1999

SENATE FINANCE COMMITTEE

MINUTES

North Carolina General Assembly

Senate Finance Committee

1999

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NORTH CAROLINA GENERAL ASSEMBLY

COMMITTEE SUMMARY REPORT

1999-2000 Biennium — SENATE: FINANCE — Valid Through 3-AUG-1999

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H 19	REDWINE	CASINO BOATS REGULATED	*S -RE-REF COM ON RULES &	06-22-99	07-08-99
H 19	REDWINE	CASINO BOATS REGULATED	*S -RE-REF COM ON RULES &	07-12-99	07-19-99
H 56=	HILL	ELIMINATE STAMPS FOR DEED TAX	*R -CH. SL 99-0028	03-30-99	04-07-99
H 62=	GRAY	EFT OF CORPORATE EST. INCOME TAX	*H -CONF COM APPOINTED	03-29-99	05-19-99
H 74	**BAKER**	**PHASE II FUNDS/IMMUNITY/TAX-EXEMPT**	***R -CH. SL 99-0333**	**06-29-99**	**07-05-99**
H 105	CRAWFORD	BUTNER COMMUNITY GOVERNANCE	*R -CH. SL 99-0140	04-19-99	05-13-99
H 112	BAREFOOT	SECURITIES TRANSFER ON DEATH	S -RE-REF COM ON FINANCE	04-06-99	
H 120	OWENS	TAX LIEN ADVERTISEMENT AND COLLECTIO	*H -PRES. TO GOV. 07-20	04-28-99	07-07-99
H 133	ROGERS	EXEMPT DISABLED VETERAN VEHICLES	*S -REF TO COM ON FINANCE	07-07-99	
H 136=	INSKO	EXEMPT CHILD CARE PROPERTY	*S -REF TO COM ON FINANCE	07-14-99	
H 143	WRIGHT	HANDICAPPED PARKING FINES	*R -CH. SL 99-0265	06-02-99	06-03-99
H 178=	BROWN	JONESVILLE ACCIDENT REPORTS/WEEDS	R -CH. SL 99-0129	04-01-99	05-26-99
H 221=	REDWINE	LONG BEACH/YAUPON BEACH	*R -CH. SL 99-0066	03-29-99	05-13-99
H 222	MITCHELL	STRENGTHEN LITTERING LAW	*H -PRES. TO GOV. 07-20	06-10-99	07-13-99
H 237	GULLEY J	BOAT AGENT FEES	R -CH. SL 99-0248	05-25-99	06-16-99
H 239	HAIRE	COMMUNITY COLLEGE PROPERTY TRANSFERS	*R -CH. SL 99-0115	04-21-99	05-13-99
H 240	INSKO	UNC NONAPPROPRIATED CAPITAL PROJECTS	*H -PRES. TO GOV. 07-19	07-12-99	07-14-99
H 251	THOMPSON	BAKERSVILLE DELINQUENT TAXES	*R -CH. SL 99-0326	04-26-99	07-20-99
H 259	JARRELL	HOME INSPECTOR AMENDMENTS	*R -CH. SL 99-0149	04-01-99	05-20-99
H 275	**REDWINE**	**ZERO ESC TAX/TRAINING CONTRIBUTION**	***R -CH. SL 99-0321**	**04-19-99**	**05-26-99**
H 278	REDWINE	TANF SEPARATION NONCHARGED	*H -PRES. TO GOV. 07-14	04-28-99	07-01-99
H 279	**REDWINE**	**TOWNSHIP HOSPITALS**	***H -PRES. TO GOV. 07-19**	**07-12-99**	**07-13-99**
H 280	COLE	MOTOR VEHICLE TECH. AMENDMENTS	*H -PRES. TO GOV. 07-21	06-15-99	07-08-99
H 283	ALLEN	STATE TREASURER'S INVESTMENT AUTHORI	*R -CH. SL 99-0251	04-22-99	06-16-99
H 293	BRIDGEMAN	PROPRIETARY SCH./CIVIL PENALTIES	*H -CONF COM APPOINTED	06-03-99	07-06-99
H 301	CULPEPPER	AUCTIONEER AMENDMENTS	*R -CH. SL 99-0142	04-15-99	05-13-99
H 315	WILSON C	MOTOR VEHICLE TAX VALUE/E&R BD.	*R -CH. SL 99-0353	06-24-99	07-07-99
H 419	BAKER	MOUNT AIRY SATELLITE ANNEXATION	*R -CH. SL 99-0232	05-11-99	06-23-99
H 449	NYE	FARM BALING EQUIPMENT TAX CHANGE	S -REF TO COM ON FINANCE	07-12-99	
H 462=	HILL	LOCAL UTILITY BILLS/DARE UTILITIES	R -CH. SL 99-0127	04-06-99	05-19-99

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BOLDED LINE INDICATES BILL INDEXED AS AFFECTING APPROPRIATIONS.

NORTH CAROLINA GENERAL ASSEMBLY

COMMITTEE SUMMARY REPORT

1999-2000 Biennium SENATE: FINANCE Valid Through 3-AUG-1999

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H 486	MOORE R	PARADE TRAILERS/PERM./RET.SHP PLATES	R -CH. SL 99-0220	04-07-99	05-13-99
H 486	MOORE R	PARADE TRAILERS/PERM./RET.SHP PLATES	R -CH. SL 99-0220	05-26-99	06-03-99
H 504	PRESTON	CARTERET PLANNING/ZONING CHANGES	*R -CH. SL 99-0154	04-26-99	06-01-99
H 507	SMITH	CAPE CARTERET/BOGUE ANNEXATIONS	*R -CH. SL 99-0287	07-06-99	07-07-99
H 519	JUSTUS	HENDERSON FIRE DISTRICTS	*S -REF TO COM ON FINANCE	07-07-99	
H 541	MITCHELL	BUOY FISHING/SPECIAL FISHING DEVICE	*S -RE-REF COM ON FINANCE	07-15-99	
H 623	BRUBAKER	PLEASANT GARDEN CHANGES	*R -CH. SL 99-0331	07-01-99	07-20-99
H 648=	DAUGHTRY	BENSON CHARTER REVISED	*R -CH. SL 99-0091	04-15-99	05-19-99
H 651	REDWINE	BRUNSWICK FIRE FEES	*R -CH. SL 99-0323	04-26-99	07-08-99
H 665	OWENS	MODIFY CURRITUCK ROOM TAX	*R -CH. SL 99-0155	05-24-99	06-01-99
H 667	CRAWFORD	ROANOKE RAPIDS ANNEXATION	*R -CH. SL 99-0324	07-12-99	07-13-99
H 677	HAIRE	CERTAIN COUNTIES DELINQUENT TAXES	*S -REF TO COM ON FINANCE	04-29-99	
H 708=	COX	AIRPORT AUTHORITY REFUNDS	*R -CH. SL 99-0104	05-12-99	05-25-99
H 723	INSKO	DARK WINDOW INSPECTION FEE	*S -REF TO COM ON FINANCE	07-13-99	
H 734	INSKO	CHAPEL HILL DEVELOPMENT AGREEMENTS	*S -REF TO COM ON FINANCE	06-10-99	
H 738	ROGERS	GREENVILLE/CATAWBA ANNEXATIONS	R -CH. SL 99-0283	05-11-99	07-01-99
H 740	ROGERS	MOUNT AIRY ANNEXATION CORRECTION	*R -CH. SL 99-0325	07-15-99	07-15-99
H 755	YONGUE	HIGHWAY LIGHTING SERVICE DISTRICTS	*R -CH. SL 99-0224	04-27-99	06-09-99
H 764	SETZER	RAISE MOORESVILLE ROOM TAX	*R -CH. SL 99-0258	06-08-99	07-01-99
H 765=	MELTON	WESLEY CHAPEL BOUNDARIES	R -CH. SL 99-0041	04-27-99	05-05-99
H 776	CRAWFORD	ROANOKE RAPIDS OVERGROWN LOTS	R -CH. SL 99-0058	04-26-99	05-13-99
H 781	SETZER	CATAWBA ANNEXATIONS	S -REF TO COM ON FINANCE	07-12-99	
H 782	BROWN	WILKES FIRE DISTRICT	*S -REF TO COM ON FINANCE	06-28-99	
H 794	WARREN EDITH	FARMVILLE ANNEXATION	R -CH. SL 99-0289	06-28-99	07-08-99
H 797=	MELTON	UNION COUNTY FIRE FEES	R -CH. SL 99-0039	04-21-99	05-05-99
H 812	THOMAS	REMOVE SUNSET/CRAVEN PROCEEDS USE	*R -CH. SL 99-0286	04-27-99	07-07-99
H 828	GILLESPIE	REVALUATION TAX RATE NOTICE	S -REF TO COM ON FINANCE	04-26-99	
H 830	WALEND	TRANSYLVANIA ROOM TAX PENALTIES	*R -CH. SL 99-0205	05-20-99	06-16-99
H 837	EDWARDS	CHOCOWINITY ETJ	*R -CH. SL 99-0042	04-26-99	05-05-99
H 845	MCLAWHORN	GREENVILLE UTILITIES COMMISSION	*R -CH. SL 99-0233	05-19-99	06-23-99

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1999-2000 Biennium SENATE: FINANCE Valid Through 3-AUG-1999

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H 846	WARREN EDITH	FARMVILLE ETJ	*R -CH. SL 99-0043	04-28-99	05-05-99
H 847	WARREN EDITH	PITT COUNTY INVESTMENTS	*R -CH. SL 99-0048	04-28-99	05-05-99
H 852	BUCHANAN	HICKORY/MOCKSVILLE ANNEXATIONS	R -CH. SL 99-0208	04-27-99	05-26-99
H 855	HORN	KINGS MOUNTAIN ETJ	R -CH. SL 99-0259	04-28-99	07-01-99
H 863	REDWINE	ST. JAMES INCORPORATION	R -CH. SL 99-0241	05-12-99	06-09-99
H 867	FITCH	WILSON ANNEXATIONS	*S -REF TO COM ON FINANCE	07-01-99	
H 899	BRIDGEMAN	REAL ESTATE SALESMAN/BROKER LICENSUR	*R -CH. SL 99-0200	05-11-99	06-01-99
H 900	HUNTER	GATES COUNTY FIRE PROTECTION	*R -CH. SL 99-0242	05-13-99	06-01-99
H 937	GRAY	REGIONAL TRANSPORTATION AUTH. AMD.	*H -PRES. TO GOV. 07-20	06-29-99	07-07-99
H 964	JARRELL	MUNICIPAL INCORPORATION PROCESS	*H -PRES. TO GOV. 07-20	06-24-99	07-14-99
H1009=	HILL	FUNDS FOR AGRICULTURAL RESEARCH	R -CH. SL 99-0172	05-17-99	05-25-99
H1010=	HILL	COTTON GINS, WAREHOUSES, MERCHANTS	*H -PRES. TO GOV. 07-20	07-13-99	07-14-99
H1069=	ALEXANDER	SOCIAL WORKER LICENSURE	*R -CH. SL 99-0313	06-23-99	07-01-99
H1084	MCMAHAN	COUNTY BONDS FOR LANDBANKING	*H -PRES. TO GOV. 07-19	07-13-99	07-14-99
H1090	MOORE R	I.A.F.F. REGISTRATION PLATE	*R -CH. SL 99-0314	06-08-99	07-01-99
H1095=	ALLEN	CLINICAL PHARMACIST PRACTITIONER	*R -CH. SL 99-0290	06-10-99	06-23-99
H1098=	HACKNEY	STRENGTHEN SEDIMENTATION ACT	*H -PRES. TO GOV. 07-19	07-07-99	07-13-99
H1120	WRIGHT	AUTHORIZE PUBLIC HOSPITAL DEBT	*H -PRES. TO GOV. 07-15	07-06-99	07-08-99
H1132=	INSKO	PRESERVE FARMLANDS/SMALL FARMS	*S -REF TO COM ON FINANCE	07-15-99	
H1134=	INSKO	UNC/HORACE WILLIAMS CAMPUS	R -CH. SL 99-0234	06-08-99	06-23-99
H1153	JUSTUS	RETIRED PHYSICIAN LICENSE	*S -REF TO COM ON FINANCE	07-13-99	
H1184=	WRIGHT	HOSPITAL GOVERNING AUTHORITY	*S -RE-REF COM ON FINANCE	07-01-99	
H1186	MINER	UNEARNED PREMIUM RESERVES	*H -PRES. TO GOV. 07-19	06-02-99	07-14-99
H1190	SEXTON	DESERT STORM PLATES	S -REF TO COM ON FINANCE	06-28-99	
H1233=	HILL	STRUCTURAL PEST CONTROL AMENDMENTS	*H -PRES. TO GOV. 07-19	07-07-99	07-08-99
H1233=	HILL	STRUCTURAL PEST CONTROL AMENDMENTS	*H -PRES. TO GOV. 07-19	07-12-99	07-13-99
H1237	MCMAHAN	LANDSCAPE ARCHITECTS EXAM FEE	R -CH. SL 99-0315	04-29-99	07-01-99
H1246	CLARY	ANIMAL LOVERS SPECIAL PLATE	H -PRES. TO GOV. 07-20	07-01-99	07-12-99
H1289	LUEBKE	1999 FEE BILL	*H -PRES. TO GOV. 07-20	07-07-99	07-13-99
H1290=	LUEBKE	LIMIT RECYCLING TAX INCENTIVES	*S -REF TO COM ON FINANCE	07-06-99	

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H1302	BONNER	CHARTER SCHOOL FUEL EXEMPTION	S -REF TO COM ON FINANCE	06-10-99	
H1326=	GIBSON	DRY-CLEANING SOLVENT CLEANUP AMENDS.	*S -REF TO COM ON FINANCE	07-12-99	
H1397	COLE	EXPAND DEVELOPMENT ZONES	S -REF TO COM ON FINANCE	06-21-99	
H1433	MILLER G	USE TAX PAYMENT/OTHER CHANGES	*R -CH. SL 99-0341	07-01-99	07-07-99
H1466	CANSLER	PENSION TAX WITHHOLDING	*H -PRES. TO GOV. 07-20	07-13-99	07-14-99
H1470	ALLEN	IMPAIRED DENTAL HYGIENISTS/FEE	*H -PRES. TO GOV. 07-19	07-07-99	07-13-99
H1471	CRAWFORD	ADJUST HIGHWAY BOND MATURITY	H -PRES. TO GOV. 07-19	07-12-99	07-13-99
H1472	HACKNEY	SIMPLIFY RENEWABLE ENERGY CREDITS	*R -CH. SL 99-0342	06-21-99	07-06-99
H1473	HACKNEY	RENEWABLE ENERGY MFR. CREDIT	*S -REF TO COM ON FINANCE	06-28-99	
H1476	**MILLER G**	**CODE UPDATE/CRIM. DEADLINE/RESEARCH**	***H -PRES. TO GOV. 07-21**	**06-29-99**	**07-07-99**
H1479	MILLER G	NEWSPRINT TAX CREDIT CHANGE	*R -CH. SL 99-0346	06-30-99	07-08-99
S 7	**ODOM**	**AG TOURISM SIGNS**	**R -CH. SL 99-0356**	**07-15-99**	**07-15-99**
S 17	WEINSTEIN	STATEWIDE TOURISM RESORT PERMITS	*S -PRES. TO GOV. 07-21	02-02-99	02-10-99
S 18	LEE	CARTHAGE CHARTER CONSOL/ANNEX	R -CH. SL 99-0239	03-30-99	03-31-99
S 21=	RAND	1999 N.C. LOTTERY	S -REF TO COM ON FINANCE	02-02-99	
S 22=	RAND	CUMBERLAND SALES TAX FOR SCHOOLS	S -REF TO COM ON FINANCE	02-03-99	
S 29	KERR	COSMETOLOGY FEES	*R -CH. SL 99-0348	02-04-99	02-17-99
S 33=	WELLONS	CLAYTON SATELLITE ANNEXATION	R -CH. SL 99-0010	02-04-99	02-17-99
S 43=	DALTON	FOREST CITY/ALEXANDER MILLS	R -CH. SL 99-0009	02-17-99	02-25-99
S 44	SOLES	LAKE WACCAMAW ANNEXATION	*R -CH. SL 99-0046	04-05-99	04-07-99
S 55	COCHRANE	REVENUE LAWS TECHNICAL CHANGES	*R -CH. SL 99-0337	02-09-99	06-02-99
S 56=	LEE	SUNSET/TERM OF ENERGY SAVINGS CTRCT	*R -CH. SL 99-0235	03-18-99	04-20-99
S 58	SHAW L	EXPAND INTERSTATE HIGHWAYS	S -REF TO COM ON FINANCE	02-09-99	
S 73=	HARTSELL	MAKE FARMLAND USE VALUE ACCURATE	S -REF TO COM ON FINANCE	02-15-99	
S 75=	HOYLE	EFT OF CORPORATE ESTIMATED INCOME TA	S -REF TO COM ON FINANCE	02-15-99	
S 115=	GARWOOD	EXTEND BOND MATCH DEADLINE	H -RE-REF COM ON FINANCE	02-17-99	03-10-99
S 116=	DALTON	ELIMINATE STAMPS FOR DEED TAX	S -REF TO COM ON FINANCE	02-17-99	
S 129	HARTSELL	REPEAL UCC ARTICLE ON BULK TRANSFERS	S -RE-REF COM ON FINANCE	04-29-99	
S 130=	WELLONS	REMOVE FLEXIBLE BENEFITS SUNSET	*H -REF TO COM ON APPROP	02-18-99	04-20-99
S 136=	SHAW L	ENTERPRISE ZONE DEVELOPMENT ACT	S -REF TO COM ON FINANCE	02-18-99	

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BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
S 149	MOORE K	SHP RETIREES LICENSE PLATES	*S -RE-REF COM ON FINANCE	05-12-99	
S 181	HOYLE	DALLAS/WHITEVILLE PROP. MAINTENANCE	*R -CH. SL 99-0062	03-01-99	03-31-99
S 184=	MARTIN R	REDUCE PITT CO. PISTOL PERMIT FEE	S -RE-REF COM ON FINANCE	03-17-99	
S 208=	KERR	REVIEW TAX CREDIT PERIODICALLY	S -REF TO COM ON FINANCE	03-02-99	
S 219=	SOLES	LONG BEACH/YAUPON BEACH	S -REF TO COM ON FINANCE	03-03-99	
S 222	REEVES	ELECTRONIC PAYMENT/INFO. TECH	*S -PRES. TO GOV. 07-21	03-04-99	05-20-99
S 223	MARTIN R	EXEMPT DISABLED VETERAN VEHICLES	S -REF TO COM ON FINANCE	03-04-99	
S 235	HAGAN	"KIDS FIRST" REGISTRATION PLATES	R -CH. SL 99-0277	03-04-99	04-27-99
S 244=	HARTSELL	UNCLAIMED PROPERTY ACT	*S -PRES. TO GOV. 07-20	05-26-99	06-09-99
S 244=	HARTSELL	UNCLAIMED PROPERTY ACT	*S -PRES. TO GOV. 07-20	06-14-99	06-15-99
S 251	HORTON	MODIFY HISTORIC REHAB CREDIT	S -PRES. TO GOV. 07-15	03-08-99	06-23-99
S 254=	GULLEY W	OUTDOOR ADVERTISING CONTROL ACT	S -PRES. TO GOV. 07-20	04-07-99	05-26-99
S 269=	ODOM	HUNTERSVILLE SATELLITE ANNEXATION	R -CH. SL 99-0024	03-08-99	03-10-99
S 270	ODOM	HUNTERSVILLE VOLUNTARY ANNEXATION	*R -CH. SL 99-0019	03-08-99	03-10-99
S 271=	ODOM	HUNTERSVILLE ANNEXATION	R -CH. SL 99-0236	03-08-99	03-11-99
S 285	WARREN E	UNIV. HEALTH SYS./JUDICIAL PLATES	*S -PRES. TO GOV. 07-20	03-08-99	05-26-99
S 286	REEVES	LOCAL OPTION HOMESTEAD RELIEF	*H -REF TO COM ON RULES	03-08-99	04-07-99
S 290	MILLER B	LOBBYING LAW AMENDMENTS	*R -CH. SL 99-0338	03-15-99	04-21-99
S 313=	CLODFELTER	MECKLENBURG STORMWATER FEES	R -CH. SL 99-0050	03-11-99	04-14-99
S 314=	PLYLER	MINERAL SPRINGS INCORPORATED	R -CH. SL 99-0175	04-07-99	04-20-99
S 323	KERR	WATERFOWL LICENSE CHANGES	*R -CH. SL 99-0339	04-21-99	05-05-99
S 325=	HOYLE	CONTINUING CARE RETIREMENT HOMES	*R -CH. SL 99-0191	03-11-99	04-22-99
S 328	WELLONS	DOT RIGHT-OF-WAY PLAN FILING	*H -REF TO COM ON RULES	03-11-99	05-19-99
S 330=	KINNAIRD	SPAY/NEUTER PROGRAM	*S -RE-REF COM ON RULES &	03-11-99	07-07-99
S 343=	GARWOOD	JONESVILLE ACCIDENT REPORTS/WEEDS	S -REF TO COM ON FINANCE	03-15-99	
S 353	ODOM	DAVIDSON SATELLITE ANNEXATION	*R -CH. SL 99-0085	03-15-99	04-27-99
S 366=	ALBERTSON	AGRICULTURAL FAIR REFUNDS	S -REF TO COM ON FINANCE	03-15-99	
S 371=	PLYLER	STANLY SALES TAX FOR SCHOOLS	S -REF TO COM ON FINANCE	03-15-99	
S 372=	PLYLER	UNION SALES TAX FOR SCHOOLS	S -REF TO COM ON FINANCE	03-15-99	
S 385=	LEE	USE OF SCHOOL BUSES/US OPEN	R -CH. SL 99-0176	04-19-99	04-21-99

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S 390	RUCHO	ELIMINATE FEE-HAM OPERATOR PLATES	S -REF TO COM ON FINANCE	03-16-99	
S 415=	KINNAIRD	EXEMPT CHILD CARE PROPERTY	S -REF TO COM ON FINANCE	03-18-99	
S 418=	SOLES	CHADBOURN UTILITY BILLS	S -REF TO COM ON FINANCE	03-18-99	
S 431	CARPENTER R	POLK/GRAHAM DELINQUENT TAXES	S -REF TO COM ON FINANCE	03-22-99	
S 433	LEE	PINEBLUFF ETJ	R -CH. SL 99-0035	03-22-99	04-27-99
S 436	PLYLER	VALIDATE CERTAIN BOND REFERENDA	R -CH. SL 99-0152	03-22-99	03-31-99
S 439	ODOM	MECKLENBURG SALES TAX FOR SCHOOLS	S -REF TO COM ON FINANCE	03-22-99	
S 440	BALLANTINE	NO FOOD TAX/FUNDS FOR LOCAL GOVTS	S -REF TO COM ON FINANCE	03-22-99	
S 447	MILLER B	INSURANCE REGULATORY CHARGE	S -REF TO COM ON FINANCE	03-22-99	
S 456	PHILLIPS	FIREMEN'S PENSION ELIGIBILITY	*S -RE-REF COM ON APPROPR	04-21-99	05-25-99
S 460=	ROBINSON	HAYWOOD LOCAL SALES TAX	S -REF TO COM ON FINANCE	03-22-99	
S 468	HORTON	WINSTON-SALEM/FORSYTH ASSESSMENTS	*R -CH. SL 99-0089	03-23-99	04-22-99
S 472	GARROU	FORSYTH LOCAL ACT-1	S -RE-REF COM ON FINANCE	06-15-99	
S 477	REEVES	LOCKSMITH LICENSURE	S -REF TO COM ON FINANCE	03-23-99	
S 484	CLODFELTER	RMV TAX BUDGETING	*R -CH. SL 99-0261	03-24-99	04-20-99
S 499	HOYLE	BOAT REGISTRATION FEES	*S -PRES. TO GOV. 07-16	03-25-99	06-03-99
S 504=	PLYLER	WESLEY CHAPEL BOUNDARIES	S -REF TO COM ON FINANCE	03-25-99	
S 505	PURCELL	RICHMOND LOCAL SALES TAX	S -REF TO COM ON FINANCE	03-25-99	
S 514=	KERR	CHILD HEALTH INSURANCE INCENTIVE	S -RE-REF COM ON FINANCE	04-13-99	
S 515=	KERR	VOLUNTEER FIRE DEPT/RESCUE WORKERS	R -CH. SL 99-0319	03-25-99	04-07-99
S 516=	KERR	EXTEND TRANSPARK INVESTMENT AUTH.	S -REF TO COM ON FINANCE	03-25-99	
S 523	HAGAN	MODIFY GREENSBORO ROOM TAX USE	R -CH. SL 99-0302	06-08-99	06-23-99
S 528	ALLRAN	26TH SENATORIAL DISTRICT-1	S -RE-REF COM ON FINANCE	04-14-99	
S 534	ALBERTSON	KENANSVILLE SERVICES	R -CH. SL 99-0054	03-29-99	04-27-99
S 539	JORDAN	CONSTRUCTION WORKER TRAINING CREDIT	S -REF TO COM ON FINANCE	03-29-99	
S 542	HORTON	FORSYTH LOCAL ACT 3	S -RE-REF COM ON FINANCE	04-21-99	
S 547	HOYLE	TELECOMMUNICATIONS RELAY SERVICE	*S -PRES. TO GOV. 07-20	03-29-99	06-24-99
S 562	MILLER B	INS. FEE REPEALS AND INCREASES	*S -PRES. TO GOV. 07-20	03-29-99	07-08-99
S 570	HOYLE	UPDATE CONSUMER FINANCE ACT	*S -RE-REF COM ON FINANCE	05-25-99	05-26-99
S 570	HOYLE	UPDATE CONSUMER FINANCE ACT	*S -RE-REF COM ON FINANCE	06-02-99	

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NORTH CAROLINA GENERAL ASSEMBLY

COMMITTEE SUMMARY REPORT

1999-2000 Biennium SENATE: FINANCE Valid Through 3-AUG-1999

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
S 571=	HARRIS	SANFORD-LEE AIRPORT AUTH. REFUNDS	S -REF TO COM ON FINANCE	03-29-99	
S 572=	HARRIS	BENSON CHARTER REVISED	S -REF TO COM ON FINANCE	03-29-99	
S 588	HARTSELL	REVENUE SHARING FOR SCHOOLS	S -REF TO COM ON FINANCE	03-29-99	
S 589	HARTSELL	CABARRUS SALES TAX FOR SCHOOLS	S -REF TO COM ON FINANCE	03-29-99	
S 596=	ROBINSON	JACKSON TRANSFER TAX	S -REF TO COM ON FINANCE	03-29-99	
S 599	ROBINSON	HENDERSONVILLE CHARTER AMENDMENTS	S -REF TO COM ON FINANCE	03-29-99	
S 606	BALLANCE	TOURISM RESORT ABC PERMITS	*S -RE-REF COM ON FINANCE	04-20-99	
S 618=	CARPENTER R	MACON COUNTY AIRPORT AUTHORITY	R -CH. SL 99-0238	03-30-99	04-27-99
S 619	MILLER B	FUQUAY ANNEX./HILLSBOROUGH MEALS TAX	R -CH. SL 99-0304	03-30-99	06-09-99
S 622	KERR	NURSING HOME ADMIN.BD./FEES	*R -CH. SL 99-0217	03-30-99	04-07-99
S 623	KERR	CLEAN BURNING FUEL RATE	S -REF TO COM ON FINANCE	03-30-99	
S 625	LUCAS	DURHAM PRIVILEGE LICENSE TECHNICAL	R -CH. SL 99-0256	04-15-99	04-21-99
S 640	ROBINSON	JACKSON, SWAIN SALES TAX	S -REF TO COM ON FINANCE	03-30-99	
S 645	MARTIN R	PARMELE/FAIR BLUFF ANNEXATION	*R -CH. SL 99-0124	03-30-99	04-21-99
S 653	GULLEY W	DURHAM CO. HEALTH FUND INVEST.	R -CH. SL 99-0101	03-30-99	04-28-99
S 675	PLYLER	UNIONVILLE CHARTER CORRECTIONS	R -CH. SL 99-0090	04-01-99	04-14-99
S 689=	PLYLER	UNION COUNTY FIRE FEES	S -REF TO COM ON FINANCE	04-01-99	
S 691=	COCHRANE	BERMUDA RUN INCORPORATION	R -CH. SL 99-0094	04-06-99	04-08-99
S 694	HARTSELL	RIMERTOWN INCORPORATION	R -CH. SL 99-0284	04-14-99	04-21-99
S 696=	PLYLER	WAXHAW ANNEXATIONS	S -REF TO COM ON FINANCE	04-01-99	
S 697=	PLYLER	UNION COUNTY IMMMPACT FEES	S -REF TO COM ON FINANCE	04-01-99	
S 703	BALLANTINE	HAMPSTEAD INCORPORATION	*S -RE-REF COM ON STLOCGVT	04-07-99	04-20-99
S 712	ODOM	CORNELIUS SATELLITE ANNEXATION	R -CH. SL 99-0103	04-01-99	04-27-99
S 713	ODOM	LINCOLN SALES TAX FOR SCHOOLS	S -REF TO COM ON FINANCE	04-01-99	
S 715	MILLER B	WAKE SALES TAX FOR SCHOOLS	S -REF TO COM ON FINANCE	04-01-99	
S 716	MILLER B	WAKE COUNTY IMPACT FEES	S -REF TO COM ON FINANCE	04-01-99	
S 717=	MILLER B	GARNER TRANSP. IMPACT FEES	S -REF TO COM ON FINANCE	04-01-99	
S 718=	MILLER B	GARNER FACILITY FEE CHANGE	S -REF TO COM ON FINANCE	04-01-99	
S 725=	KINNAIRD	CHATHAM, ORANGE REVENUE OPTIONS	S -REF TO COM ON FINANCE	04-01-99	
S 729=	MOORE K	COMMUNITY COLLEGE SALES TAX REFUND	S -REF TO COM ON FINANCE	04-01-99	

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1999-2000 Biennium | SENATE: FINANCE | Valid Through 3-AUG-1999

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S 731	CLODFELTER	CONSERVATION USE VALUE TAXATION	S -REF TO COM ON FINANCE	04-01-99	
S 772=	CLODFELTER	EXPAND MUNICIPAL SERVICE DISTRICTS	S -PRES. TO GOV. 07-15	04-07-99	04-21-99
S 776	RAND	AMEND PURCH./CONTRACT EXEMPTIONS	*S -PRES. TO GOV. 07-19	04-07-99	04-21-99
S 780=	REEVES	EARNED INCOME TAX CREDIT	S -REF TO COM ON FINANCE	04-07-99	
S 791	HOYLE	TEN YEAR DRIVERS LICENSE	*H -REF TO COM ON FINANCE	04-08-99	05-20-99
S 799	KERR	PHYSICAL THERAPY FEES	R -CH. SL 99-0345	04-12-99	05-20-99
S 811	REEVES	ALTERNATIVE R&D CREDIT	S -REF TO COM ON FINANCE	04-12-99	
S 817	BALLANCE	REAL PROPERTY TAX PENALTY	R -CH. SL 99-0297	04-12-99	05-19-99
S 828=	KINNAIRD	TRANSP. COSTS/INVOL. COMMITMENT	S -REF TO COM ON FINANCE	04-12-99	
S 843	WEINSTEIN	NURSES AIDES II REGISTRY FEES	R -CH. SL 99-0254	04-13-99	04-27-99
S 844	ALLRAN	CHARTER SCHOOLS/LICENSE PLATES	S -RE-REF COM ON FINANCE	06-15-99	
S 855=	PERDUE	PORTS AUTHORITY TAX REFUNDS	S -REF TO COM ON FINANCE	04-13-99	
S 864=	GULLEY W	LAB TESTING FACILITY SALES TAX	*H -REF TO COM ON FINANCE	04-13-99	07-08-99
S 865	GULLEY W	TRANSIT AUTHORITY CORRECTION	S -RE-REF COM ON FINANCE	04-20-99	
S 868	PLYLER	INSPECTION PROGRAM ADJUSTMENTS	S -REF TO COM ON FINANCE	04-13-99	
S 876	KERR	CLARIFY NATURAL GAS FUNDS	*S -RE-REF COM ON FINANCE	04-13-99	07-06-99
S 876	KERR	CLARIFY NATURAL GAS FUNDS	*S -RE-REF COM ON FINANCE	07-19-99	
S 878	KERR	NONPROFIT WATER CORP. LOANS	R -CH. SL 99-0213	04-13-99	04-21-99
S 883	GULLEY W	GAS TAX FOR TRANSPORTATION NEEDS	S -REF TO COM ON FINANCE	04-13-99	
S 884	COOPER	MEDICAL EQUIPMENT SALES TAX	S -REF TO COM ON FINANCE	04-13-99	
S 895	SOLES	GIFT CERTIFICATES-ESCHEAT	S -REF TO COM ON FINANCE	04-14-99	
S 897=	DALTON	SAFETY PROFESSIONALS	*H -REF TO COM ON RULES	06-29-99	07-07-99
S 899	SHAW R	MAKE FEES TAX DEDUCTIBLE	S -REF TO COM ON FINANCE	04-14-99	
S 912	RAND	BONDS FOR HIGHER EDUCATION	*H -CONF COM APPOINTED	06-24-99	06-29-99
S 916	GULLEY W	ADJUST GAS TAX FORMULA	S -REF TO COM ON FINANCE	04-14-99	
S 941	WARREN E	MANUFACTURED HOMES LAW CHANGES	*S -PRES. TO GOV. 07-16	04-22-99	04-26-99
S 941	WARREN E	MANUFACTURED HOMES LAW CHANGES	*S -PRES. TO GOV. 07-16	04-27-99	06-16-99
S 948=	HARRIS	CONFORM TAX REFUND PERIOD	S -REF TO COM ON FINANCE	04-14-99	
S 957	WEBSTER	OPTIONAL SIMPLE INCOME TAX	S -REF TO COM ON FINANCE	04-15-99	
S 959	WEBSTER	EXTEND PROTEST PERIOD	S -REF TO COM ON FINANCE	04-15-99	

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S 967	CLODFELTER	PROPERTY TAX HOMESTEAD EXCLUSION	S -REF TO COM ON FINANCE	04-15-99	
S 968	SHAW L	WAIVER OF COMPETITIVE BIDDING MODIFI	*S -PRES. TO GOV. 07-20	06-23-99	07-08-99
S 970	WELLONS	TRIANGLE REGIONAL SALES & DEED TAX	S -REF TO COM ON FINANCE	04-15-99	
S 984	MILLER B	ACCOUNTANT/CPA AUDITS	*S -RE-REF COM ON FINANCE	04-29-99	
S 996	ODOM	COUNTY BONDS FOR LANDBANKING-2	S -REF TO COM ON FINANCE	04-15-99	
S1000	ODOM	MOTOR OIL ADF/USED PROGRAM	S -REF TO COM ON FINANCE	04-15-99	
S1004	KINNAIRD	GEOLOGIST LICENSURE	R -CH. SL 99-0355	04-15-99	04-28-99
S1006	HOYLE	DWI ASSESSMENTS	S -REF TO COM ON FINANCE	04-15-99	
S1030	REEVES	FRANCHISE TAX CREDIT FOR CIP	S -REF TO COM ON FINANCE	04-15-99	
S1042	RAND	AUTHORIZE PUBLIC HOSPITL DEBT	S -REF TO COM ON FINANCE	04-15-99	
S1049	ALBERTSON	NEUSE RIVER BUFFER AMENDS	*S -PRES. TO GOV. 07-20	04-27-99	05-20-99
S1054	HARTSELL	OWNERSHIP REQUIREMENTS FOR USE VALUE	S -REF TO COM ON FINANCE	04-15-99	
S1056	WELLONS	TAX RETURN DONATIONS FOR HABITAT	S -REF TO COM ON FINANCE	04-15-99	
S1064	HOYLE	AFFORDABLE HOUSING TAX CREDIT	S -REF TO COM ON FINANCE	04-15-99	
S1076	COOPER	REFORM LOCAL TAX ON RENTAL CARS	*S -PLACED ON CAL FOR 05-08	04-15-99	07-01-99
S1082=	ALBERTSON	FUNDS FOR AGRICULTURE RESEARCH	H -REF TO COM ON AGRICULT	04-15-99	05-13-99
S1085=	ALBERTSON	WETLANDS REIMBURSE/LOCAL TAX BASE	S -REF TO COM ON FINANCE	04-15-99	
S1100	ODOM	PROPERTY TAX CLERICAL ERROR	S -REF TO COM ON FINANCE	04-15-99	
S1101	ODOM	INCREASE WATER QUALITY CIVIL PENALTY	S -REF TO COM ON FINANCE	04-15-99	
S1103	KINNAIRD	USE VALUE ROLLBACK MODIFIED-2	S -REF TO COM ON FINANCE	04-15-99	
S1105=	PLYLER	TURF GRADE FERTILIZER ASSESSMENT	S -REF TO COM ON FINANCE	04-15-99	
S1110	RAND	TECH. COMMERCIALIZATION CREDIT	*R -CH. SL 99-0305	04-15-99	06-15-99
S1112	KERR	NO SALES TAX FEE/OTHER CHANGES	*S -PRES. TO GOV. 07-21	04-15-99	06-14-99
S1115	KERR	AMEND BILL LEE ACT/INCENTIVES	*S -PRES. TO GOV. 07-19	04-15-99	05-20-99
S1128=	ROBINSON	AMEND SEDIMENTATION ACT	S -RE-REF COM ON FINANCE	07-01-99	
S1131=	PURCELL	POSTPONE PIPED GAS TAX CHANGE	S -REF TO COM ON FINANCE	04-15-99	
S1138	KERR	HMO TAX PARITY	S -REF TO COM ON FINANCE	04-15-99	
S1144	WARREN E	NO TAX ON CERTAIN DONATED VEHICLES	S -REF TO COM ON FINANCE	04-15-99	
S1148	ALLRAN	NEW REGISTRATION PLATES	S -REF TO COM ON FINANCE	04-15-99	
S1152	CLODFELTER	NONRESIDENTIAL ABANDONED STRUCTURES	H -REF TO COM ON ECONGRTH	04-15-99	04-28-99

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NORTH CAROLINA GENERAL ASSEMBLY

COMMITTEE SUMMARY REPORT

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S1157=	KERR	SOCIAL WORKER LICENSURE	S -REF TO COM ON FINANCE	04-15-99	
S1160	REEVES	AMUSEMENT DEVICE INSPECTIONS	S -REF TO COM ON FINANCE	04-15-99	
S1163=	CLODFELTER	DRY-CLEANING SOLVENT CLEANUP AMENDS	S -REF TO COM ON FINANCE	04-15-99	
S1165=	PURCELL	CLINICAL PHARMACIST PRACTITIONER	*S -RE-REF COM ON FINANCE	04-27-99	

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AGENDA

Wednesday, February 10, 1999

1:30 P.M. – Room 544

I **Introduction of Members and Staff**

II **SB 17 – Econ. Development Districts – Sen. Weinstein**

III **Status Report on the Water and Sewer Part of the Bond Package**

Robert Powell - Office of State Budget and Management

Bill Holman - Department of Environment and Natural Resources

Question and Answer Session

SENATE FINANCE COMMITTEE

WEDNESDAY, FEBRUARY 10, 1999

1:30 P.M. - ROOM 544

The Senate Finance Committee met on Wednesday, February 10, 1999, in Room 544 with Senator Kerr presiding and 26 committee members present. Finance Staff members were introduced as follows:

Cindy Avrette – Attorney – Research Division
Richard Bostic – Fiscal Analyst
Dave Crotts – Fiscal Analyst
Martha Harris – Attorney - Bill Drafting
Linda Millsaps – Fiscal Analyst
Martha Walston – Attorney - Fiscal Research

Penny Williams, Legislative Assistant to Senator Hoyle, and Evelyn Hartsell, Legislative Assistant to Senator Kerr, were also recognized.

The new members serving on the Finance Committee introduced themselves.

SB 17 – Econ. Development Districts.

Senator Weinstein was recognized to explain his bill. At the conclusion of Senator Weinstein's explanation and after questions from the committee members, Senator Cooper sent forth an Amendment. John L. Rustin, Family Policy Council of North Carolina, spoke in opposition to this bill. On motion by Senator Cooper, the Committee adopted his Amendment. Johnny R. Henderson representing the Christian Action League of North Carolina, Inc. spoke in opposition to this bill. On motion by Senator Soles, the Bill, as amended, was given a Favorable Report by the Committee. Copy of original Bill, Explanation, Amendment and new Committee Substitute included in the minutes.

Status Report on the Water and Sewer Part of the Bond Package

Robert Powell, Office of State Budget and Management, gave an update on the Water and Sewer Bond issue. Bill Holman, Department of Environment and Natural Resources, was recognized and reported further on the status. Copy of letter from Wayne McDevitt also included in the minutes. Speaking on this update were the following:

Billy Ray Hall – North Carolina Rural Center
Bob High – Department of State Treasurer
Andy Romanet – NC League of Municipalities
Bobby Blowe and Jerrry Perkins

Senator Hoyle thanked Phil Kirk, North Carolina Citizens for Business and Industry, and Stuart Dixon, North Carolina Department of Commerce, for their work in getting this bond issue passed. After a general discussion with questions from committee members, Senator Kerr announced that this discussion would be continued at a later meeting. Information pertaining to the bond issue included in the minutes.

Meeting adjourned.

David W. Hoyle, Co-Chair
Senate Finance Committee

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

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 17

Short Title: Econ. Development Districts. (Public)

Sponsors: Senator Weinstein.

Referred to: Finance.

February 2, 1999

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE DEFINITION OF "ECONOMIC DEVELOPMENT AND TOURIST DISTRICT."

The General Assembly of North Carolina enacts:

Section 1. G.S. 18B-1006(l) reads as rewritten:

"(l) Economic Development and Tourist District. -- Notwithstanding the provisions of Article 6 of this Chapter, the Commission may issue permits for the sale of mixed beverages to qualified businesses in an economic development and tourist district. An "economic development and tourist district" is a district that is a political subdivision of the State, is within the corporate limits of a city, was established by an act of the General Assembly ~~enacted before July 1, 1997~~ which specifically designates it in the act as an "economic development and tourist district", and was established for the purpose of promoting economic development and tourism in the district. The mixed beverages purchase-transportation permit authorized by G.S. 18B-404(b) shall be issued by a local board operating a store located in the city in which the district is located. The governing body of a district that is eligible for mixed beverages permits under this subsection must file with the Commission a certified copy of a map setting out the boundaries of the district."

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

EXPLANATION OF SENATE BILL 17:
AN ACT TO MODIFY THE DEFINITION OF "ECONOMIC DEVELOPMENT AND TOURIST DISTRICT"

TO: Senate Finance Committee
FROM: Martha Walston, Committee Counsel
DATE: February 10, 1999
SPONSOR: Senator Weinstein

Senate Bill 17amends the definition of an "economic development and tourist district" set out in a section of the alcoholic beverages chapter governing the retail activity of alcoholic beverages. The act is effective when it becomes law.

On June 4, 1997, the General Assembly enacted a public bill that had the effect of applying to only one city of the State. The act did two things:

- It created the Lumberton Economic Development and Tourist District setting out a metes and bounds description of the District. The Lumberton City Council was to serve as the governing body of the District and was to promote economic development and tourism in the District and do all acts reasonably necessary to fulfill this purpose, and
- It allowed the ABC Commission to issue permits for the sale of mixed beverages to qualified businesses in an economic development and tourist district without holding elections for the sale of these beverages. The act defined an "economic development and tourist district" as "a district that is a political subdivision of the State, is within the corporate limits of a city, was established by an act of the General Assembly **enacted before July 1, 1997** which specifically designates it in the act as an economic development and tourist district, and was established for the purpose of promoting economic development and tourism in the district."

Senate Bill 17 removes the bold language from the definition. The effect of the 1997 act creating this definition was that the act applied only to Lumberton, because Lumberton was the only economic development and tourist district created by the General Assembly before July 1, 1997. By deleting the time provision in Senate Bill 17, a development and tourist district could be created anywhere in the State by an act of the General Assembly.

The impetus for Senate Bill 17 is a November 18, 1998, lawsuit filed in Wake County Superior Court by a group of Robeson County citizens against the ABC Commission and the Lumberton ABC Board. The plaintiffs have alleged that the 1997 legislation violates our State Constitution because it enacts local legislation regulating trade, i.e. the sale of mixed beverages in Lumberton. They cite Section 24(j) of Article II of the State Constitution prohibiting the General Assembly from enacting a local act regulating labor, trade, mining, or manufacturing. Deleting the time provision in the statute means any economic development and tourism district could be created anywhere in North Carolina and would be entitled to a mixed beverage permit.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE 2-10-99

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

COMMITTEE SUBSTITUTE _____

Rep.)
Sen.) Cooper

moves to amend the bill on page 1, line 19

( ) WHICH CHANGES THE TITLE

by

by removing the period and adding at the end of line 19 the following

" and shall apply to pending litigation. "

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 17
Proposed Committee Substitute S17-PCS1526-RB

Short Title: Econ. Development Districts. (Public)

Sponsors:

Referred to:

February 2, 1999

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE DEFINITION OF "ECONOMIC DEVELOPMENT AND TOURIST DISTRICT."

The General Assembly of North Carolina enacts:

Section 1. G.S. 18B-1006(l) reads as rewritten:

"(l) Economic Development and Tourist District. -- Notwithstanding the provisions of Article 6 of this Chapter, the Commission may issue permits for the sale of mixed beverages to qualified businesses in an economic development and tourist district. An "economic development and tourist district" is a district that is a political subdivision of the State, is within the corporate limits of a city, was established by an act of the General Assembly ~~enacted before July 1, 1997~~ which specifically designates it in the act as an "economic development and tourist district", and was established for the purpose of promoting economic development and tourism in the district. The mixed beverages purchase-transportation permit authorized by G.S. 18B-404(b) shall be issued by a local board operating a store located in the city in which the district is located. The governing body of a district that is eligible for mixed beverages permits under this subsection must file with the Commission a certified copy of a map setting out the boundaries of the district."

Section 2. This act is effective when it becomes law and shall apply to pending litigation.

NCDENR

JAMES B. HUNT JR.
GOVERNOR

WAYNE MCDEVITT
SECRETARY

NORTH CAROLINA DEPARTMENT OF
ENVIRONMENT AND NATURAL RESOURCES

February 9, 1999

Mr. Ellis Hankins, Executive Director
North Carolina League of Municipalities
PO Box 3069
Raleigh, NC 27602

SUBJECT: Availability of Clean Water Bond Funds

Dear Mr. Hankins:

It has come to my attention that various stakeholder groups interested in accessing the proceeds of the Clean Water and Natural Gas Critical Needs Bond Act of 1998 are concerned that all grant funds will be committed during the initial application review period which closes March 31. Let me assure you that this will not be the case.

The original legislation creating the DENR programs in 1987 set up semiannual review periods which have long been established as March 31st and September 30th. In an effort to more quickly address the critical water and sewer needs facing our state, the decision was made to make these funds available at the first review cycle following passage of the referendum. The requirement that final plans and specifications be submitted soon after the application deadlines is an attempt to ensure compliance with the federal arbitrage laws regarding the tax exempt status of the bonds.

We remain committed to funding only quality projects in accordance with the guidance and directives outlined in the legislation, and realize that many high priority projects may not be able to meet the deadlines associated with the March 31st deadline. Therefore, please be assured that all available grant funds will not be committed during the first application period in order that all interested applicants may have an opportunity to apply.

I have asked Assistant Secretary Bill Holman to speak to the Senate Committee on Finance on February 10, 1999, to update legislatures on our progress in reviewing and approving Clean Water Bond projects. Thank you for your assistance in the development and passage of this important legislation. We look forward to working with you and your membership to wisely commit the resources that have been made available to us. Your assistance in allaying the concerns of your membership regarding the availability of these funds will be greatly appreciated.

Sincerely,

Wayne McDevitt

Wayne McDevitt

cc: Marvin Dorman
Henry Stikes, CEC
Paul Goodson, PENC
Ron Aycock, NCACC
The Honorable Marc Basnight
The Honorable Jim Black

P.O. Box 27687, Raleigh NC 27611-7687 / 512 North Salisbury Street, Raleigh NC 27604
Phone 919-733-4984 FAX 919-715-3060 www.ehnr.state.nc.us/EHNR/
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SUBCHAPTER 1L - STATE CLEAN WATER BOND LOAN PROGRAM

SECTION .0100 - GENERAL PROVISIONS

..0101 PURPOSE

Loans for wastewater treatment systems, wastewater collection systems, water supply systems and water conservation projects from the North Carolina Clean Water Bonds Loan Fund established by the 1993~~8~~ S.L. c. ~~542~~ 132, s. 10 shall be made in accordance with this Subchapter.

History Note: *Filed as a Temporary Rule Eff. March 8, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;*
Statutory Authority 1993 S.L., c. 542, s. 10;
Eff. July 1, 1994;
Statutory Authority 1998 S.L., c. 132, s. 10;
Temporary Amendment Eff. March 31, 1999.

.0102 DEFINITIONS

In addition to the definitions in S.L. c. 542, s. 3, the following definitions will apply to this Subchapter:

(1) "Act" means the North Carolina Education, Clean Water, and Parks Bond Act of 1993.

(2) "Award" means the offer by the receiving agency to enter into a loan commitment for a specified amount.

(3) "Award of contract" means the award by the loan recipient to a contractor of a contract to construct the project as bid.

(4) "Bid" means the amount of money for which a contractor offers to construct the project.

(5) "Contingency costs" means unforeseen costs or situations not included in the estimate of project costs.

(6) "Commitment" means a binding agreement to pay loan funds in installments to an eligible applicant at some future time.

(7) "Date of completion" means the date on which the project has been completed, as determined by the receiving agency.

(8) "Division of Environmental Health" means the Division of Environmental Health of the North Carolina Department of Environment, Health, and Natural Resources.

(9) "Division of Environmental Management" means the Division of ~~Environmental Management~~ Water Quality of the North Carolina Department of Environment, ~~Health,~~ and Natural Resources.

(10) "Effective date of receipt" means September 30 for applications postmarked or hand delivered to the principal offices of the receiving agency in Raleigh, North Carolina between April 1 and September 30, and means March 31 for applications postmarked or hand delivered to the principal offices of the receiving agency in Raleigh, North Carolina between October 1 and March 31.

(11) "Fiscal year" means the state fiscal year, beginning on July 1 of a calendar year and ending on June 30 of the following calendar year. In referring to a specific fiscal year the year named is the calendar year in which the fiscal year ends. For example, Fiscal Year 1994 refers to the fiscal year beginning July 1, 1993 and ending June 30, 1994.

(12) "Inspection" means inspection or inspections of a project to determine percentage completion of the project and compliance with applicable federal, state and local laws or rules.

(13) "Orders" means any restrictive measure, related to the operation of its wastewater treatment facilities, issued to an applicant for a loan from the wastewater accounts under this Subchapter. Such measures may be included in, but are not restricted to, Special Orders, Special Orders by Consent, Judicial Orders, or issued or proposed permits, permit modifications or certificates.

(14) "Project" means the works described in the application for a loan under this Subchapter.

(15) "Priority period" means priority review period of January 1 to June 30 and July 1 to December 31 of each year.

(16) "Real property" means land and structures affixed to the land having the nature of real property or interests in land including easements or other rights-of-way purchased or acquired for facilities and works to be constructed as a part of the project for which a loan is made under this Subchapter.

(17) "Receiving agency" means the Division of Environmental Health with respect to receipt of applications for loans for water supply systems, and the Environmental Management Commission and the Division of Environmental Management with respect to receipt of applications for loans for wastewater systems.

(18) "Regional water supply system" ~~means~~ means: ~~a public water supply system of a municipality, county, sanitary district, or other political subdivision of the state or combination thereof which provides, is intended to provide, or is capable of providing an adequate and safe supply of water to a substantial portion of the population within a county, or to a substantial water service area in a region composed of all or parts of two or more counties, or to a metropolitan area in two or more counties.~~

(a) A public water system that serves two local units of government, or

(b) A public water system that demonstrates each of the following:

(i) A specific plan to provide drinking water throughout the territory of a local unit of government, except that a municipality shall also demonstrate a specific plan to provide drinking water outside its extraterritorial jurisdiction;

(ii) Shares water supply facility resources with another public water system or eliminates an acute/imminent, immediate, chronic, or potential health hazard as described in Rule .0701 (a) through (d) of this Subchapter in an area containing at least 15 residential units which is not served by a public water system; and

(iii) An interlocal agreement or joint resolution to be a part of an interconnected regional water system within 10 years.

(19) ~~"Regional wastewater management authority" means a unit of government which has jurisdiction for providing the wastewater treatment works for three or more units of government, or which has responsibility within a facility planning area to carry out the operation and maintenance of all publicly-owned wastewater treatment works.~~ "Regional wastewater system" means a public wastewater collection or treatment system of a municipality, county, sanitary district, or other political subdivision of the State or combination thereof that serves two or more units of government.

(20) "Water Reclamation" means the production of a high level treated effluent as a reusable, non-potable water source.

(21) "Water Reuse" means the actual use or application of treated wastewater in or on areas which require water but do not require potable water quality.

History Note: *Filed as a Temporary Rule Eff. March 8, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;*
Statutory Authority 1993 S.L., c. 542, s. 10;
Eff. July 1, 1994;
Statutory Authority 1998 S.L., c. 132, s. 10;
Temporary Amendment Eff. March 31, 1999.

SECTION .0200 - ELIGIBILITY REQUIREMENTS

.0201 ELIGIBLE PROJECT COSTS

(a) Project costs eligible for a loan under this Subchapter are limited to:

(1) the actual costs of the works described in the project application;

(2) contingency costs, not to exceed ten percent of the estimated eligible construction costs for which a loan award is made under this Subchapter. Upon receipt of bids, the contingency costs shall be reduced to not more than five percent of the actual eligible construction costs as bid.

(b) Eligible costs do not include recurring annual expenditures for administration, repairs, or operation and maintenance of any wastewater treatment works, wastewater collection system, water supply system or water conservation projects. Items not covered or allowed in the definition of "cost" are also excluded.

History Note: *Filed as a Temporary Rule Eff. March 8, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;*
Statutory Authority 1993 S.L., c. 542, s.10;
Eff. July 1, 1994.

.0202 DETERMINATION OF ELIGIBILITY

(a) Each application for a loan under this Subchapter will be reviewed by the receiving agency to determine whether it meets the eligibility requirements of the Act and this Subchapter.

(b) Each applicant will be notified by the receiving agency of its eligibility for consideration for a loan award.

(c) Applications from ineligible applicants will be returned to the applicant.

History Note: *Filed as a Temporary Rule Eff. March 8, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;*
Statutory Authority 1993 S.L., c. 542, s. 10;
Eff. July 1, 1994.

.0203 LIMITATION OF LOANS

~~The maximum principal amount of loan commitment made to any one local government unit shall be five million dollars ($5,000,000) for wastewater treatment systems and wastewater collection systems and three million dollars ($3,000,000) for water supply systems or water conservation projects.~~

History Note: *Filed as a Temporary Rule Eff. March 8, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;*
Statutory Authority 1993 S.L., c. 542, s. 10;
Eff. July 1, 1994;
Statutory Authority 1998 S.L., c. 132, s. 10;
Temporary Repeal Eff. March 31, 1999.

SECTION .0300 - APPLICATIONS

.0301 APPLICATION FILING DEADLINES

The filing deadline for the review period of July 1 through December 31 is September 30 of that year. The filing deadline for the review period of January 1 through June 30 is March 31 of that year.

History Note: Filed as a Temporary Rule Eff. March 8, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Statutory Authority 1993 S.L., c. 542, s. 10;
Eff. July 1, 1994.

.0302 GENERAL PROVISIONS

(a) Applications for loans under this Subchapter shall be submitted on the appropriate forms and accompanied by all documentation, assurances and other information called for in the instructions for completing and filing applications. Information concerning any loan or grant funds from any other source that the applicant has applied for or received for the project shall be disclosed on the application.

(b) An applicant shall furnish information as required by the 1993~~8~~ Session Laws, Chapter ~~542~~ 132 or by this Subchapter in addition to or supplemental to the information contained in its application and supporting documentation upon request by the receiving agency.

(c) Any application that does not contain information as required by the 1993~~8~~ Session Laws, Chapter ~~542~~ 132 or by this Subchapter sufficient to permit the receiving agency to review and approve the project by the date the receiving agency sets the priority rating for a priority review period shall not be included in the priority rating for that priority review period.

(d) An application shall be filed with the receiving agency before the award of contract on a project. The award of contract on a project prior to consideration of the application for a loan award will not exclude the application from consideration.

(e) An application may be withdrawn from consideration upon request of the applicant but if resubmitted shall be considered as a new application.

History Note: Filed as a Temporary Rule Eff. March 8, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Statutory Authority 1993 S.L., c. 542, s. 10;
Eff. July 1, 1994.

.0303 FILING OF REQUIRED SUPPLEMENTAL INFORMATION

(a) An environmental assessment for the proposed project must accompany the required wastewater facility plan. It must accompany the water supply facility plan when required by G.S. 113(a).

(b) All applicants must submit an Affidavit of Publication of the notice of public hearing for the proposed project and a summary of the comments received at the hearing.

(c) Any application for wastewater facilities not accompanied by final plans and specifications by the date the receiving agency sets the priority rating for a priority review period shall not be included in the priority rating for that priority review period.

(d) Any application for water supply ~~facilities~~ projects must be accompanied by a preliminary engineering report.

(e) Any applicant for water supply projects not demonstrating approval of plans and specifications within four months from the end of the priority rating period shall be transferred to the next priority rating period for consideration unless this review is the second review, in which case a new application shall be required for further consideration.

~~(e)~~(f) Any application that is not accompanied by an adopted resolution stating that the unit of government has complied or will comply with all applicable federal, state and local laws or rules shall not be included in the priority rating for that priority review period. Such resolution shall be certified or attested to as a true and correct copy as adopted.

~~(f)~~(g) If a public hearing is held on an application by the Department of ~~Environment, Health,~~ Environment

concluded by the date the receiving agency sets the priority rating for the priority review period.

~~(g)~~(h) A certification shall be submitted from the local unit stating whether a petition for vote was filed within 15 days of the applicant's public hearing.

~~(h)~~(i) A certification shall be submitted by the local government unit stating that it will be in compliance with verifiable Minority Business Enterprise goals as stated in G.S. 143-128~~(c)~~.

History Note: *Filed as a Temporary Rule Eff. March 8, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;*
Statutory Authority 1993 S.L., c. 542, s. 10;
Eff. July 1, 1994;
Statutory Authority 1998 S.L., c. 132, s. 10;
Temporary Amendment Eff. March 31, 1999.

SECTION .0400 - CRITERIA FOR EVALUATION OF ELIGIBLE APPLICATIONS

.0401 GENERAL CRITERIA

(a) During the review periods set forth in Rule .0301 of this Subchapter all eligible applications shall be assigned a priority. Priorities shall be assigned by the Environmental Management Commission for applications for projects for wastewater treatment works and wastewater collection systems and by the Division of Environmental Health for applications for projects for water supply systems and water conservation projects.

(b) The categorical elements and items to be considered in assigning priorities to each application for which loan funds are sought, and the points to be awarded to each categorical element and item are set forth in Sections .0500, .0600, .0700 and .0800 of this Subchapter. Unless otherwise specifically indicated, if an item for an element of a particular category applies specifically to the application under consideration, the application will be awarded the number of points assigned to that item for the categorical element; and if no item applies, no points will be awarded the application for that particular element.

History Note: *Filed as a Temporary Rule Eff. March 8, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;*
Statutory Authority 1993 S.L., c. 542, s. 10;
Eff. July 1, 1994.

SECTION .0500 - PRIORITY CRITERIA FOR WASTEWATER TREATMENT WORKS PROJECTS

.0501 APPLICABLE CONDITIONS

Maximum Value - ~~55~~ 65 points:

The value of this Rule will be the sum of the points assigned under Items (1), (2), (3) and (4) of this Rule.

(1) Proposed project will comply with established water quality standards and priority points will be assigned on the basis of the classification assigned to the receiving waters as follows:

(a) Class "SA" (Shellfish Waters), Class "WS-I" or "WS-II" (Water Supply Source), Class "ORW" (Outstanding Resource Waters), or "HQW" (High Quality Waters). ~~30~~ 20 points

(b) Class "WS-III", "WS-IV", or "WS-V" (Water Supply Source) ~~28~~ 15 points

(c) Class "B" or "SB" (Bathing Waters) ~~26~~ 10 points

(d) Class "C" or "SC" (Fishing) ~~24~~ 5 points

(2) ~~Construction of proposed project has been initiated or must be initiated within 12 months to comply with an order issued or with a compliance schedule approved by the Environmental Management Commission, or by Judicial Order.~~ Proposed projects will provide for a regional wastewater collection or treatment ~~facility~~ system. ~~10~~ 15 points

~~(3) Proposed projects will provide for a regional wastewater treatment facility. 10 points~~

~~(4)~~(3) Proposed project will provide wastewater treatment processes for the removal of nutrients ~~or other materials not normally removed by conventional treatment processes~~. 5 points

(4) Proposed project will result in a reduction of the overall volume of effluent discharged to the state's waters by using alternative methods of wastewater treatment and disposal. 25 points

History Note: Filed as a Temporary Rule Eff. March 8, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Statutory Authority 1993 S.L., c. 542, s. 10;
Eff. July 1, 1994;
Statutory Authority 1998 S.L., c. 132, s. 10;
Temporary Amendment Eff. March 31, 1999.

.0502 FINANCIAL NEED OF APPLICANT

Maximum Value--15 Points:

(1) The financial need of the applicant will be determined by the following formula:

$$\text{Points} = \frac{50 \text{ (Total Bonded Indebtedness plus Total Estimated Project Cost)}}{\text{Total Appraised Property Valuation}}$$

"Total bonded indebtedness" includes all outstanding bonds as of the first day of the quarter in which the project application is eligible for consideration for the assignment of a priority, but shall not include bonds already authorized or sold to finance the proposed project.
"Total appraised property valuation" refers only to real property valuation based on the most recent appraisal for tax purposes as officially recorded in the county or counties in which the service area of the proposed project is to be located.
"50" is used in the formula to provide point values for this categorical element.

5 points

(2) The applicant is located within a county which has been designated as "distressed" by the Secretary of Commerce in accordance with G.S. 105-130.40(c), G.S. 105-151.17(c) and G.S. 143B-437A.

10 points

History Note: Filed as a Temporary Rule Eff. March 8, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Statutory Authority 1993 S.L., c. 542, s. 10;

Eff. July 1, 1994.

.0503 FISCAL RESPONSIBILITY OF THE APPLICANT

Maximum Value--~~10~~ 25 points:
The value of this Rule will be the sum of the points assigned to either Item (1) or (2) of this Rule plus the value assigned to Items (3) and (4) of this Rule:

(1) Applicant has adopted an acceptable sewer use ordinance which will be placed in effect on or before the completion date of the proposed project and has established an equitable schedule of fees and charges providing that each category of users shall pay ~~substantially~~ its proportional part of the total cost of the operation and which will provide sufficient revenues for the adequate operation, maintenance and administration and for reasonable expansion of the project~~.~~, or 6 points

(2) Applicant is in the process of adopting an acceptable sewer use ordinance which will be adopted and placed in effect on or before the completion date of the proposed project and has established an equitable schedule of fees and charges providing that each category of users shall pay ~~substantially~~ its proportional part of the total cost of the operation, maintenance and administration and for reasonable expansion of the project. 2 points

(3) Applicant has established by resolution of its governing body a capital reserve fund into which all surplus revenues from such charges and fees will be placed for the purposes specified in G.S. 159G-9(4). (Copy of the resolution must be submitted with application.) ~~2~~ 4 points

(4) The applicant has followed proper accounting and fiscal reporting procedures as evidenced by the applicant's most recent report of audit and the applicant is in ~~substantial~~ compliance with provisions of the general fiscal control laws of the state. ~~2~~ 15 points

The Environmental Management Commission may seek the comments of the Secretary of the Local Government Commission in determining the values to be assigned to Items (3) and (4) of this Rule.

History Note: *Filed as a Temporary Rule Eff. March 8, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;*
Statutory Authority 1993 S.L., c. 542, s. 10;
Eff. July 1, 1994;
Statutory Authority 1998 S.L., c. 132, s. 10;
Temporary Amendment Eff. March 31, 1999.

.0504 PROPERTY ACQUISITION

Maximum Value--10 points:
All necessary sites, rights-of-way or easements have been acquired. An opinion by title counsel shall be submitted stating whether or not the applicant (or the present owner if only an option has been obtained) has good and valid title to the sites, rights-of-way or easements free and clear of any preexisting deeds of trusts, liens or other encumbrances. 10 points

History Note: *Filed as a Temporary Rule Eff. March 8, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;*
Statutory Authority 1993 S.L., c. 542, s. 10;
Eff. July 1, 1994.

SECTION .0600 - PRIORITY CRITERIA FOR WASTEWATER COLLECTION SYSTEM PROJECTS

.0601 PUBLIC NEED

Select One; Maximum Value--25 points:

(1) Project is intended to improve or expand an existing system for which adequate wastewater treatment facilities will be provided by:

(a) a regional wastewater management authority,

25 points

(b) the applicant,

20 points

(2) Project is intended to provide a basic system for a unit of government which is not presently served by an approved system and adequate wastewater treatment will be provided by:

(a) a regional wastewater management authority,

20 points

(b) the applicant.

15 points

History Note: *Filed as a Temporary Rule Eff. March 8, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;*
Statutory Authority 1993 S.L., c. 542, s. 10;
Eff. July 1, 1994.

.0602 PUBLIC HEALTH NEED

Maximum Value--20 points:

Project will eliminate an imminent public health hazard as defined by G.S. 130A-2(3) and certified by the local Health Department.

20 points

History Note: *Filed as a Temporary Rule Eff. March 8, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;*
Statutory Authority G.S. 130A-2(3); 1993 S.L., c. 542, s. 10;
Eff. July 1, 1994.

.0603 FINANCIAL NEED OF APPLICANT

Maximum Value--15 Points:

(1) The financial need of the applicant will be determined by the following formula:

$$\text{Points} = \frac{50 \text{ (Total Bonded Indebtedness plus Total Estimated Project Cost)}}{\text{Total Appraised Property Valuation}}$$

"Total bonded indebtedness" includes all outstanding bonds as of the first day of the quarter in which the project application is eligible for consideration for the assignment of a priority, but shall not include bonds already authorized or sold to finance the proposed project.
"Total appraised property valuation" refers only to real property valuation based on the most recent appraisal for tax purposes as officially recorded in the county or counties in which the service area of the proposed project is to be located.
"50" is used in the formula to provide point values for this categorical element.

5 points

(2) The applicant is located within a county which has been designated as distressed by the Secretary of Commerce in accordance with G.G. 105-130.40(c), G.S. 105-151.17(c) and G.S. 143B-437A.

10 points

History Note: *Filed as a Temporary Rule Eff. March 8, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;*
Statutory Authority 1993 S.L., c. 542, s. 10;
Eff. July 1, 1994.

.0604 FISCAL RESPONSIBILITY OF THE APPLICANT

Maximum Value--~~10~~ 25 points:

The value of this Rule will be the sum of the points assigned to either Item (1) or (2) plus the value assigned to Items (3) and (4) of this Rule:

(1) Applicant has adopted an acceptable sewer use ordinance which will be placed in effect on or before the completion date of the proposed project and has established an equitable schedule of fees and charges, providing that each category of users shall pay ~~substantially~~ its proportional part of the total cost of the operation, and which will provide sufficient revenues for the adequate operation, maintenance and administration and for reasonable expansion of the ~~project.~~ project. or 6 points

(2) Applicant is in the process of adopting an acceptable sewer use ordinance which will be adopted and placed in effect on or before the completion date of the proposed project and has established an equitable schedule of fees and charges, providing that each category of users shall pay ~~substantially~~ its proportional part of the total cost of the operation and which will provide sufficient revenues for the adequate operation, maintenance and administration and for reasonable expansion of the project. 2 points

(3) Applicant has established by resolution of the governing body a capital reserve fund into which all surplus revenues from such charges and fees will be placed for the purposes specified in G.S. 159G-9(4). (Copy of the resolution must be submitted with application.) ~~2~~ 4 points

(4) The applicant has followed proper accounting and fiscal reporting procedures, as evidenced by the applicant's most recent report of audit, and the applicant is in ~~substantial~~ compliance with provisions of the general fiscal control laws of the state. ~~2~~ 15 points

The Division of Environmental Management may seek the comments of the Secretary of the Local Government Commission in determining the values to be assigned to Items (3) and (4) of this Rule.

History Note: *Filed as a Temporary Rule Eff. March 8, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;*
Statutory Authority 1993 S.L., c. 542, s. 10;
Eff. July 1, 1994;
Statutory Authority 1998 S.L., c. 132, s. 10;
Temporary Amendment Eff. March 31, 1999.

.0605 PROPERTY ACQUISITION

Maximum Value--10 points:

All necessary sites, rights-of-way or easements have been acquired. An opinion by title counsel shall be submitted stating whether or not the applicant (or the present owner if only an option has been obtained) has good and valid title to the sites, rights-of-way or easements free and clear of any preexisting deeds of trust, liens or other encumbrances.

10 points

History Note: *Filed as a Temporary Rule Eff. March 8, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;*
Statutory Authority 1993 S.L., c. 542, s. 10;
Eff. July 1, 1994.

SECTION .0700 - PRIORITY CRITERIA FOR WATER SUPPLY SYSTEMS PROJECTS

.0701 PUBLIC NECESSITY: HEALTH: SAFETY AND WELFARE

Maximum Value--~~80~~ 100 points:

(1) System and Service Area Needs: (Maximum Points--20)

(a) The project is intended to increase the source of water to meet existing service area needs or to alleviate water shortage problems. 12 points

(b) The project is intended to improve an existing system with no increase in the area to be served. 12 points

(c) The project is intended to increase the existing area to be served without improvement of the existing system. 12 points

(d) The project is intended to increase the existing area to be served and includes ~~needed~~ improvements to the existing system. 16 points

(e) The project is intended to ~~significantly~~ increase the existing area to be served and includes ~~needed~~ improvements to the existing system and either is a component of or will create a regional water supply system.~~ or is so designed as to permit interconnection at an appropriate time with an expanding metropolitan, area-wide or regional system.~~ 20 points

(f) The project is intended to provide for construction of a basic system for an area which is not presently served by an approved public water supply system and service by an existing system is not feasible. 20 points

~~(2) Public Health Need (A maximum of 40 points shall be awarded if more than one item applies.). The project is intended to eliminate the following health risks:~~

~~(a) Contaminant levels in drinking water which constitute acute health risks as defined in 40 CFR 141.32(a)(1)(iii) which is incorporated by reference at 15A NCAC 18C .1523. 40 points~~

~~(b) Unreasonable risks to health from contaminant levels in drinking water as determined by the U.S. Environmental Protection Agency or the Environmental Epidemiology Section of the Department of Environment, Health, and Natural Resources pursuant to the Guidance in Developing Health Criteria for Determining Unreasonable Risk to Health as published by the Office of Drinking Water, U.S. Environmental Protection Agency, Washington, D.C. 20460 and hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Health, 1330 St. Mary's Street, Raleigh, North Carolina. Copies may be obtained from the Department of Environment, Health, and Natural Resources, Division of Environmental Health, Public Water Supply Section, P.O. Box 19536, Raleigh, North Carolina 27626-0536 at no charge unless subsequent editions exceed 100 pages. 35 points~~

~~(c) Contaminant levels in drinking water other than those which constitute acute health risks described in Sub-item (2)(a) of this Rule. 30 points~~

~~(d) Inadequate treatment to remove or abate contaminant levels in drinking water. 30 points~~

~~(e) Insufficient water for drinking or for sewage disposal purposes or inadequate water pressure to prevent contaminant levels in drinking water. 20 points~~

~~Notwithstanding other provisions relating to the assignment of priority point values for various categorical elements and items, the Division of Environmental Health may award a higher priority value to an eligible application if the proposed project is required to eliminate a demonstrated or critical hazard to the public health.~~

(2) Public health and compliance points may be awarded to a project based on the following criteria. A proposed project shall be necessary to facilitate compliance with the N.C. Drinking Water Act or the federal Safe Drinking Water Act and to alleviate the type of public health concern for which points are awarded. A project shall receive only points in the highest sub-category for which it may qualify:

(a) Acute/Imminent Health Hazards. A maximum of 60 points shall be awarded to projects that propose to eliminate any one or more of the following acute, ongoing health hazards to the consumer:

(i) Projects that address documented nitrate, nitrite or fecal coliform MCL violations, or contaminant levels in drinking water which constitute acute health risks as defined in 40 C.F.R 141.32(a)(1)(iii) which is incorporated by reference at 15A NCAC 18C .1523; or

(ii) Projects that eliminate any contaminant in the public water system that poses an acute risk or imminent hazard to public health as determined by the State Health Director or a health risk assessment from the Division of Epidemiology, Department of Health and Human Services in accordance with G.S. 130A-2(3).

(b) Immediate Health Hazards. A maximum of 40 points shall be awarded to projects that propose to eliminate any one or more of the following immediate health hazards to the consumer:

(i) Projects that address surface water treatment technique violations occurring for two or more consecutive months;

(ii) Projects that resolve any microbiological MCL problems for a water system with three or more microbiological MCL violations during the previous 12 months;

(iii) Projects that propose filtration for a surface water source or for a well that is determined to be under the direct influence of surface water by the Department that does not currently have filtration;

(iv) Projects that address the inability of a public water system to inactivate giardia and viruses in accordance with 15A NCAC 18C .2001; or

(v) Projects that address documented recurrent water outages or low pressure below the requirements of 15A NCAC 18C .0901. Only problems that affect human consumption of drinking water shall be considered for award of points under this criteria.

(c) Chronic Health Hazards. A maximum of 24 points shall be awarded to projects that propose to eliminate any one or more of the following chronic health hazards to the consumer:

(i) Projects that address exceedances of the lead and copper action levels under 15A NCAC 18C .1507;

(ii) Projects that address violations of inorganic or organic chemical or contaminant MCLs under 15A NCAC 18C .1510, .1517, and .1518;

(iii) Projects that address violations of radiological contamination MCLs under 15A NCAC 18C .1520 and .1521; or

(iv) Projects that address a chronic health hazard as determined by the State Health Director or a health risk assessment from the Division of Epidemiology, Department of Health and Human Services.

(d) Potential Health Hazards. A maximum of 16 points shall be awarded to projects that propose to eliminate any one or more of following potential health hazards to the consumer:

(i) Projects that address low chlorine residuals in the distribution system;

(ii) Projects that address periodic violations of an MCL;

(iii) Projects for line installation or extensions to areas with poor water quality or limited quantity;

(iv) Projects to develop new sources of water, to augment existing sources, or to expand treatment capacity to meet current demand when the average daily demand for the previous 12 months equals or exceeds the available water supply as calculated in local water supply plans prepared in accordance with G.S. 143-355(l) or the maximum day demand for the previous 12 months equals or exceeds the approved water treatment plant design capacity; or

(v) Projects to provide disinfection for a system that currently does not have disinfection.

(e) System Improvements. A maximum of 8 points shall be awarded for projects that shall provide any one or more of the following general system improvements when needed for public health purposes:

(i) Projects that replace water supply production or treatment equipment that is undersized, malfunctioning or has exceeded its useful life;

(ii) Projects that replace undersized or leaking water lines;

(iii) Projects that address other water quality concerns such as iron, manganese, taste, and odor;

(iv) Projects to bring existing facilities to current design standards which affect water quality such as treatment, chemical storage and application, pumping facilities, finished storage, distribution systems;

(v) Projects that eliminate dead ends and provide looping in a distribution system;

(vi) Projects that increase water storage capacity;

(vii) Projects to develop new sources of water, to augment existing sources, or to expand treatment capacity to meet current demand when the average daily demand for the previous 12 months exceeds 80 percent of the available water supply as calculated in local water supply plans prepared in accordance with G.S. 143-355(l) or the maximum day demand for the previous 12 months exceeds 80 percent of the approved water treatment plant design capacity; or

(viii) Projects for installation or upgrade of water treatment plant waste disposal facilities.

(3) Capacity for Future Growth (Select One) - (Maximum Points –20):

(a) The project is intended to provide for the immediate needs. 6 points

(b) The project is intended to provide for the reasonable growth needs of the area during the next 5 to 20 year planning period. 10 points

(c) The project is a proposed regional system or a major component of a regional system which is intended to provide for the reasonable growth needs of the area to be served during the next 20 or more years. 20 points

History Note: Filed as a Temporary Rule Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Statutory Authority S.L., c. 542, s. 10;
Eff. July 1, 1994;
Statutory Authority 1998 S.L., c. 132, s. 10;
Temporary Amendment Eff. March 31, 1999.

.0702 PROJECT PLANNING

Maximum Value--15 points: The value of this categorical element is the sum of the points awarded to Item (1) and the points assigned to Item (2) of this Rule:

(1) The project is compatible with the State Water Supply Plan and the applicable local water supply facility plan submitted under G.S. 143-355(l). 5 points

(2) The project demonstrates planning, through inter-local agreements leading to systems of regional water supply. 10 points

History Note: Filed as a Temporary Rule Eff. March 8, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Statutory Authority 1993 S.L., c. 542, s. 10;
Eff. July 1, 1994.

.0703 FINANCIAL CONSIDERATIONS

Maximum Value-- ~~35~~ 40 Points:

(1) Financing of the Project (Select One) - (Maximum Points--10):

(a) Applicant has applied for but not received a commitment for funding from a federal agency for a portion of the project costs. 5 points

(b) Applicant has funds available or has received a commitment for funding from a federal agency, or bonds have been authorized to cover project costs over and above the state grant or loan funds requested. 10 points

(c) The loan funds requested cover all the estimated project costs. 10 points

(2) Fiscal Responsibility of the Applicant (Maximum Points--~~10~~ 15). The value of this categorical element shall be the sum of the points awarded Items (a) to (c) of this Paragraph:

(a) The applicant has followed proper accounting and fiscal reporting procedures as reflected in the applicant's most recent report of audit, and the applicant is in substantial compliance with the provisions of the general fiscal control laws of the state. 2 points

(b) The applicant water system is fiscally self-sufficient. 2 points

(c) Estimated revenues will provide funds for proper future operation, maintenance and administration, reasonable expansion of the project and estimated annual principal and interest requirements for the project debt plus annual principal and interest requirements on the outstanding debt incurred for existing facilities.

6 11 points

In determining the points to be awarded this categorical element, the Division of Environmental Health may seek the comments of the Secretary of the Local Government Commission.

(3) Financial Need of the Applicant (Maximum Points--15). The financial need of the applicant will be determined by the following formula:

$$\text{Points} = \frac{150\ (\text{Total Bonded Indebtedness plus Total Estimated Project Cost})}{\text{Total Appraised Property Valuation}}$$

"Total bonded indebtedness" includes all outstanding bonds as of the first day of the quarter in which the project application is eligible for consideration for the assignment of a priority but shall not include bonds already authorized or sold to finance the proposed project.

"Total appraised property valuation" refers only to real property valuation based on the most recent appraisal for tax purposes as officially recorded in the county or counties in which the service area of the proposed project is to be located.

"150" is used in the formula to provide point values for this categorical element.

History Note: Filed as a Temporary Rule Eff. March 8, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Statutory Authority 1993 S.L., c. 542, s. 10;
Eff. July 1, 1994.

SECTION .0800 - CRITERIA FOR PLANNING AND WATER CONSERVATION

.0801 PLANNING AND WATER CONSERVATION

Maximum value - ~~70~~ 80 points:

(a) Applicant may receive a maximum of 15 bonus points for meeting the following criteria as applicable:

(1) Applicant demonstrates it has a continuing I/I program in its wastewater sewer maintenance program. (Wastewater Projects Only) 5 points

(2) Applicant demonstrates it has a continuing water loss program in its water supply system program. (Water Supply Projects Only) 5 points

(3) Applicant demonstrates it has a continuing program of water conservation education and information. 5 points

(4) Applicant demonstrates it has established a water conservation incentive rate structure; created incentives for new or replacement installation of low flow faucets, shower heads, and toilets; or has a water reclamation or reuse system. 5 points

(b) Applicant may also receive a maximum of 25 bonus points for meeting the following criteria:

(1) Applicant demonstrates that it has adopted a comprehensive land-use plan that meets the requirements of G.S. 155H. Article 18 or G.S. 160A. Article 19. or applicant is a local government unit that is not authorized to adopt a comprehensive land-use plan but that is located in whole or in part in another local government unit that has adopted a comprehensive land-use plan. and that the proposed project is consistent with the plan. 7 points

(2) Applicant demonstrates that the comprehensive land-use plan exceeds the minimum state standards for the protection of water resources. 8 points

(3) Applicant demonstrates that actions have been taken toward implementation of the comprehensive land-use plan. These actions may include the adoption of a zoning ordinance or any other measure that significantly contributes to the implementation of the comprehensive land-use plan. 10 points

(c) Applicant may receive a maximum of 20 bonus points for the following criteria:

(1) Applicant has developed a capital improvement plan as defined in Session Laws 1998. chapter 132. 15 points

(2) Proposed project is consistent with the water supply watershed protection requirements of G.S. 143-214.5. 5 points

(d) Applicant may receive a maximum of 20 bonus points for the following criteria:

(1) Applicant demonstrates voluntary water supply watershed protection activities in excess of the minimum requirements of G.S. 143-214.5, or 15 points

(2) Applicant demonstrates it has developed a voluntary wellhead protection program. or 15 points

(3) Applicant demonstrates it has both (1) and (2) above. 20 points

History Note: *Filed as a Temporary Rule Eff. March 8, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;*
Statutory Authority 1993 S.L., c. 542, s. 10;
Eff. July 1, 1994;
Statutory Authority 1998 S.L., c. 132, s. 10;
Temporary Amendment Eff. March 31, 1999.

SECTION .0900 - PRIORITIES

.0901 ASSIGNMENT OF PRIORITIES

(a) All applications that have been reviewed and approved by the receiving agency by the date the receiving agency sets the priority rating for a priority review period will be assigned a priority rating according to the applicable criteria set forth in Sections .0500, .0600, .0700 and .0800 of this Subchapter.

(b) The receiving agency may exercise its discretionary authority in the matter of establishing a priority rating for any project application in cases where two or more applications receive the same number of priority points.

History Note: *Filed as a Temporary Rule Eff. March 8, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;*
Statutory Authority 1993 S.L., c. 542, s. 10;
Eff. July 1, 1994.

.0902 ASSIGNMENT OF CATEGORY TO WASTEWATER APPLICATIONS

(a) Applications for loans for wastewater projects will be assigned a category as follows, during review of the applications:

(1) All applications for projects that are under orders ~~or projects whose receiving waters have been designated Nutrient Sensitive Waters by the Environmental Management Commission or whose receiving waters have been identified as water quality impaired or limited in the most current basinwide water quality management report~~, under moratorium at or above 80% of permitted capacity during the previous calendar year, experiencing excessive infiltration/inflow, or that would qualify for an Emergency Loan under Section .0204 of these rules, and that have submitted final project plans and specifications for review and approval by the receiving agency, shall be placed in Category 1.

(2) ~~All other applications shall be placed in Category 2~~ All applications for projects that are under orders, under moratorium at or above 80% permitted capacity during the previous calendar year, experiencing excessive infiltration/inflow, or that would qualify for an Emergency Loan under Section .0204 of these rules that have not submitted final project plans and specifications for review and approval by the receiving agency shall be placed in Category 2.

(3) All applications for projects for expanding infrastructure primarily to support additional development and that have submitted final project plans and specifications for review and approval by the receiving agency, shall be placed in Category 3.

(4) All applications for projects for expanding infrastructure primarily to support additional development that have not submitted final project plans and specifications for review and approval by the receiving agency shall be placed in Category 4.

(b) All applications in Category 1 for a specific wastewater account will be funded before applications in Category 2 in the same account. All applications in Category 2 for a specific wastewater account will be funded before applications in Category 3 in the same account. All applications in Category 3 will be funded before applications in Category 4 in the same account.

History Note: *Temporary Rule Eff. March 8, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;*
Statutory Authority 1993 S.L., c. 542, s. 10;
Eff. July 1, 1994;
Statutory Authority 1998 S.L., c. 132, s. 10;
Temporary Amendment Eff. March 31, 1999.

SECTION .1000 - LOAN AWARD, COMMITMENT, AND DISBURSEMENT

.1001 DETERMINATION OF AWARD

(a) The funds available in each account in a given priority review period will be awarded in the descending order of priority rating and Category as determined under Sections .0500, .0600, . 0700, and .0800 and .0900 of this Subchapter.

(b) If an application is not awarded a loan in a priority review period because of its priority rating, the receiving agency will inform the applicant and will consider the application as a new application during the next priority review period. If the application again is not awarded a loan or grant because of its priority rating, the receiving agency will inform the applicant and return the application.

History Note: *Filed as a Temporary Rule Eff. March 8, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;*
Statutory Authority 1993 S.L., c. 542, s. 10;
Eff. July 1, 1994.

.1002 CERTIFICATION OF ELIGIBILITY

(a) The receiving agency shall create a certificate of eligibility for each application for which a loan commitment has been made.

(b) The certificate of eligibility shall indicate that the applicant meets all eligibility criteria and that all other requirement of the Act have been met.

(c) The certificate of eligibility shall also indicate the amount and the fiscal year of the loan commitment.

History Note: *Filed as a Temporary Rule Eff. March 8, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;*
Statutory Authority 1993 S.L., c. 542, s. 10;
Eff. July 1, 1994.

.1003 CRITERIA FOR LOAN ADJUSTMENTS

Upon receipt of bids, a loan commitment for water supply projects may be adjusted as follows:

(1) The loan commitment may be decreased, provided the project cost as bid is less than the estimated project cost, and the receiving agency approves the loan commitment decrease.

(2) Loan commitments may be increased, by a maximum of ten percent ~~or three hundred thousand dollars ($300,000.00)~~ provided: the project cost as bid is greater than the estimated project cost; the project as bid is in accordance with the project for which the loan commitment was made; the receiving agency has reviewed the bids and determined that substantial cost savings would not be available through project revisions without jeopardizing the integrity of the project; and adequate funds are available.

(3) Increases greater than 10 percent of the loan commitment shall be approved by the receiving agency and the Local Government Commission.

History Note: *Filed as a Temporary Rule Eff. March 8, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;*
Statutory Authority 1993 S.L., c. 542, s. 10;
Eff. July 1, 1994;
Statutory Authority 1998 S.L., c. 132. s. 10;
Temporary Amendment Eff. March 31, 1999.

.1004 DISBURSEMENT OF LOANS

(a) Disbursement of loan monies shall be made at intervals as work progresses and expenses are incurred. No disbursement shall be made until the receiving agency receives documentation of incurred costs. At no time shall disbursement exceed the allowable costs which have been incurred at that time.

(b) Project inspection will confirm work progress, and a final inspection is required prior to the final disbursement of loan monies.

(c) No disbursement shall be made until the receiving agency receives documentation of compliance with the verifiable percentage goal for participation by minority businesses in accordance with G.S. 143-128(c).

(d) The receiving agency will notify the ~~Fiscal Management~~ Office of the Controller of the Department of ~~Environment, Health,~~ Environment and Natural Resources to make loan disbursements. A check in the amount of the disbursement authorized by the receiving agency will be written to the recipient by the ~~Fiscal Management~~ Office of the Controller. ~~The check will be forwarded to the recipient by the receiving agency.~~

History Note: *Filed as a Temporary Rule Eff. March 8, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;*
Statutory Authority 1993 S.L., c. 542, s.10;
Eff. July 1, 1994;
Statutory Authority 1998 S.L., c. 132, s. 10;
Temporary Amendment Eff. March 31, 1999.

SECTION .1100 - LOAN REPAYMENTS

.1101 INTEREST RATES

The interest rate to be charged on loans under this Subchapter will be set by the Department of State Treasurer.

History Note: *Filed as a Temporary Rule Eff. March 8, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;*
Statutory Authority 1993 S.L., c. 542, s. 10;
Eff. July 1, 1994.

.1102 REPAYMENT OF PRINCIPAL AND INTEREST ON LOANS

History Note: *Filed as a Temporary Rule Eff. March 8, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;*
Statutory Authority 1993 S.L., c. 542, s. 10;
Temporary Rule Expired.

SECTION .1200 - INSPECTION AND AUDIT

.1201 INSPECTION

Inspection of a project to which a loan has been committed under this Subchapter may be made to determine the percentage of completion of the project for disbursements, conformance with approved plans and specifications, and for compliance with all applicable laws and rules.

History Note: *Filed as a Temporary Rule Eff. March 8, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;*
Statutory Authority 1993 S.L., c. 542, s. 10;
Eff. July 1, 1994.

.1202 AUDIT OF PROJECTS

(a) Loan recipients are required to maintain project accounts in accordance with generally accepted government accounting standards.

(b) All projects to which a loan has been committed under this Chapter will be audited in accordance with G.S. 159-34.

History Note: *Filed as a Temporary Rule Eff. March 8, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;*
Statutory Authority 1993 S.L., c. 542, s. 10;
Eff. July 1, 1994.

The Rural Center

North Carolina Water & Sewer Initiative

Rural Center

$11.34 billion
in water/sewer needs
over next 20 years

Rural Center

Critical Needs

- 80% or more of rated capacity
- on SOC or moratorium
- under other administrative orders
- critical economic development need

Rural Center

1998 Critical Needs Bond Act
Rural Center Programs

- Capacity Building Grants
- Supplemental Grants
- Unsewered Communities Grants

Capacity Building Grants

Eligibility

- Economically distressed local governments in a rural county, or

Amount of Funding Available

$2 million per year
for the next 6 years

Types of Projects

- Capital improvement plans and master water/sewer plans
- Feasibility studies
- Rate studies
- Preliminary engineering reports
- Grant application preparation

When?

June 1 - July 31, 1999

Thereafter . . . March 31 and Sept 30

Supplemental Grants

Eligibility

- Economically distressed local governments in a rural county, or
- [illegible]

Amount of Funding Available

$8 million per year
for the next 6 years

Types of Projects

- Water or wastewater projects for construction of new facilities or improvements to existing facilities
- Critical environmental or economic development need

Grant Maximums

- Generally no more than $150,000 although can exceed this in instances of documented public health threat or critical jobs need
- No more than 90% of total project cost

When?

June 1 - July 31, 1999

Thereafter . . . March 31 and Sept 30

Unsewered Community Grants

Eligibility

- Unsewered Communities (have no water/wastewater facilities)
- Population less than 5,000
- Median household income less than or equal to 90% of national median household income (available from Bureau of Census)

Amount of Funding Available

$55 million

Grant Conditions

- $3 million or not more than 90% of total project cost
- Average projected monthly water and sewer bills at least equal to 1.5% of median household income

When?

June 1 - July 31, 1999

Thereafter . . . March 31 and Sept 30

Questions?

Jean Crews-Klein or Tina Murphrey
N.C. Rural Center, Infrastructure Division
(919) 250-4314
tmurphrey@mindspring.com
jcklein@mindspring.com

Clean Water Bonds for Economic Development

NC Department of Commerce
Commerce Finance Center

Clean Water for NC

The NC "*Clean Water and Natural Gas Critical Needs Bond Act of 1998*" was ratified on 9/3/98

- Provided for a public vote on the funds; NC voters approved the bonding proposal on 11/2/98
- This presentation focuses on Section 5.1(e) of the Act -- Economic Development (ED)

Bonds for ED -- Overview

- Program Administration
- Use of Funds
- Clean Water Objectives
- Application Process

Program Administration

- NC DOC is authorized to administer the $20 million earmarked for ED projects
- Commerce Finance Center is a primary contact for ED assistance
- Funds to be applied as the Industrial Development Fund (IDF) and the IDF Utility Account
  - Some limitations of the IDF program do not apply if clean water objectives are met by the project

Use of Funds

- Bond $ to be used for grants -- not loans -- to municipal and county governments
- Only economically distressed county locations -- Tiers 1, 2 or 3 -- or counties with a population less than 50,000 are eligible
- Grants to be made with respect to industries of manufacturing, warehousing, and wholesale trade

Use of Funds (continued)

- Projects may address new or existing water or sewer lines or equipment
  - Including construction of or improvements to wastewater works
- Improvements that expand capacity of existing wastewater treatment or water supply systems
- Projects must favorably impact NC's clean water objectives

Clean Water Objectives

- Projects that reduce industrial reliance on wells, septic tanks and other similar facilities
- Projects that extend distribution lines to an industrial facility in an area not served by water and sewer
- Provision of water and wastewater capacity to an industry that results in added service for residents, other businesses, and local governments

Application Process

- A continuous application cycle, with grant award subject to available funds
- Pre-application conference with CFC required for projects of $50,000 (+)
- Application includes commitment from an eligible company for job creation of up to two year period
- Application includes description, costs (engineer's estimates) and project resources

Application Process...

- Compliance with State Environmental Policy Act (SEPA) is required
  - Environmental assessment process is similar to that for other public facility projects
  - ED Bond project SEPA requirements will be addressed in the State's DEHNR permitting process

Application Process...

- Available information from CFC includes
  - Temporary rules under NCAC Subchapter 1I, Industrial Development Fund
  - CFC Application for Industrial Development Funds Under the Clean Water and Natural Gas Critical Needs Bond Act of 1998
- Department's Internet home page provides copies of the IDF-ED application form

Funds availability

- Once awarded, funds to be drawn as needed
  - Approved grant funds can be requisitioned weekly, based on actual project expenses
  - Present funding limits will apply -- $500,000 maximum project and $5,000 per job
  - Applicants need to identify adequate resources to complete the project

1999 Eligible Counties, Under 50,000 Pop. & Not Tier 1, 2 or 3

County	1999 Tier	1998 Pop.
Alexander	4	31,076
Chatham	5	45,130
Currituck	5	16,560
Dare	4	27,386
Davie	5	31,193
Duplin	4	44,080

1999 Eligible Counties, Under 50,000 Pop. & Not Tier 1, 2 or 3

County	1999 Tier	1998 Pop.
Franklin	4	43,488
Granville	4	42,802
Greene	4	17,651
Lee	5	48,370
Macon	4	27,661
Pender	4	37,208

1999 Eligible Counties, Under 50,000 Pop. & Not Tier 1, 2 or 3

County	1999 Tier	1998 Pop.
Polk	5	16,394
Stokes	5	42,852
Transylvania	4	27,842
Watauga	4	40,859
Yadkin	4	35,200

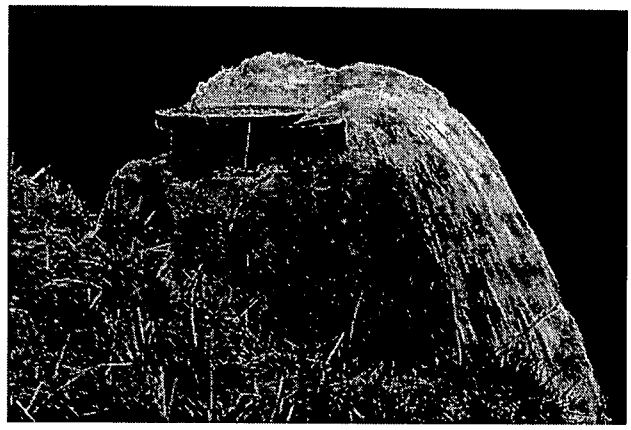
IDF-ED Bond Funds Contacts

Charles H. Johnson
or
Brandon Alexander
Commerce Finance Center
301 N. Wilmington St., PO Box 29571
Raleigh, NC 27626-0571
Phone: 919.733.5297
Internet: www.commerce.state.nc.us/commerce/finance

Clean Water and Natural Gas Critical Needs Bond Act of 1998

NC Dept. of Environment and Natural Resources

Construction Grants and Loans Section



PRIORITY CATEGORIES

- SOC, Moratorium, > or = 80% capacity, excessive I/I, or emergency *AND final plans and specs*
- Same as above w/o final plans and specs
- Expanding Infrastructure for additional development *AND final plans and specs*
- Same as above w/o final plans and specs

MARKET-RATE LOAN FUNDS

• < 75 bond rating	$ 10 million
• ≥ 75 bond rating	$140 million

Note: Same amount available for water and wastewater

HIGH-UNIT COST GRANTS (DENR)

• < 75 bond rating	$ 85 million
• ≥ 75 bond rating	$ 80 million

- Note: Same amount available for water and wastewater

GRANT QUALIFICATION

- Average residential user charge for water and sewer > 1.5% of median household income
- > .75% if only one utility @ completion
- median household income based on Census data with annual HUD updates *by unit of government*

LIMITATIONS

- $3 million maximum grant per year
- No new lines in WS-I, nor critical areas of WS-II, III, or IV
- Failing LPP cannot be replaced with another LPP

Note: DENR Secretary may grant waiver

REQUIREMENTS

- Application deadlines: March 31 and September 30
- Preliminary Engineering Report
- Environmental Assessment
- Readiness to proceed

SPECIAL EMPHASES

- regional systems, reuse, conservation
- sound fiscal policies, creative planning
- capital improvement plan (CIP)
- reduce discharge volume / alt. methods
- water supply watershed protection
- address critical needs
- comprehensive land use plan

PRIORITY POINTS

- WASTEWATER FACILITIES
- COLLECTION FACILITIES
- BONUS POINTS

WASTEWATER FACILITIES

- WATER POLLUTION CONTROL NEEDS--65 PTS
- FINANCIAL NEED--15 PTS
- FISCAL RESPONSIBILITY--25 PTS
- PROPERTY ACQUISITION--10 PTS

COLLECTION FACILITIES

- PUBLIC NEED--25 PTS
- PUBLIC HEALTH NEED--20 PTS
- FINANCIAL NEED--15 PTS
- FISCAL RESPONSIBILITY--10 PTS
- PROPERTY ACQUISITION--10 PTS

BONUS POINTS

- WATER CONSERVATION--15 PTS
- LAND USE PLANNING--25 PTS
- CIP & WATERSHED PROTECTION--20 PTS
- EXCESS WATERSHED & WELLHEAD PROTECTION--20 PTS

WHO TO CONTACT

- Drinking Water
- Jerry Perkins @ 919-715-3236
- Sid Harrell @ 919-715-3216

- Wastewater
- Bobby Blowe @ 919-715-6212
- Don Evans @ 919-715-6216

Clean Water and Natural Gas Critical Needs Bond Act of 1998

Jerry C. Perkins
State Revolving Fund Branch
PWS/DEH/DENR
(919) 715-3236 or (919) 715-3216
January 28, 1999

Clean Water and Natural Gas Critical Needs Bond Act of 1998 - Highlights

- More $ for Market Rate Loans and for High Unit Cost Grants
- Recognition that some Local Units of Government are not eligible for private sector loans
- Special Emphasis in the Act and resultant rating criteria
- Matching funds for State Revolving Fund (SRF) purposes for five years

Water Supply Loans and Grants Priority Factors

- Public Health and Compliance..... 26%
- Regional Water Supply Systems/Projects.... 23%
- Financial Management..... 17%
- Bonus Points..... 34%
- Maximum Total Points (235) for Either Grant or Market Rate Loan Applications

Public Health and Compliance* Maximum Points - 60

- Acute/Imminent Health Hazards
- Immediate Health Hazards
- Chronic Health Hazards
- Potential Health Hazards
- System Improvements

*Current Critical Infrastructure Needs

Regional Water Supply Systems/Projects Maximum Points - 55

- Service Area Expansion and System Improvement
- Regional System/Major Component - 20 Years
- Interlocal Agreements and Local Water Supply Facility Plans

Financial Management Maximum Points - 40

- Funding Application, Commitment
- Fiscal Responsibility/Self-Sufficiency
- Financial Need

Bonus Points - Special Emphasis
Maximum Points - 80

- Water Conservation..... 15 Points
- Comprehensive Land Use Planning..... 25 Points
- Capital Improvement Plan..... 15 Points
- Watershed/Well Protection
  - Statutory Requirements..... 5 points
  - Voluntary..... 20 points
    - Watersheds - Activities in Excess of Statutory Requirements
    - Wellhead Protection Program

High-Unit Cost Eligibility

- Projected Average Residential Rates
  - After Project Completion Assuming Loan
  - Based on Actual Usage Ranges
- Median Household Income
  - Municipality/County
    1 1/2 % Water and Sewer, 3/4 % Water Only
- Capacity Development
  - LGC-108 A & C Forms
  - LGC Review

High-Unit Cost Limits/Requirements

- $3M Per Applicant Per Fiscal Year
  Water Supply - Dept. Signoff by June 30 (FY99)
  - Wastewater - To EMC in July (FY00)
    - for March 31, 1999 Applications
- Local Water Supply Plan Submittal
- Plans and Specifications Approval
  - November 1 for March 31 Applications
  - May 1 for September 30 Applications

Visit Our Web Site
www.deh.enr.state.nc.us/PWS/index.htm

- Application Forms and Instructions for Completion
- Grant (1J) and Loan (1L) Rules
- Clean Water and Natural Gas Critical Needs Bond Act of 1998
- LGC Forms 108A and 108C
- Others as Added

Memorandum

To: Senator Kerr

From: Jean Crews-Klein, Infrastructure Director –Rural Center

Date: 02/09/99

Re: Critical Needs Bond Work

I have delivered to your office the following materials for the Senate Finance Committee Meeting scheduled for Wednesday at 1:30 PM:

1) 30 copies of the Clean Water Report
2) A copy of the Funding Guide for your use (I talked to Cindy and Rolf –I've dropped off a master copy to Cindy so that she could duplicate copies for the meeting).
3) 50 copies of the REVISED spreadsheet. This is current as of 2/8/99 and contains revisions to the earlier copy you have. Please use the 20 extra copies as you may need them– 30 have been provided for you to distribute at the meeting.

A group of folks comprising a subgroup of the "Bond Committee" met with Rolf Blizzard on Friday morning. Rolf facilitated the meeting extremely well and gave us the opportunity to discuss the issue of the March 31st deadline and the median income computation. Attending the meeting were Stuart Dickinson (Commerce), Bill Holman, Bobby Blowe and Jerry Perkins (DENR), Paula Thomas and Andy Romenea (League), Ron Aycock and Ed Regan (Association) and Billy Ray and myself from the Rural Center. Coming out of that meeting DENR agreed to consider limiting the amount of grant funds that would go out in this first round (March 31st deadline). Holman also agreed to have a letter, under MCDevitt's signature and directed to Ron Aycock and Ellis Hankins, go out this week explaining that not all the grant funds would be allocated this first round and encouraging local governments that may have been discouraged from even applying to reconsider and come in with an application as they are able. I've not seen the letter – you need to make sure you get a copy and that it looks good to you.

The use of the HUD update factor by DENR (a factor they have always used) has become the subject of concern by many local governments because there is so much money at stake here. This update factor is applied to the 1990 median household income from the Census and "updates" the 1990 figure to a "current" level. The Bond Act provides that we use 1990 census data. It does not speak to the use of an update factor - but DENR's draft temporary rules do. The concern with the update factor is that the factor as produced by HUD is based on a sample of 2500 households nationally (not sure how many of those are in NC). From that sample, county level update factors are derived through extrapolation. It's the only update factor that DENR has used with it's programs- but it may not be the best. Before the Rural Center uses that update factor (if any) we're going to trend some county wage data forward and compare the percentage increase to the HUD update figure by county to see how they compare. You should know that many folks, including the League, are concerned about the update factor because it will distinguish between those who receive grant and

those that do not – and how much grant is infused into a specific project. We are planning to meet and discuss this further when the wage data I have requested becomes available. So, bottom line- we're working on solving this one, too.

At Wednesday's meeting, Holman will be speaking for all of us to give an overview. Representatives of each program will be present to answer specific questions from the Finance Committee members. It might be helpful for you to ascertain from all of us that we are working on the following:

1) the March 31st deadline and making sure that all local governments with critical needs have an equal opportunity to apply for these funds and that they are given the time they need to plan appropriately for these projects (remember the Treasurer really pushed for adequate planning);
2) the update factor to come up with the best information available to update incomes;
3) continuing to meet as the "Bond Oversight Committee" which has representation from the folks who worked to pass the bond and those that will be administering funds –we have put together such a group and Holman should mention it in his remarks;
4) outreach efforts to get the word out on how to access the Bond funds – Holman should mention this in his remarks – we've been aggressive in outreach;
5) appointments to the State Infrastructure Council are soon to be made – the process for making those appointments (getting names in the pot) should be discussed so that everyone knows how this process will work. There is a tremendous amount of interest from the local governments and the professional engineering community being expressed in these appointments.

I trust that you will hear from Bill Holman in his remarks that we believe it would be appropriate for us to come before you and report from time to time on our progress. This Bond Act represents a significant investment of state funds in public infrastructure it's important for us to do this "right".

Thanks so very much for your interest- I know you're busier than a cat covering up you-know-what- but your efforts in this area are greatly appreciated. Call with any questions.

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

February 10, 1999

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bob High	Dept - State Treasurer
Gene Causby	NCSFSA
Ed Regan	N.C. Assoc. of Co. Commissioner
Andy Romanet	N.C. League of Municipalities
Bill Wilson	NCHE
Jack Cozart	PPAB
Bewley	L Bewley and Assoc.
Dene Ainsworth	RJR
Stuart Dickinson	DOC - Finance Center
Boyce A Hudson	DENR
Paul Zapp	OSBM

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — Feb 10, 1999

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bobby Hall	NC Rural Ct
Dina Humphrey	NC Rural Center
Dick Holman	DENR
Cam Coree	BPMHL
Evelyn Hawthorne	UNC-CH
Laura DeVivo	DENR
Cissy Parker	Bone & Associates
John Patrick	AT&T
Michelle Cook	Weyerhaeuser
Amy Fallbright	Hunton & Williams
Mark A Lutz	NCSA
John C Mendrek	WSACC

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

February 10, 1999

Name of Committee | Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mark Deason	Capital Group
Jim B. Pasin	UNC-CH
Mike Tyson	Maryland Jail
David Simmons	ZDA, PA
Warren Plonk	OSBM
Ann S. Sutton	ABCC
Michael Wilson	WSACC
Jay Johnson	WSACC
Mark Lambert	WSACC
Doug Rogers	NCDOT
J. Hughes	CALNC
George Reed	NC Council of Churches

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Wednesday, February 10, 1999

Senator Kerr
submits the following with recommendations as to passage:

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

S.B. **17** Econ. Development Districts.

Draft Number:	PCS1526
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment: SB 17 Feb 10

AGENDA

SENATE FINANCE COMMITTEE

Wednesday, February 17, 1999

1:30 P.M. – ROOM 544 LOB

CALL TO ORDER – SENATOR HOYLE

INTRODUCTION OF PAGES

BILLS TO BE CONSIDERED:

S. B. 29 – COSMETOLOGY FEES – SENATOR KERR

S. B. 33–CLAYTON SATELLITE ANNEXATION -SEN.WELLONS

ADJOURNMENT OF MEETING

SENATE FINANCE COMMITTEE

WEDNESDAY, FEBRUARY 17, 1999

1:30 PM – ROOM 544

The Senate Finance Committee met on Wednesday, February 17, 1999 at 1:30 PM in Room 544 with Senator Hoyle presiding. There were 19 committee members present.

SB 33 – Clayton Satellite Annexation

Senator Wellons was recognized to explain this bill. After a brief discussion on the bill, Senator Dannelly moved for a "Favorable Report", motion passed. Copy of Bill and supporting documents included in the minutes.

SB 29 – Cosmetology Fees

Senator Kerr was recognized to explain this bill. After a brief discussion on the bill, Senator Dannelly moved for a "Favorable Report", motion passed. Copy of Bill and supporting documents included in the minutes.

Meeting adjourned.

David W. Hoyle, Co-Chair

John H. Kerr, III Co-Chair

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 33*

Short Title: Clayton Satellite Annexation. (Local)

Sponsors: Senator Wellons.

Referred to: Finance.

February 4, 1999

A BILL TO BE ENTITLED

AN ACT CONCERNING ANNEXATION OF CERTAIN PROPERTY BY THE TOWN OF CLAYTON.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-58.1(b)(5) does not apply to the Town of Clayton for any noncontiguous annexation with the following area:

Lying and being situate in Wilder Township, Johnston County, containing 786.19 acres, more or less, and more particularly described as follows:

BEING all of that property as shown on the plats entitled "Survey for the Raleigh Rescue Mission, Inc., Wilder Township, Johnston County, North Carolina," dated August 1, 1990, prepared by Derward W. Baker and Associates P.A., Registered Land Surveyors, and recorded in Plat Book 35, Page 381, Johnston County Registry and "Property of Joseph M. Hester, Jr., et al." dated October 4, 1996, prepared by Joyner, Keeny & Associates, Registered Land Surveyors, and recorded in Plat Book 48, Page 359, Johnston County Registry, to which reference is hereby made for a more particular description.

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

EXPLANATION OF SENATE BILL 33:
An Act Concerning Annexation of Certain Property by the Town of Clayton

TO: Senate Finance Committee
FROM: Martha K. Walston, Staff Attorney
DATE: February 16, 1999
SPONSOR: Senator Wellons

Senate Bill 33 is a local bill that concerns voluntary satellite annexations by the Town of Clayton. The bill will give the Town of Clayton the ability to annex certain property that is not contiguous with its primary corporate limits even though the annexed property, when added to the area within all other satellite corporate limits, will exceed 10% of the area within the primary corporate limits. The bill is effective when it becomes law.

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

Seven towns have eliminated this standard altogether. They are Hickory, New Bern, Statesville, Kenly, Troy, Catawba, and Mooresville. In 1993 legislation was passed allowing Clayton and Apex to eliminate only certain property from this standard. In 1997, the Town of Beaufort eliminated certain property from the standard.

Senate Bill 33 does not release the proposed satellite annexation from meeting the other standards listed in G.S. 160A-58.1(b):

1. The nearest point on the proposed satellite corporate limits must be not more than three miles from the primary corporate limits of the annexing city.
2. No point on the proposed satellite corporate limits may be closer to the primary corporate limits of another city than to the primary corporate limits of the annexing city.
3. The area must be so situated that the annexing city will be able to provide the same services within the proposed satellite corporate limits that it provides within its primary corporate limits.
4. If the area proposed for annexation, or any portion thereof, is a subdivision as defined in G.S. 160A-376, all of the subdivision must be included.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 29

Short Title: Cosmetology Fees. (Public)

Sponsors: Senator Kerr.

Referred to: Finance.

February 4, 1999

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE EXAMINATION FEES COLLECTED UNDER THE COSMETIC ART ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 88B-20(a) reads as rewritten:

"(a) The Board may charge examination fees as follows:

(1) Cosmetologist ..... ~~$ 20.00~~ $ 50.00

(2) Apprentice ..... ~~$ 5.00~~ $ 50.00

(3) Manicurist ..... ~~$ 15.00~~ $ 50.00

(4) Esthetician ..... ~~$ 20.00~~ $ 50.00

(5) Teacher ..... ~~$ 25.00.~~ $ 50.00."

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

EXPLANATION OF SENATE BILL 29:
An Act to Increase the Examination Fees Collected Under the Cosmetic Art Act

TO: Senate Finance Committee
FROM: Martha K. Walston, Staff Attorney
DATE: February 16, 1999
SPONSOR: Senator John Kerr

Senate Bill 29 amends the Cosmetic Art Act by increasing the examination fees for the following individuals required to be licensed under the Act:

Examination	Current Fee	Proposed Fee
Cosmetologist	$20.00	$50.00
Apprentice	$5.00	$50.00
Manicurist	$15.00	$50.00
Esthetician	$20.00	$50.00
Teacher	$25.00	$50.00

The North Carolina Board of Cosmetic Art Examiners has requested the increase, because the expense of giving the examinations has become greater than the revenues generated by the examination fees. The act is effective when it becomes law.

Last year the General Assembly rewrote the Cosmetic Art Act (Senate Bill 916). The major changes in the Act included the requirement for licensure of all manicurists and manicure shops, creation of a separate license for estheticians (persons licensed to practice skin care), setting out statutory standards for teachers, easing the requirements for obtaining a license when one is licensed in another state, and the application of late penalties to all licenses. Senate Bill 916 did not increase the examination fees for cosmetologists, apprentices, manicurists, or teachers.

Senate Bill 29 would bring the Board of Cosmetic Art Examiners more in line with the examination fees collected by the State Board of Barber Examiners. That Board currently collects a $50 fee for examinations to become a registered barber or registered apprentice barber. The Board charges $95 for the examination to become a barber school instructor.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: Senate Bill 29 (First Edition)

SHORT TITLE: Cosmetology Fees

SPONSOR(S): Senator Kerr

DRAFT

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
Special Revenue Fund	$338,500	$216,000	$216,000	$216,000	$216,000
EXPENDITURES					
Special Revenue Fund	To be determined by the Board				
POSITIONS:	To be determined by the Board				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Board of Cosmetic Art Examiners

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

BILL SUMMARY: The act increases the examination fees for cosmetologists, manicurists, estheticians, and teachers.

ASSUMPTIONS AND METHODOLOGY: The NC Board of Cosmetic Art Examiners estimates that 6,200 exams are given each year. The chart below shows the number of exams per profession, current exam fees, proposed exam fees, and anticipated revenues.

	Annual Exams	Current Exam Fee	Current Estimated Revenue	Proposed Exam Fee	Proposed Estimated Revenue	Annual Revenue Gain
Cosmetologist	2,280	$20	$45,600	$50	$114,000	$68,400
Apprentice	1,320	$5	$6,600	$50	$66,000	$59,400
Manicurist	2,220	$15	$33,300	$50	$111,000	$77,700
Esthetician	200	$20	$4,000	$50	$10,000	$6,000
Teacher	180	$25	$4,500	$50	$9,000	$4,500
Total	6,200		$94,000		$310,000	$216,000

The Board proposes to increase each exam fee to $50. Based on the current volume of business, the increased exam fees will yield $216,000 in additional revenue each year. Also, there will be a revenue windfall in FY 1999-2000, because a statute change in 1998 requires 3,000 to 4,000 existing manicurists to be licensed in 1999. Assuming 3,500 manicurists take the exam this fall, the fee increase from $15 to $50 will generate $122,500 in FY 1999-2000.

Fund Balance

The Board provided the General Assembly's Fiscal Research Division its 1998 financial statement showing a June 30, 1998 fund balance of $458,802.70. The Board also provided a "Cash Balance Forecast" that predicts the following fund balances:

June 1999	$1,281,088
June 2000	$626,416
June 2001	-$72,280

Using the Board's projections, the recommended exam fee increases will not be needed to cover current expenses until 2001.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Richard Bostic
APPROVED BY:
DATE: February 17, 1999

DRAFT

(Attachment #1)

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

2-17-99

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Cam Cecil	BPMHL
Carmen Hooker Buell	CHS
Nancy Pelligreen	UNC
Douglas H. Van Essen	NC State Board of Cosmetic Art
Judy Chambers	N.C. Aestheticians Association
WALTER PRICE	CHARLOTTE CHAMBER
Alice Garland	Electricities
Joyce Peters	JP Assoc.
James Grant	PAL
Ken Wright	BCBSNC
Danny Rogers	NCDOT

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

2-17-99

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
D. Hamm	Smithfield
Amy Duncan	WCSR
Andy Komenott	N.C.L.M.

(attachment #2)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Wednesday, February 17, 1999

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

FAVORABLE

S.B. **29** Cosmetology Fees
Sequential Referral: None
Recommended Referral: None

S.B. **33** Clayton Satellite Annexation
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 2

Committee Clerk Comment:

SENATE FINANCE COMMITTEE

THURSDAY, FEBRUARY 25, 1999

ON THE SENATE FLOOR – RECESS DURING SESSION

The Senate Finance Committee met at a recess called during session. Senator Hoyle presided and all committee members present for session were present for the meeting.

SB 43 – Forest City/Alexander Mills

Senator Dalton explained his bill and offered a Committee Substitute which was adopted on motion by Senator Kerr. After Senator Dalton explained the Committee Sub, on motion by Senator Gulley, the Committee Sub was given a Favorable Report. Copy of original Bill, Explanation, and Committee Substitute included in the minutes.

Meeting adjourned.

David W. Hoyle, Co-Chair
Senate Finance Committee

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

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

Committee Report is Attachment # 1

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 43*

Short Title: Forest City/Alexander Mills. (Local)

Sponsors: Senator Dalton.

Referred to: State and Local Government.

February 8, 1999

A BILL TO BE ENTITLED

AN ACT TO CONSOLIDATE THE TOWN OF ALEXANDER MILLS INTO THE TOWN OF FOREST CITY.

The General Assembly of North Carolina enacts:

Section 1. (a) The Town of Alexander Mills is merged into the Town of Forest City. The effective date of the merger is July 1, 1999. The Town of Alexander Mills is abolished as a separate municipal corporation.

(b) Subsection (a) of this section is effective only if approved in a referendum by the qualified voters of the Town of Alexander Mills.

(c) The referendum shall be held on a date set by the Rutherford County Board of Elections, but no later than May 31, 1999. It may be held on the same day as any other referendum or election in the county, but may not otherwise be held during the period beginning 50 days before and ending 50 days after the day of any other referendum or election to be conducted by the board of elections conducting the referendum and already validly called or scheduled by law. The proposition submitted to the voters shall be in the form approved by the Rutherford County Board of Elections.

Section 2. (a) On the effective date of the merger, all property, real and personal and mixed, including accounts receivable, belonging to the Town of Alexander Mills, shall by operation of law vest in, belong to, and be the property of the Town of Forest City. The governing body of the Town of Alexander Mills shall take such additional actions and execute such documents as will carry into effect the provisions and the intent of this section.

(b) All judgments, liens, rights of liens, and causes of action of any nature in favor of the Town of Alexander Mills shall vest in and remain and inure to the benefit of the Town of Forest City.

(c) All taxes, assessments, water or sewer charges, and any other charges or fees, owed to the Town of Alexander Mills shall be owed to and collected by the Town of Forest City.

(d) All actions, suits, and proceedings pending against, or having been instituted by the Town of Alexander Mills, shall not be abated by this act or by the merger herein provided for, but all such actions, suits, and proceedings shall be continued and completed in the same manner as if merger had not occurred, and the Town of Forest City shall be a party to all such actions, suits, and proceedings in the place and stead of the Town of Alexander Mills and shall pay or cause to be paid any judgments rendered against the Town of Alexander Mills in any such actions, suits, or proceedings. No new process need be served in any such action, suit, or proceeding.

(e) All obligations of the Town of Alexander Mills, including outstanding indebtedness, shall be assumed by the Town of Forest City, and all such obligations and outstanding indebtedness are hereby constituted obligations and indebtedness of the Town of Forest City.

(f) The Town of Forest City may adopt any ordinances, rules, and regulations under Article 19 of Chapter 160A of the General Statutes prior to July 1, 1999, as to the area of the Town of Alexander Mills, to become effective not earlier than July 1, 1999. All other ordinances of the Town of Forest City become effective July 1, 1999, in the area formerly of the Town of Alexander Mills except as provided by subsection (g) of this section.

(g) All franchises heretofore granted by the Town of Alexander Mills, which are still in force, shall continue as valid franchises of the Town of Forest City for the purposes granted within the area formerly comprising the Town of Alexander Mills, but shall not hereby be constituted valid franchises for any other portion of the corporate limits of the Town of Forest City.

(h) The Town of Forest City shall assume responsibility for all current and future liabilities of the Town of Alexander Mills for unemployment insurance benefit charges under G.S. 96-9(f)(1).

Section 3. The Charter of the Town of Forest City, being Chapter 209, Session Laws of 1981, is amended by adding the following new section:

"Sec. 1.4. The corporate limits of the Town of Forest City also include all areas within the corporate limits of the Town of Alexander Mills on the date the Town of Alexander Mills was merged into the Town of Forest City."

Section 4. The Mayor and Town Commissioners of the Town of Forest City continue in existence after the consolidation. The Mayor and Commissioners of the Town of Alexander Mills are abolished as of July 1, 1999, but shall continue from that date until the organizational meeting after the 1999 Forest City municipal election as an advisory panel of the Town of Forest City to provide information and guidance in regard to matters pertaining to the area which was formerly the Town of Alexander Mills. In the 1999 municipal election, residents of the area formerly the

Town of Alexander Mills shall have full rights to be candidates for elective office in the Town of Forest City as provided by law.

Section 5. All property that had a tax situs in the Town of Alexander Mills on January 1, 1999, shall be considered to have a tax situs in the Town of Forest City for the appropriate fiscal year, and any property properly listed for taxation in the Town of Alexander Mills is properly listed for taxation in the Town of Forest City.

Section 6. Chapter 99, Private Laws of 1925, being the Charter of the Town of Alexander Mills, is repealed.

Section 7. Sections 2 through 6 of this act become effective only if the Town of Alexander Mills is merged into the Town of Forest City under Section 1 of this act.

Section 8. This act is effective when it becomes law.

EXPLANATION OF SENATE BILL 43 :
Proposed Committee Substitute
Forest City/Alexander Mills.

TO: Senate Finance Committee
FROM: Martha K. Walston, Committee Council
DATE: February 25, 1999
SPONSOR: Senator Dalton

Senate Bill 43 allows the Town of Alexander Mills to merge into the Town of Forest City only if the voters of Alexander Mills approve the merger. Senate Bill 43 was given a favorable report in State and Local Government Committee and re-referred to Senate Finance on February 17, 1999. This Bill is identical to House Bill 44. The only difference between the proposed committee substitute and the original bill is the reference to the Chapter number in Section 6 of the bill. The erroneous Chapter number is changed from "99" to "5".

Senate Bill 43 provides for the merger of the Town of Alexander Mills into the Town of Forest City on July 1, 1999, only if approved in a referendum by the voters of Alexander Mills. This referendum must be held by May 31, 1999. If the referendum is approved then the following occurs on the date of the merger:

- Property of Alexander Mills becomes the property of Forest City
- Judgements, liens, and causes of action in favor of Alexander Mills inure to the benefit of Forest City
- Actions pending against or instituted by Alexander Mills will continue and Forest City will be liable for these actions
- Forest City will assume the obligations and debt of Alexander Mills. (Neither town has any general obligation debt.)
- Forest City will assume the responsibility for the unemployment insurance benefit charges of Alexander Mills

The governing body of Alexander Mills will serve as an advisory panel to Forest City until the organizational meeting after the 1999 Forest City municipal election. All property with a tax situs in Alexander Mills on January 1, 1999, will be considered to have a tax situs in Forest City for the appropriate fiscal year.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 43*
Proposed Committee Substitute S43-PCS6538-LAX001

Short Title: Forest City/Alexander Mills. (Local)

Sponsors:

Referred to:

February 8, 1999

A BILL TO BE ENTITLED

AN ACT TO CONSOLIDATE THE TOWN OF ALEXANDER MILLS INTO THE TOWN OF FOREST CITY.

The General Assembly of North Carolina enacts:

Section 1. (a) The Town of Alexander Mills is merged into the Town of Forest City. The effective date of the merger is July 1, 1999. The Town of Alexander Mills is abolished as a separate municipal corporation.

(b) Subsection (a) of this section is effective only if approved in a referendum by the qualified voters of the Town of Alexander Mills.

(c) The referendum shall be held on a date set by the Rutherford County Board of Elections, but no later than May 31, 1999. It may be held on the same day as any other referendum or election in the county, but may not otherwise be held during the period beginning 50 days before and ending 50 days after the day of any other referendum or election to be conducted by the board of elections conducting the referendum and already validly called or scheduled by law. The proposition submitted to the voters shall be in the form approved by the Rutherford County Board of Elections.

Section 2. (a) On the effective date of the merger, all property, real and personal and mixed, including accounts receivable, belonging to the Town of Alexander Mills, shall by operation of law vest in, belong to, and be the property of the Town of Forest City. The governing body of the Town of Alexander Mills shall take such additional actions and execute such documents as will carry into effect the provisions and the intent of this section.

(b) All judgments, liens, rights of liens, and causes of action of any nature in favor of the Town of Alexander Mills shall vest in and remain and inure to the benefit of the Town of Forest City.

(c) All taxes, assessments, water or sewer charges, and any other charges or fees, owed to the Town of Alexander Mills shall be owed to and collected by the Town of Forest City.

(d) All actions, suits, and proceedings pending against, or having been instituted by the Town of Alexander Mills, shall not be abated by this act or by the merger herein provided for, but all such actions, suits, and proceedings shall be continued and completed in the same manner as if merger had not occurred, and the Town of Forest City shall be a party to all such actions, suits, and proceedings in the place and stead of the Town of Alexander Mills and shall pay or cause to be paid any judgments rendered against the Town of Alexander Mills in any such actions, suits, or proceedings. No new process need be served in any such action, suit, or proceeding.

(e) All obligations of the Town of Alexander Mills, including outstanding indebtedness, shall be assumed by the Town of Forest City, and all such obligations and outstanding indebtedness are hereby constituted obligations and indebtedness of the Town of Forest City.

(f) The Town of Forest City may adopt any ordinances, rules, and regulations under Article 19 of Chapter 160A of the General Statutes prior to July 1, 1999, as to the area of the Town of Alexander Mills, to become effective not earlier than July 1, 1999. All other ordinances of the Town of Forest City become effective July 1, 1999, in the area formerly of the Town of Alexander Mills except as provided by subsection (g) of this section.

(g) All franchises heretofore granted by the Town of Alexander Mills, which are still in force, shall continue as valid franchises of the Town of Forest City for the purposes granted within the area formerly comprising the Town of Alexander Mills, but shall not hereby be constituted valid franchises for any other portion of the corporate limits of the Town of Forest City.

(h) The Town of Forest City shall assume responsibility for all current and future liabilities of the Town of Alexander Mills for unemployment insurance benefit charges under G.S. 96-9(f)(1).

Section 3. The Charter of the Town of Forest City, being Chapter 209, Session Laws of 1981, is amended by adding the following new section:

"Sec. 1.4. The corporate limits of the Town of Forest City also include all areas within the corporate limits of the Town of Alexander Mills on the date the Town of Alexander Mills was merged into the Town of Forest City."

Section 4. The Mayor and Town Commissioners of the Town of Forest City continue in existence after the consolidation. The Mayor and Commissioners of the Town of Alexander Mills are abolished as of July 1, 1999, but shall continue from that date until the organizational meeting after the 1999 Forest City municipal election as an advisory panel of the Town of Forest City to provide information and guidance in regard to matters pertaining to the area which was formerly the Town of Alexander Mills. In the 1999 municipal election, residents of the area formerly the

Town of Alexander Mills shall have full rights to be candidates for elective office in the Town of Forest City as provided by law.

Section 5. All property that had a tax situs in the Town of Alexander Mills on January 1, 1999, shall be considered to have a tax situs in the Town of Forest City for the appropriate fiscal year, and any property properly listed for taxation in the Town of Alexander Mills is properly listed for taxation in the Town of Forest City.

Section 6. Chapter 5, Private Laws of 1925, being the Charter of the Town of Alexander Mills, is repealed.

Section 7. Sections 2 through 6 of this act become effective only if the Town of Alexander Mills is merged into the Town of Forest City under Section 1 of this act.

Section 8. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
JOHN KERR, CO-CHAIR
DAVID HOYLE, CO-CHAIR

Thursday, February 25, 1999

SENATOR KERR
submits the following with recommendations as to passage:

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

S.B 43 Forest City/Alexander Mills

Draft Number:	PCS6538
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment: Feb 25 SB 43

AGENDA

SENATE FINANCE MEETING

WEDNESDAY, MARCH 10, 1999 – ROOM 544

CALL TO ORDER

INTRODUCTION OF PAGES

BILLS TO BE HEARD:

SB 115 – Extend Bond Match Deadline – Senator Garwood
SB 269 – Huntersville Satellite Annexation – Senator Odom
SB 270 – Huntersville Voluntary Annexation – Senator Odom
SB 271 – Huntersville Annexation – Senator Odom

ADJOURNMENT OF MEETING

SENATE FINANCE COMMITTEE

WEDNESDAY, MARCH 10, 1999

1:30 PM – ROOM 544

The Senate Finance Committee met on Wednesday, March 10, 1999 at 1:30 PM in Room 544 with Senator Hoyle presiding. There were 17 committee members present. Leslie Cline from Gastonia, North Carolina was introduced as ourIntern for the Senate Finance Committee. Danielle Csolak from Fuquay-Varina, North Carolina, sponsored by Senator Brad Miller was introduced as the page for the meeting.

SB 115 – Extend Bond Match Deadline

Senator Garwood was recognized to explain this bill and at the conclusion of his explanation and a brief period of questions, Senator Moore moved for a "Favorable Report", motion passed by the committee. Copy of Bill and supporting documents included in the minutes.

SB 269 – Huntersville Satellite Annexation

Senator Odom was recognized to explain this bill and at the conclusion of his explanation, Senator Foxx moved for a "Favorable Report", motion passed by the committee. Copy of Bill and supporting documents included in the minutes.

SB 270 – Huntersville Voluntary Annexation

Senator Odom was recognized to explain this bill. Senator Ballantine moved for adoption of committee substitute for the purpose of discussion, motion passed. Senator Odom explained the committee substitute after which time and some discussion, Senator Dannally moved for a "Favorable Report", motion passed by the committee. Copy of Bill and supporting documents included in the minutes.

SB 271 – Huntersville Annexation

Senator Odom was recognized to explain this bill. Senator Hoyle moved for adoption of an amendment to the bill, motion passed. After a brief discussion on the bill, Senator Dannelly moved for a "Favorable Report, as amended and be rolled into a committee substitute", motion passed. Copy of Bill and supporting documents included in the minutes.

Meeting adjourned.

David W. Hoyle, Co-Chair

John H. Kerr, III Co-Chair

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

Visitors' Sign Up Sheet is Attachment # 1
Committee Report dated March 10, 1999 is Attachment # 2
Committee Report dated March 11, 1999 is Attachment # 3

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 115*

Short Title: Extend Bond Match Deadline. (Public)

Sponsors: Senators Garwood, Carter, Metcalf, Moore; Allran, Carpenter, Cochrane, Dalton, Forrester, Horton, Lee, Purcell, and Rucho.

Referred to: Finance.

February 17, 1999

A BILL TO BE ENTITLED

AN ACT TO EXTEND FOR ONE YEAR THE DEADLINE FOR MATCHING COMMUNITY COLLEGE BOND FUNDS.

The General Assembly of North Carolina enacts:

Section 1. Section 6(b)IV of Chapter 542 of the 1993 Session Laws, as added by Section 4 of Chapter 515 of the 1995 Session Laws and rewritten by Section 10(a) of S.L. 1998-212, reads as rewritten:

"IV. If the State Board of Community Colleges determines that a community college has not met the matching requirements of G.S. 115D-31(a)(1) by July 1, ~~1999,~~ 2000, with respect to a capital improvement project for which bond proceeds are allocated in subdivision I or pursuant to subdivision II of this subsection, the Board shall certify that fact to the State Treasurer by October 1, ~~1999.~~ 2000. All of these bond proceeds with respect to which the Board certifies that the matching requirement has not been met by July 1, ~~1999,~~ 2000, shall be placed by the State Treasurer in a special account within the Community Colleges Bond Fund and shall be used for making grants to community colleges. Bond proceeds in the special account shall be allocated among the community colleges in accordance with the following conditions:

(1) The State Board of Community Colleges shall generate, by October 1, ~~1999,~~ 2000, a priority ranking of legitimate community college capital improvement needs using a formula based on objective meaningful factors relevant to capital needs, including space to population ratio, population served ratio, capacity

enrollment ratio, local to State and vocational education ratios, type of project, and readiness to implement.

(2) The State Board of Community Colleges shall provide the State Treasurer a projected allocation of the proceeds in the special account in accordance with this priority ranking, except that:

a. No projected allocation shall be made for a community college that the Board certified in accordance with this subdivision IV had failed to meet a matching requirement.

b. No more than four million dollars ($4,000,000) shall be allocated to a single community college.

c. Funds shall not be allocated for more than one project per community college.

(3) The proceeds of grants made from bond proceeds in the special account shall be allocated and expended for paying the cost of community college capital improvements in accordance with this allocation by the State Board of Community Colleges, to the extent and as provided in this act. The Director of the Budget is empowered, when the Director of the Budget determines it is in the best interest of the State and the North Carolina Community College System to do so, and if the cost of a particular project is less than the projected allocation, to use the excess funds to increase the size of that project or increase the size of any other project itemized in this section, or to increase the amount allocated to a particular community college within the aggregate amount of funds available under this section. The Director of the Budget shall consult with the Advisory Budget Commission and the Joint Legislative Commission on Governmental Operations before making these changes."

Section 2. This act becomes effective June 30, 1999.

EXPLANATION OF SENATE BILL 115:
Extend Bond Match Deadline

TO: Senate Finance Committee
FROM: Martha K. Walston, Committee Counsel
DATE: March 9, 1999
SPONSOR: Senators Garwood, Carter, Metcalf, and Moore

Senate Bill 115 extends the following deadlines:

- The time for a community college to match its bond funds from July 1, 1999 to July 1, 2000.
- The time for the State Board of Community Colleges to develop a priority ranking of capital improvement needs that may be met with bond funds. The bond funds at issue are those in which the matching requirement has not been met. This deadline is extended from October 1,1999 to October 1, 2000.

The act becomes effective June 30, 1999.

In 1993, the General Assembly enacted the Education, Clean Water, and Parks Bond Act of 1993. A portion of this act authorized the issuance of general obligation bonds, subject to the vote of the people, to provide funds for grants to community colleges for capital improvements. In 1995, the General Assembly amended the Bond Act by requiring the State Board of Community Colleges to notify the State Treasurer by October 1, 1998, if a community college did not meet the matching requirements of G.S. 115D-31(a)(1) by July 1, 1998, with respect to a capital improvement project for which bond proceeds are allocated. These bond proceeds would then be placed in a special account within the Community Colleges Bond Fund and used for grants to community colleges. The allocation of these proceeds was to be made according to a priority ranking of legitimate community college capital improvement needs. The State Board of Community Colleges was to develop the priority ranking by October 1, 1998. The Appropriations Act of 1998 extended the deadline for meeting the matching requirements for capital improvement projects from July 1, 1998 to June 30, 1999, and extended the deadline for developing a priority ranking from October 1, 1998 to October 1, 1999.

G.S. 115D-31(a)(1) allows the State Board, on an equal matching-fund basis, to grant funds to a community college for the purchase of land, construction and remodeling of institutional buildings. The matching funds must come from the local government. The State Board will provide the State Treasurer with a projected allocation of the proceeds in the special account. No projected allocation may be made for a community college that has failed to meet the matching requirement. Only one community college, Mayland Community College,(Acronym for Mitchell, Avery, and Yancy) has not met the match. No more than $4,000,000 may be allocated to a community college, and there can be only one project per community college.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: Senate Bill 115 (First Edition)

SHORT TITLE: Senators Garwood, et al.

SPONSOR(S): Extend Bond Match Deadline

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
EXPENDITURES					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: State Board of Community Colleges

EFFECTIVE DATE: This act becomes effective June 30, 1999.

BILL SUMMARY: The bill extends for one year the deadline for matching community college bond funds.

ASSUMPTIONS AND METHODOLOGY: This bill does not impose any new funding requirements on community colleges, but simply allows Mayland Community College one additional year to match $662,704 in bond funds made available to the school from the Education, Clean Water, and Parks Bond Act of 1993. In 1993 and 1995, Mayland Community College was allocated $4,464,359 in bond funds, but was able to match only $3,801,655 of this amount. Through the combination of county funding, a federal grant, and the donation of a building by Avery county, Mayland has all but $120,704 to go to match the remaining $662,704 of bond funds. The college has applied for two $125,000 grants that will help them fulfill the matching requirement. Due to the uncertainty of the grant making process, this bill gives the school a safety margin to complete the match.

FISCAL RESEARCH DIVISION (733-4910)
PREPARED BY: Richard Bostic RB
APPROVED BY:
DATE: March 10, 1999

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 269

Short Title: Huntersville Satellite Annexation. (Local)

Sponsors: Senators Odom; Dannelly and Jordan.

Referred to: Finance.

March 8, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE TOWN OF HUNTERSVILLE TO MAKE ADDITIONAL VOLUNTARY SATELLITE ANNEXATIONS IF CERTAIN CRITERIA ARE MET.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-58.1(b) reads as rewritten:

"(b) A noncontiguous area proposed for annexation must meet all of the following standards:

(1) The nearest point on the proposed satellite corporate limits must be not more than three miles from the primary corporate limits of the annexing city. Notwithstanding this subdivision, if an area proposed for annexation is located entirely within the same county as the annexing municipality and in an area that another city has: (i) agreed not to annex, or (ii) has given the annexing city the right of annexation under an agreement with the annexing city under Part 6 of this Article or similar local legislation authorizing such agreements, then this subdivision shall not apply.

(2) No point on the proposed satellite corporate limits may be closer to the primary corporate limits of another city than to the primary corporate limits of the annexing city. Notwithstanding this subdivision, if an area proposed for annexation under this Part is either: (i) in an area that another city has agreed not to annex under an agreement with the annexing city under Part 6 of this Article or similar local legislation authorizing such agreements and

the territory to be annexed is within the same county as the annexing city is located, or (ii) the closer city is located entirely within another county than the area being annexed, then the proximity to that other city shall not be considered in applying this subdivision.

(3) The area must be so situated that the annexing city will be able to provide the same services within the proposed satellite corporate limits that it provides within its primary corporate limits.

(4) If the area proposed for annexation, or any portion thereof, is a subdivision as defined in G.S. 160A-376, all of the subdivision which is located within the same county as the annexing municipality must be included.

(5) The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed ten percent (10%) of the area within the primary corporate limits of the annexing city."

Section 2. This act applies to the Town of Huntersville only.

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

EXPLANATION OF SENATE BILL 269:
Huntersville Satellite Annexation

TO: Senate Finance Committee
FROM: Martha K. Walston, Staff Attorney
DATE: March 9, 1999
SPONSOR: Senator Fountain Odom

Senate Bill 269 is a local bill that concerns voluntary satellite annexations by the Town of Huntersville and is effective when it becomes law. The bill will give the Town of Huntersville the ability to do the following:

1. Annex property that is more than 3 miles from the primary corporate limits of Huntersville, if the proposed annexed area is located within the same county as Huntersville and another city has agreed not to annex the area or has agreed to give Huntersville the right to annex.
2. Annex property that is closer to the primary corporate limits of another city than to the limits of Huntersville, if either the other city has agreed not to annex the proposed area and the area is within the same county as Huntersville or the closer city is located entirely within another county than the proposed area being annexed.
3. If the area proposed for annexation includes a subdivision or a portion of a subdivision, then only that portion of the subdivision located in the same county as Huntersville must be included in the annexation.

Current Law

G.S. 160A-58.1 governs the voluntary annexation of noncontiguous property. Property owners may petition a city for voluntary annexation of noncontiguous property if the property meets several standards. Three of these standards are that the proposed area must be within 3 miles of the annexing city, that no point of the proposed area may be closer to another city than to the annexing city, and that if the proposed area includes a subdivision or a portion of a subdivision, then all of the subdivision must be included in the annexation. The bill exempts Huntersville from these three standards if the above criteria are met.

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

1. The area must be so situated that the annexing city will be able to provide the same services within the proposed satellite corporate limits that it provides within its primary corporate limits.
2. The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed ten percent (10%) of the area within the primary corporate limits of the annexing city.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 270

Short Title: Huntersville Voluntary Annexation. (Local)

Sponsors: Senators Odom; and Dannelly.

Referred to: Finance.

March 8, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE TOWN OF HUNTERSVILLE TO PROVIDE FOR VOLUNTARY ANNEXATION OF PROPERTY SUBJECT TO PRESENT-USE VALUE APPRAISAL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-31(e) is amended by adding new subsections to read:

"(e1) Notwithstanding subsection (e) of this section, if an area described in the annexation petition and ordinance includes agricultural land, horticultural land, or forestland, that on the effective date of annexation is:

(1) Land that is being taxed at present-use value pursuant to G.S. 105-277.4; or

(2) Land that:

a. Was on the date of the filing of the petition for annexation being used for actual production and is eligible for present-use value taxation under G.S. 105-277.4, but the land has not been in use for actual production for the required time under G.S. 105-277.3; and

b. The assessor for the county the land subject to annexation is located has certified to the city that the land meets the requirements of this subdivision.

Annexation becomes effective as to that property pursuant to subsection (e2) of this section.

(e2) Annexation of property subject to annexation under subsection (e1) of this section shall become effective:

(1) Upon the effective date of the annexation ordinance, the property is considered part of the city only (i) for the purpose of establishing city boundaries for additional annexations pursuant to this Article and (ii) for the exercise of city authority pursuant to Chapter 19 of this Chapter.

(2) For all other purposes, the annexation becomes effective as to each tract of such property or such part thereof on the last day of the month in which that tract or part thereof becomes ineligible for classification pursuant to G.S. 105-227.4 and no longer meets the requirements of subdivision (e1)(2) of this section. Until annexation of a tract or a part of a tract becomes effective pursuant to this subdivision, the tract or part of a tract is not subject to taxation by the city under Article 12 of Chapter 105 of the General Statutes, nor is the tract or part of the tract entitled to services provided by the city."

Section 2. This act applies to the Town of Huntersville only.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 270
Proposed Committee Substitute S270-PCS6559-LA

Short Title: Huntersville Voluntary Annexation. (Local)

Sponsors:

Referred to:

March 8, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE TOWN OF HUNTERSVILLE TO PROVIDE FOR VOLUNTARY ANNEXATION OF PROPERTY SUBJECT TO PRESENT-USE VALUE APPRAISAL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-31 is amended by adding new subsections to read:

"(e1) Notwithstanding subsection (e) of this section, an annexation becomes effective as to the property pursuant to subsection (e2) if an area described in the annexation petition and ordinance includes agricultural land, horticultural land, or forestland, that on the effective date of annexation is:

(1) Land that is being taxed at present-use value pursuant to G.S. 105-277.4; or

(2) Land that:

a. Was on the date of the filing of the petition for annexation being used for actual production and is eligible for present-use value taxation under G.S. 105-277.4, but the land has not been in use for actual production for the required time under G.S. 105-277.3; and

b. The assessor for the county where the land subject to annexation is located has certified to the city that the land meets the requirements of this subdivision.

(e2) Annexation of property subject to annexation under subsection (e1) of this section shall become effective as to each tract of such property or such part thereof

on the last day of the month in which that tract or part thereof becomes ineligible for classification pursuant to G.S. 105-227.4 and no longer meets the requirements of subdivision (e1)(2) of this section. Until annexation of a tract or a part of a tract becomes effective pursuant to this subsection, the tract or part of a tract is not subject to taxation by the city under Article 12 of Chapter 105 of the General Statutes, nor is the tract or part of the tract entitled to services provided by the city.

(e3) The boundaries of the property prior to the effective date under subsection (e2) of this section shall be considered as primary corporate limits only (i) for the purpose of establishing city boundaries for additional annexations pursuant to this Article and (ii) for the exercise of city authority pursuant to Article 19 of this Chapter."

Section 2. This act applies to the Town of Huntersville only.

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

EXPLANATION OF SENATE BILL 270:
Proposed Committee Substitute
Huntersville Voluntary Annexation

TO: Senate Finance Committee
FROM: Martha K. Walston, Staff Attorney
DATE: March 10, 1999
SPONSOR: Senator Fountain Odom

The proposed committee substitute for Senate Bill 270 amends the statute dealing with annexation by petition to provide for voluntary annexation of property subject to present-use value appraisal. The act applies only to the Town of Huntersville and is effective when it becomes law.

Under current law, when property is annexed by petition of property owners in the area to be annexed, the citizens and property of the annexed area are subject to the laws and municipal taxes in force.

Senate Bill 270 provides that the following property in an annexation petition would not be subject to taxation by the Town nor entitled to the services provided by the Town:

1. Land that is taxed at present-use value under the property tax statutes. This land is agricultural land, horticultural land, or forestland. The present-use value classification helps preserve farmland by insulating it from the rising property tax values caused by competing market pressures to develop farmland for commercial and residential purposes.
2. Land that, on the date of the filing of the annexation petition, was being used for actual production and is eligible for the present-use value taxation except that it had not been in use for actual production for the required statutory time, and the county tax assessor certifies that the land meets this requirement.

Annexation of the present-use value property described above becomes effective on the last day of the month in which the property no longer meets both of the above descriptions. Prior to the effective date of annexation, the boundaries of this property will be considered as primary corporate limits only (i) to establish city boundaries for additional annexations, and (ii) for the exercise of city authority pursuant to Article 19 (Planning and Regulation of Development).

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 271

Short Title: Huntersville Annexation. (Local)

Sponsors: Senator Odom.

Referred to: Finance.

March 8, 1999

A BILL TO BE ENTITLED

AN ACT TO ANNEX TO THE EXISTING CITY LIMITS OF THE TOWN OF HUNTERSVILLE CERTAIN AREAS SURROUNDED BY EXISTING CITY LIMITS OF THE TOWN OF HUNTERSVILLE.

Whereas, there are areas and tracts of land not presently part of the Town of Huntersville but which are completely surrounded by the existing town limits of the Town of Huntersville; and

Whereas, the Town of Huntersville cannot provide police protection and other services to such areas, and any entity providing such services must travel through the Town of Huntersville to reach the areas in question; and

Whereas, in order to provide for the safety and welfare of the owners and residents of the affected areas, such areas should be and become part of the Town of Huntersville and be entitled to all of the services as are provided by the Town of Huntersville to other residents and property; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. The corporate limits of the Town of Huntersville are extended to include the following described area:

TRACT I

All courses and distances hereafter given are contiguous with existing town limits:

BEGINNING on the existing town limits lines at the intersection of the northerly right-of-way of Gilead Road (SR 2136) and easterly right-of-way line of Commerce Center Drive, thence, with the easterly right-of-way line of Commerce Center Drive (1) with the arc of a circular curve to the right having a radius of 20 feet, an arc distance of 31.41 feet (and with a chord of N. 49-10-50W. 28.28 feet); (2) N. 04-10-50 W. 37 feet; (3) N. 07-02-34 W. 110.14 feet, a corner of lot bearing Mecklenburg Tax Code 017-121-33; thence with southerly line of said lot in an easterly direction 353.57 feet to a point on the line of Tax Parcel Number 017-121-03; thence with said lot N. 04-14-10 E. approximately 35.13 feet; thence N. 85-39-45 E. approximately 99 feet; thence in a southerly direction with the existing town limit line approximately 546.97 feet to the northerly right-of-way margin of Gilead Road; thence with said right-of-way in a westerly direction approximately 100 feet; thence along the new right-of-way margin in a northerly direction 20 feet; thence with said margin S. 85-49-10 W. 330 feet to the beginning, said property comprising Mecklenburg tax parcels 017-121-27 and portions of 017-121-03 and 04.

TRACT II

All courses and distances hereafter given are contiguous with existing town limits:

BEGINNING on the existing town limits line at the point of intersection of the southerly right-of-way margin of Huntersville-Concord Road and the centerline, as projected, of Glendale Drive; thence, with the centerline of Glendale Drive in a northerly direction to the point of intersection of the easterly right-of-way margin of Hunters Ridge Road, as projected; thence in a northerly direction with said easterly right-of-way margin and the front lot lines of lots 1 through 5 as shown on map in Map Book 21, page 960, Mecklenburg Registry, for a distance of approximately 807.07 feet, a course of the aforesaid lot 5; thence with line of lot 5 in an easterly direction 197.97 feet; thence with the rear lot lines of lots 5 through 1, approximately 841 feet; thence in a northerly direction 23.6 feet; thence in a southeasterly direction 206.14 feet to a point on the southerly right-of-way margin of Huntersville-Concord Road; thence with said right-of-way margin in a westerly direction 150 feet, more or less, the point of BEGINNING, said property comprising Mecklenburg Tax Parcel Numbers 019-282-03, 04, 05, 06, 07 and 019-262-14.

TRACT III

All courses and distances hereafter given are contiguous with existing town limits:

BEGINNING at a point on the northerly right-of-way margin of Glendale Road, the southwest corner of Lot 1, Map Book 21, Page 881, Mecklenburg Registry; thence N. 03-14-39 W. 278.28 feet; thence S. 86-27-16 W. 70.11 feet; thence S. 67-46-26 W. 159.56 feet; thence S. 10-32-46 W. 106.19 feet to a point on Glendale Drive; thence with Glendale Drive S. 66-11-89 E. 39.07 feet; thence S. 73-08-59 E.

99.86 feet; thence S. 67-09-09 E. 99.94 feet; thence S. 52-02-03 E. 37.81 feet to BEGINNING, said property consisting of Mecklenburg tax parcel 019-281-12.

TRACT IV

All courses and distances hereafter given are contiguous with existing town limits:

BEGINNING at a point on the existing town limits line on the northerly margin of Ramah Church Road (SR #2439), a common corner of tax parcels 011-013-37 and 011-181-01, thence northerly with said tax parcel 136.66 feet; thence northwesterly with said parcels 381.35 feet; thence with the line of tax parcel # 011-013-38 northeasterly 327.51 feet, thence continuing northeasterly 211.08 feet; then continuing with said tax parcel and parcel number 011-181-12 1238.74 feet; then continuing with tax parcel number 011-181-12 approximately 200 feet to tax parcel 011-181-04; thence with said tax parcel number southeasterly 610.14 feet; thence northeasterly 265.74 feet; thence continuing with said tax parcel number 480.09 feet to the northerly margin of Ramah Church Road; thence with the said northerly margin of Ramah Church Road in a westerly direction approximately 2,123.97 feet to the BEGINNING, comprising all of Mecklenburg tax parcel numbers 011-181-01; 011-181-03, 011-181-10, 011-181-11, and 011-181-13.

TRACT V

All courses and distances hereafter given are contiguous with existing town limits:

BEGINNING on the existing town limits line on the southerly margin of Hagers Road (SR 2438), the common line between tax parcel numbers 011-011-40 and 011-011-08; thence in a southerly direction with tax parcels 011-011-08 and 011-011-17, approximately 663.48 feet; thence in an easterly direction with tax parcel numbers 011-011-17 and 011-011-05, 1258.83 feet to SR 2438 at its terminus; then continuing easterly with tax parcel number 011-091-13, 546.56 feet; then continuing easterly with tax parcel number 011-171-03, 464.72 feet to a point, then southerly with tax parcel number 011-191-98, 616.92 feet; then westerly with tax parcel number 011-191-98, 520.14 feet and continuing 1225.28 feet; thence southerly with said tax parcel 1,056 feet, thence westerly on the line of tax parcel number 011-013-38 approximately 1068.80 feet; then continuing with tax parcel number 011-013-38 (1) southerly 350.77 feet, (2) easterly 193.54 feet, (3) southerly 117.46 feet, (4) southeasterly 291.67 feet, (5) southeasterly 131.97 feet, (6) westerly 309.31 feet, then continuing southerly with tax parcel number 011-013-38 and tax parcel number 011-013-85, 324.9 feet; thence southwesterly approximately 400 feet to the northeast corner of tax parcel number 011-013-24; then with tax parcel number 011-013-24 westerly, 143 feet, then southerly approximately 300 feet, then continuing with the existing town limits line in a westerly direction to a point at the northeast corner of tax parcel number 011-013-20; thence with the existing town limits in a northerly line generally along the purported

right-of-way of the Norfolk Southern Railroad approximately 1489.69 feet, thence easterly to the centerline of said railroad approximately 35 feet; thence continuing northerly with said centerline approximately 2,713 feet to the southwest corner of tax parcel number 011-012-34; thence easterly with said tax parcel 1028.28 feet; thence northerly approximately 945.57 feet to the southerly margin of Hagers Road, then with said southerly margin in a generally easterly direction approximately 700 feet to the BEGINNING point, comprising all or part of tax parcel numbers:

011-011-02	011-012-29	011-013-47
011-011-03	011-012-30	011-191-28
011-011-04	011-012-31	011-191-29
011-011-10	011-012-32	011-191-31
011-011-11	011-012-35	011-191-32
011-011-14	011-013-02	011-191-35
011-011-19	011-013-26	011-191-36
011-011-39	011-013-28	011-191-37
011-011-40	011-013-39	011-191-34
011-012-01	011-013-40	
011-012-02	011-013-41	
011-012-03	011-013-42	
011-012-04	011-013-43	
011-012-05	011-013-44	
011-012-27	011-013-45	
011-012-28	011-013-46	

Section 2. This act becomes effective at midnight, June 30, 1999.

Section 3. From and after the effective date of this act, the subject areas shall be entitled to those services in the same manner that the Town of Huntersville provides to its residents and property lying therein, and the residents of such areas shall be entitled to all of the privileges, rights, and obligations of other residents of the Town of Huntersville.

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 271

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

S271-ALA-1 Page 1 of __

Date_____,1999

Comm. Sub. [ ]
Amends Title [ ]

Senator _____

moves to amend the bill on page 4, line 26, by deleting that line;

and on page 4, line 27, by deleting "Section 3." and substituting "Section 2.";

and on page 4, line 32, by rewriting the line to read:
"Section 3. This act becomes effective at midnight, June 30, 1999.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

EXPLANATION OF SENATE BILL 271:
Huntersville Annexation

TO: Senate Finance Committee
FROM: Martha K. Walston, Staff Attorney
DATE: March 10, 1999
SPONSOR: Senator Fountain Odom

Senate Bill 271 is a local bill that allows the Town of Huntersville to annex five tracts of land. These tracts are completely surrounded by the existing town limits of Huntersville. The bill would provide residents of these tracts the protection of the Huntersville Police Department as well as other services of the Town. The bill contains a metes and bounds description of each tract. The act becomes effective at midnight, June 30, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 271
Proposed Committee Substitute S271-PCS4569-LA

Short Title: Huntersville Annexation. (Local)

Sponsors:

Referred to:

March 8, 1999

A BILL TO BE ENTITLED

AN ACT TO ANNEX TO THE EXISTING CITY LIMITS OF THE TOWN OF HUNTERSVILLE CERTAIN AREAS SURROUNDED BY EXISTING CITY LIMITS OF THE TOWN OF HUNTERSVILLE.

Whereas, there are areas and tracts of land not presently part of the Town of Huntersville but which are completely surrounded by the existing town limits of the Town of Huntersville; and

Whereas, the Town of Huntersville cannot provide police protection and other services to such areas, and any entity providing such services must travel through the Town of Huntersville to reach the areas in question; and

Whereas, in order to provide for the safety and welfare of the owners and residents of the affected areas, such areas should be and become part of the Town of Huntersville and be entitled to all of the services as are provided by the Town of Huntersville to other residents and property; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. The corporate limits of the Town of Huntersville are extended to include the following described area:

TRACT I

All courses and distances hereafter given are contiguous with existing town limits:

BEGINNING on the existing town limits lines at the intersection of the northerly right-of-way of Gilead Road (SR 2136) and easterly right-of-way line of Commerce Center Drive, thence, with the easterly right-of-way line of Commerce Center Drive (1) with the arc of a circular curve to the right having a radius of 20 feet, an arc distance of 31.41 feet (and with a chord of N. 49-10-50W. 28.28 feet); (2) N. 04-10-50 W. 37 feet; (3) N. 07-02-34 W. 110.14 feet, a corner of lot bearing Mecklenburg Tax Code 017-121-33; thence with southerly line of said lot in an easterly direction 353.57 feet to a point on the line of Tax Parcel Number 017-121-03; thence with said lot N. 04-14-10 E. approximately 35.13 feet; thence N. 85-39-45 E. approximately 99 feet; thence in a southerly direction with the existing town limit line approximately 546.97 feet to the northerly right-of-way margin of Gilead Road; thence with said right-of-way in a westerly direction approximately 100 feet; thence along the new right-of-way margin in a northerly direction 20 feet; thence with said margin S. 85-49-10 W. 330 feet to the beginning, said property comprising Mecklenburg tax parcels 017-121-27 and portions of 017-121-03 and 04.

TRACT II

All courses and distances hereafter given are contiguous with existing town limits:

BEGINNING on the existing town limits line at the point of intersection of the southerly right-of-way margin of Huntersville-Concord Road and the centerline, as projected, of Glendale Drive; thence, with the centerline of Glendale Drive in a northerly direction to the point of intersection of the easterly right-of-way margin of Hunters Ridge Road, as projected; thence in a northerly direction with said easterly right-of-way margin and the front lot lines of lots 1 through 5 as shown on map in Map Book 21, page 960, Mecklenburg Registry, for a distance of approximately 807.07 feet, a course of the aforesaid lot 5; thence with line of lot 5 in an easterly direction 197.97 feet; thence with the rear lot lines of lots 5 through 1, approximately 841 feet; thence in a northerly direction 23.6 feet; thence in a southeasterly direction 206.14 feet to a point on the southerly right-of-way margin of Huntersville-Concord Road; thence with said right-of-way margin in a westerly direction 150 feet, more or less, the point of BEGINNING, said property comprising Mecklenburg Tax Parcel Numbers 019-282-03, 04, 05, 06, 07 and 019-262-14.

TRACT III

All courses and distances hereafter given are contiguous with existing town limits:

BEGINNING at a point on the northerly right-of-way margin of Glendale Road, the southwest corner of Lot 1, Map Book 21, Page 881, Mecklenburg Registry; thence N. 03-14-39 W. 278.28 feet; thence S. 86-27-16 W. 70.11 feet; thence S. 67-46-26 W. 159.56 feet; thence S. 10-32-46 W. 106.19 feet to a point on Glendale Drive; thence with Glendale Drive S. 66-11-89 E. 39.07 feet; thence S. 73-08-59 E.

99.86 feet; thence S. 67-09-09 E. 99.94 feet; thence S. 52-02-03 E. 37.81 feet to BEGINNING, said property consisting of Mecklenburg tax parcel 019-281-12.

TRACT IV

All courses and distances hereafter given are contiguous with existing town limits:

BEGINNING at a point on the existing town limits line on the northerly margin of Ramah Church Road (SR #2439), a common corner of tax parcels 011-013-37 and 011-181-01, thence northerly with said tax parcel 136.66 feet; thence northwesterly with said parcels 381.35 feet; thence with the line of tax parcel # 011-013-38 northeasterly 327.51 feet, thence continuing northeasterly 211.08 feet; then continuing with said tax parcel and parcel number 011-181-12 1238.74 feet; then continuing with tax parcel number 011-181-12 approximately 200 feet to tax parcel 011-181-04; thence with said tax parcel number southeasterly 610.14 feet; thence northeasterly 265.74 feet; thence continuing with said tax parcel number 480.09 feet to the northerly margin of Ramah Church Road; thence with the said northerly margin of Ramah Church Road in a westerly direction approximately 2,123.97 feet to the BEGINNING, comprising all of Mecklenburg tax parcel numbers 011-181-01; 011-181-03, 011-181-10, 011-181-11, and 011-181-13.

TRACT V

All courses and distances hereafter given are contiguous with existing town limits:

BEGINNING on the existing town limits line on the southerly margin of Hagers Road (SR 2438), the common line between tax parcel numbers 011-011-40 and 011-011-08; thence in a southerly direction with tax parcels 011-011-08 and 011-011-17, approximately 663.48 feet; thence in an easterly direction with tax parcel numbers 011-011-17 and 011-011-05, 1258.83 feet to SR 2438 at its terminus; then continuing easterly with tax parcel number 011-091-13, 546.56 feet; then continuing easterly with tax parcel number 011-171-03, 464.72 feet to a point, then southerly with tax parcel number 011-191-98, 616.92 feet; then westerly with tax parcel number 011-191-98, 520.14 feet and continuing 1225.28 feet; thence southerly with said tax parcel 1,056 feet, thence westerly on the line of tax parcel number 011-013-38 approximately 1068.80 feet; then continuing with tax parcel number 011-013-38 (1) southerly 350.77 feet, (2) easterly 193.54 feet, (3) southerly 117.46 feet, (4) southeasterly 291.67 feet, (5) southeasterly 131.97 feet, (6) westerly 309.31 feet, then continuing southerly with tax parcel number 011-013-38 and tax parcel number 011-013-85, 324.9 feet; thence southwesterly approximately 400 feet to the northeast corner of tax parcel number 011-013-24; then with tax parcel number 011-013-24 westerly, 143 feet, then southerly approximately 300 feet, then continuing with the existing town limits line in a westerly direction to a point at the northeast corner of tax parcel number 011-013-20; thence with the existing town limits in a northerly line generally along the purported

right-of-way of the Norfolk Southern Railroad approximately 1489.69 feet, thence easterly to the centerline of said railroad approximately 35 feet; thence continuing northerly with said centerline approximately 2,713 feet to the southwest corner of tax parcel number 011-012-34; thence easterly with said tax parcel 1028.28 feet; thence northerly approximately 945.57 feet to the southerly margin of Hagers Road, then with said southerly margin in a generally easterly direction approximately 700 feet to the BEGINNING point, comprising all or part of tax parcel numbers:

011-011-02	011-012-29	011-013-47
011-011-03	011-012-30	011-191-28
011-011-04	011-012-31	011-191-29
011-011-10	011-012-32	011-191-31
011-011-11	011-012-35	011-191-32
011-011-14	011-013-02	011-191-35
011-011-19	011-013-26	011-191-36
011-011-39	011-013-28	011-191-37
011-011-40	011-013-39	011-191-34
011-012-01	011-013-40	
011-012-02	011-013-41	
011-012-03	011-013-42	
011-012-04	011-013-43	
011-012-05	011-013-44	
011-012-27	011-013-45	
011-012-28	011-013-46	

Section 2. From and after the effective date of this act, the subject areas shall be entitled to those services in the same manner that the Town of Huntersville provides to its residents and property lying therein, and the residents of such areas shall be entitled to all of the privileges, rights, and obligations of other residents of the Town of Huntersville.

Section 3. This act becomes effective at midnight, June 30, 1999.

(Attachment #1)

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — March 10, 1999

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kevin Boyd	DCC
Philip Albano	DCC
Paul Begin	OSBM
Mike Carpenter	NCHSA
John Rust	NCFPC
Jim Blackburn	Friend of Danielle
Andy Romanet	
Nancy Nonnemaker	Pozner & Jarmon
Walter Price	Charlotte Chamber
Mary Carmelia	Mecklenburg County
Lynn Bonner	NPO

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — March 10, 1999

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bill Glass	Public
Ann Case	NCRMA
Andy Ellen	NCRMA
Martin Eckes	Self-Help

(Attachment #2)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Wednesday, March 10, 1999

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

FAVORABLE

S.B. **115** Extend Bond Match Deadline
Sequential Referral: none
Recommended Referral: none

S.B. **269** Huntersville Satellite Annexation
Sequential Referral: none
Recommended Referral: none

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

S.B. **270** Huntersville Voluntary Annexation
Draft Number: PCS6559
Sequential Referral: none
Recommended Referral: none
Long Title Amended: No

TOTAL REPORTED: 3

Committee Clerk Comment: none

(Attachment #2)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Thursday, March 11, 1999

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

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

S.B. **271** Huntersville Annexation

Draft Number:	PCS4569
Sequential Referral:	none
Recommended Referral:	none
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment: Bill taken up at 3-10-99 Sen Finance Meeting

AGENDA

WEDNESDAY, MARCH 31, 1999

1:30 P.M. – ROOM 544

I CALL TO ORDER

II INTRODUCTION OF PAGES

III BILLS TO BE CONSIDERED

SB 18 – Carthage Charter Consolidation – Sen. Lee

SB 130 – Remove Flexible Benefits Sunset – Sen. Wellons

SB 181 – Dallas Property Maintenance – Sen. Hoyle

SB 286 – Local Option Homestead Relief – Sen. Reeves

SB 436 – Validate Certain Bond Referenda – Sen. Plyler and Sen. Purcell

SENATE FINANCE COMMITTEE

WEDNESDAY, MARCH 31, 1999

1:30 P.M. – ROOM 544

The Senate Finance Committee met on Wednesday, March 31, 1999, at 1:30 P.M. in Room 544 with Senator Kerr presiding. There were 21 committee members present. Senator Kerr introduced Fisher Coan from Forsythe County, sponsored by Senator Horton, as the page assisting the committee.

SB 18 – Carthage Charter Consolidation.

Senator Lee was recognized to explain his Bill and on motion by Senator Dannelly, the Bill was given a Favorable Report. Copy of Bill and Explanation included in the minutes.

SB 436 – Validate Certain Bond Referenda.

Senator Purcell explained his Bill and on motion by Senator Dalton, the committee gave the Bill a Favorable Report. Copy of Bill and Explanation included in the minutes.

SB 181 – Dallas Property Maintenance.

Senator Hoyle was recognized to explain his Bill. Senator Dannelly moved for a Favorable Report and after a general discussion, the motion carried and the Bill was given a Favorable Report. Copy of Bill, Explanation and Fiscal Note included in the minutes.

SB 130 – Remove Flexible Benefits Sunset.

Senator Wellons was recognized to explain his Bill. Ron Penny, State Personnel Director and Carl Goodwin, with State Personnel, both spoke in favor of this Bill. Stanley Moore, Fiscal Research Staff, answered questions for the committee and at the end of the discussion, Senator Webster moved for a Favorable Report and the motion carried. Copy of Bill and Explanation included in the minutes.

SB 286 – Local Option Homestead Relief.

Senator Reeves explained his Bill and upon motion by Senator Dannelly, the committee adopted a Committee Substitute. After a lengthy period of discussion on this Bill and questions to the bill sponsor and to Ed Regan, Association of County Commissioners, the meeting was adjourned and there was no vote taken on this Bill. Copy of Bill,

Explanation, Fiscal Note, Committee Substitute and other information included in the minutes.

Meeting adjourned.

David W. Hoyle, Co-Chair
Senate Finance Committee

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

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

Visitors' Sign Up Sheet is Attachment # 1
Committee Reports (2) are Attachment # 2

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 2

SENATE BILL 18
State and Local Government Committee Substitute Adopted 3/29/99

Short Title: Carthage Charter Consolidation. (Local)

Sponsors:

Referred to:

February 2, 1999

A BILL TO BE ENTITLED

AN ACT TO REVISE AND CONSOLIDATE THE CHARTER OF THE TOWN OF CARTHAGE.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the Town of Carthage is revised and consolidated to read as follows:

"THE CHARTER OF THE TOWN OF CARTHAGE.

"ARTICLE I. INCORPORATION, CORPORATE POWERS, AND BOUNDARIES.

"Section 1.1. **Incorporation**. The Town of Carthage, North Carolina, in Moore County and the inhabitants thereof shall continue to be a municipal body politic and corporate, under the name of the 'Town of Carthage,' hereinafter at times referred to as the 'Town.'

"Section 1.2. **Powers**. The Town shall have and may exercise all of the powers, duties, rights, privileges, and immunities conferred upon the Town of Carthage specifically by this Charter or upon municipal corporations by general law. The term 'general law' is employed herein as defined in G.S. 160A-1.

"Section 1.3. **Corporate Limits**. The corporate limits shall be those existing at the time of ratification of this Charter, as set forth on the official map of the Town and as they may be altered from time to time in accordance with law. An official map of the Town, showing the current municipal boundaries, shall be maintained permanently in the office of the Town Clerk and shall be available for public inspection. Upon alteration of the corporate limits pursuant to law, the appropriate changes to the official map shall be made and copies shall be filed in the office of the

Secretary of State, the Moore County Register of Deeds, and the appropriate board of elections.

"ARTICLE II. GOVERNING BODY.

"Section 2.1. **Town Governing Body; Composition.** The Town Council, hereinafter referred to as the 'Council,' and the Mayor shall be the governing body of the Town.

"Section 2.2. **Town Council; Composition; Terms of Office.** The Council shall be composed of five members, to be elected by all the qualified voters of the Town, for staggered terms of four years or until their successors are elected and qualified.

"Section 2.3. **Mayor; Term of Office; Duties.** The Mayor shall be elected by all the qualified voters of the Town for a term of four years or until his or her successor is elected and qualified. The Mayor shall be the official head of the Town government and preside at meetings of the Council, shall have the right to vote only when there is an equal division on any question or matter before the Council, and shall exercise the powers and duties conferred by law or as directed by the Council.

"Section 2.4. **Mayor Pro Tempore.** The Council shall elect one of its members as Mayor Pro Tempore to perform the duties of the Mayor during his or her absence or disability, in accordance with general law. The Mayor Pro Tempore shall serve in such capacity at the pleasure of the Council.

"Section 2.5. **Meetings.** In accordance with general law, the Council shall establish a suitable time and place for its regular meetings. Special and emergency meetings may be held as provided by general law.

"Section 2.6. **Quorum; Voting.** Official actions of the Council and all votes shall be taken in accordance with the applicable provisions of general law, particularly G.S. 160A-75. The quorum provisions of G.S. 160A-74 shall apply.

"Section 2.7. **Compensation; Qualifications for Office; Vacancies.** The compensation and qualifications of the Mayor and Council members shall be in accordance with general law. Vacancies that occur in any elective office of the Town shall be filled by majority vote of the remaining members of the Council and shall be filled for the remainder of the unexpired term, despite the contrary provisions of G.S. 160A-63.

"ARTICLE III. ELECTIONS.

"Section 3.1. **Regular Municipal Elections.** Regular municipal elections shall be held in each odd-numbered year in accordance with the uniform municipal election laws of North Carolina. Elections shall be conducted on a nonpartisan basis and the results determined using the nonpartisan plurality method as provided in G.S. 163-292.

"Section 3.2. **Election of Mayor.** A Mayor shall be elected in the regular municipal election in 1999 and each four years thereafter.

"Section 3.3. **Election of Council Members.** In the regular municipal election in 1997, the three candidates for Council member who received the highest numbers of votes shall be elected for four-year terms, while the two candidates who receive the next highest numbers of votes shall be elected for two-year terms. In the regular municipal election in 1999, and in each regular municipal election thereafter, persons

shall be elected to serve four-year terms in those positions whose terms are then expiring.

"Section 3.4. **Special Elections and Referenda.** Special elections and referenda may be held only as provided by general law or applicable local acts of the General Assembly.

"ARTICLE IV. TOWN MANAGER.

"Section 4.1. **Form of Government.** The Town shall operate under the council-manager form of government, in accordance with Part 2 of Article 7 of Chapter 160A of the General Statutes.

"Section 4.2. **Town Manager; Appointment; Powers and Duties.** The Council shall appoint a Town Manager who shall be responsible for the administration of all departments of the Town government. The Town Manager shall have all the powers and duties conferred by general law, except as expressly limited by the provisions of this Charter, and the additional powers and duties conferred by the Council, so far as authorized by general law.

"Section 4.3. **Settlement of Claims by Town Manager.** The Council may authorize the Town Manager to settle claims against the Town for (i) personal injuries or damages to property when the amount involved does not exceed the sum of two thousand five hundred dollars ($2,500) and does not exceed the actual loss sustained, including loss of time, medical expenses, and any other expenses actually incurred; and (ii) the taking of small portions of private property which are needed for the rounding of corners at intersections of streets, when the amount involved in any such settlement does not exceed two thousand five hundred dollars ($2,500) and does not exceed the actual loss sustained. Settlement of a claim by the Town Manager pursuant to this section shall constitute a complete release of the Town from any and all damages sustained by the person involved in such settlement in any manner arising out of the incident, occasion, or taking complained of. All such settlements and all such releases shall be approved in advance by the Town Attorney.

"ARTICLE V. ADMINISTRATIVE OFFICERS AND EMPLOYEES.

"Section 5.1. **Town Attorney.** The Council shall appoint a Town Attorney licensed to practice law in North Carolina. It shall be the duty of the Town Attorney to represent the Town, advise Town officials, and perform other duties required by law or as the Council may direct.

"Section 5.2. **Town Clerk.** The Town Manager shall appoint a Town Clerk to keep a journal of the proceedings of the Council, to maintain official records and documents, to give notice of meetings, and to perform such other duties required by law or as the Manager may direct. The Manager may appoint an Assistant or Deputy Town Clerk.

"Section 5.3. **Tax Collector.** The Town shall have a Tax Collector to collect all taxes owed to the Town and perform those duties specified in G.S. 105-350 and such other duties as prescribed by law or assigned by the Town Manager. Notwithstanding the contrary provisions of G.S. 105-349, the Manager may appoint and remove the Tax Collector and one or more Deputy Tax Collectors.

"Section 5.4. **Other Administrative Officers and Employees.** The Council may authorize other positions to be filled by appointment by the Town Manager, and may organize the Town government as deemed appropriate, subject to the requirements of general law.

"Section 5.5. **Manager's Authority; Role of Elected Officials.** As chief administrator, the Town Manager shall have the power to appoint, suspend, and remove all nonelected officers, department heads, and employees of the Town, except the Town Attorney, who shall be appointed as provided in Section 5.1 of this Charter. Neither the Mayor nor the Council nor any of its committees or members shall take part in the appointment or removal of officers, department heads, and employees in the administrative service of the Town, except as provided by this Charter. Except for the purpose of inquiry, or for consultation with the Town Attorney, the Mayor and the Council and its members shall deal with officers and employees in the administrative service only through the Manager, Acting Manager, or Interim Manager, and neither the Mayor nor the Council nor any of its members shall give orders or directions to any subordinate of the Manager, Acting Manager, or Interim Manager, either publicly or privately.

"ARTICLE VI. REMOVAL OF MOTOR VEHICLES.

"Section 6.1. **Liens for Removal of Motor Vehicles.** Pursuant to the authority granted by G.S. 160A-303 and G.S. 160A-303.2 and Chapter 451 of the Session Laws of 1987, the Council may establish reasonable towing fees for the cost of removing junked motor vehicles from private property. When the town causes the removal of a junked motor vehicle from private property pursuant to the authority granted by G.S. 160A-303 and G.S. 160A-303.2 and Chapter 451 of the Session Laws of 1987, and the owner of the vehicle fails to pay the towing fee within 30 days after it becomes due, the towing fee shall become a lien against the real property from which the vehicle was removed provided the owner of the real property from which the vehicle was removed was also the owner of the junked motor vehicle; said cost shall be placed upon the Town's tax books against the property and may be collected and foreclosed in the same manner as taxes are collected and foreclosed, or by suit, as the Town may determine.

"ARTICLE VII. EXTRATERRITORIAL POWERS.

"Section 7.1. **Extraterritorial Jurisdiction.** The Town shall have and may exercise all of the powers granted by Article 19 of Chapter 160A of the General Statutes within an extraterritorial area which it shall define. Despite the contrary provisions of G.S. 160A-360, the Town may, with the approval of the board of county commissioners, extend its extraterritorial area up to two miles outside the corporate limits.

Section 2. The purpose of this act is to revise the Charter of the Town of Carthage and to consolidate certain acts concerning the property, affairs, and government of the Town. It is intended to continue without interruption those provisions of prior acts which are expressly consolidated into this act, so that all rights and liabilities which have accrued are preserved and may be enforced.

Section 3. This act does not repeal or affect any acts concerning the property, affairs, or government of public schools, or any acts validating official actions, proceedings, contracts, or obligations of any kind.

Section 4. The following acts, having served the purposes for which they were enacted or having been consolidated into this act, are expressly repealed:

Chapter 85, Private Laws of 1796
Chapter 28, Private Laws of 1803
Chapter 113, Private Laws of 1812
Chapter 74, Private Laws of 1818, except for Section 1
Chapter 89, Private Laws of 1827-28
Chapter 30, Private Laws of 1832-33
Chapter 207, Private Laws of 1847
Chapter 124, Private Laws of 1871-72
Chapter 176, Private Laws of 1874-75
Chapter 32, Private Laws of 1881
Chapter 248, Private Laws of 1901
Chapter 299, Private Laws of 1903
Chapter 482, Private Laws of 1907, except for Sections 50 through 64
Chapter 166, Private Laws of 1909
Chapter 209, Private Laws of 1913
Chapter 33, Private Laws of 1924 (Extra Session)
Chapter 203, Private Laws of 1925
Chapter 862, Session Laws of 1945
Chapter 962, Session Laws of 1965.

Section 5. The Mayor and Council members serving on the date of ratification of this act shall serve until the expiration of their terms or until their successors are elected and qualified. Thereafter those offices shall be filled as provided in Articles II and III of the Charter contained in Section 1 of this act.

Section 6. This act does not affect any rights or interests which arose under any provisions repealed by this act.

Section 7. All existing ordinances, resolutions, and other provisions of the Town of Carthage not inconsistent with the provisions of this act or State law shall continue in effect until repealed or amended.

Section 8. No action or proceeding pending on the effective date of this act by or against the Town or any of its departments or agencies shall be abated or otherwise affected by this act.

Section 9. If any provision of this act or application thereof is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Section 10. Whenever a reference is made in this act to a particular provision of the General Statutes, and such provision is later amended, superseded, or recodified, the reference shall be deemed amended to refer to the amended

General Statute, or to the General Statute which most clearly corresponds to the statutory provision which is superseded or recodified.

Section 11. This act is effective when it becomes law.

SENATE BILL 18:
Carthage Charter Consolidation (2nd Edition)

BILL ANALYSIS

Committee: Senate Finance
Date: March 30, 1999
Version: 2nd Edition

Introduced by: Senators Lee & Kinnaird
Summary by: Ed Rossi & Martha Walston
Staff Attorneys

SUMMARY: ***Senate Bill 18 consolidates the charter of the Town of Carthage and reflects the changes in governance that have already taken place. In addition, the bill:***

- ***Allows the Council to authorize the Town Manager to settle claims of not more than $2,500.***
- ***Allows the Town Manager to appoint the Town Attorney, Town, Clerk, and Tax Collector.***
- ***Allows the Town to impose liens on real property that cover the cost of the reasonable towing fees for the removal of junked vehicles from the property. The lien may be imposed only if the owner of the property is also the owner of the vehicle.***
- ***With the approval of the County Commissioner, allows the Town to extend its extraterritorial jurisdiction up to two miles from its corporate limits.***

BILL ANALYSIS:

Form of Government – Chapter 160A of the General Statutes gives local governments the authority to change their form of government. In 1997, the Town of Carthage amended its charter to provide for a four-year term for its mayor and staggered four-year terms for its council members. In 1998, it adopted a Council-Manager form of government. This bill reflects those changes.

Vehicle Towing – Towns do not ordinarily have the authority to remove vehicles from private property. In 1987, the General Assembly authorized Moore County and by extension Carthage, to go on private property to remove junked motor vehicles. The 1987 law sets out a procedure that affords a hearing to the vehicle owner and also allows the municipality to sell the vehicle to recover its "reasonable towing fees". This bill allows a lien to be placed on the land when the vehicle was towed from the vehicle owner's land.

Extraterritorial Jurisdiction – Chapter 160A of the General Statutes also gives towns with populations of more than 10,000 but less than 25,000 the authority to exercise extraterritorial jurisdiction within two miles of their corporate borders. Carthage, with a population of approximately 1,460, does not meet those criteria. The bill waives the population criteria and allows Carthage to exercise extraterritorial jurisdiction up to two miles from its corporate limits if it has approval from the county commissioners.

BACKGROUND:

Senate Bill 18, as introduced, is identical to SB 1248 which passed the Senate last year and was held up in House Local & Regional Government I Committee. The proposed committee substitute to Senate Bill 18, adopted by the Senate State and Local Government Committee differs from the original version by:

- Deleting articles in the Charter referring to street improvements, sidewalk improvements, and demolition or repair of a dwelling that has been vacated and closed for one year
- Authorizing a lien for removal of motor vehicles only if the encumbered real property is owned by the owner of the motor vehicle.

TOWN OF CARTHAGE
LOCAL ACT DISPOSITION TABLE

The following Disposition Table explains the disposition of each local act affecting the Town. Some existing local acts have already been expressly repealed by state law. Others which have served their purpose can be repealed by the Revised Charter. In some cases, provisions will be preserved by adding them to the Revised Charter and repealing the local act. In other cases, the local act will not be repealed but will be incorporated into the Revised Charter by reference.

Local Act	Subject	Disposition
Ch. 85, Private Laws of 1796	Incorporation Act	Repealed
Ch. 28, Private Laws of 1803	Appoint Commissioners	Repealed
Ch 113, Private Laws of 1812	Appoint Commissioners	Repealed
Ch. 74, Private Laws of 1818	Town Name Change	Repealed
Ch. 89, Private Laws of 1827-28	Convey lots/establish streets	Repealed
Ch. 30, Private Laws of 1832-33	Appoint Commissioners	Repealed
Ch. 207, Private Laws of 1847	Appoint Commissioners	Repealed
Ch. 124, Private Laws of 1871-72	Elections	Repealed
Ch. 176, Private Laws of 1874-75	Corporate Limits Extended	Repealed
Ch. 32, Private Laws of 1881	Charter Revision & Consolidation	Repealed
Ch. 248, Private Laws of 1901	Charter Amendment (condemnation, vagrancy)	Repealed
Ch. 299, Private Laws of 1903	Charter Amendment (bond referendum amount)	Repealed
Ch. 482, Private Laws of 1907	Charter Revision & Consolidation	Repealed
Ch. 166, Private Laws of 1909	Corporate Limits	Repealed
Ch. 209, Private Laws of 1913	Charter Amendments (oath and powers of police, Abatement of nuisance, condemnation)	Repealed
Ch. 33, Private Laws of 1924	Railroad Purchase/Bonds	Repealed
Ch. 203, Private Laws of 1925	Charter Amendment (mayoral jurisdiction)	Repealed
Ch. 862, Private Laws of 1945	Railroad Bonds	Repealed
Ch. 962, Private Laws of 1965	ABC Store Elections	Repealed

Chart provided by Kim Hibbard with the North Carolina League of Municipalities

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 436

Short Title: Validate Certain Bond Referenda. (Public)

Sponsors: Senators Plyler and Purcell.

Referred to: Finance.

March 22, 1999

A BILL TO BE ENTITLED

AN ACT TO RATIFY, APPROVE, CONFIRM, AND VALIDATE CERTAIN BOND REFERENDA OF UNITS OF LOCAL GOVERNMENT HELD IN CONNECTION WITH THE AUTHORIZATION OF BONDS OF THOSE UNITS.

The General Assembly of North Carolina enacts:

Section 1. Bond referenda held by units of local government in connection with the authorization of bonds are hereby ratified, approved, confirmed, and in all respects validated, notwithstanding the provisions of G.S. 159-61(b), if the authorization of the bonds was approved at an election by a majority of the qualified voters of the unit voting thereon and notice of the referendum was published.

Section 2. This act applies to all bond referenda held by units of local government between April 1, 1997, and June 1, 1998.

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

SENATE BILL 436:
Validate Certain Bond Referenda

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Senators Plyler and Purcell
Date:	March 30, 1999	**Summary by:**	Martha K. Walston
Version:	1st Edition		Committee Counsel

SUMMARY: ***Senate Bill 436 ratifies, approves, confirms, and validates all bond referenda held by units of local government, notwithstanding the provisions of G.S. 159-61(b), if the bond referendum was approved by a majority of voters and notice of the referendum was published. G.S. 159-61(b) sets out certain date amd time requirements for the holding of a bond referendum. SB 436 applies to all bond referenda held by units of local government between April 1, 1997, and June 1, 1998***

CURRENT LAW:

G.S. 159-61 sets out the following requirements for a bond referendum:

(a) a majority vote

(b) date and time requirements for the holding of the referendum

(c) publication of notice of the referendum

(d) specific language for the form of the question on the ballot

(e) certification of the results of the referendum to the governing board and publication of the result

BACKGROUND:

SB436 would validate a Montgomery County Water District II bond referendum that was held between April 1, 1997, and June 1, 1998. This referendum did not meet the requirement in G.S. 159-61(b), that the date of a bond referendum shall not be more than one year after adoption of the bond order. The referendum was held one year and five weeks after the adoption of the bond order, but met all other requirements.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 181

Short Title: Dallas Property Maintenance. (Local)

Sponsors: Senator Hoyle.

Referred to: Finance.

March 1, 1999

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE TOWN OF DALLAS TO ENACT A PROPERTY MAINTENANCE ORDINANCE AND TO ASSESS CERTAIN COSTS OF ENFORCEMENT AS A LIEN AGAINST THE PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the Town of Dallas, being Chapter 342 of the 1979 Session Laws, is amended by adding a new Article to read:

"ARTICLE V.

"Property Maintenance.

"Section 5.1. **Removal of Trash, Weeds; Lien.** The Town Board may require the owners of all premises, vacant or improved, to keep the same free from trash, obnoxious weeds, overgrowth, solid wastes, and stagnant water and may provide that if the owners fail to comply with any such requirement, an employee or contractor of the Town may go upon the owners' premises and perform any work that may be necessary to comply with such requirement, and the Town may charge the cost thereof against the premises upon which the work is performed.

The costs of any work performed under this section shall constitute a lien against the premises upon which the work is performed and may be collected in the same manner as taxes upon real property. The term 'cost' as used in this section shall include interest at the rate of eight percent (8%) per annum until the lien is paid. Interest does not accrue until a bill for the costs becomes overdue."

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

SENATE BILL 181:
Dallas Property Maintenance

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Senator Hoyle
Date:	March 26, 1999	**Summary by:**	Martha K. Walston
Version:	1st Edition		Committee Counsel

SUMMARY: ***Senate Bill 181 is a local act that authorizes the Town Board of Dallas to enact a property maintenance ordinance requiring owners of the property to keep the property free of trash. If an owner fails to comply with this ordinance, then the Town may clean the property and charge the cost of the cleanup against the property. This cost will constitute a lien against the property that may be collected in the same manner as taxes on real property.***

BILL ANALYSIS:

Senate Bill 181 amends the Charter of the Town of Dallas by adding an article authorizing the Town to require owners of premises to keep their premises free from trash, obnoxious weeds, overgrowth, solid waste, and stagnant water. If the owner does not comply with the ordinance, then the Town may clean the premises and charge the cost against the premises. The cost will be a lien on the property and may be collected in the same manner as property taxes. Cost will include 8% interest per annum. The interest begins accruing when the bill for the cleanup becomes overdue. The act is effective when it becomes law.

Under current law taxes on real property may be collected in the following manner:

Foreclosure - a more drastic means of collecting taxes.

1. Action to foreclose a mortgage – sale of property pursuant to a court order
2. Proceeding in rem – the property may not be sold until six months after the lien advertisement

Levy – Tangible personal property is seized, advertised, and sold to highest bidder

Attachment and garnishment – The tax collector serves notice on the taxpayer and the bank holding the taxpayer's bank account or the employer owing wages to the taxpayer. If wages are attached, no more than 10% of the wages per pay period may be reached.

BACKGROUND:

G.S. 160A-193 provides:

> A city shall have authority to summarily remove, abate, or remedy everything in the city limits, or within one mile thereof, that is dangerous or prejudicial to the public health or public safety. The expense of the action shall be paid by the person in default, and, if not paid, shall be a lien upon the land or premises where the trouble arose, and shall be collected as unpaid taxes.

The following towns have been given authority to enact a similar ordinance: Salisbury, High Point, Durham, Wilmington, and Grifton.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 181 Dallas Property Maintenance

SHORT TITLE: Dallas Property Maintenance
SPONSOR(S): Senator Hoyle

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES Town of Dallas	NO GENERAL FUND IMPACT See Assumptions and Methodology				
EXPENDITURES Town of Dallas	NO GENERAL FUND IMPACT See Assumptions and Methodology				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Town of Dallas, NC.

EFFECTIVE DATE: When it becomes law.

BILL SUMMARY: The bill amends the Dallas town charter to allow the town board to require property owners to keep their property free from "trash, obnoxious weeds, overgrowth, solid wastes, and stagnant water." The bill also authorizes the town, or a contractor, to enter the premises and do any work necessary for compliance. The cost of work performed shall constitute a lien on the property, and may be collected in the same manner as taxes. The term "cost" is also defined to include an interest rate of 8% per annum.

ASSUMPTIONS AND METHODOLOGY: Currently there are approximately ten structures the town may be interested in condemning. They estimate a minimum cost to the town of approximately $100.00 to remove each structure. No estimate is possible for other future uses of the authority granted in the bill.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Linda Struyk Millsaps

APPROVED BY: Tom Covington

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 130

Short Title: Remove Flexible Benefits Sunset. (Public)

Sponsors: Senators Wellons; Garrou, Harris, and Warren.

Referred to: Finance.

February 18, 1999

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE THE SUNSET ON USING SAVED EMPLOYER FICA CONTRIBUTIONS TO PAY THE ADMINISTRATIVE EXPENSES OF THE FLEXIBLE BENEFITS PROGRAM.

The General Assembly of North Carolina enacts:

Section 1. Section 14(i) of Chapter 1044 of the 1991 Session Laws, as amended by Section 42 of Chapter 561 of the 1993 Session Laws, Section 7.28A of Chapter 769 of the 1993 Session Laws, and Section 33.20 of S.L. 1997-443 reads as rewritten:

"(i) Subsections (a) through (d) of this section are effective January 1, 1990. Subsections (e) through (h) of this section are effective January 1, 1991. ~~Subsections (a) through (h) of this section shall expire December 31, 1999.~~"

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

SENATE BILL 130:
Remove Flexible Benefits Sunset

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Senator Wellons
Date:	March 22, 1999	**Summary by:**	Thereras Matula
Version:	1st Edition		Martha Walston
			Staff Attorneys

SUMMARY: ***Senate Bill 130 eliminates the December 31, 1999 sunset provision and allows the employer's share of Federal Insurance Contributions Act (FICA) savings to pay the administrative expenses of the State employee flexible benefits program. The flexible benefits program (NC Flex) encompasses the dependent care program and the flexible compensation program. The companion bill (HB 204) was given a favorable report in House State Personnel and was re-referred to Appropriations on March 18.***

CURRENT LAW:

Until December 31, 1999, the current law, subject to the approval of the Director of Budget, allows the employer's share of FICA savings to be used to pay some or all of the administrative expenses of the flexible benefits program for State employees. The savings are generated by the reduction in salary that occurs when an employee participates in the flexible benefits program. This law affects:

eligible officers and employees of State departments, institutions, and agencies;

eligible employees of local school administrative units;

eligible employees of constituent institutions under the State Board of Community Colleges; and

eligible employees of constituent institutions under the Board of Governors of The University of North Carolina

Under current law, Session Law 1997-443, the ability to use employer FICA savings to support the administration of the flexible benefits program will expire on December 31, 1999.

BILL ANALYSIS:

SB 130 will remove the December 31, 1999 sunset provision and allow the employer's FICA contribution savings to pay for some or all of the administrative expenses of the flexible benefits program. The act is effective when it becomes law.

BACKGROUND:

Flexible Benefits Program Sunset History

- The law first appeared in Chapter 1044 of the 1991 Session Laws and expired *December 31, 1993.*
- Chapter 561 of the 1993 Session Laws amended the provision and expired *December 31, 1994.*
- Chapter 769 of the 1993 Session Laws amended the provision and expired *December 31, 1997.*
- Session Law 1997-443 amended the provision and expires *December 31, 1999.*

	Spending Accounts		Premiums			Total Pre-tax	FICA
	Daycare	Medical	Dental	AD&D	Vision	Dollars	Savings
Monthly	$ 435,037	$ 540,055	$ 552,156	$ 45,710	$ 32,352	$ 1,605,310	$ 121,361
Annual	$ 5,220,444	$ 6,480,660	$ 6,625,872	$ 548,520	$ 388,224	$ 19,263,720	$ 1,456,337

1999 Total # of Participants	39,375
DCAP	1,561
HCAP	7,728
Dental	17,815
AD&D	9,554
Vision	2,717

History:	Participants
1995	727
1996	13,113
1997	16,992
1998	28,920
1999	39,375

Fiscal Year	FICA Savings	Administrative Expense	Savings*
1995/96	$ 325,626	$ 294,087	$ 31,539
1996/97	$ 802,150	$ 370,648	$ 431,502
1997/98 proj.	$ 1,191,199	$ 592,806	$ 598,393
1998/99 proj.	$ 1,456,337	$ 800,000	$ 656,337

* Savings does not reflect the liability reserve required to ensure the state maintains a fluid plan.
TPA recommends $500,000 reserve retained from FICA savings for State plan liability.

Prepared by:
Office of State Personnel

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 286

Short Title: Local Option Homestead Relief. (Public)

Sponsors: Senators Reeves; Ballance, Cooper, Dannelly, Jordan, Kinnaird, Lucas, Martin of Guilford, and Miller.

Referred to: Finance.

March 8, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CONSTITUTION OF NORTH CAROLINA TO AUTHORIZE THE GENERAL ASSEMBLY TO ENACT LEGISLATION ALLOWING EACH COUNTY TO (I) INCREASE THE AMOUNT OF THE PROPERTY TAX HOMESTEAD EXEMPTION FOR LOW-INCOME ELDERLY AND DISABLED INDIVIDUALS IN THAT COUNTY AND (II) RAISE THE DEFINITION OF "LOW-INCOME" SO THAT MORE ELDERLY AND DISABLED INDIVIDUALS CAN QUALIFY FOR THE EXEMPTION.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Article V of the North Carolina Constitution is amended by adding a new subdivision to read:

"(8) Property tax homestead exclusion. If the General Assembly enacts legislation classifying and excluding from ad valorem taxation part of the value of the residence of each elderly or disabled individual whose income is below a maximum amount and who satisfies other conditions, the General Assembly may, notwithstanding subdivision (2) of this section, enact a general law uniformly applicable throughout the State authorizing each county to increase the portion of a classified residence's value that is excluded in that county and to increase the maximum income threshold to qualify for the exclusion in that county."

Section 2. G.S. 105-277.1 is amended by adding a new subsection to read:

"(a1) Local Option Increase. -- The board of commissioners of a county may, by resolution, increase the amount of the exclusion provided in subsection (a) of this

section, increase the maximum income threshold provided in subdivision (a)(2) of this section, or both. An increase adopted under this subsection shall apply uniformly within the county. The board of commissioners of a county may, by resolution, repeal or reduce an increase adopted under this subsection, but may not reduce the exclusion or the income threshold provided in subsection (a) of this section. A resolution changing the exclusion amount or the income threshold within a county pursuant to this subsection shall become effective no earlier than for the taxable year beginning July 1 following adoption of the resolution."

Section 3. G.S. 105-309(f) reads as rewritten:

"(f) The following information shall appear on each abstract or on an information sheet distributed with the abstract. If the county has increased the exclusion amount or the income threshold pursuant to G.S. 105-277.1(a1), the assessor shall substitute the applicable dollar amounts. The abstract or sheet must include the address and telephone number of the assessor below the notice required by this subsection. The notice shall read as follows:

'PROPERTY TAX RELIEF FOR ELDERLY AND PERMANENTLY DISABLED PERSONS.

North Carolina excludes from property taxes the first twenty thousand dollars ($20,000) in appraised value of a permanent residence owned and occupied by North Carolina residents aged 65 or older or totally and permanently disabled whose income does not exceed fifteen thousand dollars ($15,000). Income means the owner's adjusted gross income as determined for federal income tax purposes, plus all moneys received other than gifts or inheritances received from a spouse, lineal ancestor or lineal descendant.

If you received this exclusion in (assessor insert previous year), you do not need to apply again unless you have changed your permanent residence. If you received the exclusion in (assessor insert previous year) and your income in (assessor insert previous year) was above fifteen thousand dollars ($15,000), you must notify the assessor. If you received the exclusion in (assessor insert previous year) because you were totally and permanently disabled and you are no longer totally and permanently disabled, you must notify the assessor. If the person receiving the exclusion in (assessor insert previous year) has died, the person required by law to list the property must notify the assessor. Failure to make any of the notices required by this paragraph before April 15 will result in penalties and interest.

If you did not receive the exclusion in (assessor insert previous year) but are now eligible, you may obtain a copy of an application from the assessor. It must be filed by April 15.'"

Section 4. G.S. 105-328 reads as rewritten:

"**§ 105-328. Listing, appraisal, and assessment of property subject to taxation by cities and towns situated in more than one county.**

(a) ~~For~~ Except as provided in subsection (a1) of this section, for purposes of municipal taxation, all property subject to taxation by a city or town situated in two

or more counties may, by resolution of the governing body of the municipality, be listed, appraised, and assessed as provided in G.S. 105-326 and 105-327 if, in such a case, in the opinion of the governing body, the same appraisal and assessment standards will thereby apply uniformly throughout the municipality. However, if, in such a case, the governing body ~~shall determine~~ determines that adoption of the appraisals and assessments fixed by the counties will not result in uniform appraisals and assessments throughout the municipality, the governing body may, by horizontal adjustments, equalize the appraisal and assessment values fixed by the counties in order to obtain the required uniformity. Taxes levied by the city or town shall be levied uniformly on the assessments so determined.

(a1) This section does not apply to assessments of property that differ in any of the counties in which the city or town is located because of a local option adjustment in the homestead exclusion under G.S. 105-277.1(a1).

(b) Should the governing body of a city or town situated in two or more counties not adopt the procedure provided in subsection (a), above, all property subject to taxation by the municipality shall be listed, appraised, and assessed as provided in subdivisions (b)(1) through (b)(6), below.

(1) The governing body of the city or town shall appoint a municipal assessor on or before the first Monday in July in each odd-numbered year. The governing body may remove the municipal assessor from office during his term for good cause after giving him notice in writing and an opportunity to appear and be heard at a public session of the appointing body. Whenever a vacancy occurs in the office, the governing body shall appoint a qualified person to serve as municipal assessor for the period of the unexpired term. Persons holding the position of municipal assessor on July 1, 1971, shall be deemed qualified to fill the position. A person appointed as a municipal assessor shall meet the qualifications and requirements set for a county assessor under G.S. 105-294.

(2) With the approval of the governing body, a municipal assessor may employ listers, appraisers, and clerical assistants necessary to carry out the listing, appraisal, assessing, and billing functions required by law.

(3) A municipal assessor and the persons employed by him have the same powers and duties as their county equivalents with respect to property subject to taxation by a city or town.

(4) The governing body shall, with respect to property subject to city or town taxation, be vested with the powers and duties vested by this Subchapter in boards of county commissioners and boards of equalization and review. Appeals may be taken from the municipal board of equalization and review or governing body to the Property Tax Commission in the manner provided in this

Subchapter for appeals from county boards of equalization and review and boards of county commissioners.

(5) All expenses incident to the listing, appraisal, and assessment of property for the purpose of city or town taxation shall be borne by the municipality for whose benefit the work is undertaken.

(6) The intent of this subsection (b) is to provide cities and towns that are situated in two or more counties with machinery for listing, appraising, and assessing property for municipal taxation equivalent to that established by this Subchapter for counties. The powers to be exercised by, the duties imposed on, and the possible penalties against municipal governing bodies, boards of equalization and review, assessors, and persons employed by an assessor shall be the same as those provided in this Subchapter by, on, or against county boards of commissioners, boards of equalization and review, assessors, and persons employed by an assessor."

Section 5. The amendment set out in Section 1 of this act shall be submitted to the qualified voters of the State at the general election in November 2000. The election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

Constitutional amendment authorizing the General Assembly to allow counties to (1) increase the property tax exemption for a residence owned by a low-income elderly or disabled person and (2) raise the definition of 'low-income' so more elderly and disabled persons can qualify for the exemption."

Section 6. If a majority of the votes cast on the question are in favor of the amendment set out in Section 1 of this act, the State Board of Elections shall certify the amendment to the Secretary of State. The amendment becomes effective upon this certification. The Secretary of State shall enroll the amendment so certified among the permanent records of that office.

Section 7. Sections 2, 3, and 4 of this act become effective only if the constitutional amendment proposed by Section 1 of this act is approved as provided in Sections 5 and 6 of this act. If the constitutional amendment is approved, Sections 2, 3, and 4 of this act become effective when the State Board of Elections certifies the amendment to the Secretary of State.

Section 8. This act is effective when it becomes law.

SENATE BILL 286:
Proposed Committee Substitute
Local Option Homestead Exemption

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Senator Reeves
Date:	March 22, 1999	**Summary by:**	Martha Harris and Martha Walston, Staff Attorneys
Version:	Proposed Committee Substitute		

SUMMARY: ***The proposed committee substitute for Senate Bill 286 authorizes a constitutional amendment to be considered by the voters in the 2000 general election to give counties the option of increasing the property tax homestead exemption amount and the property tax homestead income ceiling amount above the Statewide amounts set by the General Assembly in G.S. 105-277.1. If the amendment is approved by the voters, SB 286 provides the statutory authorization for the counties to exercise the local option. A constitutional amendment is necessary because the constitution requires property tax classifications to be uniform statewide. SB 286 provides no reimbursement for losses due to the local option increases counties may enact if the constitutional amendment is adopted. The PCS only makes technical and clarifying changes to the original bill, and is identical to House Bill 130.***

CURRENT LAW:

Section 2 of Article V of the North Carolina Constitution authorizes the General Assembly to classify property for taxation on a Statewide basis. Property that is classified must be taxed by a general law that is uniformly applicable in every city, county, or other local government unit. The homestead exemption is one of these property classifications. The homestead exemption is a partial exemption ($20,000) from property taxes for the residence of a person who:

1. is at least 65 years old or totally disabled, and
2. has an income of less than $15,000.

The income used to determine the income eligibility amount includes moneys received from every source other than gifts or inheritances received from a spouse, lineal ancestor, or lineal descendant. For married applicants residing with their spouses, the income of both spouses is included, whether or not the residence is in both names. The State reimburses local governments for part of their revenue loss due to the homestead exemption.

BILL ANALYSIS:

Section 1 of the bill proposes an amendment to Section 2 of Article V of the Constitution. This amendment would give the General Assembly the authority to permit counties, on a local option basis, to adopt a higher homestead exemption amount and to apply higher maximum income levels for eligibility than are authorized by the General Assembly on a uniform, Statewide basis.

Section 2 establishes the procedure for a board of county commissioners to adopt a resolution increasing the amount of the exclusion and the maximum income threshold for the homestead exemption greater than the amounts set in G.S. 105-277.1(a). It also authorizes the board to repeal or reduce any such increase as long as the reduction is not below the uniform Statewide limits.

Section 3 authorizes notice of the adopted levels.

Section 4 provides that for municipalities that lie in two or more counties, the municipalities may not adjust values because of different homestead exclusions adopted by the various counties.

Section 5 makes a clarifying change to the catch line of G.S. 105-277.1

Section 6 provides that the proposed constitutional amendment will be submitted to the voters in the Statewide general election in November 2000.

Section 7 provides that if a majority vote in favor of the constitutional amendment, then the amendment becomes effective once it is certified to the Secretary of State.

Section 8 sets out the effective dates. Sections 2, 3, and 4 become effective only if the constitutional amendment is approved and then certified to the Secretary of State. The remainder of the act is effective when it becomes law.

BACKGROUND:

The homestead exemption was created in 1972 and provided for a $5,000 exemption and an income eligibility amount of $3,500. The exemption has been amended eight times:

Year	exemption amount	income eligibility
1973	$5,000	$3,500 to $5,000
1975	$5,000	$5,000 to $7,500
1977	$5,000 to $7,500	$7,500 to $9,000
1981	$7,500 to $8,500	$9,000
1985	$8,500 to $10,000	$9,000 to $10,000
1987	$10,000 to $12,000	$10,000 to $11,000
1993	$12,000 to $15,000	$11,000
1997	$15,000 to $20,000	$11,000 to $15,000

State Reimbursement

Historically, local governments have borne most of the cost of the property tax homestead exemption. In 1982, the General Assembly established a mechanism for the State to reimburse cities and counties for a percentage of the revenue loss from this exemption. From 1982 until 1985, the State reimbursed local governments for 15% of their loss. For 1985 until 1987, the State reimbursed local governments for 35% of the cost of the homestead exemption. In 1991, the General Assembly froze the amount of reimbursements made to local governments to the amount each city and county was entitled to receive in 1991. That amount is approximately $7.9 million. No additional reimbursement was provided when the exemption amount was increased in 1993. When the homestead exemption was expanded in 1996, the General Assembly provided that, in addition to the existing $7.9 million reimbursement, the State would, for two years, reimburse local governments for ½ of the revenue loss attributable to the 1996 changes.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: S.B. 286

SHORT TITLE: Local Option Homestead Relief

SPONSOR(S): Sen. Reeves

FISCAL IMPACT

Yes ( ) **No ( )** **No Estimate Available (x)**

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
General Fund	**No General Fund Impact**				
Local Governments	**(See Assumptions and Methodology Section)**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: County and City Governments who choose to participate.

EFFECTIVE DATE: When it becomes law.

BILL SUMMARY: The bill authorizes counties to increase the amount of property excluded from tax under the homestead exemption for the elderly and disabled. It also authorizes the counties to increase the maximum income threshold to qualify for the exemption. Once increased, the counties are also authorized to decrease these limits and exemptions as long at they met the minimum criteria set by the state. (Currently the state recognizes an exclusion of $20,000 of property owned by a qualified person with an income of less than $15,000). The county commission is charged with making the local decisions on homestead exemptions.

ASSUMPTIONS AND METHODOLOGY: The Homestead Exemption is a partial exemption from property taxes for the residence of a person who is aged 65 or older, or totally disabled, and who has an income of less than $15,000. The exemption amount was last increased in 1996, when it was increased from $15,000 to $20,000 effective July 1, 1997. Before then the exemption was last increased in 1993 from $12,000 to $15,000. The income eligibility amount was last increased in 1996, when it was increased from $11,000 to $15,000. Before then the

income threshold had last been increased in 1987, when it was increased from $10,000 to $11,000.

The current annual cost of the Homestead Exemption program is approximately $26 million. That cost is divided between the state and the localities. History indicates that when the exemption amount and the income requirement are changed incrementally, approximately 80% of the resulting loss corresponds to the property exemption and 20% to the income requirement. Of course this ratio may change if either the exemption or income requirements are altered dramatically.

In 1995 the U.S. Bureau of the Census estimated that the national median elderly home value was $81,956. Inflating these numbers by the Consumer Price Index rate for shelter in 1996 and 1997 creates a 1997 national average elderly home value of $87,201. Once adjusted for North Carolina's slightly lower than average home prices (5% adjustment) and the difference between actual value and assessed value for property tax purposes (because property is generally accessed every 4 or 8 years, the assessed value lags the actual value. On average the assessed value is approximately 85% of the actual value) a realistic North Carolina value would be approximately $70,500. The U.S. Bureau of the Census estimates that there were 589,000 elderly households in North Carolina in 1997. As such, the total value of homes owned by North Carolina elderly was approximately $41.5 billion. Assuming the weighted average property tax rate for 1997 applied, the total tax liability created by elderly households in 1997 was $402 million. Making adjustment for the current homestead exemption, the net 1997 cost of exempting all elderly homes would have been $376 million.

No exact fiscal estimate is possible on this bill for two reasons. First, the legislation is permissive; each individual county can decide if it will alter the income and exemption amounts. Fiscal Research cannot determine, reliably, which counties will actually decide to participate. Second, no maximum loss estimate (assuming all counties participate) is possible because the bill does not include a cap. As such, the range of potential loss goes from none, assuming no counties participate, to the entire value of all primary residences owned by all elderly persons (less the current homestead exemption).

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Linda Struyk Millsaps

APPROVED BY: Tom Covington
DATE: Tuesday, March 09, 1999

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 286
Proposed Committee Substitute S286-PCS7590-LA

Short Title: Local Option Homestead Relief. (Public)

Sponsors:

Referred to:

March 8, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CONSTITUTION OF NORTH CAROLINA, IF APPROVED BY THE VOTERS IN THE 2000 GENERAL ELECTION, TO AUTHORIZE THE GENERAL ASSEMBLY TO ENACT LEGISLATION ALLOWING EACH COUNTY TO (I) INCREASE THE AMOUNT OF THE PROPERTY TAX HOMESTEAD EXEMPTION FOR LOW-INCOME ELDERLY AND DISABLED INDIVIDUALS IN THAT COUNTY AND (II) RAISE THE DEFINITION OF "LOW-INCOME" SO THAT MORE ELDERLY AND DISABLED INDIVIDUALS CAN QUALIFY FOR THE EXEMPTION.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Article V of the North Carolina Constitution is amended by adding a new subsection to read:

"(8) Property tax homestead exclusion. If the General Assembly enacts legislation classifying and excluding from ad valorem taxation part of the value of the residence of each elderly or disabled individual whose income is below a maximum amount and who satisfies other conditions, the General Assembly may, notwithstanding subsection (2) of this section, enact a general law uniformly applicable throughout the State authorizing each county to increase the portion of a classified residence's value that is excluded in that county and to increase the maximum income threshold to qualify for the exclusion in that county."

Section 2. G.S. 105-277.1 is amended by adding a new subsection to read:

"(a1) Local Option Increase. -- The board of commissioners of a county may, by resolution, increase the amount of the exclusion provided in subsection (a) of this

section, increase the maximum income threshold provided in subdivision (a)(2) of this section, or both. An increase adopted under this subsection shall apply uniformly within the county. The board of commissioners of a county may, by resolution, repeal or reduce an increase adopted under this subsection, but may not reduce the exclusion or the income threshold provided in subsection (a) of this section. A resolution changing the exclusion amount or the income threshold within a county pursuant to this subsection shall become effective no earlier than for the taxable year beginning July 1 following adoption of the resolution."

Section 3. G.S. 105-309(f) reads as rewritten:

"(f) The following information shall appear on each abstract or on an information sheet distributed with the abstract. If the county has increased the exclusion amount or the income threshold pursuant to G.S. 105-277.1(a1), the assessor shall substitute the applicable dollar amounts. The abstract or sheet must include the address and telephone number of the assessor below the notice required by this subsection. The notice shall read as follows:

'PROPERTY TAX RELIEF FOR ELDERLY AND PERMANENTLY DISABLED PERSONS.

North Carolina excludes from property taxes the first twenty thousand dollars ($20,000) in appraised value of a permanent residence owned and occupied by North Carolina residents aged 65 or older or totally and permanently disabled whose income does not exceed fifteen thousand dollars ($15,000). Income means the owner's adjusted gross income as determined for federal income tax purposes, plus all moneys received other than gifts or inheritances received from a spouse, lineal ancestor or lineal descendant.

If you received this exclusion in (assessor insert previous year), you do not need to apply again unless you have changed your permanent residence. If you received the exclusion in (assessor insert previous year) and your income in (assessor insert previous year) was above fifteen thousand dollars ($15,000), you must notify the assessor. If you received the exclusion in (assessor insert previous year) because you were totally and permanently disabled and you are no longer totally and permanently disabled, you must notify the assessor. If the person receiving the exclusion in (assessor insert previous year) has died, the person required by law to list the property must notify the assessor. Failure to make any of the notices required by this paragraph before April 15 will result in penalties and interest.

If you did not receive the exclusion in (assessor insert previous year) but are now eligible, you may obtain a copy of an application from the assessor. It must be filed by April 15.'"

Section 4. G.S. 105-328 reads as rewritten:

"**§ 105-328. Listing, appraisal, and assessment of property subject to taxation by cities and towns situated in more than one county.**

(a) ~~For~~ Except as provided in subsection (a1) of this section, for purposes of municipal taxation, all property subject to taxation by a city or town situated in two

or more counties may, by resolution of the governing body of the municipality, be listed, appraised, and assessed as provided in G.S. 105-326 and 105-327 if, in such a case, in the opinion of the governing body, the same appraisal and assessment standards will thereby apply uniformly throughout the municipality. However, if, in such a case, the governing body ~~shall determine~~ determines that adoption of the appraisals and assessments fixed by the counties will not result in uniform appraisals and assessments throughout the municipality, the governing body may, by horizontal adjustments, equalize the appraisal and assessment values fixed by the counties in order to obtain the required uniformity. Taxes levied by the city or town shall be levied uniformly on the assessments so determined.

(a1) This section does not apply to assessments of property that differ in any of the counties in which the city or town is located because of a local option adjustment in the homestead exclusion under G.S. 105-277.1(a1).

(b) Should the governing body of a city or town situated in two or more counties not adopt the procedure provided in subsection ~~(a), above,~~ (a) of this section, all property subject to taxation by the municipality shall be listed, appraised, and assessed as provided in subdivisions (b)(1) through (b)(6), below.

(1) The governing body of the city or town shall appoint a municipal assessor on or before the first Monday in July in each odd-numbered year. The governing body may remove the municipal assessor from office during his term for good cause after giving him notice in writing and an opportunity to appear and be heard at a public session of the appointing body. Whenever a vacancy occurs in the office, the governing body shall appoint a qualified person to serve as municipal assessor for the period of the unexpired term. Persons holding the position of municipal assessor on July 1, 1971, shall be deemed qualified to fill the position. A person appointed as a municipal assessor shall meet the qualifications and requirements set for a county assessor under G.S. 105-294.

(2) With the approval of the governing body, a municipal assessor may employ testers, appraisers, and clerical assistants necessary to carry out the listing, appraisal, assessing, and billing functions required by law.

(3) A municipal assessor and the persons employed by him have the same powers and duties as their county equivalents with respect to property subject to taxation by a city or town.

(4) The governing body shall, with respect to property subject to city or town taxation, be vested with the powers and duties vested by this Subchapter in boards of county commissioners and boards of equalization and review. Appeals may be taken from the municipal board of equalization and review or governing body to the Property Tax Commission in the manner provided in this

Subchapter for appeals from county boards of equalization and review and boards of county commissioners.

(5) All expenses incident to the listing, appraisal, and assessment of property for the purpose of city or town taxation shall be borne by the municipality for whose benefit the work is undertaken.

(6) The intent of this subsection (b) is to provide cities and towns that are situated in two or more counties with machinery for listing, appraising, and assessing property for municipal taxation equivalent to that established by this Subchapter for counties. The powers to be exercised by, the duties imposed on, and the possible penalties against municipal governing bodies, boards of equalization and review, assessors, and persons employed by an assessor shall be the same as those provided in this Subchapter by, on, or against county boards of commissioners, boards of equalization and review, assessors, and persons employed by an assessor."

Section 5. The catch line of G.S. 105-277.1 reads as rewritten:

"**§ 105-277.1. Property ~~classified for taxation at reduced valuation.~~ tax homestead exclusion.**"

Section 6. The amendment set out in Section 1 of this act shall be submitted to the qualified voters of the State at the statewide general election to be held in 2000. The election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

Constitutional amendment authorizing the General Assembly to allow counties to (1) increase the property tax exemption for a residence owned by a low-income elderly or disabled person and (2) raise the definition of 'low-income' so more elderly and disabled persons can qualify for the exemption."

Section 7. If a majority of the votes cast on the question are in favor of the amendment set out in Section 1 of this act, the State Board of Elections shall certify the amendment to the Secretary of State. The amendment becomes effective upon this certification. The Secretary of State shall enroll the amendment so certified among the permanent records of that office.

Section 8. Sections 2, 3, and 4 of this act become effective only if the constitutional amendment proposed by Section 1 of this act is approved as provided in Sections 6 and 7 of this act. If the constitutional amendment is approved, Sections 2, 3, and 4 of this act become effective when the State Board of Elections certifies the amendment to the Secretary of State. The remainder of this act is effective when it becomes law.

Property Tax & the Homestead Exemption

Year	State Reimbursment
1972	Homestead Enacted: No reimbursement.
1982	State Reimburses 15% of the cost to cities and counties.
1985	State reimburses 35% of the cost to cities and counties.
1987	State reimburses 50% of the cost to cities and counties.
1991	The state freezes reimbursements at approximately $7.9 million
	(Approximately 50% of the cost at the time).
1996	State enacts a two year reimbursement for 50% of the costs
	associated with their 1996 changes ($3.0 million).
	Current Costs
	The total cost of the Homestead Exemption is estimated
	to be $26 million in 1998. The state portion was $10.9 million.
	In FY 1999-00 the state share will decrease to approximately
	$7.9 million

VISITOR REGISTRATION SHEET

SENATE FINANCE — WEDNESDAY, MARCH 31, 1999

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Don Wample	State Controller's Office
Pam Iadeluti	State Personnel (OSP)
Carl Goodwin	OSP
Ronald Penny	OSP
George Rees	NC Community Colleges
John Rust	NCFPC
Steve Woodson	NC Farm Bureau
Mary Carmilia	Mecklenburg County
John Briley	Dept. of Rev.
Alice Garland	ElectriCities
Andy Romanet	N.C.L.M.

VISITOR REGISTRATION SHEET

SENATE FINANCE — WEDNESDAY, MARCH 31, 1999

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ed Regan	N.C.A.C.C.
Troy GREEN	SEANC
Darrell Arnold	SEANC
Katherine Joyce	SEANC
Patti Seawell	DOR
Eric Rudolph	Cherokee Chamber of Commerce
[illegible]	Colonial Life & Accident Ins. Co
[illegible]	[illegible]
Evelyn Hawthorne	UNC-CH
Hazel James	NCPMA
Larry Jordan	NCPMA

VISITOR REGISTRATION SHEET

SENATE FINANCE — WEDNESDAY, MARCH 31, 1999

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Gary Harris	NCPMA
Bill Wicker	NCPMA
David Simmons	ZDA, IDA

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Tuesday, April 20, 1999

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

FAVORABLE

S.B. **130** Remove Flexible Benefits Sunset.
Sequential Referral: None
Recommended Referral: None

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

S.B. **56** Sunset/Term of Energy Savings Contracts.
Draft Number: PCS2641
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

S.B. **314** Mineral Springs Incorporated.
Draft Number: PCS1711
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

S.B. **484** RMV Tax Budgeting.
Draft Number: PCS7664
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

S.B. **703** Hampstead Incorporation.
Draft Number: PCS6656
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 5

Committee Clerk Comment: 3 31 SB 130 4 14 SB 56 314 484 703

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Wednesday, March 31, 1999

SENATOR KERR

,

submits the following with recommendations as to passage:

FAVORABLE

S.B.(CS #1)18 Carthage Charter Consolidation.
Sequential Referral: None
Recommended Referral: None

S.B. 181 Dallas Property Maintenance.
Sequential Referral: None
Recommended Referral: None

S.B. 436 Validate Certain Bond Referenda.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 3

Committee Clerk Comment: SB 18 181 436

AGENDA

FOR

SENATE FINANCE COMMITTEE

WEDNESDAY, APRIL 7, 1999

1:30 P. M. – ROOM 544 LOB

MEETING CALLED TO ORDER

INTRODUCTION OF PAGES

BILLS TO BE CONSIDERED:

- **S. B. 44 – 18th Senate District Local Act-1 – Senator Soles**
- **S. B. 56 – Sunset/Term of Energy Savings Contracts – Senator Lee**
- **S. B. 286 – Local Option Homestead Relief – Senator Reeves**
- **S. B. 515 – Volunteer Rescue Workers – Senator Kerr**
- **S. B. 622 – Nursing Home Admin. Bd./Fees – Senator Kerr**
- **S. B. 691 – Bermuda Run Incorporated – Senator Cochrane**
- **H. B. 56 – Eliminate Stamps for Deed Tax – Rep. Hill**

ADJOURNMENT OF MEETING

SENATE FINANCE COMMITTEE

WEDNESDAY, APRIL 7, 1999

1:30 PM – ROOM 544

The Senate Finance Committee met on Wednesday, April 7, 1999, at 1:30 PM in Room 544 with Senator Hoyle presiding. There were 23 committee members present. Brandon Hoover from Trinity, North Carolina, sponsored by Senator Cochrane, Allison Avery and Brett Lybrand both from Gastonia, North Carolina and both sponsored by Senator Hoyle, were introduced as the pages for the meeting.

SB 691 – Bermuda Run Incorporated

Senator Cochrane was recognized to explain the bill. Senator Cochrane submitted an amendment to the bill and moved for the adoption, motion passed. After her explanation, Senator Webster moved for a "Favorable Report, as amended and bill be rolled into a committee substitute", motion passed. Copy of Bill and supporting documents included in the minutes.

SB 44 – 18th Senate District Local Act-1

Senator Soles was recognized to explain the bill, at which time he moved for the adoption for discussion of a committee substitute to the bill, motion passed. Senator Soles explained the committee substitute, after which Senator Dannelly moved to give the committee substitute a "Favorable Report", motion passed. Copy of Bill and supporting documents included in the minutes.

SB 56 – Sunset/Term of Energy Savings Contracts

Senator Lee was recognized to explain the bill, at which time he moved for the adoption for discussion of a committee substitute to the bill, motion passed. Senator Lee proceeded to explain the committee substitute. After a length discussion and questions and answers by members of the committee, Mr. Henry Jones, Attorney to the Mechanical and Electric Trades, along with Mr. Marvin Musselwhite, Attorney representing Johnson Controls and Mr. Eddie Truelove with NCA Plumbing, Heating and Cooling, spoke on the bill. At this point, Senator Lee agreed to carry over the bill until the next week's Senate Finance Meeting. Copy of Bill and supporting documents included in the minutes. NOTE: This Bill was heard in Senate Finance on April 14, 1999 and given a "Favorable Report" by the Committee.

SB 622 – Nursing Home Admin. Bd./Fees

Senator Kerr was recognized to explain the bill and at the conclusion of his explanation, Mr. Jack Nichols, Attorney representing Board of Nursing home Examiners spoke on the bill. Senator Dannelly moved for a "Favorable Report", motion passed. Copy of the Bill and supporting documents included in the minutes.

SB 515 – Volunteer Rescue Workers

Senator Kerr was recognized to explain the bill. Mr. Gordon Joyner, Executive Director of Rescue Squad Association, spoke on the bill. Senator Albertson moved for a "Favorable Report", motion passed. Copy of Bill and supporting documents included in the minutes.

SB 286 – Local Option Homestead Relief

Senator Reeves was recognized to explain the committee substitute that was adopted for this bill for discussion at the March 31, 1999 Senate Finance Meeting. After his explanation and some discussion on the bill, Senator Wellons moved to give the bill a "Favorable Report", motion passed. Copy of the Bill and supporting documents included in the minutes.

HB 56 – Eliminate Stamps for Deed Tax

Representative Dewey Hill was recognized to explain the bill. After his explanation, Senator Foxx moved to give the bill a "Favorable Report", motion passed. Copy of the bill and supporting documents included in the minutes.

Meeting adjourned.

David W. Hoyle, Co-Chair

John H. Kerr, III Co-Chair

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

Visitors' Sign Up Sheet is Attachment #1
Committee Report dated April 7, 1999 is Attachment #2
Committee Report dated April 8, 1999 is Attachment #3

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 691*

Short Title: Bermuda Run Incorporation. (Local)

Sponsors: Senator Cochrane.

Referred to: Rules and Operations of the Senate.

April 1, 1999

A BILL TO BE ENTITLED

AN ACT TO INCORPORATE THE TOWN OF BERMUDA RUN AND TO SIMULTANEOUSLY DISSOLVE THE BERMUDA CENTER SANITARY DISTRICT.

The General Assembly of North Carolina enacts:

Section 1. In accordance with G.S. 130A-81(1a), the Town of Bermuda Run is incorporated and the Bermuda Center Sanitary District is simultaneously dissolved. The incorporation and dissolution are not subject to referendum.

Section 2. A Charter for the Town of Bermuda Run is enacted to read:

"CHARTER OF THE TOWN OF BERMUDA RUN.

"CHAPTER I.

"INCORPORATION AND CORPORATE POWERS.

"Section 1.1. **Incorporation and Corporate Powers.** The inhabitants of the Town of Bermuda Run are a body corporate and politic under the name 'Town of Bermuda Run'. The Town of Bermuda Run has all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general law of North Carolina.

"CHAPTER II.

"CORPORATE BOUNDARIES.

"Section 2.1. **Town Boundaries.** Until modified in accordance with the law, the boundaries of the Town of Bermuda Run are as follows:

Being the following tracts and parcels of land located in Davie County, North Carolina, and being more particularly described as follows:

TRACT 1:

BEGINNING at an iron pin located in the western right-of-way line of N.C. Hwy. 801, said iron pin being the southeast corner of the property owned, now or formerly, by Thad J. Bingham (Deed Book 155, Page 348) running thence with the western right-of-way line of N.C. Hwy. 801 South 08° 10' 24" East 1912.47 feet to an iron pin; thence leaving the right-of-way line of N.C. Hwy. 801, South 72° 59' 35" West 15.00 feet to an iron pin marking the northeast corner of Lot 1 Hidden Creek; thence with the northern line of Lot 1, South 72° 59' 35" West 224.95 feet to an iron pin at the northwest corner of Lot 1 and the northeast corner of Lot 2 Hidden Creek; thence with the northern line of Lots 2 and 3 Hidden Creek, South 66° 20' 15" West 360.27 feet to an iron pin located at the northwest corner of Lot 3 and the northernmost corner of Lot 4 Hidden Creek; thence with the northwest lines of Lots 4 and 5 Hidden Creek, South 35° 56' 00" West 303.72 feet to an iron pin located at the westernmost corner of Lot 5 Hidden Creek and in the northeast line of Hyfield Drive; thence crossing Hyfield Drive and with the northwest lines of Lots 6, 7 and 8 Hidden Creek, South 47° 14' 57" West 399.60 feet to an iron pin located at the northwest corner of Lot 8 and the northeast corner of Lot 9 Hidden Creek; thence with the eastern lines of Lots 34, 35, 36, 37, 38, 39 and 40 Hidden Creek (and crossing Creekside Drive between Lots 37 and 38) North 10° 45' 05" West 920.73 feet to an iron pin; thence with the northeast lines of Lots 40, 41, 42 and 43 Hidden Creek, North 41° 21' 21" West 493.44 feet to an iron pin at the northernmost corner of Lot 43 Hidden Creek, said iron pin also being in the southeast line of Seldem Farm Lane; thence with the southeast line of Seldem Farm Lane, North 48° 46' 18" East 40.00 feet to an iron pin; thence crossing Seldem Farm Lane and with the northeast line of Lot 44 Hidden Creek, North 41° 22' 04" West 260.00 feet to an iron pin; thence with the northwest lines of Lots 44, 45, 46 and 57 Hidden Creek (and crossing Talwood Drive between Lots 45 and 46) South 48° 39' 39" West 630.21 feet to an iron pin; thence South 26° 20' 51" East 144.72 feet to an iron pin located in the northern line of Creekside Drive; thence with the line of Creekside Drive on a curve to the left having a radius of 59.00 feet, a length of 131.81 feet, a chord bearing and distance of South 29° 12' 34" West 106.06 feet to a point; thence leaving the right-of-way line of Creekside Drive, South 55° 12' 28" West 105.00 feet to an iron pin; thence South 04° 47' 21" East 510.00 feet to an iron pin located at the northeast corner of the property owned, now or formerly, by Ralph and Renai Holland (Deed Book 176, Page 558); thence with the northern line of said Holland, North 87° 21' 41" West 596.11 feet to an iron pin located in the eastern line of property owned, now or formerly, by Oak Valley Associates (Deed Book 169, Page 331); thence with the eastern line of Oak Valley, North 04° 11' 45" East 1830.87 feet to a post located in the southern line of property owned, now or formerly, by Ervin and Eva Wilson (Deed Book 42, Page 468); thence with the southern line of said Wilson, North 73° 05' 24" East 38.74 feet to a concrete post located at Wilson's southeast corner; thence with the eastern line of Wilson and continuing with the eastern line of property owned, now or formerly, by William and Peggy Long (see Estate File 90E-127), North 02° 42' 46" East 593.04 feet to a concrete post located at the northeast corner of Long and located in the southern line of property owned, now or formerly, by Roy L.

Potts (Deed Book 112, Page 274); thence with the southern line of Potts, South 87° 31' 30" East 950.91 feet to an iron pin located at the southeast corner of Roy L. Potts and at the southwest corner of Thad J. Bingham (Deed Book 155, Page 348); thence with the southern line of Bingham, South 86° 34' 27" East 1351.89 fee to the point and place of BEGINNING and containing approximately 116.501 acres, more or less, as shown on the survey prepared by Marvin S. Cavanaugh & Associates dated March 27, 1998, Drawing No. 98-40B, reference to which is hereby made for a more particular description.

TRACT 2:

All of the property in Davie County, North Carolina, located:

(A) West of the Yadkin River;

(B) South of the center line of U.S. Hwy. 158;

(C) East of the centerline of N.C. Hwy. 801; and

(D) North of a line described as follows:

BEGINNING at an iron pin located at the intersection of the eastern line of N.C. Hwy. 801 and the northern line of Lybrook Drive (S.R. 1660) and running with the northern line of Lybrook Drive and the southern line of Jamesway Subdivision, North 80° 55' 58" East approximately 1,346 feet to the southwest corner of property owned by John C. Brendle (Deed Book 120, Page 448); thence with the western line of Brendle and Philip McKenzie (Deed Book 94, Page 503), in a northerly direction approximately 815 feet; thence continuing with the line of McKenzie in a easterly direction of 42 feet; thence continuing with the western line of McKenzie in a northerly direction approximately 262 feet to the southern line of Jamesway Subdivision; thence with the northern line of McKenzie, South 78° 58' 16" East 158.01 feet; thence South 04° 21' 19" East 55.69 feet; thence in a southeasterly direction with the northeast line of McKenzie approximately 87 feet to the western line of Highlands at Bermuda Run Subdivision (Plat Book 6, Page 17 and 18); thence in a southerly direction approximately 1,527 feet with the western line of Lots 20, 19, 18, 17, 16, 15, 14 and 13 to a point located in the northern line of Lots 13 Raintree Estates; thence with the northern line of said Lot 13 Raintree Estates and the southern line of Lot 13 of the Highlands Subdivision, South 75° 29' 22" East 77.63 feet to an iron pin; thence with the center of a branch in an easterly direction with the southern lines of Lots 13 and 12 Highlands Subdivision, and the northerly line of Gary Honbarrier (Deed Book 142, Page 640), approximately 475 feet to the southeast corner of Lot 12 Highlands; thence South 61° 55' 26" East 38.12 feet to a point; thence south 23° 38' 27" East 238.04 feet to a point; thence South 23° 35' 52" East 44.80 feet to a monument; thence South 85° 37' 48" East 304.96 feet to a stone and North 74° 32' 02" East 540.71 feet to an iron located on the western bank of the Yadkin River, it being the intention to include, without limitation, all the property conveyed to: (1) WFBRCC, LLC at Book 201, Page 445; Bermuda Village, Inc. at Book 117, Page 197; William A. Burnette at Deed Book 130, Page 233, Deed Book 158, Page 828 and Book 162, Page 775; and all property shown on the following plats recorded in the Davie County Registry: (1) Highlands at Bermuda Run (Plat Book 6, Pages 17 and 18); (2) River Hill (Plat Book 5, Page 212 and 213); (3) Jamesway at

Bermuda Run (Plat Book 6, Pages 46, 47 and 48); (4) Hamilton Court (Plat Book 5, Pages 195, 203, 207 and 224); (5) Pembrook Ridge (Plat Book 5, Page 145); (6) St. George Place (Plat Book 5, Page 192); (7) Bermuda Run Golf and Country Club (Plat Book 4, Pages 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 103, 116, 148, 156; Book 5, Pages 2, 13, 15, 24, 28, 31, 32, 34, 36, 39, 43, 44, 45, 46, 86, 94, 100) and (8) Warwick Place (Plat Book 5, Page 171).

Less and except, however, that certain property located Southeast of the intersection of U.S. Hwy. 158 and North Carolina Hwy. 801 and being shown on Davie County Tax Map D-8-8, and designated as parcels C-2, C-3, C-4, C-5, C-5.01, C-7, C-8 and D-8.

TRACT 3:

All property located within the right-of-way of N.C. Hwy. 801 to the extent such segment of the right-of-way is bounded on the west by Tract 1 above AND on the east by Tract 2 above.

"Section 2.2. **Electoral District Boundaries.** Until modified in accordance with the law, the boundaries of the four electoral districts of the Town of Bermuda Run are as follows:

(1) Bermuda Village District consisting of residents of Bermuda Village.

(2) South District consisting of residents of Hamilton Court, Pembrook Ridge, St. George, River Hills, Jamesway, Highland Hills, and Warwicke subdivisions.

(3) Multifamily District consisting of residents of the Maisonettes, FairWay Villas, Spy Glass Hill, Golfview, and the Lakes subdivisions.

(4) North District consisting of all of the residents of Bermuda Run not included in the other Districts as set forth above.

The Town Council shall set and change the boundaries of and add or delete electoral districts by resolution.

"CHAPTER III.

"GOVERNING BODY.

"Section 3.1. **Structure of Governing Body; Number of Members.** The governing body of the Town of Bermuda Run shall be the Town Council, which shall have four members, and the Mayor.

"Section 3.2. **Manner of Electing Council.** The qualified voters of each of the four electoral districts in the Town shall nominate one or more individuals and then elect one member of the Town Council. An individual must reside in the district to be eligible for nomination and election to the Council from a district and for service on the Council as the member for a district.

"Section 3.3. **Term of Office of Council Members.** Members of the Council shall be elected to four-year terms. In 1999, four members of the Council shall be elected. The two persons receiving the highest number of votes shall be elected for four-year terms, and the two persons receiving the next highest number of votes shall be

elected for two-year terms. In 2001, and biennially thereafter, two members of the Council shall be elected for four-year terms.

"Section 3.4. **Election of Mayor and Term of Office.** In 1999 and quadrennially thereafter, the qualified voters of the entire Town shall nominate and elect the Mayor, who shall serve a four-year term. The Mayor shall have the right to vote only to break tie votes of the Council. In determining a quorum, the Mayor shall be treated as a member of the Council.

"CHAPTER IV.

"ELECTIONS.

"Section 4.1. **Conduct of Town Elections.** Town officers shall be nominated and elected on a nonpartisan basis as provided in G.S. 163-294.

"Section 4.2. **Date of Election.** Elections shall be conducted in accordance with Chapter 163 of the General Statutes with the first election of Town officers to be held in November, 1999.

"CHAPTER V.

"ADMINISTRATION.

"Section 5.1. **Town to Operate Under Council-Manager Form.** The Town of Bermuda Run will operate under the Council-Manager form of government as provided in Part 2 of Article 7 of Chapter 160A of the General Statutes.

"Section 5.2. **Officers and Employees.** The Council may appoint such officers and employees as may be necessary, and they shall serve at the pleasure of the Council. The Council shall fix all salaries, prescribe bonds, and require such oaths as they may deem necessary.

"Section 5.3. **Town Clerk.** The Council may appoint a Town Clerk who shall keep the records of the Council and perform other duties as may be required by general law or the Council.

"Section 5.4. **Assignment of Duties.** The Council may assign additional functions or duties to offices, departments, or agencies. Where positions are not incompatible, the Council may confer the powers and duties of two or more offices created or authorized by this Charter to one person.

"Section 5.5. **Transitional Government.** Until the Mayor and members of the Town Council are elected and qualified in accordance with this Charter and the laws of this State, the following persons shall serve on the Town's interim governing body: Clyde J. Gardner, Mayor, Robert W. Griffin, Charles H. Quinn, Bob L. Cornish, and Edwin J. Titsworth. Vacancies on the Interim Council shall be filled by appointment by the remaining members of the Interim Council. A vacancy in the office of Interim Mayor shall be filled by appointment by the Bermuda Run Incorporation Committee.

"CHAPTER VI.

"SPECIAL PROVISIONS.

"Section 6.1. **Annexation.** The Town of Bermuda Run shall not annex any property without the vote or consent of a majority of the residents of any such property.

"Section 6.2. **Property Taxes.** The Town of Bermuda Run shall not increase its property tax rates in excess of fifteen cents ($0.15) per one hundred dollars ($100.00)

of valuation without the vote or consent of a majority of the residents of the Town in accordance with G.S. 160A-209(f)."

Section 3. From and after July 1, 1999, the citizens and property in the Town of Bermuda Run shall be subject to municipal taxes levied for the fiscal year beginning July 1, 1999, and for that purpose, the Town shall obtain from Davie County a record of property in the area herein incorporated which was listed for taxes as of January 1, 1999. The Town may adopt a budget ordinance for fiscal year 1999-2000 without following the timetable in the local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the Act insofar as is practical.

Section 4. The incorporation of the Town of Bermuda Run and the simultaneous dissolution of the Bermuda Center Sanitary District shall become effective at 12:00 noon on the first day of the first calendar month starting at least seven days after this act becomes law. The Bermuda Center Sanitary District shall take all actions necessary to effect this transfer of the assets and liabilities of the Sanitary District to the Town of Bermuda Run by three days before its dissolution.

Section 5. The transitional provisions of G.S. 130A-81(5) a. through g. shall apply to the Town of Bermuda Run and the Bermuda Center Sanitary District.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 691*
Proposed Committee Substitute S691-PCS4637-RR

Short Title: Bermuda Run Incorporation. (Local)

Sponsors:

Referred to:

April 1, 1999

A BILL TO BE ENTITLED

AN ACT TO INCORPORATE THE TOWN OF BERMUDA RUN AND TO SIMULTANEOUSLY DISSOLVE THE BERMUDA CENTER SANITARY DISTRICT.

The General Assembly of North Carolina enacts:

Section 1. In accordance with G.S. 130A-81(1a), the Town of Bermuda Run is incorporated and the Bermuda Center Sanitary District is simultaneously dissolved. The incorporation and dissolution are not subject to referendum.

Section 2. A Charter for the Town of Bermuda Run is enacted to read:

"CHARTER OF THE TOWN OF BERMUDA RUN.

"CHAPTER I.

"INCORPORATION AND CORPORATE POWERS.

"Section 1.1. **Incorporation and Corporate Powers.** The inhabitants of the Town of Bermuda Run are a body corporate and politic under the name 'Town of Bermuda Run'. The Town of Bermuda Run has all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general law of North Carolina.

"CHAPTER II.

"CORPORATE BOUNDARIES.

"Section 2.1. **Town Boundaries.** Until modified in accordance with the law, the boundaries of the Town of Bermuda Run are as follows:

Being the following tracts and parcels of land located in Davie County, North Carolina, and being more particularly described as follows:

TRACT 1:

BEGINNING at an iron pin located in the western right-of-way line of N.C. Hwy. 801, said iron pin being the southeast corner of the property owned, now or formerly, by Thad J. Bingham (Deed Book 155, Page 348) running thence with the western right-of-way line of N.C. Hwy. 801 South 08° 10' 24" East 1912.47 feet to an iron pin; thence leaving the right-of-way line of N.C. Hwy. 801, South 72° 59' 35" West 15.00 feet to an iron pin marking the northeast corner of Lot 1 Hidden Creek; thence with the northern line of Lot 1, South 72° 59' 35" West 224.95 feet to an iron pin at the northwest corner of Lot 1 and the northeast corner of Lot 2 Hidden Creek; thence with the northern line of Lots 2 and 3 Hidden Creek, South 66° 20' 15" West 360.27 feet to an iron pin located at the northwest corner of Lot 3 and the northernmost corner of Lot 4 Hidden Creek; thence with the northwest lines of Lots 4 and 5 Hidden Creek, South 35° 56' 00" West 303.72 feet to an iron pin located at the westernmost corner of Lot 5 Hidden Creek and in the northeast line of Hyfield Drive; thence crossing Hyfield Drive and with the northwest lines of Lots 6, 7 and 8 Hidden Creek, South 47° 14' 57" West 399.60 feet to an iron pin located at the northwest corner of Lot 8 and the northeast corner of Lot 9 Hidden Creek; thence with the eastern lines of Lots 34, 35, 36, 37, 38, 39 and 40 Hidden Creek (and crossing Creekside Drive between Lots 37 and 38) North 10° 45' 05" West 920.73 feet to an iron pin; thence with the northeast lines of Lots 40, 41, 42 and 43 Hidden Creek, North 41° 21' 21" West 493.44 feet to an iron pin at the northernmost corner of Lot 43 Hidden Creek, said iron pin also being in the southeast line of Seldem Farm Lane; thence with the southeast line of Seldem Farm Lane, North 48° 46' 18" East 40.00 feet to an iron pin; thence crossing Seldem Farm Lane and with the northeast line of Lot 44 Hidden Creek, North 41° 22' 04" West 260.00 feet to an iron pin; thence with the northwest lines of Lots 44, 45, 46 and 57 Hidden Creek (and crossing Talwood Drive between Lots 45 and 46) South 48° 39' 39" West 630.21 feet to an iron pin; thence South 26° 20' 51" East 144.72 feet to an iron pin located in the northern line of Creekside Drive; thence with the line of Creekside Drive on a curve to the left having a radius of 59.00 feet, a length of 131.81 feet, a chord bearing and distance of South 29° 12' 34" West 106.06 feet to a point; thence leaving the right-of-way line of Creekside Drive, South 55° 12' 28" West 105.00 feet to an iron pin; thence South 04° 47' 21" East 510.00 feet to an iron pin located at the northeast corner of the property owned, now or formerly, by Ralph and Renai Holland (Deed Book 176, Page 558); thence with the northern line of said Holland, North 87° 21' 41" West 596.11 feet to an iron pin located in the eastern line of property owned, now or formerly, by Oak Valley Associates (Deed Book 169, Page 331); thence with the eastern line of Oak Valley, North 04° 11' 45" East 1830.87 feet to a post located in the southern line of property owned, now or formerly, by Ervin and Eva Wilson (Deed Book 42, Page 468); thence with the southern line of said Wilson, North 73° 05' 24" East 38.74 feet to a concrete post located at Wilson's southeast corner; thence with the eastern line of Wilson and continuing with the eastern line of property owned, now or formerly, by William and Peggy Long (see Estate File 90E-127), North 02° 42' 46" East 593.04 feet to a concrete post located at the northeast corner of Long and located in the southern line of property owned, now or formerly, by Roy L.

Potts (Deed Book 112, Page 274); thence with the southern line of Potts, South 87° 31' 30" East 950.91 feet to an iron pin located at the southeast corner of Roy L. Potts and at the southwest corner of Thad J. Bingham (Deed Book 155, Page 348); thence with the southern line of Bingham, South 86° 34' 27" East 1351.89 fee to the point and place of BEGINNING and containing approximately 116.501 acres, more or less, as shown on the survey prepared by Marvin S. Cavanaugh & Associates dated March 27, 1998, Drawing No. 98-40B, reference to which is hereby made for a more particular description.

TRACT 2:

All of the property in Davie County, North Carolina, located:

(A) West of the Yadkin River;

(B) South of the center line of U.S. Hwy. 158;

(C) East of the centerline of N.C. Hwy. 801; and

(D) North of a line described as follows:

BEGINNING at an iron pin located at the intersection of the eastern line of N.C. Hwy. 801 and the northern line of Lybrook Drive (S.R. 1660) and running with the northern line of Lybrook Drive and the southern line of Jamesway Subdivision, North 80° 55' 58" East approximately 1,346 feet to the southwest corner of property owned by John C. Brendle (Deed Book 120, Page 448); thence with the western line of Brendle and Philip McKenzie (Deed Book 94, Page 503), in a northerly direction approximately 815 feet; thence continuing with the line of McKenzie in a easterly direction of 42 feet; thence continuing with the western line of McKenzie in a northerly direction approximately 262 feet to the southern line of Jamesway Subdivision; thence with the northern line of McKenzie, South 78° 58' 16" East 158.01 feet; thence South 04° 21' 19" East 55.69 feet; thence in a southeasterly direction with the northeast line of McKenzie approximately 87 feet to the western line of Highlands at Bermuda Run Subdivision (Plat Book 6, Page 17 and 18); thence in a southerly direction approximately 1,527 feet with the western line of Lots 20, 19, 18, 17, 16, 15, 14 and 13 to a point located in the northern line of Lots 13 Raintree Estates; thence with the northern line of said Lot 13 Raintree Estates and the southern line of Lot 13 of the Highlands Subdivision, South 75° 29' 22" East 77.63 feet to an iron pin; thence with the center of a branch in an easterly direction with the southern lines of Lots 13 and 12 Highlands Subdivision, and the northerly line of Gary Honbarrier (Deed Book 142, Page 640), approximately 475 feet to the southeast corner of Lot 12 Highlands; thence South 61° 55' 26" East 38.12 feet to a point; thence south 23° 38' 27" East 238.04 feet to a point; thence South 23° 35' 52" East 44.80 feet to a monument; thence South 85° 37' 48" East 304.96 feet to a stone and North 74° 32' 02" East 540.71 feet to an iron located on the western bank of the Yadkin River, it being the intention to include, without limitation, all the property conveyed to: (1) WFBRCC, LLC at Book 201, Page 445; Bermuda Village, Inc. at Book 117, Page 197; William A. Burnette at Deed Book 130, Page 233, Deed Book 158, Page 828 and Book 162, Page 775; and all property shown on the following plats recorded in the Davie County Registry: (1) Highlands at Bermuda Run (Plat Book 6, Pages 17 and 18); (2) River Hill (Plat Book 5, Page 212 and 213); (3) Jamesway at

Bermuda Run (Plat Book 6, Pages 46, 47 and 48); (4) Hamilton Court (Plat Book 5, Pages 195, 203, 207 and 224); (5) Pembrook Ridge (Plat Book 5, Page 145); (6) St. George Place (Plat Book 5, Page 192); (7) Bermuda Run Golf and Country Club (Plat Book 4, Pages 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 103, 116, 148, 156; Book 5, Pages 2, 13, 15, 24, 28, 31, 32, 34, 36, 39, 43, 44, 45, 46, 86, 94, 100) and (8) Warwick Place (Plat Book 5, Page 171).

Less and except, however, that certain property located Southeast of the intersection of U.S. Hwy. 158 and North Carolina Hwy. 801 and being shown on Davie County Tax Map D-8-8, and designated as parcels C-2, C-3, C-4, C-5, C-5.01, C-7, C-8 and D-8.

TRACT 3:

All property located within the right-of-way of N.C. Hwy. 801 to the extent such segment of the right-of-way is bounded on the west by Tract 1 above AND on the east by Tract 2 above.

"Section 2.2. **Electoral District Boundaries.** Until modified in accordance with the law, the boundaries of the five electoral districts of the Town of Bermuda Run are as follows:

(1) Bermuda Village District consisting of residents of Bermuda Village.

(2) South District consisting of residents of Hamilton Court, Pembrook Ridge, St. George, River Hills, Jamesway, Highland Hills, and Warwicke subdivisions.

(3) Multifamily district consisting of residents of the Maisonettes, Spy Glass Hill, Golfview, and the Lakes subdivision.

(4) West district consisting of all residents of Juniper Circle, Fairway Villas, Fescue Drive, Ivy Circle, Helleri Circle, and Rotunda Circle, and the residents of Riverbend Drive, from Address 675 to Address 1056.

(5) East district consisting of all the residents not included in any other district.

The Town Council shall set and change the boundaries of and add or delete electoral districts by resolution.

"CHAPTER III.

"GOVERNING BODY.

"Section 3.1. **Structure of Governing Body; Number of Members.** The governing body of the Town of Bermuda Run shall be the Town Council, which shall have five members, and the Mayor.

"Section 3.2. **Manner of Electing Council.** The qualified voters of each of the five electoral districts in the Town shall nominate one or more individuals and then elect one member of the Town Council. An individual must reside in the district to be eligible for nomination and election to the Council from a district and for service on the Council as the member for a district.

"Section 3.3. **Term of Office of Council Members.** Members of the Council shall be elected to four-year terms. In 1999, five members of the Council shall be elected.

The three persons receiving the highest number of votes shall be elected for four-year terms, and the two persons receiving the next highest number of votes shall be elected for two-year terms. In 2001 and biennially thereafter, all members whose terms expire in those years shall be elected for four-year terms.

"Section 3.4. **Election of Mayor and Term of Office.** In 1999 and quadrennially thereafter, the qualified voters of the entire Town shall nominate and elect the Mayor, who shall serve a four-year term. The Mayor shall have the right to vote only to break tie votes of the Council. In determining a quorum, the Mayor shall be treated as a member of the Council.

"CHAPTER IV.

"ELECTIONS.

"Section 4.1. **Conduct of Town Elections.** Town officers shall be nominated and elected on a nonpartisan basis as provided in G.S. 163-294.

"Section 4.2. **Date of Election.** Elections shall be conducted in accordance with Chapter 163 of the General Statutes with the first election of Town officers to be held in November, 1999.

"CHAPTER V.

"ADMINISTRATION.

"Section 5.1. **Town to Operate Under Council-Manager Form.** The Town of Bermuda Run will operate under the Council-Manager form of government as provided in Part 2 of Article 7 of Chapter 160A of the General Statutes.

"Section 5.2. **Officers and Employees.** The Council may appoint such officers and employees as may be necessary, and they shall serve at the pleasure of the Council. The Council shall fix all salaries, prescribe bonds, and require such oaths as they may deem necessary.

"Section 5.3. **Town Clerk.** The Council may appoint a Town Clerk who shall keep the records of the Council and perform other duties as may be required by general law or the Council.

"Section 5.4. **Assignment of Duties.** The Council may assign additional functions or duties to offices, departments, or agencies. Where positions are not incompatible, the Council may confer the powers and duties of two or more offices created or authorized by this Charter to one person.

"Section 5.5. **Transitional Government.** Until the Mayor and members of the Town Council are elected and qualified in accordance with this Charter and the laws of this State, the following persons shall serve on the Town's interim governing body: Clyde J. Gardner, Mayor, Robert W. Griffin, Charles H. Quinn, Bob L. Cornish, Edwin J. Titsworth, and John H. Ferguson. Vacancies on the Interim Council shall be filled by appointment by the remaining members of the Interim Council. A vacancy in the office of Interim Mayor shall be filled by appointment by the Bermuda Run Incorporation Committee.

"CHAPTER VI.

"SPECIAL PROVISIONS.

"Section 6.1. **Annexation.** The Town of Bermuda Run shall not annex any property without the vote or consent of a majority of the residents of any such property.

"Section 6.2. **Property Taxes.** The Town of Bermuda Run shall not increase its property tax rates in excess of fifteen cents ($0.15) per one hundred dollars ($100.00) of valuation without the vote or consent of a majority of the residents of the Town in accordance with G.S. 160A-209(f)."

Section 3. From and after July 1, 1999, the citizens and property in the Town of Bermuda Run shall be subject to municipal taxes levied for the fiscal year beginning July 1, 1999, and for that purpose, the Town shall obtain from Davie County a record of property in the area herein incorporated which was listed for taxes as of January 1, 1999. The Town may adopt a budget ordinance for fiscal year 1999-2000 without following the timetable in the local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the Act insofar as is practical.

Section 4. The incorporation of the Town of Bermuda Run and the simultaneous dissolution of the Bermuda Center Sanitary District shall become effective at 12:00 noon on the first day of the first calendar month starting at least seven days after this act becomes law. The Bermuda Center Sanitary District shall take all actions necessary to effect this transfer of the assets and liabilities of the Sanitary District to the Town of Bermuda Run by three days before its dissolution.

Section 5. The transitional provisions of G.S. 130A-81(5) a. through g. shall apply to the Town of Bermuda Run and the Bermuda Center Sanitary District.

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 691

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

S691-ARR-001 Page 1 of __

Date April 7 ,1999

Comm. Sub. [S691-ARR-001]
Amends Title []

Senator COCHRANE

moves to amend the bill on page 4, lines 16, 33, 35, and 41, by deleting the word "four" on each of those lines and substituting the word "five"; and

on page 4, lines 23 through 27, by deleting the language on those lines and substituting the following:

(3) Multifamily district consisting of residents of the Maisonettes, Spy Glass Hill, Golfview, and the Lakes subdivision.

(4) West district consisting of all residents of Juniper Circle, Fairway Villas, Fescue Drive, Ivy Circle, Helleri Circle, and Rotunda Circle, and the residents of Riverbend Drive, from Address 675 to Address 1056.

(5) East district consisting of all the residents not included in any other district."; and

on page 4, line 42, by deleting the word "two" and substituting the word "three"; and

on page 5, lines 1 and 2, by rewriting those lines to read: "elected for two-year terms. In 2001 and biennially thereafter, all members whose terms expire in those years shall be elected for four-year terms."; and

on page 5, lines 34 and 35,

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 691

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

S691-ARR-001 Page 2 of __

by deleting the term "and Edwin J. Titsworth" and substituting the term "Edwin J. Titsworth, and John H. Ferguson".

SIGNED Betsy Cochrane
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 44

Short Title: 18th Senate District Local Act. (Local)

Sponsors: Senator Soles.

Referred to: Rules and Operations of the Senate.

February 8, 1999

A BILL TO BE ENTITLED

AN ACT RELATING TO THE 18TH SENATORIAL DISTRICT.

The General Assembly of North Carolina enacts:

Section 1. This act relates only to the 18th Senatorial District.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S . D

SENATE BILL 44
Proposed Committee Substitute S44-PCSA602-LB

Short Title: Lake Waccamaw Annexation. (Local)

Sponsors:

Referred to:

February 8, 1999

A BILL TO BE ENTITLED

AN ACT TO ANNEX CERTAIN DESCRIBED TERRITORY TO THE TOWN OF LAKE WACCAMAW.

The General Assembly of North Carolina enacts:

Section 1. The corporate limits of the Town of Lake Waccamaw are extended to include the following described territory:

Waccamaw Shores Drive

BEGINNING at an existing concrete monument, in the northeast right-of-way of Waccamaw Shores Drive, also known as S.R. 1967, said existing concrete monument marking the most southern corner of the Lake Waccamaw Camp Ground lands now or formerly belonging to Gene Grainger as recorded in Deed Book 385 Page 531 Columbus County Registry, said existing concrete monument also marking the most western corner of lands of James and Paul Council as recorded in Deed Book 261 Page 189 of the Columbus County Registry. Said existing concrete monument also marking the most southern limits of the Town of Lake Waccamaw. Running thence along the eastern edge of Waccamaw Shores Drive in a northwesterly direction to a point located approximately North 63 degrees 33 minutes 00 seconds East 60.00 feet from the southeast corner of Lot 306, Waccamaw Shores Subdivision as shown and delineated in Plat Book 11, Page 65, of the Columbus County Registry. Thence crossing Waccamaw Shores Drive South 63 degrees 33 minutes 00 seconds West 60.00 feet to the southeast corner of Lot 306, Waccamaw Shores Subdivision as shown and delineated in Plat Book 11, Page 65, of the Columbus County Registry. Thence continuing along the line between Lot 306 and Lot 305 South 63 degrees 33

minutes 00 seconds West 119.88 feet to the southwest corner of Lot 306 and the northwest corner of Lot 305. Thence continuing South 63 degrees 33 minutes 00 seconds West to a point located North 37 degrees 25 minutes 00 seconds West from the northwest corner of Lot 304. Thence South 37 degrees 25 minutes 00 seconds East to the northwest corner of Lot 304, located in the center of a canal. Thence along the west and southwest lines of Lots 304 thru 1 of Block D, Waccamaw Shores Subdivision as shown and delineated in Plat Book 11, Page 65, Plat Book 8, Page 33, Plat Book 8, Page 31, Plat Book 8, Page 29, Plat Book 8, Page 27, and Plat Book 8, Page 25, all of the Columbus County Registry, to the southwest corner of Lot 1, Block D, Waccamaw Shores Subdivision as shown and delineated in Plat Book 8, Page 25, of the Columbus Country Registry. Thence continuing southwestwardly along the southwest lines of Lots 1 thru 272 of Block B of the Waccamaw Shores Subdivision as shown and delineated in Plat Book 8, Page 6, Plat Book 8, Page 7, Plat Book 8, Page 8, Plat Book 8, Page 9, Plat Book 8, Page 10, Plat Book 8, Page 11, and Plat Book 8, Page 12, all of the Columbus County Registry, to the southwest corner of Lot 272 of Block B of the Waccamaw Shores Subdivision as shown and delineated in Plat Book 8, Page 12, of the Columbus Country Registry, in the center of a canal. Thence along the south line of Lot 272 North 82 degrees 34 minutes 00 seconds East 145.00 feet to a point in the western right-of-way of Waccamaw Shores Drive, marking the southeast corner of Lot 272. Thence crossing Waccamaw Shores Drive approximately North 75 degrees 21 minutes 00 seconds East 60.50 feet to an existing concrete monument marking the southwest corner of Lot 273 of Block A of the Waccamaw Shores Subdivision as shown and delineated on a plat recorded in Plat Book 8 Page 12 of the Columbus County Registry. Running thence in a northwesterly direction with the eastern edge of Waccamaw Shores Drive to the point and place of beginning.

Shawnee Acres and Bella Coola

TRACT 1

For a tie line, begin at an old concrete control monument located at the northwestern corner of Lot 1 in that plat for Bella Coola Corp. recorded in Plat Book 8, Page 24, of the Columbus County Registry. Thence North 86 degrees 11 minutes East 34.01 feet to a point in the center of S.R. 1947, locally known as Creek Ridge Road, this being THE POINT AND PLACE OF BEGINNING. Thence North 86 degrees 11 minutes East 34.01 feet to a point, this being the northwestern corner of Lot 1A of that plat for Bella Coola Corp. recorded in Plat Book 10, Page 95, of the Columbus County Registry. Thence North 65 degrees 08 minutes East 192.51 feet to a point. Thence South 81 degrees 10 minutes East 34.54 feet to a point. Thence South 35 degrees 44 minutes East 54.00 feet to a point. Thence South 23 degrees 54 minutes East 101.01 feet to a point. Thence South 35 degrees 55 minutes East 100.24 feet to a point. Thence South 37 degrees 04 minutes East 100.46 feet to a point. Thence South 28 degrees 41 minutes East 72.21 feet to a point. Thence South 30 degrees 03 minutes East 101.33 feet to a point. Thence South 35 degrees 25 minutes East 100.29 feet to a point. Thence South 34 degrees 39 minutes East 100.37 feet to a point. Thence South 37 degrees 29 minutes East 100.08 feet to a point. Thence

South 43 degrees 52 minutes East 100.37 feet to a point. Thence South 40 degrees 23 minutes East 117.93 feet to a point. Thence South 41 degrees 30 minutes East 55.58 feet to a point. Thence South 31 degrees 09 minutes East 67.90 feet to a point. Thence South 18 degrees 00 minutes East 118.26 feet to a point. Thence South 14 degrees 49 minutes East 100.78 feet to a point. Thence South 17 degrees 30 minutes East 100.30 feet to a point. Thence South 68 degrees 11 minutes West 202.97 feet to a point in the centerline of S.R. 1947, said point being located South 68 degrees 11 minutes West 30.00 feet from the southwest corner of Lot 15A as shown and delineated in that plat for Bella Coola Corp. recorded in Plat Book 10, Page 95, of the Columbus County Registry. Thence following the centerline of S.R. 1947 in a northwesterly direction back to the point and place of beginning.

TRACT 2

BEGINNING at PKS #172, located in the centerline of S.R. 1947, locally known as Creek Ridge Road, said point being shown and delineated in that map entitled "The Big Creek Tract at Lake Waccamaw -- The Southern Part" for IP Timberlands Operating Co., Ltd. and International Paper Company recorded in Plat Book 60, Page 61, of the Columbus County Registry. Thence North 28 degrees 42 minutes 02 seconds East 202.38 feet to a post. Thence North 29 degrees 22 minutes 26 seconds East 28.43 feet to an existing iron pipe. Thence South 55 degrees 49 minutes 35 seconds East 3612.22 feet to an existing iron pipe located on the west bank of Big Creek. Thence South 35 degrees 55 minutes 49 seconds West approximately 376.68 feet to a point located in the centerline of S.R. 1947. Thence following the centerline of S.R. 1947 in a northwesterly direction to the point and place of beginning.

Section 2. This act becomes effective only upon adoption of an ordinance by the Town of Lake Waccamaw.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 56

Short Title: Sunset/Term of Energy Savings Contracts. (Public)

Sponsors: Senator Lee.

Referred to: Education/Higher Education.

February 9, 1999

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE SUNSET REGARDING THE AUTHORITY OF LOCAL GOVERNMENTAL UNITS TO ENTER INTO GUARANTEED ENERGY SAVINGS CONTRACTS FOR LOCAL PUBLIC FACILITIES AND TO EXTEND THE CURRENT MAXIMUM DURATION OF THESE CONTRACTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-64.17(1) reads as rewritten:

"(1) 'Energy conservation measure' means a facility ~~alteration or training~~ alteration, or training or services related to the operation of the ~~facility~~ facility, ~~that reduces energy consumption or operating costs and includes:~~ when the alteration, training, or services provide anticipated energy savings. Energy conservation measure includes any of the following:

a. Insulation of the building structure and systems within the ~~building;~~ building.

b. Storm windows or doors, caulking, weatherstripping, multiglazed windows or doors, heat-absorbing or heat-reflective glazed or coated window or door systems, additional glazing, reductions in glass area, or other window or door system modifications that reduce energy ~~consumption;~~ consumption.

c. Automatic energy control ~~systems;~~ systems.

d. Heating, ventilating, or air-conditioning system modifications or ~~replacements;~~ replacements.

e. Replacement or modification of lighting fixtures to increase the energy efficiency of a lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to the applicable State or local building code or is required by the light system after the proposed modifications are ~~made;~~ made.

f. Energy recovery ~~systems;~~ systems.

g. Cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of ~~buildings; or~~ buildings.

h. Other energy conservation ~~measures that provide long-term operating cost reductions or significantly reduce energy consumed~~ measures."

Section 2. G.S. 143-64.17(2) reads as rewritten:

"(2) 'Energy savings' means a measured reduction in ~~fuel,~~ fuel costs, ~~energy,~~ energy costs, or operating costs created from the implementation of one or more energy conservation measures when compared with an established baseline of previous ~~fuel,~~ fuel costs, ~~energy,~~ energy costs, or operating costs developed by the local governmental unit."

Section 3. G.S. 143-64.17B reads as rewritten:

"**§ 143-64.17B. Guaranteed energy savings contracts.**

(a) A local governmental unit may enter into a guaranteed energy savings contract with a qualified provider if all of the following apply:

(1) The term of the contract does not exceed ~~eight years from the date of~~ two-thirds of the anticipated remaining useful life of the facility after the installation ~~or acceptance by the local governmental unit~~ or commencement of the energy conservation measures provided for under the ~~contract.~~ contract or 25 years, whichever is less.

(2) The local governmental unit finds that the energy savings resulting from the performance of the contract will equal or exceed the total cost of the contract.

(3) The energy conservation measures to be installed under the contract are for an existing building.

(b) Before entering into a guaranteed energy savings contract, the local governmental unit shall provide published notice of the meeting at which it proposes to award the contract, the names of the parties to the proposed contract, and the contract's purpose. The notice must be published at least 15 days before the date of the meeting.

(c) A qualified provider entering into a guaranteed energy savings contract under this Part shall provide a bond to the local governmental unit in the amount equal to one hundred percent (100%) of the total cost of the guaranteed energy savings

contract to assure the provider's faithful performance. Any bonds required by this subsection shall be subject to the provisions of Article 3 of Chapter 44A of the General Statutes. If the savings resulting from a guaranteed energy savings contract are not as great as projected under the contract and all required shortfall payments to the local governmental unit have not been made, the local governmental unit may terminate the contract without incurring any additional obligation to the qualified provider.

(d) As used in this section, 'total cost' shall include, but not be limited to, costs of construction, costs of financing, and costs of maintenance and training during the term of the contract. 'Total cost' does not include any obligations on termination of the contract before its expiration, provided that those obligations are disclosed when the contract is executed.

(e) A guaranteed energy savings contract may not require the local governmental unit to purchase a maintenance contract or other maintenance agreement from the qualified provider who installs energy conservation measures under the contract if the local unit of government takes appropriate action to budget for its own forces or another provider to maintain new systems installed and existing systems affected by the guaranteed energy savings ~~contract.~~ contract, in accordance with manufacturer's standards or other reasonable standards specifically provided in the guaranteed energy savings contract."

Section 4. Section 10 of Chapter 775 of the 1993 Session Laws, as amended by Section 3 of Chapter 295 of the 1995 Session Laws, reads as rewritten:

"~~Sec. 10. A local governmental unit may not enter into a guaranteed energy savings contract under Part 2 of Article 3B of Chapter 143 of the General Statutes, as enacted by this act, on or after July 1, 1999.~~"

Section 5. Sections 1 through 3 of this act become effective July 1, 1999, and apply to contracts entered into on or after that date. The remaining sections of this act are effective upon ratification.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 56
Proposed Committee Substitute S56-PCS2641-LA

Short Title: Sunset/Term of Energy Savings Contracts. (Public)

Sponsors:

Referred to:

February 9, 1999

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE SUNSET REGARDING THE AUTHORITY OF LOCAL GOVERNMENTAL UNITS TO ENTER INTO GUARANTEED ENERGY SAVINGS CONTRACTS FOR LOCAL PUBLIC FACILITIES AND TO EXTEND THE CURRENT MAXIMUM DURATION OF THESE CONTRACTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-64.17(1) reads as rewritten:

"(1) 'Energy conservation measure' means a facility ~~alteration or training~~ alteration, or training or services related to the operation of the ~~facility~~ facility, ~~that reduces energy consumption or operating costs and includes:~~ when the alteration, training, or services provide anticipated energy savings. Energy conservation measure includes any of the following:

a. Insulation of the building structure and systems within the ~~building;~~ building.

b. Storm windows or doors, caulking, weatherstripping, multiglazed windows or doors, heat-absorbing or heat-reflective glazed or coated window or door systems, additional glazing, reductions in glass area, or other window or door system modifications that reduce energy ~~consumption;~~ consumption.

c. Automatic energy control ~~systems;~~ systems.

d. Heating, ventilating, or air-conditioning system modifications or ~~replacements;~~ replacements.

e. Replacement or modification of lighting fixtures to increase the energy efficiency of a lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to the applicable State or local building code or is required by the light system after the proposed modifications are ~~made;~~ made.

f. Energy recovery ~~systems;~~ systems.

g. Cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of ~~buildings; or~~ buildings.

h. Other energy conservation ~~measures that provide long-term operating cost reductions or significantly reduce energy consumed~~ measures."

Section 2. G.S. 143-64.17(2) reads as rewritten:

"(2) 'Energy savings' means a measured reduction in ~~fuel;~~ fuel costs, ~~energy;~~ energy costs, or operating costs created from the implementation of one or more energy conservation measures when compared with an established baseline of previous ~~fuel;~~ fuel costs, ~~energy;~~ energy costs, or operating costs developed by the local governmental unit."

Section 3. G.S. 143-64.17B reads as rewritten:

"**§ 143-64.17B. Guaranteed energy savings contracts.**

(a) A local governmental unit may enter into a guaranteed energy savings contract with a qualified provider if all of the following apply:

(1) The term of the contract does not exceed ~~eight years from the date of~~ two-thirds of the anticipated remaining useful life of the facility after the installation ~~or acceptance by the local governmental unit~~ or commencement of the energy conservation measures provided for under the ~~contract.~~ contract or 25 years, whichever is less.

(2) The local governmental unit finds that the energy savings resulting from the performance of the contract will equal or exceed the total cost of the contract.

(3) The energy conservation measures to be installed under the contract are for an existing building.

(b) Before entering into a guaranteed energy savings contract, the local governmental unit shall provide published notice of the meeting at which it proposes to award the contract, the names of the parties to the proposed contract, and the contract's purpose. The notice must be published at least 15 days before the date of the meeting.

(c) A qualified provider entering into a guaranteed energy savings contract under this Part shall provide a bond to the local governmental unit in the amount equal to one hundred percent (100%) of the total cost of the guaranteed energy savings

contract to assure the provider's faithful performance. Any bonds required by this subsection shall be subject to the provisions of Article 3 of Chapter 44A of the General Statutes. If the savings resulting from a guaranteed energy savings contract are not as great as projected under the contract and all required shortfall payments to the local governmental unit have not been made, the local governmental unit may terminate the contract without incurring any additional obligation to the qualified provider.

(d) As used in this section, 'total cost' shall include, but not be limited to, costs of construction, costs of financing, and costs of maintenance and training during the term of the contract. 'Total cost' does not include any obligations on termination of the contract before its expiration, provided that those obligations are disclosed when the contract is executed.

(e) A guaranteed energy savings contract may not require the local governmental unit to purchase a maintenance contract or other maintenance agreement from the qualified provider who installs energy conservation measures under the contract if the local unit of government takes appropriate action to budget for its own forces or another provider to maintain new systems installed and existing systems affected by the guaranteed energy savings ~~contract.~~ contract, in accordance with manufacturer's standards or other reasonable standards specifically provided in the guaranteed energy savings contract."

Section 4. Section 10 of Chapter 775 of the 1993 Session Laws, as amended by Section 3 of Chapter 295 of the 1995 Session Laws, reads as rewritten:

"~~Sec. 10. A local governmental unit may not enter into a guaranteed energy savings contract under Part 2 of Article 3B of Chapter 143 of the General Statutes, as enacted by this act, on or after July 1, 1999.~~"

Section 5. Sections 1 through 3 of this act become effective July 1, 1999, and apply to contracts entered into on or after that date. The remaining sections of this act are effective when they become law.

SENATE BILL 56 (PCS): Sunset/Term of Energy Savings Contracts

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Senator Lee
Date:	April 6, 1999	**Summary by:**	Sara Kamprath and Martha Walston
Version:	Proposed Committee Substitute		

SUMMARY: ***The proposed committee substitute for Senate Bill 56 extends the maximum term of a guaranteed energy savings contract to 2/3 of the anticipated remaining useful life of the facility or 25 years, whichever is less. The sunset date of July 1, 1999 for local governmental units to enter into these contracts is repealed. SB 56 was given a favorable report in Senate Education/Higher Education on March 18 and was re-referred to Senate Finance. The PCS makes only a technical change.***

CURRENT LAW:

Part 2 of Article 3B of Chapter 143 (Guaranteed Energy Savings Contracts for Local Government Units) was a recommendation of the 1991 LRC Committee on Ways to Promote the Conservation of Energy and the Use of Renewable Energy Sources in Residential, Commercial, Industrial and Public Facilities. Local units of government, including any board of a community college or a school board, are allowed to enter into a guaranteed energy savings contract if all of the following conditions are met:

1. The term of the contract does not exceed eight years from the date of installation and acceptance of the energy conservation measures provided for in the contract;
2. The energy savings will equal or exceed the total cost of the contract; and
3. The energy conservation measures are for an existing building.

The guaranteed energy savings contracts are awarded through a request for proposals (RFP) process set out in the statute. Once a contract is awarded, the contract and its terms must be reported to the Local Government Commission. The Local Government Commission shall compile this information and report it to the Joint Legislative Commission on Governmental Operations. In 1995, the General Assembly extended a local government's authority to enter into guaranteed energy savings contracts for an additional two years until July 1, 1999.

BILL ANALYSIS:

Sections 1 and 2 of the bill make clarifying and stylistic changes.

Section 3 amends G.S. 143-64.17B(a) to increase the maximum term of a guaranteed energy savings contract from the current 8 years to two-thirds of the anticipated remaining useful life of the facility or 25 years, whichever is less. This section also amends G.S. 143-64.17B(e) to provide that if a local governmental unit maintains the energy conservation measures on its own or through another provider other than the original installer, then the maintenance must be in accordance with the manufacturer's standards or other reasonable standards provided for in the contract.

Section 4 repeals the sunset that prohibits a local governmental unit from entering into one of the above guaranteed energy savings contract on or after July 1, 1999.

Sections 1 through 3 become effective July 1, 1999 and apply to contracts entered into on or after that date. The remaining sections of the act are effective when they become law.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 56 (First Edition)

SHORT TITLE: Sunset/Term of Energy Saving Contracts

SPONSOR(S): Senator Lee

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES	see **ASSUMPTIONS AND METHODOLOGY**				
EXPENDITURES	see **ASSUMPTIONS AND METHODOLOGY**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: **Department of State Treasurer – Local Government Commission; City and County local governmental units**

EFFECTIVE DATE: Sections 1 to 3 (increase term of contract and make stylistic changes) become effective July 1, 1999. Section 4 (repeal sunset) is effective upon ratification.

BILL SUMMARY: Senate Bill 56 repeals the sunset for local governments entering into energy savings contracts on or after July 1, 1999. In addition, the bill increases the maximum term of guaranteed energy savings contracts from 8 years to two-thirds of the anticipated remaining useful life of the facility or 25 years, whichever is less.

ASSUMPTIONS AND METHODOLOGY: The State Treasurer's Director of State and Local Government Finance believes the bill will provide local governments with an opportunity to save money through energy conservation efforts, but the savings cannot be quantified. Section 1 of the bill expands the definition of energy conservation measures to include training and services. This will permit local governments to finance items not currently allowed in installment debt financing. The Local Government Commission will work with local governmental units to review the appropriateness of using guaranteed energy savings contracts.

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

APPROVED BY:
DATE:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 622

Short Title: Nursing Home Admin. Bd./Fees. (Public)

Sponsors: Senator Kerr.

Referred to: Finance.

March 30, 1999

A BILL TO BE ENTITLED

AN ACT TO IMPOSE ADDITIONAL FEES AND COSTS AND TO INCREASE EXISTING FEES COLLECTED UNDER THE NURSING HOME ADMINISTRATORS BOARD ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-280 reads as rewritten:

"**§ 90-280. Fees; display of license; duplicate license; inactive list.**

(a) Each applicant for an examination administered by the Board and each applicant for an administrator-in-training program shall pay a processing fee set by the Board not to exceed two hundred dollars ~~($200.00).~~ ($200.00) plus the actual cost of the exam.

(b) Each person licensed as a nursing home administrator shall be required to pay a license fee in an amount set by the Board not to exceed five hundred dollars ($500.00). A license shall expire on the thirtieth day of September of the second year following its issuance and shall be renewable biennially upon payment of a renewal fee set by the Board not to exceed five hundred dollars ($500.00).

(c) Each person licensed as a nursing home administrator shall display his license certificate, along with the current certificate of renewal, in a conspicuous place in his place of employment.

(d) Any person licensed as a nursing home administrator may receive a duplicate license by payment of a fee set by the Board not to exceed twenty-five dollars ($25.00).

(e) Any person licensed as a nursing home administrator who is not acting, serving, or holding himself out to be a nursing home administrator may have his

name placed on an inactive list for such period of time not to exceed ~~five~~ two years upon payment of a fee set by the Board not to exceed ~~twenty-five dollars ($25.00).~~ two hundred dollars ($200.00). Upon request and payment of an additional fee not to exceed two hundred dollars ($200.00), the person's name may remain on an inactive list for one additional period of time not to exceed two years.

(f) Any person having a temporary license issued pursuant to G.S. 90-278(3) shall pay a fee in an amount set by the Board not to exceed ~~one~~ two hundred dollars ~~($100.00).~~ ($200.00). If the Board renews the temporary license, ~~no further~~ an additional fee not to exceed two hundred dollars ($200.00) may ~~shall~~ be required.

(g) The Board may set fees not to exceed two hundred and fifty dollars ($250.00) for conducting and administering initial training and continuing education courses, and may set a fee not to exceed one hundred dollars ($100.00) for certifying a course submitted for review by another individual or agency wishing to offer such ~~courses.~~ courses or may set an annual fee not to exceed two thousand dollars ($2,000) for certifying a course provider in lieu of certifying each course offered by the provider."

Section 2. Chapter 90 of the General Statutes is amended by adding the following new section to read:

"**§ 90-285.2. Board recovery of administrative costs in certain contested cases.**

As provided in this section, the Board may determine and assess administrative costs payable by the respondent in a contested case to the extent the costs are attributable to any Board expenditures necessitated by investigation and pursuit of contested case proceedings in the enforcement of G.S. 90-285.1. Costs may be assessed if the Board, based upon substantial evidence, finds, either by consent or through a public hearing conducted pursuant to Chapter 150B of the General Statutes, that the respondent violated G.S. 90-285.1 and that the case was unduly complicated, unduly lengthy, or unduly contentious as a result of the respondent's failure to cooperate in good faith in the investigation or contested case proceeding. Costs assessed in accordance with this section may not exceed five thousand dollars ($5,000)."

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

SENATE BILL 622:
Nursing Home Adminstrator Board/Fees

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Senator Kerr
Date:	April 6, 1999	**Summary by:**	Martha K. Walston
Version:	1st Edition		Committee Counsel

SUMMARY: ***Senate Bill 622 makes the following changes to the Nursing Home Administrator Act: (1) requires applicant for an exam and for an administrator-in-training program to pay the actual cost of the exam in addition to the current fee not to exceed $200, (2) increases the fee for a temporary license from not more than $100 to not more than $200, (3) shortens the time from five to two years a person may keep his name on an inactive list, increases the fee to be on the list from a fee not to exceed $25 to a fee not to exceed $200, and allows a person's name to remain on the inactive list for one additional period of time not to exceed two year for an additional fee not to exceed $200, (4) increases the fee for temporary license from not more than $100 to not more than $200, (5) allows the Board to set an annual fee not to exceed $2,000 for certifying a course provider of continuing education in lieu of certifying each course offered by the provider, and (6) allows recovery of administrative costs in certain contested cases.***

BILL ANALYSIS: Beginning January 1, 2000, the national examination for nursing home administrators will be computerized. The Bill will require applicants for this exam and any other exam given by the Board to pay the actual cost of the exam. The cost of the national exam is sent to the National Board. Applicants for an exam and for the administrator-in-training program will continue to pay a processing fee not to exceed $200. This fee will be used to cover expenses of verifying the applicant's eligibility, giving or making arrangements for the exam, conducting the administrator-in-training program , and reporting the exam score.

The Bill shortens the time that a licensed nursing home administrator may keep his or her name on an inactive list from five to two years. The fee to be on the list is increased from a fee not to exceed $25 to a fee not to exceed $200. A person may keep his or her name on the inactive list for one additional two year period for a fee not to exceed $200. The Board feels that five years is too long a time to remain on an inactive list and then, after this time, to be allowed to run a nursing home upon payment of a license fee and completion 30 hours of continuing education.

The Bill increases the temporary license fee from an amount not to exceed $100 to an amount not to exceed $200 and authorizes the Board to assess a renewal fee not to exceed $200.

The Bill allows the Board to charge an annual fee not to exceed $2,000 for certifying a course provider of continuing education. This annual fee will be lieu of the fee (not to exceed$100) for certifying each course. This change will eliminate paperwork and is consistent with the National Board.

The Bill adds a new section that will allow the Board to assess administrative costs to a respondent in a contested case. These costs may not exceed $5,000 and must be attributable to Board expenditures in a contested case seeking to suspend, revoke, or refuse to issue a license for the reasons stated in G.S. 90-285.1. The case must also be unduly complicated, lengthy, or contentious as a result of the respondent's failure to cooperate in good faith in the investigation or contested case proceeding.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 622 (First Edition)

SHORT TITLE: Nursing Home Admin. Bd./Fees

SPONSOR(S): Senator Kerr

DRAFT

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
Special Revenue Fund					
Inactive Status	$9,975	$9,975	$9,975	$9,975	$9,975
Temporary License	$4,600	$4,600	$4,600	$4,600	$4,600
Contested Cases	$5,000	$5,000	$5,000	$5,000	$5,000
Total	$19,575	$19,575	$19,575	$19,575	$19,575
EXPENDITURES	Not Yet Determined by Board				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina State Board of Examiners for Nursing Home Administrators

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

BILL SUMMARY: The bill makes the following changes: 1) increases the exam fee from up to $200 to an amount up to $200 plus cost of the exam; 2) increases the fee for going into inactive status from $25 to $200 and reduces the period of inactive status from 5 years to 2 years; 3) increases the cost of a temporary license from $100 to $200; 4) sets a maximum annual fee of $2000 for course providers of Continuing Education courses; and 5) allows recovery of costs of enforcement proceedings of up to $5000.

ASSUMPTIONS AND METHODOLOGY:

I. Exams

The Board of Examiners for Nursing Home Administrators (State Board) now collects $200 for examination of administrators-in-training. From this fee, $150 is sent to the National Association of Boards of Examiners for Nursing Home Administrators and $50 is retained by the State Board to cover processing costs. In January 2000, administrators-in-training will pay the National

Board directly for the exam. The proposed language in section one of the bill allows the State Board to continue collecting up to $200 for processing the exam and states that exam applicants will pay the actual cost of the exam. Since the State Board has no plans to increase their processing fee beyond the $50 now charged, revised 90-280(a) has no fiscal impact.

II. Inactive Status

In each of the last two years, there have been 57 applicants for inactive status. Revised 90-280(e) increases the fee from $25 to $200 and reduces the time permitted on inactive status from 5 to 2 years. This change could encourage former nursing home administrators to reapply for a permanent license or simply let their license lapse. The State Board makes no prediction on the future of this group, but simply projects that an average of 57 applicants each year will pay the new $200 rate. At this new rate, the State Board will collect $9,975 in new revenue each year.

III. Temporary License

The State Board issued 46 temporary licenses in 1997-98 and has issued 44 temporary licenses in the first 9 months of 1998-99. When the State Board meets every six weeks it approves temporary licenses until the next exam period, which are held four times a year. The State Board expects the number of temporary licenses to remain at 46 per year even with the increase to $200 in 90-280(f). This will generate $4,600 in additional revenue each year.

IV. Course Fees

The State Board may charge up to $100 to certify a continuing education course offered by an agency or individual, but now charges $50 per course. 90-280(g) offers a new option to groups who provide numerous continuing education courses. The State Board believes such groups as the NC Health Care Facilities Association, the NC Nonprofit Association, and the Northwest AHEC will take advantage of this $2,000 annual fee. The new fee will reduce the paperwork on both the State Board and the course sponsors and is not expected to reduce course revenue.

V. Contested Cases

The State Board has witnessed an increased number of enforcement cases in recent years due to the increased inspection efforts of the Division of Facility Services in the Department of Health and Human Services. The State Board receives about 20 cases a year that they try to resolve by consent order. However, about one case per year cannot be easily resolved due to the respondent's failure to cooperate in good faith in the investigation and proceeding. The State Board can charge up to $5,000 in each of these cases to recover administrative costs.

Fund Balances

Year Ended June 30, 1998	$88,325
Year Ended June 30, 1997	$159,708
Year Ended June 30, 1996	$145,813
Year Ended June 30, 1995	$161,690

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

DATE:

DRAFT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 515*

Short Title: Volunteer Rescue Workers. (Public)

Sponsors: Senators Kerr; Albertson, Harris, Hoyle, Metcalf, Perdue, Purcell, Rand, Reeves, and Weinstein.

Referred to: Finance.

March 25, 1999

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE NUMBER OF PAID MEMBERS A RESCUE OR RESCUE/EMS UNIT MAY HAVE TO RECEIVE GRANTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-87-5(b) reads as rewritten:

"(b) A rescue or rescue/EMS unit is eligible for a grant under this section if it meets all of the following conditions:

(1) Repealed by Session Laws 1989 (Regular Session, 1990), c. 1066, s. 33(a).

(2) It has no more than ~~two~~ 10 paid members and otherwise consists of volunteer members.

(3) It has been recognized by the Department as an organization that provides rescue or rescue and emergency medical services.

(4) It satisfies the eligibility criteria established by the Department under subsection (a) of this section."

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

SENATE BILL 515:
Volunteer Rescue Workers

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Senator Kerr
Date:	April 6, 1999	**Summary by:**	Martha K. Walston
Version:	1st Edition		Committee Counsel

SUMMARY: ***Senate Bill 515 increases the number of paid members (from 2 to 10) that a rescue or rescue/EMS unit may have in order to receive a grant from the Volunteer Rescue/EMS Fund. The grant may be used only for equipment purchases, payment of highway use taxes on those purchases, or capital expenditures.***

CURRENT LAW: G.S. 58-87-5 creates the Rescue/EMS Fund in the Department of Insurance to provide grants to volunteer rescue units providing rescue or rescue and emergency medical services. The grant may be used only for equipment purchases, payment of highway use taxes on those purchases, or capital expenditures. The Fund assets are invested by the State Treasurer, and earnings remain in the Fund. On December 15 of each year, the Department of Insurance makes grants to eligible units. A rescue or rescue /EMS unit is eligible for a grant if it meets all of the following conditions:

(1) Repealed

(2) It has no more than two paid members and otherwise consists of volunteer members.

(3) It has been recognized by the Department as an organization that provides rescue or rescue and emergency medical services.

(4) It satisfies the eligibility criteria established by the Department under subsection (a) of this section. Subsection (a) requires that an applicant whose liquid assets, when combined with the liquid assets of any corporate affiliate or subsidiary of the applicant, are more than $1,000 shall match the grant on a dollar-for-dollar basis with non-State funds. Grants to these applicants may not exceed $15,000. Grants to an applicant who is not required to match the grant with non-State funds may not exceed $3,000. An applicant may receive no more than one grant per fiscal year.

BILL ANALYSIS: **Senate Bill 515** amends the conditions of eligibility to allow a rescue or rescue/EMS unit to have no more than 10 paid members. The current law only allows no more than two paid members.

APPLICABLE DEFINITIONS:

The following definitions apply in G.S. 58-87-5:

"Rescue" means the removal of individuals facing external, nonmedical, and nonpatient related peril to areas of relative safety.

"Rescue unit" or "rescue squad" means a group of individuals who are not necessarily trained in emergency medical services, fire fighting, or law enforcement, but who expose themselves to external, nonmedical, and nonpatient related peril to effect, the removal of individuals facing the same type of peril to areas of relative safety.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: S.B. 515 DRAFT

SHORT TITLE: Volunteer Rescue Workers

SPONSOR(S): Senator Kerr

FISCAL IMPACT

Yes (x) **No ( )** **No Estimate Available ( )**

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
Highway Fund			**(minimal loss - $5000 or less)**		
Highway Trust Fund			**(minimal loss - $5000 or less)**		

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Insurance, Volunteer Rescue Units, Highway Fund, and the Highway Trust Fund.

EFFECTIVE DATE: October 1, 1999.

BILL SUMMARY: G.S. 58-87-5 established a special non-reverting Volunteer Rescue/EMS Fund. This fund provides grants to volunteer rescue units to purchase equipment and make capital improvements. In order to qualify for the grants the rescue unit must meet a number of eligibility criteria. One of those requirements is that the rescue or rescue/EMS unit has no more than two paid employees. This bill increases the limit on the number of employees to ten.

ASSUMPTIONS AND METHODOLOGY: In 1998 the Department of Insurance received 170 grant applications for the Volunteer Rescue/EMS fund. The total amount requested was $1,262,637.39. At that time $1,028,135.16 was available to fund those requests. The Department approved 148 applications and distributed $1,025,033.99. The remaining balance of $3,101.17 will be rolled over into the 1999 availability. Funding decisions are made on the basis of need. The Department uses 2% of the fund balance to cover administrative costs.

The bill does not change the amount of grant money available to rescue and rescue/EMS units. It simply increases the number of units that are eligible to compete for the funds. Therefore, the bill will not have a direct fiscal impact on the Volunteer Rescue/EMS fund.

The bill will have a small fiscal impact on motor fuel tax revenue. Under G.S. 105-449.106, volunteer rescue squads can apply for a quarterly refund of the taxes they pay on motor fuels. The Department of Revenue uses the definition of "volunteer rescue" in G.S. 58-87-5 to determine which organizations qualify for the motor fuel tax refund. The bill expands this definition. According to the North Carolina Association of Rescue and EMS, there are approximately 400 volunteer rescue and EMS units that meet the existing grant requirements. The Association believes the bill will increase the number of eligible organizations to 445. As a result, 45 additional units will be eligible for the motor fuels tax refund.

In FY 1997-98 the Department of Revenue refunded $41,579.81 in motor fuels taxes to volunteer rescue units. The Department can not estimate the number and value of the additional refunds. However, the do not believe the additional refunds will amount to more than $5000.

TECHNICAL CONSIDERATIONS:

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Linda Struyk Millsaps

APPROVED BY:

DATE: April 6, 1999

DEPARTMENT	#PAID PERSONNEL
ALTAMAHAW-OSSIPEE FIRE DEPARTMENT	03
ANGIER-BLACK RIVER RESCUE	03
LA GRANGE RESCUE SQUAD	03
[redacted]BANE FIRE & RESCUE DEPARTMENT	03
[redacted]SQUOTANK COUNTY RESCUE SQUAD	03
ANDERSON CREEK VOL. FIRE & EMS, INC.	04
EMERALD ISLE EMS, INC.	04
FREMONT RESCUE SQUAD	04
GARNER EMS & RESCUE SQUAD INC	04
LEICESTER VOL. FIRE DEPARTMENT	04
MOUNT OLIVE RESCUE	04
OAK RIDGE FIRE & RESCUE	04
PINETOPS RESCUE SQUAD	04
WINSTON-SALEM RESCUE	04
50 & 210 RESCUE SQUAD INC.	05
APEX EMERGENCY MEDICAL SERVICES, INC.	05
COATS GROVE FIRE & RESCUE	05
HARRISBURG FIRE & RESCUE - ATTN:801	05
HAVELOCK FIRE & RESCUE	05
WEST EDGECOMBE RESCUE	05
ASH-RAND RESCUE SQUAD & EMS	06
AYDEN RESCUE & EMS	06
BLUE RIDGE FIRE & RESCUE, INC.	06
BUNN RESCUE & E.M.S. INC.	06
COROLLA FIRE & RESCUE	06
SEA LEVEL FIRE & RESCUE	06
EASTERN PINES RESCUE	07
FORSYTH RESCUE SQUAD	07
[redacted]UNTAIN HOME FIRE & RESCUE	07
[redacted]LANTIC BEACH FIRE DEPARTMENT	08
DUNN RESCUE SQUAD	08
FOUR OAKS RESCUE SQUAD	08
GLENVILLE-CASHIERS RESCUE	08
MICRO RESCUE AMBULANCE SERVICE	08
CAPE CARTERET RESCUE	09
WESTSIDE VOLUNTEER FIRE & RESCUE	09
ENFIELD RESCUE SQUAD	10
ENKA-CANDLER FIRE & RESCUE	10
FUQUAY-VARINA AREA E. M. S., INC.	10
SPRING LAKE FIRE & RESCUE	10
BEESON CROSS ROADS	**06**
LEWISVILLE FIRE & RESCUE	**06**
WEST BUNCOMBE FIRE & RESCUE	**06**

DEPARTMENT	#PAID PERSONNEL
ALTAMAHAW-OSSIPEE FIRE DEPARTMENT	03
ANGIER-BLACK RIVER RESCUE	03
LA GRANGE RESCUE SQUAD	03
[redacted]BANE FIRE & RESCUE DEPARTMENT	03
[redacted]SQUOTANK COUNTY RESCUE SQUAD	03
ANDERSON CREEK VOL. FIRE & EMS, INC.	04
EMERALD ISLE EMS, INC.	04
FREMONT RESCUE SQUAD	04
GARNER EMS & RESCUE SQUAD INC	04
LEICESTER VOL. FIRE DEPARTMENT	04
MOUNT OLIVE RESCUE	04
OAK RIDGE FIRE & RESCUE	04
PINETOPS RESCUE SQUAD	04
WINSTON-SALEM RESCUE	04
50 & 210 RESCUE SQUAD INC.	05
APEX EMERGENCY MEDICAL SERVICES, INC.	05
COATS GROVE FIRE & RESCUE	05
HARRISBURG FIRE & RESCUE - ATTN:801	05
HAVELOCK FIRE & RESCUE	05
WEST EDGECOMBE RESCUE	05
ASH-RAND RESCUE SQUAD & EMS	06
AYDEN RESCUE & EMS	06
BLUE RIDGE FIRE & RESCUE, INC.	06
BUNN RESCUE & E.M.S. INC.	06
COROLLA FIRE & RESCUE	06
SEA LEVEL FIRE & RESCUE	06
EASTERN PINES RESCUE	07
FORSYTH RESCUE SQUAD	07
[redacted]UNTAIN HOME FIRE & RESCUE	07
[redacted]LANTIC BEACH FIRE DEPARTMENT	08
DUNN RESCUE SQUAD	08
FOUR OAKS RESCUE SQUAD	08
GLENVILLE-CASHIERS RESCUE	08
MICRO RESCUE AMBULANCE SERVICE	08
CAPE CARTERET RESCUE	09
WESTSIDE VOLUNTEER FIRE & RESCUE	09
ENFIELD RESCUE SQUAD	10
ENKA-CANDLER FIRE & RESCUE	10
FUQUAY-VARINA AREA E. M. S., INC.	10
SPRING LAKE FIRE & RESCUE	10
BEESON CROSS ROADS	**06**
LEWISVILLE FIRE & RESCUE	**06**
WEST BUNCOMBE FIRE & RESCUE	**06**

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 286

Short Title: Local Option Homestead Relief. (Public)

Sponsors: Senators Reeves; Ballance, Cooper, Dannelly, Jordan, Kinnaird, Lucas, Martin of Guilford, and Miller.

Referred to: Finance.

March 8, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CONSTITUTION OF NORTH CAROLINA TO AUTHORIZE THE GENERAL ASSEMBLY TO ENACT LEGISLATION ALLOWING EACH COUNTY TO (I) INCREASE THE AMOUNT OF THE PROPERTY TAX HOMESTEAD EXEMPTION FOR LOW-INCOME ELDERLY AND DISABLED INDIVIDUALS IN THAT COUNTY AND (II) RAISE THE DEFINITION OF "LOW-INCOME" SO THAT MORE ELDERLY AND DISABLED INDIVIDUALS CAN QUALIFY FOR THE EXEMPTION.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Article V of the North Carolina Constitution is amended by adding a new subdivision to read:

"(8) Property tax homestead exclusion. If the General Assembly enacts legislation classifying and excluding from ad valorem taxation part of the value of the residence of each elderly or disabled individual whose income is below a maximum amount and who satisfies other conditions, the General Assembly may, notwithstanding subdivision (2) of this section, enact a general law uniformly applicable throughout the State authorizing each county to increase the portion of a classified residence's value that is excluded in that county and to increase the maximum income threshold to qualify for the exclusion in that county."

Section 2. G.S. 105-277.1 is amended by adding a new subsection to read:

"(a1) Local Option Increase. -- The board of commissioners of a county may, by resolution, increase the amount of the exclusion provided in subsection (a) of this

section, increase the maximum income threshold provided in subdivision (a)(2) of this section, or both. An increase adopted under this subsection shall apply uniformly within the county. The board of commissioners of a county may, by resolution, repeal or reduce an increase adopted under this subsection, but may not reduce the exclusion or the income threshold provided in subsection (a) of this section. A resolution changing the exclusion amount or the income threshold within a county pursuant to this subsection shall become effective no earlier than for the taxable year beginning July 1 following adoption of the resolution."

Section 3. G.S. 105-309(f) reads as rewritten:

"(f) The following information shall appear on each abstract or on an information sheet distributed with the abstract. If the county has increased the exclusion amount or the income threshold pursuant to G.S. 105-277.1(a1), the assessor shall substitute the applicable dollar amounts. The abstract or sheet must include the address and telephone number of the assessor below the notice required by this subsection. The notice shall read as follows:

'PROPERTY TAX RELIEF FOR ELDERLY AND PERMANENTLY DISABLED PERSONS.

North Carolina excludes from property taxes the first twenty thousand dollars ($20,000) in appraised value of a permanent residence owned and occupied by North Carolina residents aged 65 or older or totally and permanently disabled whose income does not exceed fifteen thousand dollars ($15,000). Income means the owner's adjusted gross income as determined for federal income tax purposes, plus all moneys received other than gifts or inheritances received from a spouse, lineal ancestor or lineal descendant.

If you received this exclusion in (assessor insert previous year), you do not need to apply again unless you have changed your permanent residence. If you received the exclusion in (assessor insert previous year) and your income in (assessor insert previous year) was above fifteen thousand dollars ($15,000), you must notify the assessor. If you received the exclusion in (assessor insert previous year) because you were totally and permanently disabled and you are no longer totally and permanently disabled, you must notify the assessor. If the person receiving the exclusion in (assessor insert previous year) has died, the person required by law to list the property must notify the assessor. Failure to make any of the notices required by this paragraph before April 15 will result in penalties and interest.

If you did not receive the exclusion in (assessor insert previous year) but are now eligible, you may obtain a copy of an application from the assessor. It must be filed by April 15.'"

Section 4. G.S. 105-328 reads as rewritten:

"**§ 105-328. Listing, appraisal, and assessment of property subject to taxation by cities and towns situated in more than one county.**

(a) ~~For~~ Except as provided in subsection (a1) of this section, for purposes of municipal taxation, all property subject to taxation by a city or town situated in two

or more counties may, by resolution of the governing body of the municipality, be listed, appraised, and assessed as provided in G.S. 105-326 and 105-327 if, in such a case, in the opinion of the governing body, the same appraisal and assessment standards will thereby apply uniformly throughout the municipality. However, if, in such a case, the governing body ~~shall determine~~ determines that adoption of the appraisals and assessments fixed by the counties will not result in uniform appraisals and assessments throughout the municipality, the governing body may, by horizontal adjustments, equalize the appraisal and assessment values fixed by the counties in order to obtain the required uniformity. Taxes levied by the city or town shall be levied uniformly on the assessments so determined.

(a1) This section does not apply to assessments of property that differ in any of the counties in which the city or town is located because of a local option adjustment in the homestead exclusion under G.S. 105-277.1(a1).

(b) Should the governing body of a city or town situated in two or more counties not adopt the procedure provided in subsection (a), above, all property subject to taxation by the municipality shall be listed, appraised, and assessed as provided in subdivisions (b)(1) through (b)(6), below.

(1) The governing body of the city or town shall appoint a municipal assessor on or before the first Monday in July in each odd-numbered year. The governing body may remove the municipal assessor from office during his term for good cause after giving him notice in writing and an opportunity to appear and be heard at a public session of the appointing body. Whenever a vacancy occurs in the office, the governing body shall appoint a qualified person to serve as municipal assessor for the period of the unexpired term. Persons holding the position of municipal assessor on July 1, 1971, shall be deemed qualified to fill the position. A person appointed as a municipal assessor shall meet the qualifications and requirements set for a county assessor under G.S. 105-294.

(2) With the approval of the governing body, a municipal assessor may employ listers, appraisers, and clerical assistants necessary to carry out the listing, appraisal, assessing, and billing functions required by law.

(3) A municipal assessor and the persons employed by him have the same powers and duties as their county equivalents with respect to property subject to taxation by a city or town.

(4) The governing body shall, with respect to property subject to city or town taxation, be vested with the powers and duties vested by this Subchapter in boards of county commissioners and boards of equalization and review. Appeals may be taken from the municipal board of equalization and review or governing body to the Property Tax Commission in the manner provided in this

Subchapter for appeals from county boards of equalization and review and boards of county commissioners.

(5) All expenses incident to the listing, appraisal, and assessment of property for the purpose of city or town taxation shall be borne by the municipality for whose benefit the work is undertaken.

(6) The intent of this subsection (b) is to provide cities and towns that are situated in two or more counties with machinery for listing, appraising, and assessing property for municipal taxation equivalent to that established by this Subchapter for counties. The powers to be exercised by, the duties imposed on, and the possible penalties against municipal governing bodies, boards of equalization and review, assessors, and persons employed by an assessor shall be the same as those provided in this Subchapter by, on, or against county boards of commissioners, boards of equalization and review, assessors, and persons employed by an assessor."

Section 5. The amendment set out in Section 1 of this act shall be submitted to the qualified voters of the State at the general election in November 2000. The election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

Constitutional amendment authorizing the General Assembly to allow counties to (1) increase the property tax exemption for a residence owned by a low-income elderly or disabled person and (2) raise the definition of 'low-income' so more elderly and disabled persons can qualify for the exemption."

Section 6. If a majority of the votes cast on the question are in favor of the amendment set out in Section 1 of this act, the State Board of Elections shall certify the amendment to the Secretary of State. The amendment becomes effective upon this certification. The Secretary of State shall enroll the amendment so certified among the permanent records of that office.

Section 7. Sections 2, 3, and 4 of this act become effective only if the constitutional amendment proposed by Section 1 of this act is approved as provided in Sections 5 and 6 of this act. If the constitutional amendment is approved, Sections 2, 3, and 4 of this act become effective when the State Board of Elections certifies the amendment to the Secretary of State.

Section 8. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 286
Proposed Committee Substitute S286-PCS7590-LA

Short Title: Local Option Homestead Relief. (Public)

Sponsors:

Referred to:

March 8, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CONSTITUTION OF NORTH CAROLINA, IF APPROVED BY THE VOTERS IN THE 2000 GENERAL ELECTION, TO AUTHORIZE THE GENERAL ASSEMBLY TO ENACT LEGISLATION ALLOWING EACH COUNTY TO (I) INCREASE THE AMOUNT OF THE PROPERTY TAX HOMESTEAD EXEMPTION FOR LOW-INCOME ELDERLY AND DISABLED INDIVIDUALS IN THAT COUNTY AND (II) RAISE THE DEFINITION OF "LOW-INCOME" SO THAT MORE ELDERLY AND DISABLED INDIVIDUALS CAN QUALIFY FOR THE EXEMPTION.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Article V of the North Carolina Constitution is amended by adding a new subsection to read:

"(8) Property tax homestead exclusion. If the General Assembly enacts legislation classifying and excluding from ad valorem taxation part of the value of the residence of each elderly or disabled individual whose income is below a maximum amount and who satisfies other conditions, the General Assembly may, notwithstanding subsection (2) of this section, enact a general law uniformly applicable throughout the State authorizing each county to increase the portion of a classified residence's value that is excluded in that county and to increase the maximum income threshold to qualify for the exclusion in that county."

Section 2. G.S. 105-277.1 is amended by adding a new subsection to read:

"(a1) Local Option Increase. -- The board of commissioners of a county may, by resolution, increase the amount of the exclusion provided in subsection (a) of this

section, increase the maximum income threshold provided in subdivision (a)(2) of this section, or both. An increase adopted under this subsection shall apply uniformly within the county. The board of commissioners of a county may, by resolution, repeal or reduce an increase adopted under this subsection, but may not reduce the exclusion or the income threshold provided in subsection (a) of this section. A resolution changing the exclusion amount or the income threshold within a county pursuant to this subsection shall become effective no earlier than for the taxable year beginning July 1 following adoption of the resolution."

Section 3. G.S. 105-309(f) reads as rewritten:

"(f) The following information shall appear on each abstract or on an information sheet distributed with the abstract. If the county has increased the exclusion amount or the income threshold pursuant to G.S. 105-277.1(a1), the assessor shall substitute the applicable dollar amounts. The abstract or sheet must include the address and telephone number of the assessor below the notice required by this subsection. The notice shall read as follows:

'PROPERTY TAX RELIEF FOR ELDERLY AND PERMANENTLY DISABLED PERSONS.

North Carolina excludes from property taxes the first twenty thousand dollars ($20,000) in appraised value of a permanent residence owned and occupied by North Carolina residents aged 65 or older or totally and permanently disabled whose income does not exceed fifteen thousand dollars ($15,000). Income means the owner's adjusted gross income as determined for federal income tax purposes, plus all moneys received other than gifts or inheritances received from a spouse, lineal ancestor or lineal descendant.

If you received this exclusion in (assessor insert previous year), you do not need to apply again unless you have changed your permanent residence. If you received the exclusion in (assessor insert previous year) and your income in (assessor insert previous year) was above fifteen thousand dollars ($15,000), you must notify the assessor. If you received the exclusion in (assessor insert previous year) because you were totally and permanently disabled and you are no longer totally and permanently disabled, you must notify the assessor. If the person receiving the exclusion in (assessor insert previous year) has died, the person required by law to list the property must notify the assessor. Failure to make any of the notices required by this paragraph before April 15 will result in penalties and interest.

If you did not receive the exclusion in (assessor insert previous year) but are now eligible, you may obtain a copy of an application from the assessor. It must be filed by April 15.'"

Section 4. G.S. 105-328 reads as rewritten:

"**§ 105-328. Listing, appraisal, and assessment of property subject to taxation by cities and towns situated in more than one county.**

(a) ~~For~~ Except as provided in subsection (a1) of this section, for purposes of municipal taxation, all property subject to taxation by a city or town situated in two

or more counties may, by resolution of the governing body of the municipality, be listed, appraised, and assessed as provided in G.S. 105-326 and 105-327 if, in such a case, in the opinion of the governing body, the same appraisal and assessment standards will thereby apply uniformly throughout the municipality. However, if, in such a case, the governing body ~~shall determine~~ determines that adoption of the appraisals and assessments fixed by the counties will not result in uniform appraisals and assessments throughout the municipality, the governing body may, by horizontal adjustments, equalize the appraisal and assessment values fixed by the counties in order to obtain the required uniformity. Taxes levied by the city or town shall be levied uniformly on the assessments so determined.

(a1) This section does not apply to assessments of property that differ in any of the counties in which the city or town is located because of a local option adjustment in the homestead exclusion under G.S. 105-277.1(a1).

(b) Should the governing body of a city or town situated in two or more counties not adopt the procedure provided in subsection ~~(a), above,~~ (a) of this section, all property subject to taxation by the municipality shall be listed, appraised, and assessed as provided in subdivisions (b)(1) through (b)(6), below.

(1) The governing body of the city or town shall appoint a municipal assessor on or before the first Monday in July in each odd-numbered year. The governing body may remove the municipal assessor from office during his term for good cause after giving him notice in writing and an opportunity to appear and be heard at a public session of the appointing body. Whenever a vacancy occurs in the office, the governing body shall appoint a qualified person to serve as municipal assessor for the period of the unexpired term. Persons holding the position of municipal assessor on July 1, 1971, shall be deemed qualified to fill the position. A person appointed as a municipal assessor shall meet the qualifications and requirements set for a county assessor under G.S. 105-294.

(2) With the approval of the governing body, a municipal assessor may employ testers, appraisers, and clerical assistants necessary to carry out the listing, appraisal, assessing, and billing functions required by law.

(3) A municipal assessor and the persons employed by him have the same powers and duties as their county equivalents with respect to property subject to taxation by a city or town.

(4) The governing body shall, with respect to property subject to city or town taxation, be vested with the powers and duties vested by this Subchapter in boards of county commissioners and boards of equalization and review. Appeals may be taken from the municipal board of equalization and review or governing body to the Property Tax Commission in the manner provided in this

Subchapter for appeals from county boards of equalization and review and boards of county commissioners.

(5) All expenses incident to the listing, appraisal, and assessment of property for the purpose of city or town taxation shall be borne by the municipality for whose benefit the work is undertaken.

(6) The intent of this subsection (b) is to provide cities and towns that are situated in two or more counties with machinery for listing, appraising, and assessing property for municipal taxation equivalent to that established by this Subchapter for counties. The powers to be exercised by, the duties imposed on, and the possible penalties against municipal governing bodies, boards of equalization and review, assessors, and persons employed by an assessor shall be the same as those provided in this Subchapter by, on, or against county boards of commissioners, boards of equalization and review, assessors, and persons employed by an assessor."

Section 5. The catch line of G.S. 105-277.1 reads as rewritten:

"**§ 105-277.1. Property ~~classified for taxation at reduced valuation.~~ tax homestead exclusion.**"

Section 6. The amendment set out in Section 1 of this act shall be submitted to the qualified voters of the State at the statewide general election to be held in 2000. The election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

Constitutional amendment authorizing the General Assembly to allow counties to (1) increase the property tax exemption for a residence owned by a low-income elderly or disabled person and (2) raise the definition of 'low-income' so more elderly and disabled persons can qualify for the exemption."

Section 7. If a majority of the votes cast on the question are in favor of the amendment set out in Section 1 of this act, the State Board of Elections shall certify the amendment to the Secretary of State. The amendment becomes effective upon this certification. The Secretary of State shall enroll the amendment so certified among the permanent records of that office.

Section 8. Sections 2, 3, and 4 of this act become effective only if the constitutional amendment proposed by Section 1 of this act is approved as provided in Sections 6 and 7 of this act. If the constitutional amendment is approved, Sections 2, 3, and 4 of this act become effective when the State Board of Elections certifies the amendment to the Secretary of State. The remainder of this act is effective when it becomes law.

SENATE BILL 286:
Proposed Committee Substitute
Local Option Homestead Exemption

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Senator Reeves
Date:	March 22, 1999	**Summary by:**	Martha Harris and Martha Walston, Staff Attorneys
Version:	Proposed Committee Substitute		

SUMMARY: ***The proposed committee substitute for Senate Bill 286 authorizes a constitutional amendment to be considered by the voters in the 2000 general election to give counties the option of increasing the property tax homestead exemption amount and the property tax homestead income ceiling amount above the Statewide amounts set by the General Assembly in G.S. 105-277.1. If the amendment is approved by the voters, SB 286 provides the statutory authorization for the counties to exercise the local option. A constitutional amendment is necessary because the constitution requires property tax classifications to be uniform statewide. SB 286 provides no reimbursement for losses due to the local option increases counties may enact if the constitutional amendment is adopted. The PCS only makes technical and clarifying changes to the original bill, and is identical to House Bill 130.***

CURRENT LAW:

Section 2 of Article V of the North Carolina Constitution authorizes the General Assembly to classify property for taxation on a Statewide basis. Property that is classified must be taxed by a general law that is uniformly applicable in every city, county, or other local government unit. The homestead exemption is one of these property classifications. The homestead exemption is a partial exemption ($20,000) from property taxes for the residence of a person who:

1. is at least 65 years old or totally disabled, and
2. has an income of less than $15,000.

The income used to determine the income eligibility amount includes moneys received from every source other than gifts or inheritances received from a spouse, lineal ancestor, or lineal descendant. For married applicants residing with their spouses, the income of both spouses is included, whether or not the residence is in both names. The State reimburses local governments for part of their revenue loss due to the homestead exemption.

BILL ANALYSIS:

Section 1 of the bill proposes an amendment to Section 2 of Article V of the Constitution. This amendment would give the General Assembly the authority to permit counties, on a local option basis, to adopt a higher homestead exemption amount and to apply higher maximum income levels for eligibility than are authorized by the General Assembly on a uniform, Statewide basis.

Section 2 establishes the procedure for a board of county commissioners to adopt a resolution increasing the amount of the exclusion and the maximum income threshold for the homestead exemption greater than the amounts set in G.S. 105-277.1(a). It also authorizes the board to repeal or reduce any such increase as long as the reduction is not below the uniform Statewide limits.

Section 3 authorizes notice of the adopted levels.

Section 4 provides that for municipalities that lie in two or more counties, the municipalities may not adjust values because of different homestead exclusions adopted by the various counties.

Section 5 makes a clarifying change to the catch line of G.S. 105-277.1

Section 6 provides that the proposed constitutional amendment will be submitted to the voters in the Statewide general election in November 2000.

Section 7 provides that if a majority vote in favor of the constitutional amendment, then the amendment becomes effective once it is certified to the Secretary of State.

Section 8 sets out the effective dates. Sections 2, 3, and 4 become effective only if the constitutional amendment is approved and then certified to the Secretary of State. The remainder of the act is effective when it becomes law.

BACKGROUND:

The homestead exemption was created in 1972 and provided for a $5,000 exemption and an income eligibility amount of $3,500. The exemption has been amended eight times:

Year	exemption amount	income eligibility
1973	$5,000	$3,500 to $5,000
1975	$5,000	$5,000 to $7,500
1977	$5,000 to $7,500	$7,500 to $9,000
1981	$7,500 to $8,500	$9,000
1985	$8,500 to $10,000	$9,000 to $10,000
1987	$10,000 to $12,000	$10,000 to $11,000
1993	$12,000 to $15,000	$11,000
1997	$15,000 to $20,000	$11,000 to $15,000

State Reimbursement

Historically, local governments have borne most of the cost of the property tax homestead exemption. In 1982, the General Assembly established a mechanism for the State to reimburse cities and counties for a percentage of the revenue loss from this exemption. From 1982 until 1985, the State reimbursed local governments for 15% of their loss. For 1985 until 1987, the State reimbursed local governments for 35% of the cost of the homestead exemption. In 1991, the General Assembly froze the amount of reimbursements made to local governments to the amount each city and county was entitled to receive in 1991. That amount is approximately $7.9 million. No additional reimbursement was provided when the exemption amount was increased in 1993. When the homestead exemption was expanded in 1996, the General Assembly provided that, in addition to the existing $7.9 million reimbursement, the State would, for two years, reimburse local governments for ½ of the revenue loss attributable to the 1996 changes.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: S.B. 286

SHORT TITLE: Local Option Homestead Relief

SPONSOR(S): Sen. Reeves

FISCAL IMPACT

Yes ( ) **No ( )** **No Estimate Available (x)**

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
General Fund	**No General Fund Impact**				
Local Governments	**(See Assumptions and Methodology Section)**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: County and City Governments who choose to participate.

EFFECTIVE DATE: When it becomes law.

BILL SUMMARY: The bill authorizes counties to increase the amount of property excluded from tax under the homestead exemption for the elderly and disabled. It also authorizes the counties to increase the maximum income threshold to qualify for the exemption. Once increased, the counties are also authorized to decrease these limits and exemptions as long at they met the minimum criteria set by the state. (Currently the state recognizes an exclusion of $20,000 of property owned by a qualified person with an income of less than $15,000). The county commission is charged with making the local decisions on homestead exemptions.

ASSUMPTIONS AND METHODOLOGY: The Homestead Exemption is a partial exemption from property taxes for the residence of a person who is aged 65 or older, or totally disabled, and who has an income of less than $15,000. The exemption amount was last increased in 1996, when it was increased from $15,000 to $20,000 effective July 1, 1997. Before then the exemption was last increased in 1993 from $12,000 to $15,000. The income eligibility amount was last increased in 1996, when it was increased from $11,000 to $15,000. Before then the

income threshold had last been increased in 1987, when it was increased from $10,000 to $11,000.

The current annual cost of the Homestead Exemption program is approximately $26 million. That cost is divided between the state and the localities. History indicates that when the exemption amount and the income requirement are changed incrementally, approximately 80% of the resulting loss corresponds to the property exemption and 20% to the income requirement. Of course this ratio may change if either the exemption or income requirements are altered dramatically.

In 1995 the U.S. Bureau of the Census estimated that the national median elderly home value was $81,956. Inflating these numbers by the Consumer Price Index rate for shelter in 1996 and 1997 creates a 1997 national average elderly home value of $87,201. Once adjusted for North Carolina's slightly lower than average home prices (5% adjustment) and the difference between actual value and assessed value for property tax purposes (because property is generally accessed every 4 or 8 years, the assessed value lags the actual value. On average the assessed value is approximately 85% of the actual value) a realistic North Carolina value would be approximately $70,500. The U.S. Bureau of the Census estimates that there were 589,000 elderly households in North Carolina in 1997. As such, the total value of homes owned by North Carolina elderly was approximately $41.5 billion. Assuming the weighted average property tax rate for 1997 applied, the total tax liability created by elderly households in 1997 was $402 million. Making adjustment for the current homestead exemption, the net 1997 cost of exempting all elderly homes would have been $376 million.

No exact fiscal estimate is possible on this bill for two reasons. First, the legislation is permissive; each individual county can decide if it will alter the income and exemption amounts. Fiscal Research cannot determine, reliably, which counties will actually decide to participate. Second, no maximum loss estimate (assuming all counties participate) is possible because the bill does not include a cap. As such, the range of potential loss goes from none, assuming no counties participate, to the entire value of all primary residences owned by all elderly persons (less the current homestead exemption).

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Linda Struyk Millsaps

APPROVED BY: Tom Covington
DATE: Tuesday, March 09, 1999

Property Tax & the Homestead Exemption

Year	State Reimbursment
1972	Homestead Enacted: No reimbursement.
1982	State Reimburses 15% of the cost to cities and counties.
1985	State reimburses 35% of the cost to cities and counties.
1987	State reimburses 50% of the cost to cities and counties.
1991	The state freezes reimbursements at approximately $7.9 million (Approximately 50% of the cost at the time).
1996	State enacts a two year reimbursement for 50% of the costs associated with their 1996 changes ($3.0 million).
	Current Costs
	The total cost of the Homestead Exemption is estimated to be $26 million in 1998. The state portion was $10.9 million. In FY 1999-00 the state share will decrease to approximately $7.9 million

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 3

HOUSE BILL 56*
Committee Substitute Favorable 3/18/99
Third Edition Engrossed 3/25/99

Short Title: Eliminate Stamps for Deed Tax. (Public)

Sponsors:

Referred to:

February 10, 1999

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE THE USE OF STAMPS TO INDICATE WHETHER THE EXCISE TAX ON CONVEYANCES HAS BEEN PAID AND TO MAKE THE PENALTIES THAT APPLY TO THIS TAX THE SAME AS FOR OTHER TAXES.

The General Assembly of North Carolina enacts:

Section 1. Article 8E of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 8E.

"Excise ~~Stamp~~ Tax on Conveyances.

"**§ 105-228.28. ~~To whom this Article shall apply.~~ Scope.**

~~The provisions of this Article shall apply to every person, firm, corporation, association, society or organization~~ This Article applies to every person conveying an interest in real estate located in North Carolina other than a governmental unit ~~and instrumentalities thereof.~~ or an instrumentality of a governmental unit.

"**§ 105-228.29. ~~Conveyances excluded.~~ Exemptions.**

~~The provisions of this Article shall not apply to transfers of an interest in real estate by operation of law, by lease for a term of years, by or pursuant to the provisions of a will, by intestacy, by gift, by merger or consolidation, or by instruments securing indebtedness, or any other transfer where no consideration in property or money is due or paid by the transferee to transferor.~~ This Article does not apply to any of the following transfers of an interest in real property:

(1) By operation of law.
(2) By lease for a term of years.
(3) By or pursuant to the provisions of a will.
(4) By intestacy.
(5) By gift.
(6) If no consideration in property or money is due or paid by the transferee to the transferor.
(7) By merger or consolidation.
(8) By an instrument securing indebtedness.

"**§ 105-228.30. Imposition of excise ~~stamp tax.~~ tax; distribution of proceeds.**

(a) ~~There is levied an~~ An excise tax is levied on each ~~deed, instrument, or writing~~ instrument by which any interest in real property is conveyed to another person. The tax ~~shall be at the rate of~~ rate is one dollar ($1.00) on each five hundred dollars ($500.00) or fractional part thereof of the consideration or value of the interest ~~or property~~ conveyed. The ~~tax shall be paid by the~~ transferor must pay the tax to the register of deeds of the county in which the real estate is ~~situated prior to~~ located before recording the instrument of ~~conveyance; provided that, if~~ conveyance. If the instrument transfers ~~any~~ a parcel of real estate lying in two or more counties, ~~the tax shall~~ however, the tax must be paid to the register of deeds of the county ~~wherein~~ in which the greater part of the real estate with respect to value lies.

(b) The register of deeds of each county ~~shall~~ must remit the proceeds of the tax levied by this section to the county finance officer. The finance officer of each county ~~shall~~ must credit one-half of the proceeds to the county's general fund and ~~shall~~ remit the remaining one-half of the proceeds, less the county's allowance for administrative expenses, to the Department of Revenue on a quarterly basis. A county may retain two percent (2%) of the amount of tax proceeds allocated for remittance to the Department of Revenue as compensation for the county's cost in collecting and remitting the State's share of the tax. Of the funds remitted to it pursuant to this section, the Department of Revenue ~~shall~~ must credit seventy-five percent (75%) to the Parks and Recreation Trust Fund established under G.S. 113-44.15 and twenty-five percent (25%) to the Natural Heritage Trust Fund established under G.S. 113-77.7.

~~"§ 105-228.31. Issuance of tax stamp.~~

~~The Secretary of Revenue shall furnish to the register of deeds of each county tax stamps to be issued upon payment of the tax herein imposed. Counties shall pay to the Secretary a reasonable charge therefor to cover the cost of printing and handling same. Such tax stamps shall be uniform as to size and design and shall be in such form as determined by the Secretary of Revenue and shall be valid until cancelled as hereinafter provided for.~~

~~The register of deeds of any county is authorized to affix stamps by meter or other similar device in accordance with procedures established by the Secretary of Revenue. Stamps affixed by such devices shall be uniform as to size and design and shall be in such form as determined by the Secretary and cancellation as provided by this Article is not required.~~

"§ 105-228.32. ~~Duties of register of deeds; duty of party presenting instrument for registration.~~ Instrument must be marked to reflect tax paid.

~~The register of deeds of each county shall obtain from the Secretary of Revenue and keep on hand an adequate supply of excise tax stamps. The register of deeds shall keep such records and otherwise account for said stamps in accordance with procedures established by the Secretary of Revenue for the control, distribution and sale of said stamps and for the accounting for proceeds of their sale consistent with this Article. It is the duty of the party presenting the instrument for registration to see that the correct amount of stamps is affixed to the face thereof prior to recording the same in the office of the register of deeds. The register of deeds shall cancel said stamp or stamps prior to recording by writing the date of filing on the face of said stamp or stamps.~~ A person who presents an instrument for registration must report to the Register of Deeds the amount of tax due. Before the instrument may be recorded, the Register of Deeds must collect the tax due and mark the instrument to indicate that the tax has been paid and the amount of the tax paid.

"**§ 105-228.33. Taxes recoverable by action.**

~~Upon the failure to pay the taxes imposed by this Article, they may be recovered~~ A county may recover unpaid taxes under this Article in an action in the name of the county brought in the superior court of ~~said county when the same remain unpaid for a period of 30 days after demand has been made by the register of deeds on behalf of the county therefor.~~ the county. The action may be filed if the taxes remain unpaid more than 30 days after the register of deeds has demanded payment. In such actions, costs of court shall include a fee to the county of twenty-five dollars ($25.00) for expense of collection.

"~~§ 105-228.34. Willful failure to pay tax.~~

~~Any transferor or agent of transferor of real estate willfully and knowingly failing to pay the correct amount of the tax imposed by this Article or any person aiding, abetting, or directing any other person to willfully and knowingly fail to pay the correct amount of such tax shall be guilty of a Class 3 misdemeanor and only fined not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000) for each offense. When the register of deeds relies on the statement of the party presenting the instrument for registration as to the correct amount of stamps to be affixed, he shall not be subject to prosecution as an aider or abettor under this section.~~

"**§ 105-228.35. Administrative provisions.**

The provisions of ~~Subchapter III, Article 30 of Chapter 105 of the General Statutes of North Carolina to the extent applicable shall apply to the tax imposed herein.~~ Article 9 of this Chapter apply to this Article.

"~~§ 105-228.36. Reproduction of tax stamps.~~

~~No person, firm, or corporation shall print, engrave, or otherwise reproduce excise tax stamps except with the express permission of the Secretary of Revenue. The unauthorized reproduction of said stamps shall be punishable as a forgery under G.S. 14-119.~~"

Section 2. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

Section 3. Section 1 of this act becomes effective July 1, 2000. The remainder of this act is effective when it becomes law.

HOUSE BILL 56:
Eliminate Stamps for Deed Tax

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Representative Hill
Date:	April 6, 1999	**Summary by:**	Cindy Avrette, Martha Harris, and Martha Walston, Staff Attorneys
Version:	3rd Edition		

SUMMARY: ***House Bill 56 is a recommendation of Revenue Laws Study Committee. It eliminates the use of tax stamps to indicate whether the excise tax on conveyances has been paid, effective July 1, 2000. It also makes the penalties for failure to pay the tax the same as for other taxes.***

ELIMINATE THE USE OF TAX STAMPS: The excise tax on conveyances, known as the deed stamp tax, is a State tax on instruments transferring an interest in real property. It is collected by the register of deeds of the county in which the property is located and is collected when the deed transferring the property is recorded. The person presenting the instrument for recording is responsible for indicating on the instrument the amount of tax due. The tax rate is $1.00 for each $500.00 (0.2%) of the value of the property conveyed. The register of deeds must collect the tax due and affix the correct amount of tax stamps on the instrument before it may be recorded.

The county retains one-half of the net proceeds of the tax and remits the remaining one-half to the State. 75% of the funds remitted to the State is dedicated to the Parks and Recreation Trust Fund created in G.S. 113-44.15 and 25% is dedicated to the Natural Heritage Trust Fund created in G.S. 113-77.7. None of the State's share of the deed stamp tax goes to the General Fund.

House Bill 56 removes the requirement that the Register of Deeds use tax stamps to indicate the tax has been paid. The Register of Deeds is to collect the tax due and mark on the instrument to indicate payment of the tax and the amount paid. The Department of Revenue requested the elimination of the tax stamps. Tax stamps are no longer the best method for tracking payment of the conveyance tax now that metering machines and similar equipment are available. About 85 of the 100 counties have switched from stamps to more modern methods of tracking the tax. Under the stamps system, the Department of Revenue is responsible for ordering stamps in various denominations and selling them to the counties that request them. When the remaining 15 counties stop using stamps, the Department of Revenue will no longer have to devote resources to ordering and maintaining an inventory of stamps.

CONFORM PENALTY PROVISIONS: Under current law, a county may recover unpaid conveyance taxes by filing a lawsuit in superior court. In addition, willful evasion of the tax is a Class 3 misdemeanor punishable by a fine of between $100 and $1,000. House Bill 56 retains the ability of the county to file a lawsuit but also provides that the civil penalties applicable to all other State taxes apply to the conveyance tax. There is a penalty of 10% of the amount of tax due assessed when a person fails to pay a tax when it is due. In addition, instead of the current criminal penalty, the bill provides that the criminal penalties applicable to all other State taxes apply to the conveyance tax. The penalty for willfully failing to pay the correct amount of tax due is a Class 1 misdemeanor. Attempting to evade a tax due is punishable as a Class H felony. The conforming of tax penalty provisions continues the work the legislature began last session when it amended several sections of the Revenue Act to make tax penalties uniform.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: H.B. 56 (Third Edition of the Bill) DRAFT

SHORT TITLE: Eliminate Stamps for Deed Tax

SPONSOR(S): Rep. Hill

FISCAL IMPACT

Yes (x) **No ()** **No Estimate Available ( )**

	FY 1998-99	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03
REVENUES		insignificant loss – less than $500			
EXPENDITURES					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Corporate, Excise and Insurance Division, Department of Revenue, County Register of Deeds Offices.

EFFECTIVE DATE: Section 1 becomes effective July 1, 2000. The remainder becomes effective when it becomes law.

BILL SUMMARY: The bill eliminates the use of Department of Revenue produced tax stamps in payment of the conveyance tax. This tax is also known as the excise tax on deeds. Under the bill, the taxes would still be due, but the counties would be responsible for supplying the materials to record the tax stamp. The bill also clarifies that the same penalties that apply to other taxes apply to the deed tax.

ASSUMPTIONS AND METHODOLOGY: According to the Department of Revenue, only 12 counties have purchased stamps from the Department in the last two years. However, because these purchases are made in mass quantities, the actual number of counties still using such a stamp may be higher. Based on information provided by the Register of Deeds Association members and key vendors, the Department of Revenue and Fiscal Research estimate that approximately 15-20 counties may be without a computerized stamp system. As such, as many

as 15-20 counties may be dependent on the Department for deed stamps. Under the bill, these counties would now be responsible for obtaining their own stamps.

Approximately 80 to 85 counties already obtain their stamps, or some alternative, through other means. Most of these counties purchase or rent special computer equipment. Some of the largest counties have their deed stamp system integrated into a larger county government computer system.

No estimates are available at this time for potential cost savings to the Department. They are expected to be insignificant. Also, no reliable estimates are available for potential loss revenue from the lack of stamp sales. However, the Department expects the revenue loss to be less than $500.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Linda Struyk Millsaps
APPROVED BY:
DATE: April 7, 1999

(Attachment #1)

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 4/7/1999

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mary Carmichael	Mecklenburg County
[signature]	Moore & Van Allen
EDDIE TRUELOVE	NCA PLUMBING HEATING COOLING
Henry Jones	Attorney - Raleigh
Sheila McKinney	NC DOI
J.W. Reel	NC OSBM
[signature]	Poyner & Spruill
Donald Clark	Johnson Controls, Raleigh
Alicia Gregory	Poyner & Spruill
[signature]	Allen & Pinnix
Jane Baker	Nursing Home Administrator Board
Ted W. Brown, Jr.	"

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 4/7/1999

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Cindy Black	NCNA / NCANA
Sharon Pearce	NCNA NC Association of Nurse Anesthetists
Cathy Green	NC Nurses Assoc.
Gale Adcock	NCNA
Lorin Killian	Moore Van Allen
Stacy Flannery	NCHCFA
Andy Romanet	NCLM.
Gordon A Joyner	NCAREMS PO Box 1914 Goldsboro NC 27533
Patricia A Yancey	SCSL / NCGSC
Kim L Lainer	Barton College School of Nursing
Tommie Anne Harding RN	Family Nurse Practioner Wayne Co. Health Department Goldsboro

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 4/4/1999

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Patti Stowell	NC DOR
Paul Gross	OSBM
JOHN TRYON	SRS, CARY NC.
Gregg [illegible]	SRS, Cary
PAUL M. HAYES	UNC-CH School of Nursing, UNC-GH
Melissa R. Vicars	UNC-Chapel Hill School of Nursing
Leanne Kinney	ACSBA
Linda Klund	NCNA
Linda Hughes	North Carolina Nurses Associa[illegible]
Robin Wilt Colvard	NCNA/ECU
Alma Kay Woodard	NCNA

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 4/4/1999

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Katie Castens	State Const. Office
Spero Thoppas	State Const Office
Steve Weitraner	State Const. Office
R W Kaylor	Kaylor Law Firm
Jon Updegrove	CPL
Dan [illegible]	Smith [illegible]
Byron K. Harris	OSBM
Mary Jane Jewell, RN	Burlington - Visiting - Nurses Day at Legislature
Penny Faulkner	visiting - NCNA
Charles FRANCIS	WOOD & FRANCIS

(Attachment #2)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Wednesday, April 07, 1999

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

FAVORABLE

H.B.(CS) **56** Eliminate Stamps for Deed Tax
Sequential Referral: none
Recommended Referral: none

S.B. **515** Volunteer Rescue Workers
Sequential Referral: none
Recommended Referral: none

S.B. **622** Nursing Home Admin. Bd./Fees
Sequential Referral: none
Recommended Referral: none

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

S.B **44** Lake Waccamaw Annexation
Draft Number: PCSA602
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

S.B. **286** Local Option Homestead Relief
Draft Number: PCS7590
Sequential Referral: none
Recommended Referral: none
Long Title Amended: Yes

TOTAL REPORTED: 5

Committee Clerk Comment: none

(Attachment #3)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Thursday, April 08, 1999

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

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

S.B. **691** Bermuda Run Incorporation

Draft Number:	PCS4637
Sequential Referral:	none
Recommended Referral:	none
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment: Bill acted on in Committee Meeting 4-7-99

AGENDA

WEDNESDAY, APRIL 14, 1999

1:30 P.M. – ROOM 544

I CALL TO ORDER

II INTRODUCTION OF PAGES

III BILLS TO BE CONSIDERED

SB 56 - Sunset/Term of Energy Savings Contract – Sen. Lee

SB 313 – Mecklenburg Stormwater Fees – Sen. Clodfelter

SB 314 – Mineral Springs, Inc. – Sen. Plyler

SB 484 – RMV Tax Budgeting – Sen. Clodfelter

SB 675 – Unionville Charter Correction – Sen. Plyler and Sen. Purcell

SB 703 – Hampstead Incorporation – Sen. Ballantine

SENATE FINANCE COMMITTEE

WEDNESDAY, APRIL 14, 1999

1:30 P.M. - ROOM 544

The Senate Finance Committee met on Wednesday, April 14, 1999, at 1:30 P.M. in Room 544, with Senator Kerr presiding. There were 21 committee members present.

SB 314 – Mineral Springs Incorporated.

Senator Hoyle moved to adopt Committee Substitute and motion carried. After explanation of the Committee Substitute, Senator Dannelly moved for a Favorable Report and the motion carried. Copy of original Bill and Committee Sub included in the minutes.

SB 675 – Unionville Charter Corrections.

After explanation of this Bill, there was a motion for a Favorable Report and the motion carried. Copy of Bill included in the minutes.

SB 703 – Hampstead Incorporation.

Senator Ballantine explained his bill and on motion by Senator Dannelly a Committee Substitute was adopted by the committee. Senator Moore moved for a Favorable Report and the motion carried. Copy of original Bill and Committee Sub included in the minutes.

SB 313 – Mecklenburg Stormwater Fees.

Senator Clodfelter explained his Bill and Senator Rand moved for adoption of a Committee Substitute. The motion carried. Mary Carnalia, County Commissioner from Mecklenburg County, was recognized and spoke in support of this bill. Senator Hartsell moved for a Favorable Report and the motion carried. Copy of original Bill, Committee Substitute, Explanation and Fiscal Note included in the minutes.

SB 56 – Sunset/Term of Energy Savings Contracts.

Senator Lee was recognized and updated the committee on previous action on this Bill. A Committee Substitute had been adopted at a previous meeting and this was before the committee today. Marvin Musselwhite, Poyner and Spruill, spoke in support of this bill and answered questions from the committee members. Henry Jones, representing the Association of the Plumbing-Heating-Cooling Contractors, was recognized and told the committee that his organization was not happy with this bill. Senator Dalton moved for

a Favorable Report and the motion carried. Copy of Committee Substitute, Explanation and Fiscal Note included in the minutes.

Meeting adjourned.

David W. Hoyle, Co-Chair
Senate Finance Committee

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

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

Visitors' Sign Up Sheet is Attachment # 1
Committee Reports (2) are Attachment # 2

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 314*

Short Title: Mineral Springs Incorporated. (Local)

Sponsors: Senators Plyler and Purcell.

Referred to: Rules and Operations of the Senate.

March 11, 1999

A BILL TO BE ENTITLED

AN ACT TO INCORPORATE THE TOWN OF MINERAL SPRINGS.

The General Assembly of North Carolina enacts:

Section 1. A Charter for the Town of Mineral Springs is enacted to read:

"CHARTER OF TOWN OF MINERAL SPRINGS.

"CHAPTER I.

"INCORPORATION AND CORPORATE POWERS.

"Section 1.1. **Incorporation and Corporate Powers.** The inhabitants of the Town of Mineral Springs, which area is described in Section 2.1 of this Charter, are a body corporate and politic under the name 'Town of Mineral Springs'. Under that name they have all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general law of North Carolina.

"CHAPTER II.

"CORPORATE BOUNDARIES.

"Section 2.1. **Town Boundaries.** Until modified in accordance with the law, the boundaries of the Town of Mineral Springs are as follows:

BEGINNING at a point in the southern boundary of Waxhaw Highway (State Highway 75) at its intersection with the southwestern boundary of Western Union School Road (SR1143); thence westerly with the southern boundary of Waxhaw Highway approximately 2,270 feet to its intersection with the southerly extension of the western property boundary line of parcel 001 as shown on tax map 5-030; thence northerly with said property boundary line approximately 1,620 feet to the northern boundary of the S.A.R.R. right-of-way; thence easterly with said

boundary approximately 92 feet to its intersection with the western property boundary line of parcel 012D as shown on tax map 6-084; thence northerly then northeasterly and then northwesterly with said parcel to a point being the southeastern corner of parcel 012E as shown on tax map 6-084; thence westerly then northerly and then northwesterly with said parcel until it intersects the eastern boundary of Collins Road (SR1326); thence northeasterly approximately 890 feet with said boundary to its intersection with the southeastern property boundary line of parcel 008 as shown on tax map 6-084; thence northeasterly approximately 1,504 feet, then northerly approximately 475 feet, and then westerly approximately 1,146 feet with said parcel to a point in the western boundary of Collins Road (SR1326); thence with the western boundary of Collins Road in a northerly direction to its intersection with the southern boundary of McNeely Road (SR1325); thence with the southern boundary of McNeely Road in a westerly direction to its intersection with the southerly extension of the western property boundary line of parcel 002A as shown on tax map 6-084; thence northerly approximately 260 feet with said property boundary line to its intersection with the southwestern corner of parcel 002 as shown on tax map 6-084; thence northerly approximately 260 feet with the western boundary of said parcel to its intersection with the northern boundary of Pleasant Grove Road (SR1327); thence with the northern boundary of Pleasant Grove Road in an easterly direction approximately 300 feet to its intersection with the western property boundary line of parcel 008A as shown on tax map 6-081; thence northerly with said property boundary line approximately 730 feet to the southwestern corner of parcel 007 as shown on tax map 6-081; thence easterly approximately 1,377 feet, then northerly approximately 620 feet with said parcel to a point in the southern property boundary of parcel 001 as shown on tax map 6-081; thence easterly approximately 683 feet, then northerly approximately 295 feet, then northerly approximately 798 feet, and then westerly approximately 857 feet with said parcel to a point in the western boundary of Waxhaw-Indian Trail Road (SR1008); thence with the western boundary of Waxhaw-Indian Trail Road in a northerly direction approximately 2,475 feet to its intersection with the western extension of the northern boundary of Jeanne Drive (private road); thence easterly approximately 825 feet with said road boundary to its intersection with the northwestern property boundary line of parcel 015C as shown on tax map 6-081; thence northeasterly with said property boundary line approximately 1,646 feet to the eastern corner of parcel 016 as shown on tax map 6-081; thence easterly with the northwestern boundary of said parcel to its intersection with the Bates Branch, being the western boundary of parcel 001B as shown on tax map 6-054; thence following the branch along said boundary in a northerly then an easterly direction to the northeast corner of said parcel; thence southeasterly with said parcel approximately 190 feet to a point, being the western corners of parcels 013 and 014 as shown on tax map 6-054; thence along the southeastern property boundary line of parcel 047 as shown on tax map 6-054 as follows: northeasterly approximately 1,105 feet, then northeasterly approximately 450 feet, then westerly approximately 450 feet, then northeasterly approximately 450 feet, then northwesterly approximately 20 feet, and then northeasterly approximately 550 feet to a point in the centerline of

Shannon Road (SR1328) where said centerline intersects the southwesterly extension of the western boundary of parcel 055 as shown on tax map 6-054; thence northeasterly approximately 625 feet, then easterly approximately 580 feet with said parcel until it intersects with the northernmost corner of parcel 048 as shown on tax map 6-054; thence with said parcel as follows: southerly approximately 627 feet, then easterly approximately 196 feet, then southerly approximately 1,093 feet, then southerly approximately 565 feet, then southwesterly approximately 394 feet, then southeasterly with the northeastern boundary of Shannon Road (SR1328) approximately 550 feet to its intersection with the northern boundary of Pleasant Grove Road (SR1327), then continuing in the same direction across Pleasant Grove Road, then southwesterly with the southeastern boundary of Pleasant Grove Road approximately 215 feet, then southwesterly approximately 550 feet, then southeasterly approximately 1,691 feet, then northeasterly approximately 728 feet, then southeasterly with the northern boundary of Pleasant Grove Road approximately 860 feet, then southeasterly approximately 130 feet, then northerly approximately 1,050 feet, and then northerly approximately 1,105 feet to the westernmost corner property boundary of parcel 051 as shown on tax map 6-054; thence with said parcel southeasterly approximately 1,325 feet, then easterly approximately 895 feet to a point in the western property boundary line of parcel 001A as shown on tax map 6-033; thence with said parcel as follows: southerly approximately 1,300 feet, then northeasterly approximately 482 feet, then southeasterly approximately 244 feet, then northeasterly approximately 386 feet, then easterly approximately 27 feet, then easterly approximately 992 feet, then southerly approximately 668 feet, then westerly approximately 25 feet, then southwesterly approximately 127 feet, and then northeasterly approximately 1,218 feet to a point in an unnamed branch of Little Twelvemile Creek; then meandering northerly with said branch approximately 1,700 feet to the southwest corner property boundary of parcel 054 as shown on tax map 6-036; thence northeasterly with the western property boundary line of parcel 054, then northeasterly with the northwestern property boundary line of parcel 055, then easterly with the northern property boundary line of parcel 056, then southeasterly with the northeastern property boundary line of parcel 057, then southerly with the eastern property boundary line of parcel 058, then southwesterly with the eastern property boundary line of parcels 059 through 060, then southerly with the eastern property boundary line of parcels 061 through 068, then southeasterly with the northeastern property boundary line of parcels 069 through 074, and then southeasterly with the northeastern property boundary line of parcel 075 to its intersection with the northwestern boundary of Potter Road (SR1162), the aforementioned parcels 054 through 075 inclusive as shown on tax map 6-036; thence northeasterly along the northwestern boundary of Potter Road approximately 65 feet to the intersection of the extension of the southern boundary of Roscoe Howey Road (SR1332); thence easterly along the southern boundary of Roscoe Howey Road approximately 890 feet to the intersection with the Little Twelvemile Creek; thence generally southeasterly with the Little Twelvemile Creek as it forms the western boundary of parcel 2A as shown on tax map 6-015 to its intersection with the

northern property boundary line of parcel 025 as shown on tax map 6-015; thence with said parcel southwesterly approximately 660 feet, then southerly approximately 1,950 feet to the intersection of its western property boundary line with the northern boundary of the S.A.R.R. right-of-way, thence northeasterly with the northern boundary of the S.A.R.R. right-of-way approximately 3,990 feet to its intersection with the western property boundary line of parcel 003 as shown on tax map 9-429; thence with said parcel northeasterly approximately 295 feet, then southeasterly approximately 970 feet, then southerly approximately 1,155 feet, then southwesterly approximately 106 feet, then southerly approximately 810 feet to the intersection of the southern extension of its eastern property boundary line with the southern boundary of Old Waxhaw-Monroe Road (SR1150); thence southwesterly with the southern boundary of Old Waxhaw-Monroe Road approximately 265 feet to its intersection with the property boundary line of parcel 001B as shown on tax map 9-417; thence with said parcel southeasterly approximately 130 feet, then northeasterly approximately 809 feet, then northeasterly approximately 628 feet, then easterly approximately 307 feet, then northwesterly approximately 169 feet, then northeasterly approximately 134 feet, then southeasterly approximately 830 feet, then southeasterly approximately 658 feet, then southwesterly approximately 294 feet, then southeasterly approximately 866 feet, then southerly approximately 221 feet, then southerly approximately 109 feet, then southeasterly approximately 237 feet, then southerly approximately 49 feet, then easterly approximately 193 feet, then northerly approximately 894 feet, then northeasterly approximately 606 feet, then southeasterly approximately 129 feet, then southeasterly approximately 120 feet, then northeasterly approximately 1,428 feet, then northerly approximately 661 feet, then northwesterly approximately 320 feet, then northwesterly approximately 140 feet, then northeasterly approximately 286 feet, then easterly approximately 967 feet, then southerly approximately 568 feet, then southwesterly approximately 112 feet, then southwesterly approximately 259 feet, then southerly approximately 561 feet, then southeasterly approximately 734 feet, then southeasterly approximately 597 feet, then southerly approximately 1 foot, then southerly approximately 138 feet, then westerly approximately 165 feet, then northwesterly approximately 118 feet, then northwesterly approximately 82 feet, then northwesterly approximately 998 feet, then westerly approximately 1,277 feet, then southerly approximately 589 feet to the intersection of the property boundary line with the northern boundary of Doster Road (SR1149), then with the northern boundary of Doster Road easterly approximately 145 feet to its intersection with the northern extension of the eastern property boundary line, then southerly approximately 1,576 feet, then northeasterly approximately 1,066 feet, then northeasterly approximately 780 feet, then northerly approximately 207 feet, then southwesterly approximately 555 feet, then southwesterly approximately 1,350 feet, and then northerly approximately 510 feet to the intersection of the property boundary line with the southern boundary of Doster Road; thence westerly with the southern boundary of Doster Road approximately 690 feet to its intersection with the western property boundary line of parcel 001 as shown on tax map 9-417; thence with said parcel southwesterly approximately 2,455 feet, and then westerly approximately

1,960 feet to the intersection of the property boundary line with the eastern property boundary line of parcel 43 as shown on tap map 6-018; thence with said parcel southerly approximately 820 feet, then northwesterly approximately 475 feet to the intersection of the property boundary line with the northern boundary of Crow Road (SR1147), then northwesterly with the northern boundary of Crow Road approximately 990 feet to its intersection with the property boundary line, then northwesterly approximately 125 feet, and then southwesterly approximately 937 feet to the northeast corner of the property boundary line of parcel 006 as shown on tax map 6-017; thence with said parcel southwesterly approximately 194 feet, then northwesterly approximately 35 feet, then southwesterly approximately 40 feet, then southeasterly approximately 40 feet, then southwesterly approximately 980 feet, then southeasterly approximately 1,193 feet, then southwesterly approximately 676 feet, then northwesterly approximately 822 feet, and then northwesterly approximately 770 feet to the intersection of the southern property boundary line with the eastern property boundary line of parcel 002B as shown on tax map 6-017; thence with said parcel southerly approximately 30 feet, and then northeasterly approximately 1,537 feet to the intersection of the southern property boundary line with the eastern property boundary line of parcel 001 as shown on tax map 6-017; thence with said parcel southwesterly approximately 167 feet, and then northwesterly approximately 571 feet to the intersection of the southern property line with the southeastern boundary of Potter Road (SR1162); thence southwesterly with the southeastern boundary of Potter Road approximately 2,080 feet to its intersection with the southerly extension of the western property boundary line of parcel 019J as shown on tax map 5-006; thence northerly with said property boundary line approximately 637 feet to its intersection with the southern property boundary line of parcel 015 as shown on tax map 5-006; thence westerly with said property boundary line approximately 390 feet to its intersection with the southeastern corner of parcel 001A as shown on tax map 5-003; thence with said parcel westerly approximately 717 feet, then westerly approximately 1,591 feet, then westerly approximately 197 feet, then northwesterly approximately 360 feet, then northwesterly approximately 714 feet, then northwesterly approximately 337 feet, and then northerly approximately 300 feet to the intersection of the property boundary line with the northernmost corner of parcel 009G as shown on tax map 5-006; thence with said parcel southwesterly approximately 462 feet, then westerly approximately 530 feet, and then westerly approximately 246 feet to the intersection of the property boundary line with the eastern property boundary line of parcel 053 as shown on tax map 5-033; thence southerly with said property boundary line approximately 1,000 feet to the intersection of its southern extension with the centerline of Western Union School Road (SR1143); thence from the intersection of the centerline of Western Union Road with the northern extension of the western property boundary line of parcel 010 as shown on tax map 5-006 southerly with said property boundary line approximately 590 feet to its intersection with the northwest corner of the property boundary line of parcel 011 as shown on tax map 5-006; thence southerly with said property boundary line approximately 208 feet to its intersection with the northeast

corner of the property boundary line of parcel 188 as shown on tax map 5-033; thence with said parcel westerly approximately 2,090 feet, and then northerly approximately 2,345 feet to the intersection of the property boundary line with the southern boundary of Western Union School Road; thence with the southern boundary of Western Union School Road in a northwesterly direction approximately 960 feet to the point and place of BEGINNING.

EXCEPTED and EXCLUDED from the above described corporate boundary is all of that tract of land consisting of parcel 001 as shown on tax map 6-036, comprising 37.160 acres, and more commonly known as the Pleasant Grove Campground.

"CHAPTER III.

"GOVERNING BODY.

"Section 3.1. **Structure of Governing Body; Number of Members.** The governing body of the Town of Mineral Springs is the Town Council, which has six members and the Mayor.

"Section 3.2. **Temporary Officers.** Until the initial election in 1999 provided for by Section 4.1 of this Charter, Frederick Becker III is hereby appointed Mayor, and William Henry Blythe, Jr., Gerald Countryman, Lundeen Cureton, Thomas Kalin, Alice Mabe, and Peggy Neill are hereby appointed members of the Town Council, and they shall possess and may exercise the powers granted to the Mayor and Town Council until their successors are elected or appointed and qualify pursuant to this Charter.

"Section 3.3. **Manner of Electing Town Council; Term of Office.** The qualified voters of the entire Town shall elect the members of the Town Council. Except as provided by this section, members are elected to a four-year term of office. In 1999, the three candidates receiving the highest number of votes are elected to four-year terms, and the three candidates receiving the next highest number of votes are elected to two-year terms. In 2001 and each two years thereafter, three members are elected to four-year terms.

"Section 3.4. **Manner of Electing Mayor; Term of Office.** The qualified voters of the entire Town shall elect the Mayor. The Mayor shall be elected in 1999 and each two years thereafter for a two-year term.

"CHAPTER IV.

"ELECTIONS.

"Section 4.1. **Conduct of Town Elections.** Town officers shall be elected on a nonpartisan basis and results determined by a plurality as provided in G.S. 163-292.

"CHAPTER V.

"ADMINISTRATION.

"Section 5.1. **Town to Operate Under Mayor-Council Plan.** The Town of Mineral Springs operates under the Mayor-Council Plan as provided in Part 3 of Article 7 of Chapter 160A of the General Statutes.

"Section 5.2. **Budget Ordinance; Municipal Taxes.** From and after the effective date of this act, the citizens and property in the Town of Mineral Springs shall be

subject to municipal taxes levied for the year beginning July 1, 1999, and for that purpose the Town shall obtain from Union County a record of property in the area herein incorporated which was listed for property taxes as of January 1, 1999. The Town may adopt a budget ordinance for fiscal year 1999-2000 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year 1999-2000, ad valorem taxes may be paid at par or face amount within 90 days of adoption of the budget ordinance, and thereafter in accordance with the schedule in G.S. 105-360 as if the taxes had been due and payable on September 1, 1999. If this act is ratified before July 1, 1999, the Town may adopt a budget ordinance for fiscal year 1998-1999 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical, but no ad valorem taxes may be levied for the 1998-1999 fiscal year."

Section 2. On a date established by the Union County Board of Elections no earlier than 60 nor later than 120 days after this bill becomes law, the Union County Board of Elections shall conduct a special election for the purpose of submission to the qualified voters of the area described in Section 2.1 of the Charter of the Town of Mineral Springs, the question of whether such area shall be incorporated as the Town of Mineral Springs.

Section 3. In the election, the question on the ballot shall be:

"[ ]FOR [ ]AGAINST

"Incorporation of the Town of Mineral Springs".

Section 4. In the election, if a majority of the votes are cast "For the Revival of the Charter of the Town of Mineral Springs", Sections 1 through 3 of this act become effective on the date that the Union County Board of Elections certifies the results of the election. Otherwise, Section 1 of this act has no force and effect.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 314*
Proposed Committee Substitute S314-PCS1711-LA

Short Title: Mineral Springs Incorporated. (Local)

Sponsors:

Referred to:

March 11, 1999

A BILL TO BE ENTITLED

AN ACT TO INCORPORATE THE TOWN OF MINERAL SPRINGS.

The General Assembly of North Carolina enacts:

Section 1. A Charter for the Town of Mineral Springs is enacted to read:

"CHARTER OF TOWN OF MINERAL SPRINGS.

"CHAPTER I.

"INCORPORATION AND CORPORATE POWERS.

"Section 1.1. **Incorporation and Corporate Powers.** The inhabitants of the Town of Mineral Springs, which area is described in Section 2.1 of this Charter, are a body corporate and politic under the name 'Town of Mineral Springs'. Under that name they have all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general law of North Carolina.

"CHAPTER II.

"CORPORATE BOUNDARIES.

"Section 2.1. **Town Boundaries.** Until modified in accordance with the law, the boundaries of the Town of Mineral Springs are as follows:

BEGINNING at a point in the southern boundary of Waxhaw Highway (State Highway 75) at its intersection with the southwestern boundary of Western Union School Road (SR1143); thence westerly with the southern boundary of Waxhaw Highway approximately 2,270 feet to its intersection with the southerly extension of the western property boundary line of parcel 001 as shown on tax map 5-030; thence northerly with said property boundary line approximately 1,620 feet to

the northern boundary of the S.A.R.R. right-of-way; thence easterly with said boundary approximately 92 feet to its intersection with the western property boundary line of parcel 012D as shown on tax map 6-084; thence northerly then northeasterly and then northwesterly with said parcel to a point being the southeastern corner of parcel 012E as shown on tax map 6-084; thence westerly then northerly and then northwesterly with said parcel until it intersects the eastern boundary of Collins Road (SR1326); thence northeasterly approximately 890 feet with said boundary to its intersection with the southeastern property boundary line of parcel 008 as shown on tax map 6-084; thence northeasterly approximately 1,504 feet, then northerly approximately 475 feet, and then westerly approximately 1,146 feet with said parcel to a point in the western boundary of Collins Road (SR1326); thence with the western boundary of Collins Road in a northerly direction to its intersection with the southern boundary of McNeely Road (SR1325); thence with the southern boundary of McNeely Road in a westerly direction to its intersection with the southerly extension of the western property boundary line of parcel 002A as shown on tax map 6-084; thence northerly approximately 260 feet with said property boundary line to its intersection with the southwestern corner of parcel 002 as shown on tax map 6-084; thence northerly approximately 260 feet with the western boundary of said parcel to its intersection with the northern boundary of Pleasant Grove Road (SR1327); thence with the northern boundary of Pleasant Grove Road in an easterly direction approximately 300 feet to its intersection with the western property boundary line of parcel 008A as shown on tax map 6-081; thence northerly with said property boundary line approximately 730 feet to the southwestern corner of parcel 007 as shown on tax map 6-081; thence easterly approximately 1,377 feet, then northerly approximately 620 feet with said parcel to a point in the southern property boundary of parcel 001 as shown on tax map 6-081; thence easterly approximately 683 feet, then northerly approximately 295 feet, then northerly approximately 798 feet, and then westerly approximately 857 feet with said parcel to a point in the western boundary of Waxhaw-Indian Trail Road (SR1008); thence with the western boundary of Waxhaw-Indian Trail Road in a northerly direction approximately 2,475 feet to its intersection with the western extension of the northern boundary of Jeanne Drive (private road); thence easterly approximately 825 feet with said road boundary to its intersection with the northwestern property boundary line of parcel 015C as shown on tax map 6-081; thence northeasterly with said property boundary line approximately 1,646 feet to the western corner of parcel 016 as shown on tax map 6-081; thence easterly with the northwestern boundary of said parcel to its intersection with the Bates Branch, being the western boundary of parcel 001B as shown on tax map 6-054; thence following the branch along said boundary in a northerly then an easterly direction to the northeast corner of said parcel; thence southeasterly with said parcel approximately 190 feet to a point, being the western corners of parcels 013 and 014 as shown on tax map 6-054; thence along the southeastern property boundary line of parcel 047 as shown on tax map 6-054 as follows: northeasterly approximately 1,105 feet, then northeasterly approximately 450 feet, then westerly approximately 450 feet, then northeasterly approximately 450 feet, then northwesterly approximately 20

feet, and then northeasterly approximately 550 feet to a point in the centerline of Shannon Road (SR1328) where said centerline intersects the southwesterly extension of the western boundary of parcel 055 as shown on tax map 6-054; thence northeasterly approximately 625 feet, then easterly approximately 580 feet with said parcel until it intersects with the northernmost corner of parcel 048 as shown on tax map 6-054; thence with said parcel as follows: southerly approximately 627 feet, then easterly approximately 196 feet, then southerly approximately 1,093 feet, then southerly approximately 565 feet, then southwesterly approximately 394 feet, then southeasterly with the northeastern boundary of Shannon Road (SR1328) approximately 550 feet to its intersection with the northern boundary of Pleasant Grove Road (SR1327), then continuing in the same direction across Pleasant Grove Road, then southwesterly with the southeastern boundary of Pleasant Grove Road approximately 215 feet, then southwesterly approximately 550 feet, then southeasterly approximately 1,691 feet, then northeasterly approximately 728 feet, then southeasterly with the northern boundary of Pleasant Grove Road approximately 860 feet, then southeasterly approximately 130 feet, then northerly approximately 1,050 feet, and then northerly approximately 1,105 feet to the westernmost corner property boundary of parcel 051 as shown on tax map 6-054; thence with said parcel southeasterly approximately 1,325 feet, then easterly approximately 895 feet to a point in the western property boundary line of parcel 001A as shown on tax map 6-033; thence with said parcel as follows: southerly approximately 1,300 feet, then northeasterly approximately 482 feet, then southeasterly approximately 244 feet, then northeasterly approximately 386 feet, then easterly approximately 27 feet, then easterly approximately 992 feet, then southerly approximately 668 feet, then westerly approximately 25 feet, then southwesterly approximately 127 feet, and then northeasterly approximately 1,218 feet to a point in an unnamed branch of Little Twelvemile Creek; then meandering northerly with said branch approximately 1,700 feet to the southwest corner property boundary of parcel 054 as shown on tax map 6-036; thence northeasterly with the western property boundary line of parcel 054, then northeasterly with the northwestern property boundary line of parcel 055, then easterly with the northern property boundary line of parcel 056, then southeasterly with the northeastern property boundary line of parcel 057, then southerly with the eastern property boundary line of parcel 058, then southwesterly with the eastern property boundary line of parcels 059 through 060, then southerly with the eastern property boundary line of parcels 061 through 068, then southeasterly with the northeastern property boundary line of parcels 069 through 074, and then southeasterly with the northeastern property boundary line of parcel 075 to its intersection with the northwestern boundary of Potter Road (SR1162), the aforementioned parcels 054 through 075 inclusive as shown on tax map 6-036; thence northeasterly along the northwestern boundary of Potter Road approximately 65 feet to the intersection of the extension of the southern boundary of Roscoe Howey Road (SR1332); thence easterly along the southern boundary of Roscoe Howey Road approximately 890 feet to the intersection with the Little Twelvemile Creek; thence generally southeasterly with the Little Twelvemile Creek as it forms the western

boundary of parcel 2A as shown on tax map 6-015 to its intersection with the northern property boundary line of parcel 025 as shown on tax map 6-015; thence with said parcel southwesterly approximately 660 feet, then southerly approximately 1,950 feet to the intersection of its western property boundary line with the northern boundary of the S.A.R.R. right-of-way, thence northeasterly with the northern boundary of the S.A.R.R. right-of-way approximately 3,990 feet to its intersection with the western property boundary line of parcel 003 as shown on tax map 9-429; thence with said parcel northeasterly approximately 295 feet, then southeasterly approximately 970 feet, then southerly approximately 1,155 feet, then southwesterly approximately 106 feet, then southerly approximately 810 feet to the intersection of the southern extension of its eastern property boundary line with the southern boundary of Old Waxhaw-Monroe Road (SR1150); thence southwesterly with the southern boundary of Old Waxhaw-Monroe Road approximately 265 feet to its intersection with the property boundary line of parcel 001B as shown on tax map 9-417; thence with said parcel southeasterly approximately 130 feet, then northeasterly approximately 809 feet, then northeasterly approximately 628 feet, then easterly approximately 307 feet, then northwesterly approximately 169 feet, then northeasterly approximately 134 feet, then southeasterly approximately 830 feet, then southeasterly approximately 658 feet, then southwesterly approximately 294 feet, then southeasterly approximately 866 feet, then southerly approximately 221 feet, then southerly approximately 109 feet, then southeasterly approximately 237 feet, then southerly approximately 49 feet, then easterly approximately 193 feet, then northerly approximately 894 feet, then northeasterly approximately 606 feet, then southeasterly approximately 129 feet, then southeasterly approximately 120 feet, then northeasterly approximately 1,428 feet, then northerly approximately 661 feet, then northwesterly approximately 320 feet, then northwesterly approximately 140 feet, then northeasterly approximately 286 feet, then easterly approximately 967 feet, then southerly approximately 568 feet, then southwesterly approximately 112 feet, then southwesterly approximately 259 feet, then southerly approximately 561 feet, then southeasterly approximately 734 feet, then southeasterly approximately 597 feet, then southerly approximately 1 foot, then southerly approximately 138 feet, then westerly approximately 165 feet, then northwesterly approximately 118 feet, then northwesterly approximately 82 feet, then northwesterly approximately 998 feet, then westerly approximately 1,277 feet, then southerly approximately 559 feet to the intersection of the property boundary line with the northern boundary of Doster Road (SR1149), then with the northern boundary of Doster Road easterly approximately 145 feet to its intersection with the northern extension of the eastern property boundary line, then southerly approximately 81 feet, then southerly approximately 1,546 feet, then northwesterly approximately 1,066 feet, then northerly approximately 594 feet, then northeasterly approximately 443 feet, and then northerly approximately 231 feet to the intersection of the property boundary line with the southern boundary of Doster Road; thence westerly with the southern boundary of Doster Road approximately 690 feet to its intersection with the western property boundary line of parcel 001 as shown on tax map 9-417; thence with said parcel southwesterly approximately 2,455

feet, and then westerly approximately 1,960 feet to the intersection of the property boundary line with the eastern property boundary line of parcel 43 as shown on tax map 6-018; thence with said parcel southerly approximately 820 feet, then northwesterly approximately 475 feet to the intersection of the property boundary line with the northern boundary of Crow Road (SR1147), then northwesterly with the northern boundary of Crow Road approximately 990 feet to its intersection with the property boundary line, then northwesterly approximately 125 feet, and then southwesterly approximately 937 feet to the northeast corner of the property boundary line of parcel 006 as shown on tax map 6-017; thence with said parcel southwesterly approximately 194 feet, then northwesterly approximately 35 feet, then southwesterly approximately 40 feet, then southeasterly approximately 40 feet, then southwesterly approximately 980 feet, then southeasterly approximately 1,193 feet, then southwesterly approximately 676 feet, then northwesterly approximately 822 feet, and then northwesterly approximately 770 feet to the intersection of the southern property boundary line with the eastern property boundary line of parcel 002B as shown on tax map 6-017; thence with said parcel southerly approximately 30 feet, and then northeasterly approximately 1,537 feet to the intersection of the southern property boundary line with the eastern property boundary line of parcel 001 as shown on tax map 6-017; thence with said parcel southwesterly approximately 167 feet, and then northwesterly approximately 571 feet to the intersection of the southern property line with the southeastern boundary of Potter Road (SR1162); thence southwesterly with the southeastern boundary of Potter Road approximately 2,080 feet to its intersection with the southerly extension of the western property boundary line of parcel 019J as shown on tax map 5-006; thence northerly with said property boundary line approximately 637 feet to its intersection with the southern property boundary line of parcel 015 as shown on tax map 5-006; thence westerly with said property boundary line approximately 390 feet to its intersection with the southeastern corner of parcel 001A as shown on tax map 5-003; thence with said parcel westerly approximately 717 feet, then westerly approximately 1,591 feet, then westerly approximately 197 feet, then northwesterly approximately 360 feet, then northwesterly approximately 714 feet, then northwesterly approximately 337 feet, and then northerly approximately 300 feet to the intersection of the property boundary line with the northernmost corner of parcel 009G as shown on tax map 5-006; thence with said parcel southwesterly approximately 462 feet, then westerly approximately 530 feet, and then westerly approximately 246 feet to the intersection of the property boundary line with the eastern property boundary line of parcel 053 as shown on tax map 5-033; thence southerly with said property boundary line approximately 1,000 feet to the intersection of its southern extension with the centerline of Western Union School Road (SR1143); thence from the intersection of the centerline of Western Union Road with the northern extension of the western property boundary line of parcel 010 as shown on tax map 5-006 southerly with said property boundary line approximately 590 feet to its intersection with the northwest corner of the property boundary line of parcel 011 as shown on tax map 5-006; thence southerly with said property boundary line approximately 208 feet to its intersection with the northeast

corner of the property boundary line of parcel 188 as shown on tax map 5-033; thence with said parcel westerly approximately 2,090 feet, and then northerly approximately 2,345 feet to the intersection of the property boundary line with the southern boundary of Western Union School Road; thence with the southern boundary of Western Union School Road in a northwesterly direction approximately 960 feet to the point and place of BEGINNING.

EXCEPTED and EXCLUDED from the above described corporate boundary is all of that tract of land consisting of parcel 001 as shown on tax map 6-036, comprising 37.160 acres, and more commonly known as the Pleasant Grove Campground.

"CHAPTER III.

"GOVERNING BODY.

"Section 3.1. **Structure of Governing Body; Number of Members.** The governing body of the Town of Mineral Springs is the Town Council, which has six members and the Mayor.

"Section 3.2. **Temporary Officers.** Until the initial election in 1999 provided for by Section 4.1 of this Charter, Frederick Becker III is hereby appointed Mayor, and William Henry Blythe, Jr., Gerald Countryman, Lundeen Cureton, Thomas Kalin, Alice Mabe, and Peggy Neill are hereby appointed members of the Town Council, and they shall possess and may exercise the powers granted to the Mayor and Town Council until their successors are elected or appointed and qualify pursuant to this Charter.

"Section 3.3. **Manner of Electing Town Council; Term of Office.** The qualified voters of the entire Town shall elect the members of the Town Council. Except as provided by this section, members are elected to a four-year term of office. In 1999, the three candidates receiving the highest numbers of votes are elected to four-year terms, and the three candidates receiving the next highest numbers of votes are elected to two-year terms. In 2001 and each two years thereafter, three members are elected to four-year terms.

"Section 3.4. **Manner of Electing Mayor; Term of Office.** The qualified voters of the entire Town shall elect the Mayor. The Mayor shall be elected in 1999 and each two years thereafter for a two-year term.

"CHAPTER IV.

"ELECTIONS.

"Section 4.1. **Conduct of Town Elections.** Town officers shall be elected on a nonpartisan basis and results determined by a plurality as provided in G.S. 163-292.

"CHAPTER V.

"ADMINISTRATION.

"Section 5.1. **Town to Operate Under Mayor-Council Plan.** The Town of Mineral Springs operates under the Mayor-Council Plan as provided in Part 3 of Article 7 of Chapter 160A of the General Statutes.

"Section 5.2. **Budget Ordinance; Municipal Taxes.** From and after the effective date of this act, the citizens and property in the Town of Mineral Springs shall be

subject to municipal taxes levied for the year beginning July 1, 1999, and for that purpose the Town shall obtain from Union County a record of property in the area herein incorporated which was listed for property taxes as of January 1, 1999. The Town may adopt a budget ordinance for fiscal year 1999-2000 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year 1999-2000, ad valorem taxes may be paid at par or face amount within 90 days of adoption of the budget ordinance, and thereafter in accordance with the schedule in G.S. 105-360 as if the taxes had been due and payable on September 1, 1999. If this act is ratified before July 1, 1999, the Town may adopt a budget ordinance for fiscal year 1998-1999 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical, but no ad valorem taxes may be levied for the 1998-1999 fiscal year."

Section 2. On a date established by the Union County Board of Elections no earlier than 60 nor later than 120 days after this bill becomes law, the Union County Board of Elections shall conduct a special election for the purpose of submission to the qualified voters of the area described in Section 2.1 of the Charter of the Town of Mineral Springs, the question of whether such area shall be incorporated as the Town of Mineral Springs.

Section 3. In the election, the question on the ballot shall be:

"[ ]FOR [ ]AGAINST

Incorporation of the Town of Mineral Springs".

Section 4. In the election, if a majority of the votes are cast "For the Incorporation of the Town of Mineral Springs", Sections 1 through 3 of this act become effective on the date that the Union County Board of Elections certifies the results of the election. Otherwise, Section 1 of this act has no force and effect.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 675

Short Title: Unionville Charter Corrections. (Local)

Sponsors: Senators Plyler and Purcell.

Referred to: Finance.

April 1, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AMENDMENTS TO AN ACT WHICH REVIVED THE CHARTER OF THE TOWN OF UNIONVILLE.

The General Assembly of North Carolina enacts:

Section 1. Section 3 of Chapter 62 of the Private Laws of 1911, as rewritten by S.L. 1998-151, reads as rewritten:

"Section 3. (a) That the elected officers of the town shall consist of a mayor and five commissioners, and the following persons shall fill the offices until the regular election in November of 1999: Mayor, Larry B. Simpson; commissioners, Kenneth J. Price, Jimmy Lee Baucom, Kenneth M. Brown, Jr., Robert L. Crouch, and Randy Keith Baucom. In the 1999 election, the three persons who receive the highest numbers of votes are elected for four-year terms as commissioners, and the two persons who receive the next highest numbers of votes are elected to two-year terms as commissioner. In 2001 and quadrennially thereafter, two commissioners are elected for four-year terms. In 2003 and quadrennially thereafter, three commissioners are elected for four-year terms. In 1999, a mayor shall be elected for a two-year term. In 2001 and quadrennially thereafter, a mayor is elected for a four-year term.

(b) Elections shall be conducted on a nonpartisan plurality basis and the results determined in accordance with G.S. 163-292."

Section 2. Section 7 of Chapter 62 of the Private Laws of 1911, as rewritten by S.L. 1998-151 reads as rewritten:

"Section 7. Said commissioners shall have and are hereby vested with all the powers conferred upon commissioners of towns and cities and subject to the

performance of all the duties as such, conferred under the general ~~laws.~~ laws, except that the 60-day limitation in G.S. 160A-360(f) is extended to and including December 1, 1999."

Section 3. Section 2 of Chapter 62 of the Private Laws of 1911, as rewritten by S.L. 1998-151, is rewritten to read:

"Section 2. The boundaries set forth in this section follow the centerlines of the named roads and highways as they existed on the date of the general election in 1998, except where the existing property lines did not follow said centerlines, the boundaries shall extend only to the property line closest to the centerline of the road or highway. The boundaries of the Town of Unionville are as follows:

BEGINNING at the intersection of Friendly Baptist Church Road and Ridge Road; thence along and with Ridge Road in a generally southeast direction to the intersection of Ridge Road and U.S. Highway 601; thence with U.S. Highway 601 in a generally southwest direction approximately 400 feet to the southwest corner of parcel 9-174-12B; thence along and with the southern boundaries of the following properties: parcels 9-174-6G; 9-174-10; 9-174-6D; Country Ridge and Country Ridge, Sec. 2 as shown on plats recorded in Plat Cabinet B, Files 109A and 111A in the Office of the Union County Register of Deeds; the minor subdivision of Kelly Helms and wife, Pauline Helms as shown on plat recorded in Plat Cabinet B, File 343A in the Office of the Union County Register of Deeds; thence with the eastern boundary of parcel 9-177-75 in a generally northerly direction to a point in the centerline of Baucom-Deese Road; thence with Baucom-Deese Road in a generally easterly direction to the intersection of Baucom-Deese Road with Morgan Mill Road; thence with Morgan Mill Road in a generally northeast direction to the intersection of Morgan Mill Road with Henry Baucom Road; thence extending past said intersection and running with the centerline of said road approximately 701 feet; thence in a generally northwesterly direction with the line of parcel 8-072-19 to said parcel's northernmost boundary line; thence with the northernmost boundary lines of the following properties: 8-072-19, 8-072-25A, and 8-072-25; thence generally north with the property lines of parcel 8-072-9 to the northernmost line of parcel 8-072-9; thence with the northernmost property lines of parcels 9, 9A, and 8B; thence in a generally southerly direction along and with the westernmost property lines of parcels 8-072-8B, 8-072-8D, and 8-072-8A to the centerline of Henry Baucom Road; thence with the centerline of said Road in a generally westerly direction to the intersection of Henry Baucom Road with Haigler-Baucom Road; thence with Haigler-Baucom Road in a generally northwest direction to the intersection of Haigler-Baucom Road with Sikes Mill Road; thence with Sikes Mill Road in a generally northerly direction to the intersection of Sikes Mill Road with Clontz-Long Road; thence in a generally westerly direction with Clontz-Long Road to the intersection of Clontz-Long Road with U.S. Highway 601; thence with U.S. Highway 601 in a generally southerly direction to the intersection of U.S. Highway 601 and Lawyers Road; thence with Lawyers Road in a generally westerly direction to the intersection of Lawyers Road and Friendly Baptist church Road; thence along and with Friendly Baptist Church Road to the point and place of the BEGINNING."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 703

Short Title: Hampstead Incorporation. (Local)

Sponsors: Senator Ballantine.

Referred to: Rules and Operations of the Senate.

April 1, 1999

A BILL TO BE ENTITLED

AN ACT TO INCORPORATE THE TOWN OF HAMPSTEAD SUBJECT TO A REFERENDUM.

The General Assembly of North Carolina enacts:

Section 1. A Charter for the Town of Hampstead is enacted to read:

"THE CHARTER OF THE TOWN OF HAMPSTEAD.

"CHAPTER I.

"INCORPORATION AND CORPORATE POWERS.

"Section 1.1. **Incorporation and Corporate Powers.** The inhabitants of the Town of Hampstead are a body corporate and politic under the name of the 'Town of Hampstead'. Under that name they shall have all the powers, duties, rights, privileges, and immunities conferred and imposed upon cities by the general law of North Carolina.

"CHAPTER II.

"CORPORATE BOUNDARIES.

"Section 2.1. **Corporate Boundaries.** Until modified in accordance with the law, the corporate boundaries of the Town of Hampstead are as follows:

BEGINNING in Pender County at a point located in the eastern right-of-way line of US 17, said point being the intersection of the southern right-of-way line of Washington Acres Road (SR 1582) and the eastern right-of-way line of US 17; thence running in a westerly direction approximately 100 feet to the western right-of-way line of US 17 to a point; said point being the joint property corner of Eugenia K. Dail and Terry Lyle Finley and Bertha E.; thence running in a westerly direction along the boundary line between said properties for a distance of 500 feet to a point,

said point being the intersection of the Southern and Western lines of the proposed city limits; thence turning and running parallel to and 500 feet west of the western right-of-way line of US 17 for a distance of approximately 5.5 miles to a point, said point being the intersection of the Western and Northern lines of the proposed city limits; thence turning and running South 41 Degrees 41 minutes 50 seconds East 500 feet to the western right-of-way line of US 17; thence running on the same bearing approximately 100 feet to a point in the eastern right-of-way line of US 17, said point being the intersecting line of the eastern right-of-way of US 17 and the northern right-of-way line of Sloop Point Loop Road (SR 1563); thence running along the northern right-of-way line of Sloop Point Loop Road (SR 1563) for approximately 1.6 miles to a point; said point being 90 degrees from the intersection of the northern right-of-way line of Sloop Point Loop Road (SR 1563) and the northern right-of-way line of Hickory Point Road (SR 1607); thence running in an eastern direction along the northern right-of-way line of Hickory Point Road approximately 0.4 miles to the end of said road, thence continuing on the same bearing of Hickory Point Road approximately 300 feet to the western boundary of the Intracoastal Waterway, said point being the intersection of the Northern and Eastern lines of the proposed city limits; thence turning and running in a southerly direction along the ICW for approximately 5.6 miles to a point located at the intersection of the ICW and a line extended on the same bearing from the southern right-of-way line of Washington Acres Road (SR 1582), said point being the intersection of the Eastern and Southern lines of the proposed city limits; thence turning and running in a northwesterly direction, at the same bearing as the southern right-of-way line of Washington Acres Road (SR 1582), for approximately 450 feet to the most eastern end of said road; thence continuing along the southern right-of-way line of Washington Acres Road (SR 1582) approximately 1.8 miles to the point of beginning.

"CHAPTER III.

"GOVERNING BODY.

"Section 3.1. **Structure of the Governing Body; Number of Members.** The governing body of the Town of Hampstead shall be the Town Council, which shall have five members.

"Section 3.2. **Manner of Election of the Council.** Except for the temporary officers provided for in Section 3.3 of this Charter, the members of the Town Council shall be elected to two-year terms and shall be elected at large by all the qualified voters of the Town.

"Section 3.3. **Temporary Officers.** Until the regular municipal election in November, 1999, Roland Howard, Sr., Billie Oliver, Rose Schenker, Charles Jones, and Charles Watson shall serve on the Town Council for the Town of Hampstead and they shall possess and may exercise the powers granted to the Town Council until their successors are elected and qualified.

"Section 3.4. **Election of Mayor.** The majority of the Town Council shall, from among the membership of the Town Council, elect a Mayor who shall serve at the pleasure of the Town Council, but who shall not serve for a term longer than that for

which he or she was elected. The Mayor's duties and responsibilities shall be as determined by the Town Council and as provided by general law.

"CHAPTER IV.

"ELECTIONS.

"Section 4.1. **Conduct of the Town Elections.** Regular municipal elections shall be held in each odd-numbered year in accordance with the municipal election laws of North Carolina. Town officers shall be elected on a nonpartisan basis and the results determined using the nonpartisan plurality method as provided in G.S. 163-292.

"CHAPTER V.

"ADMINISTRATION.

"Section 5.1. **Form of Government.** The Town of Hampstead shall operate under the Council-Manager form of government as provided in Part 2 of Article 7 of Chapter 160A of the General Statutes."

Section 2. The Pender County Board of Elections shall conduct an election on a date set by the Board, to be not less than 60 nor more than 120 days after this act becomes law, for the purpose of submission to the qualified voters of the area described in Section 2.1 of the Charter of the Town of Hampstead the question of whether or not the area shall be incorporated as the Town of Hampstead. Registration for the election shall be conducted in accordance with G.S. 163-288.2.

Section 3. In the election, the question on the ballot shall be:

"[ ]FOR [ ]AGAINST

Incorporation of the Town of Hampstead."

Section 4. In the election, if a majority of the votes are cast "For incorporation of the Town of Hampstead", Section 1 of this act shall become effective on the date that the Pender County Board of Elections certifies the results of the election. Otherwise, that section shall have no force and effect.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 703
Proposed Committee Substitute S703-PCS6656-LA

Short Title: Hampstead Incorporation. (Local)

Sponsors:

Referred to:

April 1, 1999

A BILL TO BE ENTITLED

AN ACT TO INCORPORATE THE TOWN OF HAMPSTEAD SUBJECT TO A REFERENDUM.

The General Assembly of North Carolina enacts:

Section 1. A Charter for the Town of Hampstead is enacted to read:

"THE CHARTER OF THE TOWN OF HAMPSTEAD.

"CHAPTER I.

"INCORPORATION AND CORPORATE POWERS.

"Section 1.1. **Incorporation and Corporate Powers.** The inhabitants of the Town of Hampstead are a body corporate and politic under the name of the 'Town of Hampstead'. Under that name they shall have all the powers, duties, rights, privileges, and immunities conferred and imposed upon cities by the general law of North Carolina.

"CHAPTER II.

"CORPORATE BOUNDARIES.

"Section 2.1. **Corporate Boundaries.** Until modified in accordance with the law, the corporate boundaries of the Town of Hampstead are as follows:

BEGINNING in Pender County at a point located in the eastern right-of-way line of US 17, said point being the intersection of the southern right-of-way line of Washington Acres Road (SR 1582) and the eastern right-of-way line of US 17; thence running in a westerly direction approximately 100 feet to the western right-of-way line of US 17 to a point; said point being the joint property corner of Eugenia K. Dail and Terry Lyle Finley and Bertha E.; thence running in a westerly direction

along the boundary line between said properties for a distance of 500 feet to a point, said point being the intersection of the Southern and Western lines of the proposed city limits; thence turning and running parallel to and 500 feet west of the western right-of-way line of US 17 for a distance of approximately 5.5 miles to a point, said point being the intersection of the Western and Northern lines of the proposed city limits; thence turning and running south 41 degrees 41 minutes 50 seconds east 500 feet to the western right-of-way line of US 17; thence running on the same bearing approximately 100 feet to a point in the eastern right-of-way line of US 17, said point being the intersecting line of the eastern right-of-way of US 17 and the northern right-of-way line of Sloop Point Loop Road (SR 1563); thence running along the northern right-of-way line of Sloop Point Loop Road (SR 1563) for approximately 1.6 miles to a point; said point being 90 degrees from the intersection of the northern right-of-way line of Sloop Point Loop Road (SR 1563) and the northern right-of-way line of Hickory Point Road (SR 1607); thence running in an eastern direction along the northern right-of-way line of Hickory Point Road approximately 0.4 miles to the end of said road, thence continuing on the same bearing of Hickory Point Road approximately 300 feet to the western boundary of the Intracoastal Waterway, said point being the intersection of the Northern and Eastern lines of the proposed city limits; thence turning and running in a southerly direction along the ICW for approximately 5.6 miles to a point located at the intersection of the ICW and a line extended on the same bearing from the southern right-of-way line of Washington Acres Road (SR 1582), said point being the intersection of the Eastern and Southern lines of the proposed city limits; thence turning and running in a northwesterly direction, at the same bearing as the southern right-of-way line of Washington Acres Road (SR 1582), for approximately 450 feet to the most eastern end of said road; thence continuing along the southern right-of-way line of Washington Acres Road (SR 1582) approximately 1.8 miles to the point of beginning.

"CHAPTER III.

"GOVERNING BODY.

"Section 3.1. **Structure of the Governing Body; Number of Members.** The governing body of the Town of Hampstead shall be the Town Council, which shall have five members.

"Section 3.2. **Manner of Election of the Council.** Except for the temporary officers provided for in Section 3.3 of this Charter, the members of the Town Council shall be elected to two-year terms and shall be elected at large by all the qualified voters of the Town.

"Section 3.3. **Temporary Officers.** Until the regular municipal election in November, 1999, Elaine Myers, Billie Oliver, Rose Schenker, Charles Jones, and Charles Watson shall serve on the Town Council for the Town of Hampstead and they shall possess and may exercise the powers granted to the Town Council until their successors are elected and qualified.

"Section 3.4. **Election of Mayor.** The majority of the Town Council shall, from among the membership of the Town Council, elect a Mayor who shall serve at the pleasure of the Town Council, but who shall not serve for a term longer than that for

which he or she was elected. The Mayor's duties and responsibilities shall be as determined by the Town Council and as provided by general law.

"CHAPTER IV.

"ELECTIONS.

"Section 4.1. **Conduct of the Town Elections.** Regular municipal elections shall be held in each odd-numbered year in accordance with the municipal election laws of North Carolina. Town officers shall be elected on a nonpartisan basis and the results determined using the nonpartisan plurality method as provided in G.S. 163-292.

"CHAPTER V.

"ADMINISTRATION.

"Section 5.1. **Form of Government.** The Town of Hampstead shall operate under the Council-Manager form of government as provided in Part 2 of Article 7 of Chapter 160A of the General Statutes."

Section 2. The Pender County Board of Elections shall conduct an election on a date set by the Board, to be not less than 60 nor more than 120 days after this act becomes law, for the purpose of submission to the qualified voters of the area described in Section 2.1 of the Charter of the Town of Hampstead the question of whether or not the area shall be incorporated as the Town of Hampstead. Registration for the election shall be conducted in accordance with G.S. 163-288.2.

Section 3. In the election, the question on the ballot shall be:

"[ ]FOR [ ]AGAINST

Incorporation of the Town of Hampstead."

Section 4. In the election, if a majority of the votes are cast "For incorporation of the Town of Hampstead", Section 1 of this act shall become effective on the date that the Pender County Board of Elections certifies the results of the election. Otherwise, that section shall have no force and effect.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 313

Short Title: Mecklenburg Stormwater Fees. (Local)

Sponsors: Senator Clodfelter.

Referred to: Finance.

March 11, 1999

A BILL TO BE ENTITLED

AN ACT TO ALLOW MECKLENBURG COUNTY TO CONTINUE TO LEVY STORMWATER FEES IF REVENUE BONDS HAVE BEEN ISSUED AND ARE OUTSTANDING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-277(a1) reads as rewritten:

"(a1) Before it establishes or revises a schedule of rates, fees, charges, or penalties for structural and natural stormwater and drainage systems under this section, the board of commissioners shall hold a public hearing on the matter. A notice of the hearing shall be given at least once in a newspaper having general circulation in the area, not less than seven days before the public hearing. The hearing may be held concurrently with the public hearing on the proposed budget ordinance.

The fees established under this subsection must be made applicable throughout the area of the county outside municipalities. Schedules of rates, fees, charges, and penalties for providing structural and natural stormwater and drainage system service may vary according to whether the property served is residential, commercial, or industrial property, the property's use, the size of the property, the area of impervious surfaces on the property, the quantity and quality of the runoff from the property, the characteristics of the watershed into which stormwater from the property drains, and other factors that affect the stormwater drainage system. Rates, fees, and charges imposed under this subsection may not exceed the county's cost of providing a stormwater and drainage system.

No stormwater utility fee may be levied under this subsection whenever two or more units of local government operate separate structural and natural stormwater

and drainage system services in the same area within a ~~county.~~ county, except that a unit of local government that has issued revenue bonds, including revenue bonds issued to refund prior revenue bonds, for which stormwater utility fees have been pledged under Article 5 of Chapter 159 of the General Statutes may continue to levy a stormwater utility fee under this subsection for the sole purpose of (i) paying principal, interest, or redemption premiums in accordance with the terms of the revenue bonds, (ii) funding any reserve requirements or similar obligations imposed by any documents, instruments, or agreements pursuant to which the revenue bonds are authorized or issued or securing the same or any related credit facility, liquidity facility, derivative agreement, or any other similar agreement, and (iii) paying any related cost, fees, and expenses until the revenue bonds have been retired. However, two or more units of local government may allocate among themselves the functions, duties, powers, and responsibilities for jointly operating a single structural and natural stormwater and drainage system service in the same area within a county, provided that only one unit may levy a fee for the service within the joint service area. For purposes of this subsection, a unit of local government shall include a regional authority providing structural and natural stormwater and drainage system services."

Section 2. This act applies to Mecklenburg County only.

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

SENATE BILL 313:
Mecklenburg Stormwater Fees

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Senator Clodfelter
Date:	April 12, 1999	**Summary by:**	Martha K. Walston
Version:	1st Edition		Committee Counsel

SUMMARY: ***Senate Bill 313 is a local bill that allows Mecklenburg County to continue to levy stormwater utility fees to pay off issued and outstanding revenue bonds, even if two or more units of local government are operating separate structural and natural stormwater and drainage system services in the same area within the County. This exception applies only when the stormwater fees have been pledged as a funding source for repayment of the revenue bonds. Senate Bill 313 is identical to House Bill 597. This companion bill was given a favorable report in House Local Government I and has been referred to House Finance.***

CURRENT LAW: G.S. 153A-277 authorizes a county to establish and revise rates and fees for services furnished by a public enterprise such as a structural and natural stormwater and drainage system. These fees may vary according to factors that affect the stormwater drainage system such as the type of property, the use of the property, and the size of the property. No stormwater fee may be levied when two or more units of local government operate separate structural and natural stormwater and drainage system services in the same area within a county. The units of local government, however may agree to allocate the responsibilities of operating such a system as long as only one unit levies a fee for the service.

BILL ANALYSIS: Senate Bill 313 authorizes Mecklenburg County to continue to levy a stormwater utility fee, even where two or more units of local government are operating separate stormwater and drainage system services in the same area within the County. The stormwater utility fee may be levied only for the following purposes:

- To pay principal, interest, or redemption premiums under the terms of the revenue bonds,
- To fund any reserve requirements or obligations imposed by any documents, instruments, or agreements pursuant to which the revenue bonds are authorized or issued or securing the same or related credit facility, liquidity facility, derivative agreement, or other similar agreement.
- To pay any related cost, fees, and expenses until the revenue bonds have been retired.

BACKGROUND: During the 1997 Session, the General Assembly enacted similar legislation authorizing the City of Charlotte to continue to levy stormwater fees for issued and outstanding revenue bonds.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: S.B. 313 Mecklenburg Stormwater Fees

SHORT TITLE: Mecklenburg Stormwater Fees

SPONSOR(S): Sen. Clodfelter

FISCAL IMPACT

Yes ( ) **No ( )** **No Estimate Available (x)**

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES	**No General Fund Impact See Assumptions and Methodology**				
EXPENDITURES	**No General Fund Impact See Assumptions and Methodology**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Mecklenburg County Government.

EFFECTIVE DATE: When it becomes law.

BILL SUMMARY: Under current law stormwater fees can not be collected when two or more units of local government operate separate stormwater systems in the same area, unless those communities agree to build and operate the systems jointly. This bill alters that provision to authorize communities to levy stormwater fees without joint participation, in certain circumstances. These fees can only be levied to make payments on an existing bond, or meet reserve or other similar requirements of the existing bond. The new provision only applies when the stormwater fees have been pledged as a funding source for repayment of the bonds. The bill applies only to Mecklenburg County.

ASSUMPTIONS AND METHODOLOGY: According to officials in Mecklenburg County's Engineering and Building Structures Department, Mecklenburg County is considering using revenue bonds to fund stormwater related construction. They hope to pledge the revenue from stormwater fees as a funding source for the bond. They believe this bill would make stormwater fees a more stable funding source, and a stronger pledge to finance a revenue bond.

Because the bill addresses only local bonds, there is no state impact. While the bill could make issuance of a revenue bond in Mecklenburg County more likely, it will not have a direct fiscal impact on the community unless a revenue bond were issued. If a bond were issued, the bill would have a fiscal impact upon the County's General Fund.. However, because neither the amount nor the terms of a bond are available, no reliable fiscal estimate is possible for the potential fiscal impact on Mecklenburg County.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Linda Struyk Millsaps

APPROVED BY: Tom Covington

DATE: Tuesday, April 06, 1999

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 484

Short Title: RMV Tax Budgeting. (Public)

Sponsors: Senator Clodfelter.

Referred to: Finance.

March 24, 1999

A BILL TO BE ENTITLED

AN ACT CHANGING THE METHOD OF CALCULATING THE RATIO OF PROPERTY TAX COLLECTIONS TO THE TOTAL LEVY FOR LOCAL GOVERNMENT BUDGETING PURPOSES RELATING TO THE REGISTERED MOTOR VEHICLE TAX.

The General Assembly of North Carolina enacts:

Section 1. G.S. 159-13(b)(6) reads as rewritten:

"(b) The following directions and limitations shall bind the governing board in adopting the budget ordinance:

(6) The estimated percentage of collection of property taxes shall not be greater than the percentage of the levy actually realized in cash as of June 30 during the preceding fiscal ~~year.~~ year; provided, however, that for purposes of the calculation under this subdivision only, the levy for the registered motor vehicle tax and the collections realized in cash with respect to such levy shall both be based on the nine-month period ending on March 31 of the preceding year."

Section 2. This act becomes effective July 1, 1999, and shall apply to budget ordinances for the fiscal year beginning on that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 484
Proposed Committee Substitute S484-PCS7664-LA

Short Title: RMV Tax Budgeting. (Public)

Sponsors:

Referred to:

March 24, 1999

A BILL TO BE ENTITLED

AN ACT CHANGING THE METHOD OF CALCULATING THE RATIO OF PROPERTY TAX COLLECTIONS TO THE TOTAL LEVY FOR LOCAL GOVERNMENT BUDGETING PURPOSES RELATING TO THE REGISTERED MOTOR VEHICLE TAX.

The General Assembly of North Carolina enacts:

Section 1. G.S. 159-13(b)(6) reads as rewritten:

"(b) The following directions and limitations shall bind the governing board in adopting the budget ordinance:

. . .

(6) The estimated percentage of collection of property taxes shall not be greater than the percentage of the levy actually realized in cash as of June 30 during the preceding fiscal year. For purposes of the calculation under this subdivision only, the levy for the registered motor vehicle tax under Article 22C of Chapter 105 of the General Statutes shall be based on the nine-month period ending March 31 of the preceding fiscal year, and the collections realized in cash with respect to this levy shall be based on the twelve-month period ending June 30 of the preceding fiscal year."

Section 2. This act is effective when it becomes law and applies to budget ordinances adopted after July 1, 1999.

SENATE BILL 484 (PCS): RMV Tax Budgeting

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Senator Clodfelter
Date:	April 12, 1999	**Summary by:**	Martha K. Walston
Version:	Proposed Committee Substitute		Committee Counsel

SUMMARY: ***Senate Bill 484 changes the method for calculating the ratio of property tax collections to the total levy for local government budgeting purposes by taking into consideration the time frame necessary to collect on a registered motor vehicle (RMV) tax bill. The proposed change should result in a more accurate estimate of the property tax collection ratio for budgeting purposes. The act would apply to budget ordinances adopted after July 1, 1999.***

CURRENT LAW: Each year local governments submit a budget for raising and spending money during a fiscal year. The governing board then adopts a budget ordinance not later than July 1. The ordinance sets out the appropriation of revenues and the levying of taxes for the budget year. In adopting the budget ordinance, the governing board must not estimate the percentage of property tax collection to be greater than the percentage actually realized in cash as of June 30 during the preceding fiscal year. When calculating this percentage, the local government is better able to estimate the collection of tax on non-motor vehicle property than on motor vehicles. This is because of the difference between the dates on which the property tax is due. For example, most motor vehicle taxes are due and collected on a staggered term, i.e. the date of registration. This means that taxes become due on vehicles each month. A significant number of these bills are paid over a three-month period. All other property taxes are due on September 1, and are considered delinquent after January 6. Therefore the local government has a good idea of their actual collection rate for property taxes on property other than motor vehicles because they have from January 6 until July 1 to collect these delinquent taxes.

BILL ANALYSIS: Senate Bill 484 modifies the calculation for the estimated percentage of collection of property taxes by allowing the levy for the motor vehicle tax to be based on a nine-month period ending March 31. This would give the local governments additional time to collect the motor vehicle tax before the collection rate becomes final on June 30.

Current Formula: 12 months of collection divided by 12 months of billing

Proposed Formula: 12 months of collection on the same 9 months of bills divided by 9 months of billing.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: S.B. 484 RMV Tax Budgeting

SHORT TITLE: RMV Tax Budgeting

SPONSOR(S): Sen. Clodfelter

FISCAL IMPACT

Yes ( ) **No (x)** **No Estimate Available ( )**

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES	**No General Fund Impact See Assumptions and Methodology**				
EXPENDITURES	**No General Fund Impact See Assumptions and Methodology**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Local Governments.

EFFECTIVE DATE: July 1, 1999 and apply to budget ordinances for the fiscal year beginning on that date.

BILL SUMMARY: G.S. 159-13(b) provide local governments with binding directions and limitations for county annual budgets. G.S.159-13(b)(6) specifically requires that the estimated property tax collection rate used in the budget not exceed the previous fiscal year's collection rate. The previous fiscal year collection rate must be determined as of June 30. The bill allows the counties to use the proportion of motor vehicle taxes actually collected in the preceding nine months, as defined on March 31, as the proportion of motor vehicle taxes collected for budget purposes. The bill leaves the June 30 cutoff for all other property tax collection rates.

ASSUMPTIONS AND METHODOLOGY: Under current law taxes on all taxable property, except motor vehicles on the staggered system, are due on September 1. These taxes can be paid without penalty before January 6. After January 6th the taxes are considered delinquent. As such, there is a four-month lag between when non-motor vehicle taxes are due and when they become delinquent. The county is not required to set their collection rate until June 30. Thus, there is a

significant lag between when taxes are due and when the counties determine that actual collection rate for the fiscal year.
Most motor vehicle taxes are due and collected on a staggered term. These taxes are due on the date of registration, and not the fiscal or calendar year, under current law. As such, taxes become due on vehicles each and every month.

By modifying the June 30 collection rate to reflect only the taxes due before March 31, the bill allows the county additional time to pursue some of the remedies they would use on other property tax delinquencies before their collection rates become final.

This bill, in and of itself, makes no changes to the tax imposed, the date the taxes are due, or the remedies local governments can use to pursue delinquencies. It would also have no direct impact on how much revenue the county might generate. It only impacts at what point in time the county takes a "snapshot" of their motor vehicle tax collections, for purposes of setting their upcoming year revenue availability. No change in actual collections is expected as a result of the bill.

Because the bill deals exclusively with property taxes, there is no fiscal impact to the state. The bill should not have an impact on revenues at the local level, as it makes no change to the tax law itself. It only alters the day on which the county may take a "snapshot" of its fiscal year revenue for budgeting purposes. As a result of this shift in the snapshot date, and the extra time it allows for collection of delinquent bills before the rate is set, the bill may allow counties to use a higher property tax collection rate when determining their budget for the coming fiscal year. For example, a county may have a 90% collection rate for motor vehicles on March 31. Many of the unpaid amounts are likely to be only one or two month delinquent. By allowing the county additional time before the snapshot is taken, the county may be able to employ more of their usual collection tactics before the snapshot. This could raise their vehicle collection rate to 95%. The counties would normally employ these collection methods even after the March deadline. However, this would allow the counties to count the additional revenue collected towards their collection ratio. In the example above, the county's budget could now legally reflect a 95% collection rate on vehicles, instead of the 90% rate. This allows them more availability for budgeting purposes. It does not, however, actually increase overall revenues.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Linda Struyk Millsaps

APPROVED BY: Tom Covington

DATE: Tuesday, April 06, 1999

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 56
Proposed Committee Substitute S56-PCS2641-LA

Short Title: Sunset/Term of Energy Savings Contracts. (Public)

Sponsors:

Referred to:

February 9, 1999

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE SUNSET REGARDING THE AUTHORITY OF LOCAL GOVERNMENTAL UNITS TO ENTER INTO GUARANTEED ENERGY SAVINGS CONTRACTS FOR LOCAL PUBLIC FACILITIES AND TO EXTEND THE CURRENT MAXIMUM DURATION OF THESE CONTRACTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-64.17(1) reads as rewritten:

"(1) 'Energy conservation measure' means a facility ~~alteration or training~~ alteration, or training or services related to the operation of the ~~facility~~ facility, ~~that reduces energy consumption or operating costs and includes:~~ when the alteration, training, or services provide anticipated energy savings. Energy conservation measure includes any of the following:

a. Insulation of the building structure and systems within the ~~building;~~ building.

b. Storm windows or doors, caulking, weatherstripping, multiglazed windows or doors, heat-absorbing or heat-reflective glazed or coated window or door systems, additional glazing, reductions in glass area, or other window or door system modifications that reduce energy ~~consumption;~~ consumption.

c. Automatic energy control ~~systems;~~ systems.

d. Heating, ventilating, or air-conditioning system modifications or ~~replacements;~~ replacements.

e. Replacement or modification of lighting fixtures to increase the energy efficiency of a lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to the applicable State or local building code or is required by the light system after the proposed modifications are ~~made;~~ made.

f. Energy recovery ~~systems;~~ systems.

g. Cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of ~~buildings; or~~ buildings.

h. Other energy conservation ~~measures that provide long-term operating cost reductions or significantly reduce energy consumed~~ measures."

Section 2. G.S. 143-64.17(2) reads as rewritten:

"(2) 'Energy savings' means a measured reduction in ~~fuel;~~ fuel costs, ~~energy;~~ energy costs, or operating costs created from the implementation of one or more energy conservation measures when compared with an established baseline of previous ~~fuel;~~ fuel costs, ~~energy;~~ energy costs, or operating costs developed by the local governmental unit."

Section 3. G.S. 143-64.17B reads as rewritten:

"**§ 143-64.17B. Guaranteed energy savings contracts.**

(a) A local governmental unit may enter into a guaranteed energy savings contract with a qualified provider if all of the following apply:

(1) The term of the contract does not exceed ~~eight years from the date of~~ two-thirds of the anticipated remaining useful life of the facility after the installation ~~or acceptance by the local governmental unit~~ or commencement of the energy conservation measures provided for under the ~~contract.~~ contract or 25 years, whichever is less.

(2) The local governmental unit finds that the energy savings resulting from the performance of the contract will equal or exceed the total cost of the contract.

(3) The energy conservation measures to be installed under the contract are for an existing building.

(b) Before entering into a guaranteed energy savings contract, the local governmental unit shall provide published notice of the meeting at which it proposes to award the contract, the names of the parties to the proposed contract, and the contract's purpose. The notice must be published at least 15 days before the date of the meeting.

(c) A qualified provider entering into a guaranteed energy savings contract under this Part shall provide a bond to the local governmental unit in the amount equal to one hundred percent (100%) of the total cost of the guaranteed energy savings

contract to assure the provider's faithful performance. Any bonds required by this subsection shall be subject to the provisions of Article 3 of Chapter 44A of the General Statutes. If the savings resulting from a guaranteed energy savings contract are not as great as projected under the contract and all required shortfall payments to the local governmental unit have not been made, the local governmental unit may terminate the contract without incurring any additional obligation to the qualified provider.

(d) As used in this section, 'total cost' shall include, but not be limited to, costs of construction, costs of financing, and costs of maintenance and training during the term of the contract. 'Total cost' does not include any obligations on termination of the contract before its expiration, provided that those obligations are disclosed when the contract is executed.

(e) A guaranteed energy savings contract may not require the local governmental unit to purchase a maintenance contract or other maintenance agreement from the qualified provider who installs energy conservation measures under the contract if the local unit of government takes appropriate action to budget for its own forces or another provider to maintain new systems installed and existing systems affected by the guaranteed energy savings ~~contract.~~ contract, in accordance with manufacturer's standards or other reasonable standards specifically provided in the guaranteed energy savings contract."

Section 4. Section 10 of Chapter 775 of the 1993 Session Laws, as amended by Section 3 of Chapter 295 of the 1995 Session Laws, reads as rewritten:

~~"Sec. 10. A local governmental unit may not enter into a guaranteed energy savings contract under Part 2 of Article 3B of Chapter 143 of the General Statutes, as enacted by this act, on or after July 1, 1999."~~

Section 5. Sections 1 through 3 of this act become effective July 1, 1999, and apply to contracts entered into on or after that date. The remaining sections of this act are effective when they become law.

SENATE BILL 56 (PCS): Sunset/Term of Energy Savings Contracts

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Senator Lee
Date:	April 6, 1999	**Summary by:**	Sara Kamprath and Martha Walston
Version:	Proposed Committee Substitute		

SUMMARY: ***The proposed committee substitute for Senate Bill 56 extends the maximum term of a guaranteed energy savings contract to 2/3 of the anticipated remaining useful life of the facility or 25 years, whichever is less. The sunset date of July 1, 1999 for local governmental units to enter into these contracts is repealed. SB 56 was given a favorable report in Senate Education/Higher Education on March 18 and was re-referred to Senate Finance. The PCS makes only a technical change.***

CURRENT LAW:

Part 2 of Article 3B of Chapter 143 (Guaranteed Energy Savings Contracts for Local Government Units) was a recommendation of the 1991 LRC Committee on Ways to Promote the Conservation of Energy and the Use of Renewable Energy Sources in Residential, Commercial, Industrial and Public Facilities. Local units of government, including any board of a community college or a school board, are allowed to enter into a guaranteed energy savings contract if all of the following conditions are met:

1. The term of the contract does not exceed eight years from the date of installation and acceptance of the energy conservation measures provided for in the contract;
2. The energy savings will equal or exceed the total cost of the contract; and
3. The energy conservation measures are for an existing building.

The guaranteed energy savings contracts are awarded through a request for proposals (RFP) process set out in the statute. Once a contract is awarded, the contract and its terms must be reported to the Local Government Commission. The Local Government Commission shall compile this information and report it to the Joint Legislative Commission on Governmental Operations. In 1995, the General Assembly extended a local government's authority to enter into guaranteed energy savings contracts for an additional two years until July 1, 1999.

BILL ANALYSIS:

Sections 1 and 2 of the bill make clarifying and stylistic changes.

Section 3 amends G.S. 143-64.17B(a) to increase the maximum term of a guaranteed energy savings contract from the current 8 years to two-thirds of the anticipated remaining useful life of the facility or 25 years, whichever is less. This section also amends G.S. 143-64.17B(e) to provide that if a local governmental unit maintains the energy conservation measures on its own or through another provider other than the original installer, then the maintenance must be in accordance with the manufacturer's standards or other reasonable standards provided for in the contract.

Section 4 repeals the sunset that prohibits a local governmental unit from entering into one of the above guaranteed energy savings contract on or after July 1, 1999.

Sections 1 through 3 become effective July 1, 1999 and apply to contracts entered into on or after that date. The remaining sections of the act are effective when they become law.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 56 (First Edition)

SHORT TITLE: Sunset/Term of Energy Saving Contracts

SPONSOR(S): Senator Lee

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES	see **ASSUMPTIONS AND METHODOLOGY**				
EXPENDITURES	see **ASSUMPTIONS AND METHODOLOGY**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: **Department of State Treasurer – Local Government Commission; City and County local governmental units**

EFFECTIVE DATE: Sections 1 to 3 (increase term of contract and make stylistic changes) become effective July 1, 1999. Section 4 (repeal sunset) is effective upon ratification.

BILL SUMMARY: Senate Bill 56 repeals the sunset for local governments entering into energy savings contracts on or after July 1, 1999. In addition, the bill increases the maximum term of guaranteed energy savings contracts from 8 years to two-thirds of the anticipated remaining useful life of the facility or 25 years, whichever is less.

ASSUMPTIONS AND METHODOLOGY: The State Treasurer's Director of State and Local Government Finance believes the bill will provide local governments with an opportunity to save money through energy conservation efforts, but the savings cannot be quantified. Section 1 of the bill expands the definition of energy conservation measures to include training and services. This will permit local governments to finance items not currently allowed in installment debt financing. The Local Government Commission will work with local governmental units to review the appropriateness of using guaranteed energy savings contracts.

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

APPROVED BY:
DATE:

VISITOR REGISTRATION SHEET

SENATE FINANCE — WEDNESDAY, APRIL 14, 1999

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Daniel Burbank	State Construction
[illegible]	DOT
Kristen Mitchell	NYSRNG
Patti Seawell	NC DOR
Sperry Hayes	State Const. Office
Mike Carnes	NCHSA
Carl Wilms	NCHSA
C. Porter	Bone & Associates
Dennis Mayorem	Forsyth County
Tom Morrow	Sprint
George Everett	Duke Energy

VISITOR REGISTRATION SHEET

SENATE FINANCE — WEDNESDAY, APRIL 14, 1999

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jane Upchurch	CP&L
Lori Monteith	Poyner & Spruill
Don Visser	Poyner & Spruill
Don Clark	Johnson Controls, Inc.
Mary Carmichael	Mecklenburg County
Kim Hibbard	NCLM
Walter Price	Charlotte Chamber
Henry Jones	Attorney - Raleigh
Carlton Mynatt	DOT
David Baker	DOR
Katie Cashers	SCO

VISITOR REGISTRATION SHEET

SENATE FINANCE — WEDNESDAY, APRIL 14, 1999

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kevin D. Howell	Governor's Office
Larry Heckner	Household Financial Group
Roz Sewell	na cdl
Gerry Hancock	EGHS
J. Blackburn	Association of County Comms
Harold H. Webb	Auto Dealers
Guy Hayes	Kilpatrick Stockton
Charles Francis	Wood & Francis, PLLC

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Tuesday, April 20, 1999

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

FAVORABLE

S.B. **130** Remove Flexible Benefits Sunset.
Sequential Referral: None
Recommended Referral: None

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

S.B. **56** Sunset/Term of Energy Savings Contracts.
Draft Number: PCS2641
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

S.B. **314** Mineral Springs Incorporated.
Draft Number: PCS1711
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

S.B. **484** RMV Tax Budgeting.
Draft Number: PCS7664
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

S.B. **703** Hampstead Incorporation.
Draft Number: PCS6656
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 5

Committee Clerk Comment: 3 31 SB 130 4 14 SB 56 314 484 703

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Wednesday, April 14, 1999

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

FAVORABLE

S.B. **313** Mecklenburg Stormwater Fees.
Sequential Referral: None
Recommended Referral: None

S.B. **675** Unionville Charter Corrections.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 2

Committee Clerk Comment: April 14 SB 313 and 675

AGENDA

SENATE FINANCE COMMITTEE

WEDNESDAY, APRIL 21, 1999

1:30 PM – ROOM 544 LOB

MEETING CALLED TO ORDER

INTRODUCTION OF PAGES

BILLS TO BE HEARD:

LOCAL BILLS:

SB 385 – Use of Sch. Buses OK'd/U.S. Open – Senator Lee
SB 468 – Winston-Salem/Forsyth Assessments – Senator Horton
SB 625 – Durham Privilege License Technical – Senator Lucas
SB 645 – Parmele Annexation – Senator Robert Martin
SB 694 – Rhimertown Incorporated – Senator Hartsell

PUBLIC BILLS:

SB 290 – Lobbying Law Amendments – Senator Miller
SB 325 – Continuing Care Retirement Homes – Senator Hoyle
SB 606 – Tourism Resort ABC Permits – Senator Ballance
SB 772 – Expand Municipal Service District – Senator Clodfelter
SB 776 – Remove Sunset/Purchasing Exemptions – Senator Rand
SB 878 – Nonprofit Water Corporation Loans – Senator Kerr

ADJOURNMENT OF MEETING

SENATE FINANCE COMMITTEE

WEDNESDAY, APRIL 21, 1999

1:30 PM – ROOM 544

The Senate Finance Committee met on Wednesday, April 21, 1999, at 1:30 PM in Room 544 with Senator Hoyle presiding. There were 23 committee members present. Chris Livermore an Adam Wright both from Gastonia, North Carolina and both sponsored by Senator Hoyle were introduced as the pages for the meeting.

SB 468 – Winston-Salem/Forsyth Asessments

Senator Horton was recognized to explain this bill. Senator Cooper moved for adoption of a committee substitute to the bill for the purpose of discussion, motion passed. After the explanation of the committee substitute by Senator Horton, Senator Albertson moved for a "Favorable Report", motion passed. Copy of the Bill and supporting documents included in the minutes.

SB 625 – Durham Privilege License Technical

Martha Walston, Staff Attorney to the Senate Finance Committee, was recognized to explain the bill in the absence of Senator Lucas, who was the Bill Sponsor. After her explanation, Senator Dannelly moved for a "Favorable Report", motion pass. Copy of bill is included in the minutes.

SB 645 – Parmele Annexation

Martha Walston, Staff Attorney to the Senate Finance Committee, was recognized to explain the bill in the absence of Senator Robert Martin, who was the Bill Sponsor. After her explanation, Senator Albertson moved for a "Favorable Report", motion passed. Copy of bill is included in the minutes.

SB 772 – Expand Municipal Service District

Senator Clodfelter was recognized to explain this bill and at the conclusion of the explanation, Senator Dannelly moved for a "Favorable Report", motion passed. Copy of the Bill and supporting documents included in the minutes.

SB 694 – Rhimertown Incorporated

Senator Hartsell was recognized to explain this bill and at the conclusion of the explanation, Senator Rand moved for a "Favorable Report", motion passed. Copy of the Bill included in the minutes.

SB 776 – Remove Sunset/Purchasing Exemptions

Senator Rand was recognized to explain this bill and at the conclusion of the explanation, Senator Dannelly moved for a "Favorable Report", motion passed. Copy of the Bill and supporting documents included in the minutes.

Senator Kerr took over the Meeting at this point so that Senator Hoyle could explain the next bill.

SB 325 – Continuing Care Retirement Homes

Senator Hoyle was recognized to explain the bill. Senator Hoyle sent forth an amendment to the bill, on Page 1, line 13 by rewriting the line to read "nonprofit corporations or associations that meet all of the following" and moved for the adoption of this amendment, motion passed. After Senator Hoyle's explanation of the now amended bill, Senator Dannelly moved for "Favorable as Amended and to be rolled into a committee substitute bill", motion passed. Copy of the bill and supporting documents included in the minutes.

Senator Hoyle returned to preside over the Meeting again.

SB 385 – Use of Sch. Buses OK'd/U.S. Open

Senator Lee was recognized to explain the bill. After his explanation, Senator Rand moved for a "Favorable Report", motion passed. Copy of the bill included in the minutes.

SB 878 – Nonprofit Water Corporation Loans

Senator Kerr was recognized to explain the bill. Mr. Sandy Boyette, Executive Director of the NC Rural Water Association, spoke on behalf of their organization. After Senator Kerr's explanation, Senator Wellons moved for a "Favorable Report", motion passed. Copy of bill and support document included in the minutes.

SB 290 – Lobbying Law Amendments

Senator Miller was recognized to explain the bill and at the conclusion of his explanation, Senator Dannelly moved for a "Favorable Report", motion passed. Copy of the bill and support document included in the minutes.

Meeting was adjourned.

David W. Hoyle, Co-Chair

John H. Kerr, III Co-Chair

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

Visitors' Sign Up Sheet is Attachment #1
Committee Report dated April 21, 1999 is Attachment #2
Committee Report dated April 22, 1999 is Attachment #3

NOTE: SB 606-Tourism Resort ABC Permits was not heard at this meeting

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 468

Short Title: Winston-Salem/Forsyth Assessments. (Local)

Sponsors: Senators Horton; and Garrou.

Referred to: Finance.

March 23, 1999

A BILL TO BE ENTITLED

AN ACT CONCERNING CORNER LOT ASSESSMENT EXEMPTIONS BY THE CITY OF WINSTON-SALEM AND FORSYTH COUNTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-219 reads as rewritten:

"**§ 160A-219. Corner lot exemptions.**

The council shall have authority to establish schedules of exemptions from assessments for corner lots when a project is undertaken along both sides of such lots. The schedules of exemptions shall be based on categories of land use (residential, commercial, industrial, or agricultural) and shall be uniform for each category. The schedule of exemptions may ~~not~~ provide for exemption of up to ~~more than~~ seventy-five percent (75%) of the frontage of any side of a corner lot, or ~~150~~ 200 feet, whichever is greater."

Section 2. This act applies only to the City of Winston-Salem, Forsyth County, and the City/County Utility Commission of Winston-Salem and Forsyth County, and to any property served by any of them.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 468
Proposed Committee Substitute S468-PCS2748-LA

Short Title: Winston-Salem/Forsyth Assessments. (Local)

Sponsors:

Referred to:

March 23, 1999

A BILL TO BE ENTITLED

AN ACT CONCERNING CORNER LOT ASSESSMENT EXEMPTIONS BY THE CITY OF WINSTON-SALEM AND FORSYTH COUNTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-219 reads as rewritten:

"**§ 160A-219. Corner lot exemptions.**

The council shall have authority to establish schedules of exemptions from assessments for corner lots when a project is undertaken along both sides of such lots. The schedules of exemptions shall be based on categories of land use (residential, commercial, industrial, or agricultural) and shall be uniform for each category. The schedule of exemptions may ~~not~~ provide for exemption of up to ~~more than~~ seventy-five percent (75%) of the frontage of any side of a corner lot, or ~~150~~ 200 feet, whichever is greater."

Section 2. G.S. 153A-187 reads as rewritten:

"**§ 153A-187. Corner lot exemptions.**

The board of commissioners may establish schedules of exemptions from assessments for water or sewer projects for corner lots when water or sewer lines are installed along both sides of the lots. A schedule of exemptions shall be based on categories of land use (residential, commercial, industrial, and agricultural) and shall be uniform for each category. A schedule may ~~not~~ allow exemption of up to ~~more than~~ seventy-five percent (75%) of the frontage of any side of a corner lot, or ~~150~~ 200 feet, whichever is greater."

Section 3. This act applies only to the City of Winston-Salem, Forsyth County, and the City/County Utility Commission of Winston-Salem and Forsyth County, and to any property served by any of them. To the extent this act conflicts with Chapter 224 of the Private Laws of 1927, this act prevails.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 468
Proposed Committee Substitute S468-CSLA-001
WARNING: LINE NUMBERS MAY CHANGE AFTER ADOPTION.

Short Title: Winston-Salem/Forsyth Assessments. (Local)

Sponsors:

Referred to: Finance.

March 23, 1999

A BILL TO BE ENTITLED

AN ACT CONCERNING CORNER LOT ASSESSMENT EXEMPTIONS BY THE CITY OF WINSTON-SALEM AND FORSYTH COUNTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-219 reads as rewritten:

"**§ 160A-219. Corner lot exemptions.**

The council shall have authority to establish schedules of exemptions from assessments for corner lots when a project is undertaken along both sides of such lots. The schedules of exemptions shall be based on categories of land use (residential, commercial, industrial, or agricultural) and shall be uniform for each category. The schedule of exemptions may ~~not~~ provide for exemption of up to ~~more than~~ seventy-five percent (75%) of the frontage of any side of a corner lot, or ~~150~~ 200 feet, whichever is greater."

Section 2. G.S. 153A-187 reads as rewritten:

"**§153A-187. Corner lot exemptions.**

The board of commissioners may establish schedules of exemptions from assessments for water or sewer projects for corner lots when water or sewer lines are installed along both sides of the lots. A schedule of exemptions shall be based on categories of land use (residential, commercial, industrial, and agricultural) and shall be uniform for each category. A schedule

may ~~not~~ allow exemption of up to ~~more than~~ seventy-five percent (75%) of the frontage of any side of a corner lot, or ~~150~~ 200 feet, whichever is greater."

Section 3. This act applies only to the City of Winston-Salem, Forsyth County, and the City/County Utility Commission of Winston-Salem and Forsyth County, and to any property served by any of them. To the extent this act conflicts with Chapter 224 of the Private Laws of 1927, this act prevails.

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

SENATE BILL 468:
Winston-Salem/Forsyth Assessments

BILL ANALYSIS

Committee:	Senate Finance Committee	**Introduced by:**	Senator Horton
Date:	April 21, 1999	**Summary by:**	Martha K. Walston
Version:	Proposed Committee Substitute		Committee Counsel

SUMMARY: ***Senate Bill 468 amends the city and county statutes to authorize the governing body to expand the exemption from assessments for corner lots when a project is undertaken along both sides of such lots. This is a local act applying only to the City of Winston-Salem, Forsyth County, the City/County Utility Commission of Winston-Salem and Forsyth County, and any property served by these entities***

CURRENT LAW: The statutes regarding corner lot exemptions for cities and counties authorize the respective governing body to establish schedules of exemptions from assessments for corner lots. These schedules of exemptions are based on categories of land use. The schedule for exemption may provide for exemption from assessments for corner lots of up to 75% of the frontage of any side of a corner lot, or 150 feet, whichever is greater

BILL ANALYSIS: **SB 468** expands this exemption from assessments to include corner lots of up to 75% of the frontage of any side of a corner lot or **200** feet, whichever is greater. The proposed committee substitute makes a corresponding change to the statute regarding the counties' authority over corner lot exemptions, and clarifies that this act prevails over any conflicting provision in the private laws pertaining to Winston-Salem.

The act applies only to the City of Winston-Salem, Forsyth County, and the City/County Utility Commission of Winston-Salem and Forsyth County, and to any property served by any of these entities. The act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 625

Short Title: Durham Privilege License Technical. (Local)

Sponsors: Senators Lucas; and Gulley.

Referred to: State and Local Government.

March 30, 1999

A BILL TO BE ENTITLED

AN ACT TO REPEAL AN OBSOLETE SECTION OF THE CHARTER OF THE CITY OF DURHAM REGARDING THE PRIVILEGE LICENSE TAX YEAR.

The General Assembly of North Carolina enacts:

Section 1. Section 47 of the Charter of the City of Durham, being Chapter 671 of the 1975 Session Laws, is repealed.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 645

Short Title: Parmele Annexation. (Local)

Sponsors: Senator Martin of Pitt.

Referred to: Finance.

March 30, 1999

A BILL TO BE ENTITLED

AN ACT ADDING CERTAIN DESCRIBED PROPERTY TO THE CORPORATE LIMITS OF THE TOWN OF PARMELE.

The General Assembly of North Carolina enacts:

Section 1. The following described property is added to the corporate limits of the Town of Parmele.

Tract 1

That certain tract of land located on the south side of the southern town limits of the Town of Parmele, in Robersonville Township, Martin County, State of North Carolina, and described as follows:

BEGINNING at a concrete monument located at the point of intersection of the boundary line representing the eastern corporate limits and the boundary line representing the southern corporate limits of the Town of Parmele, which concrete monument is also located S 12-00-00 W 2640.00 feet along the line of the eastern corporate limits of the Town of Parmele from a half-mile post in the eastern corporate limits located on the Seaboard Coastline Railroad, formerly the Albemarle and Raleigh Railroad, and which half-mile post marks the point of beginning in the description of the corporate limits for the Town of Parmele as described in "An act to incorporate the town of Parmele, in the county of Martin", which act was ratified by the General Assembly of North Carolina on the 14th day of February, 1893; thence running along a southwardly extension of the line of the eastern corporate

limits of the Town of Parmele S 12-00-00 W 618.00 feet to a point, a corner; thence N 78-00-00 W 5280.00 feet along a line parallel to the line of the southern corporate limits of the Town of Parmele to a point which would be intersected by a southwardly extension of the boundary line representing the western corporate limits of the Town of Parmele, a corner; thence N 12-00-00 E 618.00 feet along a line representing a southwardly extension of the line of the western corporate limits of the Town of Parmele to a concrete monument located at the point of intersection of the boundary line representing the western corporate limits of the Town of Parmele and the boundary line representing the southern corporate limits of the Town of Parmele, a corner; thence along the line of the southern corporate limits of the Town of Parmele S 78-00-00 E 5280.00 feet to a concrete monument located at the point of intersection of the line of the southern corporate limits and the line of the eastern corporate limits of the Town of Parmele, the point of beginning.

Tract 2

That certain tract of land located on both sides of U.S. Highway No. 64 on the west side of the western town limits of the Town of Parmele, in Robersonville Township, Martin County, State of North Carolina, and described as follows:

BEGINNING at the point of intersection of the northern right-of-way (100 feet wide) line of U.S. Highway No. 64 and the boundary line representing the western corporate limits of the Town of Parmele, said point of beginning also being located S 12-00-00 W 919.84 feet along the line of the western corporate limits of the Town of Parmele from the point of intersection of the boundary line representing the western corporate limits and the boundary line representing the northern corporate limits of the Town of Parmele; and running thence from the point of beginning S 12-00-00 W 412.15 feet along the line of the western corporate limits of the Town of Parmele to a point therein, a corner; thence N 76-17-22 W 1837.62 feet to a point in the southern right-of-way line of U.S. Highway No. 64, a corner; thence running with a line across U.S. Highway No. 64, N 70-51-31 E 624.49 feet to a point in the northern right-of-way line of U.S. Highway No. 64, a corner; thence N 00-50-04 W 107.54 feet; thence N 46-19-56 E 125.42 feet; thence S 81-22-56 E 187.79 feet; thence running S 78-44-49 E 1068.08 feet along a line to its point of intersection with the line of the western corporate limits of the Town of Parmele, a corner; thence S 12-00-00 W 199.09 feet along the line of the western corporate limits of the Town of Parmele to its point of intersection with the northern right-of-way line of U.S. Highway No. 64, the point of beginning.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 772

Short Title: Expand Municipal Service Districts. (Public)

Sponsors: Senators Clodfelter; Dannelly and Odom.

Referred to: Finance.

April 7, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CREATION OF MUNICIPAL SERVICE DISTRICTS IN CERTAIN CITIES FOR URBAN AREA REVITALIZATION PROJECTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-536 reads as rewritten:

"**§ 160A-536. Purposes for which districts may be established.**

(a) Purposes. -- The city council of any city may define any number of service districts in order to finance, provide, or maintain for the districts one or more of the following services, facilities, or functions in addition to or to a greater extent than those financed, provided or maintained for the entire city:

(1) Beach erosion control and flood and hurricane protection ~~works;~~ works.

(1a) (For applicability see note) Any service, facility, or function which the municipality may by law provide in the city, and including but not limited to placement of utility wiring underground, placement of period street lighting, placement of specially designed street signs and street furniture, landscaping, specialized street and sidewalk paving, and other appropriate improvements to the rights-of-way that generally preserve the character of an historic district; provided that this subdivision only applies to a service district which, at the time of its creation, had the same boundaries as an historic district created under Part 3A of Article 19 of this ~~Chapter;~~ Chapter.

(2) Downtown revitalization ~~projects;~~ projects.
(2a) Urban area revitalization projects.
(3) Drainage ~~projects;~~ projects.
(3a) Sewage collection and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or ~~systems;~~ systems.
(4) Off-street parking ~~facilities; and~~ facilities.
(5) Watershed improvement projects, including but not limited to watershed improvement projects as defined in General Statutes Chapter 139; drainage projects, including but not limited to the drainage projects provided for by General Statutes Chapter 156; and water resources development projects, including but not limited to the federal water resources development projects provided for by General Statutes Chapter 143, Article 21.

(b) Downtown Revitalization Defined. -- As used in this section "downtown revitalization projects" include by way of illustration but not limitation improvements to water mains, sanitary sewer mains, storm sewer mains, electric power distribution lines, gas mains, street lighting, streets and sidewalks, including rights-of-way and easements therefor, the construction of pedestrian malls, bicycle paths, overhead pedestrian walkways, sidewalk canopies, and parking facilities both on-street and off-street, and other improvements intended to relieve traffic congestion in the central city, improve pedestrian and vehicular access thereto, reduce the incidence of crime therein, and generally to further the public health, safety, welfare, and convenience by promoting the economic health of the central city or downtown area. In addition, a downtown revitalization project may, in order to revitalize a downtown area and further the public health, safety, welfare, and convenience, include the provision of city services or functions in addition to or to a greater extent than those provided or maintained for the entire city. A downtown revitalization project may also include promotion and developmental activities (such as sponsoring festivals and markets in the downtown area, promoting business investment in the downtown area, helping to coordinate public and private actions in the downtown area, and developing and issuing publications on the downtown area) designed to improve the economic well-being of the downtown area and further the public health, safety, welfare, and convenience. Exercise of the authority granted by this Article to undertake downtown revitalization projects financed by a municipal service district shall not prejudice the city's authority to undertake urban renewal projects in the same area.

(c) Urban Area Revitalization Defined. -- As used in this section, the term 'urban area revitalization projects' includes the provision within an urban area of any service or facility that may be provided in a downtown area as a downtown revitalization project under subdivision (a)(2) and subsection (b) of this section. As used in this section, the term 'urban area' means an area that (i) is located within a city whose population exceeds 400,000 according to the most recent annual population statistics certified by the State Planning Officer and (ii) meets one or more of the following conditions:

(1) It is the central business district of the city.
(2) It consists primarily of existing or redeveloping concentrations of industrial, retail, wholesale, office, or significant employment-generating uses, or any combination of these uses.
(3) It is located in or along a major transportation corridor and does not include any residential parcels that are not, at their closest point, within 150 feet of the major transportation corridor right-of-way or any nonresidentially zoned parcels that are not, at their closest point, within 1,500 feet of the major transportation corridor right-of-way.
(4) It has as its center and focus a major concentration of public or institutional uses, such as airports, seaports, colleges or universities, hospitals and health care facilities, or governmental facilities.

(d) Contracts. -- A city may provide services, facilities, functions, or promotional and developmental activities in a service district with its own forces, through a contract with another governmental agency, through a contract with a private agency, or by any combination thereof. Any contracts entered into pursuant to this paragraph shall specify the purposes for which city moneys are to be used and shall require an appropriate accounting for those moneys at the end of each fiscal year or other appropriate period."

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

SENATE BILL 772:
Expand Municipal Service District

BILL ANALYSIS

Committee:	Senate Finance Committee	**Introduced by:**	Sen. Clodfelter
Date:	April 20, 1999	**Summary by:**	Martha K. Walston
Version:	1st Edition		Committee Counsel

*SUMMARY: **Senate Bill 772 expands the purposes for which service districts may be established in certain cities to include "urban area revitalization projects".***

CURRENT LAW: Article 23 of Chapter 160A sets out "The Municipal Service District Act of 1973". This Act allows a city council, by resolution, to define a service district upon finding that a proposed district is in need of one or more of the services, facilities or functions listed in the Act to a demonstrably greater extent than the remainder of the city. A service district may be established for the following purposes: (1) beach erosion control and flood and hurricane protection; (1a) certain services, facilities, or functions that preserve the character of an historic district; (2) downtown revitalization projects; (3) drainage projects, (4) off-street parking facilities; and (5) watershed improvement projects. A city may levy property taxes within defined service districts in addition to those levied throughout the city. The property taxes may not be in excess of a rate on each $100 value of property subject to taxation which, when added to the rate levied city wide, would exceed a maximum combined rate of $1.50 on the $100 appraised value of property subject to taxation. A city may also issue general obligation bonds to finance the services provided in a service district.

BILL ANALYSIS: Senate Bill 772 adds "urban area revitalization projects" to the purposes for which a service district may be established. Such projects include the providing of a service or facility within an urban area that may be provided in a downtown area as a downtown revitalization project. "Urban area " is defined as an area located within a city whose population exceeds 400,000 according to the most recent annual population statistics certified by the State Planning Officer and meets one or more of the following conditions:

1. Is the central business district of the city.
2. Consists primarily of industrial, retail, wholesale, office or significant employment generating uses.
3. Is on major transportation corridor and does not contain residential parcels within 150 feet of corridor right-of-way or nonresidentially zoned parcels within 1,500 feet of right-of-way.
4. Has as its focus a major concentration of public or institutional uses.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 772 DRAFT

SHORT TITLE: Expand Municipal Service Districts

SPONSOR(S): Senators Clodfelter, Dannelly, and Odom.

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
General Fund Impact	No General Fund Impact				
EXPENDITURES					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Municipalities.

EFFECTIVE DATE: When it becomes law.

BILL SUMMARY: Currently any city council may create service districts to finance, provide, or maintain certain city services, facilities or functions. Under present law councils can create special districts for beach erosion control, flood and hurricane protection, downtown revitalization projects, drainage projects, sewage collection and disposal, off street parking, and watershed improvements. Special districts are also created for historical district services and improvements. The bill extends city council authority to include the creation of a special urban area revitalization district.

ASSUMPTIONS AND METHODOLOGY: The bill defines an urban area as an area located in a city of more than 400,000 and meets at least one of the following requirements:

1). Is a central business district,
2). Consists primarily of industrial, retail, wholesale, office or significant employment generating uses,
3). Is on a major transportation corridor and does not contain residential parcels within specified distances, or
4). Has as its focus a major concentration of public or institutional uses.

According to the Office of State Planning only one municipality has a population in excess of 400,000. This office reports that Charlotte had a 1997 population of 516,341. The next largest cities were Raleigh with 266,530 residents and Greensboro with a population of 203,342. While projected municipal populations are not available, the Office of State Planning estimates that only Guilford, Mecklenburg, and Wake counties will have a population that exceeds 400,000 by July 2008. Therefore, the bill only applies to Charlotte, and could only realistically apply to Raleigh and Greensboro in the next ten years.

The bill has no General Fund impact, as it only addresses local fees. It may increase the tax and fee burden on some Charlotte, and later Raleigh and Greensboro, residents. However, Fiscal Research can not anticipate the additional tax burden since the bill does not set rates.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Linda Struyk Millsaps

APPROVED BY:

DATE: April 21, 1999

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 694

Short Title: Rimertown Incorporation. (Local)

Sponsors: Senator Hartsell.

Referred to: Rules and Operations of the Senate.

April 1, 1999

A BILL TO BE ENTITLED

AN ACT TO INCORPORATE THE TOWN OF RIMERTOWN SUBJECT TO A REFERENDUM.

The General Assembly of North Carolina enacts:

Section 1. A Charter for the Town of Rimertown is enacted to read:

"CHARTER OF THE TOWN OF RIMERTOWN.

"CHAPTER I.

"INCORPORATION AND CORPORATE POWERS.

"Section 1.1. **Incorporation and Corporate Powers.** The inhabitants of the Town of Rimertown are a body corporate and politic under the name 'Town of Rimertown'. Under that name they shall have all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general law of North Carolina.

"CHAPTER II.

"CORPORATE BOUNDARIES.

"Section 2.1. **Town Boundaries.** Until modified in accordance with the law, the corporate boundaries of the Town of Rimertown are as follows:

BEGINNING in Cabarrus County at a point in the centerline of Gold Hill Road (SR 2408) due south of the centerline of Rimer Road (SR 2429), thence in a east-northeast direction to the intersection of the centerline of Gold Hill Road (SR 2408) and Cline School Road (SR 2427), thence in a northeasterly direction to a point approximately 697 feet northeast of the centerline of Jennie Wolfe Creek, being the

northeast corner of property described by Cabarrus County Tax Maps as Map/PIN 5662-47-1320.

Continuing in a northwest direction along the northern property line of Map/PIN 5662-47-1320 for approximately 815.83 feet, crossing Jennie Wolfe Creek at approximately 500 feet, thence in a northeasterly direction for approximately 300 feet to the centerline of Jennie Wolfe Creek. Thence continuing in a west-northwest direction along Jennie Wolfe Creek, the creek being showed property lines with the following Map/PINs 5662-37-0824 and 5662-38-8375, 5662-29-9245 and 5662-48-2832 and 5662-49-6146, 5663-21-5019 and 5662-49-6146, 5662-49-8551, to the northernmost point in Map/PIN 5662-59-2563 in the centerline of Jennie Wolfe Creek, thence in a southeast direction to the southernmost point in Map/PIN 5663-32-4457. Thence in a northeast direction along the eastern boundaries of Map/PINs 5663-32-4457, 5663-23-6175, 5663-34-2252 and 5663-26-4073 to the southeast corner of Map/PIN 5663-26-4073, thence in a northwest direction from that corner to a point in the centerline of Jennie Wolfe Creek, continuing with the centerline of Jennie Wolfe Creek in a northeast direction to the centerline of Kluttz Road (SR 2435).

Continuing in a southwest direction with Kluttz Road (SR 2435) for approximately 100 feet to the southeast corner of Map/Pin 5663-46-6452, thence in a northerly direction to the northeast corner of Map/PIN 5663-46-6452. Thence in a northwest direction to the northernmost corner of Map/PIN 5663-46-0501, thence in a southerly direction along the western line of Map/PIN 5663-46-0501 to a point in the centerline of Kluttz Road (SR 2435), thence with the centerline of Kluttz Road (SR 2435) for a distance of approximately 513 feet to a 15-foot-wide portion of Map/PIN 5663-45-2340, crossing that portion to the corner of a portion of Map/PIN 5663-26-8734, thence in a line parallel to the 15-foot-wide portion of Map/PIN 5663-26-8734 for a length of approximately 200 feet in a southeasterly direction, thence in a southwesterly direction for a distance of approximately 200 feet, thence in a northwesterly direction for approximately 220 feet to the centerline of Kluttz Road (SR 2435).

Continuing from that point in the centerline of Kluttz Road (SR 2435) in a northwesterly direction along the northeast property line of Map/PIN 5663-26-4073, passing through a line shared with Map/PIN 5663-16-9741 to a point in the eastern property line of Map/PIN 5663-07-9409, thence in a northeasterly direction with the property line of Map/PIN 5663-07-9409 to a point in the property line of Map/PIN 5663-19-7038. Thence with a line shared by Map/PINs 5663-19-7038, 5663-26-8734, 5663-39-3485, 5663-26-8734, and 5663-28-9179 to the point of Map/PIN 5663-28-9179 in Sisk-Carter Road (SR 2434), thence in a southwesterly direction following the eastern line of a portion of Map/PIN 5663-93-3485 south of Sisk-Carter Road (SR 2434) for approximately 500 feet, thence with the southern line of Map/PIN 5663-93-3485 to the easternmost corner of Map/PIN 5663-58-1098 south of Sisk-Carter Road (SR 2434), thence in a northeasterly direction along the eastern line of Map/PIN

5663-49-4299 for approximately 392 feet to the center of Sisk-Carter Road (SR 2434), continuing in that northeasterly direction 863 feet to the northeast corner of Map/PIN 5663-49-4299.

From that point continuing along a northwest line along the rear property lines of Map/PINs 5663-49-4299 and 5663-49-1428 to a point in Map/PIN 5663-39-9608 approximately 20 feet northwest of the corner shared by Map/PINs 5663-49-1428 and 5663-39-9608, thence in a northerly direction to the northeast corner of Map/PIN 5663-39-9608, thence in an easterly direction with a line shared by Map/PINs 5663-39-9608, 5663-39-4931, 5664-20-6147 and 5664-20-0783 to the centerline of an unnamed dirt road, thence following the northern line of Map/PINs 5664-20-2270, 5664-10-5149 and 5664-00-7187 to the centerline of Rimer Road (SR 2429).

Continuing with the centerline of Rimer Road (SR 2429) in a southerly direction to the western edge of Map/PIN 5653-99-9111, thence in a line shared by Map/PINs 5653-99-9111 and 5653-98-7998 to the northernmost point of Map/PIN 5653-98-7998, thence with the line of Map/PIN 5653-98-7998 for 5 calls to the centerline of Rimer Road (SR 2429), thence with the center of Rimer Road (SR 2429) to the easternmost point of Map/PIN 5653-98-4817, thence with the line of Map/PIN 5653-98-4817 in a northwesterly direction to the eastern line of Map/PIN 5653-88-7937, thence in a northeasterly line of Map/PIN 5653-88-7937 to the easternmost corner of the property, thence in a northwestern direction within the northern lines of Map/PINs 5653-88-7937 and 5653-89-4038 to the northwest corner of Map/PIN 5653-89-4038, thence in a southwestern direction with the line shared by Map/PINs 5653-89-4038 and 5653-79-2735 to the northeast corner of Map/PIN 5653-89-1039, thence in a northeastern direction along the northern lines of Map/PINs 5653-89-1039 and 5653-79-7047 to the northwest corner of Map/PIN 5653-79-7047, thence in a southwesterly direction with the western line of Map/PIN 5653-79-7047 to the centerline of Phaniels Church Road (SR 2433).

Thence with the centerline of Phaniels Church Road (SR 2433) to a point where a 45' private right-of-way adjoins Phaniels Church Road (SR 2433) on the southern side of the road, thence with the 45' private right-of-way in a southern and western direction to the southwest corner of Map/PIN 5653-59-8350, thence in a northeasterly direction with the eastern line of Map/PIN 5653-59-8350 for a distance of approximately 398 feet to the centerline of Phaniels Church Road (SR 2433), thence returning in a southeasterly direction with the centerline of Phaniels Church Road (SR 2433) to the southeast corner of Map/PIN 5653-69-3781, thence in a northeastern direction to the northeast corner of Map/PIN 5653-69-3781, thence in a northwestern direction with the northern line of Map/PIN 5653-69-3781 to the eastern line of Map/PIN 5654-80-0109, thence in a northwestern direction with the line of Map/PIN 5654-80-0109 to the northeast corner of Map/PIN 5654-80-0109, thence in a northwestern direction to the northwest corner of Map/PIN 5654-80-0109, thence in a northeast direction with the line of Map/PIN 5654-50-6844 to the Rowan/Cabarrus

County line, thence with the Rowan/Cabarrus County line to the centerline of Phaniels Church Road (SR 2433), continuing with the Rowan/Cabarrus County line to the northwest corner of Map/PIN 5654-40-2963, thence with the line shared by Map/PINs 5654-40-2963 and 5654-40-8423 to the southwest corner of Map/PIN 5654-40-8423, thence with the western line of Map/PIN 5653-27-1609 for a distance of approximately 370 feet, thence in a southwestern direction on a line shared by Map/PINs 5653-39-9318 and 5653-39-6273 for approximately 915 feet to the northeast corner of Map/PIN 5653-39-6273, thence in a southeasterly direction for approximately 109 feet to a point in Map/PIN 5653-39-6273, thence in a southwesterly direction with the western lines of Map/PINs 5653-39-6273 and 5653-38-3602 to the centerline of Pless Road (SR 2432).

Continuing in an easterly direction with the centerline of Pless Road (SR 2432) to the western edge of Map/PIN 5653-37-6074, thence with the property line of Map/PIN 5653-37-6074 three different lines to the easternmost point of Map/PIN 5653-37-3965, thence in a westerly line with the southern line of Map/PIN 5653-37-6074 in a westerly direction to the westernmost part of Map/PIN 5653-37-6074, thence in a southeasterly direction with the line of Map/PIN 5653-37-6074 for approximately 100 feet to the northwestern corner of Map/PIN 5653-35-9469, thence in a southerly direction with the line of Map/PIN 5653-35-9469 to the centerline of Dutch Buffalo Creek, thence with the centerline of Dutch Buffalo Creek in a southerly direction with the centerline of Dutch Buffalo Creek being the western property lines with these Map/PINs 5653-35-9469, 5653-34-4556, 5653-32-4327, 5653-41-4938, 5653-40-5907, 5653-30-5169, 5652-39-6735, 5652-39-6374, 5652-39-6060, and 5652-37-6977 to the southeast corner of Map/PIN 5652-37-6977, thence with the southern line of Map/PIN 5652-37-6977 for a distance of approximately 1713 feet to a corner shared by Map/PIN 5652-37-6977 and Map/PIN 5652-46-2268.

Continuing in a southeasterly direction with the line shared by Map/PINs 5652-46-2268 and 5652-65-1952 to the easternmost point of Map/PIN 5652-46-2268, thence in a westerly direction with the line of Map/PIN 5652-46-2268 to a point shared by the southwest corner of Map/PIN 5652-46-2268 and the southwest corner of Map/PIN 5652-56-3192, thence in an easterly direction with the northern line of Map/PIN 5652-44-5766 to the northeast corner of Map/PIN 5652-44-5766, thence in a southwesterly direction with the western property lines of Map/PINs 5652-55-2303, 5652-43-9631, and 5652-54-3175 to the centerline of Gold Hill Road (SR 2408) to the point of BEGINNING.

"CHAPTER III.

"GOVERNING BODY.

"Section 3.1. **Structure of Governing Body; Number of Members.** The governing body of the Town of Rimertown shall be the Town Council, which shall have four members, and the Mayor.

"Section 3.2. **Temporary Officers.** Until the initial elections of 1999 provided for by Section 4.1 of this Charter, Terry D. Barbee, Clyde M. Drye, Jr., and Steve R.

Love are hereby appointed members of the interim Town Council. They shall jointly exercise the powers granted to the governing body until their successors are elected or appointed and qualified pursuant to this Charter.

"Section 3.3. **Manner of Electing Town Council; Term of Office.** The qualified voters of the entire Town shall elect the members of the Town Council and, except as provided in this section, they shall serve four-year terms. In 1999, the two candidates receiving the highest number of votes shall be elected to four- year terms and the two candidates receiving the next highest number of votes shall be elected to two-year terms. In 2001 and biennially thereafter, two members shall be elected to four- year terms.

"Section 3.4. **Manner of Electing Mayor; Term of Office.** The qualified voters of the entire Town shall elect the Mayor. In 1999 and quadrennially thereafter, the Mayor shall be elected for a term of four years.

"CHAPTER IV.

"ELECTIONS.

"Section 4.1. **Conduct of Town Elections.** Regular municipal elections shall be held in each odd-numbered year in accordance with the uniform municipal election laws of North Carolina. Elections shall be conducted on a nonpartisan basis and results determined by a plurality as provided in G.S. 163-292.

"CHAPTER V.

"ADMINISTRATION.

"Section 5.1. **Town to Operate Under Mayor-Council Plan.** The Town of Rimertown shall operate under the Mayor-Council form of government as provided in Part 3 of Article 7 of Chapter 160A of the North Carolina General Statutes."

Section 2. From and after the effective date of this act, the citizens and property in the Town of Rimertown shall be subject to municipal taxes levied for the year beginning July 1, 1999. For that purpose the Town shall obtain from Cabarrus County a record of property in the area herein incorporated which was listed for taxes as of January 1, 1999. The Town may adopt a budget ordinance for fiscal year 1999-2000 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year 1999-2000, ad valorem taxes may be paid at par or face amount within 90 days of adoption of the budget ordinance and thereafter in accordance with the schedule in N.C.G.S. 105-360. If this act is approved under Sections 3 and 4 of this act before July 1, 1999, the Town may adopt a budget ordinance for fiscal year 1998-99 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical.

Section 3. The Cabarrus County Board of Elections shall conduct an election on a date set by the Board, to be not less than 60 nor more than 120 days after this act becomes law, for the purpose of submission to the qualified voters of the area described in Section 2.1 of the Charter of the Town of Rimertown the question of whether or not the area shall be incorporated as the Town of Rimertown. Registration for the election shall be conducted in accordance with G.S. 163-288.2.

Section 4. In the election, the question on the ballot shall be:

"[ ]FOR [ ]AGAINST

Incorporation of the Town of Rimertown."

Section 5. In the election, if a majority of the votes are cast "For incorporation of the Town of Rimertown", Sections 1 through 2 of this act shall become effective on the date that the Cabarrus County Board of Elections certifies the results of the election. Otherwise, those sections shall have no force and effect.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 776

Short Title: Remove Sunset/Purchasing Exemptions. (Public)

Sponsors: Senator Rand.

Referred to: Finance.

April 7, 1999

A BILL TO BE ENTITLED

AN ACT TO REMOVE THE SUNSET ON THE LAW EXEMPTING CERTAIN GOVERNMENTAL ENTITIES FROM STATE PURCHASE AND CONTRACT REQUIREMENTS.

The General Assembly of North Carolina enacts:

Section 1. Section 4 of S.L. 1997-331 reads as rewritten:

"Section 4. This act is effective when it becomes ~~law and expires July 1, 1999.~~ law."

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

SENATE BILL 776:
Remove Sunset/Purchasing Exemptions

BILL ANALYSIS

Committee:	Senate Finance Committee	**Introduced by:**	Senator Rand
Date:	April 20, 1999	**Summary by:**	Martha K. Walston
Version:	1st Edition		Committee Counsel

SUMMARY: ***Senate Bill 776 removes the July 1, 1999 sunset on the law that exempts the North Carolina State Ports Authority, the North Carolina Seafood Industrial Park Authority, and Davie County from certain state purchase and contract requirements. The exemption for Davie County applies to contracting for the design and construction of jail and law enforcement facilities.***

CURRENT LAW: S.L. 1997-331 exempts the North Carolina State Ports Authority from certain state purchase and contract requirements only if the Authority finds that the delivery of a particular port facility must be expedited for good cause. The Authority must first give the Secretary of Administration written notice of its intent to exercise the exemption. This notice must set out the requirements to be exempted, the reason the exemption is necessary, and the way the Authority anticipates the exemption will expedite the delivery of the port facility. The Authority must report quarterly to the Joint Legislative Commission on Governmental Operations on any building contracts exceeding $250,000 to which an exemption applied. The State Ports Authority is exempt from the following requirements:

- G.S. 133-1.1(g) requires that plans and specifications be prepared by an architect and include color schedule.
- G.S. 143-128(a) through (e) require acceptance of bids for projects over $500,000 and separate specifications.
- G.S. 143-132 requires a minimum number of competitive bids (at least three)
- G.S. 143-135.26 sets out the powers and duties of the State Building Commission

The current law also exempts the North Carolina Seafood Industrial Park Authority from (1) the requirement to promote contracts with small, minority, physically handicapped and women contractors for supplies and services, (2) the requirements for public contracts, and (3) examination and approval of plans and specification by the Dept of Administration. With regard to the requirements in (1) and (2), the Seafood Industrial Park Authority must exercise the powers and duties set out in those requirements. The Authority must report quarterly to the Joint Legislative Commission on Governmental Operations on any purchases or building contracts exceeding $250,000 to which an exemption applied.

The current law authorizes Davie County to contract for the design and construction of jail and law enforcement facilities without being subject to the following requirements: promoting contracts with small, minority, physically handicapped and women contractors; accepting bids; and preparing separate specifications.

BILL ANALYSIS: **SB 776** removes the July 1, 1999 sunset on the law exempting the N.C. State Ports Authority, the N.C. Seafood Industrial Authority, and Davie County from the above State purchase and contract requirements.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 325*

Short Title: Continuing Care Retirement Homes. (Public)

Sponsors: Senators Hoyle, Purcell; Albertson, Forrester, and Plyler.

Referred to: Finance.

March 11, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE CORRECTIONS AND CONFORMING CHANGES RELATING TO TAXATION OF CONTINUING CARE RETIREMENT HOMES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-278.6A(c)(4) reads as rewritten:

"(c) Qualification. -- A retirement facility qualifies for the benefits of this section if it meets all of the following conditions:

. . .

(4) Its charter or ~~bylaws, as they existed on August 15, 1998,~~ bylaws provide that it is governed by a board of directors or trustees at least a majority of whose members are selected by one or more nonprofit ~~corporations~~ associations that meet all of the following conditions:

a. It is exempt under section ~~501(c)(3)~~ 501(c)(3), (8), or (10) of the Code.

b. It is organized for a charitable purpose as defined in G.S. 105-278.6.

c. It is not a private foundation as defined in section 509 of the Code."

Section 2. G.S. 105-275.2 is amended by adding a new subsection to read:

"(f) Additional Reduction. -- Each year, on or before July 15, the governing body of each county and each municipality shall notify the Secretary of the amount of

taxes it collected in the preceding fiscal year from taxes on qualified retirement facility property, as defined in G.S. 105-278.6A, discovered on or after January 1, 1998, for taxable years beginning on or after July 1, 1992. The Secretary shall reduce the amount allocated to each county and municipality for distribution the following August by one hundred ten percent (110%) of the amount the county or municipality reports pursuant to this subsection."

Section 3. The Legislative Research Commission shall conduct a comprehensive study of property tax exemptions for nonprofit institutions, including the history and evolution of such exemptions in North Carolina, the policy reasons for property tax exemptions, the effect of the exemptions on local governments and on other taxpayers, the extent to which other states provide property tax exemptions for nonprofit institutions, and any other issues it considers relevant. The Legislative Research Commission shall make a final report of its findings and recommendations to the 2000 Regular Session of the 1999 General Assembly.

Section 4. Section 2 of this act is effective on and after July 1, 1998, and expires September 1, 2003. Section 3 of this act is effective when it becomes law. The remainder of this act is effective for taxes imposed for taxable years beginning on or after July 1, 1998. Notwithstanding G.S. 105-275.2(f), as enacted by this act, the report otherwise due under that subsection on July 15, 1998, is due on July 15, 1999.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 325 Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Hoyle
)
Sen.)

moves to amend the bill on page 1, line 13

( ) WHICH CHANGES THE TITLE

by rewriting the line to read "nonprofit corporations or associations that meet all of the following"

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 325*
Proposed Committee Substitute S325-PCS1719-LA

Short Title: Continuing Care Retirement Homes. (Public)

Sponsors:

Referred to:

March 11, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE CORRECTIONS AND CONFORMING CHANGES RELATING TO TAXATION OF CONTINUING CARE RETIREMENT HOMES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-278.6A(c)(4) reads as rewritten:

"(c) Qualification. -- A retirement facility qualifies for the benefits of this section if it meets all of the following conditions:

. . .

(4) Its charter or ~~bylaws, as they existed on August 15, 1998,~~ bylaws provide that it is governed by a board of directors or trustees at least a majority of whose members are selected by one or more nonprofit corporations or associations that meet all of the following conditions:

a. It is exempt under section ~~501(c)(3)~~ 501(c)(3), (8), or (10) of the Code.

b. It is organized for a charitable purpose as defined in G.S. 105-278.6.

c. It is not a private foundation as defined in section 509 of the Code."

Section 2. G.S. 105-275.2 is amended by adding a new subsection to read:

"(f) Additional Reduction. -- Each year, on or before July 15, the governing body of each county and each municipality shall notify the Secretary of the amount of taxes it collected in the preceding fiscal year from taxes on qualified retirement facility property, as defined in G.S. 105-278.6A, discovered on or after January 1, 1998, for taxable years beginning on or after July 1, 1992. The Secretary shall reduce the amount allocated to each county and municipality for distribution the following August by one hundred ten percent (110%) of the amount the county or municipality reports pursuant to this subsection."

Section 3. The Legislative Research Commission shall conduct a comprehensive study of property tax exemptions for nonprofit institutions, including the history and evolution of such exemptions in North Carolina, the policy reasons for property tax exemptions, the effect of the exemptions on local governments and on other taxpayers, the extent to which other states provide property tax exemptions for nonprofit institutions, and any other issues it considers relevant. The Legislative Research Commission shall make a final report of its findings and recommendations to the 2000 Regular Session of the 1999 General Assembly.

Section 4. Section 2 of this act is effective on and after July 1, 1998, and expires September 1, 2003. Section 3 of this act is effective when it becomes law. The remainder of this act is effective for taxes imposed for taxable years beginning on or after July 1, 1998. Notwithstanding G.S. 105-275.2(f), as enacted by this act, the report otherwise due under that subsection on July 15, 1998, is due on July 15, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 2

SENATE BILL 385
Second Edition Engrossed 4/19/99

Short Title: Use of Sch. Buses OK'd/U.S. Open. (Local)

Sponsors: Senators Lee and Kinnaird.

Referred to: State and Local Government.

March 16, 1999

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE MOORE COUNTY BOARD OF EDUCATION TO PERMIT THE USE OF PUBLIC SCHOOL ACTIVITY BUSES TO SERVE THE TRANSPORTATION NEEDS OF THE U. S. OPEN GOLF TOURNAMENT.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding G.S. 66-58 or any other provision of law, the Moore County Board of Education may enter into a contract, under terms and conditions set by the Moore County Board of Education, that permits public school activity buses and other school property to be used from June 14, 1999, through June 20, 1999, for activities related to the U.S. Open Golf Tournament to be held in Moore County.

State funds shall not be used for the use and operation of buses under this act.

The State of North Carolina shall incur no liability for any damages resulting from the use and operation of buses under this act. Pinehurst, Inc., shall carry liability insurance covering the use and operation of buses under this act.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 878

Short Title: Nonprofit Water Corp. Loans. (Public)

Sponsors: Senators Kerr; Cochrane, Dalton, Hoyle, and Phillips.

Referred to: Finance.

April 13, 1999

A BILL TO BE ENTITLED

AN ACT TO ALLOW CERTAIN NONPROFIT WATER CORPORATIONS TO BE ELIGIBLE FOR REVOLVING LOANS AND GRANTS FROM THE DRINKING WATER TREATMENT REVOLVING LOAN FUND.

The General Assembly of North Carolina enacts:

Section 1. G.S. 159G-2 reads as rewritten:

"**§ 159G-2. Purpose.**

The General Assembly hereby recognizes that a critical need exists in this State to provide for a low-interest funding source for municipal water and wastewater capital facilities. Local government efforts to meet this need have been restricted by the inability of many units to finance necessary improvements to inadequate or nonexistent water supply and wastewater treatment systems. The decrease in financial capacity has resulted in large part from the diminished availability of federal loans and grants and the elimination of the federal general revenue sharing program, which funded a wide range of local capital improvements.

The problems have been further complicated by the uncertainty concerning Clean Water Act funding, the growing number of local units which are under moratoriums against additional connections for sewer service, and the July 1, 1988, deadline for compliance with federal effluent standards.

It is the intent and purpose of the General Assembly by this Chapter to create a program to facilitate early construction of these environmental improvements by establishing a revolving loan fund for financing such projects. This fund will enable local government units to obtain low-interest loans for financing projects for wastewater treatment ~~and water supply,~~ and for certain emergency purposes. This

fund will also enable local government units and nonprofit water corporations to obtain low-interest loans for financing projects for water supply. It is the further intent and purpose of the General Assembly to provide grants to local government units for wastewater treatment and to provide grants to local government units and nonprofit water corporations for water supply facilities. The General Assembly seeks by this Chapter to encourage and assist local government units to meet their responsibilities to their citizens to maintain a clean and healthful environment and an abundant supply of pure water and further to provide an adequate base for economic growth."

Section 2. G.S. 159G-3 reads as rewritten:

"**§ 159G-3. Definitions.**

As used in this Chapter, the following words shall have the meanings indicated, unless the context clearly requires otherwise:

(1) Repealed by Session Laws 1991, c. 186, s. 1.

(2) "Applicant" means a local government unit that applies for a revolving loan or grant under the provisions of this Chapter. In addition, a local government may provide funds to a nonprofit agency which is currently under contract and authorized to provide wastewater treatment or water supply services to that ~~unit of local government.~~ local government unit. For purposes of the Drinking Water Treatment Revolving Loan Fund established by G.S. 159G-5(d), 'applicant' also means a nonprofit water corporation that is incorporated in compliance with Chapter 55A of the General Statutes.

(3) "Clean Water Revolving Loan and Grant Fund" means the fund established in the Department of Environment and Natural Resources to carry out the provisions of this Chapter, with various accounts therein as herein provided.

(4) "Construction costs" means the actual costs of planning, designing and constructing any project for which a revolving loan or grant is made under this Chapter including planning; environmental assessment; wastewater system analysis, evaluation and rehabilitation; engineering; legal, fiscal, administrative and contingency costs for water supply systems, wastewater collection systems, wastewater treatment works and any extensions, improvements, remodeling, additions, or alterations to existing systems. Construction costs may include excess or reserve capacity costs, attributable to no more than 20-year projected domestic growth, plus ten percent (10%) unspecified industrial growth. In addition, construction costs shall include any fees payable to the Environmental Management Commission or the Division of Environmental Health for review of applications and grant of permits, and fees for inspections under G.S. 159G-14. Construction

costs may also include the costs for purchase or acquisition of real property.

(5) "Grant" means a sum of money given by the State to ~~a local government unit~~ an applicant to subsidize the construction costs of a project authorized by this Chapter, without any obligation on the part of such unit to repay such sum.

(6) "Commission for Health Services" means the Commission for Health Services created by G.S. 130A-29.

(6a) "Debt instrument" means an instrument in the nature of a promissory note executed by ~~a local government unit~~ an applicant under the provisions of this Chapter, to evidence a debt to the State and obligation to repay the principal, plus interest, under stated terms.

(7) "Division of Environmental Health" means the Division of Environmental Health of the Department of Environment and Natural Resources.

(7a) "Economically distressed local government unit" means a local government unit located, in whole or in part, in a county designated as economically distressed by the Secretary of Commerce under G.S. 143B-437A.

(8) "Environmental Management Commission" means the Environmental Management Commission of the Department of Environment and Natural Resources.

(9) "Local Government Commission" means the Local Government Commission of the Department of the State Treasurer, established by Article 2 of Chapter 159 of the General Statutes.

(10) "Local government unit" means a county, city, town, incorporated village, consolidated city-county, as defined by G.S. 160B-2(1), including such a consolidated city-county acting with respect to an urban service district defined by a consolidated city-county, sanitary district, metropolitan sewerage district, metropolitan water district, county water and sewer district, water and sewer authority, joint agency authorized by agreement between two cities and towns to operate an airport pursuant to G.S. 63-56 and that also provided water and wastewater services off the airport premises before January 1, 1995, or joint agency created pursuant to Part 1 of Article 20 of Chapter 160A of the General Statutes.

(11) Repealed by Session Laws 1991, c. 186, s. 1.

(12) "Receiving agency" means the Division of Environmental Health with respect to receipt of applications for revolving loans and grants for water supply systems, and the Environmental Management Commission and the Division of Water Quality with respect to receipt of applications for revolving loans and grants for wastewater systems.

(13) "Revolving construction loan" means a sum of money loaned by the State to ~~a local government unit~~ an applicant to subsidize the construction costs of a project authorized by this Chapter, with an obligation on the part of ~~such unit~~ the applicant to repay such sum, the proceeds of such repayment to be deposited in the ~~Water Pollution Control Revolving Fund.~~ fund from which the loan was made.

(14) "Revolving emergency loan" means a sum of money loaned by the State to a local government unit upon a certification, as provided in this Chapter, of a serious public health hazard, with an obligation on the part of such unit to repay such sum.

(15) "Revolving loan" includes a revolving construction loan and an emergency loan.

(15a) "State" means the State of North Carolina.

(15b) "State Treasurer" means the Treasurer of the State elected pursuant to Article III, Section 7 of the Constitution or his designated representative.

(16) "Wastewater Accounts" means the various accounts in the Clean Water Revolving Loan and Grant Fund established in the Department of Environment and Natural Resources under this Chapter for revolving loans and grants for wastewater treatment work and wastewater collection system projects.

(17) "Wastewater collection system" means a unified system of pipes, conduits, pumping stations, force mains, and appurtenances other than interceptor sewers, for collecting and transmitting water-carried human wastes and other wastewater from residences, industrial establishments or any other buildings, and owned by a local government unit.

(18) "Wastewater treatment works" means the various facilities and devices used in the treatment of sewage, industrial waste or other wastes of a liquid nature, including the necessary interceptor sewers, outfall sewers, phosphorous removal equipment, pumping, power and other equipment and their appurtenances.

(19) "Water Supply Accounts" means the various accounts in the Clean Water Revolving Loan and Grant Fund established in the Department of Environment and Natural Resources under this Chapter for revolving loans and grants for water supply system projects.

(20) "Water supply system" means a public water supply system consisting of facilities and works for supplying, treating and distributing potable water including, but not limited to, impoundments, reservoirs, wells, intakes, water filtration plants and other treatment facilities, tanks and other storage facilities, transmission mains, distribution piping, pipes connecting the

system to other public water supply systems, pumping equipment and all other necessary appurtenances, equipment and structures."

Section 3. G.S. 159G-4(c) reads as rewritten:

"(c) All payments of interest and repayments of principal resulting from revolving loans shall be credited to the respective accounts from which the revolving loan funds were disbursed. Terms and conditions for repayment of revolving loans shall be established by the Department of Environment and Natural Resources, with the assistance of the Local Government Commission, consistent with the requirements of the Federal Water Pollution Control Act and this Chapter. Provided, the interest rate for all revolving loans authorized by this Chapter shall be fixed at the same percent per annum as the interest rate fixed under the Federal Water Pollution Control Act for loans from the Water Pollution Control Revolving Fund established by G.S. 159G-5(c), not to exceed the lesser of four percent (4%) or one half (1/2) the prevailing national market rate for tax exempt general obligation debt of similar maturities derived from a published indicator. Provided further, the interest rate may be fixed at a lower rate per annum if authorized by the Federal Water Pollution Control Act Regulations. It is the intent of the General Assembly to provide uniform interest payments for all loans made to ~~units of local government~~ applicants irrespective of the account from which loans are made for either wastewater or water supply projects."

Section 4. G.S. 159G-5(d) reads as rewritten:

"(d) The Drinking Water Treatment Revolving Loan Fund is established as a special account within the Clean Water Revolving Loan and Grant Fund. This account shall be established and managed in accordance with the requirements of section 130 of Title I of the federal Safe Drinking Water Act Amendments of 1996 (Pub. L. 104-182; 110 Stat. 1662; 42 U.S.C. § 300j-12), to achieve the purposes and goals of the federal Safe Drinking Water Act Amendments of 1996. The funds in the Drinking Water Treatment Revolving Loan Fund may be used only for the purposes of providing revolving construction loans and other assistance as set forth in section 130 of Title I of the federal Safe Drinking Water Act Amendments of 1996 and the regulations promulgated thereunder, including making grants to the extent permitted by these amendments or these regulations. Funds in the Drinking Water Treatment Revolving Loan Fund may be used by an applicant that is a nonprofit water corporation only for a project that benefits a local government unit and that is consistent with a local water supply plan that has been prepared and approved in accordance with G.S. 143-355(l)."

Section 5. G.S. 159G-6 reads as rewritten:

"**§ 159G-6. Distribution of funds.**

(a) Revolving loans and grants.

(1) All funds appropriated or accruing to the Clean Water Revolving Loan and Grant Fund, other than funds set aside for administrative expenses, shall be used for revolving loans and grants to ~~local government units~~ applicants for construction costs of wastewater

treatment works, wastewater collection systems and water supply systems and other assistance as provided in this Chapter.

(2) The maximum principal amount of a revolving loan or a grant may be one hundred percent (100%) of the nonfederal share of the construction costs of any eligible project. The maximum principal amount of revolving loans made to any one ~~local government unit~~ applicant during any fiscal year shall be eight million dollars ($8,000,000). The maximum principal amount of grants made to any ~~one local government unit~~ applicant during any fiscal year shall be three million dollars ($3,000,000).

(3) The State Treasurer shall be responsible for investing and distributing all funds appropriated or accruing to the Clean Water Revolving Loan and Grant Fund for revolving loans and grants under this Chapter. In fulfilling his or her responsibilities under this section, the State Treasurer shall make a written request to the Department of Environment and Natural Resources to arrange for the appropriated funds to be (i) transferred from the appropriate accounts to ~~a local government unit~~ an applicant to provide funds for one or more revolving loans or grants or (ii) invested as authorized by this Chapter with the interest on and the principal of such investments to be transferred to the ~~local government unit~~ applicant to provide funds for one or more revolving loans or grants.

(b) Wastewater Accounts. -- The sums allocated in G.S. 159G-4 and accruing to the various Wastewater Accounts in each fiscal year shall be used to make revolving loans and grants to local government units as provided below. The Department of Environment and Natural Resources shall disburse no funds from the Wastewater Accounts except upon receipt of written approval of the disbursement from the Environmental Management Commission.

(1) General Wastewater Revolving Loan and Grant Account. -- The funds in the General Wastewater Revolving Loan and Grant Account shall be used exclusively for the purpose of providing for revolving construction loans or grants in connection with approved wastewater treatment work or wastewater collection system projects.

(2) High-Unit Cost Wastewater Account. -- The funds in the High-Unit Cost Wastewater Account shall be available for grants to applicants for high-unit cost wastewater projects. Eligibility of an applicant for such a grant shall be determined by comparing estimated average household user fees for water and sewer service, for debt service and operation and maintenance costs, to one and one-half percent (1.5%) of the median household income in the local government unit in which the project is located. The projects which would require estimated average household water and sewer user fees

greater than one and one-half percent (1.5%) of the median household income are defined as high-unit cost wastewater projects and will be eligible for a grant equal to the excess cost, subject to the limitations in subdivision (a)(2) of this section. However, if the applicant upon completion of the project will have only a single utility service, then the eligibility of the applicant for such a grant shall be determined by comparing estimated average household user fees for the single utility service that will be offered, for debt service and operation and maintenance costs, to three-fourths percent (3/4%) of the median household income in the local government unit in which the project is located. The single utility projects which would require estimated average household water or sewer user fees (as appropriate) greater than three-fourths percent (3/4%) of the median household income are defined as high-unit cost wastewater projects and will be eligible for a grant equal to the excess cost, subject to the limitations in subdivision (a)(2) of this section.

(3) Emergency Wastewater Revolving Loan Account. -- The funds in the Emergency Wastewater Revolving Loan Account shall be available for revolving emergency loans to applicants in the event the Environmental Management Commission certifies that a serious public health hazard, related to the inadequacy of existing wastewater facilities, is present or imminent in a community.

(c) Water Supply Accounts. -- The sums allocated in G.S. 159G-4 and accruing to the various Water Supply Accounts in each fiscal year shall be used to provide revolving loans and grants to ~~local government units~~ applicants as provided below. The Department of Environment and Natural Resources shall disburse no funds from the Water Supply Accounts except upon receipt of written approval of the disbursement from the Division of Environmental Health.

(1) General Water Supply Revolving Loan and Grant Account. -- The funds in the General Water Supply Revolving Loan and Grant Account shall be used exclusively for the purpose of providing for revolving construction loans and grants in connection with water supply systems generally and not upon a county allotment basis.

(2) High-Unit Cost Water Supply Account. -- The funds in the High-Unit Cost Water Supply Account shall be available for grants to applicants for high-unit cost water supply systems, on the same basis as provided in G.S. 159G-6(b)(2) for high-unit cost wastewater projects.

(3) Emergency Water Supply Revolving Loan Account. -- The funds in the Emergency Water Supply Revolving Loan Account shall be available for revolving emergency loans to applicants in the event the Division of Environmental Health certifies that a serious public

health hazard, related to the water supply system, is present or imminent in a community.

(d) Repealed by Session Laws 1991, c. 186, s. 4.

(e) Notwithstanding any other provision of this Chapter, funds in the Water Pollution Control Revolving Fund shall not be available as grants except to the extent permitted by Title VI of the Federal Water Quality Act of 1987 and the regulations thereunder."

Section 6. G.S. 159G-9 reads as rewritten:

"**§ 159G-9. Eligibility.**

No application shall be eligible for a revolving loan or grant under this Chapter unless it shall demonstrate to the satisfaction of the receiving agency that:

(1) The applicant is ~~a local government unit.~~ an applicant within the meaning of G.S. 159G-3(2).

(2) The applicant has the financial capacity to pay the principal of and the interest on its proposed obligations and loans.

(3) The applicant has substantially complied or will substantially comply with all applicable laws, rules, regulations and ordinances, federal, State and local.

(4) The applicant has agreed by official resolution to adopt and place into effect on or before completion of the project a schedule of fees, charges, and other available funds, including but not limited to the funds described in G.S. 159G-13(b), that will adequately provide for proper operation, maintenance, and administration of the project and for repayment of all principal of and interest on loans."

Section 7. G.S. 159G-10(b) reads as rewritten:

"(b) Priority Factors. -- All applications for revolving loans or grants under this Chapter eligible for consideration during each priority period shall be assigned a priority for such funds by the receiving agency. The priority factors shall be similar to those developed under the North Carolina Clean Water Bond Act of 1977, as provided in and modified by this subsection.

(1) General Criteria. --

a. The general criteria provided in 1 NCAC 22.0401 through .0403 on January 1, 1987, shall apply, except that 1 NCAC 22.0401(c) shall apply only to State funds appropriated to match available federal funds.

b. The existence of a comprehensive land-use plan that meets the requirements of subsection (e) of this section is a general criterion for prioritizing which ~~local government units~~ applicants will receive a loan or grant. ~~A local government unit~~ An applicant that is not authorized to adopt a comprehensive land-use plan but that is located in whole or in part in ~~another~~ a local government unit that has adopted a comprehensive land-use plan shall receive the same

priority treatment as ~~a local government unit~~ an applicant that has authority to adopt a comprehensive land-use plan. A comprehensive land-use plan that meets the requirements of subsection (e) of this section and that exceeds the minimum State standards for protection of water resources shall receive more points than a plan that does not exceed those standards. Additional points may be awarded for actions taken toward implementation of a comprehensive land-use plan. These actions may include the adoption of a zoning ordinance or any other measure that significantly contributes to the implementation of the comprehensive land-use plan.

(2) Wastewater Treatment Work Projects. -- The priority criteria provided in 1 NCAC 22.0501 through .0506 on January 1, 1987, shall apply to applications for wastewater treatment work projects, except that 1 NCAC 22.0503 shall not apply.

(3) Wastewater Collection System Projects. -- The priority criteria provided in 1 NCAC 22.0601 through .0606 on January 1, 1987, shall apply to applications for wastewater collection system projects, except that 1 NCAC 22.0601(2)(a) and (3), and 1 NCAC 22.0605(2), (3) and (4) shall not apply.

(4) Water Supply System Projects. -- The priority criteria provided in 1 NCAC 22.0701 through .0704 on January 1, 1987, shall apply to applications for water supply system projects.

(5) Wastewater Treatment Works Improvements to Meet Nitrogen and Phosphorous Limits. -- The Environmental Management Commission shall adopt a rule specifying priority criteria for modifications to existing permitted wastewater treatment facilities that are owned or operated by local government units and that are subject to G.S. 143-215.1(c1) or G.S. 143-215.1(c2) to enable local government units to comply with G.S. 143-215.1(c1) and G.S. 143-215.1(c2).

(6) The total number of points available in the respective categories shall be deemed adjusted in accordance with the provisions of subdivisions (1) through (5) of this subsection."

Section 8. G.S. 159G-13(a) reads as rewritten:

"(a) To be eligible to receive the revolving loans and grants provided for in this Chapter, ~~local government units~~ applicants shall arrange to borrow the amounts necessary to be borrowed in connection therewith pursuant to the Local Government Finance Act or as provided in this Chapter as applicable. ~~Local government units~~ Applicants may apply for the revolving loans and grants prior to arranging for such borrowing."

Section 9. G.S. 159G-14 reads as rewritten:

"**§ 159G-14. Inspection.**

Inspection of a project for which a revolving loan or grant has been made under this Chapter may be performed by qualified personnel of the Division of Environmental Health or the Environmental Management Commission or may be performed by qualified professional engineers, registered in this State, who have been approved by the Division of Environmental Health or the Environmental Management Commission; but no person shall be approved to perform inspections who is an officer or employee of the ~~unit of government~~ applicant to which the revolving loan or grant was made or who is an owner, officer, employee or agent of a contractor or subcontractor engaged in the construction of the project for which the revolving loan or grant was made. For the purpose of payment of inspection fees, inspection services shall be included in the term "construction cost" as used in this Chapter."

Section 10. G.S. 159G-15(b) reads as rewritten:

"(b) A copy of its rules adopted to implement the provisions of this Chapter shall be furnished free of charge by the receiving agency and the Department of Environment and Natural Resources to any ~~local government unit.~~ applicant."

Section 11. G.S. 159G-18 reads as rewritten:

"**§ 159G-18. ~~Local government~~ Applicant borrowing authority.**

(a) ~~Local government units~~ Applicants may execute debt instruments payable to the State in order to obtain revolving loans provided for in this Chapter. ~~Local government units~~ Applicants shall pledge as security for such obligations the user fee revenues derived from operation of the benefited facilities or systems only, or other sources of revenue, or their faith and credit, or any combination thereof. The faith and credit of ~~such~~ applicants that are local government units shall not be pledged or be deemed to have been pledged unless the requirements of Article 4, Chapter 159 of the General Statutes have been met. The State Treasurer, with the assistance of the Local Government Commission, shall develop and adopt appropriate debt instruments for use by applicants under this Chapter. The Local Government Commission shall develop and adopt appropriate procedures for the delivery of debt instruments by applicants to the State without any public bidding therefor.

(b) The Local Government Commission shall review and approve proposed loans to applicants that are local government units under this Chapter under the provisions of Articles 4 and 5, Chapter 159 of the General Statutes, as if the issuance of bonds was proposed, so far as those provisions are applicable. The Local Government Commission shall review and approve proposed loans to applicants that are nonprofit water corporations under this Chapter under the provisions of G.S. 159-153, so far as those provisions are applicable. Revolving loans under this Chapter shall be outstanding debt of applicants that are local government units for the purpose of Article 10, Chapter 159 of the General Statutes."

Section 12. G.S. 159-153 is amended by adding a new section to read:

"(a1) Commission Approval Required for Nonprofit Water Corporation Loans From the Clean Water Revolving Loan and Trust Fund. -- In addition to the requirements of Chapter 159G of the General Statutes, approval by the Commission in accordance with this section is required before a nonprofit water corporation may

be eligible to receive a revolving loan or grant under Chapter 159G of the General Statutes."

Section 13. This act becomes effective July 1, 1999.

FISCAL ANALYSIS MEMORANDUM

DATE: April 21, 1999

TO: Senate Finance Committee

FROM: Dave Crotts
Fiscal Research Division

RE: SB 878 (Nonprofit Water Corp. Loans)

FISCAL IMPACT

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

EFFECTIVE DATE: July 1, 1999

BILL SUMMARY: Under current law an applicant for a revolving loan or grant under the Clean Water Revolving Loan or Grant Fund must be a county, city, or specifically named local government authority. Under the Clean Water Fund is a special account called the Drinking Water Treatment Revolving Loan Fund. The bill allows a nonprofit water corporation to apply for loans and grants from this special account.

ASSUMPTIONS AND METHODOLOGY: The amount of federal and state dollars in the Fund will not change under the bill. The only impact would be to allow nonprofit water corporations to share in the proceeds of the fund if they meet the application requriements.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 290

Short Title: Lobbying Law Amendments. (Public)

Sponsors: Senators Miller; Gulley, Harris, Kinnaird, Lucas, Metcalf, Reeves, Shaw of Cumberland, and Weinstein.

Referred to: Judiciary II.

March 8, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LOBBYING LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 120-47.6(d) reads as rewritten:

"(d) When a lobbyist fails to file a lobbying expense report as required herein, the Secretary of State shall send a certified or registered letter advising the lobbyist of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the lobbyist shall deliver or post by United States mail to the Secretary of State the required report and an additional late filing fee of ten dollars ~~($10.00).~~ ($10.00) per day for the first 30 days the report is late and fifty dollars ($50.00) per day thereafter, not to exceed a total of one thousand dollars ($1,000).

Filing of the required report and payment of the additional fee within the time extended shall constitute compliance with this section. Failure to file an expense report in one of the manners prescribed herein shall result in revocation of any and all registrations of a lobbyist under this Article. No lobbyist may register or reregister under this Article until he has fully complied with this section."

Section 2. G.S. 120-47.7(d) reads as rewritten:

"(d) When a lobbyist's principal fails to file a lobbying expense report as required herein, the Secretary of State shall send a certified or registered letter advising the lobbyist's principal of the delinquency and the penalties provided by law. Within 20 days of the receipt of the letter, the lobbyist's principal shall deliver or post by United States mail to the Secretary of State the required report and a late filing fee of ten dollars ~~($10.00).~~ ($10.00) per day for the first 30 days the report is late and fifty

dollars ($50.00) per day thereafter, not to exceed a total of one thousand dollars ($1,000).

Filing of the required report and payment of the late fee within the time extended shall constitute compliance with this section."

Section 3. G.S. 120-47.9 reads as rewritten:

"**§ 120-47.9. Punishment for violation.**

Whoever willfully violates any provision of this Article shall be guilty of a Class ~~1~~ A1 misdemeanor. In addition, no lobbyist who is convicted of a violation of the provisions of this Article shall in any way act as a lobbyist for a period of two years following his conviction."

Section 4. This act becomes effective January 1, 2000, and Section 3 applies to offenses committed on or after that date.

SENATE BILL 290:
Lobbying Law Amendments

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Sen. Brad Miller
Date:	April 13, 1999	**Summary by:**	Martha K. Walston
Version:	1st Edition		Committee Counsel

SUMMARY: ***Senate Bill 290 increases two late filing penalties that apply to reports of lobbying activities. The bill increases the penalties from a flat $10.00 per report to a per day amount with a $1,000 cap. The bill also increases the punishment for a willful violation of any provision of the lobbying article from a Class 1 misdemeanor to a Class A1 misdemeanor. The increases become effective January 1, 2000. Senate Bill 290 is a recommendation of the Secretary of State's Office. The bill was given a favorable report in Senate Judiciary II.***

CURRENT LAW: Current law requires each lobbyist and lobbyist's principal to file two expense reports each year with the Secretary of State's Office. (A "lobbyist's principal" is the entity in whose behalf the lobbyist influences or attempts to influence legislative action.) One report covers activities from January 1 until the last day of the regular session, and the other report covers the period from the last day of the session until the end of the calendar year. The first report must be filed within 60 days after the end of the regular session, and the second report must be filed by February 28 after the end of the calendar year. A report that is not filed within these time limits is late and is subject to a $10.00 late penalty. A report must be filed even if there were no expenses during the reporting period.

The reports must list amounts paid, the person who was paid, and the legislators who benefited in six categories: transportation, lodging, entertainment, food, other items over $25.00, and contributions. A principal's report must also list the total compensation paid to lobbyists.

Willful failure to file a report is a Class 1 misdemeanor. Also a lobbyist who has not filed the report and paid any late filing fee cannot re-register as a lobbyist until the report is filed and the late filing fee is paid. A lobbyist who is convicted of a violation of the Lobbying Article may not act as a lobbyist for 2 years following his or her conviction.

BILL ANALYSIS: Senate Bill 290 changes the late filing fee to $10.00 a day for the first 30 days a report is late and then $50.00 a day for each day after the first 30 days, not to exceed $1,000. The $10 flat fee was set in 1975 and has not been increased since then.

Senate Bill 290 also increases the penalty for a willful violation of the Lobbying Article from a Class 1 misdemeanor (1-45 days of community service) to a Class A1 misdemeanor (1-60 days of community service, intermediate punishment, or active sentence).

BACKGROUND: With the exception of the change in the penalty section, an identical version of Senate Bill 290 was introduced in the last session and passed the Senate.

(Attachment #1)

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 4/21/99

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dwight O. Spencer	Tatgee / Politico / Consultant 1913 Crawford Rd. Raleigh, NC 27614
Chris Watson	Senate Page / Civil Air Patrol
Ashley Newcomb	S. page / Civil Air Patrol

(Attachment #2)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Wednesday, April 21, 1999

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

FAVORABLE

S.B. **290** Lobbying Law Amendments
Sequential Referral: none
Recommended Referral: none

S.B. **385** Use of Sch. Buses OK'd/U.S. Open
Sequential Referral: none
Recommended Referral: none

S.B. **625** Durham Privilege License Technical
Sequential Referral: none
Recommended Referral: none

S.B. **645** Parmele Annexation
Sequential Referral: none
Recommended Referral: none

S.B. **694** Rimertown Incorporation
Sequential Referral: none
Recommended Referral: none

S.B. **772** Expand Municipal Service Districts
Sequential Referral: none
Recommended Referral: none

S.B. **776** Remove Sunset/Purchasing Exemptions
Sequential Referral: none
Recommended Referral: none

S.B. **878** Nonprofit Water Corp. Loans.
Sequential Referral: none
Recommended Referral: none

TOTAL REPORTED: 8

Committee Clerk Comment: none

(Attachment # 3)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Thursday, April 22, 1999

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

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

S.B. **325** Continuing Care Retirement Homes

Draft Number:	PCS1719
Sequential Referral:	none
Recommended Referral:	none
Long Title Amended:	No

S.B. **468** Winston-Salem/Forsyth Assessments

Draft Number:	PCS2748
Sequential Referral:	none
Recommended Referral:	none
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comment: Bills taken up in Committee on 4-21-99

AGENDA

TUESDAY, APRIL 27, 1999

1:30 P.M. – ROOM 544

I CALL TO ORDER

II INTRODUCTION OF PAGES

III BILLS TO BE CONSIDERED

SB 235 – "KIDS FIRST" Registration Plate – Sen. Hagan

SB 353 – Davidson Satellite Annexation – Sen. Odom

SB 433 – Pinebluff ETJ – Sen. Lee

SB 534 – Kenansville Services – Sen. Albertson

SB 618 – Macon County Airport Authority – Sen. Carpenter

SB 653 – Durham Co. Health Fund Invest. – Sen. Gulley

SB 712 – Cornelius Voluntary Annexation – Sen. Odom

SB 843 – Nurses Aides II Registry Fees – Sen. Weinstein

SB 1004 – Geologist Licensue – Sen. Kinnaird

SENATE FINANCE COMMITTEE

TUESDAY, APRIL 27, 1999

1:30 P.M. - ROOM 544

The Senate Finance Committee met on Tuesday, April 27, 1999, at 1:30 P.M., in Room 544, with Senator Kerr presiding. There were 18 committee members present for the meeting.

SB 433 – Pinebluff ETJ.

Senator Lee explained his Bill and on motion by Senator Dannelly, the Bill was given a Favorable Report. Copy of Bill and Explanation included in the minutes.

SB 618 – Macon County Airport Authority.

Senator Carpenter was recognized to explain his bill and on motion, the Bill was given a Favorable Report by the committee. Copy of Bill, Explanation and Fiscal note included in the minutes.

SB 843 – Nurses Aides II Registry Fees.

Senator Weinstein explained his Bill and on motion by Senator Albertson, a Committee Substitute was adopted by the committee. Polly Johnson, North Carolina Board of Nursing, spoke in support of this bill. Senator Dannelly moved for a Favorable Report and the motion carried. Copy of original Bill, Committee Sub, Explanation and Fiscal Note included in the minutes.

SB 712 – Cornelius Voluntary Annexation.

Senator Odom was recognized to explain his Bill. Senator Albertson moved to adopt Committee Substitute and the motion carried. After discussion, Senator Ballantine moved for a Favorable Report and the motion carried. Copy of original Bill, Committee Sub and Explanation included in the minutes.

SB 353 – Davidson Satellite Annexation.

Senator Odom explained his Bill and on motion by Senator Phillips, a Committee Substitute was adopted. Senator Albertson moved for a Favorable Report and the motion carried. Copy of original Bill, Committee Sub and Explanation included in the minutes.

SB 235 – "Kids First" Registration Plates.

Senator Hagan was recognized to explain her Bill. Senator Lee moved for a Favorable Report and the motion passed. Copy of Bill, Explanation and Fiscal Note included in the minutes.

SB 534 – Kenansville Services.

Senator Albertson explained his Bill and on motion by Senator Hartsell, the Bill was given a Favorable Report by the committee. Copy of Bill included in the minutes.

SB 1004 – Geologist Licensure.

Senator Kinnaird was recognized to explain her Bill. On motion by Senator Albertson, a Committee Substitute was adopted by the committee. Dr. Charles Gardner, State Geologist, and Jerry Carter, Executor Director of the NC Board of Examiners for Engineers and Geologists, both spoke in favor of this Bill. Senator Ballantine sent forth an Amendment to this Bill and the Amendment was adopted by the committee. On motion by Senator Lee, the Committee Substitute, as amended, was given a Favorable Report by the committee. Copy of Amendment not available for minutes – Copy of original Bill. old Committee Sub, new Committee Sub, Explanation and Fiscal Note included in the minutes.

Meeting adjourned.

David W. Hoyle, Co-Chair
Senate Finance Committee

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

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

Visitors' Sign Up Sheet is Attachment # 1
Committee Reports (2) are Attachment # 2

SB 653 – Durham Co. Health Fund Invest. – not heard at this meeting.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 433

Short Title: Pinebluff ETJ. (Local)

Sponsors: Senators Lee; and Kinnaird.

Referred to: Finance.

March 22, 1999

A BILL TO BE ENTITLED

AN ACT RELATING TO THE EXERCISE OF EXTRATERRITORIAL JURISDICTION BY THE TOWN OF PINEBLUFF.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-360(a) reads as rewritten:

"(a) All of the powers granted by this Article may be exercised by any city within its corporate limits. In addition, any city may exercise these powers within a defined area extending not more than one mile beyond its limits. With the approval of the board or boards of county commissioners with jurisdiction over the area, a city of 10,000 or more population but less than 25,000 may exercise these powers over an area extending not more than two miles beyond its limits and a city of 25,000 or more population may exercise these powers over an area extending not more than three miles beyond its limits. The boundaries of the city's extraterritorial jurisdiction shall be the same for all powers conferred in this Article. No city may exercise extraterritorially any power conferred by this Article that it is not exercising within its corporate limits. In determining the population of a city for the purposes of this Article, the city council and the board of county commissioners may use the most recent annual estimate of population as certified by the Secretary of the North Carolina Department of Administration. The Town of Pinebluff may exercise the powers granted by this Article for a distance not more than two miles beyond its corporate limits, without regard to the population limit of this section."

Section 2. G.S. 160A-360(f) reads as rewritten:

"(f) When a city annexes, or a new city is incorporated in, or a city extends its jurisdiction to include, an area that is currently being regulated by the county, the

county regulations and powers of enforcement shall remain in effect until (i) the city has adopted such regulations, or (ii) a period of 60 days has elapsed following the annexation, extension or incorporation, whichever is sooner. During this period the city may hold hearings and take any other measures that may be required in order to adopt its regulations for the area. When the Town of Pinebluff annexes any area outside its corporate limits thus extending the area over which it would be allowed under subsection (a) of this section to exercise the powers granted by this Article, upon presenting proper evidence to the County Board of Commissioners that the annexation has been accomplished, the County Board of Commissioners shall adopt a resolution authorizing the Town to exercise these powers within the extended area thus described."

Section 3. This act applies to the Town of Pinebluff only.

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

SENATE BILL 433:
Pinebluff ETJ

BILL ANALYSIS

Committee: Senate Finance Committee
Date: April 26, 1999
Version: 1st Edition

Introduced by: Senator Lee
Summary by: Martha K. Walston
Committee Counsel

SUMMARY: ***Senate Bill 433 is a local bill that expands the extraterritorial jurisdiction authority of the Town of Pinebluff. The Bill allows the Town to exercise its zoning powers for a distance not more than two miles beyond its corporate limits, without regard to the population limit of the Town. SB 433 also provides that the Moore County Board of Commissioners will adopt a resolution authorizing Pinebluff to begin exercising its zoning powers in the extended area after the Town presents evidence that the annexation has been accomplished.***

CURRENT LAW: Article 19 of Chapter 160A of the General Statutes allows a city to enact zoning restrictions within its corporate limits. In addition, any city may exercise these same powers within a defined area extending not more than one mile beyond its limits. This is commonly known as the city's extraterritorial jurisdiction (ETJ). If the board of county commissioners approves, a city with a population greater than 10,000 but less than 25,000 may expand its ETJ to two miles beyond its corporate limits, and a city with a population of 25,000 or more may expand its ETJ to three miles beyond its corporate limits.

Article 19 of Chapter 160A also requires that when a city extends its jurisdiction to include an area currently regulated by the county, then the county's regulations remain in effect until the city has adopted regulations or 60 days after annexation, whichever is sooner.

BILL ANALYSIS: SB 433 authorizes the Town of Pinebluff to exercise its zoning powers for a distance of not more than two miles beyond its corporate limits, even though the Town may not meet the population limit of 10,000 or more but less than 25,000.

Senate Bill 433 also authorizes the Town of Pinebluff to exercise its authority over the annexed area earlier than currently allowed in Article 19. The Town need only present evidence to the Moore County Board of Commissioners that the annexation has been accomplished. The Board will then adopt a resolution authorizing Pinebluff to exercise zoning powers.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 618

Short Title: Macon County Airport Authority. (Local)

Sponsors: Senator Carpenter.

Referred to: Finance.

March 30, 1999

A BILL TO BE ENTITLED

AN ACT TO ENABLE THE COUNTY OF MACON TO ESTABLISH AN AIRPORT AUTHORITY FOR THE MAINTENANCE OF AIRPORT FACILITIES IN THE COUNTY.

The General Assembly of North Carolina enacts:

Section 1. There is hereby created the "Macon County Airport Authority" (for brevity hereinafter referred to as the "Airport Authority"), which shall be a body both corporate and politic, having the powers and jurisdiction hereinafter enumerated and such other and additional powers as shall be conferred upon it by general law and future acts of the General Assembly.

Section 2. The Airport Authority shall consist of five members, who shall be residents of Macon County and who shall be appointed to staggered terms of six years by the Macon County Board of Commissioners. Members may succeed themselves in office and serve more than one term. Two initial appointments to the Airport Authority shall be for two years, two initial appointments to the Airport Authority shall be for four years, and the remaining initial appointment to the Airport Authority shall be for six years.

When vacancies occur in the membership of the Airport Authority, for any reason, the remaining members of the Airport Authority shall submit a list of two or more candidates to the Macon County Board of Commissioners. The Board of Commissioners shall either select one from that list to fill the unexpired term of the vacant office or shall request that the Airport Authority submit additional candidates. The Airport Authority shall submit additional candidates upon request until the Board of Commissioners selects a member from the candidates submitted.

Each member shall take and subscribe before the Clerk of Superior Court of Macon County an oath of office and file the same with the Macon County Board of Commissioners. Membership on the Macon County Board of Commissioners and the Airport Authority shall not constitute double office holding within the meaning of Article VI, Section 9, of the Constitution of North Carolina.

Section 3. The Airport Authority may adopt suitable bylaws for its management. The members of the Airport Authority may receive compensation, per diem, or otherwise as the Macon County Board of Commissioners from time to time determines. Members shall be allowed and paid their actual expenses incurred in transacting the business and at the instance of the Airport Authority. Members of the Airport Authority shall not be personally liable for their acts as members of the Airport Authority, except for acts resulting from misfeasance or malfeasance.

Section 4.(a) The Airport Authority shall constitute a body, both corporate and politic, and shall have the following powers and authority:

(1) To purchase, acquire, establish, construct, own, control, lease, equip, improve, maintain, operate, and regulate airports and landing fields for the use of airplanes and other aircraft within the limits of the county and for this purpose to purchase, improve, own, hold, lease, or operate real or personal property. The Airport Authority may exercise these powers alone or in conjunction with the County of Macon.

(2) To sue and be sued in the name of the Airport Authority, to make contracts and hold any personal property necessary for the exercise of the powers of the Airport Authority, and acquire by purchase, lease, or otherwise any existing lease, leasehold right, or other interest in any existing airport located in the county.

(3) To charge and collect reasonable and adequate fees and rents for the use of airport property or for services rendered in the operation of the airport.

(4) To make all reasonable rules and regulations it deems necessary for the proper maintenance, use, operation, and control of the airport, including public safety, and provide penalties for the violation of these rules and regulations; provided, the rules and regulations and schedules of fees not be in conflict with the laws of North Carolina and the regulations of the Federal Aviation Administration. The Airport Authority may administer and enforce any airport zoning regulations adopted by the County of Macon.

(5) To issue bonds pursuant to Article 5 of Chapter 159 of the General Statutes.

(6) To sell, lease, or otherwise dispose of any property, real or personal, belonging to the Airport Authority, according to the procedures described in Article 12 of Chapter 160A of the General

Statutes, but no sale of real property shall be made without the approval of the Macon County Board of Commissioners.

(7) To purchase any insurance that the Federal Aviation Administration or the Airport Authority shall deem necessary. The Airport Authority shall be responsible for any and all insurance claims or liabilities.

(8) To deposit or invest and reinvest any of its funds as provided by the Local Government Finance Act, as it may be amended from time to time, for the deposit or investment of unit funds.

(9) To purchase any of its outstanding bonds or notes.

(10) To operate, own, lease, control, regulate, or grant to others, for a period not to exceed 20 years, the right to operate on any airport premises restaurants, snack bars, vending machines, food and beverage dispensing outlets, rental car services, catering services, novelty shops, insurance sales, advertising media, merchandising outlets, motels, hotels, barbershops, automobile parking and storage facilities, automobile service establishments, and all other types of facilities as may be directly or indirectly related to the maintenance and furnishing to the general public of a complete air terminal installation.

(11) To contract with persons, firms, or corporations for terms not to exceed 20 years, for the operation of airline-scheduled passenger and freight flights, nonscheduled flights, and any other airplane activities not inconsistent with the grant agreements under which the airport property is held.

(12) To erect and construct buildings, hangars, shops, and other improvements and facilities, not inconsistent with or in violation of the agreements applicable to and the grants under which the real property of the airport is held; to lease these improvements and facilities for a term or terms not to exceed 20 years; to borrow money for use in making and paying for these improvements and facilities, secured by and on the credit only of the lease agreements in respect to these improvements and facilities, and to pledge and assign the leases and lease agreements as security for the authorized loans.

(13) Subject to the limitations set out in this act, to have all the same power and authority granted to cities and counties pursuant to Chapter 63 of the General Statutes, Aeronautics.

(14) To have a corporate seal, which may be altered at will.

Section 4.(b) The Airport Authority shall possess the same exemptions in respect to payment of taxes and license fees and be eligible for sales and use tax refunds to the same extent as provided for municipal corporations by the laws of the State of North Carolina.

Section 5. The Airport Authority may acquire from the county, by agreement with the county, and the county may grant and convey, either by gift or for such consideration as the county may deem wise, any real or personal property which it now owns or may hereafter acquire, including nontax monies, and which may be necessary for the construction, operation, and maintenance of any airport located in the county.

Section 6. Any lands acquired, owned, controlled, or occupied by the Airport Authority shall be, and are declared to be, acquired, owned, controlled, and occupied for a public purpose.

Section 7. Private property needed by the Airport Authority for any airport, landing field, or as facilities of an airport or landing field, may be acquired by gift or devise, or may be acquired by private purchase or by the exercise of eminent domain pursuant to Chapter 40A of the General Statutes, as a local public condemnor, including the provisions of G.S. 40A-42. If property acquired by gift, devise, purchase, or condemnation has a burial ground or graveyard, then it shall be lawful for the Airport Authority, after 30 days' notice to the surviving spouse or next of kin of the deceased buried there or the person in control of the graves, if they are known, to remove the interred body and reinter the body in another cemetery in Macon County. If no surviving spouse or next of kin or person in control can be found, then the Airport Authority may advertise for four consecutive weeks in a newspaper published in Macon County of the intended removal of the graves. The removal shall then be conducted under the supervision of the Clerk of the Superior Court of Macon County or his or her representative. The expense of the removal shall be borne by the Airport Authority.

Section 8. The Airport Authority shall make an annual report to the Macon County Board of Commissioners setting forth in detail the operations and transactions conducted by it pursuant to this act. The Airport Authority shall not have the power to pledge the credit of Macon County, or any subdivision thereof, or to impose any obligation on Macon County, or any of its subdivisions, except when that power is expressly granted by statute.

Section 9. Subject to the limitations as set out in this act, all rights and powers given and granted to counties or municipalities by general law, which may now be in effect, or enacted in the future, relating to the development, regulation, and control of municipal airports and the regulation of aircraft are now concurrently vested in the Airport Authority. The Macon County Board of Commissioners may delegate its powers under these acts to the Airport Authority, and the Airport Authority shall have concurrent rights with Macon County to control, regulate, and provide for the development of aviation in Macon County.

Section 10. The Airport Authority may contract with and accept grants from the Federal Aviation Administration, the State of North Carolina, or any of the agencies or representatives of either of said governmental bodies relating to the purchase of land and air easements and to the grading, constructing, equipping, improving, maintaining, or operating of an airport or its facilities or both.

Section 11. The Airport Authority may employ or contract with any agents, engineers, attorneys, and other persons whose services may be deemed by the Airport Authority to be necessary and useful in carrying out the provisions of Sections 1 through 10 of this act.

Section 12. The Macon County Board of Commissioners may appropriate funds derived from any source including ad valorem taxes to carry out the provisions of this act in any proportion or upon any basis as may be determined by the Macon County Board of Commissioners. The Macon County Board of Commissioners may provide county services to the Airport Authority upon any basis as may be determined by the Macon County Board of Commissioners.

Section 13. The Airport Authority may expend the funds that are appropriated by the county for joint airport purposes and may pledge the credit of the Airport Authority to the extent of the appropriated funds.

Section 14. The Airport Authority shall elect from among its members a chair and other officers at its initial meeting and then biennially thereafter. Officers shall be eligible to succeed themselves in office and to serve consecutive terms at the will of the members of the Airport Authority. A majority of the Airport Authority shall control its decisions. Each member of the Airport Authority, including the chair, shall have one vote. The Airport Authority shall meet at the places and times designated by the chair.

Section 15. If an airport established pursuant to this act ceases to be operated by the Airport Authority, or if any property acquired pursuant to this act for airport purposes is abandoned, then the title to that real or personal property, or rights under any existing lease, shall revert to and vest in the County of Macon and on the sale of that property, the proceeds shall vest totally in the County of Macon.

Section 16. The powers granted to the Airport Authority shall not be effective until the members of the Airport Authority have been appointed by the Macon County Board of Commissioners, and nothing in this act shall require the Board of Commissioners to make the initial appointments. It is the intent of this act to enable but not to require the formation of the Macon County Airport Authority.

Section 17. If any one or more sections, clauses, sentences, or parts of this act shall be adjudged invalid, such judgment shall not affect, impair, or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provisions held invalid, and the inapplicability or invalidity of any section, clause, sentence, or part of this act in one or more instances or circumstances shall not be taken to affect or prejudice in any way its applicability or validity in any other instance.

Section 18. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 618

SHORT TITLE: Macon County Airport Authority

SPONSOR(S): Senator Carpenter

FISCAL IMPACT

Yes ( ) **No (x)** **No Estimate Available ( )**

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
General Fund	*** See Assumptions and Methodology ***				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Macon County Airport Authority, Macon County Government, and the Sales Tax Division of the Department of Revenue.

EFFECTIVE DATE: When it becomes law.

BILL SUMMARY: The legislation creates the Macon County Airport Authority and sets rules for it governance and operation. It also extends the sales and use tax refund provisions generally applied to county and city governments to the Macon County Airport Authority.

ASSUMPTIONS AND METHODOLOGY: The only potential fiscal impact of the bill is the sales tax refund. Under G.S. 105-164.14(c), certain government entities are eligible for refund of the sales taxes they paid on purchases in the previous fiscal year. This refund is issued annually. The types of government organizations that are currently eligible for the refund include city and county governments, municipal sewer districts, water and sewer authorities, public health authorities, a council of government, schools, and regional pubic transportation authorities. The law also states that local airport authorities, created by the General Assembly, may be eligible for the refund if the authority meets at least one of the following criteria: it has all the rights of a municipality, a local act of the General Assembly declares it to be a municipality, or a local act of the General Assembly specifically authorizes it to receive the refund. In addition to creating the Authority, the bill specifically authorizes the Macon County Airport Authority to receive the sales tax refund.

According to the Macon County Planning Office, the Airport Authority intends to make significant capital improvements to the airport. These will be funded primarily through Department of Transportation funds. However, because all airport related purchases are

currently made through the county, and would continue to be handled by the county if the bill does not pass, there is no fiscal impact. Since the purchases are made through the county, and the county receives the sales tax refund, the bill only changes who applies for the refund. It does not affect the amount of the refund. Therefore, there is no fiscal impact.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Linda Struyk Millsaps

APPROVED BY: Tom Covington

DATE: Monday, April 26, 1999

SENATE BILL 618:
Macon County Airport Authority

BILL ANALYSIS

Committee:	Senate Finance Committee	**Introduced by:**	Senator Carpenter
Date:	April 26, 1999	**Summary by:**	Martha K. Walston
Version:	1st Edition		Committee Counsel

SUMMARY: ***Senate Bill 618 is a local bill that enables Macon County to establish the Macon County Airport Authority. The Authority would have the powers and authority to maintain and operate airports and landing fields in Macon County. The act is effective when it becomes law. There is a companion House Bill introduced by Representative Carpenter in House Finance.***

BILL ANALYSIS: Senate Bill 618 enables Macon County to establish the Macon County Airport Authority and sets out the powers granted to the Authority. These powers are not effective until the members of the Authority have been appointed by the Macon County Board of Commissioners. The County is not required to form the Authority. If created, the Authority would consist of 5 residents of Macon County appointed to staggered terms of six years.

Section 4(a) of the act lists the powers given to the Authority in order to maintain and operate airport facilities in the County.

Section 4(b) of the act gives the Authority the same tax and license fee exemptions and the same sales and use tax refunds as given to municipal corporations.

Section 8 requires the Authority to make an annual report to the Macon County Board of Commissioners.

The General Assembly has enacted legislation authorizing the following airport authorities:

Whiteville Airport Authority
Raleigh-Durham Airport Authority
Wendell-Knightdale Airport Authority
Beaufort-Morehead City Airport Authority
Sparta/Alleghany Airport Authority
Goldsboro-Wayne Airport Authority
Elizabeth City-Pasquotank Airport Authority
Sanford-Lee County Regional Airport Authority
Davidson County Airport Authority
Jackson County Airport Authority
Pitt County-City of Greenville Airport Authority
Dare County Airport Authority
Macon County Airport Authority
Avery County Airport Authority
Lincoln County-City of Lincolnton Airport Authority
Stanly County Airport Authority
Asheboro Airport Authority
Johnston County Airport Authority
Haywood County Airport Authority
Rockingham County Airport Authority
Asheville Regional Airport Authority
Piedmont Triad Airport Authority
New Hanover County Airport Authority
Craven County Regional Airport Authority
Laurinburg-Maxton Airport Authority
Carolina Beach Airport Authority
Burlington-Alamance Airport Authority
Rutherford County Airport Authority
Craven County Regional Airport Authority
WakeSouth Regional Airport Authority
Columbus County Airport Authority
Halifax Regional Airport Authority
Moore County Airport Authority

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 843

Short Title: Nurses Aides II Registry Fees. (Public)

Sponsors: Senators Weinstein; Carpenter, Dalton, Garwood, Harris, Phillips, Purcell, Soles, and Wellons.

Referred to: Finance.

April 13, 1999

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE NORTH CAROLINA BOARD OF NURSING TO INCREASE THE ANNUAL FEE CHARGED NURSES AIDES II.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-171.55(a) reads as rewritten:

"(a) The Board of Nursing, established pursuant to G.S. 90-171.21, shall establish a Nurses Aides Registry for persons functioning as nurses aides regardless of title. The Board shall consider those Level I nurses aides employed in State licensed or Medicare/Medicaid certified nursing facilities who meet applicable State and federal registry requirements as adopted by the North Carolina Medical Care Commission as having fulfilled the training and registry requirements of the Board, except for the fee requirements prescribed by this section. The Board may charge an annual fee of ~~five dollars ($5.00) for each registry applicant.~~ twelve dollars ($12.00) for each nurse aide II registry applicant. The Board shall adopt rules to ensure that whenever possible, the fee is collected through the employer or prospective employer of the registry applicant. Fees collected may be used by the Board in administering the registry. The Board's authority granted by this Article shall not conflict with the authority of the Medical Care Commission."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 843
Proposed Committee Substitute S843-PCS2753-LG

Short Title: Nurses Aides II Registry Fees. (Public)

Sponsors:

Referred to:

April 13, 1999

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE NORTH CAROLINA BOARD OF NURSING TO INCREASE THE ANNUAL FEE CHARGED NURSES AIDES II.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-171.55(a) reads as rewritten:

"(a) The Board of Nursing, established pursuant to G.S. 90-171.21, shall establish a Nurses Aides Registry for persons functioning as nurses aides regardless of title. The Board shall consider those Level I nurses aides employed in State licensed or Medicare/Medicaid certified nursing facilities who meet applicable State and federal registry requirements as adopted by the North Carolina Medical Care Commission as having fulfilled the training and registry requirements of the Board, except for ~~the~~ any fee requirements prescribed by this section. The Board may charge an annual fee of ~~five dollars ($5.00) for each registry applicant.~~ twelve dollars ($12.00) for each nurse aide II registry applicant. The Board shall adopt rules to ensure that whenever possible, the fee is collected through the employer or prospective employer of the registry applicant. Fees collected may be used by the Board in administering the registry. The Board's authority granted by this Article shall not conflict with the authority of the Medical Care Commission."

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

SENATE BILL 843:
Nurses Aides II Registry Fees

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Senator Weinstein
Date:	April 25, 1999	**Summary by:**	Martha K. Walston
Version:	Proposed Committee Substitute		Committee Counsel

SUMMARY: ***Senate Bill 843 amends the Nurses Aides Registry Act by authorizing the Board of Nursing to increase the $5 annual fee to $12 for Level II nurses aides. SB 843 further clarifies that this annual fee applies only to Level II nurses aides.***

CURRENT LAW: Under the Nurses Aides Registry Act, the North Carolina Board of Nursing must establish a Nurses Aides Registry for persons functioning as nurses aides regardless of title. Each registry applicant, who is a Level II nurses aide, must pay an annual $5.00 fee. The fee, when possible, is to be collected through the employer or prospective employer and will be used in administering the registry. The Nursing Board will consider Level I nurses aides employed in State license or Medicare/Medicaid nursing facilities who meet the registry requirements adopted by the North Carolina Medical Commission as having fulfilled the training and registry requirements of the Nursing Board. Because of a change in the federal Health Care Financing Act in 1990, the Nursing Board may not assess the $5.00 annual fee against Level I nurses aides. The Division of Facility Services, within the Department of Health and Human Service maintains the registry for Level I nurses aides. The Nursing Board maintains the registry for Level II nurses aides, however a Level II nurses aide is also required to be registered as a Level I nurses aide.

A Level I nurses aide may perform basic nursing skills and personal care activities after successfully completing a training and competency evaluation program.

A Level II nurses aide performs more complex nursing skills with emphasis on sterile technique in elimination, oxygenation, and nutrition after successful completion of an approved nurse aide II training and competency evaluation program. The aide must also be listed as a Level I nurses aide on the Division of Facility Services Nurses Aide Registry with no substantiated findings of abuse, neglect, or misappropriation of property. The agency where the Level II nurses aide is working must also confirm with the Board of Nursing that the individual is listed on the Board of Nursing Nurses Aide II Registry

Listing on a Nurses Aide Registry is not required if the care is performed by clients themselves, their families or significant others, or by caretakers who provide personal care to individuals whose health care needs are incidental to the personal care required.

BILL ANALYSIS: SB 843 increases the $5 annual fee charged to Level II nurses aides to $12, and clarifies that this fee applies only to Level II nurses aides.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 843 (First Edition)

SHORT TITLE: Nurses Aides II Registry Fees

SPONSOR(S): Senator Weinstein, et al.

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
Bd. Operating Fund	$73,500	$73,500	$73,500	$73,500	$73,500
EXPENDITURES	To be determined by Board of Nursing				

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

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

BILL SUMMARY:
The act increases the annual fee from $5 to $12 for a Nurse Aide II to be listed on the Nurse Aid Registry with the North Carolina Board of Nursing.

BACKGROUND:
The 1989 Federal Omnibus Budget Reconciliation Act (OBRA) mandated the creation of a Nurse Aide Registry in every state. In North Carolina, the Division of Facility Services in the Department of Health and Human Services list the Nurse Aide I and the North Carolina Board of Nursing list the Nurse Aide II. To be listed on the Nurse Aide Registry, a Nurse Aide I must have 75 hours of training and a Nurse Aide II must have an additional 160 hours of training. Both Nurse Aides I and II must be under the supervision of a licensed nurse.

ASSUMPTIONS AND METHODOLOGY:
The Board of Nursing anticipates 10,500 new and renewed Nurse Aid II registrants each year. The current $5 fee, unchanged since 1989, generates approximately $52,500 each year. The proposed $12 fee will generate $126,000 each year. **The net revenue increase to the Board's operating fund is $73,500 each year.**

The Board of Nursing requests the increase because expenses for the Nurse Aide II Registry exceed the revenues. A cost analysis for fiscal year 1998 found the Nurse Aide Registry expenditures equal to $177,506, but Registry revenues equal to $66,865. The $50,641deficit in this program for 1998 was covered from RN and LPN licensure fees. The Board of Nursing had a fund balance of $650,852 on June 30, 1998.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic

APPROVED BY:

DATE:

AGENDA

TUESDAY, APRIL 27, 1999

1:30 P.M. – ROOM 544

I CALL TO ORDER

II INTRODUCTION OF PAGES

III BILLS TO BE CONSIDERED

SB 235 – "KIDS FIRST" Registration Plate – Sen. Hagan

SB 353 – Davidson Satellite Annexation – Sen. Odom

SB 433 – Pinebluff ETJ – Sen. Lee

SB 534 – Kenansville Services – Sen. Albertson

SB 618 – Macon County Airport Authority – Sen. Carpenter

SB 653 – Durham Co. Health Fund Invest. – Sen. Gulley

SB 712 – Cornelius Voluntary Annexation – Sen. Odom

SB 843 – Nurses Aides II Registry Fees – Sen. Weinstein

SB 1004 – Geologist Licensue – Sen. Kinnaird

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 712

Short Title: Cornelius Voluntary Annexation. (Local)

Sponsors: Senator Odom.

Referred to: Finance.

April 1, 1999

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE TOWN OF CORNELIUS TO PROVIDE FOR VOLUNTARY ANNEXATION OF PROPERTY SUBJECT TO PRESENT-USE VALUE APPRAISAL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-31(e) is amended by adding new subsections to read:

"(e1) Notwithstanding subsection (e) of this section, if an area described in the annexation petition and ordinance includes agricultural land, horticultural land, or forestland, that on the effective date of annexation is:

(1) Land that is being taxed at present-use value pursuant to G.S. 105-277.4; or

(2) Land that:

a. Was on the date of the filing of the petition for annexation being used for actual production and is eligible for present-use value taxation under G.S. 105-277.4, but the land has not been in use for actual production for the required time under G.S. 105-277.3; and

b. The assessor for the county the land subject to annexation is located has certified to the city that the land meets the requirements of this subdivision.

Annexation becomes effective as to that property pursuant to subsection (e2) of this section.

(e2) Annexation of property subject to annexation under subsection (e1) of this section shall become effective:

(1) Upon the effective date of the annexation ordinance, the property is considered part of the city only (i) for the purpose of establishing city boundaries for additional annexations pursuant to this Article and (ii) for the exercise of city authority pursuant to Chapter 19 of this Chapter.

(2) For all other purposes, the annexation becomes effective as to each tract of such property or such part thereof on the last day of the month in which that tract or part thereof becomes ineligible for classification pursuant to G.S. 105-227.4 and no longer meets the requirements of subdivision (e1)(2) of this section. Until annexation of a tract or a part of a tract becomes effective pursuant to this subdivision, the tract or part of a tract is not subject to taxation by the city under Article 12 of Chapter 105 of the General Statutes, nor is the tract or part of the tract entitled to services provided by the city."

Section 2. This act applies to the Town of Cornelius only.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 712
Proposed Committee Substitute S712-PCS8605-LA

Short Title: Cornelius Voluntary Annexation. (Local)

Sponsors:

Referred to:

April 1, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE TOWN OF CORNELIUS TO PROVIDE FOR VOLUNTARY ANNEXATION OF PROPERTY SUBJECT TO PRESENT-USE VALUE APPRAISAL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-31 is amended by adding new subsections to read:

"(e1) Notwithstanding subsection (e) of this section, an annexation becomes effective as to the property pursuant to subsection (e2) if an area described in the annexation petition and ordinance includes agricultural land, horticultural land, or forestland, that on the effective date of annexation is:

(1) Land that is being taxed at present-use value pursuant to G.S. 105-277.4; or

(2) Land that:

a. Was on the date of the filing of the petition for annexation being used for actual production and is eligible for present-use value taxation under G.S. 105-277.4, but the land has not been in use for actual production for the required time under G.S. 105-277.3; and

b. The assessor for the county where the land subject to annexation is located has certified to the city that the land meets the requirements of this subdivision.

(e2) Annexation of property subject to annexation under subsection (e1) of this section shall become effective as to each tract of such property or such part thereof

on the last day of the month in which that tract or part thereof becomes ineligible for classification pursuant to G.S. 105-277.4 and no longer meets the requirements of subdivision (e1)(2) of this section. Until annexation of a tract or a part of a tract becomes effective pursuant to this subsection, the tract or part of a tract is not subject to taxation by the city under Article 12 of Chapter 105 of the General Statutes, nor is the tract or part of the tract entitled to services provided by the city. When annexation becomes effective pursuant to this subsection as to a tract or part of a tract, the city shall provide all required services upon payment of city taxes.

(e3) The boundaries of the property prior to the effective date under subsection (e2) of this section shall be considered as primary corporate limits only (i) for the purpose of establishing city boundaries for additional annexations pursuant to this Article and (ii) for the exercise of city authority pursuant to Article 19 of this Chapter."

Section 2. This act applies to the Town of Cornelius only.

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

SENATE BILL 712:
Cornelius Voluntary Annexation

BILL ANALYSIS

Committee:	Senate Finance Committee	**Introduced by:**	Sen. Odom
Date:	April 25, 1999	**Summary by:**	Martha K. Walston and Cindy Avrette, Staff Attorneys
Version:	Proposed Committee Substitute		

SUMMARY: ***Senate Bill 712 would allow the Town of Cornelius to annex property subject to present use value classification upon a petition of the property owners. Unlike general law, this bill would allow the annexation to become effective at whatever point in time the property becomes ineligible for present use value classification. However, for purposes of the Town's extraterritorial jurisdiction and other annexing proceedings, the property would be considered part of the Town's primary corporate limits. The act becomes effective when it becomes law.***

CURRENT LAW: The law provides that a municipality may annex by ordinance any area contiguous to its boundaries upon presentation to the governing board of a petition signed by the owners of all the real property located in the area. The annexation must become effective within six months from the date of the passage of the ordinance. From and after the effective date of the ordinance, the property becomes subject to municipal taxes and the municipality must offer the area the same privileges and benefits as received by other parts of the municipality.

A municipality may annex property that is not contiguous with its primary corporate limits if five different standards are met. Two of the five standards concern the proximity of the property proposed to be annexed to the primary corporate limits of the annexing city. One of the five standards provides that the area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, does not exceed ten percent (10%) of the area within the primary corporate limits of the annexing city.

A municipality may annex property involuntarily if several different requirements are met. One of the requirements concerns the location of the property in relationship to the municipality's existing corporate boundaries: the area proposed to be annexed must be adjacent or contiguous to the municipality's boundaries and at least 1/8 of the aggregate external boundaries of the area must coincide with the municipal boundary.

Article 19 of Chapter 160A of the General Statutes allows a municipality to enact zoning restrictions within its corporate limits. In addition, any municipality may exercise these same powers within a defined area extending not more than one mile beyond its limits. This is commonly known as the municipality's extraterritorial jurisdiction (ETJ). With the approval of the board of county commissioners, a municipality with a population greater than 10,000 but less than 25,000 may expand its

ETJ to two miles beyond its corporate limits, and a municipality with a population of 25,000 or more m expand its ETJ to three miles beyond its corporate limits.

Article V, Section 2 of the North Carolina Constitution authorizes the General Assembly to classify property for taxation, so long as the classification is uniform throughout the State. In 1973, the General Assembly classified agricultural land, forestland, and horticultural land as a special class of property. To come within the classification, the property must meet certain ownership, usage, and income requirements. If the property comes within the classification, it is taxed on its present-use value as opposed to its true value. Present-use value is the value of the land in its current use as farmland.

BILL ANALYSIS: Senate Bill 712 would change the current law concerning annexation by petition for the Town of Cornelius. Under the bill, the effective date of an annexation ordinance could be at an indeterminable point in time in the future, as opposed to within six months after the passage of the annexation ordinance. The property in the annexation petition would not be subject to municipal taxes nor would it be entitled to municipal service until the effective date of the annexation. However, the property would be considered part of the municipality's primary corporate limits as of the effective date of the ordinance for purposes of establishing the Town's boundaries for additional annexations and its ETJ.

To come within the exception created by this local act, the property must be one of two types of property:

1. It must be currently classified as farmland and taxed at its present-use value.
2. It must be land that, on the date of the filing of the annexation petition, is being used for farm purposes and is eligible for the present-use value taxation except that it has not been in use for actual production for the required statutory time. The county tax assessor must certify that the land meets this requirement.

Annexation of the present-use value property described above becomes effective on the last day of the month in which the property no longer meets the above descriptions. Prior to the effective date of annexation, the boundaries of this property would be considered in establishing the primary corporate limits of Cornelius for the purposes of additional annexations and the Town's ETJ limits.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 353

Short Title: Davidson Satellite Annexation. (Local)

Sponsors: Senator Odom.

Referred to: Finance.

March 15, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE TOWN OF DAVIDSON TO MAKE ADDITIONAL VOLUNTARY SATELLITE ANNEXATIONS IF CERTAIN CRITERIA ARE MET.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-58.1(b) reads as rewritten:

"(b) A noncontiguous area proposed for annexation must meet all of the following standards:

(1) The nearest point on the proposed satellite corporate limits must be not more than three miles from the primary corporate limits of the annexing city. Notwithstanding this subdivision, if an area proposed for annexation is located entirely within the same county as the annexing municipality, and in an area that another city has: (i) agreed not to annex, or (ii) has given the annexing city the right of annexation, under an agreement with the annexing city under Part 6 of this Article or similar local legislation authorizing such agreements, then this subdivision shall not apply.

(2) No point on the proposed satellite corporate limits may be closer to the primary corporate limits of another city than to the primary corporate limits of the annexing city. Notwithstanding this subdivision, if an area proposed for annexation under this Part is either: (i) in an area that another city has agreed not to annex under an agreement with the annexing city under Part 6 of this Article or similar local legislation authorizing such agreements, and

the territory to be annexed is within the same county as the annexing city is located, or (ii) the closer city is located entirely within another county than the area being annexed, then the proximity to that other city shall not be considered in applying this subdivision.

(3) The area must be so situated that the annexing city will be able to provide the same services within the proposed satellite corporate limits that it provides within its primary corporate limits.

(4) If the area proposed for annexation, or any portion thereof, is a subdivision as defined in G.S. 160A-376, all of the subdivision which is located within the same county as the annexing municipality must be included.

(5) The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed ten percent (10%) of the area within the primary corporate limits of the annexing city."

Section 2. This act applies to the Town of Davidson only.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 353
Proposed Committee Substitute S353-PCS4686-LA

Short Title: Davidson Satellite Annexation. (Local)

Sponsors:

Referred to:

March 15, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE TOWN OF DAVIDSON TO MAKE ADDITIONAL VOLUNTARY SATELLITE ANNEXATIONS IF CERTAIN CRITERIA ARE MET.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-58.1(b) reads as rewritten:

"(b) A noncontiguous area proposed for annexation must meet all of the following standards:

(1) The nearest point on the proposed satellite corporate limits must be not more than three miles from the primary corporate limits of the annexing city. Notwithstanding this subdivision, if an area proposed for annexation is located entirely within the same county as the annexing municipality and in an area that another city in that county has: (i) agreed not to annex, or (ii) has given the annexing city the right of annexation, under an agreement with the annexing city under Part 6 of this Article or similar local legislation authorizing such agreements, then this subdivision shall not apply.

(2) No point on the proposed satellite corporate limits may be closer to the primary corporate limits of another city than to the primary corporate limits of the annexing city. Notwithstanding this subdivision, if an area proposed for annexation under this Part is either: (i) in an area that another city has agreed not to annex

under an agreement with the annexing city under Part 6 of this Article or similar local legislation authorizing such agreements and the territory to be annexed is within the same county as the annexing city is located, or (ii) the closer city is located entirely within another county than the area being annexed, then the proximity to that other city shall not be considered in applying this subdivision.

(3) The area must be so situated that the annexing city will be able to provide the same services within the proposed satellite corporate limits that it provides within its primary corporate limits.

(4) If the area proposed for annexation, or any portion thereof, is a subdivision as defined in G.S. 160A-376, all of the subdivision which is located within the same county as the annexing municipality must be included.

(5) The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed ten percent (10%) of the area within the primary corporate limits of the annexing city."

Section 2. This act applies to the Town of Davidson only.

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

SENATE BILL 353:
Davidson Satellite Annexation

BILL ANALYSIS

Committee: Senate Finance Committee
Date: April 25, 1999
Version: Proposed Committee Substitute

Introduced by: Sen. Odom
Summary by: Martha K. Walston and Cindy Avrette, Staff Attorneys
Introduced by: Sen. Odom

*SUMMARY: **Senate Bill 353 authorizes the Town of Davidson to make certain voluntary satellite annexations that it would not otherwise be able to make. The bill is effective when it becomes law.***

CURRENT LAW: G.S. 160A-58.1 governs the voluntary annexation of noncontiguous property. Property owners may petition a city for voluntary annexation of noncontiguous property if the property meets all of the following standards.

1. The nearest point on the proposed satellite corporate limits must be not more than 3 miles from the primary corporate limits of the annexing city.
2. No point on the proposed satellite corporate limits may be closer to the primary corporate limits of another city than to the primary corporate limits of the annexing city.
3. The area must be so situated that the annexing city will be able to provide the same services within the proposed satellite corporate limits that it provides within its primary corporate limits.
4. If the area proposed for annexation is a subdivision, all of the subdivision must be included.
5. The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed ten percent (10%) of the area within the primary corporate limits of the annexing city.

BILL ANALYSIS: Senate Bill 353 modifies the first, second, and fourth standards for the Town of Davidson so that it may annex property that meets the following standards:

1. The proposed area to be annexed may be more than 3 miles from the primary corporate limits of Davidson if it is located within the same county as Davidson and another city has agreed not to annex the area or has agreed to give Davidson the right to annex.
2. The proposed area to be annexed may be closer to the primary corporate limits of another city than to the limits of Davidson if either the other city has agreed not to annex the proposed area and the area is within the same county as Davidson or the closer city is located entirely within another county than the proposed area being annexed.
3. If the proposed area to be annexed includes a subdivision or a portion of a subdivision, then only that portion of the subdivision located in the same county as Davidson must be included in the annexation.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 235

Short Title: "Kids First" Registration Plates. (Public)

Sponsors: Senators Hagan; Carter, Cooper, Dalton, Dannelly, Garrou, Gulley, Harris, Hartsell, Kinnaird, Lucas, Martin of Guilford, Metcalf, Miller, Moore, Perdue, Phillips, Robinson, Shaw of Cumberland, Shaw of Guilford, and Wellons.

Referred to: Finance.

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE "KIDS FIRST" SPECIAL REGISTRATION PLATES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-79.4(b) reads as rewritten:

"(b) Types. -- The Division shall issue the following types of special registration plates:

(1) Administrative Officer of the Courts. -- Issuable to the Director of the Administrative Office of the Courts. The plate shall bear the phrase "J-20".

(2) Amateur Radio Operator. -- Issuable to an amateur radio operator who holds an unexpired and unrevoked amateur radio license issued by the Federal Communications Commission and who asserts to the Division that a portable transceiver is carried in the vehicle. The plate shall bear the phrase "Amateur Radio". The plate shall bear the operator's official amateur radio call letters, or call letters with numerical or letter suffixes so that an owner of more than one vehicle may have the call letters on each.

(3) American Legion. -- Issuable to a member of the American Legion. The plate shall bear the words "American Legion" and the emblem of the American Legion. The Division may not issue the

plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(3a) Bronze Star Recipient. -- Issuable to a recipient of the Bronze Star. The plate shall bear the emblem of the Bronze Star and the words "Bronze Star".

(4) Civil Air Patrol Member. -- Issuable to an active member of the North Carolina Wing of the Civil Air Patrol. The plate shall bear the phrase "Civil Air Patrol". A plate issued to an officer member shall begin with the number "201" and the number shall reflect the seniority of the member; a plate issued to an enlisted member, a senior member, or a cadet member shall begin with the number "501".

(5) Civic Club. -- Issuable to a member of a nationally recognized civic organization whose member clubs in the State are exempt from State corporate income tax under G.S. 105-130.11(a)(5). Examples of these clubs include Jaycees, Kiwanis, Optimist, Rotary, Ruritan, and Shrine. The plate shall bear a word or phrase identifying the civic club and the emblem of the civic club. The Division may not issue a civic club plate authorized by this subdivision unless it receives at least 300 applications for that civic club plate.

(6) Class D Citizen's Radio Station Operator. -- Issuable to a Class D citizen's radio station operator. For an operator who has been issued Class D citizen's radio station call letters by the Federal Communications Commission, the plate shall bear the operator's official Class D citizen's radio station call letters. For an operator who has not been issued Class D citizen's radio station call letters by the Federal Communications Commission, the plate shall bear the phrase "Citizen's Band Radio".

(7) Clerk of Superior Court. -- Issuable to a current or retired clerk of superior court. A plate issued to a current clerk shall bear the phrase "Clerk Superior Court" and the letter "C" followed by a number that indicates the county the clerk serves. A plate issued to a retired clerk shall bear the phrase "Clerk Superior Court, Retired", the letter "C" followed by a number that indicates the county the clerk served, and the letter "X" indicating the clerk's retired status.

(8) Coast Guard Auxiliary Member. -- Issuable to an active member of the United States Coast Guard Auxiliary. The plate shall bear the phrase "Coast Guard Auxiliary".

(9) Collegiate Insignia Plate. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or an insignia representing a public or private college or university.

(10) Combat Veteran. -- Issuable to a veteran of the armed forces who served in a combat zone, or in waters adjacent to a combat zone, during a period of war and who was separated from the armed forces under honorable conditions. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate. A "period of war" is any of the following:

a. World War I, which began April 16, 1917, and ended November 11, 1918.
b. World War II, which began December 7, 1941, and ended December 31, 1946.
c. The Korean Conflict, which began June 27, 1950, and ended January 31, 1955.
d. The Vietnam Era, which began August 5, 1964, and ended May 7, 1975.
e. The Persian Gulf War.
f. Any other campaign, expedition, or engagement for which the United States Department of Defense authorizes a campaign badge or medal.

(11) County Commissioner. -- Issuable to a county commissioner of a county in this State. The plate shall bear the words "County Commissioner" followed first by a number representing the commissioner's county and then by a letter or number that distinguishes plates issued to county commissioners of the same county. The number of a county shall be the order of the county in an alphabetical list of counties that assigns number one to the first county in the list and a letter or number to distinguish different cars owned by the county commissioners in that county. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(12) Disabled Veteran. -- Issuable to a veteran of the armed forces of the United States who suffered a 100% service-connected disability.

(12a) Distinguished Flying Cross. -- Issuable to a recipient of the Distinguished Flying Cross. The plate shall bear the emblem of the Distinguished Flying Cross and the words "Distinguished Flying Cross".

(13) District Attorney. -- Issuable to a North Carolina or United States District Attorney. The plate issuable to a North Carolina district attorney shall bear the letters "DA" followed by a number that represents the prosecutorial district the district attorney serves. The plate for a United States attorney shall bear the phrase "U.S. Attorney" followed by a number that represents the district the

attorney serves, with 1 being the Eastern District, 2 being the Middle District, and 3 being the Western District.

(13a) Eagle Scout. -- Issuable to a young man who has been certified as an Eagle Scout by the Boy Scouts of America, or to his parents or guardians. The plate shall bear the insignia of the Boy Scouts of America and shall bear the words "Eagle Scout". The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(14) 82nd Airborne Division Association Member. -- Issuable to a member of the 82nd Airborne Division Association, Inc. The plate shall bear the insignia of the 82nd Airborne Division Association, Inc. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(15) Fire Department or Rescue Squad Member. -- Issuable to an active regular member or volunteer member of a fire department, rescue squad, or both a fire department and rescue squad. The plate shall bear the words "Firefighter", "Rescue Squad", or "Firefighter-Rescue Squad".

(16) Future Farmers of America. -- Issuable to a member or a supporter of the National Future Farmers of America Organization. The plate shall bear the emblem of the organization and the letters "FFA". The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(16a) Girl Scout Gold Award recipient. -- Issuable to a young woman who has been certified as a Girl Scout Gold Award recipient by the Girl Scouts of the U.S.A., or to her parents or guardians. The plate shall bear the insignia of the Girl Scouts of the U.S.A. and shall bear the words "Girl Scout Gold Award". The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(17) Historic Vehicle Owner. -- Issuable for a motor vehicle that is at least 35 years old measured from the date of manufacture. The plate for an historic vehicle shall bear the word "Antique" unless the vehicle is a model year 1943 or older. The plate for a vehicle that is a model year 1943 or older shall bear the word "Antique" or the words "Horseless Carriage", at the option of the vehicle owner.

(18) Historical Attraction Plate. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or an insignia representing a publicly owned or nonprofit historical attraction located in North Carolina.

(19) Honorary Plate. -- Issuable to a member of the Honorary Consular Corps, who has been certified by the U. S. State Department, the

plate shall bear the words "Honorary Consular Corps" and a distinguishing number based on the order of issuance.

(20) Judge or Justice. -- Issuable to a sitting or retired judge or justice in accordance with G.S. 20-79.6.

(20a) Kids First. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear the phrase "Kids First" and a logo of children's hands.

(21) Legion of Valor. -- Issuable to a recipient of one of the following military decorations: the Congressional Medal of Honor, the Distinguished Service Cross, the Navy Cross, or the Air Force Cross. The plate shall bear the emblem and name of the recipient's decoration.

(22) Legislator. -- Issuable to a member of the North Carolina General Assembly. The plate shall bear "The Great Seal of the State of North Carolina" and, as appropriate, the word "Senate" or "House" followed by the Senator's or Representative's assigned seat number.

(23) Magistrate. -- Issuable to a North Carolina magistrate. The plate shall bear the letters "MJ" followed by a number indicating the district court district the magistrate serves, then by a hyphen, and then by a number indicating the seniority of the magistrate. The Division shall use the number "9" to designate District Court Districts 9 and 9B.

(24) March of Dimes. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or an insignia representing the March of Dimes Foundation.

(25) Marshal. -- Issuable to a United States Marshal. The plate shall bear the phrase "U.S. Marshal" followed by a number that represents the district the Marshal serves, with 1 being the Eastern District, 2 being the Middle District, and 3 being the Western District.

(26) Military Reservist. -- Issuable to a member of a reserve component of the armed forces of the United States. The plate shall bear the name and insignia of the appropriate reserve component. Plates shall be numbered sequentially for members of a component with the numbers 1 through 5000 reserved for officers, without regard to rank.

(27) Military Retiree. -- Issuable to an individual who has retired from the armed forces of the United States. The plate shall bear the word "Retired" and the name and insignia of the branch of service from which the individual retired. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(28) National Guard Member. -- Issuable to an active or a retired member of the North Carolina National Guard. The plate shall bear the phrase "National Guard". A plate issued to an active member shall bear a number that reflects the seniority of the member; a plate issued to a commissioned officer shall begin with the number "1"; a plate issued to a noncommissioned officer with a rank of E7, E8, or E9 shall begin with the number "1601"; a plate issued to an enlisted member with a rank of E6 or below shall begin with the number "3001". The plate issued to a retired or separated member shall indicate the member's retired status.

(28a) Native American. -- Issuable to the registered owner of a motor vehicle. The plate may bear a phrase or an insignia representing Native Americans. The Division must receive 300 or more applications for the plate before it may be developed.

(29) Olympic Games. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or insignia representing the Olympic Games.

(30) Partially Disabled Veteran. -- Issuable to a veteran of the armed forces of the United States who suffered a service connected disability of less than 100%.

(31) Pearl Harbor Survivor. -- Issuable to a veteran of the armed forces of the United States who was present at and survived the attack on Pearl Harbor on December 7, 1941. The plate will bear the phrase "Pearl Harbor Survivor" and the insignia of the Pearl Harbor Survivors' Association.

(32) Personalized. -- Issuable to the registered owner of a motor vehicle. The plate will bear the letters or letters and numbers requested by the owner. The Division may refuse to issue a plate with a letter combination that is offensive to good taste and decency. The Division may not issue a plate that duplicates another plate.

(33) Prisoner of War. -- Issuable to the following:

a. A member or veteran member of the armed forces of the United States who has been captured and held prisoner by forces hostile to the United States while serving in the armed forces.

b. The surviving spouse of a person who had a prisoner of war plate at the time of death so long as the surviving spouse continues to renew the plate and does not remarry.

(34) Professional Sports Fan. -- Issuable to the registered owner of a motor vehicle. The plate shall bear the logo of a professional sports team located in North Carolina. The Division shall receive 300 or more applications for a professional sports fan plate before a plate may be issued. The Division shall not develop a professional sports

fan plate unless the professional sports team licenses, without charge, the State to use the official team logo on the plate.

(35) Purple Heart Recipient. -- Issuable to a recipient of the Purple Heart award. The plate shall bear the phrase "Purple Heart Veteran, Combat Wounded" and the letters "PH".

(36) Register of Deeds. -- Issuable to a register of deeds. The plate shall bear the words "Register of Deeds" and the letter "R" followed by a number representing the county of the register of deeds. The number of a county shall be the order of the county in an alphabetical list of counties that assigns number one to the first county in the list.

(37) Scenic Rivers. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the words "Scenic Rivers" and a picture representing the unique beauty of the scenic rivers of North Carolina.

(38) School Technology. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or an insignia representing the public school system in North Carolina.

(39) Sheriff. -- Issuable to a current sheriff or to a retired sheriff who served as sheriff for at least 10 years before retiring. A plate issued to a current sheriff shall bear the word "Sheriff" and the letter "S" followed by a number that indicates the county the sheriff serves. A plate issued to a retired sheriff shall bear the phrase "Sheriff, Retired", the letter "S" followed by a number that indicates the county the sheriff served, and the letter "X" indicating the sheriff's retired status.

(39a) Silver Star Recipient. -- Issuable to a recipient of the Silver Star. The plate shall bear the emblem of the Silver Star and the words "Silver Star".

(40) Soil and Water Conservation. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase and picture appropriate to the subject of water quality and environmental protection in North Carolina.

(41) Special Olympics. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or an insignia representing the North Carolina Special Olympics.

(42) Square Dance Clubs. -- Issuable to a member of a recognized square dance organization exempt from corporate income tax under G.S. 105-130.11(a)(5). The plate shall bear a word or phrase identifying the club and the emblem of the club. The Division shall not issue a dance club plate authorized by this subdivision unless it receives at least 300 applications for that dance club plate.

(43) State Government Official. -- Issuable to elected and appointed members of State government in accordance with G.S. 20-79.5.

(44) State Attraction. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or an insignia representing a publicly owned or nonprofit State or federal attraction located in North Carolina.

(45) Street Rod Owner. -- Issuable to the registered owner of a modernized private passenger motor vehicle manufactured prior to the year 1949 or designed to resemble a vehicle manufactured prior to the year 1949. The plate shall bear the phrase "Street Rod". The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(46) Transportation Personnel. -- Issuable to various members of the Divisions of the Department of Transportation. The plate shall bear the letters "DOT" followed by a number from 1 to 85, as designated by the Governor.

(47) U.S. Representative. -- Issuable to a United States Representative for North Carolina. The plate shall bear the phrase "U.S. House" and shall be issued on the basis of Congressional district numbers.

(48) U.S. Senator. -- Issuable to a United States Senator for North Carolina. The plates shall bear the phrase "U.S. Senate" and shall be issued on the basis of seniority represented by the numbers 1 and 2.

(49) Veterans of Foreign Wars. -- Issuable to a member or a supporter of the Veterans of Foreign Wars. The plate shall bear the words "Veterans of Foreign Wars" or "VFW" and the emblem of the VFW. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(50) Vietnam Veteran. -- Issuable to a veteran of the armed forces of the United States who served in Vietnam. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(51) Wildlife Resources. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear a picture representing a native wildlife species occurring in North Carolina."

Section 2. G.S. 20-79.7(a) reads as rewritten:

"(a) Fees. -- Upon request, the Division shall provide and issue free of charge one registration plate to a recipient of the Congressional Medal of Honor, a 100% disabled veteran, and an ex-prisoner of war. All other special registration plates are subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

Special Plate	Additional Fee Amount
Historical Attraction	$30.00

State Attraction	$30.00
Collegiate Insignia	$25.00
Olympic Games	$25.00
Special Olympics	$25.00
Kids First	$25.00
March of Dimes	$20.00
Scenic Rivers	$20.00
School Technology	$20.00
Soil and Water Conservation	$20.00
Wildlife Resources	$20.00
Personalized	$20.00
Active Member of the National Guard	None
Purple Heart Recipient	None
All Other Special Plates	$10.00."

Section 3. G.S. 20-79.7(b) reads as rewritten:

"(b) Distribution of Fees. -- The Special Registration Plate Account and the Collegiate and Cultural Attraction Plate Account are established within the Highway Fund. The Division must credit the additional fee imposed for the special registration plates listed in subsection (a) among the Special Registration Plate Account (SRPA), the Collegiate and Cultural Attraction Plate Account (CCAPA), and the Natural Heritage Trust Fund (NHTF), which is established under G.S. 113-77.7, as follows:

Special Plate	SRPA	CCAPA	NHTF
Historical Attraction	$10	$20	0
In-State Collegiate Insignia	$10	$15	0
Out-of-state Collegiate Insignia	$10	0	$15
Personalized	$10	0	$10
Special Olympics	$10	$15	0
Kids First	$10	$15	0
Olympic Games	$10	$15	0
State Attraction	$10	$20	0
March of Dimes	$10	$10	0
Scenic Rivers	$10	$10	0
School Technology	$10	$10	0
Soil and Water Conservation	$10	$10	0
Wildlife Resources	$10	$10	0
All other Special Plates	$10	0	0".

Section 4. G.S. 20-81.12 is amended by adding a new subsection to read:

"(a1) Kids First Plates. -- The Division must receive 300 or more applications for a Kids First plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Kids First plates to the North Carolina Children's Trust Fund created pursuant to G.S. 110-150."

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

SENATE BILL 235:
"Kids First" Registration Plates

BILL ANALYSIS

Committee: Senate Finance Committee
Date: April 26, 1999
Version: 1st Edition

Introduced by: Senator Hagan
Summary by: Martha K. Walston
Committee Counsel

SUMMARY: SB 235 authorizes the Division of Motor Vehicles to issue "Kids First" special license plates for an additional $25 fee. $15 of the additional fee will go to the North Carolina Children's Trust Fund to help fund child abuse and neglect prevention programs.

CURRENT LAW: Passenger vehicles and property-hauling vehicles pay an annual registration fee. Upon request, the Division of Motor Vehicles will issue special registration plates for an additional fee. Active members of the National Guard and Purple Heart recipients do not have to pay an additional fee for their special plates. Special registration plates are issued free of charge to recipients of the Congressional Medal of Honor, 100% disabled veterans, and ex-prisoners of war. All other special registration plates are subject to the regular registration fee plus an additional fee. Fees generated from special registration plates are credited to the Special Registration Plate Account and the Collegiate and Cultural Attraction Account established within the Highway Fund, and the Natural Heritage Trust Fund established under G.S. 113-77.7.

$10 of the additional fee goes to the Special Registration Plate Account. This uniform system of fees has been in place since 1991 when a study commission recommended that the special registration plate system be simplified through a uniform fee schedule. After deducting the costs of the plates from the Account, the money is distributed as follows:

Amount	Purpose
$525,000 distributed annually	Operating assistance for certain Visitor Centers
33% distributed quarterly	Department of Commerce for advertising the promotion of travel and industrial development in the State
50% distributed quarterly	Department of Transportation for beautification of highways
17% distributed quarterly	Department of Health and Human Services to promote travel accessibility for disabled persons.

The portion of the special registration fee going to the Collegiate and Cultural Attraction Plate Account is transferred quarterly to the organization for which the special plate is made.

Out-of-state Collegiate Insignia and Personalized special plates distribute part of their fee to the Natural Heritage Trust Fund to be used mainly to protect land with outstanding natural or cultural heritage values.

BILL ANALYSIS: SB 235 authorizes DMV to develop a special license plate bearing the phrase "Kids First" and a logo of children's hands. DMV must receive at least 300 applications for a special plate before it can be issued. The cost of the plate is the regular registration fee plus an additional $25. The first $10 of the additional fee would be credited to the Special Registration Plate Fund. The remaining $15 of the additional fee would go to the Collegiate and Cultural Attraction Plate Account and transferred quarterly to the N.C. Children's Trust Fund. This Fund is established in the State Treasurer's Office and is funded with $5 from each $40 marriage license fee collected by a register of deeds. The Fund is used by the State Board of Education to fund child abuse and neglect prevention programs authorized under the Prevention of Child Abuse and Neglect Article in the N.C. General Statutes.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 235 "Kids First" Registration Plates

SHORT TITLE: "Kids First" Registration Plates

SPONSOR(S): Senator Hagan

FISCAL IMPACT

Yes (x) **No ( )** **No Estimate Available ( )**

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
Highway Fund Special Reg. Plate Account	$3,000	$3,000	$3,000	$3,000	$3,000
NC Children's Trust Fund	$4,500	$4,500	$4,500	$4,500	$4,500
EXPENDITURES					
Special Reg. Plate Account	($856)				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Transportation, Division of Motor Vehicles, and North Carolina Children's Trust Fund.

EFFECTIVE DATE: When it becomes law.

BILL SUMMARY: The legislation authorizes the Division of Motor Vehicles to issue "Kids First" special registration plates. It instructs the Department to develop the plate only after 300 or more applications for the plate are received. A special fee of $25.00 (in addition to the regular motor vehicle registration fee) is also authorized. Ten dollars of this amount goes to the Special Registration Plate Account, and fifteen dollars will be deposited in the Collegiate and Cultural Attractions Plate Account (CCAPA). The proceeds from the plate deposited in the CCAPA are transferred quarterly to the North Carolina Children's Trust Fund.

ASSUMPTIONS AND METHODOLOGY: In addition to the normal $20.00 registration fee every owner of a private passenger vehicle pays, there is a $25.00 fee for each specialized "Kids First" plate. Because there is no way to determine how many of the "Kids First" plates will be requested, this fiscal note assumes the issuance of the minimum 300 license plates in FY 1999-00. As a result, the bill raises a total of $7,500 ($25 X 300 plates). Three thousand dollars

($3000.00) of this amount goes to the SRPA. Four thousand five hundred dollars ($4,500.00) is deposited in the CCAPA. However, at the end of each quarter the funds deposited in the CCAPA are transferred to the North Carolina Children's Trust Fund. Therefore, the North Carolina Children's Trust Fund actually gains $4,500.00. The note also assumes that those plates will be renewed in the following years.

According to the Division of Motor Vehicles and the Department of Corrections, there is a one-time cost of $100 to design the new plate. There is also a production cost of $2.52 per plate (This assumes a basic one color design. If the design is more complex, or requires more color, the per plate cost increases). The total production cost for 300 basic plates is $856.00.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Linda Struyk Millsaps

APPROVED BY: Tom Covington

DATE: Monday, April 26, 1999

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 534

Short Title: Kenansville Services. (Local)

Sponsors: Senator Albertson.

Referred to: Finance.

March 29, 1999

A BILL TO BE ENTITLED

AN ACT PROVIDING THAT THE TOWN OF KENANSVILLE IS NOT OBLIGATED TO PROVIDE SERVICES TO CERTAIN ANNEXED PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding any other provision of law, the Town of Kenansville is not obligated to provide any services to Country Squire Restaurant, described herein as Tract 1, and Grey Fox Restaurant (formerly known as Josef's Restaurant), described herein as Tract 2:

Tract 1

Located in Kenansville Township, Duplin County, North Carolina and more particularly described as follows:

BEGINNING at a railroad spike in the centerline of North Carolina Highway Number 24, corner "A" shown on a map entitled "Country Squire & Vintage Inn Property", dated October 7, 1982, as recorded in Map Book 11, Page 95, of the Duplin County Registry, the northwest corner of Tract No. 10 of the T. J. McGowan Division (Map Book 5, Page 15), said railroad spike being located North 58 degrees 17 minutes 25 seconds West 470.90 feet from a 1/2 inch iron rod in the centerline intersection of N.C. Hwy. No. 24 and N.C.S.R. No. 1376, and runs thence;

1. With the center of the pavement of N.C. Hwy. No. 24 North 58 degrees 17 minutes 25 seconds West 499.84 feet to a 1/2 inch iron rod; thence

2. North 25 degrees 27 minutes 15 seconds East 389.50 feet (passing a concrete monument at 176.03 feet) to a concrete monument, corner "C"; thence

3. North 76 degrees 43 minutes 45 seconds East 92.29 feet to a concrete monument, corner "D"; thence

4. South 65 degrees 06 minutes 15 seconds East 317.76 feet to a concrete monument, corner "E"; thence

5. South 38 degrees 40 minutes 15 seconds East 534.67 feet to a concrete monument in the north line of Tract No. 10 of the T. J. McGowan division, corner "F"; thence

6. With the line of Tract No. 10 South 79 degrees 28 minutes 35 seconds West 461.98 feet to the point of BEGINNING, containing 7.26 acres, more or less, as shown on a map entitled "Country Squire & Vintage Inn Property" dated October 7, 1982 as recorded in Map Book 11, Page 95 of the Duplin County Registry, and being part of that land described in deeds recorded in the Duplin County Registry as follows: To Joseph A. West and wife, Janet H. West in Book 553, Page 93, to H. M. West in Book 423, Page 274, to Joseph A. West in Book 756, Page 304, and to Joseph A. West in Book 898, Page 539. And further being the same lands described in a deed dated the 22nd day of October, 1982, from Joseph A. West (Single) and Leona H. West (Widow), to Eakes Investment Company, Joe D. Eakes and Doris W. Eakes, partners, recorded in Book 903, Page 340, Duplin County Registry.

Tract 2

Located in Kenansville Township, Duplin County, State of North Carolina, and being described with bearings relative to the North Carolina Grid Meridian as follows:

BEGINNING at a 1/2 inch iron rod in the center of the pavement of N. C. Hwy. No. 24 and 50 corner "B" shown on a map recorded in Map Book 11, Page 95 of the Duplin County Registry, said iron rod being located North 58 degrees 17 minutes 25 seconds West a distance of 970.74 feet from a 1/2 inch rod in the centerline intersection of N. C. Hwy. No. 24 and S. R. No. 1376, and runs thence

With the center of the pavement of N. C. Hwy. No. 24 and 50 North 58 degrees 17 minutes 25 seconds West a distance of 119.02 feet to a 1/2 inch iron rod in the center of pavement; thence

To and with the line of the 1.17 acre house tract North 31 degrees 21 minutes 44 seconds East a distance of 251.84 feet to a 3/4 inch iron pipe; thence

North 31 degrees 21 minutes 44 seconds East a distance of 100.00 feet to a 1/2 inch iron rod; thence

North 58 degrees 17 minutes 25 seconds West a distance of 252.77 feet to a stake; thence

North 31 degrees 21 minutes 44 seconds East a distance of 500.00 feet to a stake; thence

South 58 degrees 17 minutes 25 seconds East a distance of 350.00 feet to a stake; thence

South 24 degrees 36 minutes 16 seconds West a distance of 402.50 feet to a concrete monument a corner of the 7.26 acre tract sold to the Eakes Investment Company; thence

With the lines of the 7.26 acre tract South 76 degrees 43 minutes 45 seconds West a distance of 92.29 feet to a concrete monument, South 25 degrees 27 minutes 15 seconds West a distance of 389.50 feet to the point of beginning, CONTAINING 5.06 acres more or less, and being part of the 80 acre tract described in a deed to H. M. West as recorded in Book 423, Page 274 of the Duplin County Registry.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1004

Short Title: Geologist Licensure. (Public)

Sponsors: Senator Kinnaird.

Referred to: Finance.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT REVISING THE PROCEDURE USED BY THE NORTH CAROLINA BOARD FOR LICENSING OF GEOLOGISTS TO ADDRESS COMPLAINTS AND INVESTIGATIONS AND AUTHORIZING THE BOARD TO ASSESS CIVIL PENALTIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 89E-17 reads as rewritten:

"**§ 89E-17. ~~Complaints.~~ Complaints and investigations.**

(a) Any person may file written charges with the Board against any licensee pursuant to rules and regulations adopted by the Board; provided however, such charges or allegations shall be in writing and shall be sworn to by the person or persons making them and shall be filed with the secretary. The Board shall have the authority and shall be under a duty to investigate reasonably all valid complaints.

(b) The Board may appoint, employ, or retain investigators for the purpose of examining or inquiring into any acts committed in this State that may violate the provisions of this Chapter, the Board's code of professional conduct, or the Board's rules. The Board may expend funds for salaries, fees, and per diem expenses in connection with an investigation conducted pursuant to this Chapter, but no funds other than per diem expenses shall be paid to a member of the Board in connection with an investigation. No member of the Board may give testimony during an investigation and thereafter participate in matters that may directly involve punitive action against a licensee or corporate registrant as a result of the investigation.

(c) Investigations by the Board shall be confidential until the Board takes disciplinary action against a licensee or corporate registrant. Records, papers, and

other documents containing information collected or compiled by the Board, its members, or employees as a result of an investigation, inquiry, or interview conducted pursuant to this Chapter shall not be a public record within the meaning of Chapter 132 of the General Statutes, except any notice or statement of charges or notice of hearing in any proceeding conducted by the Board and any records, papers, or other documents containing information collected and compiled by the Board and admitted into evidence in a hearing before the Board shall be a public record."

Section 2. G.S. 89E-19 reads as rewritten:

"**§ 89E-19. Disciplinary procedures.**

~~The Board may, consistent with the provisions of Chapter 150B of the General Statutes, refuse to grant or to renew, may suspend, or may revoke the license of any person licensed under this Chapter who has violated the provisions of this Chapter or a rule or regulation of the Board, or who has been convicted of a misdemeanor under this Chapter, or who has been convicted of a felony or who has been found by the Board to have been guilty of gross unprofessional conduct, dishonest practice or incompetence or fraud or deceit in obtaining a license or in aiding or abetting by fraud or deceit another person's obtaining a license.~~

(a) The Board, consistent with the provisions of Article 3A of Chapter 150B of the General Statutes, may refuse to grant a license to any applicant who does not meet the qualifications required by this Chapter, the Board's code of professional conduct, or the Board's rules, or to any corporate registrant that does not meet such qualifications and the requirements of Chapter 55B of the General Statutes. The Board, consistent with the provisions of Article 3A of Chapter 150B of the General Statutes, may refuse to renew, suspend, or revoke a license or certificate of registration if a licensee or corporate registrant:

(1) Violates the provisions of this Chapter, the Board's code of professional conduct, the Board's rules, or an order issued by the Board.

(2) Has been convicted of a misdemeanor.

(3) Has been convicted of a felony.

(4) Engages in gross unprofessional conduct, dishonest practice, or professional incompetence.

(5) Commits fraud or deceit in obtaining a license or certificate of registration or in assisting another person in obtaining a license or certificate of registration.

(b) If the Board finds that a licensee is professionally incompetent, the Board may require the licensee to take an oral or written examination or to meet other requirements to demonstrate the licensee's fitness to practice geology, and the Board may suspend the licensee's license until he or she establishes professional competence to the satisfaction of the Board.

(c) In addition to the authority granted in subsections (a) and (b) of this section, the Board may levy a civil penalty not in excess of five thousand dollars ($5,000) per violation per day for violations of the provisions of this Chapter, the Board's code of

professional conduct, the Board's rules, or any order issued by the Board. Before assessing a civil penalty, the Board shall consider the following:

(1) The nature, gravity, and persistence of the violation.

(2) The appropriateness of the imposition of a civil penalty when considered alone or in combination with other action taken by the Board.

(3) Whether the violation was willful.

(4) Any other factors that tend to mitigate or aggravate the violation.

(d) The Board may bring a civil action in the superior court of the county in which the violation occurred to recover a civil penalty if a licensee or corporate registrant does one of the following:

(1) Fails to request a hearing on the imposition of a civil penalty and fails to pay the civil penalty within 30 days after being notified that a civil penalty has been imposed.

(2) Requests and receives a hearing on the imposition of a civil penalty but fails to pay the civil penalty within 30 days after service of a written copy of the Board's decision."

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

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GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 1004
Proposed Committee Substitute S1004-PCS1724-LA

Short Title: Geologist Licensure. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT REVISING THE PROCEDURE USED BY THE NORTH CAROLINA BOARD FOR LICENSING OF GEOLOGISTS TO ADDRESS COMPLAINTS AND INVESTIGATIONS AND AUTHORIZING THE BOARD TO ASSESS CIVIL PENALTIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 89E-17 reads as rewritten:

"**§ 89E-17. ~~Complaints.~~ Complaints and investigations.**

(a) Any person may file written charges with the Board against any licensee pursuant to rules and regulations adopted by the Board; provided however, such charges or allegations shall be in writing and shall be sworn to by the person or persons making them and shall be filed with the secretary. The Board shall have the authority and shall be under a duty to investigate reasonably all valid complaints.

(b) The Board may appoint, employ, or retain investigators for the purpose of examining or inquiring into any acts committed in this State that may violate the provisions of this Chapter, the Board's code of professional conduct, or the Board's rules. The Board may expend funds for salaries, fees, and per diem expenses in connection with an investigation conducted pursuant to this Chapter, but no funds other than per diem expenses shall be paid to a member of the Board in connection with an investigation. No member of the Board may give testimony during an investigation and thereafter participate in matters that may directly involve punitive action against a licensee or corporate registrant as a result of the investigation.

(c) Investigations by the Board shall be confidential until the Board takes disciplinary action against a licensee or corporate registrant. Records, papers, and other documents containing information collected or compiled by the Board, its members, or employees as a result of an investigation, inquiry, or interview conducted pursuant to this Chapter shall not be a public record within the meaning of Chapter 132 of the General Statutes, except any notice or statement of charges or notice of hearing in any proceeding conducted by the Board and any records, papers, or other documents containing information collected and compiled by the Board and admitted into evidence in a hearing before the Board shall be a public record."

Section 2. G.S. 89E-19 reads as rewritten:

"**§ 89E-19. Disciplinary procedures.**

~~The Board may, consistent with the provisions of Chapter 150B of the General Statutes, refuse to grant or to renew, may suspend, or may revoke the license of any person licensed under this Chapter who has violated the provisions of this Chapter or a rule or regulation of the Board, or who has been convicted of a misdemeanor under this Chapter, or who has been convicted of a felony or who has been found by the Board to have been guilty of gross unprofessional conduct, dishonest practice or incompetence or fraud or deceit in obtaining a license or in aiding or abetting by fraud or deceit another person's obtaining a license.~~

(a) The Board, consistent with the provisions of Article 3A of Chapter 150B of the General Statutes, may refuse to grant a license to any applicant who does not meet the qualifications required by this Chapter, the Board's code of professional conduct, or the Board's rules, or to any corporate registrant that does not meet such qualifications and the requirements of Chapter 55B of the General Statutes. The Board, consistent with the provisions of Article 3A of Chapter 150B of the General Statutes, may refuse to renew, suspend, or revoke a license or certificate of registration if a licensee or corporate registrant:

(1) Violates the provisions of this Chapter, the Board's code of professional conduct, the Board's rules, or an order issued by the Board.

(2) Has been convicted of a misdemeanor.

(3) Has been convicted of a felony.

(4) Engages in gross unprofessional conduct, dishonest practice, or professional incompetence.

(5) Commits fraud or deceit in obtaining a license or certificate of registration or in assisting another person in obtaining a license or certificate of registration.

(b) If the Board finds that a licensee is professionally incompetent, the Board may require the licensee to take an oral or written examination or to meet other requirements to demonstrate the licensee's fitness to practice geology, and the Board may suspend the licensee's license until he or she establishes professional competence to the satisfaction of the Board.

(c) In addition to the authority granted in subsections (a) and (b) of this section, the Board may levy a civil penalty not in excess of five thousand dollars ($5,000) per

violation per day for violations of the provisions of this Chapter, the Board's code of professional conduct, the Board's rules, or any order issued by the Board. All civil penalties collected by the Board shall be remitted to the school fund of the county in which the violation occurred. Before assessing a civil penalty, the Board shall consider the following:

(1) The nature, gravity, and persistence of the violation.

(2) The appropriateness of the imposition of a civil penalty when considered alone or in combination with other action taken by the Board.

(3) Whether the violation was willful.

(4) Any other factors that tend to mitigate or aggravate the violation.

(d) The Board may bring a civil action in the superior court of the county in which the violation occurred to recover a civil penalty if a licensee or corporate registrant does one of the following:

(1) Fails to request a hearing on the imposition of a civil penalty and fails to pay the civil penalty within 30 days after being notified that a civil penalty has been imposed.

(2) Requests and receives a hearing on the imposition of a civil penalty but fails to pay the civil penalty within 30 days after service of a written copy of the Board's decision."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 1004
Proposed Committee Substitute S1004-PCS1724-LA

Short Title: Geologist Licensure. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT REVISING THE PROCEDURE USED BY THE NORTH CAROLINA BOARD FOR LICENSING OF GEOLOGISTS TO ADDRESS COMPLAINTS AND INVESTIGATIONS AND AUTHORIZING THE BOARD TO ASSESS CIVIL PENALTIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 89E-17 reads as rewritten:

"**§ 89E-17. ~~Complaints.~~ Complaints and investigations.**

(a) Any person may file written charges with the Board against any licensee pursuant to rules and regulations adopted by the Board; provided however, such charges or allegations shall be in writing and shall be sworn to by the person or persons making them and shall be filed with the secretary. The Board shall have the authority and shall be under a duty to investigate reasonably all valid complaints.

(b) The Board may appoint, employ, or retain investigators for the purpose of examining or inquiring into any acts committed in this State that may violate the provisions of this Chapter, the Board's code of professional conduct, or the Board's rules. The Board may expend funds for salaries, fees, and per diem expenses in connection with an investigation conducted pursuant to this Chapter, but no funds other than per diem expenses shall be paid to a member of the Board in connection with an investigation. No member of the Board may give testimony during an investigation and thereafter participate in matters that may directly involve punitive action against a licensee or corporate registrant as a result of the investigation.

(c) Investigations by the Board shall be confidential until the Board takes disciplinary action against a licensee or corporate registrant. Records, papers, and other documents containing information collected or compiled by the Board, its members, or employees as a result of an investigation, inquiry, or interview conducted pursuant to this Chapter shall not be a public record within the meaning of Chapter 132 of the General Statutes, except any notice or statement of charges or notice of hearing in any proceeding conducted by the Board and any records, papers, or other documents containing information collected and compiled by the Board and admitted into evidence in a hearing before the Board shall be a public record."

Section 2. G.S. 89E-19 reads as rewritten:

"**§ 89E-19. Disciplinary procedures.**

~~The Board may, consistent with the provisions of Chapter 150B of the General Statutes, refuse to grant or to renew, may suspend, or may revoke the license of any person licensed under this Chapter who has violated the provisions of this Chapter or a rule or regulation of the Board, or who has been convicted of a misdemeanor under this Chapter, or who has been convicted of a felony or who has been found by the Board to have been guilty of gross unprofessional conduct, dishonest practice or incompetence or fraud or deceit in obtaining a license or in aiding or abetting by fraud or deceit another person's obtaining a license.~~

(a) The Board, consistent with the provisions of Article 3A of Chapter 150B of the General Statutes, may refuse to grant a license to any applicant who does not meet the qualifications required by this Chapter, the Board's code of professional conduct, or the Board's rules, or to any corporate registrant that does not meet such qualifications and the requirements of Chapter 55B of the General Statutes. The Board, consistent with the provisions of Article 3A of Chapter 150B of the General Statutes, may refuse to renew, suspend, or revoke a license or certificate of registration if a licensee or corporate registrant:

(1) Violates the provisions of this Chapter, the Board's code of professional conduct, the Board's rules, or an order issued by the Board.

(2) Has been convicted of a misdemeanor.

(3) Has been convicted of a felony.

(4) Engages in gross unprofessional conduct, dishonest practice, or professional incompetence.

(5) Commits fraud or deceit in obtaining a license or certificate of registration or in assisting another person in obtaining a license or certificate of registration.

(b) If the Board finds that a licensee is professionally incompetent, the Board may require the licensee to take an oral or written examination or to meet other requirements to demonstrate the licensee's fitness to practice geology, and the Board may suspend the licensee's license until he or she establishes professional competence to the satisfaction of the Board.

(c) In addition to the authority granted in subsections (a) and (b) of this section, the Board may levy a civil penalty not in excess of five thousand dollars ($5,000) per

violation per day for violations of the provisions of this Chapter, the Board's code of professional conduct, the Board's rules, or any order issued by the Board. All civil penalties collected by the Board shall be remitted to the school fund of the county in which the violation occurred. Before assessing a civil penalty, the Board shall consider the following:

(1) The nature, gravity, and persistence of the violation.

(2) The appropriateness of the imposition of a civil penalty when considered alone or in combination with other action taken by the Board.

(3) Whether the violation was willful.

(4) Any other factors that tend to mitigate or aggravate the violation.

(d) The Board may bring a civil action in the superior court of the county in which the violation occurred to recover a civil penalty if a licensee or corporate registrant does one of the following:

(1) Fails to request a hearing on the imposition of a civil penalty and fails to pay the civil penalty within 30 days after being notified that a civil penalty has been imposed.

(2) Requests and receives a hearing on the imposition of a civil penalty but fails to pay the civil penalty within 30 days after service of a written copy of the Board's decision."

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

SENATE BILL 1004:
Geologist Licensure

BILL ANALYSIS

Committee:	**Senate Finance Committee**	**Introduced by:**	**Senator Kinnaird**
Date:	**April 25, 1999**	**Summary by:**	**Martha K. Walston**
Version:	**Proposed Committee Substitute**		Committee Counsel

SUMMARY: ***SB 1004 authorizes the State Board for Licensing of Geologists to conduct confidential investigations of acts that may violate the Board's statutes, rules, or code of professional conduct. The bill also expands the grounds for which the Board may refuse to grant a license and authorizes the Board to levy civil penalties of up to $5,000 per violation per day. The proposed committee substitute adds language that the civil penalties will be remitted to the county school fund where the violation occurred. This added language is consistent with Article IX, section 7 of the N.C. Constitution.***

CURRENT LAW: Chapter 89E of the General Statutes contains the North Carolina Geologists Licensing Act. The Licensing Board consists of five members (an academic geologist, salaried company geologist, independent or consultant geologist, representative from the mining industry, and a consumer or lay member, all appointed by the Governor. The State geologist is an ex officio member. Board members who are geologists must be licensed. The Act describes qualifications for licensure, unlawful acts, and disciplinary procedures. The rules set out the fees for licensure, certificate of registration, seal, and examination. A geologist must renew his or her license every two years, while a professional corporation engaged in the public practice of geology must renew its certificate of registration annually.

The Board may refuse to grant or to renew, suspend or revoke a license of any person who has violated Chapter 89E, the rules of the Board, or who has been convicted of a felony, who has been convicted of a misdemeanor under the Chapter, or who is found by the Board to be guilty of gross unprofessional conduct, dishonest practice or incompetence or fraud or deceit in obtaining a license or in aiding or abetting by fraud or deceit another person's obtaining a license.

BILL ANALYSIS: Senate Bill 1004 authorizes the Board to employ investigators to inquire into any acts committed in the State that may violate Chapter 89E, the Board's code of professional conduct, or the rules. A board member who gives testimony during an investigation may not later participate in any decision involving punitive action as a result of the investigation. Board investigations are confidential until the Board takes disciplinary action against a licensee or corporate registrant. Any information collected and compiled by the Board and admitted into evidence in a hearing before the Board is considered a public record.

Senate Bill 1004 amends the disciplinary procedures section of Chapter 89E by:

(1) authorizing the Board to require a licensee, who is found to be professionally incompetent, to take an oral or written exam or to meet other requirements to demonstrate the licensee's fitness to practice geology. The Board may suspend the license until the licensee shows professional competence.

(2) authorizing the Board to levy a civil penalty not to exceed $5,000 per violation per day for violations

of Chapter 89E, the code of professional conduct, the Board's rules or any order issued by the Board. The Board must consider the following when assessing a civil penalty:

- The nature, gravity, and persistence of the violation.
- The appropriateness of the imposition of a civil penalty when considered alone or in combination with other action taken by the Board.
- Whether the violation was willful.
- Any other factors that tend to mitigate or aggravate the violation.

(3) authorizing the Board to bring a civil action in superior court to recover a civil penalty.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 1004 (First Edition) Geologist Licensure

SHORT TITLE: Geologist Licensure

SPONSOR(S): Senator Kinnaird

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
County School Fund	**$3,000**	**$3,000**	**$3,000**	**$3,000**	**$3,000**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Board for Licensing of Geologists

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

BILL SUMMARY: The bill authorizes the North Carolina Board for Licensing of Geologists to (1) conduct confidential investigations of possible violations of board rules or state laws, (2) expand conditions for refusing to grant a license, and (3) levy a civil penalty up to $5,000 per violation of state law, board rules or code of conduct.

ASSUMPTIONS AND METHODOLOGY: The Chair of the North Carolina Board for Licensing of Geologists said that the Board hears approximately 10 disciplinary cases each year. The Board requests the authority to assess civil penalties as a means to deter wrongful acts without revoking a license. The Board does not intend to use the full $5,000 penalty. The Board's Chair believes that the maximum will be $1,000 per violation and the average penalty will be $300 per violation. Assuming 10 violations a year occur and the violators are charged $300 per violation, then approximately $3,000 in penalties will be assessed each year. These funds are deposited into the County School Fund.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic

APPROVED BY: Tom Covington

DATE: Monday, April 26, 1999

VISITOR REGISTRATION SHEET

SENATE FINANCE — TUESDAY, APRIL 27, 1999

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ron Aycock	N.C. Assoc. of County Comm
Jim Speed	Bone associates
Mark Landis	Bd. for Licensing of Geologist, NC
Nat Mund	Conservation Council of NC
[signature]	NCBIC
[signature]	NCAPP
Flora Dunbar	NCAPP
Sandra Long	NCAPP

VISITOR REGISTRATION SHEET

SENATE FINANCE — TUESDAY, APRIL 27, 1999

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Stacy Blaine	NCHCFA
Jerry Cooper	NCALA
Ann Case	NCRMA
Angie McMillan	The Nature Conservancy, NC Chapter
Lenna DeVivo	DENR
Mary Carmella	Mecklenburg County
Gayle Bellamy	NC Board of Nursing
Sally Johnson	NC Bd of Nursing
Charles Gardner	DENR - DLR
David Evans	NC Board of Exam. for Eng. + Surv.
Jerry Coats	NC Board of Exam for Eng. & Surv.

VISITOR REGISTRATION SHEET

SENATE FINANCE — TUESDAY, APRIL 27, 1999

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
AL DEITCH	DOA/YAIO
Jennifer Tolle	Prevent Child Abuse NC
Thomas Vance Bennett	NCCFTF
John Phelps	NCLM
Paul Gwin	OSBM
Howard KRAMER	N. C. Bd. of Nursing
Ed Regan	N.C. Assoc. of Co. Comm.
Alice Garland	Electricities
CP MEDLIN	COVENANT W/ NCs CHILDREN
Robert Upton	NC Bd for Licensing of Geologists
Kim Hibbard	NCLM

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Tuesday, April 27, 1999

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

FAVORABLE

S.B. **235** "Kids First" Registration Plates.
Sequential Referral: None
Recommended Referral: None

S.B. **433** Pinebluff ETJ.
Sequential Referral: None
Recommended Referral: None

S.B. **534** Kenansville Services.
Sequential Referral: None
Recommended Referral: None

S.B. **618** Macon County Airport Authority.
Sequential Referral: None
Recommended Referral: None

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

S.B. **353** Davidson Satellite Annexation.
Draft Number: PCS4686
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

S.B. **712** Cornelius Voluntary Annexation.
Draft Number: PCS8605
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

S.B. **843** Nurses Aides II Registry Fees.

Draft Number:	PCS2753
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 7

Committee Clerk Comment: April 27 SB 235 433 534
6 1 8 353 712 843

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

CORRECTED

Wednesday, April 28, 1999

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

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

S.B. **1004** Geologist Licensure.

Draft Number:	PCS1728
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment: April 27 SB 1004

AGENDA

SENATE FINANCE MEETING

Wednesday, April 28, 1999

544 LOB – 1:30 PM

MEETING CALLED TO ORDER

INTRODUCTION OF PAGES

BILLS TO BE CONSIDERED:

SB 653 – Durham Co. Health Fund Invest. – Sen. Gulley
SB 895 – Gift Certificates-Escheats – Sen. Soles
SB 1152 – Nonresidential Abandoned Structures – Sen. Clodfelter

ADJOURNMENT OF MEETING

SENATE FINANCE COMMITTEE

WEDNESDAY, APRIL 28, 1999

1:30 PM – ROOM 544

The Senate Finance Committee met on Wednesday, April 28, 1999, at 1:30 PM in Room 544 with Senator Hoyle presiding. There were 18 committee members present. Rachel Broadway, sponsored by Senator Reeves, was introduced as the page for the meeting.

SB 1152 – Nonresidential Abandoned Structures

Senator Clodfelter was recognized to explain this bill. Senator Albertson moved for adoption of a proposed committee substitute to the bill for the purpose of discussion, motion passed. Senator Clodfelter explained the proposed committee substitute. Senator Clodfelter also offered an amendment to the bill and moved for the adoption of the amendment, motion passed. Senator Lee moved for a "Favorable Report", motion passed. Copy of the Bill and supporting documents included in the minutes.

SB 895 – Gift Certificates-Escheats

Senator Soles was recognized to explain the bill. Senator Soles moved for the adoption of a proposed committee substitute for the purpose of discussion, motion passed. At this point, Senator Soles requested that action on the bill be delayed until a future meeting, requested was granted. Copy of Bill and supporting documents included in the minutes.

SB 653 – Durham Co. Health Fund Invest

Senator Gulley was recognized to explain the bill at which time he moved for the adoption of a proposed committee substitute for the purpose of discussion, motion passed. Senator Gulley explained the proposed committee substitute and at the conclusion of his explanation, Senator Lee moved for a "Favorable Report", motion passed. Copy of Bill and supporting documents included in the minutes.

Meeting adjourned.

David W. Hoyle, Co-Chair

John H. Kerr, III Co-Chair

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1152

Short Title: Nonresidential Abandoned Structures. (Public)

Sponsors: Senator Clodfelter.

Referred to: Finance.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT AUTHORIZING CITIES TO DEMOLISH AND REMOVE CERTAIN NONRESIDENTIAL BUILDINGS TO ENHANCE ECONOMIC DEVELOPMENT EFFORTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-441 reads as rewritten:

"**§ 160A-441. Exercise of police power authorized.**

(a) It is hereby found and declared that the existence and occupation of dwellings in this State that are unfit for human habitation are inimical to the welfare and dangerous and injurious to the health, safety and morals of the people of this State, and that a public necessity exists for the repair, closing or demolition of such dwellings. Whenever any city or county of this State finds that there exists in the city or county dwellings that are unfit for human habitation due to dilapidation, defects increasing the hazards of fire, accidents or other calamities, lack of ventilation, light or sanitary facilities, or due to other conditions rendering the dwellings unsafe or unsanitary, or dangerous or detrimental to the health, safety, morals, or otherwise inimical to the welfare of the residents of the city or county, power is hereby conferred upon the city or county to exercise its police powers to repair, close or demolish the dwellings in the manner herein provided. No ordinance enacted by the governing body of a county pursuant to this Part shall be applicable within the corporate limits of any city unless the city council of the city has by resolution expressly given its approval thereto.

(b) In addition to the exercise of police power authorized herein, any city may by ordinance provide for the repair, ~~closing~~ closing, or demolition of any abandoned

structure ~~which~~ that the city council finds to be a health or safety hazard as a result of the attraction of insects or rodents, conditions creating a fire hazard, dangerous conditions constituting a threat to children or frequent use by vagrants as living quarters in the absence of sanitary facilities. Any city may also, by ordinance, provide for the repair, closing, or demolition of any nonresidential abandoned structure located in a community development target area that the city council finds to have an exterior appearance in such dilapidated condition as to cause or contribute to blight and potentially reduce property values in the area or hinder economic development efforts. For purposes of this section, the term 'community development target area' means an area that has characteristics of a development zone under G.S. 105-129.3 or a 'nonresidential development area' under G.S. 160A-503(10) or an area otherwise designated by the city council as being in need of revitalization for the benefit of the welfare of its citizens. ~~Such ordinance,~~ The ordinance, if adopted, may provide for the repair, ~~closing~~ closing, or demolition of ~~such~~ the structure pursuant to the same provisions and procedures as are prescribed herein for the repair, closing or demolition of dwellings found to be unfit for human habitation. All municipalities shall have the powers provided in G.S. 160A-443(5a) in regard to nonresidential abandoned structures, and the finding required by the city council shall be that the continued existence of the nonresidential abandoned structure would be inimical to the health, safety, or welfare of its citizens in that the structure would either continue to deteriorate, create a fire or safety hazard, be a threat to children and vagrants, attract persons intent on criminal activity, or cause or contribute to blight and the reduction of property values in the area."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 1152
PROPOSED COMMITTEE SUBSTITUTE
S1152-CSRB-001
WARNING: LINE NUMBERS MAY CHANGE AFTER ADOPTION.

Short Title: Nonresidential Abandoned Structures. (Public)

Sponsors:

Referred to: Finance.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT AUTHORIZING CITIES WITH A POPULATION OF MORE THAN 400,000 TO DEMOLISH AND REMOVE CERTAIN NONRESIDENTIAL BUILDINGS TO ENHANCE ECONOMIC DEVELOPMENT EFFORTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-426 reads as rewritten:

"§ 160A-426. Unsafe buildings condemned.

(a) Residential building. -- Every building which shall appear to the inspector to be especially dangerous to life because of its liability to fire or because of bad condition of walls, overloaded floors, defective construction, decay, unsafe wiring or heating system, inadequate means of egress, or other causes, shall be held to be unsafe, and the inspector shall affix a notice of the dangerous character of the structure to a conspicuous place on the exterior wall of said building.

(b) Nonresidential building. -- An inspector in a city whose population exceeds 400,000, according to the most recent annual population statistics certified by the State Planning Officer, shall declare a nonresidential building within a community development target to be unsafe if it meets both of the following conditions:

(1) It appears to the inspector to be vacant or abandoned.

(2) It appears to the inspector to be in such dilapidated condition as to cause or contribute to blight, disease, vagrancy, fire or safety hazard, to be a danger to children, or to tend to attract persons intent on criminal activities or other activities which would constitute a public nuisance.

If an inspector declares a nonresidential building to be unsafe, the inspector must affix a notice of the unsafe character of the structure to a conspicuous place on the exterior wall of the building. For the purposes of this subsection, the term 'community development target area' means an area that has characteristics of a development zone under G.S. 105-129.3, a 'nonresidential development area' under G.S. 160A-503(10), or an area with similar characteristics designated by the city council as being in special need of revitalization for the benefit and welfare of its citizens."

Section 2. G.S. 160A-428 reads as rewritten:

"§ 160A-428. Action in event of failure to take corrective action.

If the owner of a building or structure that has been condemned as unsafe pursuant to G.S. 160A-426 shall fail to take prompt corrective action, the local inspector shall give him written notice, by certified or registered mail to his last known address or by personal service,

(1) That the building or structure is in a condition that appears to ~~constitute a fire or safety hazard or to be dangerous to life, health, or other property;~~ meet one or more of the following conditions:

a. Constitutes a fire or safety hazard.

b. Is dangerous to life, health, or other property.

c. Is likely to cause or contribute to blight, disease, vagrancy, or danger to children.

d. Has a tendency to attract persons intent on criminal activities or other activities which would constitute a public nuisance.

(2) That a hearing will be held before the inspector at a designated place and time, not later than 10 days after the date of the notice, at which time the owner shall be entitled to be heard in person or by

counsel and to present arguments and evidence pertaining to the matter; and

(3) That following the hearing, the inspector may issue such order to repair, close, vacate, or demolish the building or structure as appears appropriate.

If the name or whereabouts of the owner cannot after due diligence be discovered, the notice shall be considered properly and adequately served if a copy thereof is posted on the outside of the building or structure in question at least 10 days prior to the hearing and a notice of the hearing is published in a newspaper having general circulation in the city at least once not later than one week prior to the hearing."

Section 3. G.S. 160A-432 reads as rewritten:

"§ 160A-432. ~~Equitable enforcement.~~ Civil and equitable enforcement.

(a) Civil enforcement. -- Whenever any violation is denominated a misdemeanor under the provisions of this Part, the city, either in addition to or in lieu of other remedies, may initiate any appropriate action or proceedings to prevent, restrain, correct, or abate the violation or to prevent the occupancy of the building or structure involved.

(b) Equitable enforcement. -- In the case of a nonresidential building declared unsafe under G.S. 160A-426(b), a city may, in lieu of taking action under subsection (a), cause the building or structure to be removed or demolished. The amounts incurred by the city in connection with the removal or demolition shall be a lien against the real property upon which the cost was incurred. The lien shall be filed, have the same priority, and be collected in the same manner as liens for special assessments provided in Article 10 of this Chapter. If the building is removed or demolished by the city, the city shall sell the usable materials of the building and any personal property, fixtures, or appurtenances found in or attached to the building. The city shall credit the proceeds of the sale against the cost of the removal or demolition. Any balance remaining from the sale shall be deposited with the clerk of superior court of the county where the property is located and shall be disbursed by the court to the person found to be entitled thereto by final order or decree of the court.

(c) Nothing in this section shall be construed to impair or limit the power of the city to define and declare nuisances and to cause their removal or abatement by summary proceedings, or otherwise."

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

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

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

COMMITTEE SUBSTITUTE _____

Rep.) Clodfelter
)
Sen.)

moves to amend the bill on page 1, line 20

( ) WHICH CHANGES THE TITLE

by rewriting the line to read:

"development target area to be unsafe if it meets both of the following:",

and on page 2, line 15 by deleting "G.S. 105-129.3" and substituting "G.S. 105-129.3A".

SIGNED Daniel G. Clodfelter

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 1152
Proposed Committee Substitute S1152-PCS4694-RB

Short Title: Nonresidential Abandoned Structures. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT AUTHORIZING CITIES WITH A POPULATION OF MORE THAN FOUR HUNDRED THOUSAND TO DEMOLISH AND REMOVE CERTAIN NONRESIDENTIAL BUILDINGS TO ENHANCE ECONOMIC DEVELOPMENT EFFORTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-426 reads as rewritten:

"**§ 160A-426. Unsafe buildings condemned.**

(a) Residential Building. -- Every building which shall appear to the inspector to be especially dangerous to life because of its liability to fire or because of bad condition of walls, overloaded floors, defective construction, decay, unsafe wiring or heating system, inadequate means of egress, or other causes, shall be held to be unsafe, and the inspector shall affix a notice of the dangerous character of the structure to a conspicuous place on the exterior wall of said building.

(b) Nonresidential Building. -- An inspector in a city whose population exceeds 400,000, according to the most recent annual population statistics certified by the State Planning Officer, shall declare a nonresidential building within a community development target area to be unsafe if it meets both of the following conditions:

(1) It appears to the inspector to be vacant or abandoned.

(2) It appears to the inspector to be in such dilapidated condition as to cause or contribute to blight, disease, vagrancy, fire or safety hazard, to be a danger to children, or to tend to attract persons

intent on criminal activities or other activities which would constitute a public nuisance.

If an inspector declares a nonresidential building to be unsafe, the inspector must affix a notice of the unsafe character of the structure to a conspicuous place on the exterior wall of the building. For the purposes of this subsection, the term 'community development target area' means an area that has characteristics of a development zone under G.S. 105-129.3A, a 'nonresidential development area' under G.S. 160A-503(10), or an area with similar characteristics designated by the city council as being in special need of revitalization for the benefit and welfare of its citizens."

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If the owner of a building or structure that has been condemned as unsafe pursuant to G.S. 160A-426 shall fail to take prompt corrective action, the local inspector shall give him written notice, by certified or registered mail to his last known address or by personal service,

(1) That the building or structure is in a condition that appears to ~~constitute a fire or safety hazard or to be dangerous to life, health, or other property;~~ meet one or more of the following conditions:

a. Constitutes a fire or safety hazard.

b. Is dangerous to life, health, or other property.

c. Is likely to cause or contribute to blight, disease, vagrancy, or danger to children.

d. Has a tendency to attract persons intent on criminal activities or other activities which would constitute a public nuisance.

(2) That a hearing will be held before the inspector at a designated place and time, not later than 10 days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and

(3) That following the hearing, the inspector may issue such order to repair, close, vacate, or demolish the building or structure as appears appropriate.

If the name or whereabouts of the owner cannot after due diligence be discovered, the notice shall be considered properly and adequately served if a copy thereof is posted on the outside of the building or structure in question at least 10 days prior to the hearing and a notice of the hearing is published in a newspaper having general circulation in the city at least once not later than one week prior to the hearing."

Section 3. G.S. 160A-432 reads as rewritten:

"**§ 160A-432. ~~Equitable enforcement.~~ Civil and equitable enforcement.**

(a) Civil Enforcement. -- Whenever any violation is denominated a misdemeanor under the provisions of this Part, the city, either in addition to or in lieu of other remedies, may initiate any appropriate action or proceedings to prevent, restrain,

correct, or abate the violation or to prevent the occupancy of the building or structure involved.

(b) Equitable Enforcement. -- In the case of a nonresidential building declared unsafe under G.S. 160A-426(b), a city may, in lieu of taking action under subsection (a), cause the building or structure to be removed or demolished. The amounts incurred by the city in connection with the removal or demolition shall be a lien against the real property upon which the cost was incurred. The lien shall be filed, have the same priority, and be collected in the same manner as liens for special assessments provided in Article 10 of this Chapter. If the building is removed or demolished by the city, the city shall sell the usable materials of the building and any personal property, fixtures, or appurtenances found in or attached to the building. The city shall credit the proceeds of the sale against the cost of the removal or demolition. Any balance remaining from the sale shall be deposited with the clerk of superior court of the county where the property is located and shall be disbursed by the court to the person found to be entitled thereto by final order or decree of the court.

(c) Nothing in this section shall be construed to impair or limit the power of the city to define and declare nuisances and to cause their removal or abatement by summary proceedings, or otherwise."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 895

Short Title: Gift Certificates--Escheat. (Public)

Sponsors: Senator Soles.

Referred to: Finance.

April 14, 1999

A BILL TO BE ENTITLED

AN ACT TO SUBJECT GIFT CERTIFICATES AND ELECTRONIC GIFT CARDS BEARING AN EXPIRATION DATE TO THE UNCLAIMED PROPERTY LAWS OF NORTH CAROLINA AND TO EXEMPT GIFT CERTIFICATES AND ELECTRONIC GIFT CARDS WHICH ARE PERPETUALLY REDEEMABLE FROM THE UNCLAIMED PROPERTY LAWS OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. Chapter 116B of the General Statutes is amended by adding a new section to read:

"**§ 116B-24. Gift certificates.**

(a) Any gift certificate or electronic gift card bearing an expiration date and remaining unredeemed or dormant for more than three years after issuance is deemed abandoned. The amount abandoned is deemed to be sixty percent (60%) of the gift certificate's face value or the electronic gift card's face value.

(b) A gift certificate or electronic gift card is not unclaimed or abandoned property when any of the following apply:

(1) Conspicuously states that the gift certificate or electronic gift card does not expire.

(2) Bears no expiration date.

(3) States that a date of expiration printed on a gift certificate or electronic gift card is not applicable in North Carolina.

(4) The issuer is regulated by a federal agency.

(c) The amount of a gift certificate or electronic gift card deemed abandoned is subject to the custody of this State in any of the following circumstances:

(1) The records of the issuer show that the last known address of the purchaser or recipient of the gift certificate in this State.

(2) The records of the issuer do not show the address of the purchaser or recipient, but do show that the certificate or memo was issued in this State.

(3) The records of the issuer do not show the address of the purchaser or of the recipient and do not show where the certificate was issued, but the issuer is a domiciliary of this State.

(4) The records of the issuer show that the address of the purchaser or recipient, or if none, the state where the certificate was issued, is a state whose escheat or unclaimed property law does not provide for the escheat or custodial taking of gift certificates, and the issuer is a domiciliary of this State."

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

Escheat of Gift Certificates
Senate Bill 895 House Bill 1172

1) Statistics indicate that in one holiday season, U.S. retailers sold $10 billion in gift certificates. From information provided by a member of the National Conference on Uniform State Laws, redemption rates for gift certificates run from 65 to 95 percent.

2) The bill could effectively eliminate the recovery of any money from gift certificates by simply not applying an expiration date. Traveler's checks have no expiration date. Will they one day be considered a non-escheatable item?

3) Quote from South Dakota Governor William J. Janklow "At a minimum, the issuer entered into a third party beneficiary contract where he contracts with the purchaser, who intends to give the gift certificate to a third party. The issuer has agreed to provide either a product or a service for that gift certificate. If the issuer gets to keep it he is providing nothing. He is also getting to keep the interest the money earns and enjoying the benefit of the time value of the money."

4) Under the current law, and the proposed new unclaimed property act, if a gift certificate is presented to the issuer after the money represented by the certificate is escheated, the issuer may present claim to the Escheat Fund for recovery of the money.

5) The National Conference of Commissioners on Uniform State Laws "thoroughly debated" this issue with National Retail Federation and as a result reached the conclusion that 60% of the face value of a gift certificate should escheat. According to Willis E. Sullivan from the Commission "The reason behind discounting the amount escheatable on a gift certificate was that the Committee was convinced that the profit generated by the sale of an item, whether an article or a gift certificate, should be retained by the retailer and that it was somewhat unreasonable to require remittal of that profit where the retailer had done all it was required to do in purchasing inventory, stocking it on its shelves and holding it for ultimate delivery to a recipient of a gift certificate. While the retailers' representative was not overwhelmed by this compromise, she seemed satisfied that it was an acceptable resolution to the problem."

6) One North Carolina retailer that does not list an expiration date on their gift certificates, and who was under audit by the IRS was found to have $734,000 in uncashed gift certificates. An audit on another out-of-state corporation identified over $1 million in gift certificates due to North Carolina owners.

7) Statistics provided by the National Retail Federation indicate that 45% of all Americans purchase gift certificates, and gift certificates are the fourth highest selling commodity.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 895
Proposed Committee Substitute S895-CSLA-001
WARNING: LINE NUMBERS MAY CHANGE AFTER ADOPTION.

Short Title: Gift Certificates--Escheat. (Public)

Sponsors:

Referred to: Finance.

April 14, 1999

A BILL TO BE ENTITLED

AN ACT TO SUBJECT GIFT CERTIFICATES AND ELECTRONIC GIFT CARDS BEARING AN EXPIRATION DATE TO THE UNCLAIMED PROPERTY LAWS OF NORTH CAROLINA AND TO EXEMPT GIFT CERTIFICATES AND ELECTRONIC GIFT CARDS WHICH ARE PERPETUALLY REDEEMABLE FROM THE UNCLAIMED PROPERTY LAWS OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. Chapter 116B of the General Statutes is amended by adding a new section to read:

"**§ 116B-24. Gift certificates.**

(a) Any gift certificate or electronic gift card bearing an expiration date and remaining unredeemed or dormant for more than three years after issuance is deemed abandoned. The amount abandoned is deemed to be sixty percent (60%) of the gift certificate's face value or the electronic gift card's face value.

(b) A gift certificate or electronic gift card is not unclaimed or abandoned property when any of the following apply:

(1) Conspicuously states that the gift certificate or electronic gift card does not expire.

(2) Bears no expiration date.

(3) States that a date of expiration printed on a gift certificate or electronic gift card is not applicable in North Carolina.

(4) Is a prepaid calling card issued by a public utility as defined in G.S. 62-3(23)a.6.

(c) The amount of a gift certificate or electronic gift card deemed abandoned is subject to the custody of this State in any of the following circumstances:

(1) The records of the issuer show that the last known address of the purchaser or recipient of the gift certificate in this State.

(2) The records of the issuer do not show the address of the purchaser or recipient, but do show that the certificate or memo was issued in this State.

(3) The records of the issuer do not show the address of the purchaser or of the recipient and do not show where the certificate was issued, but the issuer is a domiciliary of this State.

(4) The records of the issuer show that the address of the purchaser or recipient, or if none, the state where the certificate was issued, is a state whose escheat or unclaimed property law does not provide for the escheat or custodial taking of gift certificates, and the issuer is a domiciliary of this State.

(d) The issuer shall pay an administrative fee of five dollars ($5.00) when the issuer files a report with the State Treasurer pursuant to G.S. 116B-29 and remits the amount of any abandoned gift certificate or electronic gift card required to be included in the report."

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

SENATE BILL 895:
Gift Certificates--Escheat

BILL ANALYSIS

Committee:	Senate Finance Committee	**Introduced by:**	Senator Soles
Date:	April 27, 1999	**Summary by:**	Martha K. Walston
Version:	Proposed Committee Substitute		Committee Counsel

SUMMARY: ***Senate Bill 895 amends Chapter 116B (Escheats and Abandoned Property) to provide that a gift certificate or electronic gift card is deemed abandoned if it has an expiration date and has not been redeemed or has remained dormant for more than three year after its issuance. The amount abandoned is 60% of the face value of the certificate or card. This amount must be paid into the Escheats Fund in the State Treasurer's Office. SB 895 also requires the issuer of a gift card or certificate to pay a $5.00 administrative fee to the State Treasure when the issuer files a report with the Treasurer. The bill clarifies when a gift certificate or electronic gift card is deemed abandoned and subject to the custody of the State.***

CURRENT LAW: Chapter 116 B provides that certain tangible and intangible property that has been unclaimed or abandoned will become the custody of the State and will be deposited in the Escheats Fund in the State Treasurer's Office.. Abandoned property, other than money or securities or tangible property with historic value, will be sold within three years after delivery to the Treasurer and the proceeds wills be deposited to the Fund. The income derived from the investment or deposit of the Escheat Fund is distributed annually on or before July 15 to the State Education Assistance Authority for loans to aid worthy and needy student who are N.C. residents and who are enrolled in public institutions of higher learning in N.C.

A holder of abandoned property must file a report with the Treasurer setting out the names and addresses of the property owners, description of the property, and certification that the property has been held for the required period. When the report is filed, a holder of abandoned property must also deliver to the Treasurer the abandoned property included in the report. The report of holders, other than insurers, must be filed before March 1 of each year and must cover property presumed abandoned as of the prior June 30.

On or before November 1 of each year, a holder shall mail a notice to the last known address of each owner, who as of the preceding June 30, appeared entitled to property valued at over $50.00 and presumed abandoned.

Any person claiming an interest in any property delivered to the Treasurer may file a claim to the property or the proceeds from its sale.

G.S. 116B-21 provides that property held in the ordinary course of the holder's business, shall be presumed abandoned if it has not been claimed within five years after becoming payable or distributable. This is the section that currently covers gift certificates and electronic gift cards.

BILL ANALYSIS: G.S. 116B –21 of Chapter 116B provides that property held in the ordinary course of the holder's business, shall be presumed abandoned if it has not been claimed within five years after becoming payable or distributable. This is the section that currently covers gift certificates and electronic gift cards.

Senate Bill 895 would do the following:

- Add a new section to Chapter 116B that will apply to gift certificates and electronic gift cards. Any gift certificate or electronic gift card that has an expiration date and that has not been redeemed or has remained dormant for more than three years is deemed abandoned. The issuer of the certificate or card must remit 60% of its face value to the State Treasurer.
- Add a new section that requires the issuer of a gift certificate or electronic credit card to pay a $5.00 administrative fee when the issuer submits a report to the Treasurer and the amount of the abandoned gift certificates or electronic gift cards required to be included in the report.

The amount of a certificate or card deemed abandoned is subject to the State's custody if the issuer's records show any of the following circumstances:

1. That the last known address of the purchaser or recipient is in the State.
2. That the certificate or memo was issued in this State.
3. That the issuer is a domiciliary of this State.
4. That the address of the purchaser or recipient, or if none, the state where the certificate was issued, is a state whose law does not provide for the escheat of gift certificates, and the issuer is a domiciliary of this State.

A gift certificate or electronic gift card is not considered unclaimed property if any of the following apply:

1. States that it does not expire
2. Bears no expiration date
3. States that the expiration date is not applicable in North Carolina
4. Is a prepaid calling card issued by a company that transmits messages for the public for compensation.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 895 (Proposed Senate Finance Committee Substitute)

SHORT TITLE: Gift Certificates - Escheat

SPONSOR(S): Senator Soles

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
Escheat Fund	($500,000)	($500,000)	($500,000)	($500,000)	($500,000)
State Education Assistance Authority		($30,000)	($60,000)	($90,000)	($120,000)

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of State Treasurer – Escheat and Unclaimed Property Program

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

BILL SUMMARY: The bill subjects gift certificates and electronics gift cards to the unclaimed property laws if unredeemed after three years. The amount to be escheated is 60% of the face value of the gift card or gift certificate. The property is not escheated if it has no expiration date. The bill adds a $5 administrative fee for each report filed by a business remitting unclaimed gift certificates or gift cards.

BACKGROUND: The Department of State Treasurer defines escheat as "the succession of abandoned property to the state." The State Treasurer attempts to recover over 100 different types of unclaimed or abandoned property belonging to North Carolina citizens and reunite this property with the rightful owners. In FY 1997-98, the State Treasurer's Escheat and Unclaimed Property Program received $35.1 million in funds and securities from state courts, banks, credit unions, insurance companies, public utilities and other businesses. In the same year, the State Treasurer made 6,718 refunds to individuals totaling $8.6 million. The balance in the Escheat and Unclaimed Property Fund as of June 30, 1998 was $184.4 million. The interest from this fund is deposited with the North Carolina State Education Assistance Authority (SEAA) to provide financial assistance to students in state supported schools of higher education. SEAA received $13.2 million last fiscal year and provided 3,813 low interest loans. In the past 26

years, the Escheat and Unclaimed Property Fund has contributed $110.5 million in interest to the SEAA.

ASSUMPTIONS AND METHODOLOGY:
The Director of the Escheat and Unclaimed Property Program in the Department of State Treasurer estimates that the Escheat Fund will lose $500,000 per year in unclaimed assets by eliminating gift certificates or electric gift cards from escheat. The loss of $500,000 also means a loss of interest transferred each year to the State Educational Assistance Authority.

The $500,000 annual loss is believed to be a conservative estimate by the Department of State Treasurer. In 1998, the state received $117,522 from five companies that listed gift certificates as a specific property type. However, this is the exception and not the norm since most gift certificates and gift cards are grouped together with other property types that are reported by businesses. The state collected $6.9 million in unclaimed property from businesses other than banks, insurance companies, and utilities in 1998. It is unknown what percentage of this amount is from gift certificates.

The Director of the Escheat and Unclaimed Property Program, Terry Allen, believes his program has only begun discovering unclaimed gift certificates, phone cards, and electronic gift cards. Mr. Allen reported that $10 billion in gift certificates were sold last holiday season and that 5% to 35% of those certificates will not be redeemed. The State Treasurer has 6 auditors and 2 contract audit firms that search for unclaimed property in North Carolina and in other states. A recent multi-state audit of Wal-Mart found $1 million in unclaimed gift certificates in North Carolina. This $1 million will be remitted to the state over the next four years unless prohibited by SB 895.

The interest on Escheat Fund investments in future years is calculated at 6% per year. This is the short-term investment rate recommended by the State Treasurer. It is assumed that the interest will accrue the year after the property is escheated. This interest would have been deposited with the State Education Assistance Authority to be used for student loans. The interest lost each year from an annual reduction of $500,000 in the Escheat Fund is as follows:

	Cumulative	Interest
FY 1999-00	$500,000	
FY 2000-01	$1,000,000	$30,000
FY 2001-02	$1,500,000	$60,000
FY 2002-03	$2,000,000	$90,000
FY 2003-04	$2,500,000	$120,000

Since the State Treasurer does not anticipate any reports filed with unclaimed gift certificates, no revenue is estimated from the $5 administrative fee.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic

APPROVED BY:

DATE:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 653

Short Title: Durham Co. Health Fund Invest. (Local)

Sponsors: Senator Gulley; and Lucas.

Referred to: Finance.

March 30, 1999

A BILL TO BE ENTITLED

AN ACT RELATING TO INVESTMENT OF HEALTH TRUST FUND MONIES BY THE COUNTY OF DURHAM.

The General Assembly of North Carolina enacts:

Section 1. The County of Durham, or any governing body, agency, person, or other corporation that contracts with Durham County for the investment, care, or administration of monies held by the County in its Community Health Trust Fund may invest and reinvest monies constituting the Fund in one or more of the types of securities or other investments authorized by State law for the State Treasurer in G.S. 147-69.2.

Section 2. This act shall apply only to monies constituting the Community Health Trust Fund. Limitations on investment and reinvestment of Fund assets may be enacted by the Durham County Board of Commissioners.

Section 3. This act, insofar as it authorizes certain investments, amends G.S. 159-30 with regard to the investment of the Durham County Community Health Trust Fund only.

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

SENATE BILL 653:
Durham Co. Health Fund Invest.

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Senator Gulley
Date:	April 26, 1999	**Summary by:**	Martha K. Walston
Version:	1st Edition		Committee Counsel

SUMMARY: Senate Bill 653 provides that money held by Durham County in its Community Health Trust Fund may be invested in the same investments or securities as the law allows the State Treasurer to invest the money credited to special funds, the General Fund, and the Highway Fund. The bill would expand the investment alternatives for the money in the Community Health Trust Fund. The act is effective when it becomes law.

CURRENT LAW: G.S. 159-30 provides for the manner in which a local government or public authority may invest the cash balance of any fund.. This money may be placed in certificates of deposits and invested in certain classes of securities. These securities include obligations of the U.S., obligations of federal banks and other federal agencies, obligations of the State, bonds and notes of a N.C. local government or public authority, savings certificates of a N.C. or federal savings and loan association, prime quality commercial paper, bills of exchange or time drafts drawn or accepted by a commercial bank, participating shares in a mutual fund for local government investment, certain commingled investment pools, repurchase agreements with respect to obligations of the U.S., and investment securities.

BILL ANALYSIS: Senate Bill 653 provides that the cash in Durham County's Community Health Trust Fund may be invested in the same manner as the law allows the State Treasurer to invest the cash credited to special funds, the General Fund, and the Highway Fund. These investments include those in G.S. 159-30 plus obligations of additional banks, asset-backed securities, corporate bonds and notes, obligations of other states, and obligations of any legal entity if the obligations bear high ratings.

SB 653 is a local bill applying only to the cash in Durham County's Community Health Trust Fund. The Durham County Board of Commissioners may enact limitations on the investments and reinvestments of assets in the Community Health Trust Fund.

BACKGROUND: The Community Health Trust Fund contains proceeds from the lease of Durham Regional Hospital to the Duke University Health System. Pursuant to the lease agreement, Duke prepaid the first ten years of rent on the 20 year lease. As of January 5, 1999, the Fund had $23,563,650 invested in short term investments. SB 653 would expand the investment alternatives for the proceeds in the Fund with the expectation that revenues would be increased.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 653 (First Edition)

SHORT TITLE: Durham County Health Fund Investment

SPONSOR(S): Senators Gulley and Lucas

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
Community Health Trust Fund	**(See Assumptions and Methodologies)**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Durham County Board of Commissioners

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

BILL SUMMARY: The bill authorizes Durham County to invest the money in its Community Health Trust Fund in any securities or investments authorized by law for the State Treasurer.

ASSUMPTIONS AND METHODOLOGY:
The Community Health Trust Fund contains proceeds from the lease of Durham Regional Hospital to Duke University Health System. On July 1, 1998, Duke agreed to lease the hospital from the county for 20 years and prepay the first ten years of rent (adjusted for present value). As of January 5, 1999, the Community Health Trust Fund had $23,563,650 invested in short term investments.

The firm of Davenport & Company LLC analyzed the earnings potential of the Community Health Trust Fund. The Fund currently earns 6.13% a year in interest from money market instruments. The most the Fund can earn under current statutory restrictions is 6.86% from long term fixed income investments. With the passage of SB 653, the County will be allowed to invest in the equity market. If the Fund is invested in 50% equities and 50% fixed income investments, it is estimated to earn 9.5% a year. If the Fund portfolio is 60% equities and 40% fixed income, the Fund will earn 10.02% a year. Based on this analysis, **SB 653 can increase revenue to the Community Health Trust Fund if funds are invested prudently.**

deposited in the CCAPA. However, at the end of each quarter the funds deposited in the CCAPA are transferred to the North Carolina Children's Trust Fund. Therefore, the North Carolina Children's Trust Fund actually gains $4,500.00. The note also assumes that those plates will be renewed in the following years.

According to the Division of Motor Vehicles and the Department of Corrections, there is a one-time cost of $100 to design the new plate. There is also a production cost of $2.52 per plate (This assumes a basic one color design. If the design is more complex, or requires more color, the per plate cost increases). The total production cost for 300 basic plates is $856.00.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Linda Struyk Millsaps

APPROVED BY: Tom Covington

DATE: Monday, April 26, 1999

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 653
Proposed Committee Substitute S653-PCSA138-LA

Short Title: Durham Co. Health Fund Invest. (Local)

Sponsors:

Referred to:

March 30, 1999

A BILL TO BE ENTITLED

AN ACT RELATING TO INVESTMENT OF HEALTH TRUST FUND MONIES BY THE COUNTY OF DURHAM.

The General Assembly of North Carolina enacts:

Section 1. The County of Durham, or any governing body, agency, person, or other corporation that contracts with Durham County for the investment, care, or administration of monies held by the County in its Community Health Trust Fund may invest and reinvest monies constituting the Fund in one or more of the types of securities or other investments, and subject to the same restrictions, as authorized by State law for the State Treasurer in G.S. 147-69.2.

Section 2. This act shall apply only to monies constituting the Community Health Trust Fund. Limitations on investment and reinvestment of Fund assets may be enacted by the Durham County Board of Commissioners.

Section 3. This act, insofar as it authorizes certain investments, amends G.S. 159-30 with regard to the investment of the Durham County Community Health Trust Fund only.

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

(Attachment #1)

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

Name of Committee

4/28/'99

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Doug Johnson	AG
Charles Heatherly	DST
Patricia Travinese	Durham County
Michael Palmer	" "
PBly Hall	Mineral Statistics Commission
WALTER PRICE	CHARLOTTE CHAMBER
JOHN MCARTHUR	GENERAL ELECTRIC
Terry Allen	NC Dept. of State Treasurer
Lee Hines	NC DST
Alyce C Gatewood	State Ed. Asst. Authority
FRAN PRESTON	NCRMA
ANDY ELLEN	NCRMA
[illegible]	[illegible]

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

Name of Committee

4/28/'99

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Odenkirk	AT&T
Brenda Dougherty	Sprint
Jon Mamon	Sprint
Andy Romanet	N.C.L.M.
Jim Kerr	MPAA
Dave Hare	Smith Anderson

(Attachment #2)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Wednesday, April 28, 1999

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

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

S.B. **653** Durham Co. Health Fund Invest.

Draft Number:	PCS4696
Sequential Referral:	none
Recommended Referral:	none
Long Title Amended:	No

S.B. **1152** Nonresidential Abandoned Structures

Draft Number:	PCS4694
Sequential Referral:	none
Recommended Referral:	none
Long Title Amended:	Yes

TOTAL REPORTED: 2

Committee Clerk Comment: none

AGENDA

SENATE FINANCE COMMITTEE

1:30 P.M. – ROOM 544

I CALL TO ORDER

II INTRODUCTION OF PAGES

III BILLS TO BE CONSIDERED

:

- **SB 254 – Outdoor Advertising Control Act – Sen. Gulley**
- **SB 323 – Waterfowl License Changes – Sen. Kerr**
- **HB 62 – EFT of Corporate Estimated Income – Rep. Gray**
- **HB 765 – Wesley Chapel Boundaries – Rep. Melton**
- **HB 797 – Union County Fires – Rep. Melton**
- **HB 837 – Chocowinity ETJ – Rep. Edwards**
- **HB 846 – Farmville Extraterritorial Jurisdiction – Rep. Warren**
- **HB 847 – Pitt County Investments – Rep. Warren**

SENATE FINANCE COMMITTEE

WEDNESDAY, MAY 5, 1999

1:30 P.M. - ROOM 544

The Senate Finance Committee met on Wednesday, May 5, 1999, at 1:30 P.M. in Room 544, with Senator Kerr presiding. There were 23 committee members present for the meeting.

HB 837 – Chocowinity ETJ.

Representative Edwards was recognized to explain his Bill. Senator Lee moved for a Favorable Report. The motion carried. Copy of Bill included in the minutes.

HB 797 – Union County Fire Fees.

Representative Melton was recognized to explain his Bill. On motion by Senator Albertson, the Bill was given a Favorable Report by the committee. Copy of Bill and Fiscal Note included in the minutes.

HB 765 – Wesley Chapel Boundaries.

Representative Melton was recognized to explain this Bill. On motion by Senator Lee, the Bill was given a Favorable Report by the committee. Copy of Bill included in the minutes.

SB 323 – Waterfowl License Changes/AB.

Senator Hoyle recognized Senator Kerr to explain his Bill. At the conclusion of his explanation, Dick Hamilton, Wildlife Commission, spoke in favor of this Bill. Senator Albertson moved to give the Bill a Favorable Report and the motion carried. Copy of Bill, Explanation and Fiscal Note included in the minutes.

HB 846 – Farmville Extraterritorial Jurisdiction.

Representative Warren was recognized to explain her Bill. JoAnne Burgdorff, Pitt County Attorney, spoke in support of this Bill. Senator Lee moved for a Favorable Report and the motion carried. Copy of Bill included in the minutes.

HB 84 7 – Pitt County Investments.

Representative Warren was recognized to explain her Bill and on motion by Senator Hoyle, a Committee Substitute was adopted. Martha Walston, Staff Attorney, explained the Committee Substitute and on motion by Senator Webster, the committee gave the

Committee Sub a Favorable Report. Copy of original Bill and Committee Sub included in the minutes.

Meeting adjourned.

David W. Hoyle, Co-Chair
Senate Finance Committee

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

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

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

HB 62 – EFT of Corporate Estimated Income – not heard at this meeting
SB 254 – Outdoor Advertising Control Act – not heard at this meeting

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 837
Committee Substitute Favorable 4/21/99

Short Title: Chocowinity ETJ. (Local)

Sponsors:

Referred to:

April 1, 1999

A BILL TO BE ENTITLED

AN ACT EXTENDING THE TOWN OF CHOCOWINITY'S EXTRATERRITORIAL JURISDICTION.

The General Assembly of North Carolina enacts:

Section 1. In addition to any areas where the Town of Chocowinity exercises extraterritorial jurisdiction under Article 19 of Chapter 160A of the General Statutes, the Town shall have extraterritorial jurisdiction under that Article in the following described area, which includes the Cypress Landing Subdivision:

BEGINNING at the existing Extraterritorial Jurisdiction at the southeast corner of the Margaret Louise Barr property, otherwise known as Parcel number 5674-31-1415 on the Beaufort County Land Records; thence from said point in a southeasterly direction following the right-of-way of Norfolk Southern Railroad to the southeast corner of the Weyerhaeuser Real Estate Company property, otherwise known as Parcel number 5674-83-5374 on the Beaufort County Land Records; thence from said point in a north/northeasterly direction following the eastern property line of the Weyerhaeuser Real Estate Company property, otherwise known as Parcel number 5674-83-5374 on the Beaufort County Land Records, to the right-of-way of SR 1123; thence from said point in a southeasterly direction following the right-of-way of SR 1123 to the southeastern corner of the Curtis Earl Grist and Sharon Grist property, otherwise known as Parcel number 5683-18-6341 on the Beaufort County Land Records; thence from said point in a northeasterly direction following the eastern property line of the Curtis Earl Grist and Sharon Grist property, otherwise known as Parcel number 5683-18-6341 on the Beaufort County Land Records, to the northeast

corner of said Parcel; thence from said point in a northeasterly direction following the eastern property line of the Addie Grist property, otherwise known as Parcel number 5683-18-8615 on the Beaufort County Land Records, to the northeastern corner of said Parcel; thence from said point in a varying easterly and northeasterly direction following the northern property line of the Charlotte Stokes Garris property, otherwise known as Parcel number 5683-28-9280 on the Beaufort County Tax Records, to the property line of the James Bragg Robertson, Jr. property, otherwise known as Parcel number 5683-48-4138 on the Beaufort County Tax Records; thence from said point in a northeasterly direction following the western property line of the James Bragg Robertson, Jr. property, otherwise known as Parcel number 5683-48-4138, to the mouth of Rice Creek; thence from said point in a generally northwesterly direction following the southern bank of Chocowinity Bay to the existing Extraterritorial Jurisdiction at the intersection of the right-of-way of Norfolk Southern Railroad and the center of Crawford Creek.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 797*

Short Title: Union County Fire Fees. (Local)

Sponsors: Representative Melton.

Referred to: Local Government II.

April 1, 1999

A BILL TO BE ENTITLED

AN ACT EXEMPTING CERTAIN STATE PROPERTY FROM FIRE PROTECTION FEES IMPOSED BY UNION COUNTY.

The General Assembly of North Carolina enacts:

Section 1. G.S 153A-236(c), as it applies to Union County pursuant to Chapter 883 of the 1991 Session Laws, as amended by Chapter 61 of the 1995 Session Laws, reads as rewritten:

"(c) Fees. -- The fees imposed by the county may not exceed the cost of providing fire protection services within the district and may be imposed on owners of all real property that benefits from the availability of fire protection and on owners of all manufactured or mobile homes that benefit from the availability of fire ~~protection.~~ protection; provided, however, that the fees shall not be imposed on the North Carolina Department of Transportation for real property owned by the Department and used solely for highway purposes. For the purpose of this section, the term 'fire protection' includes furnishing emergency medical, rescue, and ambulance services to protect persons in the district from injury or death. The county shall establish a schedule of fees for different classes of property and the fee for each class of property shall be proportional to the estimated cost of providing fire protection services to that class of property. The schedule of fees shall include the following classes of property and the fee on each class of property shall not exceed the following maximums:

(1) A single-family dwelling or manufactured or mobile home, and appurtenant structures, plus up to five acres of surrounding land. The fee on this class of property may not exceed fifty dollars ($50.00) per site per year.

(2) Unimproved land other than the five acres of land classified as part of a single-family dwelling or manufactured or mobile home. The fee on this class of property may not exceed two cents (2¢) per acre per year. The county may establish a minimum fee for unimproved land of not more than five dollars ($5.00) per year.

(3) An animal production or horticultural operation. The fee on this class of property may not exceed ten dollars ($10.00) per site per year.

(4) A commercial facility other than an animal production or horticultural operation. The fee on this class of property may not exceed fifty dollars ($50.00) per site per year for commercial facilities with structures encompassing less than 5,000 square feet and one hundred dollars ($100.00) per site per year for commercial facilities with structures encompassing 5,000 square feet or more.

(5) A multiple-family dwelling. The fee on a duplex may not exceed fifty dollars ($50.00) per building per year. The fee on a triplex may not exceed seventy-five dollars ($75.00) per building per year. The fee on any other multiple-family dwelling may not exceed one hundred dollars ($100.00) per building per year.

(6) Any other class of property selected by the county. The fee on these classes of property may not exceed fifty dollars ($50.00) per year."

Section 2. This act applies to Union County only.

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

DRAFTED

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: H.B. 797

SHORT TITLE: Union County Fires

SPONSOR(S): Rep. Melton

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES	* See Assumptions and Methodology *				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Transportation, Union County.

EFFECTIVE DATE: When it becomes law.

BILL SUMMARY: Union County levies a fire protection fee. This fee covers the cost of providing fire protection services in the county. The legislation exempts Department of Transportation property, used for highway purposes, from the fire protection fee.

ASSUMPTIONS AND METHODOLOGY: Department records indicate that the Department of Transportation has 22 buildings in Union county. The largest is a 4,100 square foot office building, and the smallest is an eight by ten-foot shed. Twenty of these buildings are used for highway work, while the Division of Motor Vehicles controls two. The Department believes this facility typical for a county transportation yard.

Under current law each of these buildings could be subject to a fire fee of up to $50.00. However, Union County officials report that the Department of Transportation has not been paying the fee. The bill merely formalizes the existing situation. Because the Department was not paying the fee before, nor will they if the bill is passed, there is no fiscal impact to either the Department or Union County.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Linda Struyk Millsaps

APPROVED BY:

DATE:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 765

Short Title: Wesley Chapel Boundaries. (Local)

Sponsors: Representative Melton.

Referred to: Local Government I.

March 31, 1999

A BILL TO BE ENTITLED

AN ACT AMENDING THE BOUNDARIES OF THE VILLAGE OF WESLEY CHAPEL.

The General Assembly of North Carolina enacts:

Section 1. Section 2.1 of the Charter of the Village of Wesley Chapel, being S.L. 1998-43, reads as rewritten:

"Sec. 2.1. **Village Boundaries.** Until modified in accordance with the law, the boundaries of the Village of Wesley Chapel are as follows:

BEGINNING at a point in the centerline of Wesley Chapel-Stouts Road (SR 1377) that intersects with the northwestern extension of the northern property boundary line of parcel 001 as shown on tax map 7-096; thence southeasterly with said property boundary line approximately 3,630 feet to the centerline of the ~~East Fork~~ Twelve Mile Creek; thence southerly with said creek to a point being the centerline of Goldmine Road (SR 1162); thence with the centerline of Goldmine Road in an easterly direction to the intersection of the extension of the centerline of Birmingham Lane; thence with the centerline of Birmingham Lane in a southerly direction to the northeast corner of the property boundary line of parcel 26-A as shown on tax map 7-096; thence southeastward approximately 300 feet to the northeast corner of the property boundary line of parcel 26 as shown on tax map 7-096; thence southwestward approximately 250 feet to the centerline of Birmingham Lane; thence southeastward along the centerline of Birmingham Lane approximately 800 feet to the extension of the southeast corner property boundary line of parcel 4-F as shown on tax map 7-096; thence southwestward with said property boundary line approximately 1,020 feet and then westward with said property boundary line

approximately 1,204 feet to the centerline of East Fork Twelve Mile Creek; thence following the southwesterly direction of said creek approximately 2,517 feet with the intersection of N.C. Highway 84; thence following the southerly direction of said creek approximately 1,650 feet to a point being the northernmost corner property boundary line of parcel 7-A as shown on tax map 6-006; thence easterly approximately 333 feet to a point being the northernmost corner of property boundary line of parcel 9 as shown on tax map 6-006; thence southeasterly then southwesterly and then northwesterly with said parcel until it intersects with the centerline of Potter Road (SR 1162); thence southward on said road approximately 247 feet to the intersection of the extension of the centerline of Parkside Drive; thence westward with the centerline of said road approximately 412 feet to a point being the northernmost property boundary corner of parcel 41 as shown on tax map 6-027; thence southeasterly with the eastern property boundary line of said parcel approximately 825 feet to a point being the easternmost property boundary line of parcel 31 as shown on tax map 6-027; thence southwesterly with the southern property boundary line of said parcel approximately 810 feet to a point being the southernmost property boundary line of parcel 28 as shown on tax map 6-027; thence northwesterly with the western property boundary line of said parcel approximately 1,155 feet to a point being the southernmost property boundary line of parcel 11 as shown on tax map 6-027; thence northerly and then southwesterly with said parcel approximately 1,002 feet to a point being the northeastern corner property boundary line of parcel 5-A as shown on tax map 6-027; thence southeasterly with said parcel approximately 736 feet to the intersection with the centerline of the East Fork Twelve Mile Creek; thence southwestward with said creek approximately 4,785 feet to a point being the centerline of Chambwood Road (SR 1336); thence northeasterly with the centerline of Chambwood Road approximately 2,475 feet to a point being the southernmost property boundary line of parcel 42 as shown on tax map 6-027; thence northwesterly with the southern property line of said parcel approximately 1,155 feet to a point being the intersection with the southern boundary line of parcel 4-C as shown on tax map 6-027; thence westerly with the southern property line of said parcel approximately 1,072 feet and then northwesterly with the western property line of said parcel approximately 1,815 feet to a point being the northernmost property boundary line of parcel 4-B as shown on tax map 6-027; thence northwesterly with the western property boundary line of parcel 8-B as shown on tax map 6-048 approximately 853 feet to a point being the southeastern property boundary line of parcel 20 as shown on tax map 6-045; thence westerly with said parcel approximately 786 feet and then northwesterly with said parcel approximately 509 feet to a point being the intersection of the extension of said line northwestward and the centerline of N. C. Highway 84; thence easterly with the centerline of N. C. Highway 84 approximately 577 feet to a point being the intersection of said centerline and the southeastward extension of the western property boundary line of parcel 16 as shown on tax map 6-045, thence northwesterly then southeasterly and then northwesterly with said parcel approximately 620 feet to a point being the northwestern most property boundary line of parcel 11 as shown on tax map 6-045; thence northwesterly

approximately 1,155 feet to a point being the northeast corner of parcel 7-B as shown on tax map 6-045; thence southerly and then northwesterly with said parcel approximately 1,017 feet to a point being the southwestern most property boundary line of parcel 15-A as shown on tax map 6-045; thence northerly with said parcel approximately 247 feet to a point being the southeastern most property boundary line of parcel 22-B as shown on tax map 6-045; thence westerly and then northerly with said parcel approximately 660 feet to a point being the intersection with the southern property boundary line of parcel 24 as shown on tax map 6-045; thence westerly then northerly with said parcel approximately 577 feet to a point being the intersection with the centerline of Underwood Road (SR 1377); thence southeasterly with the centerline of said road approximately 1,139 feet to a point being the extension of the western property boundary line of parcel 16 as shown on tax map 6-045; thence northerly and then southeasterly with said parcel to a point being the intersection of the centerline of Little Twelve Mile Creek; thence northerly with said creek approximately 2,145 feet to a point being the intersection with Potter Road (SR 1346); thence northerly with said creek approximately 1,520 feet to a point being a corner in the southwestern property boundary line of parcel 2 as shown on tax map 6-021; thence northeasterly, then northerly, then westerly, and then northerly with said property line to a point being the southern property boundary line of parcel 3 as shown on tax map 6-021; thence westerly with said parcel approximately 330 feet to a point being the corner of the southwest property boundary line of said parcel; thence northeasterly approximately 1,815 feet to a point being the intersection with the southwestward property boundary line of parcel 5 as shown on tax map 7-120; thence northwesterly then northeasterly and then southeasterly with said property line to a point being the northernmost corner property boundary line of parcel 7 as shown on tax map 7-120; thence with the extension of said property boundary line to the centerline of Hawfield Road (SR 1354); thence southeasterly with the centerline of said road approximately 2,145 feet to the intersection with the centerline of Wesley Chapel-Stouts Road (SR 1377); thence northeasterly with the centerline of said road approximately 1,980 feet to the point and place of BEGINNING. Excluded from this description are Tracts IV, V, and VI annexed to the Town of Indian Trail under Part 4 of Article 4A of Chapter 160A of the General Statutes by Annexation Ordinance 40 adopted May 25, 1998, more particularly described as follows:

TRACT IV:

BEGINNING at a point where the centerline of the right-of-way of S.R. 1162 (known as Goldmine Road) intersects the centerline of the right-of-way of S.R. 1377 (known as Wesley Chapel-Stouts Road) (the right-of-way for each road being 60 feet wide), and running from said beginning point with the center of the right-of-way of S.R. 1377 as follows: (1) N 44-22-25 E 148.77 feet to a point; (2) N 40-39-45 E 528.84 feet to a point, a corner of Lot 8 of Houston Farm Subdivision, Phase III (Plat Cabinet B, File 306-A, Union County Registry); thence with the southwestern boundary of Lot 8 of said subdivision, South 35-01-09 E 231.18 feet to a point, a corner of Lot 9 of Houston Farm Subdivision, Phase III; thence with southwest boundary of Lot 9 of said subdivision, S 34-51-04 E 249.94 feet to a point in the

center of the right-of-way of S.R. 1162; thence with the center of the right-of-way of S.R. 1162 as follows: (1) S 82-52-40 W 134.60 feet to a point; (2) S 80-44-44 W 558.83 feet to a point; (3) S 80-32-27 W 39.54 feet to the point of BEGINNING, and containing 3.54 acres, more or less, as shown on copy of map of survey prepared by F. Donald Lawrence & Associates, P.A., NCRLS, dated October 27, 1986, and recorded in Plat Cabinet B, at Page 306-A, Union County Registry.

TRACT V:

BEGINNING at a point where the centerline of the right-of-way of S.R. 1162 (known as Goldmine Road) intersects with the centerline of the right-of-way of S.R. 1377 (known as Wesley Chapel-Stouts Road), and running from said beginning point with the centerline of the right-of-way of S.R. 1162 as follows: (1) S 80-32-25 W 320.00 feet to a point; (2) S 80-33-44 W 591.51 feet to a point; (3) S 75-37-55 W 89.30 feet to a point; (4) S 47-08-50 W 60.77 feet to a point; (5) S 11-11-50 W 64.16 feet to a point near the center of the intersection of S.R. 1162 and S.R. 1355; thence N 15-46-08 W 35.86 feet to a point within the right-of-way of S.R. 1162; thence N 32-02-38 W 181.80 feet to a point in the center of the right-of-way of S.R. 1355; thence with the center of the right-of-way of S.R. 1355 as follows: (1) N 29-11-30 W 293.99 feet to a point; (2) N 32-02-58 W 431.58 feet to a point; (3) N 32-38-20 W 364.15 feet to a point in the center of said road right-of-way; thence N 45-02-45 E 3329.74 feet to a point in the southwestern boundary of the right-of-way of S.R. 1354 (known as Hawfield Road); thence within the right-of-way of S.R. 1354 (but not the centerline thereof), S 36-43-29 E 1656.35 feet to the point where the centerline of S.R. 1354 intersects the centerline of the right-of-way of S.R. 1377; thence with the center of the right-of-way of S.R. 1377 as follows: (1) S 51-43-45 W 98.35 feet to a point; (2) S 47-36-55 W 68.82 feet to a point; (3) S 41-39-39 W 102.57 feet to a point; (4) S 38-38-51 W 105.59 feet to a point; (5) S 38-07-38 W 270.65 feet to a point; (6) S 39-00-58 W 103.56 feet to a point; (7) S 40-22-09 W 110.27 feet to a point; (8) S 40-39-45 W 1471.25 feet to a point; (9) S 44-22-25 W 148.77 feet to the point of BEGINNING, and containing 129.06 acres, more or less, as shown on copy of unrecorded map of survey prepared by F. Donald Lawrence & Associates, P.A., NCRLS, dated March 6, 1986.

TRACT VI:

Beginning at a point in the centerline of Goldmine Road (S.R. 1162) the common corner of Lot #12 and #11 of Houston Farms, Phase I as shown on plat recorded in Plat Cabinet A, File 101-A, Union County Registry. Thence with the centerline of said road as follows: 1st N12-56-05W 122.27', 2nd N13-03-20W 105.36', 3rd N07-14-55W 76.96', 4th N11-11-50W 64.16', 5th N47-08-50W 60.77', 6th N76-37-55E 80.30', 7th N80-33-40E 419.44' to a point in the centerline of said road, the common corner of Lot #11 and #10, thence S33-44-00W 358.84' to an iron stake the common corner of Lot #10, #11, #12, thence S53-00-00W 366.35' to the point and place of BEGINNING, being all of Lot #11 and containing 3.34 acres.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 2

SENATE BILL 323
Agriculture/Environment/Natural Resources Committee Substitute Adopted 4/21/99

Short Title: Waterfowl License Changes/AB. (Public)

Sponsors:

Referred to:

March 11, 1999

A BILL TO BE ENTITLED

AN ACT TO EXTEND WATERFOWL HUNTING PRIVILEGES TO HOLDERS OF COMPREHENSIVE HUNTING LICENSES, TO INCREASE THE FEE CHARGED FOR MIGRATORY WATERFOWL LICENSES, AND TO INCREASE THE APPLICATION FEE FOR MANAGED HUNTS FOR MIGRATORY WATERFOWL AND REQUIRE APPLICANTS TO FURNISH SATISFACTORY PROOF OF POSSESSION OF THE NECESSARY HUNTING LICENSE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113-129 is amended by adding a new subdivision to read:

"(11c) Migratory Waterfowl; Waterfowl. -- Those migratory birds for which open seasons are prescribed by the United States Department of the Interior and belonging to the Family Anatidae (wild ducks, geese, brant, and swans)."

Section 2. G.S. 113-129(11c) reads as rewritten:

"~~(11c)~~ (11d) Nongame Animals. -- All wild animals except game and fur-bearing animals."

Section 3. G.S. 113-129(11d) reads as rewritten:

"~~(11d)~~ (11e) Nongame Birds. -- All wild birds except game birds."

Section 4. G.S. 113-270.1D(a) reads as rewritten:

"(a) Annual Sportsman License -- $40.00. This license shall be issued only to an individual resident of the State and entitles the holder to take all wild animals and wild birds, ~~other than~~ including waterfowl, by all lawful methods in all open seasons,

including the use of game lands, and to fish with hook and line for all fish in all inland and joint fishing waters, including public mountain trout waters."

Section 5. G.S. 113-270.2(a) reads as rewritten:

"(a) The hunting licenses set forth in subdivisions (1), (3), and (6) of subsection (c) of this section entitle the holder to take, except on game lands, wild birds and wild animals, other than big game and waterfowl, by all lawful methods and in all open seasons. The comprehensive hunting licenses of subdivisions (2) and (5) of subsection (c) of this section further entitle the holder to take big game and waterfowl and to use game lands."

Section 6. G.S. 113-270.3(b)(5) reads as rewritten:

"(5) Migratory Waterfowl Hunting License -- ~~$5.00.~~ $10.00. This license shall be issued to an individual resident or nonresident of the State and entitles the holder to take migratory waterfowl in accordance with applicable laws and regulations. The Wildlife Resources Commission may implement this license requirement through the sale of an official waterfowl stamp which may be a facsimile, in an appropriate size, of the waterfowl conservation print authorized by G.S. 113-270.2B. An amount not less than one-half of the annual proceeds from the sale of this license shall be used by the Commission for cooperative waterfowl habitat improvement projects through contracts with local waterfowl interests, with the remainder of the proceeds to be used by the Commission in its statewide programs for the conservation of waterfowl."

Section 7. G.S. 113-291.2(a) reads as rewritten:

"(a) In accordance with the supply of wildlife and other factors it determines to be of public importance, the Wildlife Resources Commission may fix seasons and bag limits upon the wild animals and wild birds authorized to be taken that it deems necessary or desirable in the interests of the conservation of wildlife resources. The authority to fix seasons includes the closing of seasons completely when necessary and fixing the hours of hunting. The authority to fix bag limits includes the setting of season and possession limits. Different seasons and bag limits may be set in differing areas; early or extended seasons and different or unlimited bag limits may be authorized on controlled shooting preserves, game lands, and public hunting grounds; and special or extended seasons may be fixed for those engaging in falconry, using primitive weapons, or taking wildlife under other special conditions. Unless modified by rules of the Wildlife Resources Commission, the seasons, shooting hours, bag limits, and possession limits fixed by the United States Department of Interior or any successor agency for migratory game birds in North Carolina must be followed, and a violation of the applicable federal rules is hereby made unlawful. When the applicable federal rules require that the State limit participation in seasons and/or bag limits for migratory game birds, the Wildlife Resources Commission may schedule managed hunts for migratory game birds. Participants in such hunts shall be selected at random by computer from properly licensed applicants. A nonrefundable fee of

~~five dollars ($5.00)~~ ten dollars ($10.00) shall be required of each applicant to defray the cost of processing the applications. Each applicant shall provide proof satisfactory to the Wildlife Resources Commission that the applicant is the lawful holder of a North Carolina hunting license that includes waterfowl privileges.

Where there is a muzzle-loading firearm season for deer, with a bag limit of five or more, one antlerless deer may be taken. Dogs may not be used for hunting deer during such season."

Section 8. This act becomes effective July 1, 1999.

SENATE BILL 323:
Waterfowl License Changes/AB

BILL ANALYSIS

Committee:	Senate Finance Committee	**Introduced by:**	Senator Kerr
Date:	May 4, 1999	**Summary by:**	Martha K. Walston
Version:	2nd Edition		Committee Counsel

SUMMARY: ***Senate Bill 323 adds a definition for "migratory waterfowl; waterfowl" and increases the fee for a migratory waterfowl hunting license from $5 to $10. The bill extends waterfowl hunting privileges to the holder of an annual sportsman license. The bill also increases the application fee for managed hunts for migratory waterfowl from $5 to $10, and requires the applicant to provide satisfactory proof to the Wildlife Resources Commission that the applicant is the lawful holder of a State hunting license that includes waterfowl privileges. The committee substitute for SB 323 was given a favorable report in Senate Agriculture.***

CURRENT LAW: Under current hunting licensure laws, an Annual Sportsman License allows the hunting of all wild animals and wild birds, except migratory waterfowl. Also comprehensive hunting licenses set out in G.S. 113-270.2(c)(2) and (5) allow the taking of wild animals, wild birds, and big game. Waterfowl are not included in the comprehensive hunting licenses.

BILL ANALYSIS: SB 323 adds the following definition for "migratory waterfowl; waterfowl":

> Those migratory birds for which open seasons are prescribed by the United States Department of the Interior and belonging to the Family Anatidae (wild ducks, geese, brant, and swans).

SB 323 adds the waterfowl hunting privilege to both the Annual Sportsman License and the Comprehensive hunting licenses. According to the Wildlife Resources Commission, the omission of the waterfowl privilege in these comprehensive licenses has caused some people to mistakenly believe that they have obtained all the necessary licenses to hunt waterfowl. The Commission believes the amendments would remedy the situation and the loss of revenue would be minimal.

SB 323 increases the cost of a Migratory Waterfowl Hunting License from $5 to $10. The fee has not been increased since the waterfowl hunting license was established in 1987. Current law requires at least one-half of the annual proceeds from the sale of this license be used by the Commission for cooperative waterfowl habitat improvement projects through contracts with local waterfowl interests. The remainder of the proceeds must be used by the Commission in its statewide programs for the conservation of waterfowl.

SB 323 increases the application fee for the special swan hunting permit from $5 to $10. This fee is used to defray the cost of processing the applications. (According to the Commission this fee is used to pay the cost of administering the special drawing and hunting requirements such as the swan tag and hunt report). An applicant for this permit must show that he or she has a NC hunting license that includes waterfowl privileges.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 323 (Second Edition)

SHORT TITLE: Waterfowl License Changes/AB

SPONSOR(S): Senator Kerr

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
Wildlife Receipts					
Waterfowl License	**$135,000**	**$135,000**	**$135,000**	**$135,000**	**$135,000**
Swan Application	**$27,500**	**$27,500**	**$27,500**	**$27,500**	**$27,500**
	$162,500	**$162,500**	**$162,500**	**$162,500**	**$162,500**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Wildlife Resources Commission

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

BILL SUMMARY: The bill extends waterfowl hunting privileges to holders of comprehensive hunting licenses, increases the fee for migratory waterfowl licenses from $5 to $10, increases the application fee for a special swan hunting permit from $5 to $10, and requires applicants for swan hunting permits to show proof of possessing a hunting license.

ASSUMPTIONS AND METHODOLOGY: There are two fee increases in SB 323. First, in Section 6, the migratory waterfowl hunting license is increased from $5 to $10. This fee has been unchanged since it was enacted in 1987 (Chapter 452, Section 2 of 1987 Session Laws). The Wildlife Resources Commission sells 27,000 waterfowl hunting licenses annually. A $5 increase in this fee will generate $135,000 in additional revenue. Section 7 of the bill contains an increase from $5 to $10 in the application fee for swan hunting permits. Since the Wildlife Resources Commission receives 5,500 applications each year, this increase will produce $27,500 in additional revenue.

An insignificant revenue impact may be created by language in sections 4 and 7. Section 4 adds waterfowl hunting privileges to the Annual Sportsman License. The Wildlife Resources Commission considers this a technical provision and does not expect a major loss of waterfowl licenses. Section 7 requires the purchase of a $15 hunting license to be eligible for a swan hunting permit. This is intended to discourage persons from applying for swan hunting permits in order to remove the permits from hunters' use. A small number of hunting licenses may be purchased due to this provision.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic

APPROVED BY:

DATE:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 846
Committee Substitute Favorable 4/26/99

Short Title: Farmville Extraterritorial Jurisdiction. (Local)

Sponsors:

Referred to:

April 1, 1999

A BILL TO BE ENTITLED

AN ACT ALLOWING THE TOWN OF FARMVILLE TO EXERCISE EXTRATERRITORIAL JURISDICTION OVER AN AREA EXTENDING TWO MILES FROM ITS LIMITS.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding G.S. 160A-360(a), the Town of Farmville may exercise the powers granted in Article 19 of Chapter 160A of the General Statutes over an area extending not more than two miles beyond its limits with the approval of the Board of County Commissioners as to the specific area within the additional territory.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 847
Committee Substitute Favorable 4/27/99

Short Title: Pitt County Investments. (Local)

Sponsors:

Referred to:

April 1, 1999

A BILL TO BE ENTITLED

AN ACT RELATING TO THE INVESTMENT OF CERTAIN FUNDS BY PITT COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding the provisions of G.S. 159-30, the County of Pitt may invest and reinvest equity assets funds received from the transfer of Pitt County Memorial Hospital in one or more of the types of securities or other investments authorized by State law for the State Treasurer in G.S. 147-69.2.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 847
Committee Substitute Favorable 4/27/99
Proposed Senate Committee Substitute H847-PCS2342-LA

Short Title: Pitt County Investments. (Local)

Sponsors:

Referred to:

April 1, 1999

A BILL TO BE ENTITLED

AN ACT RELATING TO THE INVESTMENT OF CERTAIN FUNDS BY PITT COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding the provisions of G.S. 159-30, the County of Pitt may invest and reinvest equity assets funds received from the transfer of Pitt County Memorial Hospital in one or more of the types of securities or other investments, and subject to the same restrictions, as authorized by State law for the State Treasurer in G.S. 147-69.2.

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

VISITOR REGISTRATION SHEET

SENATE FINANCE — WEDNESDAY, MAY 5, 1999

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Michelle Cook	Weyerhaeuser
Andy Romanet	N.C.L.M.
David Simmons	ZDAPA
Walter Price	Charlotte Chamber
Katherine Davis	ElectriCities
Joya Perera	JP Assoc.
Lisa Martin	Upper Neuse River Basin Assn.
Bob Slocum	NC Forestry Assoc.
Laura DeVivo	DENR
Ann Case	NCRMA
Cissy Porter	Bone & Associates
Alice Garland	Electricities
Fran Preston	NCRMA

VISITOR REGISTRATION SHEET

SENATE FINANCE — WEDNESDAY, MAY 5, 1999

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Tim Mulvaney	NCAICU
Daniel Boone	Booneville, TN
Ed Teach	—
Steve Woodson	NC Farm Bureau
John Palenchar	AT&T
Andy Eller	NCRMA
Barb Rote	NC Wildlife Resources
Richard Hamilton	" " "
Ian Rose	UNC
Janne Burgdorff County Attorney	Pitt County
John Rust	NCFPC

VISITOR REGISTRATION SHEET

SENATE FINANCE — WEDNESDAY, MAY 5, 1999

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Chris Dorsk	NCFPC
R. Paul Wilms	NCMBA

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Wednesday, May 05, 1999

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

FAVORABLE

H.B. **765** Wesley Chapel Boundaries.
Sequential Referral: None
Recommended Referral: None

H.B. **797** Union County Fire Fees.
Sequential Referral: None
Recommended Referral: None

H.B.(CS) **837** Chocowinity ETJ.
Sequential Referral: None
Recommended Referral: None

H.B.(CS) **846** Farmville Extraterritorial Jurisdiction.
Sequential Referral: None
Recommended Referral: None

S.B.(CS #1) **323** Waterfowl License Changes/AB.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **847** Pitt County Investments.
Draft Number: PCS2342
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 6

Committee Clerk Comment: May 5 SB 323 HB 765 797 837 846 and 847

HOUSE FINANCE COMMITTEE

Tuesday, May 11, 1999 – Room 544 LOB

CALL TO ORDER

INTRODUCTION OF PAGES

A presentation by Sec. Carlisle regarding the 1996 William S. Lee Quality Jobs and Business Expansion Act.

ADJOURNMENT OF MEETING

MINUTES
HOUSE COMMITTEE ON FINANCE

Tuesday, May 11, 1999

The House Committee on Finance met on Tuesday, May 11, 1999 in Room 544 of the Legislative Office Building at 8:30 a.m. The Senate Finance Committee was invited to the meeting to hear the speaker. The following members were present: Chairs Allen, Luebke, Miller; Vice Chairs Jarrell; Representatives Bridgeman, Brown, Buchanan, Church, Cox, Cunningham, Decker, Dedmon, Eddins, Edwards, Gibson, Goodwin, Hill, McComas, McCombs, Mosley, Pope, Ramsey, Rayfield, Starnes, Tucker, Wilson, and Womble. Staff including Cindy Avrette, Richard Bostic, Mary Shuping, and Linda Millsaps were in attendance. A Visitor Registration List is attached and made a part of these minutes.

Chair Allen called the meeting to order to hear a presentation by Secretary Rick Carlisle of the Department of Commerce.

Sec. Carlisle discussed the 1996 William S. Lee Quality Jobs and Business Expansion Act. Members of the House and Senate Finance Committees questioned Sec. Carlisle.

The Chair recognized Professor Lugar of the University of North Carolina at Chapel Hill to comment on the 1996 William S. Lee Quality Jobs and Business Expansion Act.

Handouts that were distributed at the meeting are included in these minutes.

There being no further business, the Chair adjourned the meeting at 10:00 a.m.

Respectfully submitted:

_____

Representative Gordon Allen
Chair

_____

Kristen L. Crosson
Assistant to the Committee

North Carolina Department of Commerce

Presentation to the

North Carolina General Assembly

Joint Finance Committees

May 11, 1999

Topics for Presentation

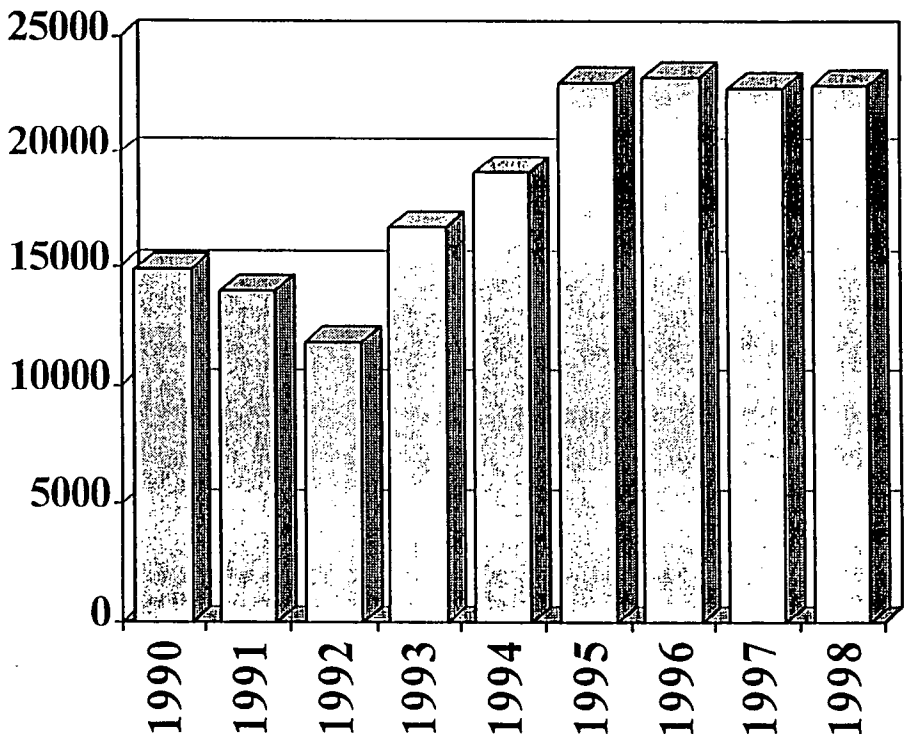
- ☆ **SB 1115/HB 1303...** ***The Widely Shared Prosperity Act of 1999***
- ☆ **William S. Lee Quality Jobs and Business Expansion Act** ***Enterprise Tier Formula Report***
- ☆ **William S. Lee Quality Jobs and Business Expansion Act** ***1999 Progress Report***

Background

Background...

A changing economy is contributing to increased job losses and plant closings, especially in North Carolina's base industries... textiles, apparel and furniture.

Announced Annual Permanent Layoffs
1990-98

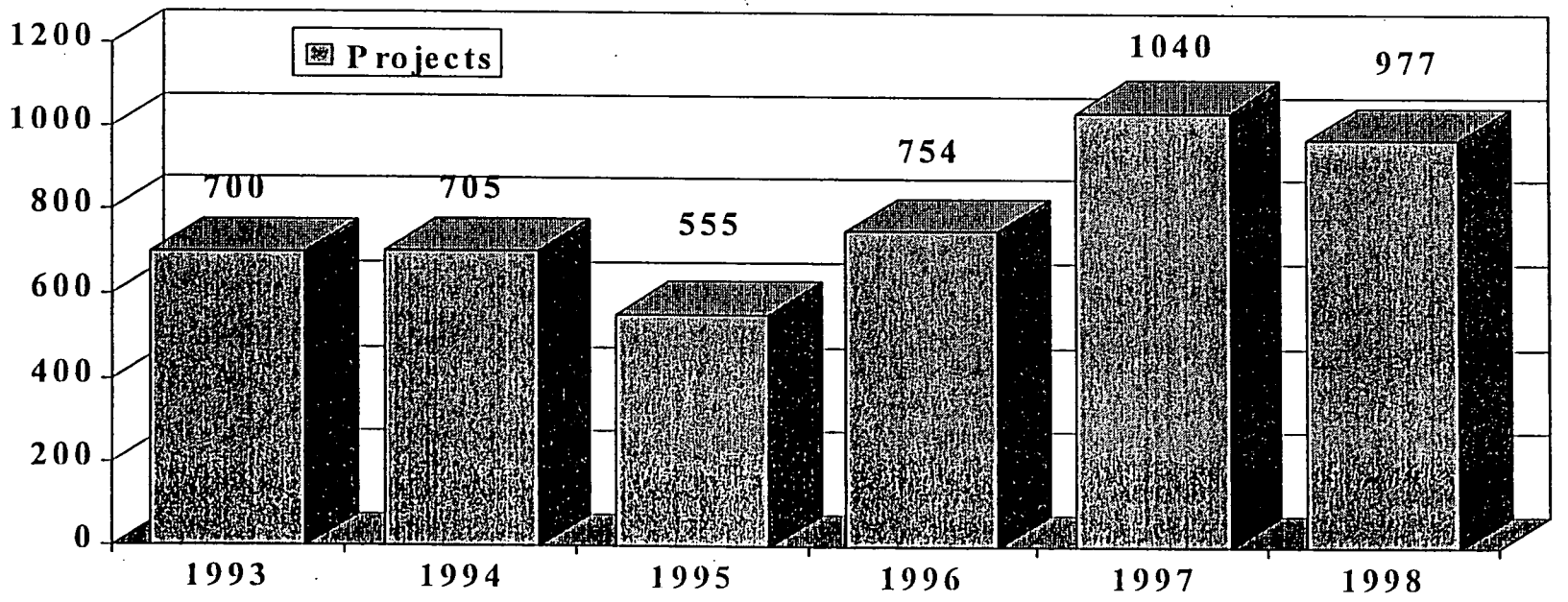


Source: NC Division of Employment and Training, NC ESC, and news clippings

Background

Competitor states improving their overall business climate threatens North Carolina's historical competitive advantage.

Economic Recruitment of W.S. Lee Act Eligible Industries... 1993-98



Source: NC Department of Commerce, Business and Industry Division

Background

North Carolina's economic growth and prosperity is not widely shared in all parts of the state.

1999 Tier	Average Per Capita Income[1]	Average Population[2]	Average Unemployment[3]
Tier 1	$15,553	23,783	8.94%
Tier 2	$16,578	42,779	6.61%
Tier 3	$17,524	55,432	4.92%
Tier 4	$18,775	65,160	4.16%
Tier 5	$22,625	162,809	2.97%

1. Three year average 1994-96; Bureau of Economic Analysis 2 Population as of 7/1/98; US Bureau of the Census 3. Average rate July 1995- June 1998, not seasonally adjusted; NC ESC

The Charge

- ✓ Help existing firms maintain and improve competitiveness through investment in new technologies.
- ✓ Help encourage new investment in the North Carolina economy-- from both existing and new industries.
- ✓ Ensure that economic growth is reaching all people in all parts of the state, particularly our rural counties and high-poverty urban areas.

The William S. Lee Quality Jobs and Business Expansion Act

The William S. Lee Quality Jobs and Business Expansion Act...

... first enacted in 1996 to stimulate the North Carolina economy-- particularly in economically distressed areas, the Act was amended in 1997 and 1998 to enhance its practicality, effectiveness and accountability.

...provides credits for five types of activities:

- **job creation**
- **investment in machinery and equipment**
- **research and development expenditures**
- **worker training costs**
- **expansion of central administrative office property**

The amount of the credit and applicable thresholds depend on the county's assigned enterprise tier and/or State Development Zone designation

Legislative Mandate

The 1997 amendment to the William S. Lee Act directed the Department of Commerce to:

Reexamine the enterprise tier formula, including consideration for alternative measures for more equitable treatment of counties in similar economic circumstances, and consideration whether the assignment of tiers and the applicable thresholds are equitable for smaller counties.

Study the economic and business recruitment effectiveness of the William S. Lee Act.

W. S. Lee Act Study Task Force

- **Mark Bernstein, Co-Chair**-- Parker, Poe, Adams & Bernstein; NC Economic Development Board
- **Norman Samet, Co-Chair**-- Samet Corporation; NC Economic Development Board
- **John Connaughton**--UNC-Charlotte Department of Economics
- **Dan Gerlach**-- NC Budget and Tax Center
- **Paul Lawler**-- NC Economic Developers Association
- **Gary Shoesmith**-- Wake Forest University, Babcock Graduate School of Management
- **Mike Walden**-- NCSU Department of Agricultural and Resource Economics

William S. Lee Quality Jobs & Business Expansion Act

1999 Tier Formula Report

North Carolina Department of Commerce

Tier Formula Options

Current Formula...

- **Population Growth (1990-1997)**
- **Unemployment Rate (36 month average: July 1995- June 1998)**
- **Per Capita Income (3 Year Average: 1995-1998)**

Other possible formula components include...

- ***Net Earnings Per Capita (1996)***
- ***Food Stamp Recipiency Rate (1997)***
- ***Average Annual Private Insured Wage (1996)***
- ***Property Valuation Per Capita (1997)***

Task Force Tier Formula Findings

- The Task Force found no variation in the Enterprise Tier Formula significantly improved the formula in a manner satisfactory to all.
- The Task Force recommends that the General Assembly keep the current tier formula in place while allowing some sort of special provision for smaller counties.

William S. Lee Quality Jobs & Business Expansion Act

1999 Progress Report

North Carolina Department of Commerce

Legislative Mandate

In addition to the tier formula report, the 1997 amendment to the William S. Lee Act directed the Department of Commerce to:

- **Study the distribution of tax incentives across new and expanding industries.**
- **Examine data on economic recruitment for the period 1994 through 1998 by county, by industry type, by size of investment, and by number of jobs, and other relevant information to determine the pattern of business locations and expansions before and after the enactment of the William S. Lee Act incentives.**
- **Measure the direct costs and benefits of the tax incentives.**
- **Compile any available data on whether expanding North Carolina businesses receive fewer benefits than out-of-state businesses that locate in North Carolina.**
- **Compile available information on the current use of incentives by other states and whether that use is increasing or declining.**

Are we fulfilling our charge?

The William S. Hart Union High School District
Business Department
Instructional Goals and Objectives

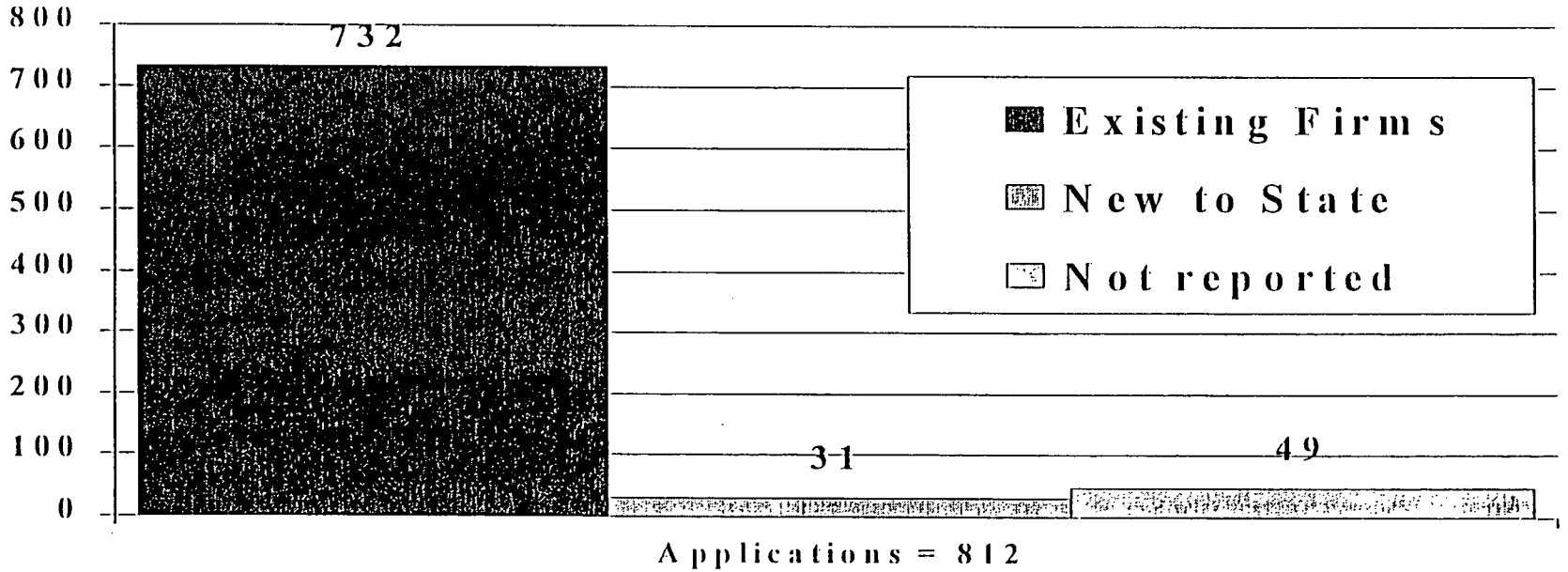
- Help existing firms maintain and improve competitiveness through investment in new technologies.

- The Maine Economic Improvement Fund's business expansion projects will create jobs and

Help existing firms maintain and improve competitiveness through investment in new technologies...

The William S. Lee Act is attractive to existing business as well as new business-- more existing firms have applied for credits than new firms.

1997 Approved WSL Applications



Help existing firms maintain and improve competitiveness through investment in new technologies.

Utilization of WSL credits strongly favors existing industry...

Firms incorporated prior to 1991 utilized:

- ***96.75% of 1997 Jobs credits***
- ***97.49% of 1997 M&E credits***
- ***93.20% of 1997 R&D credits***

Help existing firms maintain and improve competitiveness through investment in new technologies

Breakdown of Industry Analysis

Traditional Manufacturing Industries:

Food Products * Tobacco * Textiles & Apparel * Lumber * Furniture

Paper, Chemicals and Printing

Paper * Pharmaceuticals * Biotechnology * Printing

Medium Capital- Intensive Manufacturing

Rubber * Plastics * Stone * Jewelry * Metal * Industrial Machinery

Heavier and Higher- Tech Manufacturing:

Electronics * Automotive/ Transportation * Instruments * Miscellaneous

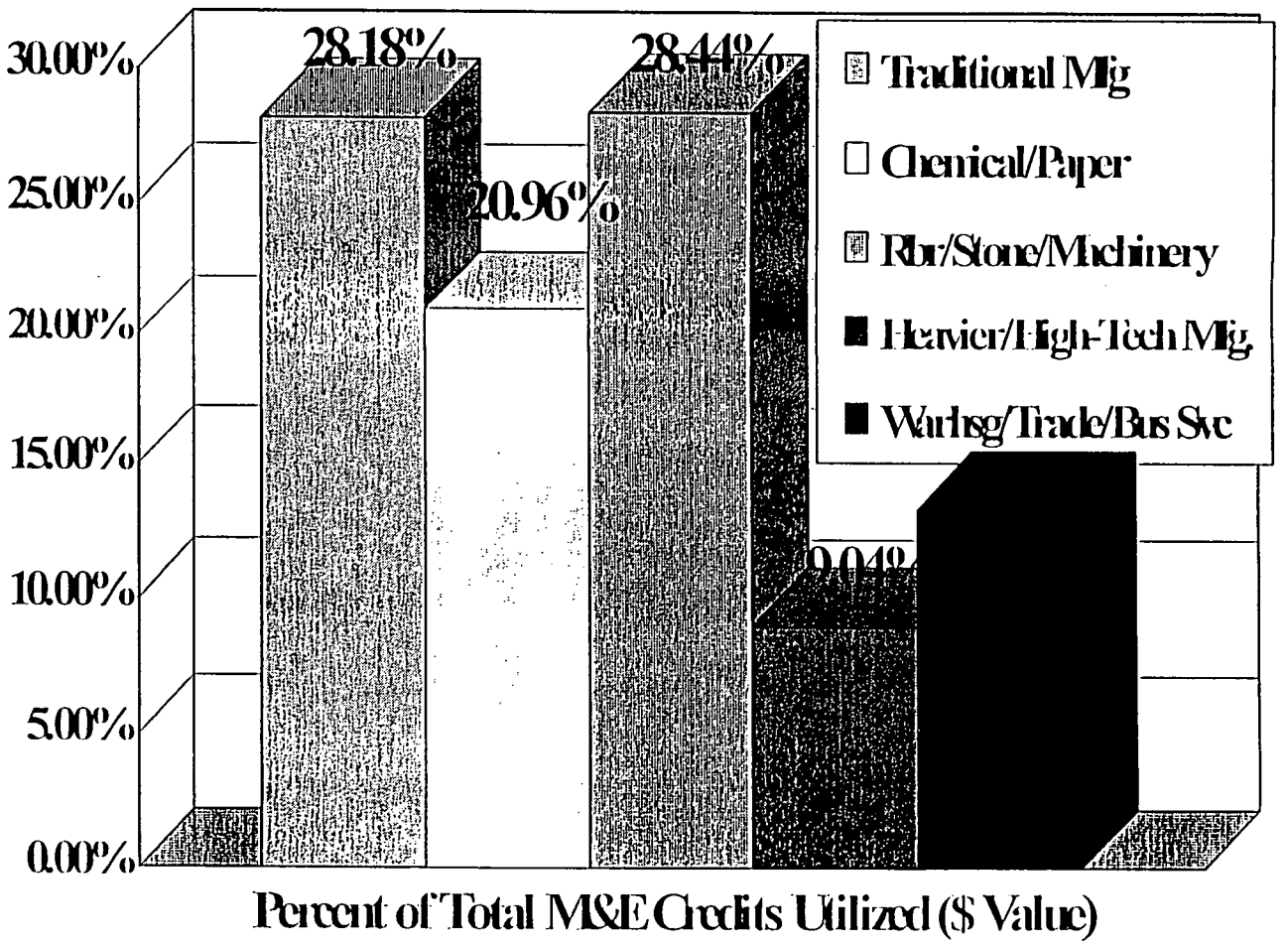
Non-Manufacturing WSL Eligible Industries:

Minerals * Warehousing * Trade * Business Services (Data Processing)

Help existing firms maintain and improve competitiveness through investment in new technologies

Helping North Carolina's traditional existing industries modernize and compete in the global economy…

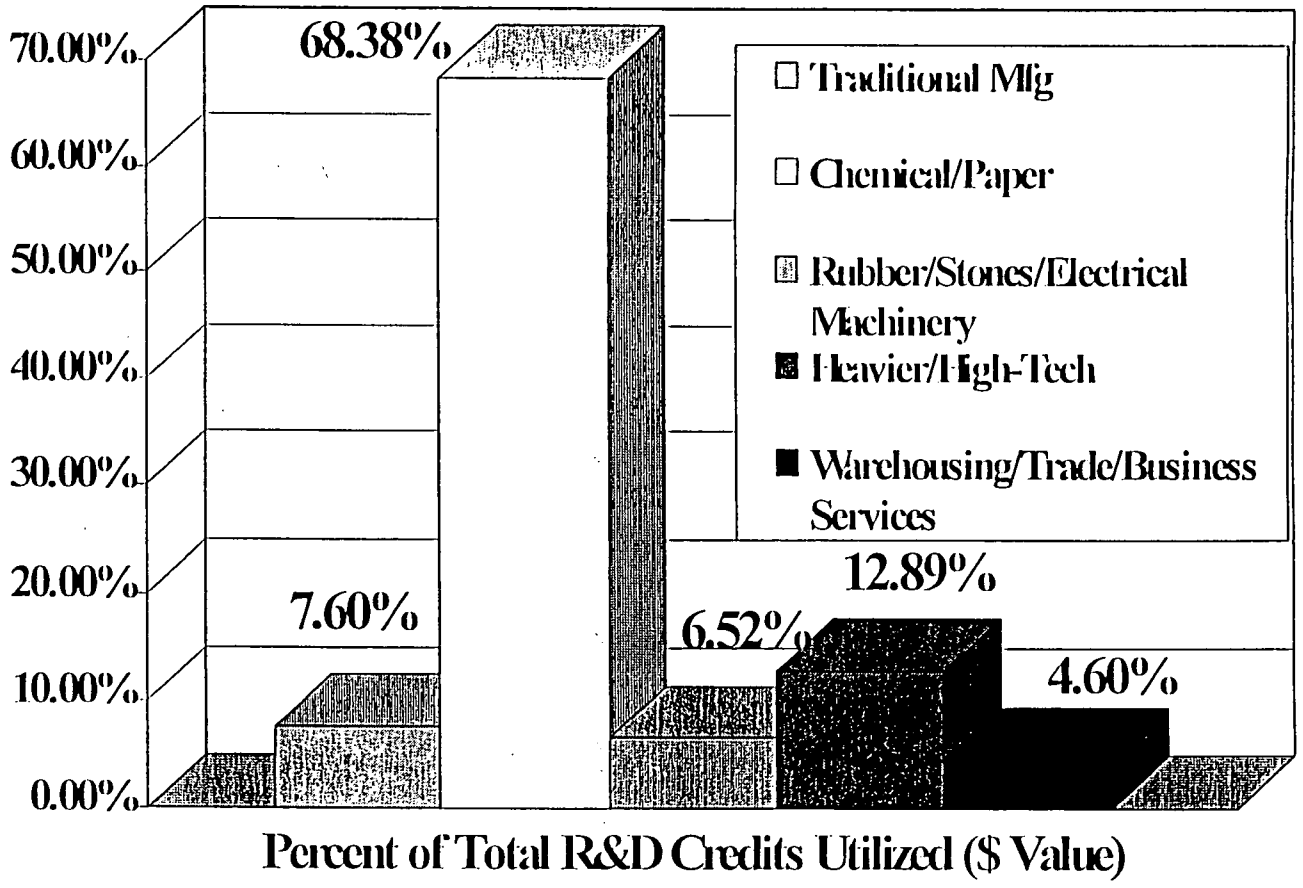
28.18% of the M&E credits were utilized by North Carolina's base industries: textiles, apparel, furniture, lumber, food, and tobacco.



Help existing firms maintain and improve competitiveness through investment in new technologies...

North Carolina's maturing biotech and pharmaceutical industries are utilizing R&D credits...

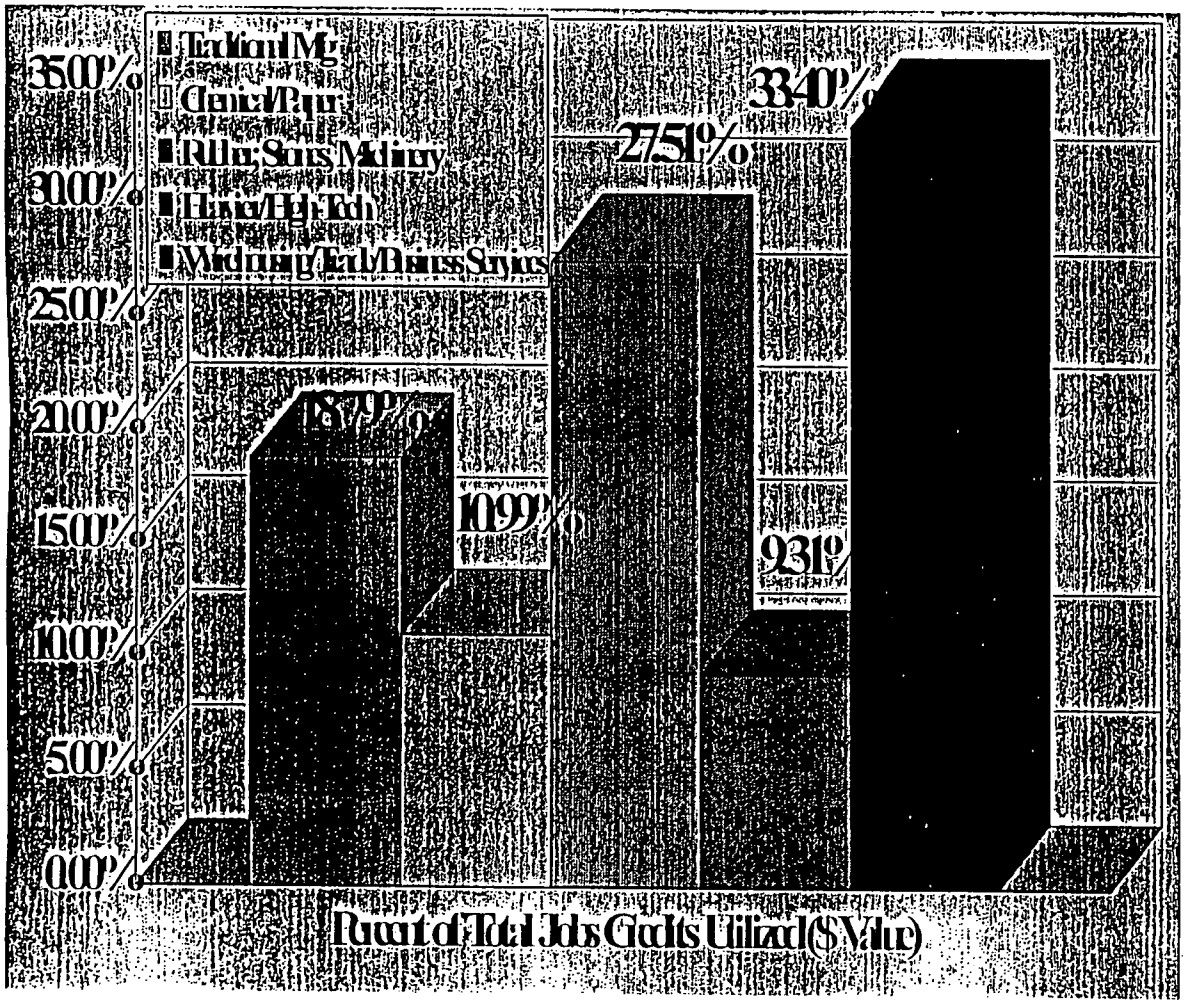
68.38% of the R&D credits were utilized by chemical and paper manufacturers.



The Williams Lee Quality Jobs and Business Expansion Act

- Help encourage new investment in the North Carolina economy -- from both existing and new industries.

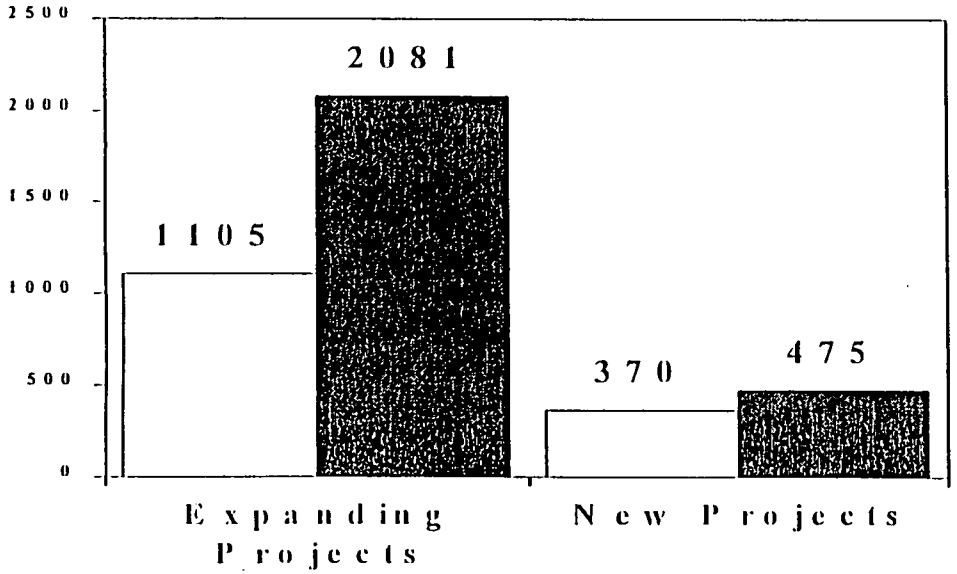
Help encourage new investment in the North Carolina economy -- from both existing and new industries

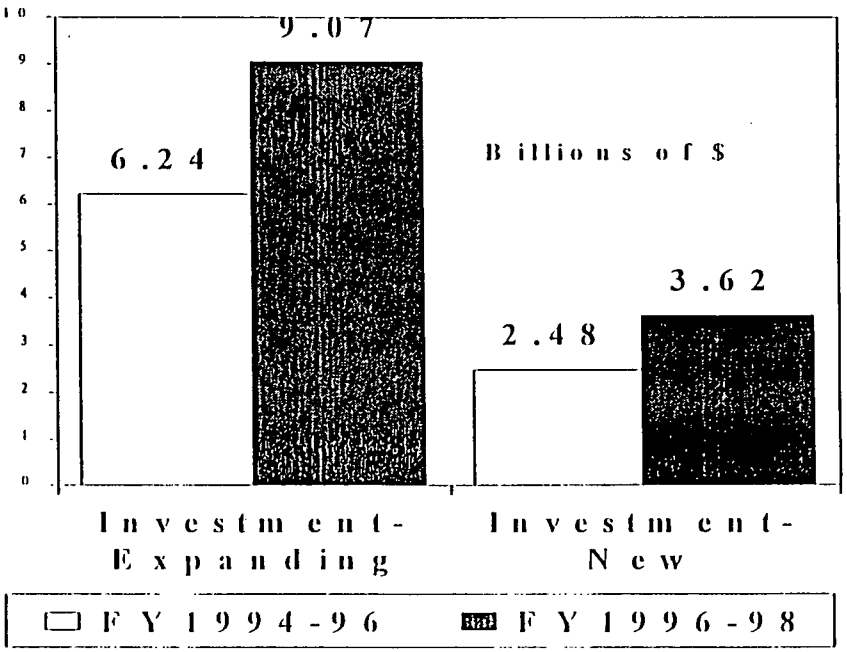


Over 1/3 of total Jobs Credit (dollar value) was utilized by the warehousing, trade and business services industries. Next highest was the rubber/plastics, stone, and electrical machinery sectors.

Help encourage new investment in the North Carolina economy - from both existing and new industries.

The Department of Commerce has recorded more new and expanding industry projects and more new and expanding industry investment since the enactment of the W.S. Lee Act.





Help existing firms maintain and improve competitiveness through investment in new technologies

Some of the new jobs and investment for North Carolina brought to you by the W. S. Lee Act...

- **Homanit GmbH and Company KG**-- Montgomery Co. (1999, 150 jobs, $90 million) ***Tier 2****
- **Magnolia Manufacturing**-- Alleghany Co. (1998, 100 jobs, $40 million investment) ***Tier 1****
- **Spectrum Dyed Yarns**-- McDowell Co. (1997-98, 75 jobs, $18 million initial, $2.5 million expansion in 1998) ***Tier 3****
- **Aflex Corporation**-- Nash Co. (1998, 100 jobs, $10 million) ***Tier 4****
- **Aisin AW Co.**-- Durham Co. (1998, 250 jobs, $100 million) ***Tier 5****
- **Amilite Corporation**-- Beaufort Co. (1998, 150 jobs, $8 million) ***Tier 2****
- **Mitchell Gold**-- Alexander Co. (1998, 250 jobs, $6 million) ***Tier 4****
- **Carolina System Technology**-- Edgecombe Co. (1997, 425 jobs, $40 million) ***Tier 1****

**Tier ranking during the year of announcement.*

- Ensure that economic growth is reaching all people in all parts of the state, particularly our rural counties and high-poverty urban areas.

Ensure that economic growth is reaching all people in all parts of the state, particularly our rural counties and high-poverty urban areas.

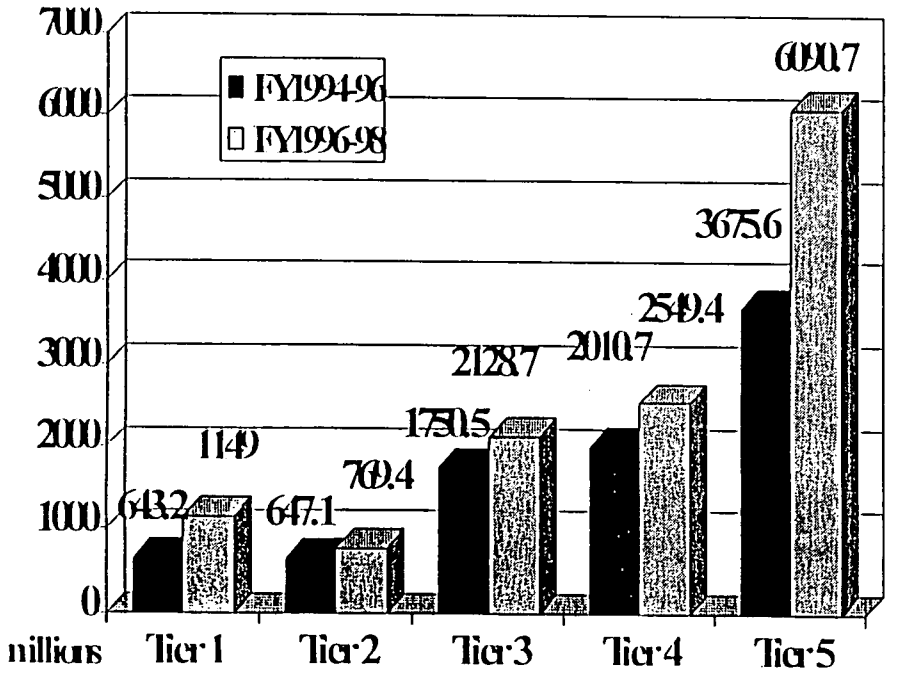
When considering total dollar value of credits, Tiers 4 and 5 have generated and utilized more credit dollars than the lower tiers. However, when credit value is analyzed on a per capita basis, *Tier 1 and Tier 3 counties demonstrate a more significant impact than the higher tiers.*

TIER	# of New Jobs	% of Total New Jobs	Credit Amount Generated*	% of Total	Amount Generated per Capita
1	69	1.73%	$862,500	14.74%	$36
2	187	4.69%	$748,000	12.78%	$17
3	664	16.67%	$2,003,000	34.23%	$36
4	1413	35.48%	$1,412,796	24.15%	$22
5	1650	41.43%	$825,000	14.10%	$5
All	*3983*	*100.00%*	*$5,851,296*	*100.00%*	

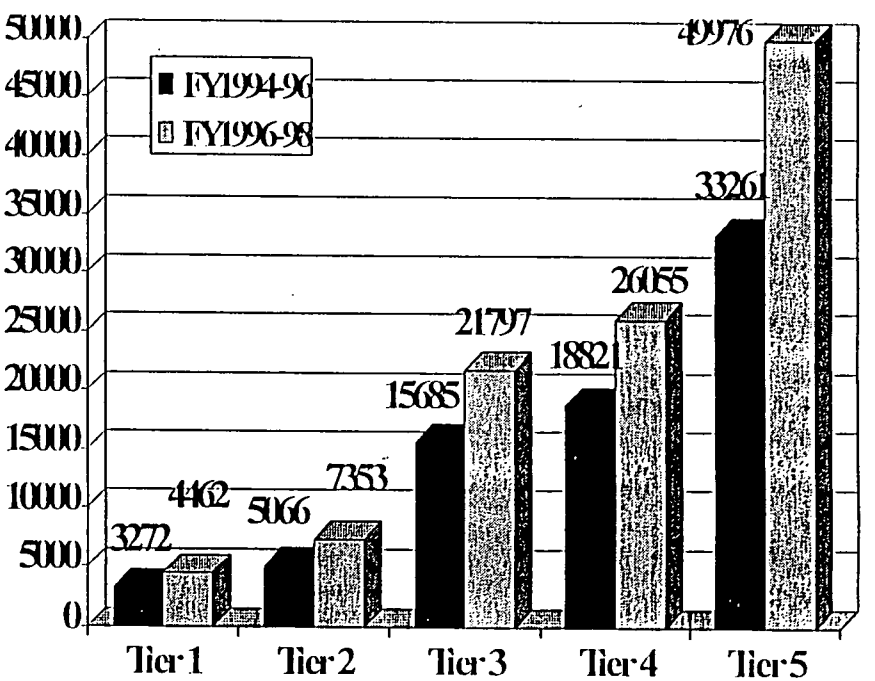
Ensure that economic growth is reaching all people in all parts of the state, particularly our rural communities and high poverty urban areas.

New and existing job and investment announcements have increased in ALL tiers since the enactment of the W.S. Lee Act.

New and Expanding Investment Announcements

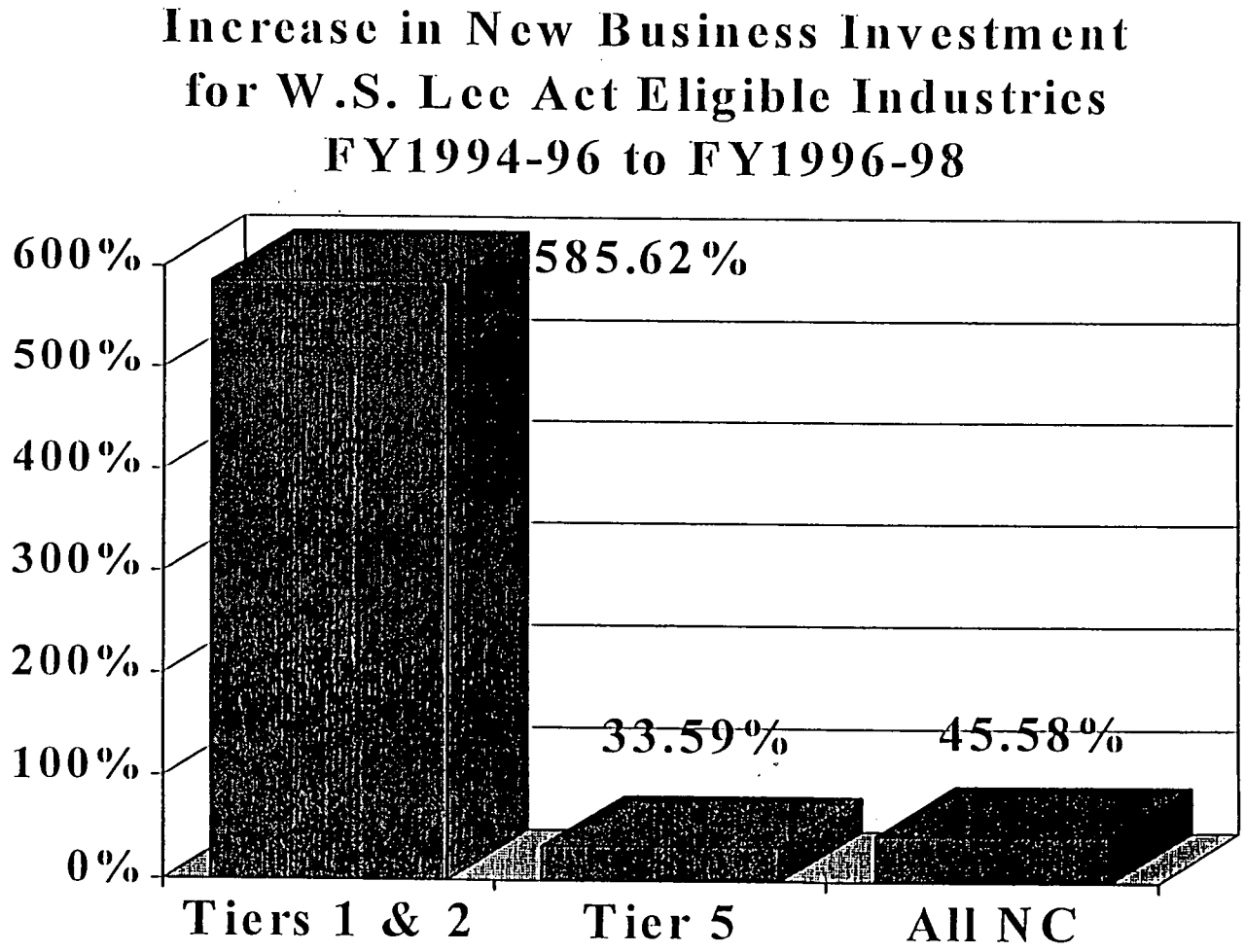


New Job Announcements



Ensure that economic growth is reaching all people in all parts of the state, particularly our rural counties and high poverty urban areas.

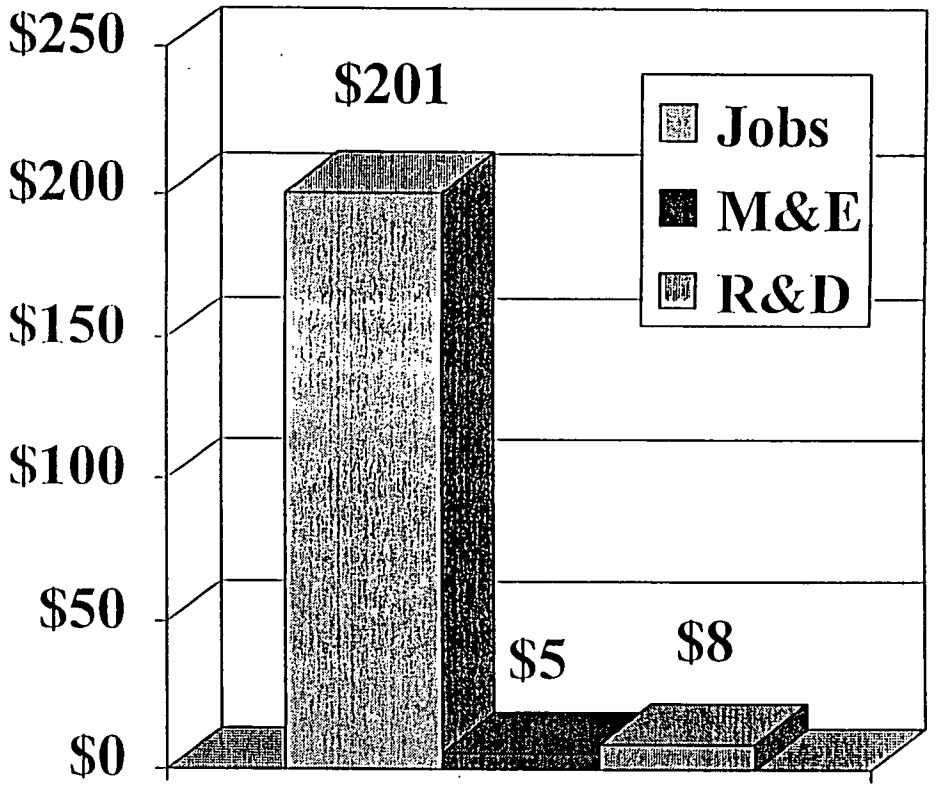
Tiers 1 and 2 experienced tremendous growth in new investment following enactment of the W. S. Lee Act.



Financial Impact of the Act...

In 1997 corporate taxpayers utilized...

- **$801,539 in Jobs tax credits** (3,983 new jobs)
- **$4,097,382 in M&E tax credits** ($789,300,000 reported capital investment)
- **$5,888,973 in R&D credits** ($723,700,000 reported R&D expenditures)



Foregone State Revenue per $1000 New Investment

Other States' Use of Incentives

The use of incentives by states is on the rise. According to a 1996 survey conducted by the Council of State Governments:

- *More than 40 states offered tax incentives to industry for job creation, machinery and equipment, goods in transition, raw materials in manufacturing, and research and development, etc.*
- *Thirty-five states indicated that their use of business incentives had increased over the past five years.*

More detailed information on incentives offered by other states is forthcoming from researchers at UNC-Chapel Hill.

The Evidence Indicates...

The William States Lee Quality Jobs and Business Expansion Act has been an effective tool in achieving the intended objectives at a reasonable cost to the state of North Carolina...

- ✓ Help existing firms invest in and compete with new technologies
- ✓ Help encourage new investment by North Carolina's existing industries and those new to our state.
- ✓ Ensure that prosperity is indeed *widely shared* by targeting our rural and urban distressed areas.

Conclusions...

We cannot definitively state from this data how much of the reported business activity (i.e., job creation, capital investment) is directly due to the tax incentives. *But we are able to make some concluding observations...*

Conclusions...

Following the passage of the William S. Lee Act...

- ✓ Expanding North Carolina companies have taken advantage of the William S. Lee Act to a greater extent than new firms.
- ✓ Overall job creation and capital investment has increased in North Carolina and the number of recruitment and expansion projects between $75 million and $200 million increased substantially.
- ✓ Overall, the industries eligible for the tax credits under the Lee Act have created more jobs and generated more new investment.
- ✓ Industrial recruitment and expansion in the most distressed counties (Tiers 1 and 2) improved compared to the rest of the state on a per capita basis.
- ✓ The cost per new job and investment dollar is modest compared to other states.

Next Steps

To date, the William S. Lee Quality Jobs and Business Expansion Act has served to benefit the North Carolina economy.

However, we feel we can improve upon the success of the past two years... particularly to increase prosperity in our rural and urban distressed areas...

The Widely Shared Prosperity Act of 1999

SB 1115 HB 1303

North Carolina Department of Commerce

Widely Shared Prosperity Act of 2009

Senate Bill 1115 House Bill 1303

TARGET

Help citizens in North Carolina's economically distressed urban and rural areas achieve financial security by providing new jobs and affordable housing in their communities.

Senate Bill 1115 House Bill 1303

- Customer service call centers that locate in a Tier 1 or Tier 2 county and are operated by financial services or telecommunications companies will be eligible for William S. Lee Act credits.
- Extend machinery and equipment sales tax limit of 1% or $80 to companies setting up a central administrative office and companies operating warehousing, distribution and data processing facilities in Tier 1 and Tier 2 counties.
- Enhance the North Carolina's State Development Zone initiative to better focus on low-income areas.
- Establish tax credits to support low income housing and job development projects.
- Add a small county provision to the William S. Lee Act entitling counties with a population of less than 20,000 and a poverty rate of at least 18% to the benefits of the next lower tier.

Senate Bill 1115 House Bill 1303

TARGET

Ensure the recruitment and expansion of high-caliber, environmentally sound companies in North Carolina.

Senate Bill 1115 House Bill 1303

- Companies benefiting from tax credits offered by the William S. Lee Quality Jobs and Business Expansion Act will be required to certify, subject to review from the state Department of Environment and Natural Resources, that their facility will have no materially adverse effects on the environment.
- Companies must provide employee health insurance and worker safety plans meeting state standards to qualify for the William S. Lee Credits.

Senate Bill 1115 House Bill 1303

TARGET

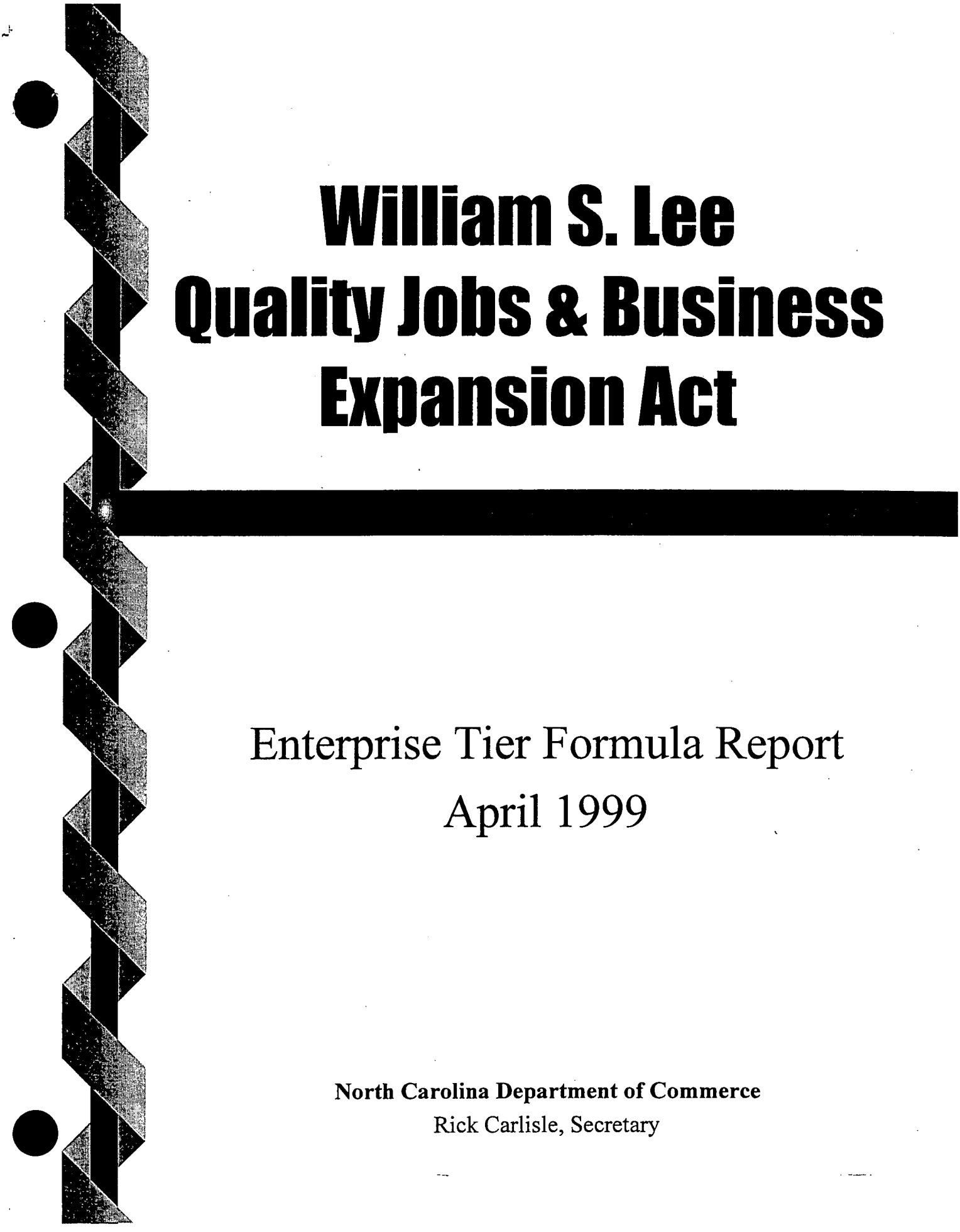
Update the William S. Lee Quality Jobs and Business Expansion Act to keep it working for North Carolina into the next century.

Senate Bill 1115 House Bill 1303

- Align older Standard Industrial Classification (SIC) codes with the newer North American Industry Classification System (NAICS) to correct definitional errors caused by the transition to the new standard.
- Increase fees for application with the William S. Lee Act tax credits to $500 per credit in Tiers 3, 4, and 5 to offset the cost of administration. [75% to the Department of Revenue, 25% to Commerce]
- Extend the sunset of the William S. Lee Act for an additional five years to 2007.
- Sales tax changes for nonprofit insurance companies and air carrier hubs.

The Widely Shared Prosperity Act of 2007

Improving the economic well-being and quality of life for all North Carolinians



William S. Lee Quality Jobs & Business Expansion Act

Enterprise Tier Formula Report

April 1999

North Carolina Department of Commerce
Rick Carlisle, Secretary

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HISTORY OF ENTERPRISE TIERS UNDER THE WILLIAM S. LEE ACT

In 1996, the General Assembly enacted the William S. Lee Quality Jobs and Business Expansion Act which provided for a modest expansion of North Carolina's incentives programs. The Act expanded an existing job creation tax credit to all 100 counties in the state and significantly expanded the amount available in the most distressed counties. The Act also established several new incentives including an investment tax credit, a research and development tax credit, and a worker training credit. All of these credits are available to every county in the state, although the amount of the credit and any applicable eligibility thresholds depend on the county's assigned "enterprise tier." *(Note: Five enterprise tiers were established by the General Assembly to assign levels of economic and community distress for all 100 North Carolina counties. The ten poorest counties are in tier one; the next fifteen counties are in tier two; with the remaining 75 counties divided evenly among tiers three, four, and five.)*

The next year, 1997, the General Assembly amended the Act mainly to enhance its usefulness and address some of the constituent's concerns after having the Act in place for a year. In doing so, they also directed the Department of Commerce to reexamine the formula used to define enterprise tiers and report the results of this reexamination to the General Assembly in 1999 (G.S.§ 105-129.19) (*See Appendix A* for actual legislation).

THE STUDY PROCESS

Reexamining the enterprise tier formula provided the Department of Commerce with an excellent opportunity to assess the practicality of the current formula and to consider the feedback and experiential information received by the department about the tiers since the formula's inception in 1996. (While the formula defining "distress" counties eligible for the Job Creation Tax Credit originated in 1987, division of all counties into 5 tiers began in 1996.) Recognizing the benefits of such a study, the Department assembled a task force to provide outside input and expert assistance throughout the study process. The advisory panel was made up of seven members with various business, academic, and economic development backgrounds (*See Appendix B* for list of task force members).

ENTERPRISE TIER FORMULA

The practice of ranking North Carolina's counties for the allocation of funds or determination of need is not new. For example, the state uses a county-ranking system to determine the level of critical needs, relative to ability to pay, for some "critical needs" school finance funds. However, the rankings and "tiering" of the states 100 counties for business incentive tax credit purposes has its own history.

HISTORY OF RANKING/ENTERPRISE TIER FORMULA FOR BUSINESS INCENTIVE TAX CREDITS

The following information provides a brief review of the history behind the enterprise tier formula for use with North Carolina's income tax credits for new and expanding business.

- In 1987, the General Assembly enacted income tax credits for corporations that created jobs in severely distressed counties. A severely distressed county was defined as a county whose combined unemployment, per capita income, and population growth rankings were among the twenty worst in the State and that had an unemployment rate of 7 percent or higher.
- In 1989, the General Assembly removed the requirement that a county must have an unemployment rate of 7 percent or higher to be designated a severely distressed county (1989 Session Laws, Chapter 111: HB 198, Representative Al Lineberry).
- Also in 1989, the General Assembly increased the number of severely distressed counties from 20 to 25 (1989 Session Laws, Chapter 753: SB 740, Senator Howard Bryan).
- In 1991, the General Assembly increased the number of severely distressed counties from 25 to 33.
- In 1993, the General Assembly increased the number of severely distressed counties from 33 to 50.
- In 1996, the General Assembly expanded the income tax credits to include all 100 counties but divided the counties into five "enterprise tiers" based on per capita income, unemployment rate, and population growth. The ten poorest counties are in tier one; the next fifteen counties are in tier two, with the remaining 75 counties divided evenly among tiers three, four, and five (1996 Session Laws, Chapter 13: HB 18, Representative Gray).
- In 1997, the General Assembly changed the factors in the formula for determining a county's ranking and subsequent enterprise tier. This involved changing the unemployment and per capita income components from a one-year standing to a standing based on the average of the most recent three years. Also, once designated a tier one county, a county was guaranteed this designation for at least two years (1997 Session Laws, Chapter 277: SB 316, Senator Kerr).

DEBATE

As with any program that uses rankings to evaluate and compare different entities, the state's enterprise tier formula hasn't escaped its share of critical observation and debate. Most often this debate centers around the significance of population growth in determining economic well-being, the disparities associated with per capita income statistics, and the notion that some sort of tax base measure needs to be included in the formula.

Relatively high population growth often indicates a healthy local economy, as people tend to migrate to areas of economic prosperity. However, population growth can occur for reasons not directly related to local economic conditions. For example, an influx of

retirees who are relatively well off can raise the population of an otherwise 'distressed' county.

Income is an important definition of economic welfare. However, per capita income can be biased by the presence of a small number of high-income individuals. On the other hand, wage measures can also be biased as they measure income by place of work rather than place of residence. For example, a county may have a low per capita income but a higher wage rate if it is a regional employment center; Durham County illustrates this difference. (*Note: Similar disparities i.e., income/wage by place of residence versus place of work, were also apparent in the Act's wage test which was later amended to account for counties that are regional employment centers or have a dominant employer*).

Tax base measures can indicate a county government's ability to provide public services. However, the tax base measures available (property tax per capita and retail sales tax per capita) have some of the same bias problems as other measures. For example, since state law only requires that property valuations be completed every eight years, some county reevaluations may lag behind other counties, making comparisons unfair. Also, if property values are changing rapidly, the data may over or under estimate a county's true fiscal capacity. While retail sales taxes per capita are available annually, sales taxes account for less than half as much county tax revenue as property taxes. Finally, sales taxes per capita can also be biased if the county is a regional shopping area. For example, people may travel to another county for shopping and entertainment increasing the sales tax revenues for that county but also increasing the need for road maintenance and other services, which create more expenses for the county.

The Department considered these observations and suggestions in reviewing the formula. In any case, with any changes in the formula and with each new year of rankings, there are going to be counties that are somehow placed at a relative disadvantage.

ANALYSIS

As directed by the General Assembly in G.S. 105–129.19 (4) the Department reexamined the formula in G.S. 105-129.3 (*See Appendix C*) used to define enterprise tiers. This reexamination included a review of the literature on economic indicators, other states' legislation and programs for measuring economic performance (*See Appendix D*), considering the characteristics of a "good" indicator (i.e., annual data availability), and taking into account the feedback and comments received from local economic developers and legislators. With the above considerations at hand, the Department chose many different alternative formulas as options for study and comparison.

OPTIONS

After an extensive analysis of these various enterprise tier formula options the Department, with the aid of the W.S. Lee Act Study Taskforce, narrowed the number of options to those that seemed the most appropriate in light of the aforementioned considerations. The analysis of the options included a rank order correlation (*Note: Rank order correlation measures the closeness of the relationship between two sets of rankings.*) This analysis revealed that there is very little difference in the rankings of counties under most methods. With this in mind, the taskforce chose the current method and three others as described below (*See Appendix E* for specific formula component definitions) for more in-depth analysis.

ENTERPRISE TIER FORMULA COMPONENTS

Option 1

- Population Growth (1990-1997)
- Unemployment Rate (36 Month Average: July 1995-June 1998)
- Per Capita Income (3 Year Average: 1995-1998)

Note: This is the method currently used.

Option 2

- Unemployment Rate (36 Month Average: July 1995-June 1998)
- Net Earnings per Capita (1996)
- Food Stamp Recipiency Rate (1997)

Note: This substitutes two measures correlated with poverty rates for population growth and per capita income measures.

Option 3

- Unemployment Rate (36 Month Average: July 1995-June 1998)
- Average Annual Private Insured Wage (1996)
- Food Stamp Recipiency Rate (1997)

Note: This substitutes a poverty measure for population growth and a measure of wages for per capita income.

Option 4

- Unemployment Rate (36 Month Average: July 1995-June 1998)
- Net Earnings per Capita (1996)
- Food Stamp Recipiency Rate (1997)
- Property Valuation per Capita (1997)

Note: This adds a measure of tax base and substitutes two measures correlated with poverty rates for population growth and per capita income measures.

As with the current methodology each option assigns individual rankings to the various formula components and ranks them from 1 to 100 with 1 being assigned to the least distressed county and 100 being assigned to the most distressed county (*See Appendix F* for a county listing and ranking of each formula component). Then each ranking in the formula is totaled to assign each county an "enterprise factor". Then the counties are ranked again using the total enterprise factor with 1 being assigned to the most distressed county (i.e., the county with the largest enterprise factor) and 100 being assigned to the least distressed county (*See Appendix G* for a county listing/ranking of each option).

Tier Option Comparison

As expected there were some changes in the tiers of some counties for each of the options. Comparing options 2, 3, and 4 with the current formula (option 1) showed that 15 counties moved up a tier and 15 counties moved down a tier while 70 remained the same between options 1 and 2. Between options 1 and 3, 21 counties moved up a tier and 19 counties moved down a tier while 60 remained the same. Finally, between options 1 and 4, 18 counties moved up a tier, 16 moved down a tier and 66 stayed the same. These results confirm that with any adjustments in the enterprise tier formula there are going to be upward as well as downward changes among the counties and tiers, placing some at a perceived disadvantage.

There were a few counties that did see some more dramatic changes (i.e., more than one tier) in their tier assignment between some of the options. For example, Hoke County was ranked 42nd (Tier 3) under option 1 and decreased to a rank of 8th (Tier 1) under option 4. On the other hand, Martin County was ranked 7th (Tier 1) under option 1 and increased to a rank of 39th under option 3. Onslow and Alleghany counties also experienced a substantial change going from Tier 2 to Tier 4 between options 1 and 2 and options 1 and 4 respectively.

Small County "Tests"

In addition to reexamining the enterprise tier formula, and pursuant to the direction of the General Assembly, the Department also considered whether the assignment of tiers and the applicable thresholds are equitable for smaller counties, for example those under 50,000 and 20,000 population (*See Appendix H* for a list of these counties). The Department devised several "tests" that could be used to take into account the sometimes special situations that occur in smaller counties (e.g., one dominant employer, regional employment center, large retirement population, etc). After reviewing these tests, the Department, with the aid of the taskforce, chose two such tests that might be used to give special consideration (e.g., the county would receive some sort of special provision in terms of its ranking, associated tier, and eligibility under programs that use the enterprise tiers) to the state's smaller and/or rural counties.

These tests include:

Poverty Rate Test

- County's poverty rate is 150% of the state rate.

Food Stamp Recipiency Rate Test

- County's food stamp recipiency rate is 150% of the state rate.

(See Appendix I for a county listing of these "tests" and which counties meet the criteria).

Summary of Results

Using the poverty rate test, 21 (of 54) counties with populations less than 50,000 and 8 (of 20) counties with populations less than 20,000 have poverty rates that are at least 150 percent of the state rate. Of all the counties that fall under the criteria of the poverty rate test, 8 are currently in Tier 1; 6 are in Tier 2; 4 are in Tier 3; and 1 is in Tier 4.

Using the food stamp recipiency rate test, 20 (of 54) counties with populations less than 50,000 and 7 (of 20) counties with populations less than 20,000 have food stamp recipiency rates that are at least 150 percent of the state rate. Of all the counties that fall under the criteria of the food stamp recipiency rate test, 7 are currently in Tier 1, 7 are in Tier 2, and 6 are in Tier 3.

Development Zone Opportunity

Another possibility for giving consideration to the state's smaller counties would be to extend the state's development zone program to these counties. This option includes only those counties with less than 25,000 population, with no city greater than 5,000 population, and at least one census tract with a poverty rate of greater than 20 percent (*See Appendix J* for counties that meet these criteria).

RECOMMENDATIONS

The Department of Commerce submits this report to the General Assembly as an educational and informational tool for the legislature to use in considering any changes to the current enterprise tier formula. With this in mind, the options presented don't come as specific recommendations from the Department. The Department will work with the General Assembly to decide, based on this report and any other additional information the Department can provide, whether adjusting the formula will be practical

and beneficial for North Carolina's 100 counties and to the state's economic development strategies.

The William S. Lee Act Study Task Force recommends that the General Assembly keep the current option (Option 1) in place while allowing some sort of special provision for smaller counties. As such, the task force proposes that tier 4 and 5 counties with less than 50,000 population receive the benefits of a one tier lower status (i.e., Tier 4 Counties under 50,000 would have the same tax credit and threshold amounts as a Tier 3 County, also making them eligible for Industrial Development Funding and increased job funding under the Community Development Block Grant Program). Additional consideration could be given to granting Tier 3 counties a Tier 2 status, although the task force did not recommend this option.

Appendix A

105-129.19 Section 4 W. S. Lee Act Study Legislation

a) The Department of Commerce shall study the effectiveness of the tax incentives provided in the William S. Lee Quality Jobs and Business Expansion Act, codified as Article 3A of Chapter 105 of the General Statutes, on tax equity. This study shall include the following:

   1) Reexamining the formula in G.S. 105-129.3(b) used to define enterprise tiers, to include consideration of alternative measures for more equitable treatment of counties in similar economic circumstances.
   2) Considering whether the assignment of tiers and the applicable thresholds are equitable for smaller counties, for example those under 50,000 population.

Appendix B

W.S. Lee Act Study Taskforce Members

Mark Bernstein	Parker, Poe, Adams, & Bernstein (Economic Development Board)
John Connaughton	UNC-Charlotte, Department of Economics, College of Business Administration
Dan Gerlach	NC Budget and Tax Center
Paul Lawler	NC Economic Developers Association
Norman Samet	Samet Corporation (Economic Development Board)
Gary Shoesmith	Wake Forest University, Babcock Graduate School of Management
Mike Walden	NC State University Department of Agricultural & Resource Economics

Appendix C

§ 105-129.3 Enterprise Tier Designation

a) Tiers Defined - - An enterprise tier one area is a county whose enterprise factor is one of the 10 highest in the State. An enterprise tier two area in a county whose enterprise factor is one of the next 15 highest in the State. An enterprise tier three area is a county whose enterprise factor is one of the next 25 highest in the State. An enterprise tier four area is a county whose enterprise factor is one of the next 25 in the State. An enterprise tier five area is an area that is not in a lower numbered enterprise tier.

b) Annual Designation--Each year, on or before December 31, the Secretary of Commerce shall assign to each county in the State an enterprise factor that is the sum of the following:

(1) The county's rank in a ranking of counties by average rate of unemployment from lowest to highest, for the preceding three years.

(2) The county's rank in a ranking of counties by average per capita income from highest to lowest, for the preceding three years

(3) The county's rank in a ranking of counties by percentage growth in population from highest to lowest.

The Secretary of Commerce shall then rank all the counties within the State according to their enterprise factor from highest to lowest, identify all the areas of the State by enterprise tier, and provide this information to the Secretary of Revenue. An enterprise tier designation is effective only for the calendar year following the designation.

In measuring rates of unemployment and per capita income, the Secretary shall use the latest available data published by a State or federal agency generally recognized as having expertise concerning the data. In measuring population growth, the Secretary shall use the most recent estimates of population certified by the State Planning Officer.

a) Exception for Enterprise Tier One Areas. Notwithstanding the provisions of this section, an enterprise tier one area may not be redesignated as a higher- numbered enterprise tier area until is has been an enterprise tier one area for at least two consecutive years.

Appendix D

Other State's Definitions of "Tiers" or Economic Distress Formulas

A review of other states that have similar systems of ranking counties or assigning a distress status indicates that virtually all of the programs use some combination of unemployment, poverty rate, and income in their formulas. Note this review does not include the states' enterprise zone definition (if applicable) or states that have only enterprise zone (i.e., sub-county) programs.

Georgia: A combination of the highest unemployment rate for the most recent 36 month period; lowest per capita income for the most recent 36 month period; highest percentage of residents whose incomes are below the poverty level according to the most recent data available; and average weekly manufacturing wage according to the most recent data available. These factors are all given a weight of 30 percent except for the average weekly manufacturing wage, which is given a weight of 10 percent.

Kentucky: Counties with unemployment rates higher than the state average in each of the five preceding calendar years qualify for the state's KREDA (Kentucky Rural Economic Development Act) program

Massachusetts: "Distress factor", a fraction, the numerator of which is the sum of (1) the city or town's unemployment rate for the most recent three years divided by the commonwealth's unemployment rate for the same period and (2) the commonwealth's per capita personal income divided by the city or town's per capita personal income, and the denominator of which is two.

Mississippi: The twenty-eight (28) counties in this state having a combination of the highest unemployment rate and lowest per capita income for the most recent thirty-six (36) month period, with equal weight being given to each category, are designated less developed areas. The twenty-seven (27) counties in the state with a combination of the next highest unemployment rate and next lowest per capita income for the most recent thirty-six (36) month period, with equal weight being given to each category, are designated moderately developed areas. The twenty-seven (27) counties in the state with a combination of the lowest unemployment rate and the highest per capita income for the most recent thirty-six (36) month period, with equal weight being given to each category, are designated developed areas.

Ohio: A county that qualifies as a "Distressed area" has (a) an average rate of unemployment, during the most recent five-year period for which data are available, equal to at least one hundred twenty-five per cent of the average rate of unemployment for the United States for the same period; (b) a per capita income equal to or below eighty per cent of the median county per capita income of the United States as determined by the most recently available figures from the United

equal to or below eighty per cent of the median county per capita income of the United States as determined by the most recently available figures from the United States census bureau; (c) in intercensal years, has a ratio of transfer payment income to total county income equal to or greater than twenty-five per cent.

Oklahoma: Distressed counties (in their entirety) these are those counties that have a population loss of 10% or greater from 1980 to 1990).

South Carolina: (1) The twelve counties with a combination of the highest unemployment rate and lowest per capita income are designated least developed counties; (2) The twelve counties with a combination of the next highest unemployment rate and next lowest per capita income are designated under developed counties; (3) The eleven counties with a combination of the next highest unemployment rate and the next lowest per capita income are designated moderately developed counties; (4) The eleven counties with a combination of the lowest unemployment rate and the highest per capita income are designated developed counties. The designation by the department is effective for corporate taxable years, which begin after the date of designation.

Tennessee: Economically Distressed Counties are those with an average unemployment rate over 12% over the last 10 years; or counties with a per capita income less than 75% of the median per capita income for all counties.

Virginia: A county qualifies as economically distressed if its unemployment rate for the preceding year is at least 0.5 percent higher than the average statewide unemployment rate for such year.

Washington: "Distressed county" means a county in which the average level of unemployment for the preceding three years exceeds the average state employment for those years by twenty percent. Another definition of a distressed county that is used for a different program is (a) county in which the average level of unemployment for the three years before the year in which an application is filed under this chapter exceeds the average state unemployment for those years by twenty percent; (b) a county that has a median household income that is less than seventy-five percent of the state median household income for the previous three years.

Appalachian Regional Commission: The Appalachian Regional Commission (ARC) has four categories or economic levels for counties. These categories are distressed, transitional, competitive, and attainment. The Commission's definition of a distressed county is one with a three year average unemployment rate of 8.6% or more (or 150% of US average), a per capita income of $12,934 or less (or 67% of the US per capita income), and a poverty rate of 19.7% or more (or 150% of US rate). A county that meets all three of these requirements or has a poverty rate that is two times (200%) of the US and any one other of these requirements is a

distressed county. The following table shows the indicator requirements for distressed counties and the other categories as well.

Classification	1994-1996 Three Year Average Unemployment Rate	1995 Per Capita Income	1990 Census Poverty Rate
Distressed	8.6% or more (150% of US 5.7%)	$12,934 or less (67% of US $19,305)	19.7% or more (150% of US 13.1%)
Transitional	All counties not in other classes. Individual indicators may vary.		
Competitive	5.7% or less (100% of US average)	$15,444 - $19,304 ($15,444 = 80% of US)	13.1% or less (100% of US)
Attainment	5.7% or less (100% of US average)	$19,305 or more (100% of US)	13.1% or less (100% of US)

Appendix E

Data Definitions/Notes

Population Growth/Change: The population growth/change statistics were determined using years 1990 and 1997 from the Office of State Planning as reported on LINC.

Unemployment Rate: The unemployment rate statistics were calculated using the average rate of the 36-month period between July 1995 and June 1998. The monthly figures are from the Employment Security Commission Labor Market Information Division's Civilian Labor Force statistics. Note that the rates are not seasonally adjusted; seasonally adjusted rates are not available on the sub-state level.

Per Capita Income: Per capita income of a county is defined as the income received by, or on behalf of all county residents divided by the total county population (total personal income divided by total population). It includes income from all sources: labor income, proprietor's income, government transfer payments (those due to poverty and those which are age-related such as social security), and dividends, interest, and rent. The per capita income statistics are the three year average from 1994-1996 as provided by the US Bureau of Economic Analysis (BEA).

Per Capita Net Earnings: Per capita net earnings is defined as per capita wages and salaries, other labor income, and proprietor's income. The per capita net earnings statistics are from 1996, the latest data available, as provided by the US Bureau of Economic Analysis' Regional Economic Information System database.

Average Annual Private Insured Wage: The average annual private insured wage is defined as the total wages and salaries paid for all insured workers divided by number of insured workers. Wages and salaries include all reported income, including gross wages and salaries, bonuses, tips and other gratuities. Wages and salaries do not include employer contributions to old age, survivors' and disability insurance (OASDI), health insurance, unemployment insurance, workers' compensation, and private pension and welfare funds. The wage statistics are from 1996, the latest available, as provided by the Employment Security Commission Labor Market Information Division. Note that the private wage was used to stay consistent with the method used to calculate the wage standard under William S. Lee Act.

Property Valuation per Capita: County property valuation divided by the 1997 certified population estimates. The property valuation data is from the Department of Revenue Ad Valorem Tax Division. The population estimates are from the Office of State Planning. Note that not all counties have updated valuation information, as the state only requires the counties to undergo the revaluation process every 8 years.

Discussion

What makes a good indicator?

Annual availability: Because the enterprise tier formula is updated every year so that it will reflect changes in economic conditions, and indicator data must be available on an annual basis.

Timeliness: The lag time between data collection and data reporting is an important consideration in choosing economic indicators. For example, if the indicator data is outdated but is the only data available, the economic situation might have changed the data was originally published (e.g., the poverty rate is only available every 10 years in the decennial census).

Accuracy: While jobs data might be more timely than income data, income data is a more complete and accurate measure of economic performance. For example, simply counting jobs created or lost ignores the fact that those jobs might not be high-paying or income increasing.

Even Coverage: Don't want to double count or overlap two indicators that essentially measure the same thing

Simplicity: Easy to understand

Geographic Availability: The data indicator should be available at the county level otherwise, a county's economic situation may be misrepresented. For example, some data/indicators are available at the MSA (Metropolitan Statistical Area) level but not at the county level. Assigning MSA data to each county in that MSA would suggest that all counties in that MSA have the same experience or situation.

What do the various indicators communicate about a county's economic situation?

Population: Population growth is an indirect proxy for county economic conditions. Presumably, people will migrate from areas of economic decline to areas of economic prosperity. Hence relatively high population growth should indicate local economic prosperity. However, population growth can occur for reasons not directly related to local economic conditions. For example, an influx of retirees who are relatively well off can raise the population of an otherwise 'distressed' county.

Unemployment Rate: A county's unemployment rate reflects the economic condition of that county by indicating what percent of the county's labor force is currently out of work and therefore without an income. A high unemployment rate in any one year may be the result of a plant closing, while chronically high unemployment may mean that there is a greater need for job development.

Per Capita Income: Income is an important definition of economic welfare. Since per capita income is an average measure, it can be biased upward by the presence of a small number of high-income individuals. If this is the case, then an average income measure will not reflect the economic situation of the typical person in the county. In

this situation, the median income is a better description of the typical resident's income. The median income is the income at which half of the county resident's incomes are above it and half are below it. This criticism is valid in theory. However, there is no meaningful measure of county median income (or median wages) that is available on an annual basis. Since, some type of average income measure should continue to be used in the distress formula.

Net Earnings per Capita: Unlike Per Capita Income, Per Capita Net Earnings reflects only that income that is based on earned income (e.g., wages, salaries, other labor income, etc.) and therefore does not present the upward bias that Per Capita Income does if there are higher incomes in the county due to a large retirement population. However, Net Earnings per Capita still involves the possibility of a skewed income measure if the county has a small number of individuals with large salaries.

Average Annual Private Insured Wage: The Average Annual Private Insured Wage is much like the Net Earnings per Capita measure in that is only represents wage and salary income. However, rather than being a per capita measure (which includes all the people in the county), Average Annual Private Insured Wage only represents the average wage based on privately insured workers. In other words, it would not include state employees' wages, county government wages, etc. In counties that have a significant number of state employees (e.g., Wake, Orange) the Average Annual Private Insured Wage might not represent the actual economic situation in that county.

Poverty: The Poverty Rate is indicator of the number and proportion of people with inadequate family incomes for needed consumption of food and other goods and services. Poverty is a key indicator of difficult economic conditions. Unfortunately, the percentage of the population in each county which is below the poverty line is only available as part of the decennial census. A 10-year interval is not acceptable for data to be used in a formula that is revised annually. It would 'lock in' conditions in one year for 10 years, thereby imposing inequities as conditions in the real world change.

Food Stamp Recipiency Rate: Eligibility for food stamp payments is based on some type of personal economic distress criteria. Therefore, the food stamp recipiency rate is alternative poverty measure. The Food Stamp Recipiency Rate is also a better indicator than the poverty rate because it is available on an annual basis.

Property Valuation per Capita: Property Valuation per Capita provides an indication of a county government's ability to provide public services. The bulk of county tax revenues come from property taxes (approximately 2/3 of county tax revenues are derived from property taxes). Property taxes are based on the assessed valuation of real property, personal property, and public service company property (railroads, electric power companies, telephone companies, etc.). Using a per capita basis to measure property valuation allows for a more meaningful comparison across counties. Also without a per capita basis, there is no consideration of the amount of people the government has to provide services for. This would result in highly misleading distress indicators. While annual total property valuation is available for each county, state law only requires that these valuations be updated at least every 8 years. Thus some county re-valuations

may lag behind other county's re-valuations. If this occurs during a period when actual property values are changing rapidly, then the property valuation data will under or over estimate the 'true' county fiscal capacity.

Appendix F

COUNTY	Population Growth/Change (1990-1997)		Unemployment (36 Mth Avg July '95-Jun '98)		Per Capita Income (3 yr avg. 1994-1996)		Food Stamp Recipiency Rate (1997)		Net Earnings per Capita (1996)		Average Annual Private Insured Wage (1996)		Property Valuation per Capita (1997)	
	% CHANGE	RANK	RATE	RANK	INCOME	RANK	RATE	RANK	AMOUNT	RANK	AMOUNT	RANK	AMOUNT	RANK
ALAMANCE	10.73%	38	3.35%	26	$21,074	17	44.5	7	$14,739	16	$22,645	26	$48,613	45
ALEXANDER	12.82%	28	3.12%	20	$18,492	43	57.1	17	$14,095	27	$19,926	53	$40,005	77
ALLEGHANY	0.88%	90	6.44%	80	$18,376	45	66.6	29	$11,665	57	$16,336	89	$71,215	10
ANSON	1.62%	89	7.06%	83	$17,590	57	149.5	81	$11,634	58	$20,336	50	$36,397	84
ASHE	6.25%	66	9.43%	97	$17,108	67	79.4	40	$10,700	73	$18,354	70	$47,547	48
AVERY	3.99%	80	4.72%	53	$19,433	30	91.0	50	$12,446	47	$16,537	86	$85,877	6
BEAUFORT	2.65%	85	7.91%	88	$17,374	62	130.9	77	$11,136	68	$20,791	46	$56,117	29
BERTIE	-0.68%	93	6.07%	76	$15,448	90	195.4	96	$9,255	92	$15,671	96	$33,705	91
BLADEN	5.76%	68	5.99%	73	$17,740	54	188.0	95	$13,300	33	$18,389	69	$48,375	46
BRUNSWICK	27.88%	3	6.43%	79	$16,813	73	92.0	51	$10,255	80	$23,264	20	$99,000	3
BUNCOMBE	9.35%	46	3.00%	16	$21,723	14	80.6	43	$14,009	28	$23,297	19	$52,296	37
BURKE	9.78%	44	4.21%	40	$18,301	48	59.4	22	$12,919	39	$21,375	38	$41,823	67
CABARRUS	17.76%	14	3.01%	17	$22,182	12	43.8	6	$16,829	7	$25,009	7	$57,010	27
CALDWELL	5.69%	69	4.00%	35	$18,641	39	60.7	23	$13,211	36	$20,396	49	$41,389	69
CAMDEN	6.84%	60	3.48%	28	$16,792	74	97.4	54	$11,135	69	$17,256	81	$46,247	51
CARTERET	12.38%	30	4.78%	54	$18,729	38	62.7	25	$11,292	65	$15,706	94	$87,706	4
CASWELL	6.57%	61	3.51%	29	$15,812	85	101.8	58	$11,558	61	$18,520	68	$35,045	87
CATAWBA	9.40%	45	3.59%	30	$22,689	11	59.2	21	$16,451	8	$23,615	13	$58,394	25
CHATHAM	16.44%	18	2.48%	6	$21,493	16	52.3	13	$14,621	20	$21,947	31	$55,280	32
CHEROKEE	11.14%	35	6.68%	82	$14,439	96	107.0	63	$8,083	99	$17,585	77	$49,686	42
CHOWAN	5.28%	72	4.50%	49	$17,685	55	174.3	90	$10,280	79	$19,334	61	$40,674	71
CLAY	12.73%	29	6.27%	77	$15,797	87	79.6	42	$8,766	95	$17,245	82	$66,773	17
CLEVELAND	7.01%	59	6.02%	75	$18,527	42	105.3	62	$12,756	41	$22,869	22	$43,508	63
COLUMBUS	4.76%	75	6.64%	81	$17,513	58	154.0	83	$11,315	64	$22,290	29	$44,013	61
CRAVEN	8.40%	52	4.60%	52	$19,198	33	100.6	57	$12,671	42	$20,985	44	$43,950	62
CUMBERLAND	7.48%	57	4.46%	47	$18,046	51	119.8	72	$13,969	29	$21,012	42	$38,647	79
CURRITUCK	20.56%	8	3.02%	18	$18,356	46	66.9	31	$13,255	34	$15,843	93	$115,490	2
DARE	20.40%	9	5.91%	71	$19,570	29	29.3	1	$12,410	49	$16,041	91	$166,183	1
DAVIDSON	10.87%	37	2.96%	15	$19,269	31	54.2	15	$14,310	24	$22,446	27	$47,941	47
DAVIE	11.97%	31	3.32%	25	$23,791	8	31.6	2	$16,397	9	$20,995	43	$55,563	31
DUPLIN	10.21%	43	5.08%	59	$20,644	19	112.4	69	$16,351	10	$19,145	64	$41,032	70
DURHAM	8.72%	50	2.53%	7	$23,605	9	96.7	53	$17,006	6	$35,753	1	$58,240	26
EDGECOMBE	-2.29%	95	10.27%	98	$16,654	77	205.3	98	$10,464	76	$21,446	36	$34,457	89
FORSYTH	8.01%	56	2.95%	14	$26,387	3	69.4	33	$18,506	3	$28,591	3	$67,085	16
FRANKLIN	19.43%	11	3.60%	31	$16,993	70	103.0	60	$12,469	45	$21,623	33	$34,252	90
GASTON	2.85%	84	4.30%	46	$20,547	20	87.1	47	$15,182	11	$23,697	11	$49,786	41
GATES	6.49%	63	2.94%	13	$15,813	84	108.3	64	$9,724	88	$16,395	87	$35,619	86
GRAHAM	4.29%	78	11.22%	99	$14,109	97	119.3	71	$8,291	98	$17,820	76	$49,523	43
GRANVILLE	11.64%	33	3.41%	27	$17,200	66	81.2	44	$12,366	50	$22,033	30	$38,353	80
GREENE	14.74%	22	3.67%	32	$17,369	63	122.7	74	$12,871	40	$16,711	84	$33,278	93

Note: Counties ranked in each category from least distressed (1) to most distressed (100).

COUNTY	Population Growth/Change (1990-1997)		Unemployment (36 Mth Avg July '95-Jun '98)		Per Capita Income (3 yr avg. 1994-1996)		Food Stamp Recipiency Rate (1997)		Net Earnings per Capita (1996)		Average Annual Private Insured Wage (1996)		Property Valuation per Capita (1997)	
	% CHANGE	RANK	RATE	RANK	INCOME	RANK	RATE	RANK	AMOUNT	RANK	AMOUNT	RANK	AMOUNT	RANK
GUILFORD	10.29%	41	3.14%	21	$25,412	4	66.7	30	$18,005	5	$27,423	4	$68,097	12
HALIFAX	0.59%	91	9.07%	95	$15,687	88	217.1	100	$9,390	91	$19,478	56	$37,341	83
HARNETT	19.94%	10	3.73%	33	$16,113	82	117.1	70	$11,562	60	$19,501	55	$32,987	95
HAYWOOD	9.22%	47	5.08%	58	$18,257	49	85.4	45	$11,199	66	$22,646	25	$56,218	28
HENDERSON	14.16%	24	2.58%	10	$22,764	10	63.5	26	$12,602	43	$23,436	15	$62,344	21
HERTFORD	-2.70%	97	5.15%	61	$15,418	91	204.3	97	$9,611	89	$18,103	73	$32,426	97
HOKE	26.36%	5	5.37%	64	$12,323	100	150.7	82	$8,538	96	$19,030	66	$27,215	99
HYDE	-2.42%	96	8.08%	90	$16,977	71	182.8	93	$10,713	72	$13,455	100	$72,128	9
IREDELL	17.22%	16	3.15%	22	$20,870	18	45.7	8	$15,151	12	$23,629	12	$61,753	22
JACKSON	8.56%	51	5.55%	67	$16,288	80	88.4	48	$10,383	77	$17,546	78	$68,992	11
JOHNSTON	26.91%	4	2.55%	8	$19,608	28	86.9	46	$14,670	19	$20,041	52	$44,196	60
JONES	-4.53%	98	4.15%	38	$19,801	24	165.2	88	$14,998	13	$17,299	80	$40,047	75
LEE	16.92%	17	4.23%	41	$21,670	15	78.2	39	$14,486	21	$22,665	24	$50,493	39
LENOIR	3.09%	83	5.80%	69	$18,858	37	154.1	84	$11,963	54	$21,221	40	$46,554	49
LINCOLN	15.06%	21	4.16%	39	$18,929	36	53.5	14	$14,129	26	$21,775	32	$53,254	35
MACON	17.71%	15	4.25%	44	$17,846	53	68.0	32	$9,487	90	$18,339	71	$86,067	5
MADISON	8.12%	55	4.06%	36	$16,002	83	95.8	52	$10,326	78	$19,459	57	$38,334	81
MARTIN	2.19%	87	8.92%	94	$16,349	79	142.4	78	$10,203	81	$24,723	8	$49,023	44
MCDOWELL	10.49%	40	5.50%	65	$17,389	61	65.1	27	$12,279	51	$21,158	41	$40,585	72
MECKLENBURG	19.04%	12	2.76%	11	$28,715	1	61.8	24	$22,564	1	$32,785	2	$77,386	7
MITCHELL	2.05%	88	6.35%	78	$16,637	78	76.8	38	$10,771	71	$19,323	62	$46,082	53
MONTGOMERY	4.80%	74	5.95%	72	$16,688	76	102.6	59	$10,973	70	$18,799	67	$52,742	36
MOORE	17.80%	13	4.14%	37	$24,707	6	58.0	19	$12,427	48	$21,613	34	$65,165	19
NASH	13.60%	27	5.87%	70	$19,954	23	103.3	61	$14,701	17	$23,835	9	$44,838	56
NEW HANOVER	21.88%	7	4.24%	42	$21,785	13	100.5	56	$14,804	15	$23,333	18	$67,765	14
NORTHAMPTON	0.01%	92	7.35%	86	$16,167	81	212.7	99	$9,887	85	$19,417	59	$42,327	65
ONSLOW	-1.66%	94	3.73%	34	$14,757	95	69.8	34	$12,052	53	$15,697	95	$25,318	100
ORANGE	14.28%	23	1.55%	1	$25,177	5	37.2	4	$18,422	4	$22,749	23	$59,242	24
PAMLICO	5.32%	71	4.48%	48	$16,749	75	122.1	73	$9,835	86	$15,474	97	$60,084	23
PASQUOTANK	10.27%	42	4.83%	56	$17,333	64	146.9	80	$11,424	63	$17,922	75	$33,072	94
PENDER	28.95%	2	5.17%	62	$17,452	60	109.2	65	$11,435	62	$16,595	85	$55,916	30
PERQUIMANS	4.34%	77	4.57%	51	$15,540	89	154.4	85	$9,021	93	$13,728	99	$44,651	57
PERSON	9.08%	49	5.13%	60	$18,353	47	66.2	28	$13,776	31	$23,366	17	$75,015	8
PITT	11.94%	32	4.82%	55	$19,776	25	109.9	67	$14,193	25	$21,518	35	$42,616	64
POLK	13.72%	26	2.33%	3	$24,612	7	39.4	5	$11,146	67	$17,446	79	$63,442	20
RANDOLPH	14.08%	25	3.06%	19	$19,697	26	35.0	3	$14,986	14	$20,917	45	$44,521	58
RICHMOND	2.56%	86	9.39%	96	$15,812	86	130.2	76	$10,063	84	$19,388	60	$33,472	92
ROBESON	7.16%	58	8.47%	92	$15,295	92	175.2	91	$10,072	83	$19,260	63	$27,976	98
ROCKINGHAM	3.59%	82	4.92%	57	$18,539	41	70.9	35	$12,450	46	$22,355	28	$42,327	66

Note: Counties ranked in each category from least distressed (1) to most distressed (100).

COUNTY	Population Growth/Change (1990-1997)		Unemployment (36 Mth Avg July '95-Jun '98)		Per Capita Income (3 yr avg. 1994-1996)		Food Stamp Recipiency Rate (1997)		Net Earnings per Capita (1996)		Average Annual Private Insured Wage (1996)		Property Valuation per Capita (1997)	
	% CHANGE	RANK	RATE	RANK	INCOME	RANK	RATE	RANK	AMOUNT	RANK	AMOUNT	RANK	AMOUNT	RANK
ROWAN	11.00%	36	3.24%	24	$19,065	35	73.1	36	$13,092	37	$23,417	16	$46,068	54
RUTHERFORD	4.35%	76	6.00%	74	$17,608	56	90.0	49	$12,057	52	$21,428	37	$50,003	40
SAMPSON	11.32%	34	5.60%	68	$20,118	21	110.6	68	$14,329	23	$19,757	54	$40,300	74
SCOTLAND	3.68%	81	7.07%	84	$17,261	65	165.1	87	$11,876	55	$22,973	21	$40,012	76
STANLY	6.50%	62	5.37%	63	$18,140	50	57.3	18	$12,566	44	$21,342	39	$40,490	73
STOKES	15.12%	20	2.48%	5	$18,011	52	54.5	16	$14,427	22	$18,105	72	$46,345	50
SURRY	8.31%	53	4.24%	43	$19,246	32	58.1	20	$13,218	35	$19,458	58	$45,483	55
SWAIN	6.44%	64	16.41%	100	$13,672	99	145.1	79	$7,918	100	$16,189	90	$34,683	88
TRANSYLVANIA	9.10%	48	2.78%	12	$19,630	27	79.5	41	$10,085	82	$25,861	6	$68,092	13
TYRRELL	-4.77%	99	8.91%	93	$15,068	93	187.0	94	$9,724	88	$13,868	98	$54,510	33
UNION	26.02%	6	2.43%	4	$19,105	34	48.2	10	$14,676	18	$23,739	10	$51,004	38
VANCE	5.37%	70	7.30%	85	$17,493	59	164.9	86	$10,685	74	$19,133	65	$36,140	85
WAKE	30.62%	1	1.90%	2	$27,006	2	50.2	12	$21,841	2	$27,062	5	$65,240	18
WARREN	5.07%	73	7.91%	89	$13,956	98	171.7	89	$8,428	97	$16,005	92	$44,472	59
WASHINGTON	-5.00%	100	7.43%	87	$16,873	72	181.4	92	$10,653	75	$16,368	88	$37,710	82
WATAUGA	10.57%	39	2.57%	9	$17,097	68	48.9	11	$11,628	59	$16,867	83	$67,327	15
WAYNE	8.14%	54	4.52%	50	$17,042	69	97.6	55	$11,718	56	$20,605	47	$32,515	96
WILKES	6.25%	65	4.26%	45	$18,614	40	75.9	37	$13,007	38	$20,320	51	$38,953	78
WILSON	4.03%	79	8.19%	91	$20,026	22	129.1	75	$13,792	30	$23,578	14	$46,129	52
YADKIN	15.46%	19	3.17%	23	$18,448	44	47.7	9	$13,317	32	$20,459	48	$41,715	68
YANCEY	6.03%	67	5.54%	66	$14,994	94	109.3	66	$8,969	94	$17,934	74	$54,377	34
STATEWIDE	*12.00%*	XXXX	*3.97%*	XXXX	*$21,081*	XXXX	*83.7*	XXXX	*$15,115*	XXXX	*$25,154*	XXXX	*$54,237*	XXXX

NOTES:

1. Population growth was determined using years 1990 and 1997 as reported on LINC.
2. Per Capita Income is a three year average from 1994-1996 using BEA data.
3. The Unemployment Rate is the average rate from July 1995 to June 1998, not seasonally adjusted, provided by the Labor Market Information Division of the Employment Security Commission.
4. Net Earnings Per Capita is from 1996 using BEA data.
5. Average Annual Private Insured Wage is from 1996 as provided by the Labor Market Information Division of the Employment Security Commission.
6. Food Stamp Recipeincy Rate (1997)
7. Property Valuation per Capita is from 1997 using data from the Department of Revenue Ad Valorem Tax Division and population estimates from the Office of State Planning.

Note. Counties ranked in each category from least distressed (1) to most distressed (100).

Appendix G

KEY	Option 1	Option 2	Option 3	Option 4
Factor 1	Population Growth	Unemployment	Unemployment	Unemployment
Factor 2	Unemployment	Net Earnings per Capita	Avg Annual Private Ins. Wage	Net Earnings per Capita
Factor 3	Per Capita Income	Food Stamp Recipiency Rate	Food Stamp Recipiency Rate	Food Stamp Recipiency Rate
Factor 4	-	-	-	Property Valuation per Capita

County	Option 1		Option 2		Option 3		Option 4	
	Rank	Tier	Rank	Tier	Rank	Tier	Rank	Tier
ALAMANCE	79	5	90	5	88	5	84	5
ALEXANDER	74	4	84	5	77	5	71	4
ALLEGHANY	24	2	40	3	29	3	61	4
ANSON	19	2	23	2	19	2	15	2
ASHE	17	2	26	3	24	2	26	3
AVERY	44	3	49	3	38	3	65	4
BEAUFORT	16	2	18	2	22	2	24	2
BERTIE	9	1	9	1	5	1	5	1
BLADEN	30	3	30	3	11	2	32	3
BRUNSWICK	50	3	26	3	55	4	49	3
BUNCOMBE	81	5	76	5	82	5	77	5
BURKE	57	4	71	4	75	4	63	4
CABARRUS	94	5	98	5	97	5	97	5
CALDWELL	55	4	75	4	68	4	64	4
CAMDEN	45	3	47	3	44	3	56	4
CARTERET	63	4	55	4	42	3	68	4
CASWELL	38	3	50	3	52	4	38	3
CATAWBA	76	5	86	5	86	5	90	5
CHATHAM	95	5	93	5	93	5	91	5
CHEROKEE	27	3	16	2	17	2	21	2
CHOWAN	36	3	24	2	28	3	19	2
CLAY	32	3	25	2	27	3	40	3
CLEVELAND	36	3	37	3	49	3	34	3
COLUMBUS	25	2	20	2	31	3	19	2
CRAVEN	56	4	47	3	53	4	49	3
CUMBERLAND	50	3	50	3	47	3	42	3
CURRITUCK	84	5	77	5	58	4	89	5
DARE	71	4	63	4	44	3	79	5
DAVIDSON	78	5	88	5	90	5	81	5
DAVIE	88	5	94	5	84	5	94	5
DUPLIN	64	4	58	4	34	3	52	4
DURHAM	86	5	83	5	87	5	88	5
EDGECOMBE	4	1	5	1	14	2	4	1
FORSYTH	82	5	89	5	93	5	95	5
FRANKLIN	68	4	60	4	63	4	43	3
GASTON	53	4	69	4	71	4	70	4
GATES	47	3	43	3	43	3	30	3
GRAHAM	2	1	7	1	8	1	13	2
GRANVILLE	59	4	63	4	74	4	57	4
GREENE	66	4	54	4	36	3	36	3
GUILFORD	86	5	87	5	91	5	93	5
HALIFAX	2	1	1	1	7	1	1	1
HARNETT	60	4	44	3	50	3	26	3
HAYWOOD	52	4	39	3	62	4	60	4
HENDERSON	92	5	78	5	92	5	82	5
HERTFORD	13	2	14	2	16	2	7	1

KEY	Option 1	Option 2	Option 3	Option 4
Factor 1	Population Growth	Unemployment	Unemployment	Unemployment
Factor 2	Unemployment	Net Earnings per Capita	Avg Annual Private Ins. Wage	Net Earnings per Capita
Factor 3	Per Capita Income	Food Stamp Recipiency Rate	Food Stamp Recipiency Rate	Food Stamp Recipiency Rate
Factor 4	-	-	-	Property Valuation per Capita

County	Option 1		Option 2		Option 3		Option 4	
	Rank	Tier	Rank	Tier	Rank	Tier	Rank	Tier
HOKE	42	3	17	2	20	2	8	1
HYDE	12	2	11	2	2	1	23	2
IREDELL	90	5	92	5	95	5	96	5
JACKSON	29	3	34	3	31	3	55	4
JOHNSTON	95	5	82	5	69	4	73	4
JONES	47	3	57	4	25	2	48	3
LEE	82	5	71	4	71	4	72	4
LENOIR	34	3	28	3	31	3	29	3
LINCOLN	72	4	78	5	80	5	80	5
MACON	68	4	40	3	56	4	62	4
MADISON	40	3	40	3	57	4	32	3
MARTIN	7	1	13	2	39	3	17	2
MCDOWELL	43	3	56	4	60	4	46	3
MECKLENBURG	99	5	94	5	96	5	98	5
MITCHELL	14	2	36	3	41	3	35	3
MONTGOMERY	22	2	30	3	29	3	37	3
MOORE	90	5	69	4	77	5	78	5
NASH	65	4	50	3	59	4	53	4
NEW HANOVER	89	5	68	4	67	4	75	4
NORTHAMPTON	9	1	6	1	10	1	10	1
ONSLOW	21	2	63	4	44	3	44	3
ORANGE	98	5	100	5	98	5	100	5
PAMLICO	31	3	28	3	18	2	41	3
PASQUOTANK	45	3	32	3	22	2	18	2
PENDER	61	4	35	3	20	2	45	3
PERQUIMANS	23	2	19	2	13	2	21	2
PERSON	49	3	67	4	70	4	75	4
PITT	68	4	53	4	51	4	51	4
POLK	97	5	81	5	79	5	83	5
RANDOLPH	85	5	94	5	85	5	84	5
RICHMOND	5	1	10	1	14	2	6	1
ROBESON	15	2	8	1	8	1	3	1
ROCKINGHAM	35	3	58	4	65	4	53	4
ROWAN	73	4	74	4	83	5	67	4
RUTHERFORD	28	3	38	3	48	3	46	3
SAMPSON	62	4	46	3	36	3	39	3
SCOTLAND	17	2	21	2	34	3	16	2
STANLY	38	3	62	4	65	4	58	4
STOKES	80	5	91	5	76	5	87	5
SURRY	58	4	73	4	64	4	66	4
SWAIN	6	1	2	1	4	1	2	1
TRANSYLVANIA	75	4	61	4	88	5	68	4
TYRRELL	1	1	3	1	1	1	14	2
UNION	92	5	97	5	99	5	92	5
VANCE	25	2	15	2	12	2	12	2
WAKE	100	5	99	5	100	5	99	5

KEY	Option 1	Option 2	Option 3	Option 4
Factor 1	Population Growth	Unemployment	Unemployment	Unemployment
Factor 2	Unemployment	Net Earnings per Capita	Avg Annual Private Ins. Wage	Net Earnings per Capita
Factor 3	Per Capita Income	Food Stamp Recipiency Rate	Food Stamp Recipiency Rate	Food Stamp Recipiency Rate
Factor 4	-	-	-	Property Valuation per Capita

County	Option 1		Option 2		Option 3		Option 4	
	Rank	Tier	Rank	Tier	Rank	Tier	Rank	Tier
WARREN	7	1	3	1	3	1	11	2
WASHINGTON	9	1	12	2	6	1	9	1
WATAUGA	67	4	78	5	73	4	84	5
WAYNE	41	3	45	3	54	4	28	3
WILKES	53	4	66	4	60	4	58	4
WILSON	33	3	33	3	39	3	31	3
YADKIN	76	5	84	5	81	5	74	4
YANCEY	20	2	21	2	25	2	25	2

Notes:

- Option 1 is the method currently used by the Department of Commerce. However, for comparison's sake, the tiers listed here may not coincide with the official tiers released in December of 1998 as those take into account tier grandfathering, etc. In other words, the tiers assigned here are based on the option ranking alone.
- For each option, the counties are ranked from 1 to 100 with 1 being the most distressed county and 100 being the least distressed county.

Appendix H

Counties with Population < 50,000

COUNTY	1997 Population
ALEXANDER	31,078
ALLEGHANY	9,682
ANSON	23,854
ASHE	23,596
AVERY	15,460
BEAUFORT	43,400
BERTIE	20,248
BLADEN	30,314
CAMDEN	6,308
CASWELL	22,059
CHATHAM	45,130
CHEROKEE	22,416
CHOWAN	14,219
CLAY	8,066
CURRITUCK	16,571
DARE	27,394
DAVIE	31,192
DUPLIN	44,080
FRANKLIN	43,487
GATES	9,914
GRAHAM	7,504
GRANVILLE	42,802
GREENE	17,651
HERTFORD	21,916
HOKE	28,882
HYDE	5,280
JACKSON	29,142
JONES	8,988
LEE	48,369
MACON	27,664
MADISON	18,330
MARTIN	25,628
MCDOWELL	39,424
MITCHELL	14,729
MONTGOMERY	24,473
NORTHAMPTON	20,800
PAMLICO	11,973
PASQUOTANK	34,519
PENDER	37,208
PERQUIMANS	10,900
PERSON	32,920
POLK	16,393
RICHMOND	45,658
SCOTLAND	35,004
STOKES	42,848
SWAIN	11,994
TRANSYLVANIA	27,845
TYRRELL	3,672
VANCE	40,981
WARREN	18,140
WASHINGTON	13,297
WATAUGA	40,862
YADKIN	35,199
YANCEY	16,349

Source: 1997 Certified Population Estimates, Office of State Planning

Counties with Population < 20,000

COUNTY	1997 Population
ALLEGHANY	9,682
AVERY	15,460
CAMDEN	6,308
CHOWAN	14,219
CLAY	8,066
CURRITUCK	16,571
GATES	9,914
GRAHAM	7,504
GREENE	17,651
HYDE	5,280
JONES	8,988
MADISON	18,330
MITCHELL	14,729
PAMLICO	11,973
PERQUIMANS	10,900
POLK	16,393
SWAIN	11,994
TYRRELL	3,672
WARREN	18,140
WASHINGTON	13,297
YANCEY	16,349

Source: 1997 Certified Population Estimates, Office of State Planning

Appendix I

Poverty Rate "Test" for Counties with Population < 50,000

County	Option 1 Tier	Option 2 Tier	Option 3 Tier	Option 4 Tier	Poverty Rate	% of State Rate
ALEXANDER	4	5	5	4	9.84%	76.28%
ALLEGHANY	2	3	3	4	20.06%	155.50%
ANSON	2	2	2	2	17.65%	136.82%
ASHE	2	3	2	3	18.41%	142.71%
AVERY	3	3	3	4	14.56%	112.87%
BEAUFORT	2	2	2	2	19.51%	151.24%
BERTIE	1	1	1	1	25.92%	200.93%
BLADEN	3	3	2	3	21.94%	170.08%
CAMDEN	3	3	3	4	16.06%	124.50%
CASWELL	3	3	4	3	16.19%	125.50%
CHATHAM	5	5	5	5	9.66%	74.88%
CHEROKEE	3	2	2	2	20.42%	158.29%
CHOWAN	3	2	3	2	17.73%	137.44%
CLAY	3	2	3	3	17.95%	139.15%
CURRITUCK	5	5	4	5	10.05%	77.91%
DARE	4	4	3	5	8.26%	64.03%
DAVIE	5	5	5	5	8.36%	64.81%
DUPLIN	4	4	3	4	19.13%	148.29%
FRANKLIN	4	4	4	3	14.54%	112.71%
GATES	3	3	3	3	15.72%	121.86%
GRAHAM	1	1	1	2	24.94%	193.33%
GRANVILLE	4	4	4	4	13.47%	104.42%
GREENE	4	4	3	3	19.08%	147.91%
HERTFORD	2	2	2	1	24.95%	193.41%
HOKE	3	2	2	1	21.09%	163.49%
HYDE	2	2	1	2	23.99%	185.97%
JACKSON	3	3	3	4	16.68%	129.30%
JONES	3	4	2	3	20.24%	156.90%
LEE	5	4	4	4	14.67%	113.72%
MACON	4	3	4	4	11.43%	88.60%
MADISON	3	3	4	3	16.53%	128.14%
MARTIN	1	2	3	2	20.36%	157.83%
MCDOWELL	3	4	4	3	22.29%	172.79%
MITCHELL	2	3	3	3	15.96%	123.72%
MONTGOMERY	2	3	3	3	14.42%	111.78%
NORTHAMPTON	1	1	1	1	23.60%	182.95%
PAMLICO	3	3	2	3	18.89%	146.43%
PASQUOTANK	3	3	2	2	19.75%	153.10%
PENDER	4	3	2	3	17.21%	133.41%
PERQUIMANS	2	2	2	2	21.55%	167.05%
PERSON	3	4	4	4	12.95%	100.39%
POLK	5	5	5	5	9.63%	74.65%
RICHMOND	1	1	2	1	16.79%	130.16%
SCOTLAND	2	2	3	2	18.60%	144.19%
STOKES	5	5	5	5	9.82%	76.12%
SWAIN	1	1	1	1	27.61%	214.03%
TRANSYLVANIA	4	4	5	4	13.49%	104.57%
TYRRELL	1	1	1	2	25.03%	194.03%
VANCE	2	2	2	2	19.62%	152.09%
WARREN	1	1	1	2	28.20%	218.60%
WASHINGTON	1	2	1	1	20.42%	158.29%
WATAUGA	4	5	4	5	21.52%	166.82%
YADKIN	5	5	5	4	11.97%	92.79%
YANCEY	2	2	2	2	18.65%	144.57%

Notes:

- Poverty rate is defined as the number of persons with family (or single-person) income falling below the poverty threshold divided by persons for whom poverty status is determined. The poverty rate statistics are from the U.S. Bureau of the Census, 1990.
- Shaded counties are those with a poverty rate at 150% of the state rate (12.9%).

Poverty Rate "Test" for Counties with Population < 20,000

County	Option 1 Tier	Option 2 Tier	Option 3 Tier	Option 4 Tier	Poverty Rate	% of State Rate
ALLEGHANY	2	3	3	4	20.06%	155.50%
AVERY	3	3	3	4	14.56%	112.87%
CAMDEN	3	3	3	4	16.06%	124.50%
CHOWAN	3	2	3	2	17.73%	137.44%
CLAY	3	2	3	3	17.95%	139.15%
CURRITUCK	5	5	4	5	10.05%	77.91%
GATES	3	3	3	3	15.72%	121.86%
GRAHAM	1	1	1	2	24.94%	193.33%
GREENE	4	4	3	3	19.08%	147.91%
HYDE	2	2	1	2	23.99%	185.97%
JONES	3	4	2	3	20.24%	156.90%
MADISON	3	3	4	3	16.53%	128.14%
MITCHELL	2	3	3	3	15.96%	123.72%
PAMLICO	3	3	2	3	18.89%	146.43%
PERQUIMANS	2	2	2	2	21.55%	167.05%
POLK	5	5	5	5	9.63%	74.65%
SWAIN	1	1	1	1	27.61%	214.03%
WARREN	1	1	1	2	28.20%	218.60%
WASHINGTON	1	2	1	1	20.42%	158.29%
YANCEY	2	2	2	2	18.65%	144.57%

Notes:

- Poverty rate is defined as the number of persons with family (or single-person) income falling below the poverty threshold divided by persons for whom poverty status is determined. The poverty rate statistics are from the U.S. Bureau of the Census, 1990.
- Shaded counties are those with a poverty rate at 150% of the state rate (12.9%).

Food Stamp Recipiency Rate "Test" for Counties with Population < 50,000

County	Option 1 Tier	Option 2 Tier	Option 3 Tier	Option 4 Tier	Food Stamp Rate	% of State Rate
ALEXANDER	4	5	5	4	57.1	68.25%
ALLEGHANY	2	3	3	4	66.6	79.62%
ANSON	2	2	2	2	149.5	178.65%
ASHE	2	3	2	3	79.4	94.83%
AVERY	3	3	3	4	91.0	108.70%
BEAUFORT	2	2	2	2	130.9	156.43%
BERTIE	1	1	1	1	195.4	233.47%
BLADEN	3	3	2	3	188.0	224.60%
CAMDEN	3	3	3	4	97.4	116.33%
CASWELL	3	3	4	3	101.8	121.65%
CHATHAM	5	5	5	5	52.3	62.47%
CHEROKEE	3	2	2	2	107.0	127.86%
CHOWAN	3	2	3	2	174.3	208.30%
CLAY	3	2	3	3	79.6	95.06%
CURRITUCK	5	5	4	5	66.9	79.93%
DARE	4	4	3	5	29.3	35.00%
DAVIE	5	5	5	5	31.6	37.78%
DUPLIN	4	4	3	4	112.4	134.35%
FRANKLIN	4	4	4	3	103.0	123.06%
GATES	3	3	3	3	108.3	129.45%
GRAHAM	1	1	1	2	119.3	142.52%
GRANVILLE	4	4	4	4	81.2	97.08%
GREENE	4	4	3	3	122.7	146.63%
HERTFORD	2	2	2	1	204.3	244.15%
HOKE	3	2	2	1	150.7	180.07%
HYDE	2	2	1	2	182.8	218.45%
JACKSON	3	3	3	4	88.4	105.62%
JONES	3	4	2	3	165.2	197.33%
LEE	5	4	4	4	78.2	93.45%
MACON	4	3	4	4	65.1	77.82%
MADISON	3	3	4	3	68.0	81.28%
MARTIN	1	2	3	2	95.8	114.49%
MCDOWELL	3	4	4	3	142.4	170.18%
MITCHELL	2	3	3	3	76.8	91.71%
MONTGOMERY	2	3	3	3	102.6	122.65%
NORTHAMPTON	1	1	1	1	212.7	254.20%
PAMLICO	3	3	2	3	122.1	145.95%
PASQUOTANK	3	3	2	2	146.9	175.53%
PENDER	4	3	2	3	109.2	130.44%
PERQUIMANS	2	2	2	2	154.4	184.45%
PERSON	3	4	4	4	66.2	79.05%
POLK	5	5	5	5	39.4	47.04%
RICHMOND	1	1	2	1	130.2	155.62%
SCOTLAND	2	2	3	2	165.1	197.31%
STOKES	5	5	5	5	54.5	65.12%
SWAIN	1	1	1	1	145.1	173.32%
TRANSYLVANIA	4	4	5	4	79.5	95.04%
TYRRELL	1	1	1	2	187.0	223.38%
VANCE	2	2	2	2	164.9	196.99%
WARREN	1	1	1	2	171.7	205.15%
WASHINGTON	1	2	1	1	181.4	216.70%
WATAUGA	4	5	4	5	48.9	58.38%
YADKIN	5	5	5	4	47.7	57.05%
YANCEY	2	2	2	2	109.3	130.58%

Notes:

- The Food Stamp Recipiency Rate (1997) is equal to the average number of monthly food stamp recipients for the state fiscal year 96-97 divided by total population (in 000s) in 1997. The food stamp recipients data is from the Department of Health and Human Resources. The population data is from the Office of State Planning's certified population estimates. Note that when representing annual data, the agency lists the information by the ending year although it may be for the fiscal year. Also, the 1997 population data (rather than 1996) was used to remain consistent with how the state calculates per capita statistics in other areas.
- Shaded counties are those with a Food Stamp Recipiency Rate at 150% of the state rate (83.7%).

Food Stamp Recipiency Rate "Test" for Counties with Population < 20,000

County	Option 1 Tier	Option 2 Tier	Option 3 Tier	Option 4 Tier	Food Stamp Rate	% of State Rate
ALLEGHANY	2	3	3	4	66.6	79.62%
AVERY	3	3	3	4	91.0	108.70%
CAMDEN	3	3	3	4	97.4	116.33%
CHOWAN	3	2	3	2	174.3	208.30%
CLAY	3	2	3	3	79.6	95.06%
CURRITUCK	5	5	4	5	66.9	79.93%
GATES	3	3	3	3	108.3	129.45%
GRAHAM	1	1	1	2	119.3	142.52%
GREENE	4	4	3	3	122.7	146.63%
HYDE	2	2	1	2	182.8	218.45%
JONES	3	4	2	3	165.2	197.33%
MADISON	3	3	4	3	68.0	81.28%
MITCHELL	2	3	3	3	76.8	91.71%
PAMLICO	3	3	2	3	122.1	145.95%
PERQUIMANS	2	2	2	2	154.4	184.45%
POLK	5	5	5	5	39.4	47.04%
SWAIN	1	1	1	1	145.1	173.32%
WARREN	1	1	1	2	171.7	205.15%
WASHINGTON	1	2	1	1	181.4	216.70%
YANCEY	2	2	2	2	109.3	130.58%

Notes:

- The Food Stamp Recipiency Rate (1997) is equal to the average number of monthly food stamp recipients for the state fiscal year 96-97 divided by total population (in 000s) in 1997. The food stamp recipients data is from the Department of Health and Human Resources. The population data is from the Office of State Planning's certified population estimates. Note that when representing annual data, the agency lists the information by the ending year although it may be for the fiscal year. Also, the 1997 population data (rather than 1996) was used to remain consistent with how the state calculates per capita statistics in other areas.
- Shaded counties are those with a Food Stamp Recipiency Rate at 150% of the state rate (83.7%).

Appendix J

Development Zone Option Counties	1999 Tier
Alleghany	2
Anson	2
Ashe	2
Bertie	1
Caswell	3
Cherokee	2
Chowan	3
Clay	3
Graham	1
Greene	4
Hertford	1
Hyde	1
Jones	3
Madison	3
Mitchell	2
Northampton	1
Pamlico	3
Perquimans	2
Swain	1
Tyrrell	1
Warren	1
Washington	1
Yancey	2

Presentation Summary from
The Department of Commerce
to the Joint Finance Committee
The North Carolina General Assembly
Secretary Rick Carlisle
Tuesday, May 11, 1999

William S. Lee Quality Jobs and Business Expansion Act

- First enacted in 1996 to stimulate the North Carolina economy – particularly in economically distressed areas
- Amended in 1997 and 1998 to enhance its practicality, effectiveness and accountability.
- Provides tax credits for five types of activities:
  - Job creation
  - Investment in machinery and equipment
  - Research and development expenditures
  - Worker training costs
  - Expansion of central administrative office property
- Offers a sliding scale of these credits depending upon a county's enterprise tier designation, which is determined by a formula comprised of population growth, unemployment rates, and per capita income.

1999 Tier Report of the William S. Lee Quality Jobs and Business Expansion Act

A 1997 amendment to the William S. Lee Act directed the Department of Commerce to examine the enterprise tier formula. The directive included consideration for alternative measures for more equitable treatment of counties in similar economic circumstances and consideration of whether the assignment of tiers and the applicable thresholds are equitable for smaller counties.

A seven-member task force studied the tier system and in its 1999 Tier Study Report:

- Found no variation in the enterprise tier formula significantly improved the tier designation system
- Recommended that the General Assembly keep the current tier formula in place while allowing some type of special provision for smaller counties

1999 Progress Report of the William S. Lee Quality Jobs and Business Expansion Act

The William S. Lee Act was developed to:

- Help existing firms maintain and improve competitiveness through investment in new technologies
- Encourage new investment in North Carolina's economy from both existing and new industries
- Ensure that economic growth is reaching all people in all parts of the state, particularly rural counties and high-poverty urban areas

The 1997 amendment to the William S. Lee Act also directed the Department of Commerce to review economic indicators to determine that the Act was fulfilling its original intent. Based on a review of job creation and investment numbers, the utilization of tax credits, and the financial impact of these credits, the William S. Lee Quality Jobs and Business Expansion Act 1999 Progress Report found that since the passage of the Act:

- Existing businesses take advantage of more tax credit opportunities than new firms
- Overall, job creation and capital investment increased in North Carolina
- Overall, the industries eligible for the tax credits under the Lee Act created more jobs and generated more new investment
- Industrial recruitment and expansion in the most distressed counties (Tiers 1 and 2) compares favorably to the rest of the state on a per capita basis

The Cost of the Lee Act

Based on the tax returns available for analysis, the total amount of foregone revenue from the Act in 1997 was $10,787,894, distributed among the credits as follows:

Type of credit	Amount of credits utilized in 1997	Amount of activity reported	Dollars of credit per activity unit
Jobs	$ 801,539	3,983 jobs	$ 201 per job claimed
Machinery & Equipment	$ 4,097,382	$ 789, 300,000	$ 5 per $1000 expenditure
Research & Development	$ 5,888,973	$ 723,700,000	$ 8 per $1000 expenditure

* Worker training and central office omitted due to insufficient data.

Conclusions

- The current tier formula is working as well as any formula can and should be maintained. The tier system could be more successful with a special provision for smaller counties. (This provision has been proposed in the Widely Shared Prosperity Act (HB 1303; SB 1115.)
- The William S. Lee Act is effective in
  - Helping existing firms invest in and compete with new technologies
  - Encouraging new investment by North Carolina's existing industries as well as new businesses
  - Ensuring that prosperity is indeed widely shared by targeting rural and urban distressed areas. The Act can be strengthened to extend its reach with provisions included in the Widely Shared Prosperity Act (HB 1303; SB 1115.)

GENERAL ASSEMBLY OF NORTH CAROLINA
SECOND EXTRA SESSION 1996
RATIFIED BILL

CHAPTER 13
HOUSE BILL 18

AN ACT TO REDUCE TAXES FOR THE CITIZENS OF NORTH CAROLINA AND TO PROVIDE INCENTIVES FOR HIGH QUALITY JOBS AND BUSINESS EXPANSION IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

TABLE OF CONTENTS

I. REDUCE SALES TAX ON FOOD
II. REDUCE CORPORATE INCOME TAX
III. QUALITY JOBS AND BUSINESS EXPANSION TAX CREDITS
IV. PHASE OUT SOFT DRINK TAX
V. MODIFY BUNDLED TRANSACTION SALES TAX
VI. REDUCE INHERITANCE AND GIFT TAXES
VII. NONITEMIZER CHARITABLE CONTRIBUTION TAX CREDIT
VIII. EXCLUDE CERTAIN SEVERANCE PAY FROM INCOME TAX
IX. REDUCE SALES TAX ON FARM AND INDUSTRY FUEL
X. EFFECTIVE DATES

Section 1. This act shall be known as the William S. Lee Quality Jobs and Business Expansion Act.

PART I. REDUCE SALES TAX ON FOOD

Sec. 1.1. G.S. 105-164.4(a) is amended by adding a new subdivision to read:

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

Sec. 1.2. G.S. 105-465 reads as rewritten:

"**§ 105-465. County election as to adoption of local sales and use tax.**

The board of elections of any county, upon the written request of the board of county ~~commissioners thereof,~~ commissioners, or upon receipt of a petition signed by qualified voters of the county equal in number to at least fifteen percent (15%) of the total number of votes cast in the county, at the last preceding election for the office of Governor, shall call a special election for the purpose of submitting to the voters of the county the question of whether a one percent (1%) sales and use tax ~~as hereinafter provided~~ will be levied.

The special election shall be held under the same rules ~~and regulations~~ applicable to the election of members of the General Assembly. No new registration of voters shall be required. All qualified voters in the county who are properly registered not later than 21 days (excluding Saturdays and Sundays) prior to the election shall be

entitled to vote at ~~said~~ the election. The county board of elections shall give at least 20 days' public notice prior to the closing of the registration books for the special election.

The county board of ~~election~~ elections shall prepare ballots for the special ~~election which shall contain the words,~~ election. The question presented on the ballot shall be 'FOR ~~the~~ one percent (1%) local sales and use tax ~~only on those items presently covered by the four percent (4%) sales and use tax,' and the words,~~ on items subject to State sales and use tax at the general State rate and on food' or 'AGAINST ~~the~~ one percent (1%) local sales and use tax ~~only on those items presently covered by the four percent (4%) sales and use tax,' with appropriate squares so that each voter may designate his vote by his cross (X) mark.~~ on items subject to State sales and use tax at the general State rate and on food'.

The county board of elections shall fix the date of the special ~~election; provided, however,~~ election, except that the special election shall not be held on the date or within 60 days of any biennial election for county officers, ~~nor within 60 days thereof,~~ nor within one year from the date of the last preceding special election under this section."

Sec. 1.3. G.S. 105-467 reads as rewritten:

"**§ 105-467. Scope of sales tax.**

The sales tax ~~which~~ that may be imposed under this Article is limited to a tax at the rate of one percent (1%) ~~of:~~ of the following:

(1) The sales price of ~~those articles of~~ tangible personal property ~~now~~ subject to the general rate of sales tax imposed by the State under G.S. 105-164.4(a)(1) and ~~(4b);~~ (a)(4b).

(2) The gross receipts derived from the lease or rental of tangible personal property when the lease or rental of the property is subject to the general rate of sales tax imposed by the State under G.S. ~~105-164.4(a)(2);~~ 105-164.4(a)(2).

(3) The gross receipts derived from the rental of any room or ~~furnished by any hotel, motel, inn, tourist camp or~~ other ~~similar~~ accommodations ~~now~~ subject to the general rate of sales tax imposed by the State under G.S. ~~105-164.4(a)(3); and~~ 105-164.4(a)(3).

(4) The gross receipts derived from services rendered by laundries, dry cleaners, and other businesses ~~now~~ subject to the general rate of sales tax imposed by the State under G.S. 105-164.4(a)(4).

(5) The sales price of food that is not otherwise exempt from tax pursuant to G.S. 105-164.13 but would be exempt from the State sales and use tax pursuant to G.S. 105-164.13 if it were purchased with coupons issued under the Food Stamp Program, 7 U.S.C. § 51.

The sales tax authorized by this Article does not apply to sales that are taxable by the State under G.S. 105-164.4 but are not specifically included in ~~subdivisions (1) through (4) of~~ this section.

The State exemptions and exclusions contained in G.S. 105-164.13 and the State refund provisions contained in G.S. 105-164.14 ~~shall~~ apply ~~with equal force and in like manner~~ to the local sales and use tax authorized to be levied and imposed under this Article. A taxing county ~~shall have no authority, with respect to the local sales and use tax imposed under this Article to change, alter, add to or delete any refund provisions contained in G.S. 105-164.14, or any exemptions or exclusions contained in G.S. 105-164.13 or which are elsewhere provided for.~~ may not allow an exemption, exclusion, or refund that is not allowed under the State sales and use tax.

The local sales tax authorized to be imposed and levied under ~~the provisions of~~ this Article ~~shall apply to such retail sales, leases, rentals, the rendering of services, furnishing of rooms, lodgings or accommodations and other~~ applies to taxable transactions ~~which are made, furnished or rendered~~ by retailers whose place of business is located within the taxing county. ~~The tax imposed shall apply to the furnishing of rooms, lodging or other accommodations within the county which are rented to transients.~~ For the purpose of this Article, the situs of a transaction is the location of the retailer's place of business."

Sec. 1.4. G.S. 105-468 reads as rewritten:

"**§ 105-468. Scope of use tax.**

The use tax ~~which may be imposed under~~ authorized by this Article ~~shall be~~ is a tax at the rate of one percent (1%) of the cost price of each item or article of tangible personal property ~~when it~~ that is not sold in the taxing county but is used, ~~consumed~~ consumed, or stored for use or consumption in the taxing ~~county, except that no tax shall be imposed upon tangible personal property when the property would be taxed by the State at a rate other than the general rate of tax set in G.S. 105-164.4 if it were taxable under G.S. 105-164.6.~~ county. The tax applies to the same items that are subject to tax under G.S. 105-467.

Every retailer who is engaged in business in this State and in the taxing county and is required to collect the use tax levied by G.S. 105-164.6 shall ~~also~~ collect the one percent (1%) use tax when ~~such~~ the property is to be used, ~~consumed~~ consumed, or stored in the taxing ~~county, one percent (1%) use tax to be collected concurrently with the State's use tax; but no retailer not required to collect the use tax levied by G.S. 105-164.6 shall be required to collect the one percent (1%) use tax.~~ county. The use tax contemplated by this section shall be levied against the purchaser, and the purchaser's liability for the use tax shall be extinguished only upon payment of the use tax to the retailer, where the retailer is required to collect the tax, or to the ~~Secretary of Revenue, or to the taxing county, as appropriate,~~ Secretary, where the retailer is not required to collect the tax.

Where a local sales or use tax has been paid with respect to tangible personal property by the purchaser, either in another taxing county within the State, or in a taxing jurisdiction outside the State where the purpose of the tax is similar in purpose and intent to the tax which may be imposed pursuant to this Article, the tax paid may be credited against the tax imposed under this section by a taxing county upon the same property. If the amount of sales or use tax so paid is less than the amount of the use tax due the taxing county under this section, the purchaser shall pay to the Secretary ~~of Revenue or to the taxing county, as appropriate,~~ an amount equal to the difference between the amount so paid in the other taxing county or jurisdiction and the amount due in the taxing county. The Secretary ~~of Revenue or the taxing county, as appropriate,~~ may require such proof of payment in another taxing county or jurisdiction as is deemed to be necessary. The use tax levied under this Article is not subject to credit for payment of any State sales or use tax not imposed for the benefit and use of counties and municipalities. No credit shall be given under this section for sales or use taxes paid in a taxing jurisdiction outside this State if that taxing jurisdiction does not grant similar credit for sales taxes paid under this Article."

Sec. 1.5. The first paragraph of Section 4 of Chapter 1096 of the 1967 Session Laws, as amended, is amended as follows:

(1) By deleting the word "and" before subdivision (4).

(2) By changing the period at the end of subdivision (4) to a semicolon and adding the word "and".

(3) By adding a new subdivision to read:

"(5) The sales price of food and other items that are not otherwise exempt from tax pursuant to G.S. 105-164.13 but would be exempt

from the State sales and use tax pursuant to G.S. 105-164.13 if purchased with coupons issued under the Food Stamp Program, 7 U.S.C. § 51."

Sec. 1.6. Section 5 of Chapter 1096 of the 1967 Session Laws is amended by deleting the first sentence of that section and substituting the following sentences to read:

"The use tax that Mecklenburg County may impose under this division is a tax at the rate of one percent (1%) of the cost price of each item or article of tangible personal property that is not sold but is used, consumed, or stored for use or consumption in Mecklenburg County. The tax applies to the same items that are subject to tax under Section 4 of this act."

Sec. 1.7. Approval under Article 39, 40, or 42 of Chapter 105 of the General Statutes or under the Mecklenburg County Sales and Use Tax Act, Chapter 1096 of the 1967 Session Laws, as amended, of local sales and use taxes on items subject to State sales and use tax at the general State rate constitutes approval of local sales and use taxes on food.

PART II. REDUCE CORPORATE INCOME TAX

Sec. 2.1. G.S. 105-130.3 reads as rewritten:

"**§ 105-130.3. Corporations.**

A tax is imposed on the State net income of every C Corporation doing business in this ~~State at seven and seventy-five one-hundredths percent (7.75%) of the corporation's State net income.~~ State. An S Corporation is not subject to the tax levied in this section. The tax is a percentage of the taxpayer's State net income computed as follows:

Income Years Beginning	Tax
In 1997	7.5%
In 1998	7.25%
In 1999	7%
After 1999	6.9%".

Sec. 2.2. G.S. 115C-546.1 reads as rewritten:

"**§ 115C-546.1. Creation of Fund; administration.**

(a) There is created the Public School Building Capital Fund. The Fund shall be used to assist county governments in meeting their public school building capital needs.

(b) Each calendar quarter, the Secretary of Revenue shall remit to the State Treasurer for credit to the Public School Building Capital Fund an amount equal to ~~two-thirty-firsts (2/31)~~ the applicable fraction provided in the table below of the net collections received during the previous quarter by the Department of Revenue under G.S. 105-130.3 minus two million five hundred thousand dollars ($2,500,000). All funds deposited in the Public School Building Capital Fund shall be invested as provided in G.S. 147-69.2 and G.S. 147-69.3.

Period	Fraction
10/1/97 to 9/30/98	One-fifteenth (1/15)
10/1/98 to 9/30/99	Two twenty-ninths (2/29)
10/1/99 to 9/30/00	One-fourteenth (1/14)
After 9/30/00	Five sixty-ninths (5/69)

(c) The Fund shall be administered by the Office of State Budget and Management."

PART III. QUALITY JOBS AND BUSINESS EXPANSION TAX CREDITS

Sec. 3.1. Chapter 105 of the General Statutes is amended by adding a new Article 3A entitled "Tax Incentives for New and Expanding Businesses."

Sec. 3.2. G.S. 105-130.40 is recodified as G.S. 105-129.8 in Article 3A of Chapter 105 of the General Statutes.

Sec. 3.3. Article 3A of Chapter 105 of the General Statutes, as enacted by this act, reads as rewritten:

"ARTICLE 3A.

"Tax Incentives for New and Expanding Businesses.

"**§ 105-129.2. Definitions.**

The following definitions apply in this Article:

(1) Cost. -- Defined in section 179 of the Code.

(2) Data processing. -- Defined in the Standard Industrial Classification Manual issued by the United States Bureau of the Census.

(3) Enterprise tier. -- The classification assigned to an area pursuant to G.S. 105-129.3.

(4) Full-time job. -- A position that requires at least 1,600 hours of work per year and is intended to be held by one employee during the entire year. A full-time employee is an employee who holds a full-time job.

(5) Machinery and equipment. -- Engines, machinery, tools, and implements that are capitalized by the taxpayer for tax purposes under the Code and are used or designed to be used in manufacturing or processing, warehousing and distribution, or data processing. The term does not include real property as defined in G.S. 105-273 or rolling stock as defined in G.S. 105-333.

(6) Manufacturing and processing. -- Defined in the Standard Industrial Classification Manual issued by the United States Bureau of the Census.

(7) Purchase. -- Defined in section 179 of the Code.

(8) Warehousing and distribution. -- Defined in the Standard Industrial Classification Manual issued by the United States Bureau of the Census.

"**§ 105-129.3. Enterprise tier designation.**

(a) Tiers Defined. -- An enterprise tier one area is a county whose enterprise factor is one of the 10 highest in the State. An enterprise tier two area is a county whose enterprise factor is one of the next 15 highest in the State. An enterprise tier three area is a county whose enterprise factor is one of the next 25 highest in the State. An enterprise tier four area is a county whose enterprise factor is one of the next 25 highest in the State. An enterprise tier five area is any area that is not in a lower-numbered enterprise tier.

(b) Annual Designation. -- Each year, on or before December 31, the Secretary of Commerce shall assign to each county in the State an enterprise factor that is the sum of the following:

(1) The county's rank in a ranking of counties by rate of unemployment from lowest to highest.

(2) The county's rank in a ranking of counties by per capita income from highest to lowest.

(3) The county's rank in a ranking of counties by percentage growth in population from highest to lowest.

The Secretary of Commerce shall then rank all the counties within the State according to their enterprise factor from highest to lowest, identify all the areas of the State by enterprise tier, and provide this information to the Secretary of Revenue. An enterprise tier designation is effective only for the calendar year following the designation.

In measuring rates of unemployment and per capita income, the Secretary shall use the latest available data published by a State or federal agency generally recognized as having expertise concerning the data. In measuring population growth, the Secretary shall use the most recent estimates of population certified by the State Planning Officer.

"**§ 105-129.4. Eligibility; forfeiture.**

(a) Type of Business. -- A taxpayer is eligible for a credit allowed by this Article if the taxpayer engages in manufacturing or processing, warehousing or distributing, or data processing, and the jobs with respect to which a credit is claimed are created in that business, the machinery and equipment with respect to which a credit is claimed are used in that business, and the research and development for which a credit is claimed are carried out as part of that business.

(b) Wage Standard. -- A taxpayer is eligible for the credit for creating jobs or the credit for worker training if the jobs for which the credit is claimed meet the wage standard at the time the taxpayer applies for the credit. A taxpayer is eligible for the credit for investing in machinery and equipment or the credit for research and development if the jobs at the location with respect to which the credit is claimed meet the wage standard at the time the taxpayer applies for the credit. Jobs meet the wage standard if they pay an average weekly wage that is at least ten percent (10%) above the average weekly wage paid in the county in which the jobs will be located. In calculating the average weekly wage of jobs, positions that pay a wage or salary at a rate that exceeds one hundred thousand dollars ($100,000) a year shall be excluded. For the purpose of this subsection, the average wage in a county is the average wage for all insured industries in the county as computed by the Employment Security Commission for the most recent period for which data are available.

(c) Worker Training. -- A taxpayer is eligible for the tax credit for worker training only for training workers who occupy jobs for which the taxpayer is eligible to claim an installment of the credit for creating jobs or which are full-time positions at a location with respect to which the taxpayer is eligible to claim an installment of the credit for investing in machinery and equipment for the taxable year.

The credit for worker training is allowed only with respect to employees in positions not classified as exempt under the Fair Labor Standards Act, 29 U.S.C. § 213(a)(1) and for expenditures for training that would be eligible for expenditure or reimbursement under the Department of Community Colleges' New and Expanding Industry Program, as determined by guidelines adopted by the State Board of Community Colleges. To establish eligibility, the taxpayer must obtain as part of the application process under G.S. 105-129.6 the certification of the Department of Community Colleges that the taxpayer's planned worker training would satisfy the requirements of this paragraph. A taxpayer shall apply to the Department of Community Colleges for this certification. The application must be on a form provided by the Department of Community Colleges, must provide a detailed plan of the worker training to be provided, and must contain any information required by the Department of Community Colleges to determine whether the requirements of this paragraph will be satisfied. If the Department of Community Colleges determines that the planned worker training meets the requirements of this paragraph, the Department of Community Colleges shall issue a certificate describing the location with respect to which the credit is claimed and stating that the planned worker training meets the requirements of this paragraph. The State Board of Community Colleges may adopt rules in accordance with Chapter 150B of the General Statutes that are needed to carry out its responsibilities under this paragraph.

(d) Forfeiture. -- A taxpayer forfeits a credit allowed under this Article if the taxpayer was not eligible for the credit at the time the taxpayer applied for the credit. A taxpayer that forfeits a credit under this Article is liable for all past taxes avoided

as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236. If a taxpayer forfeits the credit for creating jobs or the credit for investing in machinery and equipment, the taxpayer also forfeits any credit for worker training claimed for the jobs for which the credit for creating jobs was claimed or the jobs at the location with respect to which the credit for investing in machinery and equipment was claimed.

(e) Change in Ownership of Business. -- The sale, merger, acquisition, or bankruptcy of a business, or any other transaction by which an existing business reformulates itself as another business, does not create new eligibility in a succeeding business with respect to credits for which the predecessor was not eligible under this Article. A successor business may, however, take any installment of or carried-over portion of a credit that its predecessor could have taken if it had a tax liability.

"**§ 105-129.5. Tax election; cap.**

(a) Tax Election. -- The credits provided in this Article are allowed against the franchise tax levied in Article 3 of this Chapter and the income taxes levied in Article 4 of this Chapter. The taxpayer shall elect the tax against which a credit will be claimed when filing the application for the credit. This election is binding. Any carryforwards of the credit must be claimed against the same tax elected in the application.

(b) Cap. -- The credits allowed under this Article may not exceed fifty percent (50%) of the tax against which they are claimed for the taxable year, reduced by the sum of all other credits allowed against that tax, except tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of credit, including carryforwards, claimed by the taxpayer under this Article against each tax for the taxable year. Any unused portion of the credit may be carried forward for the succeeding five years.

"**§ 105-129.6. Application; reports.**

(a) Application. -- To claim the credits allowed by this Article, the taxpayer must provide with the tax return the certification of the Secretary of Commerce that the taxpayer meets all of the eligibility requirements of G.S. 105-129.4 with respect to each credit. A taxpayer shall apply to the Secretary of Commerce for certification of eligibility. The application must be on a form provided by the Secretary of Commerce, must specify the credit and the tax against which it will be claimed, and must contain any information necessary for the Secretary of Commerce to determine whether the taxpayer meets the eligibility requirements. If the Secretary determines that the taxpayer meets all of the eligibility requirements of G.S. 105-129.4 with respect to a credit, the Secretary shall issue a certificate describing the location with respect to which the credit is claimed, specifying the tax against which the credit will be claimed, outlining the eligibility requirements for the credit, and stating that the taxpayer meets the eligibility requirements. If the Secretary determines that the taxpayer does not meet all of the eligibility requirements of G.S. 105-129.4 with respect to a credit, the Secretary must advise the taxpayer in writing of the eligibility requirements the taxpayer fails to meet. The Secretary of Commerce may adopt rules in accordance with Chapter 150B of the General Statutes that are needed to carry out the Secretary of Commerce's responsibilities under this section.

(b) Reports. -- The Department of Commerce shall report to the Department of Revenue and to the Fiscal Research Division of the General Assembly by May 1 of each year the following information for the 12-month period ending the preceding April 1:

(1) The number of applications for each credit allowed in this Article.

(2) The number and enterprise tier area of new jobs with respect to which credits were applied for.

(3) The cost of machinery and equipment with respect to which credits were applied for.

"**§ 105-129.7. Substantiation.**

To claim a credit allowed by this Article, the taxpayer must provide any information required by the Secretary of Revenue. Every taxpayer claiming a credit under this Article shall maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving eligibility for the credit and the amount of the credit shall rest upon the taxpayer, and no credit shall be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection.

"**§ 105-129.8. Credit for creating ~~jobs in severely distressed county.~~ jobs.**

(a) Credit. -- A ~~corporation that (i) for at least 40 weeks during the year has at least nine employees and (ii) is located, for part or all of its taxable year, in a severely distressed county~~ taxpayer that meets the eligibility requirements set out in G.S. 105-129.4, has five or more employees for at least 40 weeks during the taxable year, ~~may qualify for a credit against the tax imposed by this Division by creating new full-time jobs with the corporation in the severely distressed county during that year. A corporation~~ and ~~that~~ hires an additional full-time employee during that year to fill a position located in ~~a severely distressed county~~ this State is allowed a credit ~~of two thousand eight hundred dollars ($2,800) for the additional employee.~~ for creating a new full-time job. The amount of the credit for each new full-time job created is set out in the table below and is based on the enterprise tier of the area in which the position is located:

Area Enterprise Tier	Amount of Credit
Tier One	$12,500
Tier Two	4,000
Tier Three	3,000
Tier Four	1,000
Tier Five	500

A position is located in ~~a county~~ an area if ~~(i) at least~~ more than fifty percent (50%) of the employee's duties are performed in the ~~county, or (ii) the employee is a resident of the county.~~ area. The credit may not be taken in the ~~income~~ taxable year in which the additional employee is hired. Instead, the credit shall be taken in equal installments over the four years following the ~~income~~ taxable year in which the additional employee was hired and shall be conditioned on the continued employment by the ~~corporation~~ taxpayer of the number of full-time employees the ~~corporation~~ taxpayer had upon hiring the employee that caused the ~~corporation~~ taxpayer to qualify for the credit. ~~If,~~

If, in one of the four years in which the installment of a credit accrues, the number of the ~~corporation's~~ taxpayer's full-time employees falls below the number of full-time employees the ~~company~~ taxpayer had in the year in which the ~~corporation~~ taxpayer qualified for the ~~credit or the position filled by the employee is moved to another county,~~ credit, the credit expires and the ~~corporation~~ taxpayer may not take any remaining installment of the credit. The ~~corporation~~ taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under ~~subsection (c) of this section.~~ G.S. 105-129.5.

Jobs transferred from one area in the State to another area in the State shall not be considered new jobs for purposes of this section. If, in one of the four years in which the installment of a credit accrues, the position filled by the employee is moved to an area in a higher- or lower-numbered enterprise tier, the remaining installments of the

credit shall be calculated as if the position had been created initially in the area to which it was moved.

~~For the purposes of this section, a full-time job is a position that requires at least 1,600 hours of work per year and is intended to be held by one employee during the entire year. A full-time employee is an employee who holds a full-time job.~~

(b) Repealed by Session Laws 1989, c. 111, s. 1.

~~(b1) Eligibility. -- A corporation is eligible for the tax credit allowed by this section only if it obtained a credit under this section for taxable year 1988 or the Department of Commerce determines that it engages in the manufacturing of goods, or that it engages in an industrial activity such as the processing of foods, raw materials, chemicals and process agents, goods in process, or finished products.~~

~~(c) County Designation. -- A severely distressed county is a county designated as severely distressed by the Secretary of Commerce. Each year, on or before December 31, the Secretary of Commerce shall designate which counties are considered severely distressed, and shall provide that information to the Secretary of Revenue. A county is considered severely distressed if its distress factor is one of the fifty highest in the State.~~

~~The Secretary shall assign to each county in the State a distress factor that is the sum of the following:~~

- ~~(1) The county's rank in a ranking of counties by rate of unemployment from lowest to highest.~~
- ~~(2) The county's rank in a ranking of counties by per capita income from highest to lowest.~~
- ~~(3) The county's rank in a ranking of counties by percentage growth in population from lowest to highest.~~

~~In measuring rates of unemployment and per capita income, the Secretary shall use the latest available data published by a State or federal agency generally recognized as having expertise concerning the data. In measuring population growth, the Secretary shall use the most recent estimates of population certified by the State Planning Officer. A designation as a severely distressed county is effective only for the calendar year following the designation.~~

(d) Planned Expansion. -- A ~~corporation that, during the year in which a county is designated as a severely distressed county,~~ taxpayer that signs a letter of commitment with the Department of Commerce to create at least twenty new full-time jobs in ~~that distressed county~~ a specific area within two years of the date the letter is signed qualifies for the credit in the amount allowed by this section based on the area's enterprise tier for that year even though the employees are not hired that year. The credit shall be available in the ~~income~~ taxable year after at least twenty employees have been hired if ~~such~~ the hirings are within the two-year commitment period. The conditions outlined in subsection (a) apply to a credit taken under this subsection except that if the ~~county is no longer designated a severely distressed county~~ area is redesignated to a higher-numbered enterprise tier after the year the letter of commitment was signed, the credit is ~~still available.~~ allowed based on the area's enterprise tier for the year the letter was signed. If the ~~corporation~~ taxpayer does not hire the employees within the two-year period, the ~~corporation~~ taxpayer does not qualify for the credit. However, if the ~~corporation~~ taxpayer qualifies for a credit under subsection (a) in the year any new employees are hired, ~~it~~ the taxpayer may take the credit under that subsection.

~~(e) Limitations. -- The sale, merger, acquisition, or bankruptcy of a business, or any other transaction by which an existing business reformulates itself as another business, does not create new eligibility in a succeeding business with respect to jobs for which the predecessor was not eligible under this section. A successor~~

~~corporation may, however, take any installment of or carried over portion of a credit that its predecessor could have taken if it had taxable income.~~

~~Jobs transferred from one county in the State to another county in the State shall not be considered new jobs for purposes of this section. A credit taken under this section may not exceed fifty percent (50%) of the tax imposed by this Division for the taxable year, reduced by the sum of all other credits allowed under this Division, except tax payments made by or on behalf of the corporation. Any unused portion of the credit may be carried forward for the succeeding five years.~~

~~(f) Substantiation. -- Every corporation claiming the credit provided in subsection (a) shall maintain and make available for inspection by the Secretary of Revenue or his agent such records as may be necessary to determine and verify the amount of the credit to which it is entitled. The burden of proving eligibility for the credit and the amount of the credit shall rest upon the corporation, and no credit shall be allowed to a corporation that fails to maintain adequate records or to make them available for inspection.~~

"§ 105-129.9. Credit for investing in machinery and equipment.

(a) Credit. -- A taxpayer that has purchased machinery and equipment and places it in service in this State during the taxable year is allowed a credit equal to seven percent (7%) of the excess of the eligible investment amount over the applicable threshold. The credit may not be taken for the taxable year in which the equipment is placed in service but shall be taken in equal installments over the seven years following the taxable year in which the equipment is placed in service.

(b) Eligible Investment Amount. -- The eligible investment amount is the lesser of (i) the cost of the machinery and equipment and (ii) the amount by which the cost of all of the taxpayer's machinery and equipment that is in service in this State on the last day of the taxable year exceeds the cost of all of the taxpayer's machinery and equipment that was in service in this State on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer had the most machinery and equipment in service in this State.

(c) Threshold. -- The applicable threshold is the appropriate amount set out in the following table based on the enterprise tier of the area where the machinery and equipment are placed in service during the taxable year. If the taxpayer places machinery and equipment in service in more than one area during the taxable year, the threshold applies separately to the machinery and equipment placed in service in each area.

Area Enterprise Tier	Threshold
Tier One	$ -0-
Tier Two	100,000
Tier Three	200,000
Tier Four	500,000
Tier Five	1,000,000

(d) Expiration. -- If, in one of the seven years in which the installment of a credit accrues, the machinery and equipment with respect to which the credit was claimed are sold or moved out of State, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5.

If, in one of the seven years in which the installment of a credit accrues, the machinery and equipment with respect to which the credit was claimed are moved to an area in a higher-numbered enterprise tier, the remaining installments of the credit are allowed only to the extent they would have been allowed if the machinery and equipment had been placed in service initially in the area to which they were moved.

"§ 105-129.10. Credit for research and development.

A taxpayer that claims for the taxable year a federal income tax credit under section 41 of the Code for increasing research activities is allowed a credit equal to five percent (5%) of the State's apportioned share of the taxpayer's expenditures for increasing research activities. The State's apportioned share of a taxpayer's expenditures for increasing research activities is the excess of the taxpayer's qualified research expenses for the taxable year over the base amount, as determined under section 41 of the Code, multiplied by a percentage equal to the ratio of the taxpayer's qualified research expenses in this State for the taxable year to the taxpayer's total qualified research expenses for the taxable year. As used in this section, the terms 'qualified research expenses' and 'base amount' have the meaning provided in section 41 of the Code.

"§ 105-129.11. Credit for worker training.

(a) Credit. -- A taxpayer that provides worker training for five or more of its eligible employees during the taxable year is allowed a credit equal to fifty percent (50%) of its eligible expenditures for the training. For positions located in an enterprise tier one area, the credit may not exceed one thousand dollars ($1,000) per employee trained during the taxable year. For other positions, the credit may not exceed five hundred dollars ($500.00) per employee trained during the taxable year. A position is located in an area if more than fifty percent (50%) of the employee's duties are performed in the area.

(b) Eligibility. -- The eligibility of a taxpayer's expenditures and employees is determined as provided in G.S. 105-129.4."

Sec. 3.4. G.S. 105-151.17 is recodified as G.S. 105-129.8. G.S. 105-129.8, as rewritten by this act, incorporates both G.S. 105-130.40 and G.S. 105-151.17.

Sec. 3.5. G.S. 143B-437A reads as rewritten:

"§ 143B-437A. Industrial Development Fund.

(a) Creation and Purpose of Fund. -- There is created in the Department of Commerce the Industrial Development Fund to provide funds to assist the local government units of the most economically ~~depressed~~ distressed counties in the State in creating jobs in ~~qualified~~ certain industries. ~~As used in this section, the term 'qualified industry' means the manufacturing of goods or the processing of foods, raw materials, chemicals and process agents, goods in process, or finished products.~~ The Department of Commerce shall adopt rules providing for the administration of the program. Those rules shall include the ~~following.~~ following provisions, which shall apply to each grant from the fund:

(1) The funds shall be used for (i) installation of or purchases of equipment for ~~qualified industries,~~ manufacturing or processing, (ii) structural repairs, improvements, or renovations of existing buildings to be used for expansion of ~~qualified industries,~~ manufacturing or processing, or (iii) construction of or improvements to new or existing water, sewer, gas, or electrical utility distribution lines or equipment for existing or new or proposed industrial buildings to be used for ~~qualified industrial operations, or (iv) in the case of counties designated as severely distressed counties under G.S. 105-130.40(e) or G.S. 105-151.17(e) or units of local government within those counties, construction of or improvement to new or existing water, sewer, gas, or electrical utility distribution lines or equipment to serve new or proposed industrial buildings to be used for qualified industrial operations.~~ manufacturing or processing operations. To be eligible for funding, the water, sewer, gas, or electrical utility lines or facilities shall be located on the site of the building or, if not located on the

site, shall be directly related to the operation of the specific ~~qualified industrial~~ manufacturing or processing activity.

(1a) The funds shall be used for projects located in economically distressed counties except that ~~However,~~ the Secretary of Commerce may use up to one hundred thousand dollars ($100,000) to provide emergency economic development assistance in any county ~~which~~ that is documented to be experiencing a major economic dislocation.

(2) The funds shall be used by the city and county governments for projects that will directly result in the creation of new jobs. The funds shall be expended at a rate of ~~two thousand four hundred dollars ($2,400)~~ four thousand dollars ($4,000) per new job created up to a maximum of ~~two hundred fifty thousand dollars ($250,000)~~ four hundred thousand dollars ($400,000) per project.

(3) There shall be no local match requirement if the project is located in an enterprise tier one area as defined in G.S. 105-129.3.

(a1) Definitions. -- The following definitions apply in this section:

(1) Economically distressed county. -- A county designated as an enterprise tier one, two, or three area pursuant to G.S. 105-129.3.

(2) Major economic dislocation. -- The actual or imminent loss of 500 or more manufacturing jobs in the county or of a number of manufacturing jobs equal to at least ten percent (10%) of the existing manufacturing workforce in the county.

(3) Manufacturing and processing. -- Defined in the Standard Industrial Classification Manual issued by the United States Bureau of the Census.

~~(b) Each year, on or before December 31, the Secretary of Commerce shall designate the most economically distressed counties in the State; this designation shall remain effective for the following calendar year. The Secretary of Commerce shall determine which counties are the most economically distressed counties in the State based on (i) rate of unemployment, (ii) per capita income, and (iii) relative population and work force growth or lack of growth, as determined by the Secretary of Commerce.~~

(b1) Utility Account. -- There is created within the Industrial Development Fund a special account to be known as the Utility Account to provide funds to assist the local government units of enterprise tier one areas, as defined in G.S. 105-129.3, in creating jobs in manufacturing and processing, warehousing and distribution, and data processing, as defined in the Standard Industrial Classification Manual issued by the United States Bureau of the Census. The Department of Commerce shall adopt rules providing for the administration of the program. Except as otherwise provided in this subsection, those rules shall be consistent with the rules adopted with respect to the Industrial Development Fund. The rules shall provide that the funds in the Utility Account may be used only for construction of or improvements to new or existing water, sewer, gas, or electrical utility distribution lines or equipment for existing or new or proposed industrial buildings to be used for industrial operations in manufacturing or processing, warehousing or distribution, or data processing. To be eligible for funding, the water, sewer, gas, or electrical utility lines or facilities shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the specific industrial activity. There shall be no maximum funding amount per new job to be created or per project.

(c) Reports. -- The Department of Commerce shall report annually to the General Assembly concerning the applications made to the fund and the payments made from the fund and the impact of the payments on job creation in the State. The

Department of Commerce shall also report quarterly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the use of the moneys in the fund, including information regarding to whom payments were made, in what amounts, and for what purposes.

~~(d) As used in this section, 'major economic dislocation' means the actual or imminent loss of:~~

~~(1) 500 or more manufacturing jobs in the county; or~~

~~(2) A number of manufacturing jobs which is equal to or more than ten percent (10%) of the existing manufacturing workforce in the county.~~"

Sec. 3.6. Part 2 of Article 10 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-437D. Economic development block grants.**

The Department of Commerce shall adopt guidelines for the awarding of Community Development Block Grants for economic development that will ensure that no local match is required for grants awarded for projects located in enterprise tier one areas as defined in G.S. 105-129.3 and, to the extent practicable, that priority consideration for grants is given to projects located in enterprise tier one areas as defined in G.S. 105-129.3."

Sec. 3.7. G.S. 105-241.1(e), as amended by Chapter 646 of the 1995 Session Laws, reads as rewritten:

"(e) Statute of Limitations. -- There is no statute of limitations and the Secretary may propose an assessment of tax due from a taxpayer at any time if (i) the taxpayer did not file a proper application for a license or did not file a return, (ii) the taxpayer filed a false or fraudulent application or return, or (iii) the taxpayer attempted in any manner to fraudulently evade or defeat the tax.

If a taxpayer files a return reflecting a federal determination as provided in G.S. 105-29, 105-130.20, 105-159, 105-160.8, 105-163.6A, or 105-197.1, the Secretary must propose an assessment of any tax due within one year after the return is filed or within three years of when the original return was filed or due to be filed, whichever is later. If there is a federal determination and the taxpayer does not file the required return, the Secretary must propose an assessment of any tax due within three years after the date the Secretary received the final report of the federal determination. If a taxpayer forfeits a tax credit pursuant to G.S. ~~105-163.014,~~ 105-163.014 or Article 3A of this Chapter, the Secretary must assess any tax due as a result of the forfeiture within three years after the date of the forfeiture. If a taxpayer elects under section 1033(a)(2)(A) of the Code not to recognize gain from involuntary conversion of property into money, the Secretary must assess any tax due as a result of the conversion or election within the applicable period provided under section 1033(a)(2)(C) or section 1033(a)(2)(D) of the Code. If a taxpayer sells at a gain the taxpayer's principal residence, the Secretary must assess any tax due as a result of the sale within the period provided under section 1034(j) of the Code.

In all other cases, the Secretary must propose an assessment of any tax due from a taxpayer within three years after the date the taxpayer filed an application for a license or a return or the date the application or return was required by law to be filed, whichever is later.

If the Secretary proposes an assessment of tax within the time provided in this section, the final assessment of the tax is timely.

A taxpayer may make a written waiver of any of the limitations of time set out in this subsection, for either a definite or an indefinite time. If the Secretary accepts the taxpayer's waiver, the Secretary may propose an assessment at any time within the time extended by the waiver."

Sec. 3.8. G.S. 153A-376(f) reads as rewritten:

"(f) All program income from Economic Development Grants from the Small Cities Community Development Block Grant Program may be retained by recipient ~~'severely~~ 'economically distressed counties', as ~~designated under G.S. 105-130.40(e),~~ defined in G.S. 143B-437A for the purposes of creating local economic development revolving loan funds. Such program income derived through the use by counties of Small Cities Community Development Block Grant money includes but is not limited to: (i) payment of principal and interest on loans made by the county using Community Development Block Grant Funds; (ii) proceeds from the lease or disposition of real property acquired with Community Development Block Grant Funds; and (iii) any late fees associated with loan or lease payments in (i) and (ii) above. The local economic development revolving loan fund set up by the county shall fund only those activities eligible under Title I of the federal Housing and Community Development Act of 1974, as amended (P.L. 93-383), and shall meet at least one of the three national objectives of the Housing and Community Development Act. Any expiration of G.S. ~~105-130.40(e)~~ 143B-437A or G.S. 105-129.3 shall not affect this subsection as to designations of ~~severely~~ economically distressed counties made prior to its expiration."

Sec. 3.9. G.S. 160A-456(e1) reads as rewritten:

"(e1) All program income from Economic Development Grants from the Small Cities Community Development Block Grant Program may be retained by recipient cities in ~~'severely~~ 'economically distressed counties', as ~~designated under G.S. 105-130.40(e),~~ defined in G.S. 143B-437A, for the purposes of creating local economic development revolving loan funds. Such program income derived through the use by cities of Small Cities Community Development Block Grant money includes but is not limited to: (i) payment of principal and interest on loans made by the county using Community Development Block Grant Funds; (ii) proceeds from the lease or disposition of real property acquired with Community Development Block Grant Funds; and (iii) any late fees associated with loan or lease payments in (i) and (ii) above. The local economic development revolving loan fund set up by the city shall fund only those activities eligible under Title I of the federal Housing and Community Development Act of 1974, as amended (P.L. 93-383), and shall meet at least one of the three national objectives of the Housing and Community Development Act. Any expiration of G.S. ~~105-130.40(e)~~ 143B-437A or G.S. 105-129.3 shall not affect this subsection as to designations of ~~severely~~ economically distressed counties made prior to its expiration."

Sec. 3.10. Part 2 of Article 10 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-437D. Regional development.**

The Department of Commerce shall review the Economic Development Board's annual report on economic development to evaluate the progress of development in each of the economic regions defined by the Board in its Comprehensive Strategic Economic Development Plan. In its recruitment and development work, the Department shall strive for balance and equality among the economic regions and shall use its best efforts to locate new industries in the less developed areas of the State."

Sec. 3.11. Notwithstanding the provisions of G.S. 105-129.10, as enacted by this act, if a taxpayer relocates an employee to this State during 1996, any in-house research expenses the taxpayer incurs with respect to that employee during 1996, either before or after the employee is relocated to this State, are considered in-house research expenses in this State for the purposes of G.S. 105-129.10. Notwithstanding the definition of "Code" in G.S. 105-228.90, if the federal tax credit for increasing research activities that was formerly allowed under section 41 of the Code is reenacted, the credit for research and development allowed in Article 3A of Chapter

105 of the General Statutes, as enacted by this act, becomes effective for the same taxable year for which the reenacted federal credit becomes effective.

Sec. 3.12. Chapter 105 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 3B.
"Business Tax Credit.

"§ 105-129.15. Definitions.

The following definitions apply in this Article:

(1) Business property. -- Tangible personal property that is used by the taxpayer in connection with a business or for the production of income and is capitalized by the taxpayer for tax purposes under the Code. The term does not include, however, a luxury passenger automobile taxable under section 4001 of the Code or a watercraft used principally for entertainment and pleasure outings for which no admission is charged.

(2) Cost. -- Defined in section 179 of the Code.

(3) Purchase. -- Defined in section 179 of the Code.

"§ 105-129.16. Credit for investing in business property.

(a) Credit. -- A taxpayer that has purchased business property and places it in service in this State during the taxable year is allowed a credit equal to four and one-half percent (4.5%) of the cost of the property. The maximum credit allowed a taxpayer for property placed in service during a taxable year is four thousand five hundred dollars ($4,500). The entire credit may not be taken for the taxable year in which the property is placed in service but must be taken in five equal installments beginning with the taxable year in which the property is placed in service.

(b) Expiration. -- If, in one of the five years in which the installment of a credit accrues, the business property with respect to which the credit was claimed is sold or moved out of State, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.17.

(c) No Double Credit. -- A taxpayer that claims the credit allowed under Article 3A of this Chapter with respect to business property may not take the credit allowed in this section with respect to the same property.

"§ 105-129.17. Tax election; cap.

(a) Tax Election. -- The credit allowed in this Article is allowed against the franchise tax levied in Article 3 of this Chapter or the income taxes levied in Article 4 of this Chapter. The taxpayer must elect the tax against which the credit will be claimed when filing the return on which the first installment of the credit is claimed. This election is binding. Any carryforwards of the credit must be claimed against the same tax.

(b) Cap. -- The credit allowed in this Article may not exceed fifty percent (50%) of the tax against which it is claimed for the taxable year, reduced by the sum of all other credits allowed against that tax, except tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of credit, including carryforwards, claimed by the taxpayer under this Article against each tax for the taxable year. Any unused portion of the credit may be carried forward for the succeeding five years.

"§ 105-129.18. Substantiation.

To claim the credit allowed by this Article, the taxpayer must provide any information required by the Secretary of Revenue. Every taxpayer claiming a credit under this Article must maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the

amount of the credit to which the taxpayer is entitled. The burden of proving eligibility for the credit and the amount of the credit rests upon the taxpayer, and no credit may be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection.

"**§ 105-129.19. Reports.**

The Department of Revenue shall report to the Legislative Research Commission and to the Fiscal Research Division of the General Assembly by May 1 of each year the following information for the 12-month period ending the preceding April 1:

(1) The number of taxpayers that claimed the credit allowed in this Article.

(2) The cost of business property with respect to which credits were claimed.

(3) The total cost to the General Fund of the credits claimed."

PART IV. PHASE OUT SOFT DRINK TAX

Sec. 4.1. G.S. 105-113.45, as amended by Chapter 646 of the 1995 Session Laws, reads as rewritten:

"**§ 105-113.45. Excise taxes on soft drinks and base products.**

(a) Bottled Soft Drinks. -- An excise tax ~~of three-fourths cent (3/4¢)~~ at the applicable rate provided in the following table is levied on each bottled soft drink.

Date Tax Accrues	Rate
From 7/1/96 until 6/30/97	3/4¢
From 7/1/97 until 6/30/98	1/2¢
After 7/1/98	1/4¢

(b) Repealed by Session Laws 1991, c. 689, s. 276.

(c) Liquid Base Products. -- An excise tax at the ~~rate of seventy-five cents (75¢) a gallon~~ applicable per-gallon rate provided in the table below is levied on each individual container of a liquid base product. The tax applies regardless whether the liquid base product is diverted to and used for a purpose other than making a soft drink.

Date Tax Accrues	Rate
From 7/1/96 until 6/30/97	75¢
From 7/1/97 until 6/30/98	50¢
After 7/1/98	25¢

(d) Dry Base Products. -- An excise tax is levied on each individual container of a dry base product ~~at the rate:~~ at:

(1) ~~Of three-fourths cent (3/4¢) an ounce~~ The applicable per-ounce rate in the table below if the dry base product is not converted into a syrup or other liquid base product before it is used to make a soft drink.

Date Tax Accrues	Rate
From 7/1/96 until 6/30/97	3/4¢
From 7/1/97 until 6/30/98	1/2¢
After 7/1/98	1/4¢

(2) ~~That~~ The rate that would apply under subsection (c) to the resulting liquid base product if the dry base product is converted into a liquid base product before it is used to make a soft drink.

(e) Repealed by Session Laws 1991, c. 689, s. 276."

Sec. 4.2. Effective July 1, 1999, Article 2B of Chapter 105 of the General Statutes, as amended by this act, is repealed. The Secretary shall retain from collections under Article 2 of Chapter 105 of the General Statutes the cost of refunding the taxes levied in Article 2B of Chapter 105 of the General Statutes.

PART V. MODIFY BUNDLED TRANSACTION SALES TAX

Sec. 5.1. Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-164.12B. Bundled transactions.**

(a) Bundled Transaction Defined. -- A bundled transaction is a transaction in which all of the following conditions are met:

(1) A seller transfers an item of tangible personal property to a consumer on the condition that the consumer enter into an agreement to purchase services on an ongoing basis for a minimum period of at least six months.

(2) The agreement requires the consumer to pay a cancellation fee to the service provider if the consumer cancels the contract for services within the minimum period.

(3) For the item transferred, the seller:

a. Does not charge the consumer; or

b. Charges the consumer a price that, after any discount or rebate the seller gives the consumer, is below the cost price the seller paid for the item.

(b) Bundled Transaction Is a Sale; Sales Price. -- If a seller transfers an item of tangible personal property as part of a bundled transaction, a sale has occurred, and the sales price of the item is presumed to be the retail price at which the item would sell if no agreement for services were entered into. Part of this price may be paid by the consumer at the time of the transfer; the remainder of the price is considered paid as part of the price to be paid for the services contracted for. Sales tax is due on any part of the price paid by the consumer at the time of the transfer.

(c) No Additional Sales Tax if Services Taxed. -- If the services for which the consumer was required to contract are subject to services taxes at a combined rate equal to or greater than the combined State and local general rate of sales and use tax, then no additional sales tax is due on the transfer. However, if the consumer cancels the contract for services before the expiration of the minimum period, sales tax applies to the cancellation fee paid by the consumer.

(d) Additional Sales Tax if Services Not Taxed. -- If the services for which the consumer was required to contract are not subject to services taxes at a combined rate equal to or greater than the combined State and local general rate of sales and use tax, then sales tax is due at the time of the transfer on the remainder of the sales price not paid at that time.

(e) Services Taxes Defined. -- For the purpose of this section, the term 'services taxes' means any combination of State franchise tax on gross receipts, State sales tax, or local sales tax levied on the sale of or gross receipts from the services.

(f) Determination of Cost Price. -- For the purpose of this section, the cost price a seller paid for an item is presumed to be no greater than the price the seller paid for the same model within 12 months before the bundled transaction, as shown on the seller's invoices."

PART VI. REDUCE INHERITANCE AND GIFT TAXES

Sec. 6.1. G.S. 105-4(b) reads as rewritten:

"(b) An inheritance tax credit ~~in the amount specified in the following table~~ of thirty-three thousand one hundred fifty dollars ($33,150) is allowed against the tax imposed by this Article on the transfer of property to a Class A beneficiary.

~~For Decedents Dying on or After~~	~~Amount of Credit~~
~~August 1, 1985~~	~~$ 2,350~~
~~July 1, 1986~~	~~8,150~~
~~January 1, 1987~~	~~14,150~~

~~January 1, 1988~~ ~~20,150~~
~~January 1, 1989~~ ~~26,150~~

The credit may not exceed the amount of tax imposed by this Article.

This credit is allowed to Class A beneficiaries in the following order:

(1) Children who are less than 18 years old, and children who are at least 18 years old and who are single, are unable to support themselves because of mental or physical incapacity, and either are members of the decedent's household or, because of their mental or physical incapacity, live in an institution.

(2) Other Class A Beneficiaries. -- The status of a beneficiary is determined as of the date of the decedent's death. When two or more beneficiaries are equally entitled to the credit, the credit shall be allocated among those beneficiaries on a pro rata basis according to their tax liability. ~~The credit allowed by this section may not exceed the amount of tax imposed by this Article.~~"

Sec. 6.2. G.S. 105-3 is amended by adding a new subdivision to read:

"(11) Property transferred to a spouse when the transfer of the property is exempt from federal estate and gift taxes under section 2056(b)(7) of the Code because it is considered qualified terminable interest property."

Sec. 6.3. G.S. 105-188 is amended by adding a new subsection to read:

"(j) The tax does not apply to property transferred to a spouse when the transfer of the property is exempt from federal estate and gift taxes under section 2523(f) of the Code because it is considered qualified terminable interest property."

Sec. 6.4. G.S. 105-2(a) reads as rewritten:

"(a) A tax shall be and is hereby imposed upon the transfer of any property, real or personal, or of any interest therein or income therefrom, in trust or otherwise, to persons or corporations, in the following cases:

(1) When the transfer is from a person who dies seized of the property while a resident of the State and it is made:
   a. By will or by intestacy;
   b. Pursuant to a final judgment entered in a proceeding to caveat a will; or
   c. Pursuant to a settlement agreement, to which the personal representative is a party, that, in the determination of the Secretary of Revenue in his sole discretion based on evidence presented by the personal representative, reflects the good faith, arm's-length compromise of an actual dispute between beneficiaries, heirs, or personal representatives and does not have the primary purpose of avoiding inheritance tax.

(2) When the transfer is by will or intestate laws of this or any other state of real property or goods, wares, and merchandise within this State, or of any property, real, personal, or mixed, tangible or intangible, over which the State of North Carolina has a taxing jurisdiction, including State and municipal bonds, and the decedent was a resident of the State at the time of death; when the transfer is of real property or tangible personal property within the State, or intangible personal property that has acquired a situs in this State, and the decedent was a nonresident of the State at the time of death.

(3) When the transfer of property made by a resident, or nonresident, is of real property within this State, or of goods, wares and

merchandise within this State, or of any other property, real, personal, or mixed, tangible or intangible, over which the State of North Carolina has taxing jurisdiction, including State and municipal bonds, by deed, grant, bargain, sale, or gift made in contemplation of the death of the grantor, vendor, or donor, or intended to take effect in possession or enjoyment at or after such death, including a transfer under which the transferor has retained for his life or any period not ending before his death (i) the possession or enjoyment of, or the income from, the property or (ii) the right to designate the persons who shall possess or enjoy the property or the income therefrom. The aggregate value exceeding ten thousand dollars ($10,000) of transfers to any one donee within a tax year by deed, grant, bargain, sale, gift, or combination thereof, made within three years prior to the death of the grantor, vendor, or donor, without an adequate valuable consideration, shall be presumed, subject to rebuttal, to have been made in contemplation of death within the meaning of this section; the first ten thousand dollars ($10,000) in value shall be deemed not made in contemplation of death.

(4) When any person or corporation comes into possession or enjoyment, by a transfer from a resident, or from a nonresident decedent when such nonresident decedent's property consists of real property within this State or tangible personal property within the State, or intangible personal property that has acquired a situs in this State, of an estate in expectancy of any kind or character which is contingent or defeasible, transferred by any instrument taking effect after March 24, 1939.

(5) a. For purposes of this Article, the term 'general power of appointment' means a power which is exercisable in favor of the decedent, his estate, his creditors, or the creditors of his estate; except that:

1. A power to consume, invade or appropriate property for the benefit of the decedent which is limited by an ascertainable standard relating to the health, education, support or maintenance of the decedent shall not be deemed a general power of appointment.
2. A power of appointment which is exercisable by the decedent only in conjunction with another person:
   I. If the power is not exercisable by the decedent except in conjunction with the creator of the power, such power shall not be deemed a general power of appointment.
   II. If the power is not exercisable by the decedent except in conjunction with a person having a substantial interest in the property, subject to the power, which is adverse to exercise of the power in favor of the decedent, such power shall not be deemed a general power of appointment. For the purposes of this clause a person who, after the death of the decedent, may be possessed of a power of appointment (with respect to the property subject to the decedent's power) which he may exercise in

his own favor shall be deemed as having an interest in the property and such interest shall be deemed adverse to such exercise of the decedent's power.

III. If (after the application of clauses I and II) the power is a general power of appointment and is exercisable in favor of such other person, such power shall be deemed a general power of appointment only in respect of a fractional part of the property subject to such power, such part to be determined by dividing the value of such property by the number of such persons (including the decedent) in favor of whom such power is exercisable.

IV. For purposes of clauses II and III, a power shall be deemed to be exercisable in favor of a person if it is exercisable in favor of such person, his estate, his creditors, or the creditors of his estate.

b. Whenever any person shall have a general power of appointment with respect to any interest in property, such person shall, for the purposes of this Article, be deemed the owner of such interest and accordingly:

1. If in connection with any transfer of property taxable under this Article the transferor shall give to any person a general power of appointment with respect to any interest in such property, the transferor shall be deemed to have given such interest in such property to such person.

2. If any person holding a general power of appointment with respect to any interest in property shall exercise such power in favor of any other person or persons, either by will or by an appointment made in contemplation of the death of such person, or by an appointment intended to take effect in possession or enjoyment at or after such death, he shall be deemed to have made a transfer of such interest to such person or persons.

3. If any person holding a general power of appointment with respect to any interest in property shall relinquish such power by any action taken in contemplation of death or intended to take effect at or after his death, or shall die without fully exercising such power, he shall be deemed, to the extent of such relinquishment or nonexercise, to have made a transfer of such interest to the person or persons who shall benefit thereby.

(6) Neither the exercise nor the relinquishment of a special power of appointment (which shall mean any power other than a general power) with respect to an interest in property shall be deemed to constitute a transfer of such interest within the meaning of this Article. If in connection with any transfer taxable under this Article the transferor shall give to any person a special power of

appointment with respect to any interest in property, he shall be deemed, for the purpose of computing the tax applicable thereto, to have given such interest in equal shares to those persons, not more than two, among the possible appointees and takers in default of appointment whom the transferor's executor or administrator may designate as transferees in the inheritance tax return, except that:

a. If a gift tax return is filed with respect to such transfer, the persons designated therein shall also be designated in the inheritance tax return, and

b. The tax shall be computed according to the relationship of the donee of the power to the persons designated if the possible appointees and takers in default of appointment include any persons more closely related to the donee of the power than to the donor, and if such computation would produce a higher tax.

(7), (7a) Repealed by Session Laws, 1985, c. 656, s. 1.

(8) Where the proceeds of life insurance policies are payable as provided in G.S. 105-13.

(9) Whenever any person or corporation comes into possession or enjoyment of any real or personal property, including bonds of the United States and bonds of a state or subdivision or agency thereof, at or after the death of an individual and by reason of said individual's having entered into a contract or other arrangement with the United States, a state or any person or corporation to pay, transfer or deliver said real or personal property, including bonds of the United States and bonds of a state, to the person or corporation receiving the same, whether said person or corporation is named in the contract or other arrangement or not: Provided, that no tax shall be due or collected on that portion of the real or personal property received under the conditions outlined herein which the person or corporation receiving the same purchased or otherwise acquired by funds or property of the person or corporation receiving the same, or had acquired by a completed inter vivos gift.

Nothing in subdivision (9) shall apply to the proceeds of life insurance policies.

(10) Upon the death of a spouse who had a qualifying income interest for life in qualified terminable interest property whose previous transfer was exempt from inheritance or gift taxes under G.S. 105-3(11) or G.S. 105-188(j), the qualified terminable interest property that was previously exempt is considered to pass from the spouse to the person who is entitled to the property upon the termination of the spouse's qualifying income interest for life.

However, nothing in this Article shall be construed as imposing a tax upon any transfer of intangibles not having a commercial or business situs in this State, by a person, or by reason of the death of a person, who was not a resident of this State at the time of his death, and, if held or transferred in trust, such intangibles shall not be deemed to have a commercial or business situs in this State merely because the trustee is a resident or, if a corporation, is doing business in this State, unless the same be employed in or held or used in connection with some business carried on in whole or in part in this State."

Sec. 6.5. G.S. 105-9(8) reads as rewritten:

"(8) Costs of ~~administration, including~~ administration not claimed as a deduction on the federal income tax return filed under the Code by the fiduciary for the decedent's estate. Costs of administration include reasonable attorneys' fees."

Sec. 6.6. Article 1 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-23.1. Making installment payments of tax due when federal estate tax is payable in installments.**

A personal representative who elects under section 6166 of the Code to make installment payments of federal estate tax may elect to make installment payments of the tax imposed by this Article. An election under this section extends the time for payment of the tax due in accordance with the extension elected under section 6166 of the Code. Payments of tax are due under this section at the same time and in the same proportion to the total amount of tax due as payments of federal tax under section 6166 of the Code. Acceleration of payments under section 6166 of the Code accelerates the payments due under this section."

PART VII. NONITEMIZER CHARITABLE CONTRIBUTION TAX CREDIT

Sec. 7.1. Division II of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-151.26. Credit for charitable contributions by nonitemizers.**

A taxpayer who elects the standard deduction under section 63 of the Code for federal tax purposes is allowed as a credit against the tax imposed by this Division an amount equal to two and three-fourths percent (2.75%) of the taxpayer's excess charitable contributions. The taxpayer's excess charitable contributions are the amount by which the taxpayer's charitable contributions for the taxable year that would have been deductible under section 170 of the Code if the taxpayer had not elected the standard deduction exceed two percent (2%) of the taxpayer's adjusted gross income as calculated under the Code.

No credit shall be allowed under this section for amounts deducted from gross income in calculating taxable income under the Code or for contributions for which a credit was claimed under G.S. 105-151.12 or G.S. 105-151.14. A nonresident or part-year resident who claims the credit allowed by this section shall reduce the amount of the credit by multiplying it by the fraction calculated under G.S. 105-134.5(b) or (c), as appropriate. The credit allowed under this section may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowed, except payments of tax made by or on behalf of the taxpayer."

PART VIII. EXCLUDE CERTAIN SEVERANCE PAY FROM INCOME TAX

Sec. 8.1. G.S. 105-134.6(b) is amended by adding a new subdivision to read:

"(11) The amount paid to the taxpayer as severance wages as the result of the permanent closure of a manufacturing or processing plant, not to exceed a maximum of thirty-five thousand dollars ($35,000) for the taxable year."

Sec. 8.2. G.S. 105-134.1 is amended by adding a new subdivision to read:

"(15a) Manufacturing and processing. -- Defined in the Standard Industrial Classification Manual issued by the United States Bureau of the Census."

PART IX. REDUCE SALES TAX ON FARM AND INDUSTRY FUEL

Sec. 9.1. G.S. 105-164.4(a) is amended by adding a new subdivision to read:

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

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

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

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

Sec. 9.2. G.S. 105-164.4(a)(4a) reads as rewritten:

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

PART X. EFFECTIVE DATES

Sec. 10.1. This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal.

Sec. 10.2. This act becomes effective as follows:

(1) Reduce sales tax on food. -- Part I of this act becomes effective January 1, 1997, and applies to sales made on or after that date.

(2) Reduce corporate income tax. -- Section 2.1 of Part II of this act is effective for taxable years beginning on or after January 1, 1997. Section 2.2 of Part II of this act becomes effective October 1, 1997, and applies to remittances made on or after that date.

(3) Quality jobs and business expansion tax credits. -- Sections 3.5, 3.6, and 3.8 through 3.10 of Part III of this act become effective August 1, 1996. G.S. 105-129.11, as enacted by Part III of this act, becomes effective for taxable years beginning on or after January 1, 1997, and applies to training expenditures made on or after July 1, 1997. The remainder of Part III of this act is effective for taxable years beginning on or after January 1, 1996, and applies to jobs created on or after August 1, 1996, and property placed in service on or after August 1, 1996. Article 3A of Chapter 105 of the General Statutes is repealed effective for applications for credits filed under G.S. 105-129.6 on or after January 1, 2002. Article 3B of Chapter 105 of the General Statutes is repealed effective for business property placed in service on or after January 1, 2002.

(4) Phase out soft drink tax. -- Section 4.1 of Part IV of this act becomes effective July 1, 1997. Section 4.2 of Part IV of this act becomes effective July 1, 1999.

(5) Modify bundled transaction sales tax. -- Part V of this act becomes effective on the earliest date practicable. The "earliest date practicable" is considered to be the first day of the third month following the ratification of this act. The Part applies to sales made on or after the effective date.

(6) Reduce inheritance and gift taxes. -- Part VI of this act becomes effective January 1, 1997, and applies to the estates of decedents dying on or after that date and to gifts made on or after that date.

(7) Nonitemizer charitable contribution tax credit. -- Part VII of this act is effective for taxable years beginning on or after January 1, 1997.

(8) Exclude certain severance pay from income tax. -- Part VIII of this act is effective for taxable years beginning on or after January 1, 1996.

(9) Reduce sales tax on farm and industry fuel. -- Part IX of this act becomes effective August 1, 1996, and applies to sales made on or after that date.

(10) Remainder. -- The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of August, 1996.

DENNIS A. WICKER

Dennis A. Wicker
President of the Senate

HAROLD J. BRUBAKER

Harold J. Brubaker
Speaker of the House of Representatives

VISITOR REGISTRATION SHEET

HOUSE FINANCE COMMITTEE — May 11, 1999

Name of Committee — Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Durward Easterlow	NS
Becki Streit	PPAIB
Zeb ALCEY	ZIDA PA
Brenda Daughtry	Sprint
Catherine Davis	Electric Cities
Chris Heagerty	Electric Coops
Mark Kram	FAITS
Paul Gagnon	OSBM
Rocky Lane	Halifax Dev. Comm P.O. Box 96 Roanoke Rapids 27870
Lindsay Hilburn	Dept of Commerce
Lyda Queen	Commerce
Roy Dail	Jones County EDC
Marty Wiggins	NC State Political Sci. Dept.
Don Carrington	John Locke Foundation
V L McBride	NCAE
Jim Quinn	NCHSA FIN AGENCY
Katharyn Sawyer	Commerce
Sabra Faires	Revenue
Preston Howard	MCIC
Kevin Howell	Governor's office
Bob Price	Jordan Price Wall
William Potter	NCDS & NCDTA
Patti Seawell	NC DOR
Nancy Pomeranz	NC DOR
Andy Sabol	NC DOR
Jeanne Collins	NC DOR
Susan Perry Cole	Commerce

VISITOR REGISTRATION SHEET

HOUSE FINANCE COMMITTEE

Name of Committee

Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Pat Gilzlaclt	NCBIC
Chris Fitzsimon	Common Sense Foundation

AGENDA

SENATE FINANCE COMMITTEE MEETING
WEDNESDAY, MAY 12, 1999
1:00 PM – ROOM 544 LOB

CALL MEETING TO ORDER

INTRODUCTION OF PAGES

BILLS TO BE HEARD IN COMMITTEE:

- **HB 301-Auctioneer Education Requirements-Culpepper**
- **HB 105-Butner Community Governance-Crawford and Allen**
- **HB 221-Long Beach/Yaupon Beach-Redwine**
- **HB 239-Community College Property Transfer-Haire**
- **HB 486-Parade Trailers-Permanent Plates-Moore**
- **HB 776-Roanoke Rapid Overgrown Lots-Crawford**
- **SB 1082-Funds for Agricultural Research-Albertson**

SB 799-Physical Therapy Fees-Kerr

ADJOURNMENT OF MEETING

SENATE FINANCE COMMITTEE

WEDNESDAY, MAY 12, 1999

1:00 PM – ROOM 544

The Senate Finance Committee met on Wednesday, May 12, 1999, at 1:00 PM in Room 544 with Senator Hoyle presiding. There were 23 committee members present. Benny Davenport from Clayton, North Carolina, sponsored by Senator Wellons was introduced as the page for the meeting. Senator Hoyle also introduced former Senator Jim Edwards.

HB 239 – Community College Property Transfer

Representative Haire was recognized to explain this bill and at the conclusion of his explanation, Senator Albertson moved for a "Favorable Report", motion passed. Copy of Bill and supporting documents included in the minutes.

HB 105 – Butner Community Governance

Representative Jim Crawford was recognized to explain this bill and at the conclusion of his explanation, Senator Wellons moved for a "Favorable Report", motion passed. Copy of Bill and supporting documents included in the minutes.

HB 776 – Roanoke Rapid Overgrown Lots

Representative Jim Crawford was recognized to explain this bill and at the conclusion of his explanation, Senator Webster moved for a "Favorable Report", motion passed. Copy of Bill and supporting documents included in the minutes.

HB 221 – Long Beach/Yaupon Beach

Senator Soles was recognized to explain this bill in the absence of Representative Redwine and at the conclusion of his explanation, Senator Dannelly moved for a "Favorable Report", motion passed. Copy of Bill and supporting documents included in the minutes.

HB 486 – Parade Trailers-Permanent Plates

Senator Hartsell was recognized to explain this bill in the absence of Representative Moore. Senator Hartsell moved for adoption for the purpose of discussion of a committee substitute for this bill, motion passed. At the conclusion of Senator Hartsell's explanation, Senator Foxx moved for a "Favorable Report", motion passed. Copy of Bill and supporting documents included in the minutes.

HB 301 – Auctioneer Education Requirements

Representative Culpepper was recognized to explain this bill. Mr. Bill Forbes, Chairman of the N. C. Auctioneers Association, spoke in support of the bill. At the conclusion of Representative Culpepper's explanation, Senator Lee moved for a "Favorable Report", motion passed. Copy of Bill and supporting documents included in the minutes.

SB 1082 – Funds for Agricultural Research

Senator Albertson was recognized to explain this bill and at the conclusion of his explanation, Senator Soles moved for a "Favorable Report", motion passed. Copy of Bill and supporting documents included in the minutes.

Meeting adjourned.

David W. Hoyle, Co-Chair

John H. Kerr, III Co-Chair

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

Visitors' Sign Up Sheet is Attachment #1
Committee Report dated May 12, 1999 is Attachment #2
Committee Report dated May 13, 1999 is Attachment #3

NOTE: SB 799 – Physical Therapy Fees was not heard at this Meeting.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 239
Committee Substitute Favorable 4/1/99

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

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 3. The following laws are repealed:

(1) Chapter 613 of the 1993 Session Laws

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

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

(4) Chapter 706 of the 1995 Session Laws

(5) Chapter 42 of the 1997 Session Laws.

Section 4. Section 3 of this act becomes effective January 1, 2000, and shall not be construed to alter any agreements entered into before that date. The

remainder of this act is effective when it becomes law and applies to agreements entered into on or after that date.

HOUSE BILL 239:
Community College Transfers/AB

BILL ANALYSIS

Committee:	Senate Finance Committee	**Introduced by:**	Representative Haire
Date:	May 10, 1999	**Summary by:**	Cindy Avrette and Martha K. Walston, Staff Attorneys
Version:	2nd Edition		

SUMMARY: ***House Bill 239 makes several changes to the law in order to facilitate installment financings entered into by counties to make improvements to community college property. Gaston, Greene, Halifax, Harnett, Montgomery, Nash, Sampson, and Wilson Counties currently have this authority through local acts passed by the General Assembly since 1993. Seventy-five counties also have similar authority for public school construction and renovation. The bill received a favorable report from the Ways and Means Committee on April 1, 1999, received a favorable report in House Finance on April 13, and passed the House on April 20.***

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

1. It authorizes counties to acquire real or personal property for use by a community college within the county when requested to do so by the board of trustees for the college and after a public hearing is held on the issue. Under general law, a county is authorized to acquire real or personal property only on behalf of the county or an agency of the county and a community college is not an agency of the county. (G.S. §160A-274)
2. It authorizes the community colleges' boards of trustees to contract with the county for the erection, improvement, renovation, or repair of buildings located on property owned by the county. Under general law, local boards of trustees of community colleges are required to hold title to all community college property that was donated to the college or acquired with tax revenue and therefore have no authority to make contracts concerning the construction or repair of buildings located on sites not owned by them. (G.S. §115D-14)
3. It authorizes the community college's board of trustees to transfer to the county property on which a community college building in need of renovation or repair is located for any price agreed to by the board of trustees and the county. Under general law, a board of trustees may not transfer property unless it is undesirable or unnecessary for the purposes of the community college. (G.S. §115D-15)

The effect of these changes is twofold:

- To allow certain installment financing to be used for community college construction or renovation.
- To allow a sales tax refund to counties on materials and supplies. Community colleges are not entitled to a refund of sales and use taxes paid.

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

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 239 Community College Property Transfer

SHORT TITLE: Community College Property Transfer

SPONSOR(S): Rep. Haire

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES	*** See Assumptions and Methodology ***				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Community Colleges, County Governments, and the Department of Revenue, Sales Tax Division.

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

BILL SUMMARY: Allows any county to acquire an interest in real or personal property for use by a community college and to construct, equip, expand, improve, renovate, repair or otherwise make available property for use by a community college. Once these activities are completed, the county must transfer the property back to the college. This authority is currently allowed in 8 counties under local legislation. The bill is effective when it becomes law.

ASSUMPTIONS AND METHODOLOGY: The practical effect is to allow the county to use installment purchase arrangements or certificates of participation to finance community college capital outlay. A secondary negative impact on State and local sales tax revenue will occur **if a county not having this authority under current law uses the financing.** The impact results from a refund of taxes paid on materials and supplies. Under current law a county is eligible for a refund but a community college is not eligible for a refund.

According to the Community College System, North Carolina Community Colleges and the Center for Applied Textile Technology paid $6.0 million in sales and use taxes in FY 1997-98. Assuming a 5% annual growth rate the projected community college sales tax liability for the

1999-00 fiscal year is $6.6 million (State portion would be $4.4 million and the local amount is $2.2 million).

These numbers represent a maximum potential, with the actual impact being much lower due to the fact that: (1) 8 counties already have such authority; (2) some counties may be receiving refunds through an interlocal agreement with a community college; (3) 1998 legislation gave all counties this authority for equipment purchases; and (4) the numbers above include materials and supplies (which would not be financed).

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: David Crotts and Linda Struyk Millsaps

APPROVED BY: Tom Covington

DATE:

Monday, May 10, 1999

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 3

HOUSE BILL 105
Committee Substitute Favorable 4/12/99
Third Edition Engrossed 4/13/99

Short Title: Butner Community Governance. (Public)

Sponsors:

Referred to:

February 18, 1999

A BILL TO BE ENTITLED

AN ACT TO CREATE THE BUTNER ADVISORY COUNCIL, AND TO ALLOW CERTAIN FEES TO BE PLACED IN A SPECIAL FUND FOR THE BUTNER PUBLIC SAFETY DIVISION.

The General Assembly of North Carolina enacts:

Section 1. The General Assembly finds that the Camp Butner reservation and the Community of Butner, as regulated by Article 6 of Chapter 122C of the General Statutes, is a unique State resource that is and should continue to be administered by the State of North Carolina through the Office of the Secretary of Health and Human Services. The General Assembly finds that there is a resident population in the Community of Butner that, because of the unique relationship between the State of North Carolina and cities and counties, as provided in G.S. 122C-410, does not have elected representation with respect to public services, such as police and fire protection, and the provision of water and sewers, that would normally be under the control of an elected city council or board of county commissioners. The General Assembly finds that the citizens of the Camp Butner reservation should be permitted to elect a representative body to act as the voice of the affected people of Butner in dealing with the State of North Carolina through the Department of Health and Human Services with regard to the provision of public services and planning for the future of the Camp Butner reservation.

Section 2. Part 1A of Article 6 of Chapter 122C of the General Statutes is repealed.

Section 3. Article 6 of Chapter 122C of the General Statutes is amended by adding a Part to read:

"Part 1B. Butner Advisory Council.

"**§ 122C-413. Butner Advisory Council; created.**

(a) There is created a Butner Advisory Council to consist of seven members, to be elected by the residents of the territorial jurisdiction established by G.S. 122C-408(a), at a nonpartisan election administered by the Granville County Board of Elections to be set after preclearance from the federal Department of Justice.

(b) Members of the Butner Advisory Council shall be elected at large, and the election shall be held in accordance with all applicable federal and State constitutional and statutory provisions, including the Voting Rights Act of 1965. For the purpose of elections under this Part, the jurisdiction shall be considered a city under Chapters 160A and 163 of the General Statutes. In accordance with North Carolina law, a candidate for the Butner Advisory Council must be a resident of the territorial jurisdiction established by G.S. 122C-408(a).

(c) The candidates for the Butner Advisory Council shall file their notices of candidacy with the Granville County Board of Elections. Absentee voting by qualified voters residing in the territorial jurisdiction shall be in accordance with G.S. 163-302.

(d) The seven candidates receiving the highest numbers of votes shall be elected for the following terms:

(1) If the election is held in an even-numbered year, the four candidates receiving the highest numbers of votes shall be elected for terms of four years, and the three candidates receiving the next highest numbers of votes shall be elected for terms of two years.

(2) If the election is held in an odd-numbered year, the four candidates receiving the highest numbers of votes shall be elected for terms of five years, and the three candidates receiving the next highest numbers of votes shall be elected for terms of three years.

Biennially thereafter, in each even-numbered year, the members whose terms expire shall be elected to four-year terms.

(e) The Chair of the Butner Advisory Council shall be elected from among its members, shall serve a one-year term, may be reelected, and shall serve at the pleasure of the council.

(f) The Butner Advisory Council shall comply with the applicable and relevant provisions of Parts 1, 2, and 3 of Article 5 of Chapter 160A of the General Statutes with respect to the filling of vacancies and the organization and procedures of the council as if it were a city.

"**§ 122C-413.1. Butner Advisory Council; powers.**

(a) The Butner Advisory Council may advise the Secretary of Health and Human Services, through resolutions adopted by the council, on the operations of the Camp Butner reservation and the concerns of the residents of the Camp Butner reservation in connection with the exercise of the powers granted to the Secretary pursuant to G.S. 122C-403. A resolution adopted pursuant to this subsection shall be delivered to

the Office of the Secretary of Health and Human Services who shall act on the resolution in accordance with G.S. 122C-403(8a).

(b) When a vacancy occurs in the position of Butner Town Manager, the Butner Advisory Council shall submit the names of three candidates for the position to the Secretary of Health and Human Services. The candidates shall meet the qualifications set by the State Personnel Commission for the position. The Butner Town Manager shall be selected by the Secretary of Health and Human Services pursuant to G.S. 122C-403(9a)."

Section 4. G.S. 122C-403 reads as rewritten:

"**§ 122C-403. Secretary's authority over Camp Butner reservation.**

The Secretary shall administer the Camp Butner reservation. In performing this duty, the Secretary has the powers listed below. In exercising these powers the Secretary has the same authority and is subject to the same restrictions that the governing body of a city would have and would be subject to if the reservation was a city, unless this section provides to the contrary. The Secretary may:

(1) Regulate airports on the reservation in accordance with the powers granted in Article 4 of Chapter 63 of the General Statutes.

(2) Take actions in accordance with the general police power granted in Article 8 of Chapter 160A of the General Statutes.

(3) Regulate the development of the reservation in accordance with the powers granted in Article 19, Parts 2, 3, ~~3A, 3B,~~ 3C, 5, 6, and 7, of Chapter 160A of the General Statutes. The Secretary may not, however, grant a special use permit, a conditional use permit, or a special exception under Part 3 of that Article. In addition, the Secretary is not required to notify landowners of zoning classification actions under G.S. 160A-384, and the protest petition requirements in G.S. 160A-385, and 160A-386 do not apply. The Secretary may ~~appoint~~ designate the Butner ~~Planning~~ Advisory Council to act like a Board of Adjustment to make recommendations to the Secretary concerning implementation of plans for the development of the reservation. When acting as a Board of Adjustment, the Butner ~~Planning~~ Advisory Council shall be subject to subsections (b), (c), (d), (f), and (g) of G.S. 160A-388.

(4) Establish one or more planning agencies in accordance with the power granted in G.S. 160A-361 or designate the Butner ~~Planning~~ Advisory Council as the planning agency for the reservation.

(5) Regulate streets, traffic, and parking on the reservation in accordance with the powers granted in Article 15 of Chapter 160A of the General Statutes.

(6) Control erosion and sedimentation on the reservation in accordance with the powers granted in G.S. 160A-458 and Article 4 of Chapter 113A of the General Statutes.

(7) Contract with and undertake agreements with units of local government in accordance with the powers granted in G.S. 160A-

413 and Article 20, Part 1, of Chapter 160A of the General Statutes.

(8) Regulate floodways on the reservation in accordance with the powers granted in G.S. 160A-458.1 and Article 21, Part 6, of Chapter 143 of the General Statutes.

(8a) Act on resolutions adopted by the council pursuant to G.S. 122C-413.1(a). If the Secretary approves the resolution, it shall be carried out by the Butner Town Manager. The Secretary shall have no more than 30 days during which to disapprove any recommendation of the council contained in the resolution. Any disapproval shall be in writing, stating the reasons for the disapproval, and shall be returned to the council. If the Secretary does not disapprove a recommendation of the council within the prescribed period, the recommendation shall be deemed approved by the Secretary and shall be carried out by the Butner Town Manager.

(9) Assign duties given by the statutes listed in the preceding subdivisions to a local official to the Butner Town Manager. ~~Manager who shall be hired upon the recommendation of the Butner Planning Council and shall be assigned to the Office of the Secretary of Health and Human Services. The Butner Planning Council shall submit the names of three candidates for the position of Butner Town Manager to the Secretary of Health and Human Services and the Secretary shall select one of the candidates. The candidates shall meet the qualifications set by the State Personnel Commission for the position. The Butner Town Manager shall serve at the pleasure of the Secretary. The Secretary shall, through the Butner Town Manager, provide all necessary administrative assistance to the council in carrying out its duties.~~

(9a) Select the Butner Town Manager from the candidates submitted by the council pursuant to G.S. 122C-413.1(b). The Butner Town Manager shall serve at the pleasure of the Secretary. The Secretary shall, through the Butner Town Manager, provide all necessary administrative assistance to the council in carrying out its duties.

(10) Adopt rules to carry out the purposes of this Article."

Section 5. G.S. 122C-405 reads as rewritten:

"**§ 122C-405. Procedure applicable to rules.**

Rules adopted by the Secretary under this Article shall be adopted in accordance with the procedures for adopting a city ordinance on the same subject, shall be subject to review in the manner provided for a city ordinance adopted on the same subject, and shall be enforceable in accordance with the procedures for enforcing a city ordinance on the same subject. Violation of a rule adopted under this Article is punishable as provided in G.S. 122C-406.

Rules adopted under this Article may apply to part or all of the Camp Butner reservation. If a public hearing is required before the adoption of a rule, the ~~Butner Planning Council~~ Butner Advisory Council shall conduct the hearing."

Section 6. Part 1 of Article 6 of Chapter 122C is amended by adding a new section to read:

"**§ 122C-411.2. Butner Public Safety Division fees.**

The proceeds from the tax levied pursuant to S.L. 83-830 on real and personal property located in the Butner Police and Fire Protection District and fees collected under contracts entered into pursuant to G.S. 122C-411 shall be placed in a special fund to be used by the Department of Crime Control and Public Safety to fund the Butner Public Safety Division."

Section 7. The Study Commission on the Transfer of Butner Public Safety, created by Section 20.5 of Chapter 324 of the 1995 Session Laws and as amended by Section 7 of Chapter 667 of the 1995 Session Laws, is continued through December 31, 2001. The funds appropriated for the operation of the Commission by that section, and remaining unexpended, shall not revert and shall remain available to the Commission to continue its work. The Commission shall provide legislative oversight to ensure compliance with the provisions of this act.

Section 8. Sections 1, 3, and 6 through 8 of this act are effective when they become law. Sections 2, 4, and 5 of this act become effective when a majority of the members of the Butner Advisory Council created pursuant to G.S. 122C-413 as enacted by this act have been elected and qualified.

HOUSE BILL 105:
Butner Community Governance

BILL ANALYSIS

Committee:	Senate Finance Committee	**Introduced by:**	Crawford; and Allen
Date:	May 10, 1999	**Summary by:**	Mary Shuping, Research Asst. Cindy Avrette and Martha K. Walston, Staff Attorneys
Version:	3rd Edition		

SUMMARY: House Bill 105 establishes the Butner Advisory Council as an elected body. The Council will advise the Secretary of Health and Human Services on the operations of the Camp Butner reservation and the concerns of its residents. House Bill 105 also provides that the public safety fees currently assessed will be placed in a special fund to be used by the Department of Crime Control and Public Safety to fund the Butner Public Safety Division.

CURRENT LAW: Butner is a community located in parts of Granville and Durham Counties. Several State institutions under the Department of Health and Human Services are located in Butner. The Camp Butner reservation, as it is commonly known, is administered primarily by the Secretary of Health and Human Services. The Secretary has many of the powers given to cities and towns in Chapter 160A of the General Statutes. To give the residents of Butner a voice in the decision making process, the General Assembly created the Butner Planning Council. The council consists of seven members: 3 appointed by the Secretary of Health and Human Services, and 4 appointed by the Granville County Board of Commissioners. The council advises the Secretary on the operations of Butner through the adoption of resolutions and recommends candidates to the Secretary for the position of Butner Town Manager. The council may only *advise* the Secretary.

The Secretary of Crime Control and Public Safety is authorized to employ special police officers for Butner and also directed to establish an emergency management agency for Butner under the NC Emergency Management Act. To help pay for these services, the General Assembly created the Butner Police and Fire Protection District in 1983 and imposed a tax of 20 cents per $100.00 valuation of all real and personal property in the district. Durham and Granville Counties collect the tax and remit the proceeds to the State Treasurer, who credits the revenue to the General Fund. In 1987, the General Assembly authorized the Department of Crime Control and Public Safety to contract with industries in the vicinity of Butner to provide fire protection services. The contracts must provide for a payment equal to 20 cents per $100.00 assessed valuation. Through the appropriations process, money is appropriated to the Department of Crime Control and Public Safety to fund the Butner Public Safety Division.

BILL ANALYSIS AND BACKGROUND: House Bill 105 reestablishes the Butner Advisory Council as an elected body, as opposed to an appointed body. The 1995 General Assembly provided for the election of council members (SL 95-667). The election was held on November 5, 1996. In February of 1997, the U.S. Department of Justice found that the method of at-large elections with staggered terms violated the Voting Rights Act of 1965. The Department's objections were primarily based on what it felt was a pattern of racially polarized voting in Granville County. In 1997, the General Assembly reinstated the council as an appointed body (SL 97-59). The members appointed to the council were the people

elected to serve on the council in 1996. This bill would reestablish the council as an elected body. Unlik the 1995 legislation, this legislation requires that the election may not be held until after the U Department of Justice has approved the contents of this bill.

House Bill 105 (3rd Edition) provides for the repeal of the appointed council when a majority of the elected members take office and makes other organizational and stylistic changes. Following is a section-by-section analysis of the proposed committee substitute:

Section 1 sets out the findings of the General Assembly.

Section 2 repeals the existing appointed Butner Planning Council.

Section 3 sets out a new Part entitled "Butner Advisory Council". This Part provides that the Butner Advisory Council is to be elected by the residents of the Butner territorial district. The election is to be nonpartisan and held on a date set by the Granville County Board of Elections after clearance from the federal Department of Justice. The council will continue to consist of 7 members. Section 3 also provides for the terms of the initial council members and the election of a chair by the council members. The council continues to be only advisory in nature.

In addition, Section 3 also sets out the powers and duties of the council. These powers and duties are substantially the same as the powers and duties of the current council and include, advising the Secretary of Health and Human Services by resolution on the operations of Butner, and submitting the names of candidates for the position of Butner Town Manager to the Secretary.

Section 4 makes conforming changes to G.S. 122C-403. This section also reorganizes existing law regarding the Secretary's duty to act on resolutions adopted by the council and the Secretary's authority t appoint the Butner Town Manager.

Section 5 makes conforming changes to G.S. 122C-405.

Section 6 adds new G.S. 122C-411.2, Butner Public Safety Division fees. This section directs that the tax revenue collected in the Butner Police and Fire Protection District, created by S.L 83-830, and the fees collected under contracts for fire protection between industries in the vicinity of Butner and the Department of Crime Control and Public Safety, will be credited to a special fund to be used by the Department of Crime Control and Public Safety to fund the Butner Public Safety Division.

Section 7 continues the Study Commission on the Transfer of Butner Public Safety until December 31, 2001. (The Study Commission is charged with examining the transfer of the responsibility for Butner Public Safety from the Department of Crime Control and Public Safety to other State or local entities; determining the most appropriate way to meets the needs of State institutions and residents that would be affected by a transfer; and, determining the most cost effective means of accomplishing a transfer.)

Section 8 sets out the effective dates. Sections dealing with the election of the council and the establishment of a special fund for the Butner Public Safety Division are effective when they become law. Sections repealing the existing council and making conforming changes are effective when a majority of the members of the council take office.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: H.B. 105 (2nd Edition)

SHORT TITLE: Butner Community Governance

SPONSOR(S): Representatives Jim Crawford and Gordon Allen

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
General Fund	**($600,000)**	**($600,000)**	**($600,000)**	**($600,000)**	**($600,000)**
Special Fund for Butner Public Safety Div.	**$600,000**	**$600,000**	**$600,000**	**$600,000**	**$600,000**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Butner Advisory Council, The Department of Crime Control and Public Safety.

EFFECTIVE DATE: Sections repealing the existing council and making conforming changes are effective when the elected council takes office. The remainder of the bill becomes effective when law.

BILL SUMMARY: The bill establishes the Butner Advisory Council as an elected body. The Council will advise the Secretary of Health and Human Services on the operations of the Camp Butner reservation and the concerns of its residents. House Bill 105 also provides that the public safety fees currently assessed will be placed in a special fund to be used by the Department of Crime Control and Public Safety to fund the Butner Public Safety Division.

ASSUMPTIONS AND METHODOLOGY: Section Six is the only portion of the bill that has a fiscal impact. This section effectively transfers money from the General Fund to a Special Fund within the Department of Crime Control and Public Safety.

In 1983, the General Assembly passed legislation that established the Butner Police and Fire Protection District. Within this District, the tax collectors of Durham and Granville Counties are required to collect a tax of twenty cents ($.20) per one hundred dollars ($100) of assessed value on all real and personal property. These funds are then transferred to the State Treasurer and

deposited in the General Fund to help offset the cost of providing police and fire protection for the jurisdiction.

The actual expenses for the Butner Public Safety Division in FY 1997-98 was $2,284,090. In that same year, Durham and Granville Counties remitted $600,000 to the General Fund, or approximately 26% of the costs associated with providing public safety services. Under this legislation, these funds would be earmarked in a special fund for the Butner Public Safety Division rather than the General Fund. The result would be that the net appropriation for Butner Public Safety would be reduced by $600,000 (or whatever receipts were collected), but these funds would not be included in General Fund availability. The bill does not change the overall net expenditures for Butner Public Safety, just the manner in which they are funded.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Linda Struyk Millsaps & Charles Perusse

APPROVED BY: Tom Covington

DATE: Monday, April 12, 1999

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 776

Short Title: Roanoke Rapids Overgrown Lots. (Local)

Sponsors: Representative Crawford.

Referred to: Local Government I.

March 31, 1999

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE CITY OF ROANOKE RAPIDS TO GIVE ANNUAL NOTICE TO CHRONIC VIOLATORS OF THE CITY'S OVERGROWN VEGETATION ORDINANCE.

The General Assembly of North Carolina enacts:

Section 1. A municipality may notify a chronic violator of the municipality's overgrown vegetation ordinance that, if the violator's property is found to be in violation of the ordinance, the municipality shall, without further notice in the calendar year in which notice is given, take action to remedy the violation and the expense of the action shall become a lien upon the property and shall be collected as unpaid taxes. The initial annual notice shall be served by registered or certified mail. A chronic violator is a person who owns property whereupon, in the previous calendar year, the municipality took remedial action at least three times under the overgrown vegetation ordinance.

Section 2. This act applies to the City of Roanoke Rapids only.

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

HOUSE BILL 776:
Roanoke Rapids Overgrown Lots

BILL ANALYSIS

Committee:	Senate Finance Committee	**Introduced by:**	Rep. Crawford
Date:	May 10, 1999	**Summary by:**	Martha K. Walston
Version:	1st Edition		Committee Counsel

SUMMARY: ***House Bill 776 is a local act that authorizes the City of Roanoke Rapids to give notice and place a lien on the property of chronic violators of the City's overgrown vegetation ordinance. The bill gives the City the authority to collect on the lien as they would on unpaid property taxes. The bill was given a favorable report in House Local Government I on April 20, and passed the House on April 22.***

BILL ANALYSIS: House Bill 776 authorizes Roanoke Rapids to notify a chronic violator of the city's overgrown vegetation ordinance that if his or her property violates the ordinance, then the city may remedy the violation without further notice in the calendar year in which the notice was given. The cost of the remedy will become a lien on the property and collected as unpaid taxes.

The initial annual notice must be served by registered or certified mail.

A chronic violator is defined as "a person who owns property whereupon, the previous calendar year, the municipality took remedial action at least three times under the overgrown vegetation ordinance.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 221*
Committee Substitute Favorable 3/18/99

Short Title: Long Beach/Yaupon Beach. (Local)

Sponsors:

Referred to:

March 3, 1999

A BILL TO BE ENTITLED

AN ACT TO REVISE AND CONSOLIDATE THE CHARTERS OF THE TOWN OF YAUPON BEACH AND THE TOWN OF LONG BEACH AND ESTABLISH A CHARTER FOR THE CONSOLIDATED TOWN OF OAK ISLAND.

The General Assembly of North Carolina enacts:

Section 1. The charters of the Town of Yaupon Beach and the Town of Long Beach are hereby revised and consolidated into the Charter for the Town of Oak Island to read as follows:

"ARTICLE I. INCORPORATION AND CORPORATE POWERS.

"Sec. 1.1. **Incorporation and General Powers.** The Town of Oak Island shall be a body politic and corporate under the name of the "Town of Oak Island", and shall be vested with all property and rights which now belong to the Towns of Yaupon Beach and Long Beach; shall have perpetual succession; may have a common seal and alter and renew the same at pleasure; may sue and be sued; may contract; may acquire and hold all such property, real and personal, as may be devised, bequeathed, sold or in any manner conveyed or dedicated to it, or otherwise acquired by it, and may from time to time hold or invest, sell, or dispose of the same; and shall have and may exercise in conformity with this Charter all municipal powers, functions, rights, privileges, and immunities of every name and nature.

"Sec. 1.2. **Exercise of Powers.** All powers, functions, rights, privileges, and immunities of the Town, its officers, agencies, or employees shall be carried into execution as provided by this Charter, or, if this Charter makes no provisions, as

provided by ordinance or resolution of the Town Council and as provided by the general laws of North Carolina pertaining to municipal corporations.

"Sec. 1.3. **Enumerated Power Not Exclusive.** The enumeration of particular powers by this Charter shall not be held or deemed to be exclusive but, in addition to the powers enumerated herein or implied hereby, or those appropriate to the exercise of such powers, the Town of Oak Island shall have and may exercise all applicable powers which are granted to municipal corporations by the general laws of North Carolina and all powers which are granted by this Charter.

"Sec. 1.4. **Referendum Not Required.** Notwithstanding any other provision of law, the consolidation of the Town of Yaupon Beach and the Town of Long Beach into the Town of Oak Island shall not require a referendum but shall be governed by the provisions of this act.

"ARTICLE II. CORPORATE BOUNDARIES.

"Sec. 2.1. **Existing Corporate Boundaries.** The corporate limits of the Town of Oak Island shall be the combined corporate limits of the Town of Yaupon Beach and the Town of Long Beach existing at the time of enactment of this Charter and the effective date of consolidation, as the same are now or hereafter may be constituted pursuant to law. An official map or description of the Town, showing the current Town boundaries, shall be maintained permanently in the office of the Town Clerk, and shall be available for public inspection. Immediately upon changes, alteration of the corporate limits pursuant to law, the appropriate changes to the official map or description of the Town shall be made.

"Sec. 2.2. **Pending Annexations.** Matters pertaining to the annexation of property instituted by the Town of Yaupon Beach under an ordinance adopted September 14, 1998, shall become the responsibility of the consolidated Town of Oak Island as if begun originally by the Town of Oak Island. Any annexation action instituted or pending by the Town of Yaupon Beach and Town of Long Beach prior to the effective date of consolidation into the Town of Oak Island shall be as if instituted by the Town of Oak Island and the prior actions are hereby ratified. This section shall not be construed as prohibiting any annexation proceedings occurring between the date of enactment of this act and the effective date of consolidation.

"Sec. 2.3. **Extension of Corporate Boundaries.** All extensions of the corporate boundaries shall be governed by the General Statutes.

"ARTICLE III. TRANSITIONAL PROVISIONS.

"Sec. 3.1. **Action Prior to Consolidation.** (a) The following actions by the governing bodies of the Town of Yaupon Beach and the Town of Long Beach under subsections (b) and (c) of this section are authorized prior to the effective date of consolidation.

(b) The Town of Yaupon Beach and the Town of Long Beach shall take whatever action is necessary to assure delivery of services as of the effective date of consolidation of the two Towns into the Town of Oak Island. This includes effecting any interim planning, work assignments, and coordination required to effect a consolidated workforce and support operation as of the effective date of consolidation.

(c) The Town of Yaupon Beach and the Town of Long Beach shall take necessary action to consolidate accounting and budgeting systems to effect the consolidation of the Towns by the effective date of consolidation. Notwithstanding other provisions of the Local Government Budget and Fiscal Control Act, the Towns may prepare a budget for the consolidated Town of Oak Island in a manner and schedule agreed to by both Towns. Adoption of a budget for the consolidated Town of Oak Island shall be approved by both governing bodies prior to the effective date of consolidation and shall be effective on the date of consolidation. Audits of existing Town accounts shall be performed as of the end of the last fiscal year and prior to consolidation.

"Sec. 3.2. **Effective Date of Consolidation; Status of Governing Bodies.** Subject to the conditions and provisions of this act, the Town of Yaupon Beach and the Town of Long Beach are consolidated into the Town of Oak Island effective at 12:01 a.m., on July 1, 1999. The governing body of the Town of Oak Island will be the Interim Town Council and subsequent Councils as prescribed in this act. The terms of office of the governing bodies of the Town of Yaupon Beach and the Town of Long Beach will cease as of 12:00 midnight on June 30, 1999.

"Sec. 3.3. **Operational Procedures Upon Consolidation.** Upon the date of consolidation of the Town of Yaupon Beach and the Town of Long Beach into the Town of Oak Island:

(1) All property, real and personal and mixed, including accounts receivable, belonging to the Town of Yaupon Beach and the Town of Long Beach shall vest in, belong to, and be the property of the Town of Oak Island. The governing body of the Town of Oak Island will take such actions and execute such documents as will carry into effect the provisions and the intent of this section;

(2) All judgments, liens, rights of liens, and causes of action of any nature in favor of the Town of Yaupon Beach and the Town of Long Beach shall vest in and remain and inure to the benefit of the Town of Oak Island;

(3) All taxes, assessments, water or sewer charges, and any other charges or fees, owing to the Town of Yaupon Beach and the Town of Long Beach shall be owed to and collected by the Town of Oak Island;

(4) All actions, suits, and proceedings pending against, or having been instituted by the Town of Yaupon Beach and the Town of Long Beach shall not be abated by the legislative act allowing consolidation, but all such actions, suits, and proceedings shall be continued and completed in the same manner as if consolidation had not occurred, and the Town of Oak Island shall be a party to all such actions, suits, and proceedings in the place and stead of the Town of Yaupon Beach and the Town of Long Beach and shall pay or cause to be paid any judgments rendered against the Town of Yaupon Beach and the Town of Long Beach, its governing board and officials acting in their official capacity, in such actions,

suits, or proceedings. No new process need be served in any such action, suit, or proceeding;

(5) All obligations of the Town of Yaupon Beach and the Town of Long Beach, including outstanding indebtedness, shall be assumed by the Town of Oak Island and all such obligations and outstanding indebtedness are hereby constituted obligations and indebtedness of the Town of Oak Island and the financial resources of the Town of Oak Island shall be deemed to be pledged for the punctual payment of all such obligations and indebtedness;

(6) All ordinances of the Town of Yaupon Beach and the Town of Long Beach shall continue in full force and effect within the area to which they apply until the effective date of consolidation as ordinances until modified by the Town of Oak Island governing body to be effective uniformly throughout the consolidated corporate limits and, where applicable, extraterritorial jurisdiction;

(7) All franchises heretofore granted by the Town of Yaupon Beach and the Town of Long Beach which are still in force shall continue as valid franchises of the Town of Oak Island for purposes granted within the area formerly comprising the Town of Yaupon Beach and the Town of Long Beach until modified by the Town of Oak Island governing body to be effective uniformly throughout the consolidated corporate limits of the Town of Oak Island;

(8) The Town of Oak Island shall assume responsibility for all current and future liabilities of the Town of Yaupon Beach and the Town of Long Beach for unemployment insurance benefit charges under G.S. 96-9(f)(1);

(9) Extraterritorial Jurisdiction (ETJ) areas of the Town of Yaupon Beach and the Town of Long Beach under Article 19 of Chapter 160A of the General Statutes in effect on the date of consolidation shall be extraterritorial areas of the Town of Oak Island;

(10) All property that had a tax situs in the Town of Yaupon Beach and the Town of Long Beach on January 1, 1999, shall be considered to have a tax situs in the Town of Oak Island for the appropriate fiscal year, and any property properly listed for taxation in the Town of Yaupon Beach and the Town of Long Beach is properly listed for the Town of Oak Island; and

(11) Prior local acts that apply to the Town of Yaupon Beach and the Town of Long Beach, that are not inconsistent with the provisions of this act, shall remain in force in the consolidated Town of Oak Island from and after the date of consolidation.

"ARTICLE IV. MAYOR AND TOWN COUNCIL.

"Sec. 4.1. **Interim Mayor and Council and Succession of Interim Council Members and Mayors.** (a) Upon enactment of this act and on the effective date of

consolidation, an interim Town Council shall serve until elections are held in accordance with provisions of this Charter. The following individuals are hereby named to serve as the Interim Council: Linda W. Franklin, Roy R. Johnson, Richard D. Marshall, William S. Smith, Martin John Wozniak, Kevin M. Bell (or the person appointed to succeed him on the Long Beach Town Council), Horace Collier, James H. Locke, H. Michael Oxford, Mary B. Snead, J.K. Somers; Joan P. Altman, Co-Mayor, and Dorothy Kelly, Co-Mayor. The succession of Mayor and Council Member positions shall occur in a rotation prescribed as follows:

Elected Officials July 1999 - November 1999

Town Area	Seat	Name	Term Expires
Long Beach	Co-Mayor	Altman(or successor)	2001
Yaupon Beach	Co-Mayor	Kelly(or successor)	2001
Yaupon Beach	Council Member	Smith(or successor)	2001
Yaupon Beach	Council Member	Wozniak(or successor)	2001
Long Beach	Council Member	Bell(or successor)	2001
Long Beach	Council Member	Somers(or successor)	2001
Long Beach	Council Member	Locke(or successor)	2001
Yaupon Beach	Council Member	Franklin(or successor)	1999
Yaupon Beach	Council Member	Marshall(or successor)	1999
Yaupon Beach	Council Member	Johnson(or successor)	1999
Long Beach	Council Member	Oxford(or successor)	1999
Long Beach	Council Member	Collier(or successor)	1999
Long Beach	Council Member	Snead(or successor)	1999

(b) November 1999 Election: Two Council Member seats will be elected, one from Yaupon Beach and one from Long Beach. This preserves equal representation. From November 1999 on, there will be eight Council Members. Mayor Altman will serve until November 2001.

Elected Officials November 1999 - November 2001

Town Area	Seat	Name	Term Expires
At Large	Mayor	Altman	2001
Yaupon Beach	Mayor Pro Tempore	Kelly	2001
Yaupon Beach	Council Member	Smith	2001
Yaupon Beach	Council Member	Wozniak	2001
Yaupon Beach	Council Member	Elected 1999	2003
Long Beach	Council Member	Bell(or successor)	2001
Long Beach	Council Member	Somers	2001
Long Beach	Council Member	Locke	2001
Long Beach	Council Member	Elected 1999	2003

(c) November 2001 Election: Two Council Members from Long Beach will be elected to four-year terms. Two Council Members from Yaupon Beach will be elected to four-year terms. One Council Member from Long Beach will be elected to a two-year term. One Council Member from Yaupon Beach will be elected to a two-year term. The Mayor will be elected at large for a two-year term. The Mayor Pro Tempore will be elected by Council Members at December 2001 Town Council meeting.

Elected Officials November 2001 - November 2003

Town Area	Seat	Name	Term Expires
At Large	Mayor	Elected 2001	2003
Yaupon Beach	Council Member	Elected 1999	2003
Yaupon Beach	Council Member	Elected 2001	2003
Yaupon Beach	Council Member	Elected 2001	2005
Yaupon Beach	Council Member	Elected 2001	2005
Long Beach	Council Member	Elected 1999	2003
Long Beach	Council Member	Elected 2001	2003
Long Beach	Council Member	Elected 2001	2005
Long Beach	Council Member	Elected 2001	2005

(d) November 2003 Election: Four Council Members elected at large to four-year terms. Mayor elected at large to two-year term.

Elected Officials November 2003 - November 2005

Town Area	Seat	Name	Term Expires
At Large	Mayor	Elected 2003	2005
Yaupon Beach	Council Member	Elected 2001	2005
Yaupon Beach	Council Member	Elected 2001	2005
Long Beach	Council Member	Elected 2001	2005
Long Beach	Council Member	Elected 2001	2005
At Large	Council Member	Elected 2003	2007
At Large	Council Member	Elected 2003	2007
At Large	Council Member	Elected 2003	2007
At Large	Council Member	Elected 2003	2007

(e) November 2005 Election: Four Council Members elected at large to four-year terms. Mayor elected at large to two-year term. Beginning in November 2005, all seats will be elected at large.

"Sec. 4.2. **Composition of Town Council.** The Town Council shall consist of eight members to be elected by the qualified voters of the Town at large in the manner provided by Article IV.

"Sec. 4.3. **Terms; Qualifications; Vacancies.** (a) The members of the Town Council shall serve for terms of four years, beginning the day and hour of the organizational meeting following their election, as established by ordinance with this Charter; provided, they shall serve until their successors are elected and qualify.

(b) No person shall be eligible to be a candidate or be elected as a member of the Town Council, or to serve in such capacity, unless he is a resident and a qualified voter of the Town.

(c) If any elected Town Council members shall refuse to qualify, or if there shall be any vacancy in the Town Council after election and qualification, the remaining members of the Council shall by majority vote appoint some qualified person to serve for the unexpired term. Any Town Council member so appointed shall have the same authority and powers as if regularly elected.

"Sec. 4.4. **Mayor and Mayor Pro Tempore.** Beginning with the regular municipal election following succession of the Interim Council as provided by this act, and every two years thereafter, there shall be elected a Mayor by the qualified voters of the Town voting at large. The Mayor shall serve for a term of two years. A vacancy in the office of Mayor shall be filled for the unexpired term by a person appointed by the Town Council. The Mayor shall take the oath of office before entry upon the duties of his office. Candidates for Mayor shall file a notice of candidacy as is required by candidates for Town Council.

The Mayor shall be the official head of the Town government, shall preside at all meetings of the Town Council, but shall have the right to vote when there are equal numbers of votes in the affirmative and in the negative. The Mayor shall exercise such powers and perform such duties as are or may be conferred upon him by the general laws of North Carolina, by this Charter, and by the ordinances of the Town. The Town Council shall choose one of its number to act as Mayor Pro Tempore, and he shall perform the duties of the Mayor in the Mayor's absence or disability. The Mayor Pro Tempore as such shall have no fixed term of office, but shall serve in such capacity at the pleasure of the remaining members of the Town Council.

"Sec. 4.4. **Compensation of Mayor and Town Council Members.** The Mayor and Town Council shall receive for their services such salary and compensation as the Town Council shall determine in accordance with the General Statutes.

"Sec. 4.5. **Organization of Town Council; Oaths of Office.** The Town Council shall meet and organize for the transaction of business at a time established by the General Statutes. Before entering upon their offices, each Town Council member shall take, subscribe, and have entered upon the minutes of the Town Council the following oath of office: "I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution and laws of North Carolina not inconsistent therewith, and that I will faithfully perform the duties of the office of Town Council member, on which I am about to enter, according to my best skill and ability; so help me, God."

"Sec. 4.6. **Meetings of Town Council.** (a) The Town Council shall fix suitable times for its regular meeting, which shall be as often as once monthly. Special

meetings may be held on the call of the Mayor or a majority of the Town Council members, and those not joining in the call shall be notified in writing. Any business may be transacted at a special meeting that might be transacted at a regular meeting.

(b) All meetings of the Town Council shall be open to the public. The Town Council shall not by closed session or otherwise formally consider or vote upon any question in private session.

"Sec. 4.7. **Quorum; Votes.** (a) A majority of the members elected to the Town Council shall constitute a quorum for the conduct of business, but a less number may adjourn from time to time and compel the attendance of absent members in such manner as may be prescribed by ordinance.

(b) The affirmative vote of a majority of the members of the Town Council shall be necessary to adopt any ordinance, or any resolution or motion having the effect of an ordinance. All other matters to be voted upon shall be decided by a majority vote of the members present and voting.

"Sec. 4.8. **Ordinances and Resolutions.** The adoption, amendment, repeal, pleading, or proving of ordinances shall be in accordance with the applicable provisions of the general laws of North Carolina not inconsistent with this Charter. The yeas and nays shall be taken upon all ordinances and resolutions and entered upon the minutes of the Town Council. The enacting clause of all ordinances shall be "Be it ordained by the Town Council of the Town of Oak Island." All ordinances and resolutions shall take effect upon adoption unless otherwise provided therein.

"ARTICLE V. ELECTION PROCEDURE.

"Sec. 5.1. **Regular Municipal Elections.** At the regular municipal election to be held following the succession of the Interim Council, and every two years thereafter, four members of the Town Council shall be elected to serve for four-year terms.

"Sec. 5.2. **Voting.** Election of the Mayor and Town Council member shall be by the nonpartisan plurality election method prescribed by G.S. 163-192, and shall be conducted as provided by General Statutes.

"Sec. 5.3. **Regulation of Elections.** All municipal elections shall be conducted in accordance with the general laws of North Carolina relating to municipal elections, except as otherwise herein provided.

"ARTICLE VI. TOWN MANAGER.

"Sec. 6.1. **Appointment; Compensation.** The Town Council shall appoint an officer whose title shall be Town Manager and who shall be the chief executive officer of the Town and the head of the administrative branch of the Town government. The Town Manager shall be chosen by the Town Council solely on the basis of his executive and administrative qualifications with special reference to his actual experience in, or knowledge of, accepted practice in respect to the duties of his office as hereinafter prescribed. At the time of his appointment he need not be a resident of the Town, but shall reside therein during his tenure of office. No person elected as a member of the Town Council shall be eligible for appointment as Town Manager until one year shall have elapsed following the expiration of the term for which he was elected. The Town Manager shall serve at the pleasure of the Town Council and shall receive such salary as the Town Council shall fix. In case of the

absence or disability of the Manager, the Town Council may designate a qualified administrative officer of the Town to perform the duties of the Manager during such absence or disability.

"Sec. 6.2. **Chief Administrator**. The Manager shall be the chief administrator of the Town. The Manager shall be responsible to the Council for administering all municipal affairs placed in his charge by them, and shall have the following powers and duties:

(1) The Manager shall appoint and suspend or remove all city officers and employees not elected by the people and whose appointment or removal is not otherwise provided for by law, except the Town Attorney, in accordance with such general personnel rules, regulations, policies, or ordinances as the Council may adopt. Before appointing or removing officers or department heads he shall consult with Council, but retain the authority to take whatever personnel action he deems proper.

(2) The Manager shall direct and supervise the administration of all departments, offices, and agencies of the city, subject to the general direction and control of the Council, except as otherwise provided by law. No member of Council shall direct or request the appointment of any person to, or removal from, office by the Town Manager; nor give orders or directions to any subordinate of the Town Manager, either publicly or privately, without the permission of the Town Manager. On the other hand, members of Council shall be free to make work-related inquiries of any employee, to be available for discussion, and to bring to the attention of the Town Manager any facts of which he may not be aware which may require remedial action.

(3) The Manager shall attend all meetings of the Council and recommend any measures that he deems expedient.

(4) The Manager shall see that all laws of the State, the Town Charter, and the ordinances, resolutions and regulations of the Council are faithfully executed within the Town.

(5) The Manager shall prepare and submit the annual budget and capital program to the Council.

(6) The Manager shall annually submit to the Council and make available to the public a complete report on the finances and administrative activities of the Town as of the end of the fiscal year.

(7) The Manager shall make any other reports that the Council may require concerning the operations of the Town departments, offices, and agencies subject to his direction and control.

(8) The Manager shall perform any other duties that may be required or authorized by the Council.

"ARTICLE VII. TOWN ATTORNEY.

"Sec. 7.1. **Appointment; Qualification; Term; Compensation.** The Town Council shall appoint a Town Attorney who shall be an Attorney-at-law licensed to engage in the practice of law in North Carolina and who need not be a resident of the Town during his tenure. The Town Attorney shall serve at the pleasure of the Town Council and shall receive such compensation as the Town Council shall determine.

"Sec. 7.2. **Duties of Town Attorney.** It shall be the duty of the Town Attorney to prosecute and defend suits for and against the Town; to advise the Mayor, Town Council, Town Manager, and other Town officials with respect to the affairs of the Town; to draw all legal documents relating to the affairs of the Town; to draw proposed ordinances when requested to do so; to inspect and pass upon all agreements, contracts, franchises, and other instruments with which the Town may be concerned; to attend all meetings of the Town Council; and to perform such other duties as may be required of him by virtue of his position as Town Attorney.

"ARTICLE VIII. ADMINISTRATIVE OFFICERS AND EMPLOYEES.

"Sec. 8.1. **Town Clerk.** The Town Manager may appoint a Town Clerk to keep a journal of the proceedings of the Town Council and to maintain in a safe place all records and documents pertaining to the affairs of the Town, and to perform such other duties as may be required by law or as the Manager may direct.

"Sec. 8.2. **Town Tax Collector.** The Town Manager may appoint a Tax Collector to collect all taxes, licenses, fees, and other moneys belonging to the Town, subject to the provisions of this Charter and the ordinances of the Town, and he shall diligently comply with and enforce all the general laws of North Carolina relating to the collection, sale, and foreclosure of taxes by municipalities.

"Sec. 8.3. **Consolidation of Functions.** The Town Manager may, in his discretion, consolidate the offices of Town Clerk and Town Tax Collector, or may assign the functions of any one of these offices to the holder or holders of any other of these offices. The Town Manager may also, in his discretion, himself perform all or any part of the functions of any of the named offices, in lieu of appointing another person to perform the same.

"ARTICLE IX. FINANCE.

"Sec. 9.1. **Issuance of Bonds.** The Town may issue bonds for the purposes and in the manner prescribed by the General Statutes relating to the issuance of bonds by municipalities.

"Sec. 9.2. **Purchases and Contracts.** Purchases of apparatus, supplies, material, and equipment, and contracts for construction or repair work shall be made in accordance with the General Statutes relating thereto.

"ARTICLE X. TITLE TO PROPERTIES.

"Sec. 10.1. **Title to Properties Used for Certain Purposes.** In the absence of any contracts with the Town in relation to the lands used or occupied by it for the purposes of streets, sidewalks, alleys, or other public works of the Town signed by the owner thereof or his agent, it shall be conclusively presumed that said land has been granted to the Town by the owner or owners, and the Town shall have good right and title thereto and shall have, hold, and enjoy the same. Unless the owner or owners of said land, or those claiming under them, shall make claim or demand in

writing addressed to the Town Council within two years following the date when such land was taken, he or they shall be forever barred from recovering such land or having any compensation therefor; provided, nothing herein shall affect the rights of persons under disabilities until two years following removal thereof.

Section 2. Effective July 1, 1999, the Alcoholic Beverage Control Boards of the Town of Yaupon Beach and the Town of Long Beach will be consolidated into the Alcoholic Beverage Control Board of the Town of Oak Island. The Alcoholic Beverage Control Board of the Town of Oak Island shall be appointed by the Town Council of the Town of Oak Island and shall consist of three members. The Chair of the Alcoholic Beverage Control Board of the Town of Oak Island shall be appointed by the Oak Island Town Council. The assets and liabilities of the Alcoholic Beverage Control Boards of the Town of Yaupon Beach and the Town of Long Beach shall become the assets and liabilities of the Alcoholic Beverage Control Board of the Town of Oak Island as of July 1, 1999. The individual Alcoholic Beverage Control Boards of the Town of Yaupon Beach and the Town of Long Beach shall take whatever actions are necessary to effectuate the consolidation of the two Boards and Systems between the adoption of this act and July 1, 1999, so that consolidation will be accomplished on July 1, 1999.

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

HOUSE BILL 221:
Long Beach/Yaupon Beach

BILL ANALYSIS

Committee:	Senate Finance Committee	**Introduced by:**	Rep. Redwine
Date:	May 11, 1999	**Summary by:**	Ed Rossi and Martha K. Walston, Staff Attorneys
Version:	2nd Edition		

SUMMARY: ***House Bill 221 consolidates the charters of the towns of Yaupon Beach and Long Beach and creates the new consolidated Town of Oak Island. No referendum is required to effectuate this change. Under the provisions of the bill:***

- ***The new town acquires all the property, rights, obligations, and liabilities of the former towns.***
- ***A transitional government is created, with some members being appointed until 2001.***
- ***A council-manager form of government is adopted and council members serve staggered 4 year terms.***
- ***The Town Council will appoint the Town Manager and Town Attorney. The Town Manager may appoint a Town Clerk and a Town Tax Collector.***
- ***The Town is authorized to issue bonds and enter into purchases and contracts.***
- ***The consolidation is effective July 1, 1999, at which time the ABC boards are also consolidated.***

House Bill 221 (2nd Edition) was given a favorable report in House Finance and passed the House on March 25. The companion bill, Senate Bill 219,was introduced by Senator Soles and is in Senate Finance.

CURRENT LAW: State laws provide a mechanism for the consolidation of towns. Where two or more towns share a continuous boundary, they may, by concurrent resolution, create a commission to study a consolidation of services. This commission may draft a plan to create a single government unit, and if authorized by the concurrent resolutions, may place the matter before the voters by way of a referendum. Article V of the State Constitution also addresses referendums in the context of government debt. It requires that a majority of voters approve the contracting of debt that is secured by a pledge of a local government's full faith and credit.

BACKGROUND: Oak Island has three municipalities: Long Beach, Yaupon Beach, and Caswell Beach. The Town of Yaupon Beach has approximately 900 residents and a land area of 1 square mile. The Town of Long Beach has approximately 5,100 residents and a land area of 8 square miles. In October 1998, both towns began a process of open hearings to discuss the consolidation issue. That process culminated in March 1999, with the introduction of the bill. In preparation for the introduction of the bill, both towns retired their general obligation debt in order to avoid the cost of a referendum.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 3

HOUSE BILL 486
Committee Substitute Favorable 3/31/99
Third Edition Engrossed 4/5/99

Short Title: Parade Trailers -- Permanent Plates. (Public)

Sponsors:

Referred to:

March 18, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE PERMANENT REGISTRATION PLATES TO TRAILERS OWNED BY CHARITABLE ORGANIZATIONS AND USED ONLY IN PARADES AND TO CONSOLIDATE AND MODERNIZE THE STATUTES PROVIDING FOR PERMANENT REGISTRATION PLATES.

The General Assembly of North Carolina enacts:

Section 1. The caption of Part 6 of Article 3 of Chapter 20 of the General Statutes reads as rewritten:

"Part 6. Vehicles of Nonresidents of ~~State, etc.~~ State; Permanent Plates; Highway Patrol."

Section 2. G.S. 20-79 is amended by adding a new subsection to read:

"(c) The Division shall not collect a fee for a certificate of title for a motor vehicle entitled to a permanent registration plate under G.S. 20-84."

Section 3. G.S. 20-84 reads as rewritten:

"**§ 20-84. ~~Vehicles owned by State, municipalities or orphanages, etc.; certain vehicles operated by the local chapters of American National Red Cross.~~ Permanent registration plates; State Highway Patrol.**

(a) General. -- The Division may issue a permanent registration plate for a motor vehicle owned by one of the persons authorized to have a permanent registration plate in this section. To obtain a permanent registration plate, a person must provide proof of ownership, provide proof of financial responsibility as required by G.S. 20-

309, and pay a fee of six dollars ($6.00). A permanent plate issued under this section may be transferred as provided in G.S. 20-78 to a replacement vehicle of the same classification. A permanent registration plate issued under this section must be a distinctive color and bear the word "permanent". In addition, a permanent registration plate issued under subdivision (b)(1) of this section must have distinctive color and design that is readily distinguishable from all other permanent registration plates issued under this section.

(b) Permanent Registration Plates. -- The Division may issue permanent plates for the following motor vehicles:

(1) ~~The Division upon proper proof being filed with it that any motor vehicle for which registration is herein required is owned by the~~ A motor vehicle owned by the State or ~~any department thereof, or by any~~ one of its agencies.

(2) A motor vehicle owned by a county, ~~township,~~ city or ~~town, or by any~~ town.

(3) A motor vehicle owned by a board of ~~education, or by any~~ education.

(4) A motor vehicle owned by an ~~orphanage or civil~~ orphanage.

(5) A motor vehicle owned by the civil air ~~patrol, or incorporated~~ patrol.

(6) A motor vehicle owned by an incorporated emergency rescue ~~squad, or incorporated~~ squad.

(7) A motor vehicle owned by an incorporated REACT ("Radio Emergency Association of Citizen Teams") ~~Team, or for any~~ Team.

(8) A motor vehicle owned by a person and ~~involved~~ used exclusively in the support of a disaster relief ~~effort,~~ effort.

(9) A bus owned by a church and used exclusively for transporting individuals to Sunday school and church services.

(10) A motor vehicle owned by a rural fire department, agency, or association.

(11) A motor vehicle in the form of a mobile X-ray unit operated exclusively in this State for the purpose of diagnosis, treatment, and discovery of tuberculosis, and owned by the North Carolina Tuberculosis Association, Incorporated, or by a local chapter or association of the North Carolina Tuberculosis Association, Incorporated.

(12) A motor vehicle owned by a local chapter of the American National Red Cross and used for emergency or disaster work.

(13) A motor vehicle owned by a sheltered workshop recognized or approved by the Division of Vocational Rehabilitation Services.

(14) A motor vehicle owned by a nonprofit agency or organization that provides transportation for or operates programs subject to and

approved in accordance with standards adopted by the Commission for Mental Health and Human Services.

(15) A bus or trackless trolley owned by a city and operated under a franchise authorizing the use of city streets. This subdivision does not apply to a bus or trackless trolley operated under a franchise authorizing an intercity operation.

(16) A trailer owned by a nationally chartered charitable organization and used exclusively for parade floats and for transporting vehicles and structures used only in parades.

~~shall collect six dollars ($6.00) for the registration of such motor vehicles, but shall not collect any fee for application for certificate of title in the name of the State or any department thereof, or by any county, township, city or town, or by any board of education or orphanage: Provided, that the term "owned" shall be construed to mean that such motor vehicle is the actual property of the State or some department thereof or of the county, township, city or town, or of the board of education, and no motor vehicle which is the property of any officer or employee of any department named herein shall be construed as being "owned" by such department. Provided, that the above exemptions from registration fees shall also apply to any church-owned bus used exclusively for transporting children and parents to Sunday school and church services and for no other purpose.~~

~~In lieu of the annual six dollars ($6.00) registration provided for in this section, the Division may for the license year 1950 and thereafter provide for a permanent registration of the vehicles described in this section and issue permanent registration plates for such vehicles.~~

~~The permanent registration plates issued pursuant to this paragraph shall be of a distinctive color and shall bear thereon the word "permanent." Such plates may be transferred as provided in G.S. 20-78 to a replacement vehicle of the same classification. For the permanent registration and issuance of permanent registration plates provided for in this paragraph, the Division shall collect a fee of six dollars ($6.00) for each vehicle so registered and licensed.~~

~~The provisions of this section are hereby made applicable to vehicles owned by a rural fire department, agency or association.~~

~~The Division of Motor Vehicles shall issue to the North Carolina Tuberculosis Association, Incorporated, or any local chapter or association of said corporation, for a fee of six dollars ($6.00) for each plate a permanent registration plate which need not be thereafter renewed for each motor vehicle in the form of a mobile X-ray unit which is owned by said North Carolina Tuberculosis Association, Incorporated, or any local chapter or local association thereof and operated exclusively in this State for the purpose of diagnosis, treatment and discovery of tuberculosis. The initial six dollars ($6.00) fee required by this section and for this purpose shall be in full payment of the permanent registration plates issued for such vehicle operated as a mobile X-ray unit, and such plates need not thereafter be renewed, and such plates may be transferred as provided in G.S. 20-78 to replacement vehicles to be used for the purposes above described and for which the plates were originally issued.~~

~~The Division of Motor Vehicles shall issue to the American National Red Cross, upon application of any local chapter thereof and payment of a fee of six dollars ($6.00) for each plate, a permanent registration plate, which need not be thereafter renewed, for all disaster vans, bloodmobiles, handivans, and such sedans and station wagons as are used for emergency or disaster work, and operated by a local chapter in this State in the business of the American National Red Cross. Such plates may be transferred as provided in G.S. 20-78 to a replacement vehicle to be used for the purposes above described and for which the plates were originally issued. In the event of transfer of ownership to any other person, firm or corporation, or transfer or reassignment of any vehicle bearing such registration plate to any chapter or association of the American National Red Cross in any other state, territory or country, the registration plate assigned to such vehicle shall be surrendered to the Division of Motor Vehicles.~~

(c) State Highway Patrol. -- In lieu of all other registration requirements, the Commissioner shall each year assign to the State Highway Patrol, upon payment of six dollars ($6.00) per registration plate, a sufficient number of regular registration plates of the same letter prefix and in numerical sequence beginning with number 100 to meet the requirements of the State Highway Patrol for use on Division vehicles assigned to the State Highway Patrol. The commander of the Patrol shall, when such plates are assigned, issue to each member of the State Highway Patrol a registration plate for use upon the Division vehicle assigned to ~~him~~ the member pursuant to G.S. 20-190 and assign a registration plate to each Division service vehicle operated by the Patrol. An index of such assignments of registration plates shall be kept at each State Highway Patrol radio station and a copy ~~thereof~~ of it shall be furnished to the registration division of the Division. Information as to the individual assignments of ~~such~~ the registration plates shall be made available to the public upon request to the same extent and in the same manner as regular registration information. The commander, when necessary, may reassign registration plates provided that ~~such~~ the reassignment shall ~~be made to~~ appear upon the index required ~~herein~~ under this subsection within 20 days after ~~such~~ the reassignment.

~~The Division of Motor Vehicles shall, upon appropriate certification of financial responsibility, issue to sheltered workshops recognized or approved by the Division of Vocational Rehabilitation Services and to public and nonprofit agencies or organizations which provide transportation for or operate programs subject to and approved in accordance with standards adopted by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services of the Department of Health and Human Services upon application and payment of a fee of six dollars ($6.00) for each plate, a permanent registration plate for vehicles registered to and operated by such agencies. The initial six dollars ($6.00) fee required by this section and for this purpose shall be in full payment of the permanent registration plate issued for such vehicle operated by a sheltered workshop and such plates need not thereafter be renewed, and such plates may be transferred as provided in G.S. 20-78 to a replacement vehicle to be used by the sheltered workshop designated on the registration card.~~

~~On and after January 1, 1972, permanent registration plates used on all vehicles owned by the State of North Carolina or a department thereof shall be of a distinctive color and design which shall be readily distinguishable from all other permanent registration plates issued pursuant to this section or G.S. 20-84.1. For the purpose of carrying out the intent of this paragraph, all vehicles owned by the State of North Carolina or a department thereof in operation as of October 1, 1971, and bearing a permanent registration shall be reregistered during the months of October, November and December, 1971, and upon reregistration, registration plates issued for such vehicles shall be of a distinctive color and design as provided for hereinabove.~~"

Section 4. G.S. 20-84.1 is repealed.

Section 5. This act becomes effective July 1, 1999.

HOUSE BILL 486:
Parade Trailers -- Permanent Plates

BILL ANALYSIS

Committee:	Senate Finance Committee	**Introduced by:**	Rep. Moore
Date:	May 10, 1999	**Summary by:**	Cindy Avrette and Martha K. Walston, Staff Attorneys
Version:	Proposed Senate Committee Substitute		

SUMMARY: ***House Bill 486 would authorize the Division of Motor Vehicles to issue a permanent registration plate for trailers owned by a nationally chartered charitable organization and used only for parade floats and for transporting vehicles and structures used only in parades. The cost of the plate would be six dollars ($6.00). The bill consolidates and modernizes provisions in the permanent plate statute. The bill would become effective July 1, 1999. House Bill 486 was given a favorable report in House Finance on March 31, and passed the House on April 5. The proposed committee substitute corrects an erroneous cite in Section 2 of the bill.***

CURRENT LAW: The registration fee for a trailer is $10.00. The fee is payable on or before January 1 of each year. The Division may issue a multiyear plate and registration card for a trailer for a fee of $75.00. The multiyear plate may not be transferred to a replacement vehicle.

BILL ANALYSIS: House Bill 486 would authorize the Division of Motor Vehicles to issue a permanent registration plate to a nationally chartered charitable organization for a trailer the organization owns and uses only for parade floats and for transporting vehicles and structures used only in parades. The Shriners appear to be the major organization that would benefit from this legislation. The cost of the permanent registration plate would be $6.00. The permanent plates could be transferred to another trailer that is bought to replace the one for which the plate was originally issued, so long as the use of the trailer is restricted to parades.

The statute amended by the bill, G.S. 20-84, was originally written in 1937. It has been amended many times. Many of the paragraphs repeat the same general information, such as fee and transferability, for each entity entitled to a permanent plate. The bill rewrites the statute by listing the entites entitled to a permanent plate and by consolidating the general provisions into one subsection. It also changes the caption of Part 6 of Article 3 of Chapter 20 and of G.S. 20-84 to accurately reflect their contents.

Under G.S. 20-84, there is an ambiguous provision that appears to prohibit the Division from collecting the $35 certificate of registration fee for certain motor vehicles entited to a permanent registration plate. The Division interprets the provision to mean that any entity entitled to a permanent registration plate does not have to pay the $35 certificate of registration fee. Section 2 of the bill puts this provision in the appropriate statute concerning fees. The provision has been rewritten to conform the language with the Division's interpretation and practice.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: H 486 (First Edition)
SHORT TITLE: Parade Trailers – Permanent Plates
SPONSOR(S): Rep. Richard Moore

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES	**($152)**	**($380)**	**($380)**	**($380)**	**($380)**
EXPENDITURES					
POSITIONS:					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Division of Motor Vehicles (DMV)

EFFECTIVE DATE: Upon Enactment

BILL SUMMARY: DMV will make permanent registration plates available to nationally chartered charitable organizations, at a fee of $6.00, for all trailers that are used only for parade floats and for transporting vehicles and structures used only in parades.

ASSUMPTIONS AND METHODOLOGY: The Shriners appear to be the major organization that would be affected by this legislation and the three main Temples in North Carolina have a total of approximately 38 trailers that would qualify. For these trailers the annual fee of $10 would become a one time fee of $6. The loss in revenue would be $4 per trailer in the first year and $10 per trailer in subsequent years.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Robert Weiss

APPROVED BY: Tom Covington

DATE: Monday, March 22, 1999

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 486
Committee Substitute Favorable 3/31/99
Third Edition Engrossed 4/5/99
Proposed Senate Committee Substitute H486-PCS8128

Short Title: Parade Trailers -- Permanent Plates. (Public)

Sponsors:

Referred to:

March 18, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE PERMANENT REGISTRATION PLATES TO TRAILERS OWNED BY CHARITABLE ORGANIZATIONS AND USED ONLY IN PARADES AND TO CONSOLIDATE AND MODERNIZE THE STATUTES PROVIDING FOR PERMANENT REGISTRATION PLATES.

The General Assembly of North Carolina enacts:

Section 1. The caption of Part 6 of Article 3 of Chapter 20 of the General Statutes reads as rewritten:

"Part 6. Vehicles of Nonresidents of ~~State, etc.~~ State; Permanent Plates; Highway Patrol."

Section 2. G.S. 20-85 is amended by adding a new subsection to read:

"(c) The Division shall not collect a fee for a certificate of title for a motor vehicle entitled to a permanent registration plate under G.S. 20-84."

Section 3. G.S. 20-84 reads as rewritten:

"**§ 20-84. ~~Vehicles owned by State, municipalities or orphanages, etc.; certain vehicles operated by the local chapters of American National Red Cross.~~ Permanent registration plates; State Highway Patrol.**

(a) General. -- The Division may issue a permanent registration plate for a motor vehicle owned by one of the persons authorized to have a permanent registration plate in this section. To obtain a permanent registration plate, a person must provide

proof of ownership, provide proof of financial responsibility as required by G.S. 20-309, and pay a fee of six dollars ($6.00). A permanent plate issued under this section may be transferred as provided in G.S. 20-78 to a replacement vehicle of the same classification. A permanent registration plate issued under this section must be a distinctive color and bear the word "permanent". In addition, a permanent registration plate issued under subdivision (b)(1) of this section must have distinctive color and design that is readily distinguishable from all other permanent registration plates issued under this section.

(b) Permanent Registration Plates. -- The Division may issue permanent plates for the following motor vehicles:

(1) ~~The Division upon proper proof being filed with it that any motor vehicle for which registration is herein required is owned by the~~ A motor vehicle owned by the State or ~~any department thereof, or by any~~ one of its agencies.

(2) A motor vehicle owned by a county, ~~township,~~ city or ~~town, or by any~~ town.

(3) A motor vehicle owned by a board of ~~education, or by any~~ education.

(4) A motor vehicle owned by an ~~orphanage or civil~~ orphanage.

(5) A motor vehicle owned by the civil air ~~patrol, or incorporated~~ patrol.

(6) A motor vehicle owned by an incorporated emergency rescue ~~squad, or incorporated~~ squad.

(7) A motor vehicle owned by an incorporated REACT ("Radio Emergency Association of Citizen Teams") ~~Team, or for any~~ Team.

(8) A motor vehicle owned by a person and ~~involved~~ used exclusively in the support of a disaster relief ~~effort,~~ effort.

(9) A bus owned by a church and used exclusively for transporting individuals to Sunday school and church services.

(10) A motor vehicle owned by a rural fire department, agency, or association.

(11) A motor vehicle in the form of a mobile X-ray unit operated exclusively in this State for the purpose of diagnosis, treatment, and discovery of tuberculosis, and owned by the North Carolina Tuberculosis Association, Incorporated, or by a local chapter or association of the North Carolina Tuberculosis Association, Incorporated.

(12) A motor vehicle owned by a local chapter of the American National Red Cross and used for emergency or disaster work.

(13) A motor vehicle owned by a sheltered workshop recognized or approved by the Division of Vocational Rehabilitation Services.

(14) A motor vehicle owned by a nonprofit agency or organization that provides transportation for or operates programs subject to and

approved in accordance with standards adopted by the Commission for Mental Health and Human Services.

(15) A bus or trackless trolley owned by a city and operated under a franchise authorizing the use of city streets. This subdivision does not apply to a bus or trackless trolley operated under a franchise authorizing an intercity operation.

(16) A trailer owned by a nationally chartered charitable organization and used exclusively for parade floats and for transporting vehicles and structures used only in parades.

~~shall collect six dollars ($6.00) for the registration of such motor vehicles, but shall not collect any fee for application for certificate of title in the name of the State or any department thereof, or by any county, township, city or town, or by any board of education or orphanage: Provided, that the term "owned" shall be construed to mean that such motor vehicle is the actual property of the State or some department thereof or of the county, township, city or town, or of the board of education, and no motor vehicle which is the property of any officer or employee of any department named herein shall be construed as being "owned" by such department. Provided, that the above exemptions from registration fees shall also apply to any church owned bus used exclusively for transporting children and parents to Sunday school and church services and for no other purpose.~~

~~In lieu of the annual six dollars ($6.00) registration provided for in this section, the Division may for the license year 1950 and thereafter provide for a permanent registration of the vehicles described in this section and issue permanent registration plates for such vehicles.~~

~~The permanent registration plates issued pursuant to this paragraph shall be of a distinctive color and shall bear thereon the word "permanent." Such plates may be transferred as provided in G.S. 20-78 to a replacement vehicle of the same classification. For the permanent registration and issuance of permanent registration plates provided for in this paragraph, the Division shall collect a fee of six dollars ($6.00) for each vehicle so registered and licensed.~~

~~The provisions of this section are hereby made applicable to vehicles owned by a rural fire department, agency or association.~~

~~The Division of Motor Vehicles shall issue to the North Carolina Tuberculosis Association, Incorporated, or any local chapter or association of said corporation, for a fee of six dollars ($6.00) for each plate a permanent registration plate which need not be thereafter renewed for each motor vehicle in the form of a mobile X-ray unit which is owned by said North Carolina Tuberculosis Association, Incorporated, or any local chapter or local association thereof and operated exclusively in this State for the purpose of diagnosis, treatment and discovery of tuberculosis. The initial six dollars ($6.00) fee required by this section and for this purpose shall be in full payment of the permanent registration plates issued for such vehicle operated as a mobile X-ray unit, and such plates need not thereafter be renewed, and such plates may be transferred as provided in G.S. 20-78 to replacement vehicles to be used for the purposes above described and for which the plates were originally issued.~~

~~The Division of Motor Vehicles shall issue to the American National Red Cross, upon application of any local chapter thereof and payment of a fee of six dollars ($6.00) for each plate, a permanent registration plate, which need not be thereafter renewed, for all disaster vans, bloodmobiles, handivans, and such sedans and station wagons as are used for emergency or disaster work, and operated by a local chapter in this State in the business of the American National Red Cross. Such plates may be transferred as provided in G.S. 20-78 to a replacement vehicle to be used for the purposes above described and for which the plates were originally issued. In the event of transfer of ownership to any other person, firm or corporation, or transfer or reassignment of any vehicle bearing such registration plate to any chapter or association of the American National Red Cross in any other state, territory or country, the registration plate assigned to such vehicle shall be surrendered to the Division of Motor Vehicles.~~

(c) State Highway Patrol. -- In lieu of all other registration requirements, the Commissioner shall each year assign to the State Highway Patrol, upon payment of six dollars ($6.00) per registration plate, a sufficient number of regular registration plates of the same letter prefix and in numerical sequence beginning with number 100 to meet the requirements of the State Highway Patrol for use on Division vehicles assigned to the State Highway Patrol. The commander of the Patrol shall, when such plates are assigned, issue to each member of the State Highway Patrol a registration plate for use upon the Division vehicle assigned to ~~him~~ the member pursuant to G.S. 20-190 and assign a registration plate to each Division service vehicle operated by the Patrol. An index of such assignments of registration plates shall be kept at each State Highway Patrol radio station and a copy ~~thereof~~ of it shall be furnished to the registration division of the Division. Information as to the individual assignments of ~~such~~ the registration plates shall be made available to the public upon request to the same extent and in the same manner as regular registration information. The commander, when necessary, may reassign registration plates provided that ~~such~~ the reassignment shall ~~be made to~~ appear upon the index required ~~herein~~ under this subsection within 20 days after ~~such~~ the reassignment.

~~The Division of Motor Vehicles shall, upon appropriate certification of financial responsibility, issue to sheltered workshops recognized or approved by the Division of Vocational Rehabilitation Services and to public and nonprofit agencies or organizations which provide transportation for or operate programs subject to and approved in accordance with standards adopted by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services of the Department of Health and Human Services upon application and payment of a fee of six dollars ($6.00) for each plate, a permanent registration plate for vehicles registered to and operated by such agencies. The initial six dollars ($6.00) fee required by this section and for this purpose shall be in full payment of the permanent registration plate issued for such vehicle operated by a sheltered workshop and such plates need not thereafter be renewed, and such plates may be transferred as provided in G.S. 20-78 to a replacement vehicle to be used by the sheltered workshop designated on the registration card.~~

~~On and after January 1, 1972, permanent registration plates used on all vehicles owned by the State of North Carolina or a department thereof shall be of a distinctive color and design which shall be readily distinguishable from all other permanent registration plates issued pursuant to this section or G.S. 20-84.1. For the purpose of carrying out the intent of this paragraph, all vehicles owned by the State of North Carolina or a department thereof in operation as of October 1, 1971, and bearing a permanent registration shall be reregistered during the months of October, November and December, 1971, and upon reregistration, registration plates issued for such vehicles shall be of a distinctive color and design as provided for hereinabove.~~"

Section 4. G.S. 20-84.1 is repealed.

Section 5. This act becomes effective July 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 301
Committee Substitute Favorable 4/12/99

Short Title: Auctioneer Amendments. (Public)

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE EDUCATIONAL REQUIREMENTS FOR AUCTIONEERS, APPRENTICE AUCTIONEERS, AND PRINCIPALS IN AN AUCTION FIRM, TO ALLOW THE AUCTIONEERS COMMISSION TO ASSESS A CIVIL PENALTY IN CERTAIN CIRCUMSTANCES, TO INCREASE FEES, AND TO AUTHORIZE CRIMINAL HISTORY CHECKS FOR APPLICANTS FOR AN AUCTIONEER'S LICENSE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 85B-3 reads as rewritten:

"**§ 85B-3. Auctioneers Commission.**

(a) There shall be a five-member North Carolina Auctioneers Commission having the powers and responsibilities set out in this Chapter. The Governor shall appoint the members of the Commission, at least three of whom, and their successors, shall be from nominations submitted by the Auctioneers Association of North Carolina. The Auctioneers Association shall submit, within 45 days of when the vacancy occurs, at least three names for each position for which it is entitled to make a nomination. Of the initial five members of the Commission one shall be appointed for a one-year term, two shall be appointed for two-year terms and two for three-year terms; thereafter, each new member shall be appointed for a term of three years. Any vacancy shall be filled for the remainder of the unexpired term only. Each member shall continue in office until his successor is appointed and qualified. No member shall serve more than two complete consecutive terms.

(b) At least three members of the Commission shall be experienced auctioneers who are licensed under this Chapter. One member shall be a person who shall represent the public at large and shall not be licensed under this Chapter.

(c) The Commission shall employ an executive director and other employees as needed to carry out the duties of this Chapter. All employees shall serve at the pleasure of the Commission.

(d) Any action that may be taken by the Commission may be taken by vote of any three of its members.

(e) The members of the Commission shall elect from among themselves a chairman to serve a one-year term. No person shall serve more than two consecutive terms as chairman.

~~(f) The Commission shall receive and act upon applications for auctioneer licenses, issue and suspend and revoke licenses, adopt rules and regulations for auctioneers and auctions that are consistent with the provisions of this Chapter and the General Statutes, and issue declaratory rulings. The Commission may make and enforce reasonable rules and take other actions necessary to administer and enforce the provisions of this Chapter.~~

(g) Members of the Commission shall receive the compensation set for members of occupational licensing boards by G.S. 93B-5."

Section 2. Chapter 85B of the General Statutes is amended by adding a new section to read:

"**§ 85B-3.1. Auctioneers Commission; powers and duties.**

(a) The Commission shall have the following powers and duties:

(1) To receive and act upon applications for licenses.

(2) To issue licenses.

(3) To deny, suspend, and revoke licenses pursuant to G.S. 85B-8.

(3) To adopt rules for auctioneers and auctions that are consistent with the provisions of this Chapter and the General Statutes.

(4) To issue declaratory rulings.

(b) The Commission may assess a civil penalty not in excess of two thousand dollars ($2,000) for acts prohibited in G.S. 85B-8. All civil penalties collected by the Commission shall be remitted to the school fund of the county in which the violation occurred. Before imposing and assessing a civil penalty and fixing the amount thereof, the Commission shall, as a part of its deliberations, take into consideration the following factors:

(1) The nature, gravity, and persistence of the particular violation.

(2) The appropriateness of the imposition of a civil penalty when considered alone or in combination with other punishment.

(3) Whether the violation was willful.

(4) Any other factors that would tend to mitigate or aggravate the violations found to exist."

Section 3. Chapter 85B of the General Statutes is amended by adding a new section to read:

"**§ 85B-3.2. Criminal history record checks of applicants for licensure.**

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

(1) Applicant -- An applicant for initial licensure as an auctioneer.

(2) Criminal history -- A State or federal history of conviction of a crime, whether a misdemeanor or felony, that bears upon an applicant's fitness to be licensed as an auctioneer.

(b) The Commission shall ensure that the State criminal history of an applicant is checked. National criminal history checks are authorized for an applicant who has not resided in the State of North Carolina during the past five years. The Commission shall provide to the North Carolina Department of Justice the fingerprints of the applicant to be checked, a form signed by the applicant to be checked consenting to the check of the criminal history and to the use of fingerprints and other identifying information required by the State or National Repositories, and any additional information required by the Department of Justice.

(c) All releases of criminal history information to the Commission shall be subject to, and in compliance with, rules governing the dissemination of criminal history record checks as adopted by the North Carolina Division of Criminal Information. All of the information the Commission receives through the checking of the criminal history is for the exclusive use of the Commission and shall be kept confidential.

(d) If the applicant's verified criminal history record check reveals one or more convictions of a crime that is punishable as a felony offense, or the conviction of any crime involving fraud or moral turptitude, the Commission may deny the applicant's license. However, the conviction shall not automatically prohibit licensure, and the following factors shall be considered by the Commission in determining whether licensure shall be denied:

(1) The level and seriousness of the crime.

(2) The date of the crime.

(3) The age of the person at the time of the crime.

(4) The circumstances surrounding the commission of the crime, if known.

(5) The nexus between the criminal conduct of the applicant and the applicant's duties as an auctioneer.

(6) The prison, jail, probation, parole, rehabilitation, and employment records of the applicant since the date the crime was committed.

(7) The subsequent commission by the person of a crime.

(e) The Commission may deny licensure to an applicant who refuses to consent to a criminal history record check or use of fingerprints or other identifying information required by the State or National Repositories of Criminal Histories.

(f) The Commission shall notify the applicant of the applicant's right to review the criminal history information, the procedure for challenging the accuracy of the criminal history, and the applicant's right to contest the Commission's denial of licensure."

Section 4. G.S. 85B-4 reads as rewritten:

"**§ 85B-4. Licenses required.**

(a) No person who is not exempt under G.S. 85B-2, shall sell, or offer to sell, goods or real estate at auction in this State or perform any act for which an auction firm license is required unless the person holds a currently valid license issued under this Chapter.

(b) No person shall be licensed as an apprentice auctioneer, auctioneer, or receive an auction firm license if the person:

(1) Is under 18 years of ~~age;~~ age.

(1a) Is not a high school graduate or the equivalent. However, a person licensed under this Chapter prior to July 1, 1999, does not need to meet this requirement.

(2) Repealed by Session Laws 1983, c. 751, s. 6.

(3) Has within the preceding five years pleaded guilty to, entered a plea of nolo contendere or been convicted of any felony, or committed or been convicted of any act involving fraud or moral ~~turpitude;~~ turpitude.

(4) Has had an auctioneer or apprentice auctioneer or auction firm license ~~revoked; or~~ revoked.

(5) Has, within the preceding five years, committed any act ~~which~~ that constitutes grounds for license suspension or revocation under this Chapter or a Commission rule.

(c) Each applicant for an apprentice auctioneer license shall submit a written application in a form approved by the Commission and containing at least two statements by residents of the community in which the applicant resides attesting to the applicant's good moral character.

(c1) Each apprentice auctioneer application and license shall name a licensed auctioneer to serve as the supervisor of the apprentice. No apprentice auctioneer may enter into an agreement to conduct an auction, or conduct an auction, without the express approval of his supervisor. The supervisor shall review all contracts before approving them and shall regularly review the records his apprentice is required to maintain under G.S. 85B-7 to see that they are accurate and current, and shall perform such other supervisory duties as may be required by the Commission.

(d) No person shall be licensed as an auctioneer unless the person has held an apprentice auctioneer license and served as an apprentice auctioneer for the two preceding years, accumulated sufficient knowledge and experience in such areas of the auctioneer profession as the Commission may deem appropriate, and has taken an examination approved by the Commission and performed on it to the satisfaction of the Commission. The examination shall test the applicant's understanding of the law relating to auctioneers and auctions, ethical practices for auctioneers, the mathematics applicable to the auctioneer business, and such other matters relating to auctions as the Commission considers appropriate. The examination shall be given at least twice each year in Raleigh, and at other times and places the Commission designates, but no person shall be allowed to take the examination within six months after having failed it a second time.

~~Any person who has been in the auctioneer business in this State for at least two years prior to the effective date of this act [July 1, 1973], and who makes proper application to the Commission within one year after July 1, 1973, may be licensed as an auctioneer without holding an apprentice license and serving as an apprentice of two years, and without taking the examination required by this subsection.~~ Any person who has successfully completed the equivalent of at least 80 hours of classroom instruction in a course in auctioneering at an institution ~~approved by the Commission~~ whose curriculum and instructors meet the qualifications approved or established by the Commission may be licensed as an auctioneer without holding an apprentice license and serving as an apprentice for two years, but ~~must~~ shall take the examination required by this subsection and perform on it to the satisfaction of the Commission.

Each applicant for an auctioneer license shall submit a written application in a form approved by the ~~Commission.~~ Commission, pay all applicable fees, and consent in writing to a criminal history check as required by G.S. 85B-3.2. If the applicant has been previously licensed as an apprentice auctioneer, the application shall contain an evaluation by the applicant's supervisor of the applicant's performance as an apprentice auctioneer and the applicant's performance in specific areas as required by the Commission. If the applicant is exempted from apprenticeship after completion of the equivalent of at least 80 hours of classroom instruction in auctioneering, the application shall contain a transcript of the applicant's course work in auctioneering. Each application shall be accompanied by statements of at least two residents of the community in which the applicant resides attesting to the applicant's good moral character. The Commission may require verification of any information included in an application for an auctioneer license and may request other information or verification of information provided to determine whether the applicant possesses the good moral character or other qualifications for licensure.

(e) Each license issued under this Chapter shall be valid from July 1 of the year issued, or from the date issued, whichever is later, to the following June 30 unless sooner revoked or suspended pursuant to this Chapter or a rule of the Commission. A license may be renewed for one year at a time, except an apprentice auctioneer license may not be renewed for more than three times. No examination shall be required for renewal of an auctioneer license if the application for renewal is made within 24 months of the expiration of the previous license.

(e1) The Commission may require licensees to complete annually not more than six hours of Commission-approved continuing education courses prior to license renewal. The Commission may impose different continuing education requirements, including no such requirements, upon the classes of licensees under this Chapter. The Commission may waive any or all continuing education requirements in cases of hardship, disability, or illness, or under other circumstances as the Commission deems appropriate.

(f) No person shall be issued an auctioneer or apprentice auctioneer license until the person has made the contribution to the Fund as required by G.S. 85B-4.1.

(g) An auction firm must be licensed by the Board even though no owner or officer of the firm acts as an auctioneer. To be licensed an auction firm must make the contribution to the Fund as required by G.S. 85B-4.1 and must pay the proper fees as set out in G.S. 85B-6. Auction firms are covered by the provisions of G.S. 85B-8.

An auction firm license issued by the Commission is restricted to the persons named in the license and does not inure to the benefit of any other person. Where a license is issued to an auction firm, authority to transact business under the license is limited to the person or persons designated in the application and named in the license.

The designated person or persons, prior to being licensed, shall be required to take a written examination, approved by the Commission, and demonstrate to the satisfaction of the Commission a thorough understanding of the law relating to the conduct of the auction business and other matters the Commission deems appropriate. An individual who is licensed as an auctioneer and who is the designated person applying for an auction firm license is not required to take the auction firm examination. Licensed real estate brokers and real estate firms may be exempt from the auction firm examination provided they employ or associate themselves with a licensed auctioneer to handle those aspects of the transactions peculiar to the auctioneer profession. Any person or entity, on the effective date of this Chapter, duly licensed as an auction firm in good standing is not required to take any examination in order to maintain or to renew an auction firm license provided that the license does not otherwise expire or lapse and is not suspended or revoked by the Commission.

(h) The Commission shall publish at least once a year a list of names and addresses of all persons, sole proprietorships, partnerships and corporations holding valid apprentice auctioneer, auctioneer, or auction firm licenses.

(i) The Commission may investigate as it deems necessary the ethical background of any applicant for licensure under this Chapter."

Section 5. G.S. 85B-4.1 reads as rewritten:

"**§ 85B-4.1. Auctioneer Recovery Fund.**

(a) In addition to license fees, upon application for a license or renewal of a license, the Commission may charge the applicant or licensee up to fifty dollars ($50.00) per year to be included in the Fund.

(b) The Commission shall maintain at least ~~one~~ two hundred thousand dollars ~~($100,000)~~ ($200,000) in the Fund for use as provided in this Chapter. The Fund may be invested by the State Treasurer in interest bearing accounts, and any interest accrued shall be added to the Fund. Sufficient liquidity shall be maintained to insure that funds will be available to satisfy claims processed through the Board. The Fund may be disbursed by a warrant drawn against the State Treasurer or by other method at the discretion of the State Treasurer.

(c) The Commission, in its discretion, may use contents of the Fund in excess of ~~one~~ two hundred thousand dollars ~~($100,000)~~ ($200,000) for the following purposes:

(1) To promote education and research in the auctioneer profession, in order to benefit persons licensed under this Chapter and to improve the efficiency of the ~~profession;~~ profession.

(2) To underwrite educational seminars, training centers, and other forms of educational projects for the use and benefit of ~~licensees;~~ licensees.

(3) To sponsor, contract for, or underwrite education and research projects in order to advance the auctioneer profession in ~~North Carolina; and~~ North Carolina.

(4) To cooperate with associations of auctioneers, or other groups, in order to promote the enlightenment and advancement of the auctioneer profession in North Carolina."

Section 6. G.S. 85B-6(a) reads as rewritten:

"**§ 85B-6. Fees; local governments not to charge fees or require licenses.**

(a) The Commission shall collect and remit to the State Treasurer fees in an amount not to exceed the following:

Item	Maximum Fee	
Apprentice Auctioneers:		
Application for license	~~$50.00~~	$125.00
Issuance or renewal of license	~~50.00~~	125.00
Auctioneers:		
Application for license	~~50.00~~	125.00
Examination	~~25.00~~	75.00
Issuance or renewal of license	~~100.00~~	250.00
Auction Firms:		
Application for license	~~50.00~~	125.00
Examination	~~25.00~~	75.00
Issuance or renewal of license	~~100.00~~	250.00
Reinstatement of License	~~25.00.~~	75.00.

An application fee for a license and an examination fee are nonrefundable. The amount payable by a nonresident under G.S. 85B-5 to obtain a nonresident reciprocal auctioneer license is the greater of the amount set in the above table for an examination for and the issuance of an auctioneer's license and the amount the nonresident's state would charge a resident auctioneer of this State to obtain a comparable license from that state.

A reinstatement fee is payable when a person applies for renewal of a license after the license has lapsed for failure to renew it before it expired. The reinstatement of a lapsed license is not retroactive in effect and does not limit the authority of the courts or of the Commission to take disciplinary action against a person who engages in the auctioneer profession with a lapsed license."

Section 7. G.S. 85B-8 reads as rewritten:

"**§ 85B-8. Prohibited acts; assessment of civil penalty; denial, suspension, or revocation of license.**

(a) The following shall be grounds for the assessment of a civil penalty in accordance with G.S. 85B-3.1(b) or the denial, suspension, or revocation of an auctioneer, auctioneer apprentice, or auction firm license:

(1) Any violation of this Chapter or any violation of a rule or regulation duly adopted by the ~~Commission;~~ Commission.

(2) A continued and flagrant course of misrepresentation or making false promises, either by the licensee, an employee of the licensee, or by someone acting on behalf of and with the licensee's ~~consent;~~ consent.

(3) Any failure to account for or to pay over within a reasonable time, not to exceed 30 days, funds belonging to another which have come into the licensee's possession through an auction ~~sale;~~ sale.

(4) Any false, misleading, or untruthful ~~advertising;~~ advertising.

(5) Any act of conduct in connection with a sales transaction which demonstrates bad faith or ~~dishonesty;~~ dishonesty.

(6) Knowingly using false bidders, ~~cappers~~ cappers, or pullers, or knowingly making a material false statement or ~~representation;~~ representation.

(7) Commingling the funds or property of a client with the licensee's own or failing to maintain and deposit in a trust or escrow account in an insured bank or savings and loan association located in North Carolina funds received for another person through sale at ~~auction;~~ auction.

(8) Failure to make the required contribution to the ~~Fund;~~ Fund.

(9) The commission or conviction of a crime that is punishable as a felony offense under the laws of North Carolina or the laws of the jurisdiction where committed or convicted, or the commission of any act involving fraud or moral ~~turpitude;~~ turpitude.

(10) Failure to properly make any disclosures or to provide documents or information required by this Chapter or by the ~~Commission;~~ Commission.

(11) A demonstrated lack of financial responsibility.

(b) to (d) Repealed by Session Laws 1973, c. 1195, s. 5.

(e) The Commission may upon its own motion or upon the complaint in writing of any person, provided the complaint and any evidence presented with it establishes a prima facie case, hold a hearing and investigate the actions of any auctioneer, apprentice auctioneer, or auction firm, or any person who holds himself or herself out as an auctioneer or apprentice auctioneer, and shall have the power to impose a civil penalty on any licensee, suspend or revoke any license issued under the provisions of this Chapter, or to reprimand or censure any licensee. In all proceedings for the imposition of a civil penalty or the denial, suspension, or revocation of licenses, the provisions of Chapter 150B of the General Statutes including provisions relating to summary suspension shall be applicable. Any person who desires to appeal the denial of an application for any license authorized to be

issued under this Chapter shall file a written appeal with the Commission not later than 30 days following notice of denial.

(f) A person whose license has been denied, suspended, or revoked may not apply in that person's name or in any other manner within the period during which the order of denial, suspension, or revocation is in effect, and no firm, partnership, or corporation in which any person has a substantial interest or exercises management responsibility or control may be licensed during the period."

Section 8. G.S. 85B-9(a) reads as rewritten:

"(a) Any person, corporation or association of persons violating the provisions of G.S. 85B-4(a) shall be guilty of a Class 1 misdemeanor. The Attorney General of North Carolina, or the Attorney General's designee, shall have concurrent jurisdiction with the district attorneys of this State to prosecute violations of this Chapter."

Section 9. Article 4 of Chapter 114 of the General Statutes is amended by adding a new section to read:

"**§ 114-19.8. Criminal record checks of applicants for auctioneer license.**

The Department of Justice may provide to the North Carolina Auctioneers Commission from the State and National Repositories of Criminal Histories the criminal history of any applicant for an auctioneer's license under Chapter 85B of the General Statutes. Along with the request, the Commission shall provide to the Department of Justice the fingerprints of the applicant, a form signed by the applicant consenting to the criminal record check and the use of fingerprints and other identifying information required by the State or National Repositories, and any additional information required by the Department of Justice. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a check of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Commission shall keep all information obtained pursuant to this section confidential. The Department of Justice may charge a fee to offset the cost incurred by it to conduct a criminal record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information."

Section 10. Sections 3, 4, 6, and 9 of this act become effective July 1, 1999. Sections 1, 2, and 7 of this act become effective October 1, 1999. The remainder of this act is effective when it becomes law.

HOUSE BILL 301:
Auctioneer Amendments

BILL ANALYSIS

Committee:	Senate Finance Committee	**Introduced by:**	Rep. Culpepper
Date:	May 10, 1999	**Summary by:**	Mary Shuping, Research Assistant, and Martha K. Walston, Staff Attorney
Version:	2nd Edition		

SUMMARY: ***House Bill 301 will allow the Auctioneers Commission to assess a civil penalty for certain violations, allow the Commission to conduct criminal history checks on applicants for initial licensure as an auctioneer, and authorize the Commission to require continuing education. House Bill 301 also raises the amount of money that must be maintained in the Auctioneer Recovery Fund and increases the fees charged to applicants for licensure. The bill was given a favorable report in House Finance on April 12 and passed the House on April 14.***

CURRENT LAW: The Auctioneers Commission is made up of five members appointed by the Governor. At lease three of the members must be nominated by the Auctioneers Association of NC. Also, at least 3 must be experienced auctioneers, and one member must be from the public at large. The Commission has the authority to license apprentice auctioneers, auctioneers, and auctioneer firms. The Commission may also deny, suspend or revoke licenses for certain violations. The Commission administers the Auctioneers Recovery Fund for compensation to persons who have suffered a monetary loss as a direct result of the conversion of funds or property, or other fraudulent act or conduct by a licensed auctioneer, apprentice auctioneer, or auction firm. Finally, the Commission may also charge fees for licensure and an additional fee to be deposited in the Auctioneers Recovery Fund.

BILL ANALYSIS: House Bill 301 authorizes the Commission to charge a civil penalty for certain violations, conduct criminal history checks, require continuing education and raises the fees for applicants and the amount of money that must be maintained in the Auctioneers Recovery Fund. The 2nd version of the bill caps the civil penalty at $2,000 and directs that those penalties be deposited in the appropriate school fund, adds additional language requiring the criminal history checks, and makes stylistic and conforming changes to the statutes. Following is a section-by-section analysis of the bill:

Section 1 deletes the powers and duties of the Auctioneers Commission and recodifies those powers and duties in new G.S. 85B-3.1 (see Section 2).

Section 2 reorganizes the powers and duties of the Commission in a separate section and adds the power to assess a civil penalty. The civil penalty is capped at $2,000, and must be remitted to the school fund of the county in which the violation occurred. Section 2 also establishes guidelines the Commission must use in assessing civil penalties.

Section 3 establishes the criminal history checks in G.S. 85B-3.2. Criminal history checks will be conducted only on applicants for initial licensure as an auctioneer. This section will not apply to applicants for relicensure as an auctioneer, apprentice auctioneers, and auction firms. This section defines "criminal history" and directs the Commission to conduct State criminal history checks on applicants and requires national criminal history checks on applicants who have not resided in NC during the past 5 years.

This section directs the Commission to provide to the Department of Justice the fingerprints of the applicant, a form signed by the applicant consenting to the check and to the use of fingerprints and other identifying information as required by the State or National Repositories, and any additional information required by the Department of Justice. All information the Commission receives through the checks must be kept confidential.

Section 3 also provides that a conviction for a felony or a crime involving fraud or moral turptitude will not automatically prohibit licensure and gives guidelines that must be used by the Commission in determining whether a license will be denied. Licensure may, however, be denied to an applicant who refuses to consent to the criminal history check. The Commission must notify the applicant of the applicant's right to review the criminal history information, the procedure for challenging the accuracy of the criminal history, and the applicant's right to contest the Commission's denial of licensure.

Section 4 provides that no person shall be licensed as an auctioneer, apprentice auctioneer, or receive an auction firm license unless that person is a high school graduate or equivalent. However, this section also provides that anyone who was licensed prior to July 1, 1999 will not have to meet this requirement.

Section 4 also authorizes the Commission to require not more than 6 hours of continuing education. It also permits the Commission to impose different or no continuing education requirements on different classes of licensees. The Commission may waive continuing education requirements for hardship, disability, illness, or under other circumstances as the Commission deems appropriate.

Section 4 also clarifies that an applicant for initial licensure must comply with the criminal history checks in G.S. 85B-3.2.

Finally, Section 4 also makes stylistic changes and repeals obsolete law.

Section 5 increases the amount of money the Commission must maintain in the Auctioneers Recovery Fund from $100,000 to $200,000. Funds in excess of $200,000 may continue to be used to promote education about the profession, to underwrite educational projects for licensees and to advance the auctioneer profession, and to work with auctioneers' associations to promote the auctioneer profession in NC.

Section 6 increases the fees for auctioneers, apprentice auctioneers, and auction firms.

Type of Fee	Current	Proposed Fee
Apprentice Auctioneers		
Application for license	$50.00	$125.00
Issuance or renewal of license	$50.00	$125.00
Auctioneers		
Application for license	$50.00	$125.00
Examination	$25.00	$75.00
Issuance or renewal of license	$100.00	$250.00
Auction Firms		
Application for license	$50.00	$125.00
Examination	$25.00	$75.00
Issuance or renewal of license	$100.00	$250.00
Reinstatement of license	$25.00	$75.00

Section 7 provides that, in addition to the denial, suspension, or revocation of licenses, the Commission may also assess a civil penalty in accordance with G.S. 85B-3.1(b) for the prohibited acts enumerated in G.S. 85B-8.

Section 8 clarifies that the Attorney General's Office has concurrent jurisdiction with the district attorneys in the State to prosecute violations of this Chapter.

Section 9 adds conforming language to the Department of Justice statutes which permits the DOJ to release information from the criminal history checks to the Commission. The Department of Justice may charge a fee to offset the cost incurred by it to conduct a criminal history check. The fee may not exceed the actual cost of locating, editing, researching, and retrieving the information. The current cost for conducting a State criminal history check is $14.00. The current cost of conducting a national criminal history check is $24.00.

Section 10 makes the provisions regarding the criminal history checks, requirement for a high school diploma, continuing education requirements, and the increase in fees effective July 1. The civil penalty authority is effective October 1, 1999, and the remainder of the act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 301 (House Proposed Committee Substitute)

SHORT TITLE: Auctioneer Education Requirements

SPONSOR(S): Rep. Culpepper

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
Special Revenue Fund		see **ASSUMPTIONS AND METHODOLOGY**			
Auctioneer Recovery Fund		see **ASSUMPTIONS AND METHODOLOGY**			
County School Fund		$25,000 to $50,000 per year			
General Fund - Department of Justice	$266	$266	$266	$266	$266

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Auctioneer Licensing Board, North Carolina Auctioneers Commission

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

BILL SUMMARY: The act makes several changes in Chapter 85B of the General Statutes concerning auctioneers. Sections 1, 2 and 7 of the bill allow the North Carolina Auctioneers Commission to assess civil penalties up to $2,000 for violations detailed in G.S. 85B-8. Section three establishes the procedures for doing a state criminal record check. Section four requires auctioneer licensees to have a high school diploma or its equivalent. This section also gives the North Carolina Auctioneers Commission the power to require licensees to complete 6 hours of continuing education courses each year for license renewal. Section five requires a minimum balance of $200,000 in the Auctioneer Recovery Fund. Section six increases the maximum fee that the Board can charge for licenses and exams. Section eight authorizes the Attorney General to prosecute anyone acting as an auctioneer without a license. Section nine allows the Department of Justice to do federal criminal record checks for the North Carolina Auctioneers Commission.

ASSUMPTIONS AND METHODOLOGY:

FINES/PENALTIES

The North Carolina Auctioneer Licensing Board receives approximately 80 complaints a year from the public. The Board's interim Executive Director believes that as many as 50 cases a year will be subject to a civil penalty. The bill authorizes a penalty of up to $2,000, but the Executive Director believes the Board will follow the example of other states and charge between $500 and $1,000 per violation. Based on this estimate, between $25,000 and $50,000 each year will be deposited into the school fund of the county in which the violation occurred.

CRIMINAL RECORD CHECKS

This bill allows the Department of Justice to charge a reasonable fee for conducting state and national criminal-history record checks. Presently, the Federal Bureau of Investigation charges $24 for each criminal record check and the North Carolina State Bureau of Investigation charges $14. In 1998-99, the North Carolina Auctioneer Licensing Board had 131 applicants for licensure. The Board currently receives a criminal record check from the home county of the applicant. The Board's Executive Director estimates that the Board will ask for a state and national criminal record check for only 5% of applicants. In 1998-99, five percent of the caseload would have been seven record checks. The Board will pay the $266 in record check fees to the Department of Justice.

EDUCATION REQUIREMENTS

Section 4 of the bill requires that applicants for an auctioneer license be a high school graduate or have an equivalent degree. From July 1, 1997 to April 1, 1999, licenses were issued to 18 persons without a high school diploma. Since it is unknown whether this requirement will discourage application for licensing or encourage potential applicants to obtain their GEDs, no revenue estimate is available.

Another part of section 4 allows the N. C. Auctioneer Licensing Board to impose a continuing education requirement of up to 6 hours of courses on auctioneers seeking to renew their licenses. Although these courses are offered free to auctioneers twice a year at conventions of the Auctioneers Association of North Carolina, the Board's Executive Director feels the requirement could discourage part-time auctioneers from renewing their license and thus reduce revenue for the Board's Special Revenue Fund. An unofficial estimate by the Board's Executive Director projects the loss could be one fourth of current licensees. Since the language in HB 301 is permissive, this fiscal note assumes the Commission will not implement the continuing ed requirements within the next five years and thus no change in revenues.

AUCTIONEER RECOVERY FUND

Section 5 of the bill increases the minimum balance in the Auctioneer Recovery Fund from $100,000 to $200,000. The Fund is used to compensate persons who have suffered monetary losses from the fraudulent acts of auctioneers. In effect, this change puts into the statutes a practice that the Board has deemed prudent and sound fiscal policy for several years. In 1995, the fund balance in the Auctioneer Recovery Fund was $220,837. In 1996, the balance dipped to $188,977 primarily due to $30,521 in claims paid that year. The Board has the authority to assess all auctioneers a fee to insure the Fund has a sufficient balance and did so in FY 1998-99. With

the $141,400 in fees assessed in 1998-99, the balance in the Auctioneer Recovery Fund is now $294,343.

FEES

Section 6 of the bill increases the maximum fee the Board can charge for licenses and exams for deposit into the Board's Special Revenue Fund for its operating budget. The Board has not increased the statutory maximum license fee since 1973, but did add exam and application fees in 1993. The Board raised fees to their maximum amount on September 1, 1998. When the fee increase was discussed in 1997 and 1998, the Board's previous Executive Director said the fee increase would provide sufficient revenue for Board operations for the next five years. The Board has stated again in an April 7 fax to the Fiscal Research Division of the General Assembly that "it is not the Board's intention to raise fees in the near future". The chart below shows the fiscal impact of raising all fees to the maximum with the authority under HB 301.

	FY 1998-99	Current Fee	Current Revenue	HB 301 Maximum Fee	HB 301 Maximum Revenue
Apprentice Auctioneers					
Application for License	19	$50	$950	$125	$2,375
Issuance or Renewal of License	43	$50	$2,150	$125	$5,375
Auctioneers					
Application for License	131	$50	$6,550	$125	$16,375
Examination	125	$25	$3,125	$75	$9,375
Issuance or Renewal of License	2438	$100	$243,800	$250	$609,500
Auction Firms					
Application for License	27	$50	$1,350	$125	$3,375
Examination	5	$25	$125	$75	$375
Issuance or Renewal of License	347	$100	$34,700	$250	$86,750
Reinstatement of License	170	$25	$4,250	$75	$12,750
Total			$297,000		$746,250

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic

APPROVED BY: Tom Covington

DATE: Thursday, April 08, 1999

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1082*

Short Title: Funds for Agriculture Research. (Public)

Sponsors: Senators Albertson; and Metcalf.

Referred to: Finance.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FUNDS FOR AGRICULTURAL RESEARCH BY INCREASING THE ASSESSMENT ON FERTILIZER, COMMERCIAL FEED, OR THEIR INGREDIENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 106-568.2 reads as rewritten:

"**§ 106-568.2. Policy as to referendum and assessment.**

It is declared to be in the public interest and highly advantageous to the economic development of the State that farmers, producers, and growers of agricultural commodities using commercial feed and/or fertilizers or their ingredients be permitted by referendum held among themselves to levy upon themselves an assessment of ~~ten cents (10¢)~~ fifteen cents (15¢) per ton on mixed fertilizers, commercial feed, and their ingredients (except lime and land plaster) to provide funds through the Agricultural Foundation to supplement the established program of agricultural research and dissemination of research facts.

It is further declared to be in the public interest and highly advantageous to the economic development of the State that tobacco producers be permitted by referendum to levy upon themselves an assessment not to exceed ten cents (10¢) per hundred pounds of tobacco marketed to provide funds through the North Carolina Tobacco Research Commission for research and dissemination of research facts concerning tobacco."

Section 2. G.S. 106-568.8(a) reads as rewritten:

"(a) Fertilizer and feed assessments. In the event two-thirds or more of the eligible farmers and producers participating in said referendum vote in favor of such

assessment, then said assessment shall be collected for a period of six years under rules, regulations, and methods as provided for in this Article. The assessments shall be added to the wholesale purchase price of each ton of fertilizer, commercial feed, and/or their ingredients (except lime and land plaster) by the manufacturer of said fertilizer and feed. The assessment so collected shall be paid by the manufacturer into the hands of the North Carolina Commissioner of Agriculture on the same tonnage and at the same time and in the same manner as prescribed for the reporting of the inspection tax on commercial feeds and fertilizers as prescribed by G.S. 106-284.40 and 106-671. The Commissioner shall then remit ~~said ten cents (10¢) per ton~~ the assessment for the total tonnage as reported by all manufacturers of commercial feeds, fertilizers, and their ingredients to the treasurer of the North Carolina Agricultural Foundation, Inc., who shall disburse such funds for the purposes herein enumerated and not inconsistent with provisions contained in the charter and bylaws of the North Carolina Agricultural Foundation, Inc. Signed copies of the receipts for such remittances made by the Commissioner to the treasurer of the North Carolina Agricultural Foundation, Inc., shall be furnished the Commissioner of Agriculture, the North Carolina Farm Bureau Federation, and the North Carolina State Grange. The treasurer of the North Carolina Agricultural Foundation, Inc., shall make an annual report at each annual meeting of the Foundation directors of total receipts and disbursements for the year and shall file a copy of said report with the Commissioner of Agriculture and shall make available a copy of said report for publication.

It shall be the duty of the Commissioner of Agriculture to audit and check the remittances of ~~ten cents (10¢) per ton~~ the assessment by the manufacturer to the Commissioner in the same manner and at the same time as audits and checks are made of remittances of the inspection tax on commercial feeds and fertilizers.

Any commercial feed excluded from the payment of the inspection fee required by G.S. 106-284.40 shall nevertheless be subject to the assessment provided for by this Article and to quarterly tonnage reports to the Department of Agriculture and Consumer Services as provided for in G.S. 106-284.40(c)."

Section 3. This act is effective when it becomes law; however, the increased assessment of five cents (5¢) per ton under G.S. 106-568.2, as amended by Section 1 of this act, shall not be levied nor collected before January 1, 2001.

SENATE BILL 1082:
Funds for Agriculture Research

BILL ANALYSIS

Committee:	Senate Finance Committee	**Introduced by:**	Sen. Albertson
Date:	May 10, 1999	**Summary by:**	Cindy Avrette and Martha K. Walston, Staff Attorneys
Version:	1st Edition		

SUMMARY: ***Senate Bill 1082 would allow farmers to vote on whether to levy an assessment of fifteen cents (15¢) per ton on mixed fertilizers, commercial fee, and their ingredients. This assessment would be a five cent (5¢) increase over the current assessment amount. The proceeds of the assessment would be used by the Agricultural Foundation for agricultural research and dissemination of research facts. The bill becomes effective when it becomes law; however, the increased assessment of five cents (5¢) per ton could not be levied before January 1, 2001. House Bill 1009, introduced by Representative Hill, is identical to this bill and was given a favorable report in House Finance. House Bill 1009 has been calendared pursuant to Rule 36(b).***

CURRENT LAW AND BILL ANAYSIS: In 1951, the General Assembly gave North Carolina farmers the ability to levy upon themselves an assessment on mixed fertilizers, commercial feed, and their ingredients, except lime and land plaster. The purpose of the assessment is to provide funds for agricultural research and dissemination of research facts through the North Carolina Agricultural Foundation. For the assessment to be levied, two thirds or more of the farmers voting in the referendum must vote in favor of the levying and collection of the assessment. If two thirds of the farmers vote in favor of the assessment, the assessment is levied annually for the next six years. A new referendum may be called and conducted during the sixth year on the question of whether or not the assessment shall be continued for the next ensuing six years. The sixth year period ends this year. In the past, the assessment has been supported by a 90% vote in favor of the assessment. The current assessment amount is ten cents (10¢). **Senate Bill 1082 would increase the assessment amount five cents (5¢), from ten cents (10¢) to fifteen cents (15¢).** This amount has not been increased since 1981.

The governing boards of the North Carolina Farm Bureau Federation, the North Carolina State Grange, and the North Carolina Agricultural Foundation, Inc., arrange for and manage the referendum. They must publicly announce in each county the date, hours, and polling places in that county for voting in the referendum at least 60 days before the date the referendum will be held. They must also disclose the amount of the proposed assessment and the general purposes for which the funds collected will be used.

The manufacturer of the fertilizer and feed adds the assessment to the wholesale purchase price of each ton of fertilizer, commercial feed, and their ingredients. The manufacturer collects the assessment amount and remits it to the North Carolina Commissioner of Agriculture on the same tonnage and at the same time and in the same manner as prescribed for the reporting of the inspection tax on commercial feed. The inspection tax is due by the last day of January, April, July, and October of each year. The Commissioner then remits the assessment to the treasurer of the North Carolina Agricultural Foundation, Inc. If a farmer does not want to pay the assessment, the farmer may request a refund in writing from the North Carolina Agricultural Foundation. The refund must be requested within 30 days from the date the assessment is paid.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: S.B. 1082 Funds for Agricultural Research

SHORT TITLE: Funds for Agricultural Research

SPONSOR(S): Senator Albertson

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
General Fund		*** No General Fund Impact ***			
N.C. Agricultural Foundation		**$187,500**	**$375,000**	**$375,000**	**$375,000**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: N.C. Department of Agriculture, N.C. Agricultural Foundation, North Carolina State University.

EFFECTIVE DATE: The act is effective when it becomes law. The increased assessment shall not be levied nor collected before January 1, 2001.

BILL SUMMARY: Currently farmers, producers, and growers of agricultural commodities pay a $0.10 assessment on each ton of mixed fertilizers, commercial feed, and the ingredients for feed and fertilizer. This assessment is added to the wholesale purchase price. Lime and land plasters are exempt from the assessment. The assessment was levied after a required referendum vote of eligible farmers and producers. The levy must be renewed by referendum every six years. The proceeds of the assessment are collected by the Department of Agriculture and deposited in the North Carolina Agricultural Foundation. The bill increases the assessment on these items to $0.15 per ton.

ASSUMPTIONS AND METHODOLOGY: Funds from the assessment are deposited with the North Carolina Agricultural Foundation, Inc. The Agricultural Foundation is a non-profit, charitable and educational corporation as defined in Internal Revenue Service code 501(c) 3. The Agricultural Foundation was formed in 1944 "to aid and promote, by financial assistance and otherwise, all types of education and research in agriculture at or through the North Carolina State University at Raleigh." North Carolina State University administers the program.

According to documents from N.C. State University, total cash receipts for the Foundation were approximately $9.5 million in 1998. This was a significant increase from the $6.2 million experienced the previous year. Approximately $700,000 - $775,000 of this amount came from the $0.10 assessment on mixed fertilizers and commercial feed. This assessment is generally referred to in the agricultural community as "nickels for know how".

Officials at N.C. State University expect "nickels for know how" income to continue to hover at the $700,000 - $775,000 range for the next five years. Assuming the farmers approve the fifty-percent increase (from $0.10 to $0.15 per ton), the added revenue generated by the bill will be approximately $375,000.

Under current law farmers must vote on the "nickels for know now" funding every six years. The next referendum must be held in 1999. Generally voting is done in October or November. For the new rate, or any rate, to apply the measure must pass with a 2/3-majority vote. N.C. State reports that the referendum has always been endorsed by at least 90% of those voting. Therefore, Fiscal Research assumes, for the purposes of the note, that this measure will also be approved. The 2000-01 fiscal impact has been adjusted to account for the January 1 effective date.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Linda Struyk Millsaps

APPROVED BY: Tom Covington

DATE: Monday, May 10, 1999

(Attachment #1)

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 5-12-99

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Hal Miller	NCAECT
W. Potter	NCPTA
Ben F. Massey, Jr.	N.C. Board of PT Examiners
J Heaton Burke, Jr	" " " " "
Mark Deason	Capitol Group
Augustine Stasi	North Carolina Licensed Home Inspectors Association
Grace Howard	DOT / DMV
Keith L. Pierce	Pierce Auction Service + Real Estate, Inc - Winston-Salem, NC
Ernest J. Culee	American Auction Associates Charlotte NC
Bruce E. Marshburn	Auctioneer Licensing Board
Andy Ellen	NCRMA
Debbie Ramquist	NCDHHS

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 5-12-99

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Fran Preston	NCRMA
Kelli Ludwig	DOT
Ed Regan	N.C. A.C.C.
Glenn Gaithers	NCSU Ag Pgms
Paul Sloan	OSBM
Joyce Peters	LPDSOC
William B. Lilly	Iron Horse Auction Co P.O. Box 1267 Rockingham, N.C 28380
William R. Forbes, Jr	NC Auctioneers Commission PO Box 10 Auctioneers Association of NC Creswell, NC 27928
Jeff Gray	Legal Counsel, N.C. Auctioneers Licensing Board
Cam Coven	BPOMHL
Alice Garland	Electricities

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 5-12-99

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
PG	NCFB
Porter	B & A
John Cyrus	N.C. State Grange
Keith Oakley	NCSU
JAMES L. OBLINGER	NC STATE
Steve Woodson	NC Farm Bureau
Barry Russell	NCCCS
Phil Kirby	"
Martin Eder	Self-Help
Walter Price	CUTC Hanover
David McLeod	NCDA&CS

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 5-12-99

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Joel Wilson	Sen. Lee's Office

(Attachment #2)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Wednesday, May 12, 1999

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

FAVORABLE

H.B.(CS) **105** Butner Community Governance
Sequential Referral: none
Recommended Referral: none

H.B.(CS) **221** Long Beach/Yaupon Beach
Sequential Referral: none
Recommended Referral: none

H.B.(CS) **239** Community College Property Transfers/AB
Sequential Referral: none
Recommended Referral: none

H.B.(CS) **301** Auctioneer Amendments
Sequential Referral: none
Recommended Referral: none

H.B. **776** Roanoke Rapids Overgrown Lots
Sequential Referral: none
Recommended Referral: none

S.B. **1082** Funds for Agriculture Research
Sequential Referral: none
Recommended Referral: none

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **486** Parade Trailers--Permanent Plates
Draft Number: PCS8128
Sequential Referral: none
Recommended Referral: none
Long Title Amended: No

TOTAL REPORTED: 7

Committee Clerk Comment: none

(Attachment #3)

Penny Williams (Sen. Hoyle)

From: Penny Williams (Sen. Hoyle)
Sent: Thursday, May 13, 1999 10:17 AM
Anna Avery; Cindy Avrette; Dot Waugaman; Evelyn Hartsell; Janet Pruitt; Linda Millsaps; Martha Walston; Penny Williams; Richard Bostic
Subject: 5-13-99 Senate Finance Committee Report for 5-12-99 Meeting

5-12-99 Comm Report (me).doc

The report did not get reported in yesterday, so I am producing another report to be reported in today.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Thursday, May 13, 1999

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

FAVORABLE

H.B.(CS) **105** Butner Community Governance
Sequential Referral: none
Recommended Referral: none

H.B.(CS) **221** Long Beach/Yaupon Beach
Sequential Referral: none
Recommended Referral: none

H.B.(CS) **239** Community College Property Transfers/AB
Sequential Referral: none
Recommended Referral: none

H.B.(CS) **301** Auctioneer Amendments
Sequential Referral: none
Recommended Referral: none

H.B. **776** Roanoke Rapids Overgrown Lots
Sequential Referral: none
Recommended Referral: none

S.B. **1082** Funds for Agriculture Research
Sequential Referral: none
Recommended Referral: none

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1) **486** Parade Trailers--Permanent Plates
Draft Number: PCS8128
Sequential Referral: none
Recommended Referral: none
Long Title Amended: No

TOTAL REPORTED: 7

Committee Clerk Comment: none

AGENDA

TUESDAY, MAY 18, 1999

1:30 P.M. – ROOM 544

I CALL TO ORDER

II INTRODUCTION OF PAGES

III BILLS TO BE CONSIDERED

SB 222 – Government Accept Credit Cards – Sen. Reeves
SB 251 – Modify Historic Rehab Credit – Sen. Horton
SB 328 – DOT Map Transfer and Filing – Sen. Wellons
SB 791 – Ten Year Drivers License – Sen. Hoyle
SB 799 – Physical Therapy Fees – Sen. Kerr
SB 817 – Real Property Tax Penalty – Sen. Ballance
SB 941 – Manufactured Homes Law Changes – Sen. Warren
SB 1049 – Neuse River Buffer Amends – Sen. Albertson
SB 1157 – Social Worker Licensure – Sen. Kerr

HB 62 - EFT of Corporate Estimated Income Tax
HB 259 – Home Inspector Amendments – Rep. Jarrell
HB 648 – Benson Charter Revised – Rep. Daughtry

BILLS NOT HEARD ON TUESDAY WILL BE CARRIED OVER AND HEARD ON WEDNESDAY

SENATE FINANCE COMMITTEE

TUESDAY, MAY 18, 1999

1:30 P.M. - ROOM 544

The Senate Finance Committee met on Tuesday, May 18, 1999, at 1:30 P.M. in Room 544 with Senator Kerr presiding. The pages were introduced: Rebecca Garner from Wake Forest and Stephen Garner, from Wake Forest, both sponsored by Senator Carrington. There were 22 committee members present for the meeting.

HB 64 8 – Benson Charter Revised.

Senator Wellons was recognized to explain this Bill for Representative Daughtry, the Bill Sponsor. Senator Weinstein moved for a Favorable Report and the motion carried. Copy of Bill included in the minutes.

SB 328 – D.O.T. Map Transfer and Filing.

Senator Wellons explained his Bill and on motion by Senator Albertson, a Committee Substitute was adopted. Senator Wellons explained the changes and Charles Brown, D.O.T. was recognized. Mr. Brown spoke in support of this Bill and answered questions from the committee members. Senator Weinstein moved for a Favorable Report and the motion carried. Copy of original Bill, Committee Sub, Explanation and Fiscal Note included in the minutes.

SB 941 – Manufactured Homes Law Changes.

Senator Warren was recognized to explain his Bill. After a brief explanation by Senator Warren, Dascheil Propes, Chief Deputy Commissioner with the North Carolina Department of Insurance was called on to further explain and to answer questions regarding this Bill. After a lengthy discussion with many questions from the committee members, Senator Kerr announced this Bill would be held over and discussed further at another meeting. Copy of Bill, Explanation and Fiscal Note included in the minutes.

HB 62 – EFT of Corporate Estimated Income Tax.

Representative Gray was recognized to explain his Bill and Senator Hoyle moved for the adoption of a Committee Substitute. The motion carried. Representative Gray explained this Committee Sub. Sabra Faires, North Carolina Department of Revenue, was recognized and answered questions from the committee members regarding this Bill. On motion by Senator Clodfelter, the Committee Sub was given a Favorable Report by the committee. Copy of original Bill, Committee Sub, Explanation and Fiscal Note included in the minutes.

SB 817 – Real Property Tax Penalty.

Senator Ballance was recognized to explain his Bill. Martha Harris, Staff Attorney, also gave a further explanation. Senator Hoyle offered a technical Amendment and on his motion, the Amendment was adopted. Senator Webster moved for a Favorable Report as amended and the motion carried. Copy of original Bill, Committee Substitute, Explanation and Fiscal Note included in the minutes. No copy of Amendment available for the minutes.

SB 791 – Ten Year Drivers License.

Senator Hoyle explained his Bill and offered a technical Amendment which was adopted by the committee on his motion. After a lengthy discussion, Senator Hoyle requested that this Bill be held over for a later meeting. Copy of Bill, Explanation and Fiscal Note included in the minutes. Copy of Amendment not available.

Senator Kerr announced the following members to serve as a subcommittee to study SB 941: Senators Ballantine, Phillips, Cochrane, Weinstein, Dannelly, Metcalf and Hartsell. Senator Ballantine was asked to serve as Chairman and work with Mr. Propes from the Department of Insurance and Senator Warren, the Bill Sponsor.

Meeting adjourned.

David W. Hoyle, Co-Chair
Senate Finance Committee

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

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

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

SB 222, SB 251, SB 799, SB 1049, SB 1157 and HB 259 were not heard at this meeting.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 648*
Committee Substitute Favorable 4/12/99

Short Title: Benson Charter Revised. (Local)

Sponsors:

Referred to:

March 29, 1999

A BILL TO BE ENTITLED

AN ACT TO REVISE AND CONSOLIDATE THE CHARTER OF THE TOWN OF BENSON.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the Town of Benson is revised and consolidated to read as follows:

"THE CHARTER OF THE TOWN OF BENSON.

"ARTICLE I. INCORPORATION, CORPORATE POWERS, AND BOUNDARIES.

"Section 1.1. **Incorporation.** The Town of Benson, North Carolina, in Johnston County and the inhabitants thereof shall continue to be a municipal body politic and corporate, under the name of the 'Town of Benson', hereinafter at times referred to as the 'Town'.

"Section 1.2. **Powers.** The Town shall have and may exercise all of the powers, duties, rights, privileges, and immunities conferred upon the Town of Benson specifically by this Charter or upon municipal corporations by general law. The term 'general law' is employed herein as defined in G.S. 160A-1.

"Section 1.3. **Corporate Boundaries.** The corporate boundaries shall be those existing at the time of ratification of this Charter, as set forth on the official map of the Town and as they may be altered from time to time in accordance with law. An official map of the Town, showing the current municipal boundaries, shall be maintained permanently in the office of the Town Clerk and shall be available for public inspection. Upon alteration of the corporate limits pursuant to law, the appropriate changes to the official map shall be made and copies shall be filed in the

office of the Secretary of State, the Johnston County Register of Deeds, and the appropriate board of elections.

"ARTICLE II. GOVERNING BODY.

"Section 2.1. **Town Governing Body; Composition.** The Board of Commissioners, hereinafter referred to as the 'Board', and the Mayor shall be the governing body of the Town.

"Section 2.2. **Town Board; Composition; Terms of Office.** The Board shall be composed of six members to be elected in the manner provided in Article III for terms of four years, or until their successors are elected and qualified.

"Section 2.3. **Mayor; Duties.** The Mayor shall be elected by and from the qualified voters of the Town voting at large in the manner provided in Article III for a term of two years or until his or her successor is elected and qualified. The Mayor shall be the official head of the Town government and shall preside at meetings of the Board. Where there is an equal division upon any question, or upon the appointment of officers, the Mayor shall determine the matter by his or her vote, but he or she shall vote in no other case. The Mayor shall exercise such powers and perform such duties as are or may be conferred upon him or her by the general laws of North Carolina, by this Charter, and by the ordinances of the Town.

"Section 2.4. **Mayor Pro Tempore.** The Board shall choose one of its members to act as Mayor Pro Tempore, and he or she shall perform the duties of the Mayor in the Mayor's absence or disability. The Mayor Pro Tempore as such shall have no fixed term of office, but shall serve in such capacity at the pleasure of the remaining members of the Board.

"Section 2.5. **Meetings; Quorum.** In accordance with general law, the Board shall establish a suitable time and place for its regular meetings. Special and emergency meetings may be held as provided by general law. The quorum provisions of G.S. 160A-74 shall apply.

"Section 2.6. **Voting.** Four affirmative votes, which may include the vote of the Mayor in the event of equal division among the Board, shall be necessary to adopt any ordinance or any resolution or motion having the effect of an ordinance. All other matters to be voted upon shall be decided by a majority vote of those present and voting.

"Section 2.7. **Ordinances and Resolutions.** The adoption, amendment, repeal, pleading, or proving of ordinances shall be in accordance with the applicable provisions of the general laws not inconsistent with this Charter. The yeas and nays shall be taken upon all ordinances and resolutions and entered upon the minutes of the Board. The enacting clause of all ordinances shall read: 'Be it ordained by the Board of Commissioners of the Town of Benson'. All ordinances and resolutions shall take effect upon adoption unless otherwise provided therein.

"Section 2.8. **Qualifications for Office; Compensation; Vacancies.** The qualifications and compensation of the Mayor and the Board shall be in accordance with general law. In the event a vacancy occurs in the office of Mayor, the Board shall by a majority vote appoint some qualified person to fill the same for the remainder of the unexpired term. Any vacancy on the Board shall be filled by

majority vote of the remaining members of the Board for the remainder of the unexpired term. The person appointed to fill a vacancy in the office of Board member for District 1, 2, or 3 must reside in the district for which appointed.

"ARTICLE III. ELECTIONS.

"Section 3.1. **Regular Municipal Elections.** Regular municipal elections shall be held in each odd-numbered year in accordance with the uniform municipal election laws of North Carolina. Elections shall be conducted on a nonpartisan basis and the results determined using the nonpartisan plurality election method as provided in G.S. 163-279(a)(1) and G.S. 163-292.

"Section 3.2. **Election of Mayor.** A Mayor shall be elected in each regular municipal election.

"Section 3.3. **Election of Commissioners.** The Commissioners serving on the date of ratification of this Charter shall serve until the expiration of their terms or until their successors are elected and qualified. In the 1999 election and every four years thereafter, three Commissioners shall be elected, one each for Districts 1, 2, and 3 as the same are described in Section 3.5 of this Article. Only voters residing in a district may vote for the Commissioner for that district. In the 2001 election and every four years thereafter, three Commissioners shall be elected by the voters of the entire Town.

"Section 3.4. **Voting.** In each election, each voter shall be entitled to vote for one candidate for Mayor. In each election in which Commissioners for Districts 1, 2, and 3 are being chosen, each voter shall be entitled to vote for one candidate for Commissioner for the district in which the voter resides. In each election in which the three Commissioners to be elected by the entire Town are being chosen, the names of all candidates for those offices shall be placed on a single ballot and each voter shall be entitled to vote for one candidate only.

"Section 3.5. **District Boundaries.** The Districts for the election of Commissioners are:

District 1. The eastern side of Town included within the following line beginning at the intersection of Market Street with the southern Town limits and running clockwise to the same point as follows: North on Market Street to Brocklyn Street, east on Brocklyn to the western side of Interstate 95, north along the western side of Interstate 95 one block to Harnett Street, west on Harnett one block to George Street, north on George (or the line George would follow if extended north at that point) one block to Parrish Street, west on Parrish to Dunn Street, north on Dunn three blocks to Hill Street, east on Hill to Catherine Street, north on Catherine to Morris Avenue, east on Morris to Hall Street, north on Hall two blocks to Branch Street, west on Branch to Johnson Street, north on Johnson to U.S. Highway 301, east on 301 to the Town limits, then south and clockwise along the Town limits to the starting point.

District 2. The middle portion of the Town included between the western boundary of District 1 and the following line running south to north from its beginning at the intersection of Ryals Street and Mann Street at the southern Town limits: North on Ryals Street four blocks to Harnett Street, east on Harnett to Farmer

Road, north on Farmer two blocks to Main Street, east on Main one block to Wall Street, north on Wall one block to Church Street, east on Church one block to the railroad tracks, north on the railroad tracks to the Town limits at U.S. Highway 301.

District 3. The western side of Town including all of the Town west of the line described above as the boundary for District 2.

"Section 3.6. **Special Elections and Referenda.** Special elections and referenda may be held only as provided by general law or applicable local acts of the General Assembly.

"ARTICLE IV. ORGANIZATION AND ADMINISTRATION.

"Section 4.1. **Form of Government.** The Town shall operate under the council-manager form of government, in accordance with Part 2 of Article 7 of Chapter 160A of the General Statutes.

"Section 4.2. **Town Manager; Appointment; Powers and Duties.** The Board shall appoint a Town Manager who shall be responsible for the administration of all departments of the Town government. The Town Manager shall have all the powers and duties conferred by general law, except as expressly limited by the provisions of this Charter, and the additional powers and duties conferred by the Board, so far as authorized by general law.

"Section 4.3. **Town Clerk.** The Board shall appoint a Town Clerk to keep a journal of the proceedings of the Board, to maintain official records and documents, to give notice of meetings, and to perform such other duties required by law or as the Board may direct.

"Section 4.4. **Finance Director.** The Board shall appoint a Finance Director to perform the duties designated in G.S. 159-25 and such other duties as may be prescribed by law or assigned by the Board.

"Section 4.5. **Tax Collector.** The Board shall appoint a Tax Collector pursuant to G.S. 105-349 to collect all taxes owed to the Town, subject to general law, this Charter, and Town ordinances.

"Section 4.6. **Town Attorney.** The Board shall appoint a Town Attorney licensed to practice law in North Carolina. It shall be the duty of the Town Attorney to represent the Town, advise Town officials, and perform other duties required by law or as the Board may direct. The Town Attorney shall serve at the pleasure of the Board and shall receive such compensation as the Board shall determine.

"Section 4.7. **Other Administrative Officers and Employees.** The Board may authorize other positions to be filled by appointment by the Town Manager, and may organize the Town government as deemed appropriate, subject to the requirements of general law.

"ARTICLE V. REGULATORY JURISDICTION.

"Section 5.1. **Effect of Ordinances on Town Property.** All applicable ordinances of the Town shall have full force and effect upon and within all property, rights-of-way, and facilities owned or leased by the Town, whether located within or outside the corporate limits.

"ARTICLE VI. POLICE.

"Section 6.1. **Jurisdiction Extended.** In addition to their authority within the corporate limits, Town police shall have all the powers invested in law-enforcement officers by statute or common law within one and one-half miles of the corporate limits of the Town, and on all property owned by or leased to the Town wherever located.

"ARTICLE VII. STREETS AND SIDEWALKS.

"Section 7.1. **Assessments for Street Improvements.** In addition to any authority that is now or may hereafter be granted by general law for making street improvements, the Board is authorized to order to be made or to make street improvements according to the standards and specifications of the Town and to assess the total costs, or a portion thereof, against abutting property owners in accordance with the provisions of this Article.

"Section 7.2. **When Petition Unnecessary.** The Board may order street improvements and assess the total costs or a portion thereof, exclusive of the costs incurred at street intersections, against the abutting property owners according to one or more of the assessment bases set forth in Article 10 of Chapter 160A of the General Statutes, without the necessity of a petition, upon the finding by the Board of one of the following:

(1) That such street or part thereof is unsafe for vehicular traffic and it is in the public interest to make such improvement.

(2) That it is in the public interest to connect two streets or portions of a street already improved.

(3) That it is in the public interest to widen a street, or part thereof, that is already improved, except that assessments for widening any street or portion of a street without petition shall be limited to the cost of widening and otherwise improving the street in accordance with the street classification and improvement standards established by the Town's thoroughfare or major street plan for the particular street or part thereof to be widened and improved under the authority granted by this Article.

"Section 7.3. **Street Improvement Defined.** 'Street improvement' shall include grading, regrading, surfacing, resurfacing, widening, paving, and repaving streets, the acquisition of rights-of-way, and the construction or reconstruction of curbs, gutters, and street drainage facilities.

"Section 7.4. **Sidewalk Improvements.** In addition to any authority that is now or may hereafter be granted by general law for making sidewalk improvements, the Board is authorized to order to be made or to make sidewalk improvements or repairs according to the standards and specifications of the Town, and to assess the total costs, or a portion thereof, against abutting property owners according to one or more of the assessment bases set forth in Article 10 of Chapter 160A of the General Statutes, except that the Board may order the cost of sidewalk improvements made only on one side of a street to be assessed against property owners abutting both sides of the street.

"Section 7.5. **Assessment Procedure.** In ordering street or sidewalk improvements without a petition and assessing the cost thereof under authority of this Article, the Board shall comply with the procedure provided by Article 10 of Chapter 160A of the General Statutes, except those provisions relating to the petition of property owners and the sufficiency thereof.

"Section 7.6. **Effect of Assessments.** The effect of the act of levying assessments under authority of this Article shall for all purposes be the same as if the assessments were levied under authority of Article 10 of Chapter 160A of the General Statutes.

"Section 7.7. **Acceptance of Conveyance in Satisfaction of Assessments.** The Town Tax Collector or other official or employee of the Town having charge of the collection of special assessments, shall have the right, power, and authority, by and with the approval of the Board first had and obtained, to receive and accept a fee simple conveyance to the Town of any lot or parcel of land in the Town, free and clear of other encumbrances, in full settlement and satisfaction of any street or sidewalk assessments outstanding and unpaid against the property. Such right, power, and authority shall be limited to conveyance of the whole of the lot or parcel of land against which the particular assessments involved were levied. No lot or tract of land may be divided and such right, power, and authority exercised as to a part of the property originally embraced in and covered by the assessments. In the case of such conveyance, it shall not be necessary that the street or sidewalk assessments against the property be foreclosed, but the Town, upon the receipt of any such conveyance, shall become and be the absolute fee simple owner of the property as fully to all intents and purposes as if purchased in and through foreclosure proceedings for the enforcement of such street or sidewalk assessments.

"ARTICLE VIII. WATER AND SEWER.

"Section 8.1. **Corner Lot Exemptions.** The Board is hereby authorized to establish, by ordinance or resolution, schedules of exemptions for assessments for water and sewer line extensions for corner lots when water or sewer lines, or both, are installed along both sides of such lots and when the cost of such installation along both sides were or are financed in whole or in part by assessments. The schedules of exemptions may be classified as to land uses (residential, commercial, industrial, institutional, or agricultural) and shall be uniform for each such classification used, except that no schedule of exemptions may provide for exemption of more than fifty percent (50%) of the frontage on any side of a corner lot, or 150 feet, whichever is greater.

"Section 8.2. **Alternative Method of Assessment.** In addition to, and as an alternative, to the methods provided in G.S. 160A-218 for assessing the costs of water and sewer lines and laterals, the Board, if in its opinion it would be more equitable to do so, is hereby authorized in its discretion to levy any such assessments according to either of the following methods: (1) equally against each of the lots capable of being served by the lines, or (2) on the basis of the footage of land upon a public street by an equal rate per foot of such frontage.

Instead of assessing the total cost of a particular project as herein provided, the Board may annually, between the first days of January and July of each year,

determine the average cost of installing water and sewer mains or lines and on the basis of the determination may make assessments of the average cost during the following fiscal year beginning July 1. The average cost of the installation shall include the cost of the particular size and material of lines completed during the preceding calendar year. It may also include the anticipated increase in labor and material costs based upon the average of such increases during the preceding five calendar years. The assessment of the average cost of the line shall not be made until after the particular assessment project has been completed. The purpose of this section is to: (1) distribute more equitably the cost of the installation of water and sewer lines throughout the Town; (2) permit a property owner to know in advance what the cost of installation of water and sewer lines benefiting his or her property will be; and (3) permit the most expeditious assessment of cost against property after completion of the installation of the lines. The actual cost of acquisition of rights-of-way may also be assessed as part of the cost of an individual project. If the right-of-way costs have not been determined and assessed with the assessment of the average installation costs at the time of the completion of the project, the costs may be assessed separately when they are determined.

"ARTICLE IX. WATER AND SEWER LINE CHARGES.

"Section 9.1. **Water and Sewer Line Charges.** The authority of the Town to impose water and sewer line charges shall continue as authorized by S.L. 1989-477.

"ARTICLE X. CLAIMS AGAINST THE TOWN.

"Section 10.1. **Settlement of Claims by Town Manager.** The Board may authorize the Town Manager to settle claims against the Town for: (1) personal injuries or damages to property when the amount involved does not exceed the sum of five thousand dollars ($5,000) and does not exceed the actual loss sustained, including loss of time, medical expenses, and any other expenses actually incurred, and (2) the taking of small portions of private property that are needed for the rounding of corners at intersections of streets when the amount involved in any such settlement does not exceed five thousand dollars ($5,000) and does not exceed the actual loss sustained. Settlement of a claim by the Town Manager pursuant to this section shall constitute a complete release of the Town from any and all damages sustained by the person involved in the settlement in any manner arising out of the incident, occasion, or taking complained of. All such settlements and all such releases shall be approved by the Town Attorney.

"ARTICLE XI. EXTRATERRITORIAL JURISDICTION.

"Section 11.1. **Jurisdiction Extended.** The area over which the Town exercises its extraterritorial jurisdiction may be extended pursuant to Chapter 804 of the 1986 Session Laws, any subsequent local acts, and any applicable general laws."

Section 2. The purpose of this act is to revise the Charter of the Town of Benson and to consolidate certain acts concerning the property, affairs, and government of the Town. It is intended to continue without interruption those provisions of prior acts that are expressly consolidated into this act so that all rights and liabilities that have accrued are preserved and may be enforced.

Section 3. This act does not repeal or affect any acts concerning the property, affairs, or government of public schools or any acts validating official actions, proceedings, contracts, or obligations of any kind.

Section 4. The provisions of Article III of this act are intended to codify and continue, without change, the terms of the election plan ordered by the United States District Court for the Eastern District of North Carolina on November 22, 1988, in Johnson v. Town of Benson, No. 88-240.CIV-5.

Section 5. The following acts, having served the purposes for which they were enacted or having been consolidated into this act, are expressly repealed:

Chapter 623 of the 1971 Session Laws, except Section 4.

Chapter 71 of the 1989 Session Laws.

Section 6. The Mayor and Board serving on the date of ratification of this act shall serve until the expiration of their terms or until their successors are elected and qualified.

Section 7. This act does not affect any rights or interests that arose under any provisions repealed by this act.

Section 8. All existing ordinances, resolutions, and other provisions of the Town of Benson not inconsistent with the provisions of this act shall continue in effect until repealed or amended.

Section 9. No action or proceeding pending on the effect date of this act by or against the Town or any of its departments or agencies shall be abated or otherwise affected by this act.

Section 10. If any provision of this act or application thereof is held invalid, such invalidity shall not affect other provisions or applications of this act that can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Section 11. Whenever a reference is made in this act to a particular provision of the General Statutes and such provision is later amended, superseded, or recodified, the reference shall be deemed amended to refer to the amended General Statute, or to the General Statute that most clearly corresponds to the statutory provision that is superseded or recodified.

Section 12. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 328

Short Title: D.O.T. Map Transfer and Filing. (Public)

Sponsors: Senators Wellons; Gulley and Lucas.

Referred to: Finance.

March 11, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE TRANSMISSION AND FILING OF MAPS BY THE DEPARTMENT OF TRANSPORTATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 136-19.4 reads as rewritten:

"**§136-19.4. Registration of right-of-way plans.**

(a) A copy of the cover sheet and plan and profile sheets of the final right-of-way plans for all Department of Transportation projects, on those projects for which plans are prepared, under which right-of-way or other interest in real property is acquired or access is controlled shall be certified by the Department of Transportation to the register of deeds of the county or counties within which the project is located. The Department shall certify said plan sheets to the register of deeds within two weeks from their formal approval by the Board of Transportation.

(b) The copy of the plans certified to the register of deeds shall consist of a Xerox, photographic, or other permanent ~~copy~~ copy, except for maps electronically transmitted pursuant to subsection (b1) of this section, and shall measure approximately ~~20 inches by 12 inches~~ 17 inches by 11 inches including no less than one and one-half inches binding space on the left-hand side.

(b1) With the approval of the county in which the maps or plans are to be filed, the Department may transmit the right-of-way plans electronically.

(c) Notwithstanding any other provision in the law, upon receipt of said original certified copy of the right-of-way plans, the register of deeds shall record said right-of-way plans and place the same in a book maintained for that purpose, and the register of deeds shall maintain a cross-index to said right-of-way plans by number of

road affected, if any, and by project number. No probate before the clerk of the superior court shall be required.

(d) If after the approval of said final right-of-way plans the Board of Transportation shall by resolution alter or amend said right-of-way or control of access, the Department of Transportation, within two weeks from the adoption by the Board of Transportation of said alteration or amendment, shall certify to the register of deeds in the county or counties within which the project is located a copy of the amended plan and profile sheets approved by the Board of Transportation and the register of deeds shall remove the original plan sheets and record the amended plan sheets in lieu thereof.

(e) The register of deeds in each county shall collect a fee from the Department of Transportation of twenty-one dollars ($21.00) for the first page and five dollars ($5.00) for each additional page for each original or amended plan and profile sheet recorded."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 328
Proposed Committee Substitute S328-PCSA142-LA

Short Title: D.O.T. Right-of-Way Plan Filing. (Public)

Sponsors:

Referred to:

March 11, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE TRANSMISSION AND FILING OF RIGHT-OF-WAY PLANS BY THE DEPARTMENT OF TRANSPORTATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 136-19.4 reads as rewritten:

"**§136-19.4. Registration of right-of-way plans.**

(a) A copy of the cover sheet and plan and profile sheets of the final right-of-way plans for all Department of Transportation projects, on those projects for which plans are prepared, under which right-of-way or other interest in real property is acquired or access is controlled shall be certified by the Department of Transportation to the register of deeds of the county or counties within which the project is located. The Department shall certify said plan sheets to the register of deeds within two weeks from their formal approval by the Board of Transportation.

(b) The copy of the plans certified to the register of deeds shall consist of a Xerox, photographic, or other permanent ~~copy~~ copy, except for plans electronically transmitted pursuant to subsection (b1) of this section, and shall measure approximately ~~20 inches by 12 inches~~ 17 inches by 11 inches including no less than one and one-half inches binding space on the left-hand side.

(b1) With the approval of the county in which the right-of-way plans are to be filed, the Department may transmit the plans electronically.

(c) Notwithstanding any other provision in the law, upon receipt of said original certified copy of the right-of-way plans, the register of deeds shall record said right-of-way plans and place the same in a book maintained for that purpose, and the

register of deeds shall maintain a cross-index to said right-of-way plans by number of road affected, if any, and by ~~project~~ identification number. No probate before the clerk of the superior court shall be required.

(d) If after the approval of said final right-of-way plans the Board of Transportation shall by resolution alter or amend said right-of-way or control of access, the Department of Transportation, within two weeks from the adoption by the Board of Transportation of said alteration or amendment, shall certify to the register of deeds in the county or counties within which the project is located a copy of the amended plan and profile sheets approved by the Board of Transportation and the register of deeds shall remove the original plan sheets and record the amended plan sheets in lieu thereof.

(e) The register of deeds in each county shall collect a fee from the Department of Transportation of twenty-one dollars ($21.00) for the first page and five dollars ($5.00) for each additional page for each original or amended plan and profile sheet recorded."

Section 2. This act becomes effective January 1, 2000.

SENATE BILL 328:
D.O.T. Right-of-Way Plan Filing

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Senator Wellons
Date:	May 17, 1999	**Summary by:**	Martha K. Walston
Version:	Proposed Committee Substitute		Committee Counsel

SUMMARY: ***Senate Bill 328 amends the statute dealing with registration of right-of-way plans by the Department of Transportation (DOT). The bill makes the following changes: (1) permits DOT to transmit right-of-way plans electronically to the register of deeds if the county where the plans are to be filed approves, (2) reduces the size of the hard copy plans from 20 X 12 inches to 17 X 11 inches, (3) changes the reference from the "project number" of the right-of-way plan recorded by the register of deeds to the "identification number", (4) increases the fee paid by DOT to the register of deeds for registration of right-of-way plans from $5 per plan to $21 for the first page and $5 for each additional page. The changes become effective January 1, 2000.***

CURRENT LAW: When the Board of Transportation formally approves a project, the Dot must certify the cover sheet, plan, and profile sheets of the final right-of-way plans on the project with the register of deeds of the county where the project is located. The plans certified to the register of deeds shall be a Xerox, photographic, or other permanent copy and must measure approximately 20 X 12 inches. The register of deeds in each county charges the DOT $5.00 for the registration of each original plan and profile sheet.

BILL ANALYSIS: Senate Bill 328 allows the DOT to file the right-of-way plans electronically if the county where the plans are to be filed approves. Senate Bill also reduces the size of the hard copy of the plans to be filed from 20 X 12 inches to 17 X 11 inches. The bill changes a reference in the cross-index of the plans maintained by the register of deeds from the "project number" to the "identification number". A project may have several project numbers but only has one identification number. This change will alleviate some of the confusion. The act becomes effective January 1, 2000. This effective date will give the registers of deeds several months to get their software programmed.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: Senate Bill 328 (Proposed Committee Substitute) D.O.T. Right-of-Way Plan Filing

SHORT TITLE: D.O.T. Right-of-Way Plan Filing

SPONSOR(S): Senators Wellons; Gulley and Lucas

FISCAL IMPACT

Yes (x) **No ( )** **No Estimate Available ( )**

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
EXPENDITURES	$1160	$2320	$2320	$2320	$2320
POSITIONS:					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Transportation

EFFECTIVE DATE: January 1, 2000

BILL SUMMARY: SB 328 allows DOT to transmit right-of-way plans electronically with the approval of the county in which the plans are to be filed. The fee collected from DOT by the register of deeds in each county would change to $21 for the first page plus $5 for each additional page from the current charge of $5 per page.

ASSUMPTIONS AND METHODOLOGY: DOT estimates that there are approximately 145 projects per year for which the additional fees would be relevant. At an additional charge of $16 for each the annual impact would be $2320. (The impact for FY1999-2000 would be half this amount.) This assumes that all counties permit the electronic filing. DOT points out that the language of the bill does not address revisions to plans but that even with charges for revisions the impact would not be greater than $3000 per year. There are likely to be savings from electronic submission of plans but no estimate of these savings is included. DOT is in a pilot project with several counties to test the system and estimate the savings and at this time no estimate of savings is available.

TECHNICAL CONSIDERATIONS: The expenditures would be from TIP funding, which could be either Federal funding or Trust Fund, depending on how the project is funded. Most of these will be 80% Federal funds with a 20% Trust Fund match.

FISCAL RESEARCH DIVISION 733-4910

PREPARED BY: Robert Weiss

APPROVED BY: Tom Covington

DATE: Monday, May 17, 1999

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 2

SENATE BILL 941
Commerce Committee Substitute Adopted 4/27/99

Short Title: Manufactured Homes Law Changes. (Public)

Sponsors:

Referred to:

April 14, 1999

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE MANUFACTURED HOUSING BOARD STATUTES, TO PROVIDE FOR CONTINUING EDUCATION FOR LICENSEES, TO IMPROVE THE BUYER CANCELLATION LAW, AND TO UPDATE THE LAW ON MANUFACTURED HOME STANDARDS TO COMPLY WITH FEDERAL LAWS AND REGULATIONS.

The General Assembly of North Carolina enacts:

Section 1. Article 9A of Chapter 143 of the General Statutes reads as rewritten:

"ARTICLE 9A.

"North Carolina Manufactured Housing Board --
Manufactured Home Warranties.

"§ 143-143.8. Purpose.

The General Assembly finds that ~~mobile~~ manufactured homes have become a primary housing resource for many of the citizens of North Carolina. The General Assembly finds further that it is the responsibility of the ~~mobile~~ manufactured home industry to provide homes which are of reasonable quality and safety and to offer warranties to buyers that provide a means of remedying quality and safety defects in ~~mobile~~ manufactured homes. The General Assembly also finds that it is in the public interest to provide a means for enforcing such warranties.

Consistent with these findings and with the legislative intent to promote the general welfare and safety of ~~mobile~~ manufactured home residents in North Carolina, the General Assembly finds that the most efficient and economical way to assure

safety, quality and responsibility is to require the licensing and bonding of all segments of the ~~mobile~~ manufactured home industry. The General Assembly also finds that it is reasonable and proper for the ~~mobile~~ manufactured home industry to cooperate with the Commissioner of Insurance, through the establishment of the North Carolina Manufactured Housing Board, to provide for a comprehensive framework for industry regulations.

"**§ 143-143.9. Definitions.**

The following ~~words, terms and phrases, when used in this Article, shall have the meanings respectively ascribed to them in this section, except where the context clearly indicates a different meaning:~~ definitions apply in this Article:

(1) ~~"Board" means the~~ Board. -- The North Carolina Manufactured Housing Board.

(2) ~~"Buyer" means a~~ Buyer. -- A person who purchases at retail from a dealer or manufacturer a manufactured home for personal use as a residence or other related use.

(3) ~~"Code" means the appropriate~~ Code. -- Engineering standards adopted by the Commissioner.

(4) ~~"Commissioner" means the~~ Commissioner. -- The Commissioner of Insurance of the State of North Carolina.

(5) ~~"Department" means the~~ Department. -- The Department of Insurance of the State of North Carolina.

(5a) License. -- A license issued under this Article.

(5b) Licensee. -- A person who has been issued a license under this Article by the North Carolina Manufactured Housing Board.

(6) ~~"Manufactured home" or "mobile home" means a~~ Manufactured home. -- A structure, transportable in one or more sections, which, in the travelling mode, is eight feet or more in width or is 40 feet or more in length, or when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems contained therein.

(7) ~~"Manufactured home dealer" or "dealer" means any~~ Manufactured home dealer or dealer. -- Any person engaged in the business of ~~buying,~~ buying or selling ~~or dealing in~~ manufactured homes or offering or displaying manufactured homes for sale in North Carolina. Any person who ~~buys, sells or deals in~~ buys or sells three or more manufactured homes in any 12-month period, or who offers or displays for sale three or more manufactured homes in any 12-month period shall be presumed to be a manufactured home dealer. The terms 'selling' and 'sale' include lease-purchase transactions. The term 'manufactured home dealer' does not include banks and finance companies that acquire manufactured homes as an incident to their regular business.

(8) ~~"Manufactured home manufacturer" or "manufacturer" means any~~ Manufactured home manufacturer or manufacturer. -- Any person, resident or nonresident, who manufactures or assembles manufactured homes for sale to dealers in North Carolina.

(9) ~~"Manufactured home salesman" or "salesman" means any~~ Manufactured home salesperson or salesperson. -- Any person employed ~~as a salesman~~ by a manufactured home dealer to sell manufactured homes to buyers.

(10) ~~"Person" means any~~ Person. -- Any individual, natural persons, firm, partnership, association, corporation, legal representative or other recognized legal entity.

(11) ~~"Responsible party" means a~~ Responsible party. -- A manufacturer, dealer, supplier, or set-up contractor.

(12) ~~"Setup" means the~~ Setup. -- The operations performed at the occupancy site which render a manufactured home fit for habitation. ~~Such operations include, but are not limited to, transportation by a bona fide private or exempt carrier operating under the provisions of the Public Utilities Act, positioning, blocking, leveling, supporting, tying down, connecting utility systems, making minor adjustments, or assembling multiple or expandable units. Such operations do not include lawful transportation services performed by public utilities operating under certificates or permits issued by the North Carolina Utilities Commission.~~

(13) ~~"Set-up contractor" means a~~ Set-up contractor. -- A person who engages in the business of performing ~~set-up operations~~ setups for compensation in North Carolina.

(14) ~~"Substantial defect" means any~~ Substantial defect. -- Any substantial deficiency in or damage to materials or workmanship occurring in a manufactured home which has been reasonably maintained and cared for in normal use. The term also means any structural element, utility system or component part of the manufactured home which fails to comply with the Code.

(15) ~~"Supplier" means the~~ Supplier. -- The original producer of completed components, including refrigerators, stoves, hot water heaters, dishwashers, cabinets, air conditioners, heating units, and similar components, and materials such as floor coverings, panelling, siding, trusses, and similar materials, which are furnished to a manufacturer or dealer for installation in the manufactured home prior to sale to a buyer.

"**§ 143-143.10. Manufactured Housing Board created; membership; terms; meetings.**

(a) There is ~~hereby~~ created the North Carolina Manufactured Housing Board within the ~~Department of Insurance.~~ Department. The Board shall be composed of nine members as follows:

(1) The Commissioner of Insurance or his ~~designee~~ designee.
(2) A manufactured home ~~manufacturer~~ manufacturer.
(3) A manufactured home ~~dealer~~ dealer.
(4) A representative of the banking and finance ~~business~~ business.
(5) A representative of the insurance ~~industry~~ industry.
(6) A manufactured home ~~supplier~~ supplier.
(7) A set-up ~~contractor~~ contractor.
(8) Two representatives of the general public.

The Commissioner ~~of Insurance~~ or his designee shall ~~serve as chairman of~~ chair the Board. The Governor shall appoint to the Board the manufactured home manufacturer and the manufactured home dealer. The General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121 shall appoint the representative of the banking and finance industry and the representative of the insurance industry. The General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121 shall appoint the manufactured home supplier and set-up contractor. The Commissioner ~~of Insurance~~ shall appoint two representatives of the general public. Except for the representatives from the general public and the persons appointed by the General Assembly, each member of the Board shall be appointed by the appropriate appointing authority from a list of nominees submitted to the appropriate appointing authority by the Board of Directors of the North Carolina Manufactured Housing Institute. At least three nominations shall be submitted for each position on the Board. The members of the Board shall be residents of the State.

The members of the Board shall serve for terms of three ~~years to begin on October 1, 1981, except that the persons appointed by the General Assembly upon the recommendation of the Speaker shall serve two-year terms to expire on September 30, 1985, and the persons appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate shall serve for three-year terms to expire on September 30, 1986.~~ years. In the event of any vacancy of a position appointed by the Governor or ~~Commissioner of Insurance,~~ Commissioner, the appropriate appointing authority shall appoint a replacement in the same manner as provided for the original appointment to serve the remainder of the unexpired term. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. In the event of any vacancy, the appropriate appointing authority shall appoint a replacement to serve the remainder of the unexpired term. Such appointment shall be made in the same manner as provided for the original appointment. No member of the Board shall serve more than two consecutive, three-year terms.

The member of the Board representing the general public shall have no financial interest connected with the manufactured housing industry. No member of the Board shall participate in any proceeding before the Board involving that member's own business.

Each member of the Board, except the Commissioner ~~of Insurance~~ and any other State employee, shall receive per diem and allowances as provided with respect to

occupational licensing boards by G.S. 93B-5. All per diem and travel expenses shall be paid exclusively out of the fees received by the Board as authorized by this Article. In no case shall any salary, expense, or other obligation of the Board be charged against the ~~Treasury~~ General Fund of the State of North Carolina. All moneys and receipts shall be kept in a special fund by and for the use of the Board for the exclusive purpose of carrying out the provisions of this Article. Unexpended funds shall not revert to the General Fund.

(b) In accordance with the provisions of this Article, the ~~North Carolina Manufactured Housing~~ Board shall have the following powers and duties:

(1) To issue licenses to manufacturers, dealers, ~~salesmen~~ salespersons, and set-up ~~contractors;~~ contractors.

(2) To require that an adequate bond or other security be posted by all licensees, except manufactured housing ~~salesmen;~~ salespersons.

(3) To receive and resolve complaints from buyers of manufactured homes and from persons in the manufactured housing industry, in connection with the warranty, warranty service, licensing requirements or any other provision under this ~~Article; and~~ Article.

(4) To ~~promulgate~~ adopt rules in accordance with Chapter 150B of the General Statutes as are necessary to carry out the provisions of this Article.

(5) To file against the bond posted by a licensee for warranty repairs and service on behalf of a buyer.

"**§ 143-143.11. License required; application for license.**

(a) It shall be unlawful for any manufactured home manufacturer, dealer, ~~salesman~~ salesperson, or set-up contractor to engage in business as such in this State without first obtaining a license from the Board, as provided in this Article. The fact that a person is licensed by the Board as a set-up contractor or a dealer does not preempt any other licensing boards' applicable requirements for that person.

(b) Application for ~~such~~ the license shall be made to the Board at such time, in such form, and contain ~~such~~ information ~~as~~ the Board ~~shall require;~~ requires, and shall be accompanied by the ~~required~~ fee established by the Board. ~~Such~~ The fee shall not exceed three hundred dollars ($300.00) for any license.

(c) In ~~such~~ the application, the Board shall require information relating to the matters set forth in G.S. 143-143.13 as grounds for refusal of a license, and information relating to other pertinent matters consistent with safeguarding the public interest. All ~~such~~ of this information shall be considered by the Board in determining the fitness of the ~~applicant to engage in the business for which a license is sought.~~ applicant.

(d) All licenses ~~that are granted~~ shall expire, unless ~~sooner~~ revoked or suspended, on June 30 of each year following the date of issue.

(e) Every ~~registrant under this Chapter~~ licensee shall, on or before the first day of July of each year, obtain a renewal of a license for the ~~ensuing~~ next year, by application, accompanied by the required ~~fee; and upon~~ fee. Upon failure to renew,

~~his~~ a license ~~shall~~ automatically ~~expire; but such~~ expires. The license may be renewed at any time within one year upon payment of the ~~prescribed renewal fee and upon evidence satisfactory to the Board that the applicant has not engaged in business as a manufactured home manufacturer, dealer, salesman or set-up contractor after expiration of the license and is otherwise eligible for registration under the provisions of this Chapter.~~ renewal fee.

(f) Supplemental licenses shall be issued for each place of business, operated or proposed to be operated by the licensee, that is not contiguous to other premises for which a license is issued. The fee for a supplemental license shall be established by the Board and shall not exceed three hundred dollars ($300.00), provided that no supplemental license shall be required for a place of business operated by a licensee that is used exclusively for storage.

(g) Notwithstanding the provisions of subsection (a), the Board may provide by rule that a manufactured home ~~salesman~~ salesperson will be allowed to engage in business during the time period after making application for a license but before such license is granted.

(h) ~~To obtain~~ As a prerequisite to obtaining a license under this Article, a person ~~must~~ may be required to pass an examination prescribed by the Board that is based on the ~~North Carolina Manufactured/Mobile Home Regulations and Administrative Procedures required to enforce the Codes.~~ Code, this Article, and any other subject matter considered relevant by the Board.

"§ 143-143.11A. Notification of change of address; service of notice.

(a) Every applicant for a license shall inform the Board of the applicant's business address. Every licensee shall give written notification to the Board of any change in the licensee's business address, for whatever reason, within 10 business days after the licensee moves to a new address or a change in the address takes place. A violation of this subsection shall not constitute grounds for revocation, suspension, or non-renewal of a license or for the imposition of any other penalty by the Board.

(b) Notwithstanding any other provision of law, whenever the Board is authorized or required to give notice to a licensee under this Article, the notice may be delivered personally to the licensee or sent by first-class mail to the licensee at the address provided to the Board under subsection (a) of this section. Notice shall be deemed given four days after mailing, and any Department employee may certify that notice has been given.

"§ 143-143.11B. Continuing education.

(a) The Board may establish programs and requirements of continuing education for licensees, but shall not require licensees to complete more than eight credit hours of continuing education. Prior to the renewal of a license, a licensee shall present evidence to the Board that he or she has completed the required number of continuing education hours in courses approved by the Board during the two months immediately preceding the expiration of his or her license.

(b) The Board may establish nonrefundable fees for the purpose of providing staff and resources to administer continuing education programs, and may establish nonrefundable course application fees, not to exceed one hundred fifty dollars

($150.00), for the Board's review and approval of proposed continuing education courses. The Board may charge the sponsor of an approved course a nonrefundable fee not to exceed seventy-five dollars ($75.00) for the annual renewal of course approval. The Board may also require a course sponsor to pay a fee, not to exceed five dollars ($5.00) per credit hour per licensee, for each licensee completing an approved continuing education course conducted by the sponsor. The Board may award continuing education credit for an unapproved course or related educational activity and may prescribe procedures for a licensee to submit information on an unapproved course or related educational activity for continuing education credit and may charge the licensee a fee not to exceed fifty dollars ($50.00) for each course or activity submitted. Any unexpended revenue from the fees shall not revert to the General Fund.

(c) The Board may adopt any reasonable rules not inconsistent with this Article to give purpose and effect to the continuing education requirement, including rules that govern:

(1) The content and subject matter of continuing education courses.

(2) The criteria, standards, and procedures for the approval of courses, course sponsors, and course instructors.

(3) The methods of instruction.

(4) The computation of course credit.

(5) The ability to carry forward course credit from one year to another.

(6) The waiver of or variance from the continuing education requirement for hardship or other reasons.

(7) The procedures for compliance and sanctions for noncompliance.

(d) The license of any person who fails to comply with the continuing education requirements under this section shall lapse. The Board may, for good cause shown, grant extensions of time to licensees to comply with these requirements. Any licensee who, after obtaining an extension, offers evidence satisfactory to the Board that he or she has satisfactorily completed the required continuing education courses shall be deemed in compliance with this section.

"**§ 143-143.12. Bond required.**

(a) A person licensed as a manufactured home ~~salesman~~ salesperson shall not be required to furnish a bond, but each applicant approved by the Board for license as a manufacturer, dealer, or set-up contractor shall furnish a corporate surety bond, cash bond or fixed value equivalent ~~thereof~~ in the following amounts:

(1) For a ~~manufactured,~~ manufacturer, two thousand dollars ($2,000) per manufactured home manufactured in the prior license year, up to a maximum of one hundred thousand dollars ($100,000). When no manufactured homes were produced in the prior year, the amount required shall be based on the estimated number of manufactured homes to be produced during the current ~~year;~~ year.

(2) For a dealer ~~who buys, sells, or deals in manufactured homes and~~ who has four or less places of business, the amount shall be twenty-five thousand dollars ~~($25,000);~~ ($25,000).

(3) For a dealer ~~who buys, sells, or deals in manufactured homes and~~ who has more than four places of business, the amount shall be fifty thousand dollars ~~($50,000);~~ ($50,000).

(4) For a set-up contractor, the amount shall be five thousand dollars ($5,000).

(b) A corporate surety bond shall be approved by the Board as to form and shall be conditioned upon the obligor faithfully conforming to and abiding by the provisions of this Article. A cash bond or fixed value equivalent ~~thereof~~ shall be approved by the Board as to form and terms of deposits in order to secure the ultimate beneficiaries of the bond. A corporate surety bond shall be for a one-year period, and a new bond or a proper continuation certificate shall be delivered to the Board at the beginning of each subsequent one-year period.

(c) Any buyer of a manufactured home who suffers any loss or damage by any act of a licensee that constitutes a violation of this Article ~~shall have the right to~~ may institute an action to recover against ~~such~~ the licensee and the surety.

(d) The Board may adopt rules to assure satisfaction of claims.

"§ 143-143.13. Grounds for denying, ~~suspending~~ suspending, or revoking ~~license.~~ licenses; civil penalties.

(a) A license may be denied, suspended or revoked by the Board on any one or more of the following grounds:

(1) ~~Material~~ Making a material misstatement in application for ~~license;~~ license.

(2) ~~Failure~~ Failing to post an adequate corporate surety bond, cash bond or fixed value ~~equivalent thereof;~~ equivalent.

(3) Engaging in the business of manufactured home manufacturer, dealer, ~~salesman~~ salesperson, or set-up contractor without first obtaining a license from the ~~Board;~~ Board.

(4) ~~Failure~~ Failing to comply with the warranty service obligations and claims procedure established by this ~~Article;~~ Article.

(5) ~~Failure~~ Failing to comply with the ~~set-up and tie-down~~ set-up requirements established by this ~~Article;~~ Article.

(6) ~~Having knowingly failed or refused~~ Failing or refusing to account for or to pay over moneys or other valuables belonging to others ~~which~~ that have come into licensee's possession arising out of the sale of manufactured ~~homes;~~ homes.

(7) ~~Use of~~ Using unfair methods of competition or committing unfair or deceptive ~~commercial~~ acts or ~~practices;~~ practices.

(8) ~~Failure~~ Failing to comply with any provision of this ~~Article;~~ Article.

(9) ~~Failure~~ Failing to appear for a hearing before the Board or for a prehearing conference with a person or persons designated by the

Board ~~upon due~~ after proper notice or failing to ~~follow directives~~ comply with orders of the Board issued pursuant to this ~~Article;~~ Article.

(10) Employing unlicensed ~~retail salesmen;~~ salespersons.

(11) ~~Knowingly offering for sale the products of manufacturers who are not licensed pursuant to this Article or selling, to dealers not licensed pursuant to this Article, manufactured homes which are to be sold in this State to buyers as defined in this Article;~~ Offering for sale manufactured homes manufactured or assembled by unlicensed manufacturers or selling manufactured homes to unlicensed dealers for sale to buyers in this State.

(12) Conviction of a felony or any crime involving moral ~~turpitude;~~ turpitude.

(13) Having had a license revoked, suspended or denied by the ~~Board under this Article;~~ Board; or having had a license revoked, suspended or denied by a similar entity in another state; or engaging in conduct in another state which conduct, if committed in this State, would have been a violation under this ~~Article;~~ Article.

(14) ~~Knowingly engaging~~ Employing or contracting with any person to perform ~~set-up operations~~ setups who is not licensed by the Board as a set-up contractor.

(b) Repealed by Session Laws 1985, c. 666, s. 38.

(c) In addition to the authority to deny, suspend, or revoke a license under this Article, the Board ~~also has the authority to~~ may impose a civil penalty upon any person violating the provisions of this Article. Upon a finding by the Board of a violation of this Article, the Board shall ~~direct~~ order the payment of a penalty of not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00). In determining the amount of the penalty, the Board shall consider the degree and extent of harm caused by the violation, the amount of money that inured to the benefit of the violator as a result of the violation, whether the violation was committed willfully, and the prior record of the violator in complying or failing to comply with laws, rules, or orders applicable to the violator. Each day during which a violation occurs shall constitute a separate offense. The penalty shall be payable to the Board. The Board shall remit the clear proceeds of penalties provided for in this subsection to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

Payment of the civil penalty under this section shall be in addition to payment of any other penalty for a violation of the criminal laws of this State. Nothing in this subsection shall prevent the Board from negotiating a mutually acceptable agreement with any person as to the status of the person's license or certificate or as to any civil penalty.

"§ 143-143.14. ~~Notice and hearing.~~ Hearings; rules.

(a) License suspensions, revocations, and renewal refusals are subject to the provisions of Chapter 150B of the General Statutes.

(b) If the Board finds that an applicant has not met the requirements for licensure, the Board shall refuse to issue the applicant a license and shall notify the applicant in writing of the denial and the grounds for the denial. The application may also be denied for any reason for which a license may be suspended or revoked or not renewed under G.S. 143-143.13. Within 30 days after receipt of a notification that an application for a license has been denied, the applicant may make a written request for a review by a member of the Department staff designated by the ~~chairman~~ chair of the Board to determine the reasonableness of the Board's action. The review shall be completed without undue delay, and the applicant shall be notified promptly in writing as to the outcome of the review. Within 30 days after service of the notification as to the outcome, the applicant may make a written request for a hearing under Article 3A of Chapter 150B of the General Statutes if the applicant disagrees with the outcome.

(c) The Board may adopt rules for hearings and prehearing conferences under this Article, and the rules may include provisions for prefiled evidence, the use of evidence, testimony of parties, prehearing statements, prehearing conference procedures, settlement conference procedures, discovery, subpoenas, sanctions, motions, intervention, consolidation of cases, continuances, and the rights and responsibilities of parties and witnesses.

"§ 143-143.15. ~~Set-up and tie-down~~ Set-up requirements.

(a) Manufactured homes shall be set up ~~and anchored~~ in accordance with the standards adopted by the Commissioner.

(b) ~~In the event that~~ If a manufactured home is insured against damage caused by windstorm and subsequently sustains windstorm damage ~~of a nature~~ that indicates the manufactured home was not ~~anchored or tied down~~ set up in the manner required by this section, the insurer issuing the ~~homeowner's~~ insurance policy on the manufactured home shall not be relieved from meeting the obligations specified in the insurance policy with respect to such damage on the basis that the ~~mobile~~ manufactured home was not properly ~~anchored or tied down.~~ set up.

"§ 143-143.16. Warranties.

Each manufacturer, dealer and supplier of manufactured homes shall warrant each new manufactured home sold in this State ~~and the setup of each such manufactured home~~ in accordance with the warranty requirements prescribed by this section for a period of at least 12 months, measured from the date of delivery of the manufactured home to the buyer. The warranty requirements for each manufacturer, dealer, supplier and set-up contractor of manufactured homes are as follows:

(1) The manufacturer warrants that all structural elements, plumbing systems, heating, cooling and fuel burning systems, electrical systems, and any other components included by the manufacturer are manufactured and installed free from substantial ~~defect.~~ defects.

(2) The dealer warrants:

a. That any modifications or alterations made to the manufactured home by the dealer or authorized by the dealer are free from substantial defects. Alterations or modifications made by a dealer shall relieve the manufacturer of warranty responsibility as to the item altered or modified and any ~~damage resulting therefrom.~~ resulting damage.

b. That ~~set-up operations~~ a setup performed by the dealer on the manufactured home ~~are~~ is performed in compliance with ~~applicable standards adopted by the Commissioner for the installation of manufactured homes.~~ the Code.

c. ~~That, during the course of setup~~ That the setup and transportation of the manufactured home ~~performed~~ by the ~~dealer, substantial defects do not occur to the manufactured home.~~ dealer did not result in substantial defects.

(3) The supplier warrants that any warranties generally offered in the ordinary sale of his product to consumers shall be extended to buyers of manufactured homes. The manufacturer's warranty shall remain in effect notwithstanding the existence of a supplier's warranty.

(4) The set-up contractor warrants that ~~set-up operations are performed~~ the manufactured home is set up in compliance with ~~applicable standards adopted by the Commissioner for the installation of manufactured homes,~~ the Code and that ~~during the course of set-up operations performed on the manufactured home, substantial defects do not occur to the manufactured home.~~ the setup did not result in any substantial defects.

"§ 143-143.17. Presenting claims for warranties and substantial defects.

(a) Whenever a claim for warranty service or about a substantial defect is made to a licensee, it shall be handled as provided ~~by~~ in this Article. ~~A~~ The licensee shall make a record ~~shall be made~~ of the name and address of each claimant and the date, substance, and disposition of each claim about a substantial defect. The licensee may request that a claim be in writing, but must nevertheless record it as provided above, and may not delay service pending receipt of the written claim.

(b) When the licensee notified is not the responsible party, he shall in writing immediately notify the claimant ~~of that fact, and shall also in writing immediately notify~~ and the responsible party of the claim. When a responsible party is asked to remedy defects, it may not fail to remedy those defects because another party may also be responsible. Nothing ~~herein shall prevent such~~ in this section prevents a party from obtaining compensation by way of contribution or subrogation from another responsible party in accordance with any other provision of law or contract.

(c) Within the time limits provided in this Article, the licensee shall either resolve the claim or determine that it is not justified. At any time a licensee determines that a claim for warranty service is not justified in whole or in part he shall immediately

notify the claimant in writing that the claim or part of the claim is rejected and why, and shall inform the claimant that he is entitled to complain to the Board, for which a complete mailing address shall be provided. ~~Within five working days of its receipt of a complaint, the Board shall send a complete copy thereof to the Attorney General and to the Commissioner of Insurance.~~

"§ 143-143.18. Warranty service.

(a) When a service agreement exists between or among a manufacturer, dealer and supplier to provide warranty service, the agreement shall specify which party is to remedy warranty defects. Every ~~such~~ service agreement shall be in writing. Nothing contained in such an agreement shall relieve the responsible party, as provided by this Article, of responsibility to perform warranty service. However, any licensee undertaking by such agreement to perform the warranty service obligations of another shall thereby himself become responsible both to that other licensee and to the buyer for his failure adequately to perform as agreed.

(b) When no service agreement exists for warranty service, the responsible party as designated by ~~the provisions of~~ this Article is responsible for remedying the warranty defect.

(c) A substantial defect shall be remedied within 45 days ~~of~~ after the receipt of written notification from the claimant. If no written notification is given, the defect shall be remedied within 45 days ~~of~~ after the mailing of notification by the Board, unless the claim is unreasonable or bona fide reasons exist for not remedying the defect within the 45-day period. The responsible party shall respond to the claimant in writing with a copy to the Board stating its reasons for not promptly remedying the defect and stating what further action is contemplated by the responsible party. Notwithstanding the foregoing provisions of this subsection, defects, which constitute an imminent safety hazard to life and health shall be remedied within five working days of receipt of the written notification of the warranty claim. An imminent safety hazard to life and health shall include but not be limited to (i) inadequate heating in freezing weather; (ii) failure of sanitary facilities; (iii) electrical shock, leaking gas; or (iv) major structural failure. The Board may suspend this five-day time period in the event of widespread defects or damage resulting from adverse weather conditions or other natural catastrophes.

(d) When the person remedying the defect is not the responsible party as designated by the provisions of this Article, he shall be entitled to reasonable compensation paid to him by the responsible party. Conduct ~~which~~ that coerces or requires a nonresponsible party to perform warranty service is a violation of this Article.

(e) Warranty service shall be performed at the site at which the ~~mobile~~ manufactured home is initially delivered to the buyer, except for components which can be removed for service without substantial expense or inconvenience to the buyer.

(f) Any dealer, manufacturer or supplier ~~shall have the right to~~ may complain to the Board when warranty service obligations under this Article are not being enforced.

"**§ 143-143.19. Dealer alterations.**

(a) No alteration or modification shall be made to a manufactured home by a dealer after shipment from the manufacturer's plant, unless such alteration or modification is authorized by this Article or the manufacturer. The dealer shall ensure that all authorized alterations and modifications are performed, if so required, by qualified persons as defined in subsection (d). An unauthorized alteration or modification performed by a ~~manufactured home~~ dealer or his agent or employee shall place primary warranty responsibility for the altered or modified item upon the dealer. If the manufacturer fulfills or is required to fulfill the warranty on the altered or modified item, he shall be entitled to recover damages in the amount of his cost and attorney's fee from the dealer.

(b) An unauthorized alteration or modification of a manufactured home by the owner or his agent shall relieve the manufacturer of responsibility to remedy defects caused by such alteration or modification. A statement to this effect, together with a warning specifying those alterations or modifications which should be performed only by qualified personnel in order to preserve warranty protection, shall be displayed clearly and conspicuously on the face of the warranty. Failure to display such statement shall result in warranty responsibility on the manufacturer.

(c) The Board is authorized to ~~promulgate~~ adopt rules in accordance with Chapter 150B of the General Statutes ~~which~~ that define the alterations or modifications which must be made by qualified personnel. The Board may require qualified personnel only for those alterations and modifications which could substantially impair the structural integrity or safety of the manufactured home.

(d) In order to be designated as a person qualified to alter or modify a manufactured home, a person must comply with State licensing or competency requirements in skills relevant to performing alterations or modifications on manufactured homes.

"**§ 143-143.20. Disclosure of manner used in determining length of manufactured homes.**

In any advertisement or other communication regarding the length of a manufactured home, a manufacturer or dealer shall not include the coupling mechanism in describing the length of the home.

"**§ 143-143.21:** Repealed by Session Laws 1993, c. 409, s. 6, and applicable to purchase agreements executed on or after that date.

"**§ 143-143.21A. ~~Refund of buyer deposit.~~ Purchase agreements; buyer cancellations.**

(a) ~~A dealer shall record the following information in a retail~~ A purchase agreement for a manufactured ~~home:~~ home shall include all of the following:

(1) A description of the manufactured home and all accessories included in the ~~purchase;~~ purchase.

(2) The purchase price for the home and all ~~accessories;~~ accessories.

(3) The amount of ~~deposit;~~ deposit or other payment toward or payment of the purchase price of the manufactured home and accessories that is made by the buyer.

(4) The date the retail purchase agreement is ~~signed; and~~ signed.

(5) The estimated terms of financing the purchase, if any, including the estimated interest rate, number of years financed, and monthly payment.

(6) The buyer's signature.

(7) The dealer's signature.

(b) ~~A dealer must present to the buyer and obtain his signature to a retail purchase agreement at the time the deposit is received.~~ The purchase agreement shall contain, in immediate proximity to the space reserved for the signature of the buyer and in at least ten point, all upper-case Gothic type, ~~a statement in substantially~~ the following ~~form:~~ statement:

'I UNDERSTAND THAT I HAVE THE RIGHT TO CANCEL THIS PURCHASE ~~PRIOR TO~~ BEFORE MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE THAT I HAVE SIGNED THIS AGREEMENT. I UNDERSTAND THAT THIS CANCELLATION MUST BE IN WRITING. IF I ~~ATTEMPT TO~~ CANCEL THE PURCHASE AFTER THE THREE-DAY PERIOD, I UNDERSTAND THAT THE DEALER ~~HAS NO~~ MAY NOT HAVE ANY OBLIGATION TO ~~REFUND THE ENTIRE AMOUNT OF MY DEPOSIT.'~~ 'GIVE ME BACK ALL OF THE MONEY THAT I PAID THE DEALER.'

(c) ~~The~~ At the time the deposit or other payment toward or payment for the purchase price is received by the dealer, the dealer ~~must~~ shall give ~~to~~ the buyer a copy of the purchase agreement ~~along with~~ and a completed form in duplicate, captioned 'Notice of ~~Cancellation",~~ Cancellation,' which shall be attached to the purchase agreement, be easily detachable, and ~~shall~~ explain ~~in plain English~~ the buyer's right to cancel the ~~agreement~~ purchase and how that right can be exercised.

(d) ~~A dealer~~ The dealer shall ~~refund to a buyer the full amount of a deposit on the purchase of a manufactured home~~ return the deposit or other payment toward or payment for the purchase price to the buyer if the buyer cancels the purchase before midnight of the third business day after the date the buyer signed the purchase agreement. ~~In order to make an effective cancellation, the buyer must notify the dealer, in writing, of the buyer's intent to cancel the purchase agreement.~~ To make the cancellation effective, the buyer shall give the dealer written notice of the buyer's cancellation of the purchase. The dealer shall ~~make the refund promptly and, in any event,~~ return the deposit or other payment toward or payment for the purchase price to the buyer within 15 business days ~~from~~ after receipt of the notice of cancellation. For purposes of this section, 'business day' ~~shall mean Monday through Saturday, excluding~~ means any day except Sunday and legal holidays.

(e) If the buyer cancels the purchase ~~agreement~~ after the three-day cancellation period, but before the ~~home is delivered to the buyer, then,~~ sale is completed, and if:

(1) ~~If the~~ The manufactured home is in the dealer's inventory, the dealer may retain from the deposit or other payment received from the buyer actual damages up to a maximum of ten percent (10%) of the purchase price; or

(2) ~~If the~~ The manufactured home is specially ordered from the manufacturer for the buyer, the dealer may retain actual damages up to the full amount of the buyer's ~~deposit.~~ deposit or other payment received from the buyer.

"§ 143-143.22. Inspection of service records.

The Board ~~is authorized to~~ may inspect the ~~pertinent~~ service records of a manufacturer, dealer, supplier or set-up contractor relating to a written warranty claim or complaint made to the Board against ~~such~~ the manufacturer, dealer, supplier, or set-up contractor. Every licensee shall send to the Board upon request within 10 days a ~~true~~ copy of every document or record pertinent to any complaint or claim for service.

"§ 143-143.23. Other remedies not excluded.

Nothing in this ~~Article nor~~ Article, rules adopted by the Board, or any ~~decision by~~ action of the Board shall limit any right or remedy available to the buyer ~~at common law or under any other statute, nor limit~~ or any power or duty of the Attorney General.

"§ 143-143.24. Engaging in business without license a Class 1 misdemeanor.

If any person shall unlawfully act as a manufactured home manufacturer, dealer, ~~salesman,~~ salesperson, or set-up contractor without first obtaining a license from the ~~North Carolina Manufactured Housing~~ Board, as provided in this Article, he shall be guilty of a Class 1 misdemeanor.

"§ 143-143.25. Staff support for Board.

The Manufactured ~~Housing~~ Building Division of the Department shall provide clerical and other staff services required by the Board; and shall administer and enforce all provisions of this Article and all rules adopted under this Article, subject to the direction of the Board; except for powers and duties delegated by this Article to local units of government, other State agencies, or to any persons."

Section 2. Article 9B of Chapter 143 of the General Statutes reads as rewritten:

"ARTICLE 9B.

"Uniform Standards Code for Manufactured Homes.

"§ 143-144. Short title.

This Article shall be known and may be cited as 'The Uniform Standards ~~Code~~ for Manufactured Homes Act.'

"§ 143-145. Definitions.

The following definitions apply in this Article:

~~Unless clearly indicated otherwise by context, the following words when used in this Article, for the purpose of this Article, shall have the meanings respectively ascribed to them in this section:~~

(1) ~~"Certificate of compliance" means a certificate issued by an inspection department approved and licensed by the Council as being competent which certificate shall be valid only within the jurisdiction of the inspection department and on which certificate shall be recorded.~~

~~a. The inspection department issuing such certificate;~~
~~b. The date of issue;~~
~~c. The serial or other identification number of such manufactured home and the name of the manufacturer;~~
~~d. A certification that such manufactured home was on the day of inspection so opened that its entire structural, electrical, heating, plumbing and air-conditioning systems could be closely observed and inspected;~~
~~e. A certification that said manufactured home complies in full with the standards and rules and regulations prescribed in this Article.~~

Act. -- The National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. § 5401, et seq., federal regulations adopted under the Act, and any laws enacted by the United States Congress that supersede or supplement the Act.

(2) ~~"Commissioner" means the~~ Commissioner. -- The Commissioner of Insurance of the State of North ~~Carolina.~~ Carolina or an authorized designee of the Commissioner.

~~(3) "Competent" shall mean competent to technically evaluate, test, and inspect in accordance with the standards, rules and regulations prescribed in this Article: the structural features, the plumbing, heating, electrical and air-conditioning systems and the materials used in the construction of a manufactured home.~~

(4) ~~"Council" means the North Carolina State Building Code Council.~~ HUD. -- The United States Department of Housing and Urban Development or any successor agency.

(5) ~~"Inspection department" means a~~ Inspection department. -- A North Carolina city or county building inspection department authorized by Chapter ~~160~~ 160A or Chapter ~~153~~ 153A of the General Statutes.

(6) ~~"Label of compliance" shall mean a permanent label or seal permanently attached to a manufactured home at completion of construction thereof which is issued by any independent, solvent, and trustworthy person approved and licensed by the Council as being competent and as having and utilizing initial and follow-up manufacturing inspection services which provide the highest degree of quality control, and on which seal or label shall be recorded:~~
~~a. The person issuing such label or seal and the serial number of the label or seal;~~
~~b. The serial or other identification number of said manufactured home;~~
~~c. A certification that said manufactured home was evaluated, tested, and inspected in accordance with the standards and rules and regulations prescribed in this Article.~~

Label. -- The form of certification required by HUD to be permanently affixed to each transportable section of each manufactured home manufactured for sale to a purchaser in the United States to indicate that the manufactured home conforms to all applicable federal construction and safety standards.

(7) ~~"Manufactured home" means a~~ Manufactured home. -- A structure, transportable in one or more sections, which in the traveling mode is eight body feet or more in width, or 40 body feet or more in length, or, when erected on site, is 320 or more square feet; and which is built on a permanent chassis and designed to be used as a dwelling, with or without permanent foundation when connected to the required utilities, including the plumbing, heating, air conditioning and electrical systems contained therein. 'Manufactured home' includes any structure that meets all of the requirements of this subsection except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of ~~the United States Department of Housing and Urban Development~~ HUD and complies with the standards established under the ~~National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. §5401, et seq.~~ Act.

For manufactured homes built ~~prior to~~ before June 15, 1976, 'manufactured home' means a portable manufactured housing unit designed for transportation on its own chassis and placement on a temporary or semipermanent foundation having a measurement of over 32 feet in length and over eight feet in width. 'Manufactured home' also means a double-wide manufactured home, which is two or more portable manufactured housing units designed for transportation on their own chassis that connect on site for placement on a temporary or semipermanent foundation having a measurement of over 32 feet in length and over eight feet in width.

~~(8) "Person" means any corporation, partnership, association, voluntary organization or governmental agency of the United States or any state therein and does not mean an individual natural person.~~

"§ 143-146. Statement of policy; rule-making power.

(a) Manufactured homes, because of the manner of their construction, assembly and use and that of their systems, components and appliances (including heating, plumbing and electrical systems) like other finished products having concealed vital parts may present hazards to the health, life and safety of persons and to the safety of property unless properly manufactured. In the sale of manufactured homes, there is also the possibility of defects not readily ascertainable when inspected by purchasers. It is the policy and purpose of this State to provide protection to the public against those possible hazards, and for that purpose to forbid the manufacture and sale of

new manufactured homes, which are not so constructed as to provide reasonable safety and protection to their owners and users. This Article ~~is intended to provide~~ provides to the Commissioner all necessary authority to enable the State to obtain approval as a State Administrative Agency under the provisions of the ~~National Manufactured Housing Construction and Safety Standards Act of 1974.~~ Act.

~~(b) The Commissioner shall make and promulgate rules embodying the standards for construction or manufacture of manufactured homes set by the Department of Housing and Urban Development under the provisions of the National Manufactured Housing Construction and Safety Standards Act of 1974, as these standards may be amended.~~

~~(c) The Council is authorized to make and promulgate reasonable rules and regulations governing the procedure to be followed by a person or inspection department seeking to obtain a license pursuant to the provisions of this Article which shall provide opportunity for hearing before the Council on such application.~~

~~(d) In order to insure the highest degree of quality control in the manufacture of manufactured homes, the Council is further authorized and empowered to make and promulgate reasonable rules and regulations governing the initial and follow-up manufacturing inspection practices and procedures to be performed by any person granted a license to issue a label of compliance pursuant to this Article. In order to assure uniformity in standards and enforcement, such rules and regulations may also provide that any such licensee and its operations may be inspected from time to time by any other person or licensee designated by the Council who shall report the results of such examination to the Council. In such case the reasonable expense incurred by the examiner in making such inspection shall be borne by the licensee whose operations were examined.~~

(e) The Commissioner ~~is authorized to promulgate such~~ may adopt rules ~~as are necessary~~ to carry out the provisions of the Act and this Article, including rules ~~regarding~~ for consumer complaint ~~procedures, and such other~~ procedures and rules ~~as are necessary to enable the State to assume responsibility~~ for the enforcement of the ~~National Manufactured Housing Construction and Safety Standards Act of 1974.~~ standards and regulations established and adopted by HUD under the Act.

"**§ 143-147. ~~Approval and licensing of persons and inspection departments.~~** Structures built under previous standards.

~~(a) Any qualified person may make application to the Council for approval for license to issue labels of compliance. Any inspection department may make application to the Council for approval for issuing certificates of compliance. The Council after notice and hearing, if satisfied that such person or inspection department meets the qualifications prescribed in this Article, shall cause a license to be issued which license shall be valid for a consecutive period of 12 months and may be renewed for like consecutive periods on application to and approval by the Council;~~

~~(b) Any such license issued to a person other than an inspection department may be suspended or revoked after notice and hearing if such person:~~

~~(1) Is either insolvent, not competent, not independent, or untrustworthy;~~

~~(2) Has made false statements in his application to the Council for license;~~

~~(3) Fails or neglects to perform evaluations, testing, or manufacturing inspections in accordance with its proposed plans and procedures submitted to the Council or fails to comply with any applicable rules and regulations promulgated by the Council pursuant to G.S. 143-146(d);~~

~~(4) Has repeatedly, specifically or by implication authorized the attachment of its label of compliance to manufactured homes and such manufactured homes did not meet the standards and rules and regulations provided by this Article at the time said labels were attached.~~

~~(c) Any such license issued to an inspection department may be suspended or revoked after notice and hearing if such department:~~

~~(1) Is not competent;~~

~~(2) Has issued a certificate of compliance on a manufactured home when such manufactured home was not opened for inspection so that the entire structural, electrical, heating, plumbing and air-conditioning systems could be closely observed and inspected;~~

~~(3) Has issued a certificate of compliance on a manufactured home and such manufactured home did not at the time of inspection meet the standards and rules and regulations provided by this Article.~~

The legal status of any structure built before the effective date of the Act shall not be affected by any changes made in this Article by the General Assembly.

"§ 143-148. Certain structures excluded from coverage.

The Commissioner may by rule provide for the exclusion of certain structures by certification in accordance with the ~~National Manufactured Housing Construction and Safety Standards Act of 1974.~~ Act.

"§ 143-149. Necessity for obtaining label ~~or certificate~~ for purposes of sale.

No ~~individual natural person, firm, partnership, association or corporation~~ person shall ~~after September 1, 1971,~~ sell or offer for sale any manufactured home in this ~~State, which manufactured home~~ State that does not ~~bear permanently attached thereto a label of compliance or for which manufactured home the individual natural person, firm, partnership, association, or corporation selling or offering to sell such manufactured home does not have a certificate of compliance; provided it shall be~~ have a label. It is a defense to any prosecution for a violation of ~~the provisions of~~ this section if ~~such individual natural person, firm, partnership, association or corporation shall show~~ a person shows that a certificate of title for ~~such~~ the manufactured home as required by G.S. 20-52 was obtained ~~prior to September 1, 1971,~~ before June 15, 1976, or produces other satisfactory evidence on file with the North Carolina

~~Department~~ Division of Motor Vehicles that ~~such~~ the manufactured home was manufactured ~~prior to September 1, 1971.~~ before June 15, 1976.

"§ 143-150. No electricity to be furnished units not in compliance.

It is unlawful for any person to ~~initially~~ furnish electricity for use in any manufactured home without first ascertaining that the manufactured home and its electrical supply has been inspected pursuant to G.S. 143-139 by the inspection authority having jurisdiction and found to comply with the requirements of the State Electrical Code. The certificate of compliance issued by the inspection jurisdiction shall be accepted as evidence of compliance.

"§ 143-151. Penalties.

(a) ~~Whoever violates (i) the provisions of this Article; or (ii)~~ Any person who is found by the Commissioner to have violated the provisions of the Act, this Article, or any rules ~~promulgated~~ adopted under this Article, shall be liable for a civil penalty not to exceed one thousand dollars ($1,000) for each violation. Each ~~such~~ violation shall constitute a separate violation ~~with respect to~~ for each manufactured home or ~~with respect to~~ for each failure or refusal to allow or perform an act required ~~thereby, except that the~~ by the Act, this Article, or any rules adopted under this Article. The maximum civil penalty may not exceed one million dollars ($1,000,000) for any related series of violations occurring within one year ~~from~~ after the date of the first violation. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation, the amount of money that inured to the benefit of the violator as a result of the violation, whether the violation was willful, and the prior record of the violator in complying or failing to comply with laws, rules, or orders applicable to the violator. The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(b) Any individual, ~~corporation,~~ or a director, officer or agent of a corporation who knowingly and willfully violates the Act, this ~~Article~~ Article, or any rules ~~promulgated~~ adopted under this Article in a manner ~~which~~ that threatens the health or safety of any purchaser is guilty of a Class ~~1 misdemeanor.~~ I felony.

"§ 143-151.1. Enforcement.

The Commissioner ~~of Insurance or any inspection department~~ may initiate any appropriate action or proceeding to prevent, restrain, or correct any violation of the Act, this Article, or any rules adopted under this Article. The Commissioner, or any of his deputies or employees, upon showing proper credentials and in the discharge of their duties ~~pursuant to~~ under this Article, or the ~~National Manufactured Housing Construction and Safety Standards Act of 1974,~~ Act, is authorized at reasonable hours and without advance notice to enter and inspect all factories, warehouses, or establishments in ~~the State of North Carolina~~ this State in which manufactured homes are manufactured, stored or held for sale.

"§ 143-151.2. Fees.

(a) The Commissioner ~~may~~ shall establish a monitoring inspection fee in an amount ~~established~~ required by the Secretary of ~~Housing and Urban Development.~~ HUD. This monitoring inspection fee shall be an amount paid by each manufactured

home manufacturer in ~~the~~ this State for each manufactured home produced by the manufacturer in ~~that state.~~ this State.

(b) The monitoring inspection fee shall be paid by the manufacturer to the Secretary of ~~Housing and Urban Development~~ HUD or ~~such~~ the Secretary's ~~agent, who shall distribute the fees collected from all manufactured home manufacturers among the approved and conditionally approved states based on the number of manufactured homes whose first location after leaving the manufacturing plant is on the premises of a distributor, dealer, or purchaser in that state, and the extent of participation of the State in the joint monitoring team program established under the National Manufactured Housing Construction and Safety Standards Act of 1974.~~ agent.

"§ 143-151.3. Reports.

Each manufacturer, distributor, and dealer of manufactured homes shall establish and maintain such records, make such reports, and provide such information as the Commissioner or the Secretary of ~~Housing and Urban Development~~ HUD may reasonably require to be able to determine whether ~~such~~ the manufacturer, distributor, or dealer has acted or is acting in compliance with this Article, or the ~~National Manufactured Housing Construction and Safety Standards Act of 1974~~ Act and shall, upon request of a person ~~duly~~ designated by the Commissioner or the Secretary of ~~Housing and Urban Development,~~ HUD, permit ~~such~~ the person to inspect appropriate books, papers, records and documents relevant to determining whether ~~such~~ the manufacturer, distributor, or dealer has acted or is acting in compliance with this Article or the ~~National Manufactured Housing Construction and Safety Standards Act of 1974.~~ Act, and any rules adopted by the Commissioner under this Article.

"§ 143-151.4. Notification of ~~defects.~~ defects and correction procedures.

Every manufacturer of manufactured homes shall ~~furnish~~ provide for notification ~~of any defect~~ and correction procedures in any manufactured home produced by ~~such~~ the manufacturer ~~and correct such defect~~ in accordance with the Act, this Article, and any ~~procedures specified~~ rules adopted by the Commissioner.

"§ 143-151.5. Prohibited acts.

(a) No person shall:

(1) Manufacture for sale, lease, sell, offer for sale or lease, or introduce or deliver, or import into the United States, any manufactured home ~~which~~ that is manufactured on or after the effective date of any applicable manufactured home construction and safety standard under the Act or this Article and ~~which~~ that does not comply with ~~such~~ the standard, except as provided in ~~subsection (b);~~ subsections (b), (c), and (d) of this section.

(2) Fail or refuse to permit access to or copying of records, or fail to make reports or provide information, or fail or refuse to permit entry or inspection, as required under the Act or this ~~Article;~~ Article.

(3) Fail to furnish notification of any defect as required by ~~G.S. 143-151.4;~~ the Act or this Article.

(4) Fail to issue a ~~certificate of compliance,~~ label or issue a ~~certification to the effect that a manufactured home conforms to all applicable manufactured home construction and safety standards,~~ label if ~~such~~ the person in the exercise of due care has reason to know that ~~such certification~~ the label is false or misleading in a material ~~respect;~~ respect.

(5) Fail to comply with a rule adopted or an order issued by the Commissioner under this ~~Article; or~~ Article.

(6) Issue a certification pursuant to G.S. 143-148 if ~~such~~ the person in the exercise of due care has reason to know that ~~such~~ the certification is false or misleading in a material respect.

(b) (1) ~~Paragraph (1) of subsection (a) shall~~ Subdivision (a)(1) of this section does not apply to the sale, the offer for sale, or the introduction or delivery of any manufactured home after the first purchase of it in good faith for purposes other than resale.

(2) ~~Paragraph (1) of subsection (a) shall~~ Subdivision (a)(1) of this section does not apply to any person who establishes that he did not have reason to know in the exercise of due care that ~~such~~ the manufactured home was not in conformity with applicable manufactured home construction and safety ~~standards,~~ standards. ~~or~~

(c) Subdivision (a)(1) of this section shall not apply to any person who, ~~prior to such~~ before the first purchase, holds a certificate of compliance issued by the manufacturer or importer of ~~such~~ the manufactured home to the effect that ~~such mobile~~ the manufactured home conforms to all applicable manufactured home construction and safety standards, unless ~~such~~ the person knows that ~~such~~ the manufactured home does not so conform.

"**§§ 143-151.6, 143-151.7:** Reserved for future codification purposes."

Section 3. Article 9D of Chapter 143 of the General Statutes is repealed.

Section 4. G.S. 58-2-55 reads as rewritten:

"**§ 58-2-55. Designated hearing officers.**

In any contested case under ~~Articles 1 through 64, 65 and 66, 67, 69, 70, or 71 of this Chapter,~~ Chapter or Article 9A or Article 9B of Chapter 143 of the General Statutes, the Commissioner may designate a member of his staff to serve as a hearing officer. When the Commissioner is unable or elects not to hear a contested case and elects not to designate a hearing officer to hear a contested case, he shall apply to the director of the Office of Administrative Hearings for the designation of an administrative law judge to preside at the hearing of a contested case. Upon receipt of the application, the Director shall, without undue delay, assign an administrative law judge to hear the case."

Section 5. Structures built before the effective date of the Act shall not be affected by any changes made in this Article.

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

SENATE BILL 941:
Manufactured Homes Law Changes

BILL ANALYSIS

Committee: Senate Finance Committee
Date: May 16, 1999
Version: 2nd Edition

Introduced by: Senator Warren
Summary by: Linwood Jones and Martha K. Walston, Staff Attorneys

SUMMARY: ***Senate Bill 941 makes several changes to the laws governing manufactured housing. The bill is before Senate Finance because it authorizes the North Carolina Manufactured Housing Board to establish continuing education requirements for licensees and to charge fees for the courses Senate Bill was reported favorably by Senate Commerce on April 27, 1999. The committee substitute differs from the original bill in that it rewrites G.S. 143-147 to state that the legal status of any structure built before the effective date of the National Manufactured Housing Construction and Safety Standards Act of 1974 is not affected by any changes made by the General Assembly to the Uniform Standards Code for Manufactured Homes.***

BILL ANALYSIS: Section 1 makes the following amendments to the law regulating manufactured housing licensees. (A manufactured home manufacturer, dealer, salesman and set-up contractor are required to be licensed by the North Carolina Manufactured Housing Board.)

143-143.8. References to "mobile homes" are changed to "manufactured homes".

143-143.9. Definitions are added for "license" and "licensee". "Setup" is redefined to eliminate a portion of the definition that defines what "setup" operations include and exclude.

143-143.10. A provision is added that unexpended funds of the Board (whose funds are already kept in a separate fund apart from the General Fund), do not revert to the General Fund.

143-143.11. The provision, allowing a licensee whose license has lapsed to renew within one year by payment of the renewal fee with proof that he or she has not engaged in the manufactured housing business since the lapse and is otherwise eligible for registration, is amended to provide that the applicant must pay the renewal fee. The current fee for a license may not exceed $300.00

143-143.11A. This new section requires an applicant to inform the Board of a change of address within 10 days, and allows the Board to serve notice on a licensee personally or by first-class mail at the address provided by the licensee. Notice is deemed delivered four days after mailing.

143-143.11B. This new section allows the Board to require up to 8 hours of continuing education for licensees and charge course application fees not to exceed $150.00. The Board may charge the sponsor of an approved course a fee not to exceed $75.00 for the annual renewal of course approval. A course sponsor may also be required to pay a fee, not to exceed $5.00 per credit hour per licensee, for each licensee completing a course conducted by the sponsor. The Board may charge a licensee a fee not to exceed $50.00 for each unapproved course or related educational activity that the licensee submits for credit. Failure to complete the continuing education requirements results in a lapse of the license.

143-143.13. This section is amended to allow the Board to revoke, suspend, or deny a license for failure to appear for a prehearing conference with the Board after proper notice. Failure to appear for the hearing after proper notice is already grounds for discipline.

143-143.14. This section adds language that if the Board finds an applicant has not met the requirements for licensure, the Board shall not issue a license and shall notify the applicant of the denial and the grounds for it. This section also allows the Board to adopt rules for hearings and prehearing conferences including provisions on discovery, motions, sanctions, continuances, etc.

143-143.15. "Anchoring down" a manufactured home is changed to "setting up" the manufactured home.

143-143.17. This section eliminates the requirement that the Board forward to the Attorney General and the Commissioner of Insurance a copy of each warranty service complaint filed by consumers. (Note: The Board is housed within and staffed by the Department of Insurance.)

143-143.21A. This section provides that the following must be included in a manufactured home purchase agreement in addition to the information already required by law: amount of any payment made by the buyer towards purchase of the home or accessories (current law refers only to amount of the "deposit") and the buyer's and dealer's signatures. (Current law already requires the buyer's signature). This section also rewrites the required disclosure statement concerning buyer cancellation and refund rights.

Section 2 makes the following changes to the laws governing the standards code for manufactured home construction

143-145. Several definitions are deleted and several are added.

143-146. Several provisions authorizing the adoption of rules are deleted. The existing authority of the Commissioner to adopt rules to carry out this law is retained.

143-147. This section, relating to licenses to individuals or inspection departments to issue labels of HUD compliance to manufactured homes, is repealed. A grandfather provision is added. (The legal status of any structure built before the effective date of the National Manufactured Housing Construction and Safety Standards Act of 1974 is not affected by any changes made in the Article 9B, Uniform Standards Code for Manufactured Homes, by the General Assembly.

143-149. This section makes stylistic changes and moves the exemption date for the sale of manufactured homes without a HUD label of compliance from homes manufactured prior to September 1, 1971 to those manufactured prior to June 15, 1976.

143-151. This section adds language requiring the Commissioner, in assessing a civil penalty for a violation of these laws, to look at certain factors (such as the extent of harm caused and whether the violation was willful) in determining the amount of the penalty.

143-151.2. This section provides that the Commissioner shall (now "may") establish a monitoring inspection fee in the amount required by HUD. This fee is paid by each manufactured home manufacturer in this State for each manufactured home produced by the manufacturer in the State. This section also repeals language that purports to direct HUD on how to distribute the fee revenue.

Section 3 repeals Article 9D of Chapter 143. Article 9D is entitled "*Enforcement of Building Code Insulation and Energy Standards*".

Section 4 amends one of the general hearing laws of the Department of Insurance to include Article 9B of Chapter 143. This provision relates to the Commissioner designating staff members as hearing officers in contested cases and referring cases to OAH for a hearing.

Section 5 provides that structures built before the effective date of this bill are not affected by the bill's provisions.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: S.B. 941 DRAFT

SHORT TITLE: Manufactured Homes Law Changes

SPONSOR(S): Senator Warren

FISCAL IMPACT

Yes ( ) **No ( )** **No Estimate Available (x)**

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
General Fund	* Make Create a General Fund Loss (See Below) *				
Man. Homes Licensing Board	* Revenue Increase (See Below) *				
EXPENDITURES					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Manufactured Housing Board, the Department of Insurance, and Corrections.

EFFECTIVE DATE: When it becomes law.

BILL SUMMARY: The legislation makes several changes to the laws governing manufactured housing. First, it provides several updated definitions including manufactured home, license, licensee, and set up. Second, it allows the North Carolina Manufactured Housing Board to retain unexpended funds at the end of the fiscal year. Currently any balance reverts to the general fund. Third, it provides that a licensee can renew a lapsed license within one year by paying the renewal fee and proving that they have not engaged in the industry during that time. Forth, it requires an applicant to inform the Board of a change of address in ten days, and offers other provisions for postal difficulties. Fifth, it authorizes the Board to require up to eight hours of continuing education, with fees not to exceed $150.00. The Board may charge the sponsor of an approved course up to $75.00 for a course approval renewal. Sponsors may also be required to charge a fee of up to $5.00 per credit hour, per licensee. The Board can also charge a licensee fee not to exceed $50.00 for each unapproved course or related educational activity submitted for credit. Next the bill authorizes the Board to adopt rules for hearings and prehearing conferences. It adds a requirement that purchase agreements must include buyer and dealer signatures, and makes other changes to the purchasing agreement. The bill also several changes to the penalty and violation provisions. This includes increasing the penalty for a willing violation of the Act that threatens the health or safety of a purchaser from a Class 1 misdemeanor to a Class 1 felony.

ASSUMPTIONS AND METHODOLOGY: There are three items in the bill that could have a fiscal impact. First the bill provides that unexpended funds do not revert to the General Fund. In the past, all remaining fund balances have returned to the General Fund. Therefore, there is a potential General Fund loss. In 1997-98 the Manufactured House Licensing Board collected $596,825 in licensing fees. The Department of Insurance, who administers the program, does not expect any significant changes in this revenue stream. However, neither Fiscal Research nor the Department of Insurance has information, at this time, on reversion amounts.

The second potential fiscal impact relates to the continuing education requirements. As noted previously, the bill authorizes the Board to require continuing education. It also sets the maximum fees associated with that training. The Department of Insurance reports collecting for 7,251 licenses in 1997-98. The vast majority of these (4,566) were for salesman. The next largest group of licensees is dealers. At this point there is no estimate on the number of courses that will be offered, or the number of credit hours the Board will actually require. As a result, no accurate fiscal estimate is possible.

Finally, the bill could impact the prison population. Under current law it is a Class 1 misdemeanor to violate the Manufactured Housing Act in a manner that threatens the health or safety of a purchaser. The legislation moves such a violation to a Class 1 felony. Data from the Administrative Office of the Courts (AOC) did not reveal the number of charges brought under this provision of the current law. Although the penalty enhancement is significant, AOC does not expect a substantial fiscal impact on the courts from this bill. They assume that the vast majority of the businesses being regulated will comply with the requirements of the law.

TECHNICAL CONSIDERATIONS:

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Linda Struyk Millsaps

APPROVED BY:

DATE:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 62*

Short Title: EFT of Corporate Estimated Income Tax. (Public)

Sponsors: Representatives Gray, Cansler, Capps, Hill, Neely, Ramsey, C. Wilson; Culp, Dockham, Rayfield, Starnes, and Wood.

Referred to: Finance.

February 10, 1999

A BILL TO BE ENTITLED

AN ACT TO REQUIRE CORPORATIONS THAT ARE REQUIRED TO PAY FEDERAL-ESTIMATED INCOME TAX BY ELECTRONIC FUNDS TRANSFER TO PAY STATE-ESTIMATED INCOME TAX BY ELECTRONIC FUNDS TRANSFER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-163.40 reads as rewritten:

"**§ 105-163.40. Time for submitting declaration; time and method for paying estimated ~~tax.~~ tax; form of payment.**

(a) Due Dates of Declarations. -- Declarations of estimated tax are due at the same time as the corporation's first installment payment. Installment payments are due as follows:

(1) If, before the 1st day of the 4th month of the taxable year, the corporation's estimated tax equals or exceeds five hundred dollars ($500.00), the corporation shall pay the estimated tax in four equal installments on or before the 15th day of the 4th, 6th, 9th and 12th months of the taxable year.

(2) If, after the last day of the 3rd month and before the 1st day of the 6th month of the taxable year, the corporation's estimated tax equals or exceeds five hundred dollars ($500.00), the corporation shall pay the estimated tax in three equal installments on or before the 15th day of the 6th, 9th and 12th months of the taxable year.

(3) If, after the last day of the 5th month and before the 1st day of the 9th month of the taxable year, the corporation's estimated tax equals or exceeds five hundred dollars ($500.00), the corporation shall pay the estimated tax in two equal installments on or before the 15th day of the 9th and 12th months.

(4) If, after the last day of the 8th month and before the 1st day of the 12th month of the taxable year, the corporation's estimated tax equals or exceeds five hundred dollars ($500.00), the corporation shall pay the estimated tax on or before the 15th day of the 12th month of the taxable year.

(b) Payment of Estimated Tax When Declaration Amended. -- When a corporation submits an amended declaration after making one or more installment payments on its estimated tax, the amount of each remaining installment shall be the amount that would have been payable if the estimate in the amended declaration was the original estimate, increased or decreased as appropriate by the amount computed by dividing:

(1) The absolute value of the difference between:

a. The amount paid and

b. The amount that would have been paid if the estimate in the amended declaration was the original estimate by

(2) The number of remaining installments.

(c) Short Taxable Year. -- Payment of estimated tax for taxable years of less than 12 months shall be made in accordance with rules promulgated by the Secretary.

(d) Form of Payment. -- A corporation that is required under the Code to pay its federal estimated corporate income tax by electronic funds transfer must pay its State estimated tax by electronic funds transfer."

Section 2. G.S. 105-241(b) reads as rewritten:

"(b) Electronic Funds Transfer. -- ~~The~~ Except as provided in G.S. 105-163.40, the Secretary shall not require a taxpayer to pay a tax by electronic funds transfer unless, during the applicable period for that tax, the average amount of the taxpayer's required payments of the tax was at least twenty thousand dollars ($20,000) a month. The twenty thousand dollar ($20,000) threshold applies separately to each tax. The applicable period for a tax is a 12-month period, designated by the Secretary, preceding the imposition or review of the payment requirement. The requirement that a taxpayer pay a tax by electronic funds transfer remains in effect until suspended by the Secretary. Every 12 months after requiring a taxpayer to pay a tax by electronic funds transfer, the Secretary shall determine whether, during the applicable period for that tax, the average amount of the taxpayer's required payments of the tax was at least twenty thousand dollars ($20,000) a month. If it was not, the Secretary shall suspend the requirement that the taxpayer pay the tax by electronic funds transfer and shall notify the taxpayer in writing that the requirement has been suspended."

Section 3. This act becomes effective for taxable years beginning on or after January 1, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 62*
Proposed Senate Committee Substitute H62-PCS3419-LC

Short Title: EFT of Corporate Estimated Income Tax. (Public)

Sponsors:

Referred to:

February 10, 1999

A BILL TO BE ENTITLED

AN ACT TO REQUIRE CORPORATIONS THAT ARE REQUIRED TO PAY FEDERAL ESTIMATED INCOME TAX BY ELECTRONIC FUNDS TRANSFER TO PAY STATE ESTIMATED INCOME TAX BY ELECTRONIC FUNDS TRANSFER, AND TO STATE THE INTENT OF THE GENERAL ASSEMBLY THAT SOME OF THE RESULTING REVENUE GAIN SHALL BE USED TO ADD FOUR TAX ANALYST POSITIONS IN THE TAX RESEARCH DIVISION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-163.40 reads as rewritten:

"**§ 105-163.40. Time for submitting declaration; time and method for paying estimated ~~tax.~~ tax; form of payment.**

(a) Due Dates of Declarations. -- Declarations of estimated tax are due at the same time as the corporation's first installment payment. Installment payments are due as follows:

(1) If, before the 1st day of the 4th month of the taxable year, the corporation's estimated tax equals or exceeds five hundred dollars ($500.00), the corporation shall pay the estimated tax in four equal installments on or before the 15th day of the 4th, 6th, 9th and 12th months of the taxable year.

(2) If, after the last day of the 3rd month and before the 1st day of the 6th month of the taxable year, the corporation's estimated tax equals or exceeds five hundred dollars ($500.00), the corporation

shall pay the estimated tax in three equal installments on or before the 15th day of the 6th, 9th and 12th months of the taxable year.

(3) If, after the last day of the 5th month and before the 1st day of the 9th month of the taxable year, the corporation's estimated tax equals or exceeds five hundred dollars ($500.00), the corporation shall pay the estimated tax in two equal installments on or before the 15th day of the 9th and 12th months.

(4) If, after the last day of the 8th month and before the 1st day of the 12th month of the taxable year, the corporation's estimated tax equals or exceeds five hundred dollars ($500.00), the corporation shall pay the estimated tax on or before the 15th day of the 12th month of the taxable year.

(b) Payment of Estimated Tax When Declaration Amended. -- When a corporation submits an amended declaration after making one or more installment payments on its estimated tax, the amount of each remaining installment shall be the amount that would have been payable if the estimate in the amended declaration was the original estimate, increased or decreased as appropriate by the amount computed by dividing:

(1) The absolute value of the difference between:

a. The amount paid and

b. The amount that would have been paid if the estimate in the amended declaration was the original estimate by

(2) The number of remaining installments.

(c) Short Taxable Year. -- Payment of estimated tax for taxable years of less than 12 months shall be made in accordance with rules promulgated by the Secretary.

(d) Form of Payment. -- A corporation that is required under the Code to pay its federal estimated corporate income tax by electronic funds transfer must pay its State estimated tax by electronic funds transfer."

Section 2. G.S. 105-241(b) reads as rewritten:

"(b) Electronic Funds Transfer. -- ~~The~~ Except as provided in G.S. 105-163.40, the Secretary shall not require a taxpayer to pay a tax by electronic funds transfer unless, during the applicable period for that tax, the average amount of the taxpayer's required payments of the tax was at least twenty thousand dollars ($20,000) a month. The twenty thousand dollar ($20,000) threshold applies separately to each tax. The applicable period for a tax is a 12-month period, designated by the Secretary, preceding the imposition or review of the payment requirement. The requirement that a taxpayer pay a tax by electronic funds transfer remains in effect until suspended by the Secretary. Every 12 months after requiring a taxpayer to pay a tax by electronic funds transfer, the Secretary shall determine whether, during the applicable period for that tax, the average amount of the taxpayer's required payments of the tax was at least twenty thousand dollars ($20,000) a month. If it was not, the Secretary shall suspend the requirement that the taxpayer pay the tax by electronic funds transfer and shall notify the taxpayer in writing that the requirement has been suspended."

Section 3. It is the intent of the General Assembly that, of the revenue generated by this act, one hundred seventy-eight thousand thirty-eight dollars ($178,038) in the 1999-2000 fiscal year and two hundred eighty-three thousand two hundred seventy-five dollars ($283,275) in the 2000-2001 fiscal year shall be used to fund the four tax analyst positions in the Tax Research Division of the Department of Revenue, effective January 1, 2000, as recommended in Senate Bill 74 and House Bill 55, 1999 General Assembly, A BILL TO BE ENTITLED AN ACT TO ADD FOUR NEW TAX ANALYSTS IN THE TAX RESEARCH DIVISION OF THE DEPARTMENT OF REVENUE. This act does not appropriate funds or obligate the General Assembly to appropriate funds.

Section 4. Section 3 of this act is effective when it becomes law. The remainder of this act becomes effective for taxable years beginning on or after January 1, 2000.

HOUSE BILL 62:
EFT of Corporate Estimated Income Tax

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Rep. Gray
Date:	May 6, 1999	**Summary by:**	Martha H. Harris
Version:	Proposed Senate Comm. Sub.		Staff Attorney

SUMMARY: House Bill 62 requires corporations that are required to pay federal income tax estimated payments by electronic funds transfer (EFT) to pay State income tax estimated payments by EFT. The Department of Revenue estimates an annual gain of $334,662 from this EFT requirement. Because of the January 1, 2000, effective date of this bill, the gain for fiscal year 1999-2000 will be half of the annual estimate. The bill also states the intent of the General Assembly that part of the revenue gain will be used to fund the four new tax research positions for the Tax Research Division of the Department of Revenue.

CURRENT LAW: In 1993, the General Assembly authorized the Department of Revenue to collect taxes by EFT. The average tax payment must be at least $20,000 a month before the tax payment must be submitted by EFT. The $20,000 threshold applies separately to each tax.

BILL ANALYSIS: House Bill 62 creates a different rule for corporate estimated income tax payments in order to increase the efficiency of State tax collections and to conform the State's method of collecting corporate estimated income tax payments with federal law so that a taxpayer has only one set of rules to learn and follow. House Bill 62 was recommended by the Revenue Laws Study Committee.

For federal purposes, under current law, a corporation whose depository taxes exceed $50,000 in a twelve-month period must pay its corporate income tax estimated payments by EFT. The federal regulations list the different types of depository taxes. Examples of depository taxes include social security taxes, withheld income taxes, and corporate estimated income taxes. The Internal Revenue Service has just issued a propose rule that would require estimated payments by EFT only if the corporation's annual aggregate deposits were more than $200,000. This new rule will limit the EFT requirement to the largest 9% of taxpayers.

Section 1 of the bill requires a corporation that must pay its federal estimated tax by EFT to pay its State estimated tax by EFT. This change in the law will eliminate thousands of returns, not payments, each year. It will enable the State to receive tax payments more quickly and thus gain three to five days of interest on the payments.

Section 2 makes a conforming change in the State's current requirements for EFT to recognize the EFT requirements established in Section 1 for corporate estimated income tax payments.

Section 3 of House Bill 62 states the intent of the General Assembly that part of the revenue generated by the bill will be used to pay for four new positions in the Tax Research Division of the Department of Revenue, effective January 1, 2000. The Revenue Laws Study Committee recommended that funds be appropriated to add four new tax analyst positions in the Tax Research Division. This recommendation was introduced by Senator Hoyle as Senate Bill 74 and by Representative Cansler as House Bill 55. The intent language does not appropriate funds or obligate the General Assembly to appropriate funds.

The Revenue Laws Study Committee determined that there is a need for in-depth tax research that cannot be met by the current three-person staff. Adding four new tax analyst positions would provide a tax research resource capable of serving the needs of the legislative and executive branches for analyses of various tax proposals and of the effect of changes in the economy on the tax base.

The Tax Research Division compiles and publishes statistical and descriptive information on State and local taxes, analyzes the impact of proposed changes in the tax laws, and answers inquiries from other State agencies and the public about the tax laws. In recent years, the General Assembly had made additional demands on the Division for reports and estimates, and this trend will undoubtedly continue. With additional tax analysts, the Tax Research Division could develop tax databases and models to provide quick estimates of various tax proposals as they arise. There are many important issues facing the General Assembly at this time and extensive tax research will be required to provide the information necessary to evaluate these issues. Examples of these issues are:

- The effect on the current tax structure of the change from a manufacturing and farming economy to a service economy
- The effectiveness and cost of tax incentives
- The impact that utility deregulation will have on State and local taxes
- The effect of allowing combined or consolidated corporate income tax returns, rather than the current single-entity returns
- The effect on revenues and on various taxpayers groups of changing the 3-factor corporate apportionment formula to a single-factor formula
- Whether to adopt the Multistate Tax Commission's uniform apportionment formula for financial institutions in place of the current single-factor formula
- How to simplify the formulas for distribution of State-shared revenues

The Department of Revenue surveyed other states to determine the number of tax research personnel each employs in its executive branch. The following table shows the number of tax research employees for twenty states, ranked by size of state population. For those states that

have positions devoted partly to tax research and partly to other duties, the number represents the portion of staff time dedicated to forecasting.

State	Number of Employees
California	10
Texas	81
New York	16
Florida	12
Pennsylvania	9
Illinois	4
Ohio	5
Michigan	11
New Jersey	6
Georgia	1
North Carolina	3
Virginia	6
Massachusetts	5
Indiana	1
Washington	13
Missouri	5
Tennessee	3
Wisconsin	11
Maryland	3
Minnesota	14

Cindy Avrette contributed to this analysis

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 62 (Senate Finance Committee Substitute)

SHORT TITLE: EFT of Corporate Estimated Income Tax

SPONSOR(S): Representatives Gray, et al.

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
GENERAL FUND					
Revenue	**$169,725**	**$339,450**	**$339,450**	**$339,450**	**$339,450**
Expenditures	**($6,093)**	**($4,788)**	**($4,788)**	**($4,788)**	**($4,788)**
NET G.F. Gain	**$163,632**	**$334,662**	**$334,662**	**$334,662**	**$334,662**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue

EFFECTIVE DATE: Section 3 of the act (Tax Research positions) is effective when it becomes law. The remainder of the act becomes effective for taxable years beginning on after January 1, 2000.

BILL SUMMARY:

The bill requires corporations that pay federal income tax estimated payments by electronic funds transfers (EFT) to also pay state income tax estimated payments by EFT. The bill also states that it is the intent of the General Assembly to use a portion of the revenue gained in this bill to fund four tax analyst positions in the Tax Research Division of the Department of Revenue.

ASSUMPTIONS AND METHODOLOGY:

ELECTRONIC FUNDS TRANSFER (EFT)

The Department of Revenue estimates an annual gain of **$334,662** from the required electronic funds transfer (EFT) provision in this bill. By processing an additional 3,925 transactions by EFT instead of paper based transactions, the state will earn an additional five days of interest on tax collections of $271.1 million each fiscal year. Using the State Treasurer's FY 1997-98 short-term interest rate of 5.51%, the additional interest is anticipated to be $339,450. To administer the program, the Department of Revenue will spend $4,788 each year to process the additional 3,925 EFT transactions and will have a one-time cost of $1,305 to set up 981 new accounts. The first fiscal year savings will be half of the annual estimate due to a January 1, 2000 effective date. This assumes that the quarterly estimated tax payments are equal and that April and June 2000 income tax payments are made by EFT.

TAX RESEARCH POSITIONS

House Bill 62 states the General Assembly's intent to fund four Tax Analyst positions in the Tax Research Division of the Department of Revenue. These positions were recommended by the Revenue Laws Study Committee and are included in SB 74 and HB 55. The first year cost of the positions is $319,675 and the second year cost is $283,275.

The Tax Research Division compiles and publishes statistical and descriptive information on state and local taxes, analyzes the impact of proposed changes in the tax laws, and answers inquiries from the General Assembly, other state agencies, and the public about the tax laws.

The four additional personnel will enable the Department to do the research and analysis needed to meet reporting requirements imposed by the General Assembly. These positions are also needed to evaluate various tax issues that the General Assembly will have to address in the near future such as 1) the adoption of the Multistate Tax Commission's 3-factor apportionment formula for financial institutions, 2) changing from a single entity state to a combined reporting state, 3) changing the distinction between business and non-business income, 4) the impact of deregulation of utilities on the economy, and 5) changes in the distribution formulas for State-shared revenues. Additionally, these staff members will strengthen the Tax Research Division's ability to conduct more complex studies and to provide information on a more timely basis to the Office of State Budget & Management, the State Controller's and Treasurer's Offices, and the Commerce Department. Each position is a Tax Analyst, grade 79, budgeted at an annual salary of $57,590. The estimated budget for these positions is shown below. The salaries are not adjusted for any potential pay increases in future years. The furniture, computers, and office equipment are one-time costs.

Account Title	1999-00	2000-01
SPA Regular Salaries	$230,360	$230,360
Social Security Contributions	17,623	17,623
Retirement Contributions	24,948	24,948
Medical Insurance Contributions	6,944	6,944
Telephone Service	1,400	1,400
General Office Supplies	2,000	2,000
Furniture-Office (Workstation and Chair)	18,000	
Office Equipment (Calculator)	400	
Equipment - Computer (Desktop/Laptop)	18,000	
Total	**$319,675**	**$283,275**

FISCAL RESEARCH DIVISION (733-4910)
PREPARED BY: Richard Bostic

APPROVED BY: Tom Covington

DATE: Tuesday, May 11, 1999

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 817

Short Title: Real Property Tax Penalty. (Public)

Sponsors: Senator Ballance.

Referred to: Finance.

April 12, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE AN EXCEPTION TO THE LATE LISTING PENALTY FOR CERTAIN REAL PROPERTY IN COUNTIES THAT HAVE NOT ADOPTED PERMANENT LISTING AND TO PHASE IN PERMANENT LISTING IN ALL COUNTIES.

The General Assembly of North Carolina enacts:

Section 1. It is the intent of the General Assembly to encourage all counties to adopt a permanent property tax listing system in accordance with G.S. 105-303(b). The General Assembly finds that permanent listing is more convenient for taxpayers and more efficient for counties. To encourage counties to adopt permanent listing in the next few years, Section 2 of this act prohibits counties that have not adopted such a system from charging late listing penalties in certain circumstances. Section 3 of this act requires all counties to adopt permanent listing systems by the 2004 tax year.

Section 2. G.S. 105-312(h) reads as rewritten:

"(h) Computation of Penalties. -- Having computed each year's taxes separately as provided in subsection ~~(g), above,~~ (g) of this section, there shall be added a penalty of ten percent (10%) of the amount of the tax for the earliest year in which the property was not listed, plus an additional ten percent (10%) of the same amount for each subsequent listing period that elapsed before the property was discovered. This penalty shall be computed separately for each year in which a failure to list occurred; and the year, the amount of the tax for that year, and the total of penalties for failure to list in that year shall be shown separately on the tax records; but the taxes and penalties for all years in which there was a failure to list shall be then totalled on a

single tax receipt. The penalty provided in this section does not apply to real property if there have been no improvements to the property since it was last listed and there has been no change in ownership since it was last listed."

Section 3. Effective for taxes imposed for taxable years beginning on or after July 1, 2004, G.S. 105-303(b) reads as rewritten:

"(b) ~~With the approval of the Department of Revenue, the board of county commissioners may install a permanent listing system. (The Department's approval shall not, however, be required for any such system installed prior to April 3, 1939.)~~ The board of commissioners of each county must install a permanent listing system. Each county must obtain the approval of the Department of Revenue for its permanent listing system. Under such a system the provisions of subdivisions (b)(1) through ~~(b)(4), below, shall~~ (b)(4) of this subsection apply.

(1) The assessor ~~shall be~~ is responsible for listing all real property on the abstracts and tax records each year in the name of the owner of record as of the day as of which property is to be listed under G.S. 105-285.

(2) Persons whose duty it is to list real property under the provisions of G.S. 105-302 ~~shall be~~ is relieved of that duty, but annually, during the listing period established by G.S. 105-307, ~~such persons shall~~ these persons must furnish the assessor with the information concerning improvements on and separate rights in real property required by G.S. 105-309(c)(3) through (c)(5).

(3) The penalties imposed by G.S. 105-308 and 105-312 ~~shall not be imposed for~~ do not apply to failure to list real property for taxation, but they ~~shall be imposed for~~ apply to failure to comply with the provisions of subdivision ~~(b)(2), above,~~ (b)(2) of this subsection with respect to reporting the construction or acquisition of improvements on and separate rights in real property. In such a case, the penalty prescribed by G.S. 105-312 shall be computed on the basis of the tax imposed on the improvements and separate rights.

(4) The Department of Revenue may authorize the board of county commissioners to make additional modifications of the listing requirements of this Subchapter, ~~but no such modification shall conflict with the provisions of~~ as long as the modifications do not conflict with subdivisions (b)(1) through ~~(b)(3), above.~~ (b)(3) of this subsection."

Section 4. Section 3 of this act is effective for taxes imposed for taxable years beginning on or after July 1, 2004. The remainder of this act is effective for taxes imposed for taxable years beginning on or after July 1, 1999. Section 2 of this act is repealed effective for taxes imposed for taxable years beginning on or after July 1, 2004.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 817
Proposed Committee Substitute S817-PCSA143-LA

Short Title: Real Property Tax Penalty. (Public)

Sponsors:

Referred to:

April 12, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE AN EXCEPTION TO THE LATE LISTING PENALTY FOR CERTAIN REAL PROPERTY IN COUNTIES THAT HAVE NOT ADOPTED PERMANENT LISTING AND TO PHASE IN PERMANENT LISTING IN ALL COUNTIES.

The General Assembly of North Carolina enacts:

Section 1. It is the intent of the General Assembly to encourage all counties to adopt a permanent property tax listing system in accordance with G.S. 105-303(b). The General Assembly finds that permanent listing is more convenient for taxpayers and more efficient for counties. To encourage counties to adopt permanent listing in the next few years, Section 2 of this act prohibits counties that have not adopted such a system from charging late listing penalties in certain circumstances. Section 3 of this act requires all counties to adopt permanent listing systems by the 2004 tax year.

Section 2. G.S. 105-312(h) reads as rewritten:

"(h) Computation of Penalties. -- Having computed each year's taxes separately as provided in subsection ~~(g), above,~~ (g) of this section, there shall be added a penalty of ten percent (10%) of the amount of the tax for the earliest year in which the property was not listed, plus an additional ten percent (10%) of the same amount for each subsequent listing period that elapsed before the property was discovered. This penalty shall be computed separately for each year in which a failure to list occurred; and the year, the amount of the tax for that year, and the total of penalties for failure to list in that year shall be shown separately on the tax records; but the taxes and

penalties for all years in which there was a failure to list shall be then totalled on a single tax receipt. The penalty provided in this section does not apply to real property if there have been no improvements to the property since it was last listed and there has been no change in ownership since it was last listed."

Section 3. Effective for taxes imposed for taxable years beginning on or after July 1, 2004, G.S. 105-303(b) reads as rewritten:

"(b) ~~With the approval of the Department of Revenue, the board of county commissioners may install a permanent listing system. (The Department's approval shall not, however, be required for any such system installed prior to April 3, 1939.)~~ The board of commissioners of each county must install a permanent listing system. Each county must obtain the approval of the Department of Revenue for its permanent listing system. Under such a system the provisions of subdivisions (b)(1) through ~~(b)(4), below, shall~~ (b)(4) of this subsection apply.

(1) The assessor ~~shall be~~ is responsible for listing all real property on the abstracts and tax records each year in the name of the owner of record as of the day as of which property is to be listed under G.S. 105-285.

(2) Persons whose duty it is to list real property under the provisions of G.S. 105-302 ~~shall be~~ are relieved of that duty, but annually, during the listing period established by G.S. 105-307, ~~such persons shall~~ these persons must furnish the assessor with the information concerning improvements on and separate rights in real property required by G.S. 105-309(c)(3) through (c)(5).

(3) The penalties imposed by G.S. 105-308 and 105-312 ~~shall not be imposed for~~ do not apply to failure to list real property for taxation, but they ~~shall be imposed for~~ apply to failure to comply with the provisions of subdivision ~~(b)(2), above,~~ (b)(2) of this subsection with respect to reporting the construction or acquisition of improvements on and separate rights in real property. In such a case, the penalty prescribed by G.S. 105-312 shall be computed on the basis of the tax imposed on the improvements and separate rights.

(4) The Department of Revenue may authorize the board of county commissioners to make additional modifications of the listing requirements of this Subchapter, ~~but no such modification shall conflict with the provisions of~~ as long as the modifications do not conflict with subdivisions (b)(1) through ~~(b)(3), above.~~ (b)(3) of this subsection."

Section 4. Section 3 of this act is effective for taxes imposed for taxable years beginning on or after July 1, 2004. The remainder of this act is effective for taxes imposed for taxable years beginning on or after July 1, 1999. Section 2 of this act is repealed effective for taxes imposed for taxable years beginning on or after July 1, 2004.

SENATE BILL 817:
Real Property Tax Penalty

BILL ANALYSIS

Committee:	Senate Finance Committee	**Introduced by:**	Senator Ballance
Date:	May 17, 1999	**Summary by:**	Martha K. Walston
Version:	1st Edition		Committee Counsel

SUMMARY: ***Senate Bill 817 amends the property tax laws by providing that the 10% tax penalty on discovered real property does not apply if there has been no improvements to the property and there has been no change in ownership since the property was last listed. Senate Bill 817 also requires each county to install a permanent listing system effective for taxable years beginning on or after July 1, 2004.***

CURRENT LAW: When property that should have been listed for tax purposes is discovered, the property is taxed for the year it was discovered and the preceding five years it escaped taxation. Each year's taxes are computed separately and then the following penalty is added: a penalty of 10% of the amount of the tax for the earliest year the property was not listed, plus an additional 10% of the same amount for each subsequent listing period that elapsed before the property was discovered. This penalty is also computed separately for each year the failure to list occurred.

Current law also authorizes a board of county commissioners to install a permanent listing system, with the approval of the Department of Revenue. A permanent listing system provides:

1. The assessor is responsible for listing all real property each year.
2. The owner of the property is relieved of the duty of listing his real property each year during the month of January. However, during this listing period the owner must furnish the assessor with information on buildings or improvements worth more than $100 that have been acquired, begun, erected, damaged, or destroyed since the last appraisal, and with information of improvements and separate rights owned by the taxpayer with respect to the lands of another.
3. Property tax penalties do not apply for failure to list real property for taxation, but they do apply for failure to furnish the assessor with the information in 2 above.

BILL ANALYSIS: Section 1 states the intent of the General Assembly to encourage all counties to adopt a permanent property tax listing system. There are only six counties that have not adopted a system: Clay, Graham, Swain, Vance, Warren, and Yancey.

Section 2 provides that the 10% penalty on discovered property does not apply to real property if there have been no improvements to the property since it was last listed and there has been no change in ownership since it was last listed. This section is repealed effective for taxes imposed for taxable years beginning on or after July 1, 2004.

Section 3 requires the board of commissioners of each county to install a permanent listing system. This section is effective for taxes imposed for taxable years beginning on or after July 1, 2004.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: S.B. 817 Real Property Tax Penalty

SHORT TITLE: Real Property Tax Penalty

SPONSOR(S): Sen. Ballance

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
General Fund			*** No General Fund Impact ***		
Local Government			* See Assumptions and Methodology *		

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: County and municipal governments, the North Carolina Department of Revenue, Property Tax Division.

EFFECTIVE DATE: Section 3 of this act is effective for taxes imposed for taxable years beginning on or after July 1, 2004. The remainder of this act is effective for taxes imposed for taxable years beginning on or after July 1, 1999. Section 2 of this act is repealed effective for taxes imposed for taxable years beginning on or after July 1, 2004.

BILL SUMMARY: The legislation makes two changes to real property tax law. First, it provides an exception to the late listing penalty for property that has not been improved or transferred since it was last listed. This is generally referred to as unimproved discovered property. This applies only in counties were there is no permanent listing system. Second, it requires that each county install a permanent listing system. This system must be approved by the Department of Revenue, and implemented by the 2004 tax year.

ASSUMPTIONS AND METHODOLOGY: According to the Department of Revenue, as of January 1, 1999 there were six counties without a permanent listing system. These counties are Clay, Graham, Swain, Vance, Warren, and Yancey. All of the remaining 94 counties have some version of a permanent listing system.

Under a permanent listing system, real property is assumed to remain the same, unless the county has reason to believe otherwise. In counties without a permanent system, the assessor requires property owners to listing their real property each year. According to the Department of Revenue, many counties have a permanent system, but also use a post card reminder system to

give property owners a convenient opportunity to declare any significant modifications or unrecorded transfers. In the case of residential property, a significant modification would include building a deck or garage, or increasing the overall footprint of the home. When a permanent listing system is used, assessors often depend on inspection and permit officials for much of their information on property improvements.

According to the Department of Revenue, the amount of discovered property in a county is generally very insignificant each year, unless the county performs an audit. Counties are only required to audit one-eighth of their exempt property each year. There are no requirements to audit property that produces income for the county. Because there is no data available on the amount of discovered property, the associated penalty amounts, or how much of that property is held by the same owner and unimproved, no fiscal estimate is possible on this portion of the bill. However, the bill has the potential to decrease penalty income in the six counties that do not have a permanent listing system. Since provision of the bill expires in 2004, there will be no fiscal impact after that date.

The requirement that all counties have a permanent listing system by 2004 could have a fiscal impact on the six counties without such a system. No information is available at this time on the cost of developing a permanent system.

TECHNICAL CONSIDERATIONS:

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Linda Struyk Millsaps

APPROVED BY: Tom Covington

DATE: Monday, May 17, 1999

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 791

Short Title: Ten Year Drivers License. (Public)

Sponsors: Senator Hoyle.

Referred to: Finance.

April 8, 1999

A BILL TO BE ENTITLED

AN ACT TO CHANGE THE GENERAL DRIVERS LICENSE RENEWAL CYCLE FROM FIVE TO TEN YEARS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-7(f) reads as rewritten:

"(f) License Expiration. ~~Expiration and Temporary License. -- The first drivers license the Division issues to a person expires on the person's fourth or subsequent birthday that occurs after the license is issued and on which the individual's age is evenly divisible by five, unless this subsection sets a different expiration date. The first drivers license the Division issues to a person who is at least 17 years old but is less than 18 years old expires on the person's twentieth birthday. The first drivers license the Division issues to a person who is at least 62 years old expires on the person's birthday in the fifth year after the license is issued, whether or not the person's age on that birthday is evenly divisible by five.~~

~~A drivers license that was issued by the Division and is renewed by the Division expires five years after the expiration date of the license that is renewed.~~

A drivers license issued to a person at least 16 but less than 18 years of age expires on the person's twentieth birthday. A drivers license issued to a person age 18 but less than age 60 expires 10 years after the date of issuance, or on the person's sixty-fifth birthday, whichever is earlier. A drivers license issued to a person age 60 but less than age 80 expires five years after the date of issuance, or on the person's eightieth birthday, whichever is earlier. A drivers license issued to a person age 80 or over expires three years from the date of issuance.

(f1) Early renewal. -- A person may apply to the Division to renew a license during the 180-day period before the license expires. The Division may not accept an application for renewal made before the 180-day period begins.

(f2) Temporary license by mail. --

(1) The Division may renew by mail a drivers license issued by the Division to a person who meets any of the following descriptions:

~~(1)~~ a. Is serving on active duty in the armed forces of the United States and is stationed outside this State.

~~(2)~~ b. Is a resident of this State and has been residing outside the State for at least 30 continuous days.

(2) When renewing a license by mail, the Division may waive the examination that would otherwise be required for the renewal and may impose any conditions it finds advisable. A license renewed by mail is a temporary license that expires 60 days after the person to whom it is issued returns to this State."

Section 2. G.S. 20-7 is amended by adding a new subsection to read:

"(f3) Consultation. -- Any person who holds a drivers license with a duration greater than five years who has three reportable accidents as defined in G.S. 2-4.01(33b), or is convicted of three moving violations as specified in G.S. 20-16(c) during any twelve-month period shall be notified by the Division and required to attend a drivers license consultation. The Division shall establish the format of the consultation, which shall include a review of traffic law and rules, and a review of road signs."

Section 3. G.S. 20-37.7(d) reads as rewritten:

"(d) Expiration and Fee. -- A special identification card issued to a person ~~for the first time~~ under this section expires ~~when a drivers license issued on the same day to that person would expire.~~ five years following the date of issuance. ~~A special identification card renewed under this section expires when a drivers license renewed by the card holder on the same day would expire.~~

The fee for a special identification card is the same as the fee set in G.S. 20-14 for a duplicate license. The fee does not apply to a special identification card issued to a resident of this State who is legally blind, is at least 70 years old, or is homeless. To obtain a special identification card without paying a fee, a homeless person must present a letter to the Division from the director of a facility that provides care or shelter to homeless persons verifying that the person is homeless."

Section 4. This act becomes effective July 1, 2000.

SENATE BILL 791:
Ten Year Drivers License

BILL ANALYSIS

Committee:	Senate Finance Committee	**Introduced by:**	Senator Hoyle
Date:	May 16, 1999	**Summary by:**	Martha K. Walston
Version:	1st Edition		Committee Counsel

SUMMARY: ***Senate Bill 791 amends G.S. 20-7(f) to provide that: (1) license issued to person at least 16 but less than 18 expires on the person's 20th birthday, (2) license issued to person between the ages of 18 and 60 expires 10 years after date of issuance, (3) license issued to person between the ages of 60 and 80 expires the earlier of 5 years after issuance or the 80th birthday, and (4) license issued to person 80 or over expires 3 years after issuance. Senate Bill 791 requires a person holding a 10-year license who has three reportable accidents or is convicted of three moving violations during a 12 month period to attend a drivers license consultation. Senate Bill 791 provides that a special identification card will expire 5 years after issuance. The act is effective July 1, 2000.***

CURRENT LAW: G.S. 20-7(f) provides for the following expiration dates of drivers licenses:

First drivers license

Issued to a person who is at least 17 but less than 18 - expires when the person turns 20.

Issued to a person who is at least 62 - expires on person's birthday in the fifth year after license is issued.

Issued to every other person - expires on the person's fourth or subsequent birthday that occurs after the license is issued and on which the person's age is evenly divisible by five.

License issued by DMV and renewed by DMV

Expires five years after the expiration date of the renewed license.

BILL ANALYSIS: **Section 1** of Senate Bill 791 amends G.S. 20-7(f) by setting out the following new expiration dates for a drivers license:

License issued to person at least 16 but less than 18 – expires on person's 20th birthday.

License issued to a person age 18 but less than 60 – expires 10 years after date of issuance or on the person's 65th birthday, whichever is earlier.

License issued to person age 60 but less than 80 – expires 5 years after date of issuance, or on the person's 80th birthday, whichever is earlier.

License issued to person age 80 or over – expires 3 years from date of issuance.

Section 2 of Senate Bill 791 adds a new subsection to G.S. 20-7 that requires a person who holds a 10-year license to attend a drivers license consultation if one of the following applies:

- The person has three reportable accidents during any 12-month period. A "reportable accident" is defined as

  An accident or collision involving a motor vehicle that results in either of the following:

  a. Death or injury of a human being.

b. Total property damage of $1,000 or more, or property damage of any amount to a vehicle seized when the driver is charged with impaired driving and the driver's license had been revoked because of a prior impaired driving license revocation.

- The person is convicted of three moving violations during any 12-month period.

The drivers license consultation shall include a review of traffic law and rules, and a review of road signs.

Section 3 of the bill amends G.S. 20-37.7(d) to require that a special identification card issued by the DMV shall expire five years following the date of issuance. The current law requires that the card expire on the same day that a drivers license held by that person would expire. The current fee for a card is $10.00. A homeless person, legally blind person, or a person who is at least 70 does not have to pay the fee.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 791 Ten Year Drivers License

SHORT TITLE: Ten Year Drivers License

SPONSOR(S): Senator Hoyle

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES		$5,892,102	$13,444,149	$13,763,848	$13,050,692
EXPENDITURES	$234,732	$842,496	$963,972	$1,019,627	$1,029,230
POSITIONS:					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Division of Motor Vehicles Driver License Section

EFFECTIVE DATE: July 1, 2000

BILL SUMMARY:
Currently the law generally provides that drivers licenses expire five years from the date of issue. This bill would provide that beginning July 1, 2000 customers age 18-55 would receive a 10-year license. Customers over 56 would receive a license expiring at age 65, with renewals every five years after that. Customers from age 75-80 would receive licenses expiring at age 80. From age 80 on, customers would begin receiving 3-year licenses. Customers with three reportable crashes or three traffic violations in a year would be automatically called in for conference with examiners to discuss driving performance. Special ID cards would expire five years after date of issuance, irrespective of age of customer.

ASSUMPTIONS AND METHODOLOGY:

Producing the 10-Year License

- DMV notes that the current license is not designed to last ten years so a new license card stock and printer would have to be installed. Current licenses cost $1.05 each and it is estimated that 10-year licenses from the same vendor would cost $1.50 each.

- For the system to be operational by July 1, 2000 it would have to be installed in the last quarter of FY99-00. To meet this schedule, DMV would have to be authorized to renegotiate its contract with the current vendor. If DMV were required instead to rebid the contract it would be 20-24 months before the system could be on-line.

Projected Transaction Volumes

- Growth in issuances was projected at 2% per year.
- In Calendar Year 1998 the number of drivers who had three accidents within a one year period was 1,690. The number of drivers who had three moving violations in a one-year period was 73,315. As a result, approximately 75,000 to 80,000 drivers would have to visit offices for consultations.
- The benefits of reduced customer visits would not begin until five years after the effective date of the legislation (FY2005-06).

Staffing Issues

- The timesaving for examiners would come primarily in renewals, which require comparatively little time (an average of 6.97 minutes).
- The number of transactions would continue to grow through FY2005 but would then drop for five years. It is possible that no examiners would need to be added in the next ten years. In the last five years of that period the filling of some vacancies could be delayed.

Cost and Revenue Issues

- It is estimated that ITS costs for reprogramming would be $46,920 (510 hours x $80 per hour equals $40,800 plus $6,120 for ITS charges).
- In the last quarter of FY2000 5-year licenses would be issued on the 10-year card stock, incurring additional costs of $.45 for each of the 417,360 licenses issued during that quarter.
- Yearly fees for issuance of licenses would remain the same at $2.50. The cost of ID cards would remain the same at $10.
- For the foreseeable future there will be a cycle of five years of high income and five years of reduced income. Low cycles would be the years FY05-10 and FY15-20. DMV provided the estimates in the following table:

Revenue Cycling with Ten-Year Driver License
(millions of dollars)

Fiscal Year	Projected Revenue with current 5-year License	Projected Revenue with proposed 10-year License	Increase or (Decrease) in Revenue
1999-00	$20.0	$20.0	0
2000-01	$23.6	$29.5	$5.9
2001-02	$27.7	$41.1	$13.4
2002-03	$28.3	$42.1	$13.8
2003-04	$27.4	$40.5	$13.1
2004-05	$27.9	$41.4	$13.4
2005-06	$29.6	$32.0	$2.4
2006-07	$31.6	$22.9	($8.7)
2007-08	$30.9	$23.4	($7.5)
2008-09	$30.1	$23.5	($6.6)

2009-10	$30.7	$23.9	($6.8)
2010-11	$32.5	$35.3	$2.8
2011-12	$34.6	$50.2	$15.6
2012-13	$34.0	$51.3	$17.3
2013-14	$33.2	$49.4	$16.2
2014-15	$33.8	$50.4	$16.5

TECHNICAL CONSIDERATIONS:

FISCAL RESEARCH DIVISION 733-4910

PREPARED BY: Robert Weiss

APPROVED BY: Tom Covington

DATE: Monday, May 17, 1999

VISITOR REGISTRATION SHEET

SENATE FINANCE — TUESDAY, MAY 18, 1999

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jim Blackburn	Association of County Commissioners
Cam Cree	BPMHL
Jane Perry	AAA
Kelli Kukura	DuPont
Tony Spence	DMV
W Hunter	DMV-Driver License
L Rockett	DENR
Grover Sawyer	NCDOI
Roger R. Pierce	NC Home Inspector Licensure Board - Chairman
Bradley Adams	Bradley T Assn
Ralph E. Hise Jr	Legislative Intern

VISITOR REGISTRATION SHEET

SENATE FINANCE — TUESDAY, MAY 18, 1999

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Denise Connelly	Hunton & Williams
Myricle Howard	Preservation NC
Laura P. Jones	DENR - DWQ
Annette Lucas	DENR - DWQ
Preston Howard	MCIC
Paul Wilms	NCMBA
Bob "Chainsaw" Slocum	NCFA
Lisa Martin	Upper Neuse River Basin Assn.
Mike Carpenter	NCHBA
Gilbermon Bunch, JR	NCBPTE
[illegible]	NCPTA

VISITOR REGISTRATION SHEET

SENATE FINANCE — TUESDAY, MAY 18, 1999

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Willie Riddick	DOR
Laura DeVivo	DENR
Butch Gunnells	NC SDA

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Wednesday, May 19, 1999

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

FAVORABLE

H.B.(CS) **648** Benson Charter Revised.
Sequential Referral: None
Recommended Referral: None

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

S.B. **328** D.O.T. Map Transfer and Filing.
Draft Number: PCSA142
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

S.B. **817** Real Property Tax Penalty.
Draft Number: PCSA143
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

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

H.B. **62** EFT of Corporate Estimated Income Tax.
Draft Number: PCS3419
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED 4

Committee Clerk Comment: SB 328 and 817 HB 62 and 648

AGENDA

SENATE FINANCE COMMITTEE MEETING

WEDNESDAY, MAY 19, 1999

ROOM 544 LOB – 1:30 PM

MEETING CALLED TO ORDER – SENATOR HOYLE

INTRODUCTION OF PAGES

BILLS TO BE HEARD:

- HB 259 – HOME INSPECTOR AMENDMENTS – REP. JARRELL
- HB 462 – CHADBOURN UTILITY BILLS – REP. HILL

- SB 222 – GOVERNMENT ACCEPT CREDIT CARDS – SEN. REEVES
  SB 251 – MODIFY HISTORIC REHAB CREDIT – SEN. HORTON
- SB 791 – TEN YEAR DRIVERS LICENSE – SEN. HOYLE
- SB 799 – PHYSICAL THERAPY FEES – SEN. KERR
- SB 1049 – NEUSE RIVER BUFFER AMENDS – SEN. ALBERTSON

ADJOURNMENT OF MEETING

SENATE FINANCE COMMITTEE

WEDNESDAY, MAY 19, 1999

1:30 PM – ROOM 544

The Senate Finance Committee met on Wednesday, May 19, 1999 at 1:30 PM in Room 544 with Senator Hoyle presiding. There were 23 committee members present. David Nida from Littleton, North Carolina, sponsored by Senator Ballance, was introduced as the page for the meeting.

HB 462 – Chadbourn Utility Bills

Senator Soles was recognized to explain the bill in the absence of Representative Hill. Senator Soles moved for adoption for the purpose of discussion a committee substitute to this bill, motion passed. Senator Soles requested that Gerry Cohn, Head of Bill Drafting, explain the bill, which he did. After Mr. Cohn's explanation, Senator Albertson moved to give bill a "Favorable Report", motion passed. Copy of Bill and supporting documents included in the minutes.

HB 259 – Home Inspector Amendments

Representative Jarrell was recognized to explain the bill. After her explanation, there were comments on the bill from the following: Henry Jones, Attorney, representing the American Society of Home Inspectors; Roger Pierce, Chairman of the Home Inspectors Licensure Board; Augustine Stasi, Executive Director of the N. C. Licensed Home Inspectors Association and Michael Carpenter from the N. C. Home Builders Association. Senator Lee moved for a "Favorable Report", motion passed. Copy of Bill and supporting documents included in the minutes.

SB 1049 – Neuse River Buffer Amends

Senator Albertson was recognized to explain this bill. Senator Albertson moved for adoption for the purpose of discussion a committee substitute, motion passed. After Senator Albertson's explanation of the committee substitute there was a length discussion of the bill and George Givens, Staff Attorney on Environment, and Coleen Sullins with the Division of Water Quality with the Department of Environment and Natural Resources, were called on to answer most of the questions that members of the committee had on this bill. Senator Dannelly moved for a "Favorable Report", motion passed. Copy of Bill and supporting documents included in the minutes.

Senator Kerr took over presiding so that Senator Hoyle could come to explain a bill.

SB 791 – Ten Year Drivers License

Senator Hoyle was recognized to explain this bill again. Senator Soles sent forth an amendment to this bill and moved that bill be amended, motion was not voted on. After a length discussion by the members of the committee, Senator Soles withdrew his 1st amendment and sent forth a 2nd amendment and moved that bill be amended, motion passed. Senator Webster moved that bill be given a "Favorable Report as amended and rolled into a committee substitute", motion passed. Copy of Bill and supporting documents included in the minutes.

Senator Hoyle returned to preside over the Meeting.

SB 799 0 Physical Therapy Fees

Senator Kerr was recognized to explain the bill and at the conclusion of his explanation, Senator Soles moved for a "Favorable Report", motion passed. Copy of Bill and supporting documents included in the minutes.

SB 222 – Government Accept Credit Cards

Senator Reeves was recognized to explain the bill. He moved for adoption of a committee substitute to the bill for the purpose of discussion, motion passed. After some discussion on the bill, Ralph Campbell, State Auditor, spoke in support of the Bill. Senator Cooper moved to give the committee substitute a "Favorable Report", motion passed. Copy of Bill and supporting documents included in the minutes.

Meeting adjourned.

David W. Hoyle, Co-Chair

John H. Kerr, III Co-Chair

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

Visitors' Sign Up Sheet is Attachment #1
Committee Report dated 5-19-99 is Attachment #2
Committee Report dated 5-20-99 is Attachment #3

NOTE: SB 251 was not heard at this Meeting

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 462
Second Edition Engrossed 3/31/99

Short Title: Chadbourn Utility Bills. (Local)

Sponsors: Representatives Hill; and Wright.

Referred to: Local Government I.

March 16, 1999

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE TOWNS OF CHADBOURN AND MOUNT GILEAD, AND MONTGOMERY COUNTY, TO COLLECT UTILITY BILLS AS IF THEY WERE TAXES DUE THEM.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 1070 of the 1989 Session Laws, as amended by S.L. 1998-84, reads as rewritten:

"Sec. 2. This act applies to the Towns of ~~Richfield~~ Chadbourn, Richfield, Mount Gilead, and ~~Stanfield and~~ Stanfield, the City of Locust, and Montgomery County only."

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

North Carolina General Assembly
Legislative Services Office

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EXPLANATION OF PROPOSED SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL 462

House Bill 462 as it passed the House provides that the Towns of Chadbourn and Mount Gilead, and Montgomery County may collect unpaid water and sewer bills with the same remedies that they can use to collect property taxes by levying on tangible personal property. The Senate Committee Substitute makes no changes in this provision. This language is Section 1.

The remainder of the bill, Sections 1.1 through 10 provides a means for Dare County to finance placing electric lines underground. A few communities in Brunswick County have authority to finance this kind of project through assessments, but Senate Bill 462 proposes instead to finance the project through a utility bill surcharge.

To use the local bill, Dare County would first hold a public hearing, setting out the boundaries of the special tax district or districts (multiple districts could be created if was desired to have different rates. The County Commissioners would authorize the tax for any unincorporated area of the county it deems appropriate. Notice of the proposal would be sent to municipalities in the County. Those municipalities wishing to opt into the program would have to adopt a resolution requesting that the tax be levied in their town. County would then levy tax in municipalities. The county could later after a public hearing expand the district to include other unincorporated areas.

The tax rate would be set by the county commissioners of up to:
$1.00 per month per residential power bill.
$5.00 per month per commercial/industrial power bill.

The tax would be collected by the public utility and placed into a special account specifically for line transfers from suspended to underground.

The account is to be controlled by special commission of the following:
-one representative of the county commissioners
-one representative of each municipality opting in the program for that district
-one representative of the Roanoke Island Corridor Commission

. It would work like this. Only those municipalities opting in could participate in having their lines put beneath the ground/benefit from the proceeds of the tax.
Upon receipt of the funds, the special commission would set priorities as to which lines would be transferred underground and in what order.

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

The district could contract with the utility to do the actual construction, or could contract with the State another local government.

The tax would act like the normal sales tax and gross receipts tax already on power bills. The utility could use the same procedures for terminating service for nonpayment as for nonpayment of the regular utility bill. Standard boilerplate provisions on collections and administration appear in the bill.

The utility would remit the tax monthly, but there is flexibility for the county to use a collection cycle keyed to the utility billing cycle rather than the calendar month.

I have been told that the County Board of Commissioners of Dare County and a few of the municipalities have endorsed this concept. It is permissive in nature and can be implemented only if the county chooses to create the district and levy the tax. It applies to Dare County only.

I have been told that North Carolina Power, the primary provider in Dare, is not opposed to the bill and has agreed to work with the County on this issue.

PREPARED BY GERRY COHEN
MAY 19, 1999

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 462
Second Edition Engrossed 3/31/99
Proposed Senate Committee Substitute H462-PCS2352-LB

Short Title: Local Utility Bills/Dare Utilities. (Local)

Sponsors:

Referred to:

March 16, 1999

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE TOWNS OF CHADBOURN AND MOUNT GILEAD, AND MONTGOMERY COUNTY, TO COLLECT UTILITY BILLS AS IF THEY WERE TAXES DUE THEM, AND TO ALLOW DARE COUNTY TO CREATE SPECIAL TAX DISTRICTS TO UNDERGROUND ELECTRIC UTILITY LINES.

The General Assembly of North Carolina enacts:

CHADBOURN, MOUNT GILEAD, AND MONTGOMERY COUNTY UTILITY BILL COLLECTION

Section 1. Section 2 of Chapter 1070 of the 1989 Session Laws, as amended by S.L. 1998-84, reads as rewritten:

"Sec. 2. This act applies to the Towns of ~~Richfield~~ Chadbourn, Richfield, Mount Gilead, and ~~Stanfield and~~ Stanfield, the City of ~~Locust~~ Locust, and Montgomery County only."

DARE UTILITY DISTRICT

Section 1.1. Authorization to Create Utility District. A county board of commissioners may create one or more Utility Districts for the purpose of raising and expending funds to underground electric utility lines in the district.

Section 2.(a) Procedure. A county board of commissioners may by resolution signify its determination to create a Utility District under the provisions of this act. The resolution shall be adopted after a public hearing thereon, notice of

which hearing shall be given by publication at least once, not less than 10 days prior to the date fixed for the hearing, in a newspaper having a general circulation in the county. The notice shall contain a brief statement of the substance of the proposed resolution, shall set forth the boundaries of the district, and shall state the time and place of the public hearing. No other publication of the resolution is required under the provisions of any other law.

Section 2.(b) The resolution shall include articles of incorporation which shall set forth:

(1) The name of the district;

(2) A statement that the district is organized under this act; and

(3) A description of the boundaries, which may include any territory designated by the county board of commissioners that is not in the corporate limits of any municipality.

Section 2.(c) No territory may be in more than one district.

Section 2.(d) All territory of a district shall be within the county.

Section 2.(e) A certified copy of the resolution signifying the determination to organize a district under the provisions of this act shall be filed with the Secretary of State, together with proof of publication of the notice of hearing on the resolution. If the Secretary of State finds that the resolution, including the articles of incorporation, conforms to the provisions of this act and that the notice of hearing was properly published, the Secretary of State shall file the resolution and proof of publication in the records of that office, shall issue a certificate of incorporation under the seal of the State, and shall record the same in an appropriate book of record. The issuance of the certificate of incorporation by the Secretary of State shall constitute the district, a public body and body politic and corporate of the State of North Carolina. This certificate of incorporation shall be conclusive evidence of the fact that the district has been duly created and established under the provisions of this act.

Section 2.(f) When the district has been duly organized and its officers appointed as provided by this act, the secretary or clerk of the district shall certify to the Secretary of State the names and addresses of the officers as well as the address of the principal office of the district.

Section 3.(a) Annexation to District. By adoption of a resolution, and with the approval of the board of commissioners of a county by resolution, any municipality located wholly within that county may annex the entirety of that municipality to any Utility District created by this act, but no municipality may be in more than one district. The resolution shall be adopted by the municipal governing board after a public hearing thereon, notice of which hearing shall be given by publication at least once, not less than 10 days prior to the date fixed for the hearing, in a newspaper having a general circulation in the county. The notice shall contain a brief statement of the substance of the proposed resolution and shall state the time and place of the public hearing. No other publication of the resolution is required under the provisions of any other law.

Section 3.(b) By adoption of a resolution, the board of commissioners of a county may annex any area within that county but not within the corporate limits of any municipality to a Utility District, but no area may be in more than one district. The resolution shall be adopted by the county board of commissioners after a public hearing thereon, notice of which hearing shall be given by publication at least once, not less than 10 days prior to the date fixed for the hearing, in a newspaper having a general circulation in the county. The notice shall contain a brief statement of the substance of the proposed resolution, the boundaries of the proposed annexation, and shall state the time and place of the public hearing. No other publication of the resolution is required under the provisions of any other law.

Section 3.(c) If any area in a Utility District is annexed to the corporate limits of any municipality, it shall remain in the same Utility District notwithstanding any other provision of this act.

Section 4.(a) Governing Board. Each Utility District shall be governed by a special commission consisting of one person appointed by the board of commissioners of that county, one person appointed by the governing board of each municipality that has annexed its territory to the district under Section 3(a) of this act.

Section 4.(b) In the case of Dare County, one person shall also be appointed to the Special Commission by the Roanoke Island Commission established by Part 27A of Article 2 of Chapter 143B of the General Statutes. Appointments shall be for two-year terms.

Section 5.(a) Powers. By resolution the board of commissioners of the county, acting ex officio on behalf of the Utility District, may levy a tax of up to one dollar ($1.00) per month on each residential electric power customer bill for service within the district, and up to five dollars ($5.00) per month on each commercial or industrial electric power customer bill within the district.

Section 5.(b) The Utility District may receive contributions from the State of North Carolina, local governments, and the private sector for corporate purposes authorized by this act.

Section 5.(c) The commission may contract with the State of North Carolina, another local government, or a private entity for carrying out the projects authorized by this act.

Section 6. Use of Funds. The taxes levied under this act, after being expended for the necessary administrative expenses of the utility district, shall be used only for undergrounding of electric utility lines within the district. The budget for the Utility District shall be adopted by the special commission for that district.

Section 7. Corporate Existence. A Utility District created under this act shall have the power granted by this act, and may do all acts reasonably necessary to fulfill this purpose. A simple majority of the governing board constitutes a quorum, and approval by a majority of those present is sufficient to determine any matter before the governing body, if a quorum is present.

Section 8. Fiscal Control. The Utility District is a special district under G.S. 159-7 and is covered by the applicable provisions of Chapter 159 of the General Statutes.

Section 9.(a) Levy. A tax authorized by this act may be levied only by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto. A tax authorized by this act shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the third month after the date the resolution is adopted. In establishing the effective date, the board of commissioners shall consult with any utility that will be collecting the tax to determine any administrative lead times that might be desirable.

Section 9.(b) Collection. Every electric utility subject to a tax authorized by this act shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall be collected as part of the charge for furnishing electric power. The tax shall be stated and charged separately and shall be paid by the purchaser to the utility as trustee for and on account of the Utility District. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the utility. The Utility District shall design, print, and furnish to all appropriate utilities in the district the necessary forms for filing returns and instructions to ensure the full collection of the tax. A utility who collects a tax authorized by this act may deduct from the amount remitted to the Utility District a discount equal to the discount the State allows the utility for State sales and use tax. For the purpose of this act, a utility includes a government entity providing electric service, a cooperative, and any other electric utility. A utility shall have the same right to suspend or terminate service for nonpayment of the tax that it has to suspend or terminate service for payment of any other part of the utility bill. The obligation of the utility to pay the tax if the customer has not paid the bill is the same as its liability under G.S. 105-164.4(a)(4a).

Section 9.(c) Administration. The Utility District shall administer a tax it levies under this act. A tax authorized by this act is due and payable to the district finance officer in monthly installments on or before the last day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the Utility District. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A tax return filed with the district finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 as if the Utility District was a county. The Utility District may adopt a payment schedule keyed to the billing cycle of the utility collecting the tax rather than the calendar month, as long as there are at least 12 billing cycles per year.

Section 9.(d) Penalties. A person, firm, corporation, or association who fails or refuses to file a tax return or pay a tax authorized by this act as required by law is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The governing board of the Utility

District has the same authority to waive the penalties for a tax authorized by this act that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

Section 9.(e) Increase, Repeal, or Reduction. A tax levied by a district under this act may be increased not in excess of the maximum allowed by this act, repealed or reduced by a resolution adopted by the board of commissioners of the county, acting ex officio on behalf of the Utility District. Repeal or reduction of a tax authorized by this act shall become effective on the first day of a month and may not be earlier than the first day of the third month after the date the resolution is adopted. Repeal or reduction of a tax authorized by this act does not affect a liability for a tax that was attached before the effective date of the repeal or reduction, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal or reduction. In establishing the effecive date, the board of commissioners shall consult with any utility that will be collecting the tax to determine any administrative lead times that might be desirable.

Section 10. Interlocal Agreements. By interlocal agreement adopted under Chapter 160A of the General Statutes, a Utility District created under this act may contract with a municipality or county to handle tax collections and fiscal control.

Section 11. Sections 1.1 through 10 of this act apply to Dare County only.

Section 12. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 259
Committee Substitute Favorable 3/24/99

Short Title: Home Inspector Amendments/AB. (Public)

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE LAPSE OF A HOME INSPECTOR'S LICENSE AND AN ASSOCIATE HOME INSPECTOR'S LICENSE UNDER CERTAIN CONDITIONS; TO ESTABLISH RECORD-KEEPING REQUIREMENTS FOR HOME INSPECTORS; AND TO AUTHORIZE THE HOME INSPECTOR LICENSURE BOARD TO ESTABLISH CONTINUING EDUCATION PROGRAMS AND CHARGE FEES FOR THOSE PROGRAMS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-151.55 reads as rewritten:

"**§ 143-151.55. Renewal of license; inactive ~~licenses.~~ licenses; lapsed licenses.**

(a) Renewal. -- A license expires on September 30 of each year. A license may be renewed by filing an application for renewal with the Board and paying the required renewal fee. The Board must notify license holders at least 30 days before their licenses expire. The Board must renew the license of a person who files an application for renewal, pays the required renewal fee, has fulfilled the continuing education requirements set by the Board, and is not in violation of this Article when the application is filed. If the Board imposes a continuing education requirement as a condition of renewing a license, the Board must ensure that the courses needed to fulfill the requirement are available in all geographic areas of the State.

(b) Late Renewal. -- The Board may provide for the late renewal of a license upon the payment of a late fee, but no late renewal of a license may be granted more than five years after the license expires.

(c) Inactive License. -- A license holder may apply to the Board to be placed on inactive status. An applicant for inactive status must follow the procedure set by the Board. A license holder who is granted inactive status is not subject to the license renewal requirements during the period the license holder remains on inactive status.

A license holder whose application is granted and is placed on inactive status may apply to the Board to be reinstated to active status at any time. The Board may set conditions for reinstatement to active status. An individual who is on inactive status and applies to be reinstated to active status must comply with the conditions set by the Board.

(d) Lapsed License. -- The license of a licensed home inspector shall lapse if the licensee fails to continuously maintain minimum net assets or a bond as required by G.S. 143-151.58. The license of a licensed associate home inspector shall lapse if the licensee fails to continuously be employed by or affiliated with a licensed home inspector as required by G.S. 143-151.58."

Section 2. G.S. 143-151.57(a) reads as rewritten:

"(a) Maximum Fees. -- The Board may adopt fees that do not exceed the amounts set in the following table for administering this Article:

Item	Maximum Fee
Application for home inspector license	$25.00
Application for associate home inspector license	15.00
Home inspector examination	75.00
Issuance of home inspector license	150.00
Issuance of associate home inspector license	100.00
Late renewal of home inspector license	25.00
Late renewal of associate home inspector license inspector	15.00
Application for course approval	150.00
Renewal of course approval	75.00
Course fee, per credit hour per licensee	5.00
Credit for unapproved continuing education course	50.00
Copies of Board rules or licensure standards	Cost of printing and mailing."

Section 3. G.S. 143-151.58 reads as rewritten:

"**§ 143-151.58. Duties of licensed home inspector or licensed associate home inspector.**

(a) Home Inspection Report. -- A licensed home inspector or licensed associate home inspector must give to each person for whom the inspector performs a home inspection for compensation a written report of the home inspection. The inspector must give the person the report by the date set in a written agreement by the parties to the home inspection. If the parties to the home inspection did not agree on a date in a written agreement, the inspector must give the person the report within three business days after the inspection was performed.

(b) Bond Required. -- A licensed home inspector must continuously maintain minimum net assets or a bond as required in G.S. 143-151.51(3).

(c) Supervision. -- A licensed associate home inspector must be continuously employed by or affiliated with a licensed home inspector as required in G.S. 143-151.52(5).

(d) Record Keeping. -- All licensees under this Article shall make and keep full and accurate records of business done under their licenses. Records shall include the written, signed contract and the written report required by the standards of practice referred to in G.S. 143-151.49(a)(2) and any other information the Board requires by rule. Records shall be retained by licensees for not less than three years. Licensees shall furnish their records to the Board on demand."

Section 4. Article 9F of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-151.64. Continuing education requirements.**

(a) Requirements. -- The Board may establish programs of continuing education for licensees under this Article. A licensee subject to a program under this section shall present evidence to the Board upon the license renewal following initial licensure, and every renewal thereafter, that during the 12 months preceding the annual license expiration date the person has completed the required number of classroom hours of instruction in courses approved by the Board. Annual continuing education hour requirements shall be determined by the Board, but shall not be more than 12 credit hours.

(b) Fees. -- The Board may establish a nonrefundable course application fee to be charged to a course sponsor for the review and approval of a proposed continuing education course. Approval of a continuing education course must be renewed annually. The Board may also require a course sponsor to pay a fee for each licensee completing an approved continuing education course conducted by the sponsor.

(c) Credit for Unapproved Course. -- The Board may award continuing education credit for an unapproved course or related educational activity. The Board may prescribe procedures for a licensee to submit information on an unapproved course or related educational activity for continuing education credit. The Board may charge a fee to the licensee for each course or activity submitted.

(d) Extension of Time. -- The Board may, for good cause shown, grant extensions of time to licensees to comply with these requirements. Any licensee who, after obtaining an extension under this subsection, offers evidence satisfactory to the Board that the licensee has satisfactorily completed the required continuing education courses, is in compliance with this section.

(e) Rules. -- The Board may adopt rules governing continuing education requirements, including rules that govern:

(1) The content and subject matter of continuing education courses.

(2) The criteria, standards, and procedures for the approval of courses, course sponsors, and course instructors.

(3) The methods of instruction.

(4) The computation of course credit.

(5) The ability to carry forward course credit from one year to another.

(6) The waiver of or variance from the continuing education requirement for hardship or other reasons.

(7) The procedures for compliance and sanctions for noncompliance."

Section 5. This act becomes effective October 1, 1999, and applies to licenses applied for or renewed on or after that date.

HOUSE BILL 259:
Home Inspector Amendments/AB

BILL ANALYSIS

Committee:	Senate Finance Committee	**Introduced by:**	Rep. Jarrell
Date:	May 10, 1999	**Summary by:**	Cindy Avrette and Martha K. Walston, Staff Attorneys
Version:	2nd Edition		

SUMMARY: House Bill 259 is an agency bill that proposes three changes to the home inspector licensure law:

- *It provides that a home inspector's license will lapse if the licensee does not continuously maintain net assets or a bond as required by the Board. It provides that a licensed associate home inspector's license will lapse if the licensee is not employed by or affiliated with a licensed home inspector.*
- *It establishes record-keeping requirements.*
- *It authorizes the Board to establish and approve continuing education programs and to charge fees for those programs.*

The bill becomes effective October 1, 1999, and applies to licenses applied for or renewed on or after that date. The bill has passed both the House Finance Committee and the House.

CURRENT LAW: The General Assembly created the Home Inspector Licensure Act in 1994. Under that act, a person must be licensed as a home inspector in order to perform a home inspection for pay. To be a home inspector, a person must have a high school diploma and have been engaged as a licensed associated home inspector for at least 1 year and have completed 100 home inspections. The North Carolina Home Inspector Licensure Board is composed of seven members and is established in the Department of Insurance.

BILL ANALYSIS: To be licensed as a home inspector, the statute requires that the applicant have minimum net assets or a bond in an amount determined by the Board. The amount may not be less than $5,000 nor more than $10,000. To be licensed as an associate home inspector, the statute requires that the applicant be employed by or affiliated with a licensed home inspector. The current statute does not provide that these conditions be continuously met. This bill addresses this problem in two ways. First, it makes it a duty to continuously meet these requirements. If a licensee fails to meet these requirements, the Board may suspend or revoke the licensee's license. Second, it provides that a license will automatically lapse if these conditions fail to be met. (Section 1)

The current law requires a licensee to give each person for whom the inspector performs a home inspection for compensation a written report of the home inspection. The bill creates a new requirement for licensees. Under section 3 of the bill, a licensee would need to make and keep full and accurate

records of the business the licensee has completed. The records would need to include the writt contracts for the work requested as well as the written home inspection reports. The licensee would nee to maintain the records for at least three years.

Lastly, the bill gives the Board greater authority to establish a continuing education program and to charge fees for the program. Under current law, the Board has the general authority to require continuing education for licensure renewal. However, the Board does not have the authority to accredit continuing education programs or to charge fees for these programs. Section 4 of the bill gives the Board the specific authority to require licensees to complete no more than 12 hours of continuing education a year. The Board must approve the courses for which credit is awarded. Sections 2 and 4 of the bill allow the Board to charge the following fees:

• Application fee for course approval	$150.00
• Renewal fee for course approval	75.00
• A course fee paid per credit hour per licensee	5.00
• Fee for credit of an unapproved course	50.00

H259-SMRB-1

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: H.B. 259

SHORT TITLE: Home Inspector Amendments/AB

SPONSOR(S): Rep. Jarrell

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES	See Assumptions and Methodology				
EXPENDITURES					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Home Inspector Licensure Board.

EFFECTIVE DATE: October 1, 1999, and applies licenses applied for or renewed on or after that date.

Monday, March 22, 1999

BILL SUMMARY: The bill makes several changes to the requirements for licensure as a home inspector. First, it clarifies that an inspector must continuously maintain a minimum bond, or net assets, as determined by the board. The required amount can not exceed $10,000 or fall below $5,000. (Current law only requires that inspectors have such a bond). Second, it requires that an inspector's license be considered lapsed when they do not pay the renewal fee or maintain the bond or asset base. It also requires that an associate inspector's license be considered lapsed when the associate does not pay the renewal fee or is not continuously employed by or affiliated with a licensed home inspector. Third, the bill requires that all licensees maintain full and accurate records. Fourth, it authorizes the Home Inspector Licensure Board to establish continuing education courses, and require that inspectors and associates complete a set number of credit hours each year. While the board will determine the number of hours, the annual requirement can not exceed 12 credit hours. Fifth, the bill authorizes the board to charge fees to a course sponsor to review and approve a suggested course, and renew the approval for that course. It also authorizes the board to charge a course sponsor up to $5.00 per credit hour for each licensee that completes an approved course, and allows them to charge licensees up to

$50.00 to review an unapproved course or activity to determine if that activity meets the continuing education requirements. Sixth, the bill authorizes the board to adopt reasonable rules to carry out and enforce the continuing education program. Finally, the bill provides the board with the option to grant extensions to those who fail to meet the continuing education requirements.

ASSUMPTIONS AND METHODOLOGY: The bill has two potential areas for fiscal impact: creating a lapsed category, and authorizing continuing education and a series of associated fees.

The Department of Insurance reports that there are currently 96 home inspectors and 29 associate home inspectors who have not yet paid their renewal fee. (This does not include the inspectors and associates who have become "inactive"). The renewal fee for home inspectors is $150. The renewal fee for associate home inspectors is $100. Payment is due by October 1 of each year. Under the bill, in future years, the licenses of these inspectors and associate inspectors would be considered "lapsed". If "lapsed" status encourages these inspectors and associates to renew their license, the Department could see a $17,300 increase in renewal fees. However, it is unclear if the "lapsed" standing would actually cause these inspectors and associates to renew their license. It is also unclear how many of these inspectors will eventually pay their delinquent fee, with our without the law. As such, no fiscal estimate on this portion of the bill is possible.

The second potential area for fiscal impact is related to the continuing education requirements. At this time, neither the Home Inspection Licensure Board nor the Department of Insurance (which staffs the Board) have made any determinations or recommendations as to the number of courses to be offered, or the number of courses to approve. No estimate on this portion of the bill is possible. Neither body has determined or recommended what fee should be charged, per student, for each credit hour completed. The Department of Insurance reports that there are 1079 home inspectors and 110 associate home inspectors with active licenses. Assuming each active inspector and associate completes 12 credit hours of training, and the Board charges the maximum fee of $5, the Board might see a revenue increase of $71,300 (1189 inspectors and associates X $60 each in fees). The Department reports that the current number of inspectors and associates is about average. No significant revenue growth is expected. All revenue from continuing education program is non-reverting.

Given the above information it appears that the Home Inspectors Licensing Board will see some increase in revenue. It is unclear how much the exact fiscal impact may be, primarily because the Board has yet to determine the number of courses offered and approved.

FISCAL RESEARCH DIVISION 733-4910

PREPARED BY: Linda Struyk Millsaps

APPROVED BY: Tom Covington

DATE:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 2

SENATE BILL 1049
Agriculture/Environment/Natural Resources Committee Substitute Adopted 4/27/99

Short Title: Neuse River Buffer Amends. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND AND CODIFY THE LAW THAT PROVIDES FOR COMPENSATORY MITIGATION AS AN ALTERNATIVE TO THE MAINTENANCE OF RIPARIAN BUFFERS AND THAT AUTHORIZES THE ENVIRONMENTAL MANAGEMENT COMMISSION TO DELEGATE RESPONSIBILITY FOR THE IMPLEMENTATION AND ENFORCEMENT OF THE STATE'S RIPARIAN BUFFER PROTECTION REQUIREMENTS TO LOCAL GOVERNMENTS, AS RECOMMENDED BY THE NEUSE RIVER BUFFER RULES STAKEHOLDER ADVISORY COMMITTEE AND REQUESTED BY THE ENVIRONMENTAL MANAGEMENT COMMISSION.

Whereas, in 1996 the General Assembly established a goal to reduce the average annual load of nitrogen delivered from point and nonpoint sources to the Neuse River Estuary by a minimum of thirty percent (30%) of the average load for the period 1991 through 1995 by the year 2001 and directed the Environmental Management Commission to develop and adopt a plan to achieve this goal; and

Whereas, in 1997 the General Assembly directed the Environmental Management Commission to develop and implement a basinwide water quality plan for each of the State's 17 major river basins; and

Whereas, in 1997, in response to these legislative mandates, the Environmental Management Commission adopted a Neuse River Nutrient Sensitive Waters Management Strategy as temporary and permanent rules and adopted revisions to these rules in 1998; and

Whereas, in 1998 the General Assembly enacted legislation to disapprove 15A NCAC 2B.0203 (Neuse River Nutrient Sensitive Waters Management Strategy: Protection and Maintenance of Riparian Areas with Existing Forest Vegetation) as a permanent rule while continuing this rule in effect as a temporary rule with certain modifications until the Environmental Management Commission adopted a revised temporary and permanent rule; and

Whereas, the 1998 legislation established a Stakeholder Advisory Committee to assist the Environmental Management Commission with the development of (i) a revised temporary rule, (ii) rules and recommended legislation to provide for compensatory mitigation as an alternative to the maintenance of riparian buffers, and (iii) rules and recommended legislation to authorize the Environmental Management Commission to delegate responsibility for the implementation and enforcement of the State's riparian buffer protection requirements to local governments; and

Whereas, the Stakeholder Advisory Committee, after many hours of work, submitted a report and recommendations to the Environmental Management Commission; and

Whereas, that report included recommended legislation pertaining to compensatory mitigation and delegation to local governments; and

Whereas, at its meeting on 8 April 1999, the Environmental Management Commission accepted these recommendations and forwarded them to the Environmental Review Commission; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Part 1 of Article 21 of Chapter 143 of the General Statutes is amended by adding two new sections to read:

"**§ 143-214.20. Riparian Buffer Protection Program; Alternatives to maintaining riparian buffers; compensatory mitigation fees.**

(a) The Commission shall establish a program to provide alternatives for persons who would otherwise be required to maintain riparian buffers and who can demonstrate that they have attempted to avoid and minimize the loss of the riparian buffer and that there is no practical alternative to the loss of the buffer. This program is intended to allow these persons to perform compensatory mitigation in lieu of complying with laws and rules that require that riparian buffers be protected and maintained. Alternatives shall include, but are not limited to:

(1) Payment of a compensatory mitigation fee into the Riparian Buffer Restoration Fund.

(2) Donation of real property or of an interest in real property to the Department, another State agency, a unit of local government, or a private nonprofit conservation organization if both the donee organization and the donated real property or interest in real property are approved by the Department. The Department may approve a donee organization only if the donee agrees to maintain the real property or interest in real property as a riparian buffer. The Department may approve a donation of real property or an

interest in real property only if the real property or interest in real property either:

a. Is a riparian buffer that will provide protection of water quality that is equivalent to or greater than that provided by the riparian buffer that is lost in the same river basin as the riparian buffer that is lost; or

b. Will be used to restore, create, enhance, or maintain a riparian buffer that will provide protection of water quality that is equivalent to or greater than that provided by the riparian buffer that is lost in the same river basin as the riparian buffer that is lost.

(3) Establishment, restoration, or enhancement of a riparian buffer that is not otherwise required to be protected.

(b) Compensatory mitigation is available for loss of a riparian buffer along an intermittent stream, a perennial stream, or a perennial waterbody.

(c) The Commission shall establish a standard schedule of compensatory mitigation fees. The compensatory mitigation fee schedule shall be based on the area of the riparian buffer that is permitted to be lost and the cost to provide equivalent or greater protection of water quality by:

(1) Restoring existing riparian buffers.

(2) Acquiring land for and creation of new riparian buffers.

(3) Monitoring and maintaining the restored or created riparian buffers over time.

(4) Constructing approved alternative measures that reduce nutrient loading as well or better than the riparian buffer that is lost.

(d) The Commission may adopt rules to implement this section.

"**§ 143-215.23. Riparian Buffer Protection Program: Delegation of riparian buffer protection requirements to local governments.**

(a) The Commission may delegate responsibility for the implementation and enforcement of the State's riparian buffer protection requirements to units of local government that have the power to regulate land use. A delegation under this section shall not affect the jurisdiction of the Commission over State agencies and units of local government. Any unit of local government that has the power to regulate land use may request that responsibility for the implementation and enforcement of the State's riparian buffer protection requirements be delegated to the unit of local government. To this end, units of local government may adopt ordinances and regulations necessary to establish and enforce the State's riparian buffer protection requirements.

(b) Within 90 days after the Commission receives a complete application requesting delegation of responsibility for the implementation and enforcement of the State's riparian buffer protection requirement, the Commission shall review the application and notify the unit of local government that submitted the application whether the application has been approved, approved with modifications, or disapproved. The Commission shall not approve a delegation unless the Commission

finds that local implementation and enforcement of the State's riparian buffer protection requirements will equal implementation and enforcement by the State.

(c) If the Commission determines that a unit of local government is failing to implement or enforce the State's riparian buffer protection requirements, the Commission shall notify the unit of local government in writing and shall specify the deficiencies in implementation and enforcement. If the local government has not corrected the deficiencies within 90 days after the unit of local government receives the notification, the Commission shall rescind delegation and shall implement and enforce the State's riparian buffer protection program. If the unit of local government indicates that it is willing and able to resume implementation and enforcement of the State's riparian buffer protection requirements, the unit of local government may reapply for delegation under this section.

(d) The Department shall provide technical assistance to units of local government in the development, implementation, and enforcement of the State's riparian buffer protection requirements.

(e) The Department shall provide a stream identification training program to train individuals to determine the existence of surface water for purposes of rules adopted by the Commission for the protection and maintenance of riparian buffers. The Department may charge a fee to cover the full cost of the training program. No fee shall be charged to an employee of the State who attends the training program in connection with the employee's official duties.

(f) The Commission may adopt rules to implement this section."

Section 2. G.S. 143-214.21 reads as rewritten:

"**§ 143-214.21. Riparian Buffer Protection Program: Riparian Buffer Restoration Fund.**

The Riparian Buffer Restoration Fund is established as a nonreverting fund within the Department. The Fund shall be treated as a special trust fund and shall be credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-69.3. The Riparian Buffer Restoration Fund shall provide a repository for monetary contributions to promote projects for the restoration, enhancement, or creation of riparian buffers or to construct approved alternative measures that reduce nutrient loading as well or better than the riparian buffer that is lost and for compensatory mitigation fees paid to the Department. The Fund shall be administered by the Division of Water Quality within the Department. ~~Monies [Moneys]~~ Moneys shall be expended from the Fund only for those purposes directly related to the restoration, acquisition, creation, enhancement, and maintenance of riparian buffers or to construct approved alternative measures that reduce nutrient loading as well or better than the riparian buffer that is lost to offset the benefits to water quality, including the removal of nutrients, lost through the loss of buffers. Compensatory mitigation fees paid into the Fund in connection with the loss of riparian buffers in a river basin and the interest earned on those fees may be used only for projects in that river basin."

Section 3. The catch line to G.S. 143-214.22 reads as rewritten:

"§ 143-214.22. Riparian Buffer Protection Program; Department may accept donations of real property."

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

SENATE BILL 1049:
Neuse River Buffer Amendments

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Albertson
Date:	May 19, 1999	**Summary by:**	Hannah Holm, Research Assistant
Version:	Proposed Committee Substitute		

SUMMARY: ***SB 1049 amends and codifies elements of SL 1998-221 (Neuse River Basin Rule/ Other Environmental Amendments) that 1) provide for compensatory mitigation as an alternative to maintaining riparian buffers and 2) authorize the Environmental Management Commission (EMC) to delegate responsibility for the implementation of riparian buffer protection requirements to local governments.***

CURRENT LAW: SL 1998 – 221 instructed the EMC on implementing and revising the Neuse River Basin Rule, which is designed to protect water quality by protecting riparian buffers. SL 1998-221 also created a stakeholder committee to advise the EMC in revising the rule and recommending related legislation.

BILL ANALYSIS: SB 1049 reflects the EMC's recommendations for legislation related to the implementation of the Neuse River Basin Rule. These recommendations are based on the Neuse River Buffer Stakeholder Committee's report to the EMC.

Compensatory mitigation: SB 1049 codifies the requirement that the EMC establish a program to allow persons who can demonstrate no practical alternative to destroying a buffer to perform compensatory mitigation in lieu of complying with laws to preserve buffers. These alternatives shall include:

- Payment of a compensatory mitigation fee.
- Donation of real property or an interest in real property to the Department of Environment and Natural Resources (DENR), another State agency, a unit of local government, or a private nonprofit, provided that the property is a buffer or will be used to restore a buffer and will provide equal or greater water quality protection as the lost buffer. The property must also be in the same river basin as the lost buffer.
- The establishment, restoration, or enhancement of a buffer that is not otherwise required to be protected.
- The construction of an alternative mechanism that will provide equal or greater water quality protection as the lost buffer.

SB 1049 further provides that compensatory mitigation is available for the loss of a riparian buffer along an intermittent stream, perennial stream, or perennial waterbody. SL 1998-221 allowed compensatory mitigation only for the loss of a riparian buffer along an intermittent stream. The compensatory mitigation fee schedule established by the EMC shall be based on the cost to provide equivalent or greater water quality protection as that provided by the lost buffer by one of the following measures:

- Restoring existing riparian buffers.
- Acquiring riparian land and creating new riparian buffers.
- Monitoring and maintaining the restored or created buffers.
- Constructing an alternative mechanism that will provide provide equal or greater waterquality protection as the lost buffer.

Delegation to local governments: SB 1049 defines the procedure by which the EMC may delegate the responsibility for implementing riparian buffer protection requirements to a local government. SB also provides that the EMC shall rescind the delegation if it determines that a local government is failing to implement or enforce the requirements. SB 1049 further provides that DENR shall provide technical assistance to local governments in the development, implementation and enforcement of the State's riparian buffer protection requirements. DENR shall also provide a training program for the identification of surface waters for the purpose of implementing the buffer protection requirements.

Rulemaking authority: SB 1049 authorizes the EMC to adopt rules to implement the act.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: Senate Bill 1049 Neuse River Buffer Amendments (Second Edition)

SHORT TITLE: Neuse River Buffer Amendments (Second Edition)

SPONSOR(S): Senator Albertson

FISCAL IMPACT

Riparian Buffer Restoration Fund	**Yes ( )**	**No ( )**	**No Estimate Available (x)**
General Fund	**Yes (x)**	**No ( )**	**No Estimate Available ( )**
Local Funds	**Yes ( )**	**No ( )**	**No Estimate Available (x)**

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
Riparian Buffer Restoration Fund		No Estimate Available			
EXPENDITURES					
General Fund	$56,964	$55,871	$57,288	$58,838	$60,577
Local Funds		No Estimate Available			
POSITIONS:	1.00	1.00	1.00	1.00	1.00

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Environment and Natural Resources, Division of Water Quality; Environmental Management Commission; Local Government Units

EFFECTIVE DATE: When the act becomes law.

BILL SUMMARY:
The 2nd Edition codifies the Riparian Buffer Protection Program, including alternatives to riparian buffers, compensatory mitigation fees and delegation of protection authority to local units of government.

ASSUMPTIONS AND METHODOLOGY:

RIPARIAN RESTORATION FUND

The Environmental Management Commission (EMC) is responsible for developing a compensatory mitigation fee schedule to provide an alternative to maintaining riparian buffers. Payment of a fee into the Riparian Buffer Restoration Fund is an option available to persons demonstrating that there is no practical alternative to destroying a buffer. **Revenues to be credited to the fund cannot be estimated until the EMC adopts a fee schedule**. The bill does not establish a minimum nor maximum fee amount, but requires the fee schedule to be commensurate with the cost of providing equivalent or greater water quality than the area impacted. Moneys credited to the Riparian Buffer Restoration Fund may be used to restore, acquire, create, enhance and maintain riparian buffers. In addition, the fund may be used to construct approved alternatives that provide equal or improved water quality protection.

ADMINISTRATION OF THE RIPARIAN BUFFER PROTECTION PROGRAM

The Department of Environment and Natural Resources (DENR) is responsible for administering the Riparian Buffer Protection Program. The program is similar in nature to the state's Wetlands Restoration Program. Based on their experiences in administering and implementing the wetlands program the department anticipates requiring one additional staff person to administer the Riparian Buffer Protection Program. The riparian buffer program will be housed within the Wetlands Restoration Program to achieve administrative efficiencies and limit the need for additional staff.

The requirements for the additional position and associated operating costs are outlined in the following table:

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
Personnel					
Environmental Specialist III	40,814	42,221	43,638	45,188	46,927
Total Salaries & Benefits *	40,814	42,221	43,638	45,188	46,927
Positions	1.00	1.00	1.00	1.00	1.00
Operating Expenses	16,150	13,650	13,650	13,650	13,650
Total Requirements	**$56,964**	**$55,871**	**$57,288**	**$58,838**	**$60,577**

* *Salaries adjusted for inflation based on January 1999 forecasts by Data Resources Inc, as provided by the Office of State Budget and Management.*

In addition to requiring DENR to provide technical assistance to local governments applying for enforcement authority, the bill requires the department to provide training in stream identification. The bill allows the department to charge a fee to cover the full cost of this training program.

DELEGATION OF RIPARIAN BUFFER REQUIREMENTS TO LOCAL GOVERNMENTS
The bill allows the EMC to delegate implementation and enforcement responsibilities of the state's riparian buffer requirements to units of local government with the authority to regulate land use. Local government units are not required to participate, but may apply for delegation of enforcement authority.

Local government units choosing to apply may incur costs associated with administering the riparian buffer protection requirement. Such expenditures are likely to vary depending on the number of projects within the local unit's jurisdiction and current staff and resources.

TECHNICAL CONSIDERATIONS: none

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Mona Moon

APPROVED BY: Tom Covington

DATE: Monday, May 17, 1999

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 1049
Agriculture/Environment/Natural Resources Committee Substitute Adopted 4/27/99
Proposed Committee Substitute S1049-PCS6676-RT

Short Title: Neuse River Buffer Amends. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND AND CODIFY THE LAW THAT PROVIDES FOR COMPENSATORY MITIGATION AS AN ALTERNATIVE TO THE MAINTENANCE OF RIPARIAN BUFFERS AND THAT AUTHORIZES THE ENVIRONMENTAL MANAGEMENT COMMISSION TO DELEGATE RESPONSIBILITY FOR THE IMPLEMENTATION AND ENFORCEMENT OF THE STATE'S RIPARIAN BUFFER PROTECTION REQUIREMENTS TO LOCAL GOVERNMENTS, AS RECOMMENDED BY THE NEUSE RIVER BUFFER RULES STAKEHOLDER ADVISORY COMMITTEE AND REQUESTED BY THE ENVIRONMENTAL MANAGEMENT COMMISSION.

Whereas, in 1996 the General Assembly established a goal to reduce the average annual load of nitrogen delivered from point and nonpoint sources to the Neuse River Estuary by a minimum of thirty percent (30%) of the average load for the period 1991 through 1995 by the year 2001 and directed the Environmental Management Commission to develop and adopt a plan to achieve this goal; and

Whereas, in 1997 the General Assembly directed the Environmental Management Commission to develop and implement a basinwide water quality plan for each of the State's 17 major river basins; and

Whereas, in 1997, in response to these legislative mandates, the Environmental Management Commission adopted a Neuse River Nutrient Sensitive Waters Management Strategy as temporary and permanent rules and adopted revisions to these rules in 1998; and

Whereas, in 1998 the General Assembly enacted legislation to disapprove 15A NCAC 2B.0233 (Neuse River Nutrient Sensitive Waters Management Strategy: Protection and Maintenance of Riparian Areas with Existing Forest Vegetation) as a permanent rule while continuing this rule in effect as a temporary rule with certain modifications until the Environmental Management Commission adopted a revised temporary and permanent rule; and

Whereas, the 1998 legislation established a Stakeholder Advisory Committee to assist the Environmental Management Commission with the development of (i) a revised temporary rule, (ii) rules and recommended legislation to provide for compensatory mitigation as an alternative to the maintenance of riparian buffers, and (iii) rules and recommended legislation to authorize the Environmental Management Commission to delegate responsibility for the implementation and enforcement of the State's riparian buffer protection requirements to local governments; and

Whereas, the Stakeholder Advisory Committee, after many hours of work, submitted a report and recommendations to the Environmental Management Commission; and

Whereas, that report included recommended legislation pertaining to compensatory mitigation and delegation to local governments; and

Whereas, at its meeting on 8 April 1999, the Environmental Management Commission accepted these recommendations and forwarded them to the Environmental Review Commission; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Part 1 of Article 21 of Chapter 143 of the General Statutes is amended by adding two new sections to read:

"**§ 143-214.20. Riparian Buffer Protection Program: Alternatives to maintaining riparian buffers; compensatory mitigation fees.**

(a) The Commission shall establish a program to provide alternatives for persons who would otherwise be required to maintain riparian buffers and who can demonstrate that they have attempted to avoid and minimize the loss of the riparian buffer and that there is no practical alternative to the loss of the buffer. This program is intended to allow these persons to perform compensatory mitigation in lieu of complying with laws and rules that require that riparian buffers be protected and maintained. Alternatives shall include, but are not limited to:

(1) Payment of a compensatory mitigation fee into the Riparian Buffer Restoration Fund.

(2) Donation of real property or of an interest in real property to the Department, another State agency, a unit of local government, or a private nonprofit conservation organization if both the donee organization and the donated real property or interest in real property are approved by the Department. The Department may approve a donee organization only if the donee agrees to maintain the real property or interest in real property as a riparian buffer. The Department may approve a donation of real property or an

interest in real property only if the real property or interest in real property either:

a. Is a riparian buffer that will provide protection of water quality that is equivalent to or greater than that provided by the riparian buffer that is lost in the same river basin as the riparian buffer that is lost; or

b. Will be used to restore, create, enhance, or maintain a riparian buffer that will provide protection of water quality that is equivalent to or greater than that provided by the riparian buffer that is lost in the same river basin as the riparian buffer that is lost.

(3) Restoration or enhancement of an existing riparian buffer that is not otherwise required to be protected, or creation of a new riparian buffer, that will provide protection of water quality that is equivalent to or greater than that provided by the riparian buffer that is lost in the same river basin as the riparian buffer that is lost and that is approved by the Department.

(4) Construction of an alternative measure that reduces nutrient loading as well or better than the riparian buffer that is lost in the same river basin as the riparian buffer that is lost and that is approved by the Department.

(b) Compensatory mitigation is available for loss of a riparian buffer along an intermittent stream, a perennial stream, or a perennial waterbody.

(c) The Commission shall establish a standard schedule of compensatory mitigation fees. The compensatory mitigation fee schedule shall be based on the area of the riparian buffer that is permitted to be lost and the cost to provide equivalent or greater protection of water quality in the same river basin as that provided by the riparian buffer this is lost by:

(1) Restoration or enhancement of existing riparian buffers.

(2) Acquisition of land for and creation of new riparian buffers.

(3) Maintenance and monitoring of restored, enhanced, or created riparian buffers over time.

(4) Construction of alternative measures that reduce nutrient loading.

(d) The Commission may adopt rules to implement this section.

"§ 143-215.23. Riparian Buffer Protection Program: Delegation of riparian buffer protection requirements to local governments.

(a) The Commission may delegate responsibility for the implementation and enforcement of the State's riparian buffer protection requirements to units of local government that have the power to regulate land use. A delegation under this section shall not affect the jurisdiction of the Commission over State agencies and units of local government. Any unit of local government that has the power to regulate land use may request that responsibility for the implementation and enforcement of the State's riparian buffer protection requirements be delegated to the unit of local government. To this end, units of local government may adopt

ordinances and regulations necessary to establish and enforce the State's riparian buffer protection requirements.

(b) Within 90 days after the Commission receives a complete application requesting delegation of responsibility for the implementation and enforcement of the State's riparian buffer protection requirement, the Commission shall review the application and notify the unit of local government that submitted the application whether the application has been approved, approved with modifications, or disapproved. The Commission shall not approve a delegation unless the Commission finds that local implementation and enforcement of the State's riparian buffer protection requirements will equal implementation and enforcement by the State.

(c) If the Commission determines that a unit of local government is failing to implement or enforce the State's riparian buffer protection requirements, the Commission shall notify the unit of local government in writing and shall specify the deficiencies in implementation and enforcement. If the local government has not corrected the deficiencies within 90 days after the unit of local government receives the notification, the Commission shall rescind delegation and shall implement and enforce the State's riparian buffer protection program. If the unit of local government indicates that it is willing and able to resume implementation and enforcement of the State's riparian buffer protection requirements, the unit of local government may reapply for delegation under this section.

(d) The Department shall provide technical assistance to units of local government in the development, implementation, and enforcement of the State's riparian buffer protection requirements.

(e) The Department shall provide a stream identification training program to train individuals to determine the existence of surface water for purposes of rules adopted by the Commission for the protection and maintenance of riparian buffers. The Department may charge a fee to cover the full cost of the training program. No fee shall be charged to an employee of the State who attends the training program in connection with the employee's official duties.

(f) The Commission may adopt rules to implement this section."

Section 2. G.S. 143-214.21 reads as rewritten:

"§ 143-214.21. Riparian Buffer Protection Program: Riparian Buffer Restoration Fund.

The Riparian Buffer Restoration Fund is established as a nonreverting fund within the Department. The Fund shall be treated as a special trust fund and shall be credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-69.3. The Riparian Buffer Restoration Fund shall provide a repository for monetary contributions to promote projects for the restoration, enhancement, or creation of riparian buffers or to construct approved alternative measures that reduce nutrient loading as well or better than the riparian buffer that is lost and for compensatory mitigation fees paid to the Department. The Fund shall be administered by the Division of Water Quality within the Department. ~~Monies [Moneys]~~ Moneys shall be expended from the Fund only for those purposes directly related to the restoration, acquisition, creation, enhancement, and maintenance of riparian buffers or to

construct approved alternative measures that reduce nutrient loading as well or better than the riparian buffer that is lost to offset the benefits to water quality, including the removal of nutrients, lost through the loss of buffers. Compensatory mitigation fees paid into the Fund in connection with the loss of riparian buffers in a river basin and the interest earned on those fees may be used only for projects in that river basin."

Section 3. The catch line to G.S. 143-214.22 reads as rewritten:

"**§ 143-214.22. Riparian Buffer Protection Program; Department may accept donations of real property.**"

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 791

Short Title: Ten Year Drivers License. (Public)

Sponsors: Senator Hoyle.

Referred to: Finance.

April 8, 1999

A BILL TO BE ENTITLED

AN ACT TO CHANGE THE GENERAL DRIVERS LICENSE RENEWAL CYCLE FROM FIVE TO TEN YEARS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-7(f) reads as rewritten:

"(f) License Expiration. ~~Expiration and Temporary License. -- The first drivers license the Division issues to a person expires on the person's fourth or subsequent birthday that occurs after the license is issued and on which the individual's age is evenly divisible by five, unless this subsection sets a different expiration date. The first drivers license the Division issues to a person who is at least 17 years old but is less than 18 years old expires on the person's twentieth birthday. The first drivers license the Division issues to a person who is at least 62 years old expires on the person's birthday in the fifth year after the license is issued, whether or not the person's age on that birthday is evenly divisible by five.~~

~~A drivers license that was issued by the Division and is renewed by the Division expires five years after the expiration date of the license that is renewed.~~

A drivers license issued to a person at least 16 but less than 18 years of age expires on the person's twentieth birthday. A drivers license issued to a person age 18 but less than age 60 expires 10 years after the date of issuance, or on the person's sixty-fifth birthday, whichever is earlier. A drivers license issued to a person age 60 but less than age 80 expires five years after the date of issuance, or on the person's eightieth birthday, whichever is earlier. A drivers license issued to a person age 80 or over expires three years from the date of issuance.

(f1) Early renewal. -- A person may apply to the Division to renew a license during the 180-day period before the license expires. The Division may not accept an application for renewal made before the 180-day period begins.

(f2) Temporary license by mail. --

(1) The Division may renew by mail a drivers license issued by the Division to a person who meets any of the following descriptions:

~~(1)~~ a. Is serving on active duty in the armed forces of the United States and is stationed outside this State.

~~(2)~~ b. Is a resident of this State and has been residing outside the State for at least 30 continuous days.

(2) When renewing a license by mail, the Division may waive the examination that would otherwise be required for the renewal and may impose any conditions it finds advisable. A license renewed by mail is a temporary license that expires 60 days after the person to whom it is issued returns to this State."

Section 2. G.S. 20-7 is amended by adding a new subsection to read:

"(f3) Consultation. -- Any person who holds a drivers license with a duration greater than five years who has three reportable accidents as defined in G.S. 2-4.01(33b), or is convicted of three moving violations as specified in G.S. 20-16(c) during any twelve-month period shall be notified by the Division and required to attend a drivers license consultation. The Division shall establish the format of the consultation, which shall include a review of traffic law and rules, and a review of road signs."

Section 3. G.S. 20-37.7(d) reads as rewritten:

"(d) Expiration and Fee. -- A special identification card issued to a person ~~for the first time~~ under this section expires ~~when a drivers license issued on the same day to that person would expire.~~ five years following the date of issuance. ~~A special identification card renewed under this section expires when a drivers license renewed by the card holder on the same day would expire.~~

The fee for a special identification card is the same as the fee set in G.S. 20-14 for a duplicate license. The fee does not apply to a special identification card issued to a resident of this State who is legally blind, is at least 70 years old, or is homeless. To obtain a special identification card without paying a fee, a homeless person must present a letter to the Division from the director of a facility that provides care or shelter to homeless persons verifying that the person is homeless."

Section 4. This act becomes effective July 1, 2000.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 791 Ten Year Drivers License

SHORT TITLE: Ten Year Drivers License

SPONSOR(S): Senator Hoyle

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES		$5,892,102	$13,444,149	$13,763,848	$13,050,692
EXPENDITURES	$234,732	$842,496	$963,972	$1,019,627	$1,029,230
POSITIONS:					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Division of Motor Vehicles Driver License Section

EFFECTIVE DATE: July 1, 2000

BILL SUMMARY:
Currently the law generally provides that drivers licenses expire five years from the date of issue. This bill would provide that beginning July 1, 2000 customers age 18-55 would receive a 10-year license. Customers over 56 would receive a license expiring at age 65, with renewals every five years after that. Customers from age 75-80 would receive licenses expiring at age 80. From age 80 on, customers would begin receiving 3-year licenses. Customers with three reportable crashes or three traffic violations in a year would be automatically called in for conference with examiners to discuss driving performance. Special ID cards would expire five years after date of issuance, irrespective of age of customer.

ASSUMPTIONS AND METHODOLOGY:

Producing the 10-Year License

- DMV notes that the current license is not designed to last ten years so a new license card stock and printer would have to be installed. Current licenses cost $1.05 each and it is estimated that 10-year licenses from the same vendor would cost $1.50 each.

- For the system to be operational by July 1, 2000 it would have to be installed in the last quarter of FY99-00. To meet this schedule, DMV would have to be authorized to renegotiate its contract with the current vendor. If DMV were required instead to rebid the contract it would be 20-24 months before the system could be on-line.

Projected Transaction Volumes

- Growth in issuances was projected at 2% per year.
- In Calendar Year 1998 the number of drivers who had three accidents within a one year period was 1,690. The number of drivers who had three moving violations in a one-year period was 73,315. As a result, approximately 75,000 to 80,000 drivers would have to visit offices for consultations.
- The benefits of reduced customer visits would not begin until five years after the effective date of the legislation (FY2005-06).

Staffing Issues

- The timesaving for examiners would come primarily in renewals, which require comparatively little time (an average of 6.97 minutes).
- The number of transactions would continue to grow through FY2005 but would then drop for five years. It is possible that no examiners would need to be added in the next ten years. In the last five years of that period the filling of some vacancies could be delayed.

Cost and Revenue Issues

- It is estimated that ITS costs for reprogramming would be $46,920 (510 hours x $80 per hour equals $40,800 plus $6,120 for ITS charges).
- In the last quarter of FY2000 5-year licenses would be issued on the 10-year card stock, incurring additional costs of $.45 for each of the 417,360 licenses issued during that quarter.
- Yearly fees for issuance of licenses would remain the same at $2.50. The cost of ID cards would remain the same at $10.
- For the foreseeable future there will be a cycle of five years of high income and five years of reduced income. Low cycles would be the years FY05-10 and FY15-20. DMV provided the estimates in the following table:

Revenue Cycling with Ten-Year Driver License
(millions of dollars)

Fiscal Year	Projected Revenue with current 5-year License	Projected Revenue with proposed 10-year License	Increase or (Decrease) in Revenue
1999-00	$20.0	$20.0	0
2000-01	$23.6	$29.5	$5.9
2001-02	$27.7	$41.1	$13.4
2002-03	$28.3	$42.1	$13.8
2003-04	$27.4	$40.5	$13.1
2004-05	$27.9	$41.4	$13.4
2005-06	$29.6	$32.0	$2.4
2006-07	$31.6	$22.9	($8.7)
2007-08	$30.9	$23.4	($7.5)
2008-09	$30.1	$23.5	($6.6)

2009-10	$30.7	$23.9	($6.8)
2010-11	$32.5	$35.3	$2.8
2011-12	$34.6	$50.2	$15.6
2012-13	$34.0	$51.3	$17.3
2013-14	$33.2	$49.4	$16.2
2014-15	$33.8	$50.4	$16.5

TECHNICAL CONSIDERATIONS:

FISCAL RESEARCH DIVISION 733-4910

PREPARED BY: Robert Weiss

APPROVED BY: Tom Covington

DATE: Monday, May 17, 1999

SENATE BILL 791:
Ten Year Drivers License

BILL ANALYSIS

Committee:	Senate Finance Committee	**Introduced by:**	Senator Hoyle
Date:	May 16, 1999	**Summary by:**	Martha K. Walston
Version:	1st Edition		Committee Counsel

SUMMARY: ***Senate Bill 791 amends G.S. 20-7(f) to provide that: (1) license issued to person at least 16 but less than 18 expires on the person's 20th birthday, (2) license issued to person between the ages of 18 and 60 expires 10 years after date of issuance, (3) license issued to person between the ages of 60 and 80 expires the earlier of 5 years after issuance or the 80th birthday, and (4) license issued to person 80 or over expires 3 years after issuance. Senate Bill 791 requires a person holding a 10-year license who has three reportable accidents or is convicted of three moving violations during a 12 month period to attend a drivers license consultation. Senate Bill 791 provides that a special identification card will expire 5 years after issuance. The act is effective July 1, 2000.***

CURRENT LAW: G.S. 20-7(f) provides for the following expiration dates of drivers licenses:

First drivers license

Issued to a person who is at least 17 but less than 18 - expires when the person turns 20.

Issued to a person who is at least 62 - expires on person's birthday in the fifth year after license is issued.

Issued to every other person - expires on the person's fourth or subsequent birthday that occurs after the license is issued and on which the person's age is evenly divisible by five.

License issued by DMV and renewed by DMV

Expires five years after the expiration date of the renewed license.

BILL ANALYSIS: **Section 1** of Senate Bill 791 amends G.S. 20-7(f) by setting out the following new expiration dates for a drivers license:

License issued to person at least 16 but less than 18 – expires on person's 20th birthday.

License issued to a person age 18 but less than 60 – expires 10 years after date of issuance or on the person's 65th birthday, whichever is earlier.

License issued to person age 60 but less than 80 – expires 5 years after date of issuance, or on the person's 80th birthday, whichever is earlier.

License issued to person age 80 or over – expires 3 years from date of issuance.

Section 2 of Senate Bill 791 adds a new subsection to G.S. 20-7 that requires a person who holds a 10-year license to attend a drivers license consultation if one of the following applies:

- The person has three reportable accidents during any 12-month period. A "reportable accident" is defined as

  An accident or collision involving a motor vehicle that results in either of the following:

  a. Death or injury of a human being.

b. Total property damage of $1,000 or more, or property damage of any amount to a vehicle seized when the driver is charged with impaired driving and the driver's license had been revoked because of a prior impaired driving license revocation.

- The person is convicted of three moving violations during any 12-month period.

The drivers license consultation shall include a review of traffic law and rules, and a review of road signs.

Section 3 of the bill amends G.S. 20-37.7(d) to require that a special identification card issued by the DMV shall expire five years following the date of issuance. The current law requires that the card expire on the same day that a drivers license held by that person would expire. The current fee for a card is $10.00. A homeless person, legally blind person, or a person who is at least 70 does not have to pay the fee.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 791
Proposed Committee Substitute S791-PCSA144-LA

Short Title: Ten Year Drivers License. (Public)

Sponsors:

Referred to:

April 8, 1999

A BILL TO BE ENTITLED

AN ACT TO CHANGE THE GENERAL DRIVERS LICENSE RENEWAL CYCLE FROM FIVE TO TEN YEARS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-7(f) reads as rewritten:

"(f) License Expiration. ~~Expiration and Temporary License. -- The first drivers license the Division issues to a person expires on the person's fourth or subsequent birthday that occurs after the license is issued and on which the individual's age is evenly divisible by five, unless this subsection sets a different expiration date. The first drivers license the Division issues to a person who is at least 17 years old but is less than 18 years old expires on the person's twentieth birthday. The first drivers license the Division issues to a person who is at least 62 years old expires on the person's birthday in the fifth year after the license is issued, whether or not the person's age on that birthday is evenly divisible by five.~~

~~A drivers license that was issued by the Division and is renewed by the Division expires five years after the expiration date of the license that is renewed.~~

A drivers license issued to a person at least 16 but less than 18 years of age expires on the person's twentieth birthday. A drivers license issued to a person age 18 but less than age 60 expires 10 years after the date of issuance, or on the person's sixty-fifth birthday, whichever is earlier. A drivers license issued to a person age 60 but less than age 80 expires five years after the date of issuance, or on the person's eightieth birthday, whichever is earlier. A drivers license issued to a person age 80 or over expires three years from the date of issuance.

(f1) Early renewal. -- A person may apply to the Division to renew a license during the 180-day period before the license expires. The Division may not accept an application for renewal made before the 180-day period begins.

(f2) Temporary license by mail. --

(1) The Division may renew by mail a drivers license issued by the Division to a person who meets any of the following descriptions:

~~(1)~~ a. Is serving on active duty in the armed forces of the United States and is stationed outside this State.

~~(2)~~ b. Is a resident of this State and has been residing outside the State for at least 30 continuous days.

(2) When renewing a license by mail, the Division may waive the examination that would otherwise be required for the renewal and may impose any conditions it finds advisable. A license renewed by mail is a temporary license that expires 60 days after the person to whom it is issued returns to this State."

Section 2. G.S. 20-7 is amended by adding a new subsection to read:

"(f3) Consultation. -- Any person who holds a drivers license with a duration greater than five years who has three reportable accidents as defined in G.S. 20-4.01, or is convicted of three moving violations as specified in G.S. 20-16(c) during any 12-month period shall be notified by the Division and required to attend a drivers license consultation at the drivers license office of the person's choice. The Division shall establish the format of the consultation, which shall include a review of traffic law and rules, and a review of road signs."

Section 3. G.S. 20-37.7(d) reads as rewritten:

"(d) Expiration and Fee. -- A special identification card issued to a person ~~for the first time~~ under this section expires ~~when a drivers license issued on the same day to that person would expire.~~ five years following the date of issuance. ~~A special identification card renewed under this section expires when a drivers license renewed by the card holder on the same day would expire.~~

The fee for a special identification card is the same as the fee set in G.S. 20-14 for a duplicate license. The fee does not apply to a special identification card issued to a resident of this State who is legally blind, is at least 70 years old, or is homeless. To obtain a special identification card without paying a fee, a homeless person must present a letter to the Division from the director of a facility that provides care or shelter to homeless persons verifying that the person is homeless."

Section 4. This act becomes effective July 1, 2000.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

H. B. No. _____ DATE _____

S. B. No. 791 Amendment No. _____

(to be filled in by Principal Clerk)

Rep.)
) Soles
Sen.)

moves to amend the bill on page 2, line 21,

by rewriting the line to read "attend a drivers license consultation at the drivers license office of the person's choice. The Division shall establish the format of the".

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 799

Short Title: Physical Therapy Fees. (Public)

Sponsors: Senator Kerr.

Referred to: Finance.

April 12, 1999

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE FEES COLLECTED BY THE NORTH CAROLINA BOARD OF PHYSICAL THERAPY EXAMINERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-270.33 reads as rewritten:

"**§ 90-270.33. Fees.**

The Board may collect fees established by its rules, but those fees shall not exceed the following schedule for the specified items:

(1)	Each application for licensure	~~$100.00~~	$200.00
(2)	License renewal	~~40.00~~	$150.00
(3)	Transfer/verification/replace certificate	~~15.00~~	$45.00
(4)	Examination retake	~~30.00~~	$100.00
(5)	Late renewal		$20.00
(6)	Licensure revival (in addition to renewal)	~~25.00~~	$75.00
(7)	Directory	~~5.00~~	$25.00
(8)	Licensee ~~lists:~~ lists: labels	~~60.00~~	$250.00
	computer diskette		$450.00

In all instances where the Board uses the services of a national testing service for preparation, administration, or grading of examinations, the Board may charge the applicant the actual cost of the examination services, in addition to its other fees."

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

SENATE BILL 799:
Physical Therapy Fees

BILL ANALYSIS

Committee: Senate Finance Committee
Date: May 11, 1999
Version: 1st Edition

Introduced by: Sen. Kerr
Summary by: Martha K. Walston
Committee Counsel

SUMMARY: ***Senate Bill 799 increases the maximum fees that the North Carolina Board of Physical Therapy Examiners may charge, except for the late renewal fee. Senate Bill also adds a fee for a computer diskette of licensees. The fee schedule has not changed since 1985.***

BILL ANALYSIS: Senate Bill 799 increases the maximum fees that the North Carolina Board of Physical Therapy Examiners may charge, and adds a fee for a computer diskette of licensees.

Type of Fee	Current Maximum Fee	Proposed Maximum Fee
Each application for licensure	$100.00	$200.00
License renewal	$ 40.00	$150.00
Transfer/verification/replace certificate	$ 15.00	$ 45.00
Examination retake	$ 30.00	$100.00
Late renewal	$ 20.00	
Licensure revival (in addition to renewal)	$ 25.00	$ 75.00
Directory	$ 5.00	$ 25.00
Licensee lists; labels	$ 60.00	$250.00
computer diskette		$450.00

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 799 (First Edition)

SHORT TITLE: Physical Therapy Fees

SPONSOR(S): Senator Kerr

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
Bd. Operating Fund*	$148,509	$155,668	$163,185	$171,079	$179,367

* Board proposed rate, not statutory maximum

EXPENDITURES To be determined by the Board.

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Board of Physical Therapy Examiners

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

BILL SUMMARY: The bill increases the maximum fee amounts that can be charged by the North Carolina Board of Physical Therapy Examiners.

ASSUMPTIONS AND METHODOLOGY:
The North Carolina Board of Physical Therapy Examiners' statutory fee structure has not changed since 1985. The Board is now charging the highest fees allowed by statute. SB 799 increases the maximum statutory fees, but the Board plans to gradually increase fees to the statutory maximum. The chart on page two of this fiscal note shows the fee amounts and revenue from the current Board fees, the fees proposed by the Board if the law is enacted, and the maximum fees allowed by SB 799. Based on 1998 licenses, the Board would earn an additional $156,330 a year on the fees it intends to charge in the year 2000. If the Board charged the maximum fees allowed, it would earn an additional $807,310 a year.

	1998 Applicants	Current Board Fees	Current Revenues	Board Proposed Fee In 99-00	Board Revenue In 99-00	SB 799 Maximum Fees	SB 799 Maximum Revenue
Application Fees	992	$100	$99,200	$120	$119,040	$200	$198,400
License Renewal	5,877	$40	$235,080	$60	$352,620	$150	$881,550
Transfer/ Verify/ Replace Certificate	976	$15	$14,640	$25	$24,400	$45	$43,920
Exam Retake	146	$30	$4,380	$50	$7,300	$100	$14,600
Late Renewal	0	$20	0	$20	0	$20	0
Licensure Revival	54	$25	$1,350	$35	$1,890	$75	$4,050
Directory	41	$5	$205	$15	$615	$25	$1,025
License Lists							
- Labels	38	$60	$2,280	$150	$5,700	$250	$9,500
- Computer Diskette*	38	$150	$5,700	$200	$7,600	$450	$17,100
			$362,835		**$519,165**		**$1,170,145**

* No statutory authority for diskette sale

The Board of Physical Therapy Examiners projects a 5% annual growth rate for all the above categories except license lists. This 5% growth rate was applied to the base year 1998 and used to increase each category annually until 2004. (see chart below) Instead of the maximum allowed by SB 799, this fiscal note assumes the Board recommended rates until the year 2005.

	1998	1999	2000	2001	2002	2003	2004
Application Fees	992	1042	1094	1148	1206	1266	1329
License Renewal	5877	6171	6479	6803	7144	7501	7876
Transfer	976	1025	1076	1130	1186	1246	1308
Exam Retake	146	153	161	169	177	186	196
Late Renewal	0						
Licensure Revival	54	57	60	63	66	69	72
Directory	41	43	45	47	50	52	55
License Lists	38	38	38	38	38	38	38
	38	38	38	38	38	38	38
	8,162	8,566	8,991	9,437	9,905	10,396	10,912

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic

APPROVED BY: Tom Covington

DATE: Monday, April 26, 1999

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 222

Short Title: Government Accept Credit Cards. (Public)

Sponsors: Senator Reeves.

Referred to: Finance.

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR STATE AND LOCAL GOVERNMENTS TO ACCEPT CREDIT CARDS AND DEBIT CARDS FOR PAYMENT OF GOVERNMENT FEES, COSTS, AND DEBTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 147-86.10 reads as rewritten:

"**§ 147-86.10. Statement of policy.**

It is the policy of the State of North Carolina that all agencies, institutions, departments, bureaus, boards, ~~commissions~~ commissions, and officers of the State, whether or not subject to the Executive Budget Act, Chapter 143, Article 1 of the General Statutes, shall devise techniques and procedures for the receipt, deposit, and disbursement of moneys coming into their control and custody which are designed to maximize interest-bearing investment of cash, and to minimize idle and nonproductive cash balances. This policy shall apply to the General Court of Justice as defined in Article IV of the North Carolina Constitution, the public school administrative units, and the community colleges with respect to the receipt, deposit, and disbursement of moneys required by law to be deposited with the State Treasurer and with respect to moneys made available to them for expenditure by warrants drawn on the State Treasurer. This policy shall include the acceptance of credit cards and debit cards in accordance with G.S. 147-86.22 to the maximum extent possible consistent with sound business practices."

Section 2. G.S. 147-86.22(b) reads as rewritten:

"(b) Credit Card Payment. -- Notwithstanding the provisions of G.S. 147-86.21, this subsection applies to debts owed a community college, a local school

administrative unit, an area mental health, developmental disabilities, and substance abuse authority, and the General Court of Justice as well as to other State agencies as defined in G.S. 147-86.21. The State Controller ~~may~~ shall establish policies that allow accounts receivable to be payable under certain conditions, with the concurrence of the State Treasurer, by credit ~~card.~~ card and debit card. A condition of payment by credit card or debit card is receipt by the appropriate State agency of the full amount of the account receivable owed to the State agency. A debtor who pays by credit card or debit card shall be required to include an amount equal to any fee charged by a depository financial institution or card issuer for processing the ~~credit~~ card payment. A payment of an account receivable that is made by credit card or debit card and is not honored by the issuer of the ~~credit~~ card does not relieve the debtor of the obligation to pay the account receivable."

Section 3. G.S. 147-86.11 reads as rewritten:

"**§ 147-86.11. Cash management for the State.**

(a) Uniform Plan. -- The State Controller, with the advice and assistance of the State Treasurer, the State Budget Officer, and the State Auditor, shall develop, implement and amend as necessary a uniform statewide plan to carry out the cash management policy for all State agencies. The State Auditor shall report annually to the Advisory Budget Commission and the General Assembly on the implementation of the plan as shown in the audits completed during the prior fiscal year. The State Treasurer shall recommend periodically to the General Assembly any implementing legislation necessary or desirable in the furtherance of the State policy. When used in this section, 'State agency' means any agency, institution, bureau, board, commission or officer of the State; however, except as provided in G.S. 147-86.12, 147-86.13, ~~and 147-86.14,~~ 147-86.14, and 147-86.22, this Article ~~shall~~ does not apply to the agencies, institutions, bureaus, boards, commissions and officers of the General Court of Justice as defined in Article IV of the North Carolina Constitution or to the local school administrative units and community colleges and their officers and employees.

(b) Duties of Auditor. -- The State Auditor pursuant to ~~his~~ authority under G.S. 147-64.6 shall monitor agency compliance with this Article, and make any comments, suggestions, and recommendations ~~he~~ the Auditor deems advisable to the agencies.

(c) Treasurer's Report. -- The State Treasurer shall publish a quarterly report on all funds in the control or custody of the State Treasurer showing cash balances on hand, investments of cash balances and a comparative analysis of earnings and investment performances.

(d) Earnings on Trust Funds. -- The statewide cash management plan shall provide that any net earnings on invested funds, whose beneficial owner is not the State or a local governmental unit, shall be paid to the beneficial owners of the funds. 'Net earnings' are the amounts remaining after allowance for the cost of administration, management, and operation of the invested funds.

(e) Elements of Plan. -- For moneys received or to be received, the statewide cash management plan shall provide at a minimum that:

(1) Except as otherwise provided by law, moneys received by employees of State agencies in the normal course of their employment shall be deposited as follows:
a. Moneys received in trust for specific beneficiaries for which the employee-custodian has a duty to invest shall be deposited with the State Treasurer under the provisions of G.S. 147-69.3.
b. All other moneys received shall be deposited with the State Treasurer pursuant to G.S. 147-77 and G.S. 147-69.1.

(2) Moneys received shall be deposited daily in the form and amounts received, except as otherwise provided by ~~statute;~~ statute.

(3) Moneys due to a State agency by another governmental agency or by private persons shall be promptly billed, collected and ~~deposited;~~ deposited.

(4) Unpaid billings due to a State agency shall be turned over to the Attorney General for collection no more than 90 days after the due date of the billing, except that a State agency need not turn over to the Attorney General unpaid billings of less than five hundred dollars ($500.00), or (for institutions where applicable) amounts owed by all patients which are less than the federally established deductible applicable to Part A of the Medicare program, and instead may handle these unpaid bills pursuant to agency debt collection ~~procedures; and~~ procedures.

(5) Moneys received in the form of warrants drawn on the State Treasurer shall be deposited by the State agency directly with the State Treasurer and not through the banking system, unless otherwise approved by the State Treasurer.

(6) State agencies shall accept payment by credit cards and debit cards in accordance with G.S. 147-86.22 to the maximum extent possible consistent with sound business practices.

(f) Disbursement Requirements. -- For the disbursement of money, the statewide cash management plan shall provide at a minimum that:

(1) Moneys deposited with the State Treasurer remain on deposit with the State Treasurer until final disbursement to the ultimate ~~payee;~~ payee.

(2) The order in which appropriations and other available resources are expended shall be subject to the provisions of G.S. 143-27 regardless of whether the State agency disbursing or expending the moneys is subject to the Executive Budget ~~Act;~~ Act.

(3) Federal and other reimbursements of expenditures paid from State funds shall be paid immediately to the source of the State ~~funds;~~ funds.

(4) Billings to the State for goods received or services rendered shall be paid neither early nor late but on the discount date or the due date to the extent ~~practicable; and~~ practicable.

(5) Disbursement cycles for each agency shall be established to the extent practicable so that the overall efficiency of the warrant disbursement system is maximized while maintaining prompt payment of bills due.

(g) Interest Maximized. -- The interest earnings of the General Fund and Highway Fund shall be maximized to the extent practicable. To this end:

(1) Interest earnings shall not be allocated to an account by the State Treasurer unless all of the moneys in the account are expressly eligible by law for receiving interest ~~allocations;~~ allocations.

(2) State officers and employees who received moneys in trust or for investment shall be solely responsible for properly segregating such funds for investment in the manner prescribed by law. The officer or employee charged with the responsibility for these moneys shall be under a duty to segregate the funds in a timely manner. No investment income shall be allocated by the State Treasurer to trust or other investment accounts until properly segregated into investment accounts as provided by law and the rules of the State Treasurer.

(h) New Technologies. -- The statewide cash management plan shall consider new technologies and procedures whenever the technologies and procedures are economically beneficial to the State as a whole. Where the new technologies and procedures may be implemented without additional legislation, the technologies and procedures shall be implemented in the plan.

(i) Penalty. -- A willful or continued failure of an employee paid from State funds or employed by a State agency to follow the statewide cash management plan is sufficient cause for immediate dismissal of the employee."

Section 4. Article 3 of Chapter 159 of the General Statutes is amended by adding a new section to read:

"**§ 159-32.1. Credit card payment.**

The Commission shall establish policies that allow local governments' accounts receivable to be payable under certain conditions by credit card and debit card. A condition of payment by credit card or debit card is receipt by the local government of the full amount of the account receivable owed to it. A debtor who pays by credit card or debit card shall be required to include an amount equal to any fee charged by a depository financial institution or card issuer for processing the card payment. A payment of an account receivable that is made by credit card or debit card and is not honored by the issuer of the card does not relieve the debtor of the obligation to pay the account receivable."

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

SENATE BILL 222:
Government Accept Electronic Payment

BILL ANALYSIS

Committee:	Senate Finance Committee	**Introduced by:**	Senator Reeves
Date:	May 17, 1999	**Summary by:**	Martha K. Walston
Version:	Proposed Committee Substitute		Committee Counsel

SUMMARY: ***Senate Bill 222 directs the State Controller to establish policies that allow accounts receivable of State agencies to be payable by electronic payment. "Electronic payment" is defined as payment by charge card, credit card, debit card, or electronic funds transfer. The fees associated with processing electronic payments to State agencies may be paid out of the General Fund and Highway Fund or may be paid by the debtor. Senate Bill 222 also authorizes a unit of local government or public authority to accept payment by electronic payment for any tax, assessment, rate, fee, charge, rent, interest, penalty, or other receivable owed to it. The debtor or local government unit may be required to pay the processing fee. The account number for electronic payment is confidential information and may not be disclosed under the Public Records Act.***

CURRENT LAW: G.S. 147-86.22 authorizes the State Controller, with the concurrence of the State Treasurer, to establish policies to allow accounts receivable of a State agency to be paid by credit card. The payment must include the full amount owed to the State agency, i.e. the debtor must pay any processing fee. State agency is defined as "any department, institution, board, commission, committee, division, bureau, officer, official or any other entity for which the State has oversight responsibility, including but not limited to, any university, mental or specialty hospital, community college, or clerk of court. The term does not include, however, a community college, a local school administrative unit, an area mental health, developmental disabilities, and substance abuse authority, or the General Court of Justice.

State agencies are currently not accepting credit cards because they are prohibited by operating rules of both MasterCard and Visa from charging any of their cardholders a surcharge for making payments by credit card.

BILL ANALYSIS: **Section 1** of the bill creates a definition for electronic payment in G.S.105-228.90(b). Electronic payment is defined as payment by charge card, credit card, debit card, or by electronic funds transfer as defined in subsection (b). Electronic Funds Transfer is defined as a transfer of funds initiated by using an electronic terminal, a telephone, a computer, or magnetic tape to instruct or authorize a financial institution or its agent to credit or debit an account.

Section 2. clarifies that the cash management policy of the State includes the acceptance of electronic payments. The current policy of the State is that all State agencies, institutions, departments, bureaus, boards, commissions, and officers of the State, shall devise techniques and procedures for the receipt, deposit, and disbursement of moneys coming into their control and custody which are designed to maximize interest-bearing investment of cash, and to minimize idle and nonproductive cash balances.

Section 3 makes changes to the Statewide Accounts Receivable Program. Current law states that the State Controller may establish policies that allow accounts receivable to be payable under certain conditions, with the concurrence of the State Treasurer, by credit card. The debtor who pays by credit

card is required to pay the processing fee. Senate Bill 222 mandates that the State Controller, with the concurrence of the State Treasurer, establish policies that allow accounts receivable to be paid by electronic payment. The debtor may (now shall) be required to pay a processing fee. This new electronic payment language applies to the following:

- debts owed a community college, a local school administrative unit, an area mental health, developmenal disabilities, and substance abuse authority, and the Administrative Office of the Courts
- Debts payable to or through the office of a clerk of superior court or a magistrate
- Debts owed to other State agencies (any department, institution, board, commission, committee, division, bureau, officer, official or other entity for which the State has oversight responsibility, including but not limited to, any university, mental or specialty hospital, community college, or clerk of court.

Any policies for electronic payment that apply to debts to the office of a clerk of superior court or magistrate must be established with the concurrence of the Administrative Officer of the Courts. The Administrative Officer of the Courts may also establish policies for these debts if the policies are not inconsistent with the Controller's policies.

Payment of processing fees. Subject to approval by the State Controller and State Treasurer, processing fees will be paid out of the General Fund and Highway Fund when the process is economically beneficial to the State.

Governmental Operations oversight. –The State Controller and State Treasurer must consult with Governmental Operations before establishing policies for electronic payment and before authorizing payment of processing fees from the General Fund and Highway Fund. A State agency must also consult with Governmental Operations before implementing an electronic payment program.

Section 4 adds as an element to the Statewide cash management plan that State agencies shall accept electronic payment to the maximum extent possible consistent with sound business practices.

Section 5 adds a new section to the Local Government Budget and Fiscal Control Act. This section authorizes a unit of local government or a public authority to accept payment by electronic payment for any tax, assessment, rate, fee, charge, rent, interest, penalty, or other receivable owed it. The local government may pay the processing fee, as a condition of contracting for acceptance of the electronic payment, or the local government may impose a surcharge on the amount paid by the person using electronic payment.

Section 6 amends G.S. 105-367 to clarify that a tax collector may accept electronic payment of property taxes. Current law authorizes the tax collector to accept a check or credit card in payment of property taxes.

Section 7 amends Chapter 132 (Public Records) to add an account number for electronic payment to the list of confidential information that a public agency or its subdivision is prohibited from disclosing.

Section 8 makes the act effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 222 (Proposed Senate Finance Committee Substitute)

SHORT TITLE: Government Accept Electronic Payment

SPONSOR(S): Senator Reeves

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES	See Assumptions and Methodology				
EXPENDITURES	See Assumptions and Methodology				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Office of the State Controller; Department of State Treasurer; state agencies; local governments

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

BILL SUMMARY: The bill provides for state and local governments to accept credit cards, charge cards, debit cards and electronic fund transfers for payment of government fees, costs, and debts. The bill mandates the State Controller establish a policy to allow accounts receivable to be paid by electronic payment.

ASSUMPTIONS AND METHODOLOGY: No estimate is available on the fiscal impact on state and local governments due to the uncertainty about participation by both governmental units and consumers. SB 222 adds electronic payment as another method to maximize investment of tax dollars and minimize idle, nonproductive cash. However, governmental units will only use electronic payment if it is consistent with sound business practices. It is not known which state agencies and local governments have examined their cash management policies and determined that electronic payment is needed.

Some state agencies have decided to pursue electronic payment as a means to help consumers. The Division of Motor Vehicles (DMV) in the Department of Transportation requested HB 280 in the 1999 General Assembly to allow the agency "to accept electronic applications for the issuance of registration plates, registration certificates, and certificates of title, and to electronically collect fees and penalties". SB 222 is needed to enable DMV to collect a fee by

electronic payment. The Virginia DMV currently accepts credit cards and check cards for all transactions.

The Department of Revenue has been interested in using credit cards for tax payments at least since 1991. Former Secretary of Revenue Betsy Justus corresponded with two credit card companies in August, 1991, about using their cards for payment of taxes. The Federation of Tax Administrators found in a 1997 survey that 12 state tax agencies accept credit cards for at least some types of tax payment. Eleven additional states have authority to accept credit cards but have no program in place.

The State Controller's staff has attempted to quantify the state impact of SB 222. They estimate that a transaction ranging from $20 to $200 has a cost of handling and processing of approximately $5 per transaction using current payment methods. They estimate the cost per transaction using electronic payment will be reduced $3 to $4 depending on the fee charged by credit or debit card companies. The State Controller estimates that the first year impact will be revenue neutral with only 100,000 transactions using electronic payment. In the following years, it is estimated that each transaction by electronic payment will save $3 and the volume of transactions will grow as shown in the chart below:

2nd Year	1,100,000 transactions	$3.3 million savings
3rd Year	2,200,000 transactions	$6.6 million savings
4th Year	3,400,000 transactions	$10.2 million savings
5th Year	4,800,000 transactions	$14.4 million savings

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic

APPROVED BY:

DATE:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 222
Proposed Committee Substitute S222-CSLA-5/19
WARNING: LINE NUMBERS MAY CHANGE AFTER ADOPTION.

Short Title: Government Accept Electronic Payment. (Public)

Sponsors:

Referred to: Finance.

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR STATE AND LOCAL GOVERNMENTS TO ACCEPT CREDIT CARDS, CHARGE CARDS, DEBIT CARDS, AND ELECTRONIC FUNDS TRANSFERS FOR PAYMENT OF GOVERNMENT FEES, COSTS, AND DEBTS, AND TO ALLOW LOCAL GOVERNMENTS TO ACCEPT CREDIT CARDS, CHARGE CARDS, DEBIT CARDS, AND ELECTRONIC FUNDS TRANSFERS FOR PAYMENT OF PROPERTY TAXES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-228.90(b) is amended by adding a new subdivision to read:

"(3a) Electronic payment. -- Payment by charge card, credit card, debit card, or by electronic funds transfer as defined in this subsection."

Section 2. G.S. 147-86.10 reads as rewritten:

"**§ 147-86.10. Statement of policy.**

It is the policy of the State of North Carolina that all agencies, institutions, departments, bureaus, boards, ~~commissions~~ commissions, and officers of the State, whether or not subject to the Executive Budget Act, Chapter 143, Article 1 of the General Statutes, shall devise techniques and procedures for the receipt, deposit, and disbursement of moneys coming into their control and custody which are designed to maximize interest-bearing

investment of cash, and to minimize idle and nonproductive cash balances. This policy shall apply to the General Court of Justice as defined in Article IV of the North Carolina Constitution, the public school administrative units, and the community colleges with respect to the receipt, deposit, and disbursement of moneys required by law to be deposited with the State Treasurer and with respect to moneys made available to them for expenditure by warrants drawn on the State Treasurer. This policy shall include the acceptance of electronic payments in accordance with G.S. 147-86.22 to the maximum extent possible consistent with sound business practices."

Section 3. G.S. 147-86.22(b) reads as rewritten:

"(b) ~~Credit Card~~ Electronic Payment. -- Notwithstanding the provisions of G.S. 147-86.20 and G.S. 147-86.21, this subsection applies to debts owed a community college, a local school administrative unit, an area mental health, developmental disabilities, and substance abuse authority, and the Administrative Office of the Courts, and to debts payable to or through the office of a clerk of superior court or a magistrate, as well as to debts owed to other State agencies as defined in G.S. 147-86.20. The State Controller ~~may~~ shall establish policies that allow accounts receivable to be payable under certain ~~conditions, with the concurrence of the State Treasurer, by credit card.~~ conditions by electronic payment as defined in G.S. 105-228.90(b).

These policies shall be established with the concurrence of the State Treasurer. In addition, any policies that apply to debts payable to or through the office of a clerk of superior court or a magistrate shall be established with the concurrence of the Administrative Officer of the Courts. The Administrative Officer of the Courts may also establish policies otherwise authorized by law that apply to these debts as long as those policies are not inconsistent with the Controller's policies.

A condition of payment by ~~credit card~~ electronic payment is receipt by the appropriate State agency of the full amount of the account receivable owed to the State agency. A debtor who pays by ~~credit card~~ electronic payment ~~shall~~ may be required to ~~include an amount equal to any fee charged by a depository financial institution for processing the credit card payment.~~ pay any fee or charge associated with the use of electronic payment.

Subject to approval by the State Controller and State Treasurer, fees associated with processing electronic payments shall be paid out of the General Fund and Highway Fund when th

process is economically beneficial to the State. The State may impose a fee for the use of electronic payment when applicable.

The State Controller and State Treasurer shall consult with the Joint legislative Commission on Governmental Operations before establishing policies that allow accounts receivables to be payable by electronic payment in accordance with this subsection and before authorizing fees associated with electronic payment to be paid out of the General Fund and Highway Fund in accordance with this subsection. A State agency must also consult with the Joint Legislative Commission on Governmental Operations before implementing any program to accept payment under this subsection.

A payment of an account receivable that is made by ~~credit card~~ electronic payment and is not honored by the issuer of the ~~credit~~ card or the financial institution offering electronic funds transfer does not relieve the debtor of the obligation to pay the account receivable."

Section 4. G.S. 147-86.11 reads as rewritten:

"**§ 147-86.11. Cash management for the State.**

(a) Uniform Plan. -- The State Controller, with the advice and assistance of the State Treasurer, the State Budget Officer, and the State Auditor, shall develop, implement and amend as necessary a uniform statewide plan to carry out the cash management policy for all State agencies. The State Auditor shall report annually to the Advisory Budget Commission and the General Assembly on the implementation of the plan as shown in the audits completed during the prior fiscal year. The State Treasurer shall recommend periodically to the General Assembly any implementing legislation necessary or desirable in the furtherance of the State policy. When used in this section, 'State agency' means any agency, institution, bureau, board, commission or officer of the State; however, except as provided in G.S. 147-86.12, 147-86.13, ~~and 147-86.14,~~ 147-86.14, and 147-86.22, this Article ~~shall~~ does not apply to the agencies, institutions, bureaus, boards, commissions and officers of the General Court of Justice as defined in Article IV of the North Carolina Constitution or to the local school administrative units and community colleges and their officers and employees.

(b) Duties of Auditor. -- The State Auditor pursuant to ~~his~~ authority under G.S. 147-64.6 shall monitor agency compliance with this Article, and make any comments, suggestions, and recommendations ~~he~~ the Auditor deems advisable to the agencies.

(c) Treasurer's Report. -- The State Treasurer shall publish a quarterly report on all funds in the control or custody of the State Treasurer showing cash balances on hand, investments of

cash balances and a comparative analysis of earnings and investment performances.

(d) Earnings on Trust Funds. -- The statewide cash management plan shall provide that any net earnings on invested funds, whose beneficial owner is not the State or a local governmental unit, shall be paid to the beneficial owners of the funds. 'Net earnings' are the amounts remaining after allowance for the cost of administration, management, and operation of the invested funds.

(e) Elements of Plan. -- For moneys received or to be received, the statewide cash management plan shall provide at a minimum that:

(1) Except as otherwise provided by law, moneys received by employees of State agencies in the normal course of their employment shall be deposited as follows:

a. Moneys received in trust for specific beneficiaries for which the employee-custodian has a duty to invest shall be deposited with the State Treasurer under the provisions of G.S. 147-69.3.

b. All other moneys received shall be deposited with the State Treasurer pursuant to G.S. 147-77 and G.S. 147-69.1.

(2) Moneys received shall be deposited daily in the form and amounts received, except as otherwise provided by ~~statute;~~ statute.

(3) Moneys due to a State agency by another governmental agency or by private persons shall be promptly billed, collected and ~~deposited;~~ deposited.

(4) Unpaid billings due to a State agency shall be turned over to the Attorney General for collection no more than 90 days after the due date of the billing, except that a State agency need not turn over to the Attorney General unpaid billings of less than five hundred dollars ($500.00), or (for institutions where applicable) amounts owed by all patients which are less than the federally established deductible applicable to Part A of the Medicare program, and instead may handle these unpaid bills pursuant to agency debt collection ~~procedures; and~~ procedures.

(5) Moneys received in the form of warrants drawn on the State Treasurer shall be deposited by the State agency directly with the State Treasurer and not through the banking system, unless otherwise approved by the State Treasurer.

(6) State agencies shall accept payment by electronic payment in accordance with G.S. 147-86.22 to the maximum extent possible consistent with sound business practices.

(f) Disbursement Requirements. -- For the disbursement of money, the statewide cash management plan shall provide at a minimum that:

(1) Moneys deposited with the State Treasurer remain on deposit with the State Treasurer until final disbursement to the ultimate ~~payee;~~ payee.

(2) The order in which appropriations and other available resources are expended shall be subject to the provisions of G.S. 143-27 regardless of whether the State agency disbursing or expending the moneys is subject to the Executive Budget ~~Act;~~ Act.

(3) Federal and other reimbursements of expenditures paid from State funds shall be paid immediately to the source of the State ~~funds;~~ funds.

(4) Billings to the State for goods received or services rendered shall be paid neither early nor late but on the discount date or the due date to the extent ~~practicable; and~~ practicable.

(5) Disbursement cycles for each agency shall be established to the extent practicable so that the overall efficiency of the warrant disbursement system is maximized while maintaining prompt payment of bills due.

(g) Interest Maximized. -- The interest earnings of the General Fund and Highway Fund shall be maximized to the extent practicable. To this end:

(1) Interest earnings shall not be allocated to an account by the State Treasurer unless all of the moneys in the account are expressly eligible by law for receiving interest ~~allocations;~~ allocations.

(2) State officers and employees who received moneys in trust or for investment shall be solely responsible for properly segregating such funds

for investment in the manner prescribed by law. The officer or employee charged with the responsibility for these moneys shall be under a duty to segregate the funds in a timely manner. No investment income shall be allocated by the State Treasurer to trust or other investment accounts until properly segregated into investment accounts as provided by law and the rules of the State Treasurer.

(h) New Technologies. -- The statewide cash management plan shall consider new technologies and procedures whenever the technologies and procedures are economically beneficial to the State as a whole. Where the new technologies and procedures may be implemented without additional legislation, the technologies and procedures shall be implemented in the plan.

(i) Penalty. -- A willful or continued failure of an employee paid from State funds or employed by a State agency to follow the statewide cash management plan is sufficient cause for immediate dismissal of the employee."

Section 5. Article 3 of Chapter 159 of the General Statutes is amended by adding a new section to read:

"**§ 159-32.1. Electronic payment.**

A unit of local government or public authority may, in lieu of payment by cash or check, accept payment by electronic payment as defined in G.S. 105-228.90(b) for any tax, assessment, rate, fee, charge, rent, interest, penalty, or other receivable owed to it. A unit of local government or public authority may pay any negotiated discount, processing fee, transaction fee, or other charge imposed by a credit card, charge card, or debit card company, or by a third party merchant bank, as a condition of contracting for the unit's or the authority's acceptance of electronic payment. A unit or authority may impose the fee or charge as a surcharge on the amount paid by the person using electronic payment."

Section 6. G.S. 105-357(b) reads as rewritten:

"(b) Acceptance of ~~Checks and Credit Cards.~~ Checks and Electronic Payment. -- The tax collector may accept ~~checks, credit cards,~~ checks and electronic payments, as defined in G.S. 105-228.90(b), ~~or both~~ in payment of ~~taxes.~~ taxes, as authorized by G.S. 159-32.1. Acceptance of a check or ~~credit card~~ electronic payment is at the tax collector's own risk. A tax collector who accepts ~~credit cards in payment~~ electronic payment of taxes may add a fee to each ~~credit card~~ electronic payment transaction to offset the service charge the taxing unit pays for

~~credit card~~ electronic payment service. A tax collector who accepts ~~a credit card~~ electronic payment or check in payment of taxes may issue the tax receipt immediately or withhold the receipt until the check has been collected or the ~~credit card~~ electronic payment invoice has been honored by the issuer.

If a tax collector accepts a check or ~~a credit card~~ an electronic payment and issues a tax receipt and the check is returned unpaid (without negligence on the part of the tax collector in presenting the check for payment) or the ~~credit card~~ electronic payment invoice is not honored by the issuer, the taxes for which the check or ~~credit card~~ electronic payment was given shall be deemed unpaid; the tax collector shall immediately correct the copy of the tax receipt and other appropriate records to show the fact of nonpayment, and shall give written notice by certified or registered mail to the person to whom the tax receipt was issued to return it to the tax collector. After correcting the records to show the fact of nonpayment, the tax collector shall proceed to collect the taxes by the use of any remedies allowed for the collection of taxes or by bringing a civil action on the check or ~~credit card.~~ electronic payment.

A financial institution with which a taxing unit has contracted for receipt of payment of taxes may accept a check in payment of taxes. If the check is honored, the financial institution shall so notify the tax collector, who shall, upon request of the taxpayer, issue a receipt for payment of the taxes. If the check is returned unpaid, the financial institution shall so notify the tax collector, who shall proceed to collect the taxes by use of any remedy allowed for collection of taxes or by bringing a civil action on the check.

(1) Effect on Tax Lien. -- If the tax collector accepts a check or ~~credit card~~ electronic payment in payment of taxes on real property and issues the receipt, and the check is later returned unpaid or the ~~credit card~~ electronic payment invoice is not honored by the issuer, the taxing unit's lien for taxes on the real property shall be inferior to the rights of purchasers for value and of persons acquiring liens of record for value if the purchasers or lienholders acquire their rights in good faith and without actual knowledge that the check has not been collected or the ~~credit card~~ electronic payment invoice has not been honored, after examination of the copy of the tax receipt in the tax collector's office during

the time that record showed the taxes as paid or after examination of the official receipt issued to the taxpayer prior to the date on which the tax collector notified the taxpayer to return the receipt.

(2) Penalty. -- In addition to interest for nonpayment of taxes provided by G.S. 105-360 and in addition to any criminal penalties provided by law for the giving of worthless checks, the penalty for giving in payment of taxes a check that is returned because of insufficient funds or nonexistence of an account of the drawer is ten percent (10%) of the amount of the check, subject to a minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). This penalty does not apply if the tax collector finds that, when the check was presented for payment, the drawer of the check had sufficient funds in an account at a financial institution in this State to pay the check and, by inadvertance, the drawer of the check failed to draw the check on the account that had sufficient funds. This penalty shall be added to and collected in the same manner as the taxes for which the check was given."

Section 7. G.S. 132-1.2 reads as rewritten:

"**§ 132-1.2. Confidential information.**

(a) Nothing in this ~~Article~~ Chapter shall be construed to require or authorize a public agency or its subdivision to disclose any information ~~which~~ that:

(1) Meets all of the following conditions:

~~(1)~~ a. Constitutes a "trade secret" as defined in ~~G.S. 66-152(3);~~ G.S. 66-152(3).

~~(2)~~ b. Is the property of a private "person" as defined in ~~G.S. 66-152(2);~~ G.S. 66-152(2).

~~(3)~~ c. Is disclosed or furnished to the public agency in connection with the owner's performance of a public contract or in connection with a bid, application, proposal, industrial development project, or in compliance with laws, regulations, rules, or ordinances of the United States, the State, or political subdivisions of the ~~State; and~~ State.

~~(4)~~ d. Is designated or indicated as "confidential" or as a "trade secret" at the time of its initial disclosure to the public agency.

(2) Reveals an account number for electronic payment as defined in G.S. 105-228.90(b) and obtained pursuant to Articles 6A or 6B of Chapter 147 of the General Statutes or G.S. 159-32.1."

Section 8. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 222
Proposed Committee Substitute S222-PCS2768-LA

Short Title: Government Accept Electronic Payment. (Public)

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR STATE AND LOCAL GOVERNMENTS TO ACCEPT CREDIT CARDS, CHARGE CARDS, DEBIT CARDS, AND ELECTRONIC FUNDS TRANSFERS FOR PAYMENT OF GOVERNMENT FEES, COSTS, AND DEBTS, AND TO ALLOW LOCAL GOVERNMENTS TO ACCEPT CREDIT CARDS, CHARGE CARDS, DEBIT CARDS, AND ELECTRONIC FUNDS TRANSFERS FOR PAYMENT OF PROPERTY TAXES.

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"**§ 147-86.10. Statement of policy.**

It is the policy of the State of North Carolina that all agencies, institutions, departments, bureaus, boards, ~~commissions~~ commissions, and officers of the State, whether or not subject to the Executive Budget Act, Chapter 143, Article 1 of the General Statutes, shall devise techniques and procedures for the receipt, deposit, and disbursement of moneys coming into their control and custody which are designed to maximize interest-bearing investment of cash, and to minimize idle and nonproductive cash balances. This policy shall apply to the General Court of Justice as defined in Article IV of the North Carolina Constitution, the public school administrative units, and the community colleges with respect to the receipt, deposit,

and disbursement of moneys required by law to be deposited with the State Treasurer and with respect to moneys made available to them for expenditure by warrants drawn on the State Treasurer. This policy shall include the acceptance of electronic payments in accordance with G.S. 147-86.22 to the maximum extent possible consistent with sound business practices."

Section 3. G.S. 147-86.22(b) reads as rewritten:

"(b) ~~Credit Card~~ Electronic Payment. -- Notwithstanding the provisions of G.S. 147-86.20 and G.S. 147-86.21, this subsection applies to debts owed a community college, a local school administrative unit, an area mental health, developmental disabilities, and substance abuse authority, and the Administrative Office of the Courts, and to debts payable to or through the office of a clerk of superior court or a magistrate, as well as to debts owed to other State agencies as defined in G.S. 147-86.20. The State Controller ~~may~~ shall establish policies that allow accounts receivable to be payable under certain ~~conditions, with the concurrence of the State Treasurer, by credit card.~~ conditions by electronic payment as defined in G.S. 105-228.90(b).

These policies shall be established with the concurrence of the State Treasurer. In addition, any policies that apply to debts payable to or through the office of a clerk of superior court or a magistrate shall be established with the concurrence of the Administrative Officer of the Courts. The Administrative Officer of the Courts may also establish policies otherwise authorized by law that apply to these debts as long as those policies are not inconsistent with the Controller's policies.

A condition of payment by ~~credit card~~ electronic payment is receipt by the appropriate State agency of the full amount of the account receivable owed to the State agency. A debtor who pays by ~~credit card~~ electronic payment ~~shall~~ may be required to ~~include an amount equal to any fee charged by a depository financial institution for processing the credit card payment.~~ pay any fee or charge associated with the use of electronic payment.

Subject to approval by the State Controller and State Treasurer, fees associated with processing electronic payments shall be paid out of the General Fund and Highway Fund when the process is economically beneficial to the State. The State may impose a fee for the use of electronic payment when applicable.

The State Controller and State Treasurer shall consult with the Joint Legislative Commission on Governmental Operations before establishing policies that allow accounts receivable to be payable by electronic payment in accordance with this subsection and before authorizing fees associated with electronic payment to be paid out of the General Fund and Highway Fund in accordance with this subsection. A State agency must also consult with the Joint Legislative Commission on Governmental Operations before implementing any program to accept payment under this subsection.

A payment of an account receivable that is made by ~~credit card~~ electronic payment and is not honored by the issuer of the ~~credit~~ card or the financial institution offering electronic funds transfer does not relieve the debtor of the obligation to pay the account receivable."

Section 4. G.S. 147-86.11 reads as rewritten:

"**§ 147-86.11. Cash management for the State.**

(a) Uniform Plan. -- The State Controller, with the advice and assistance of the State Treasurer, the State Budget Officer, and the State Auditor, shall develop, implement and amend as necessary a uniform statewide plan to carry out the cash management policy for all State agencies. The State Auditor shall report annually to the Advisory Budget Commission and the General Assembly on the implementation of the plan as shown in the audits completed during the prior fiscal year. The State Treasurer shall recommend periodically to the General Assembly any implementing legislation necessary or desirable in the furtherance of the State policy. When used in this section, 'State agency' means any agency, institution, bureau, board, commission or officer of the State; however, except as provided in G.S. 147-86.12, 147-86.13, ~~and 147-86.14,~~ 147-86.14, and 147-86.22, this Article ~~shall~~ does not apply to the agencies, institutions, bureaus, boards, commissions and officers of the General Court of Justice as defined in Article IV of the North Carolina Constitution or to the local school administrative units and community colleges and their officers and employees.

(b) Duties of Auditor. -- The State Auditor pursuant to ~~his~~ authority under G.S. 147-64.6 shall monitor agency compliance with this Article, and make any comments, suggestions, and recommendations ~~he~~ the Auditor deems advisable to the agencies.

(c) Treasurer's Report. -- The State Treasurer shall publish a quarterly report on all funds in the control or custody of the State Treasurer showing cash balances on hand, investments of cash balances and a comparative analysis of earnings and investment performances.

(d) Earnings on Trust Funds. -- The statewide cash management plan shall provide that any net earnings on invested funds, whose beneficial owner is not the State or a local governmental unit, shall be paid to the beneficial owners of the funds. 'Net earnings' are the amounts remaining after allowance for the cost of administration, management, and operation of the invested funds.

(e) Elements of Plan. -- For moneys received or to be received, the statewide cash management plan shall provide at a minimum that:

(1) Except as otherwise provided by law, moneys received by employees of State agencies in the normal course of their employment shall be deposited as follows:

a. Moneys received in trust for specific beneficiaries for which the employee-custodian has a duty to invest shall be deposited with the State Treasurer under the provisions of G.S. 147-69.3.

b. All other moneys received shall be deposited with the State Treasurer pursuant to G.S. 147-77 and G.S. 147-69.1.

(2) Moneys received shall be deposited daily in the form and amounts received, except as otherwise provided by ~~statute;~~ statute.

(3) Moneys due to a State agency by another governmental agency or by private persons shall be promptly billed, collected and ~~deposited;~~ deposited.

(4) Unpaid billings due to a State agency shall be turned over to the Attorney General for collection no more than 90 days after the due date of the billing, except that a State agency need not turn over to the Attorney General unpaid billings of less than five hundred dollars ($500.00), or (for institutions where applicable) amounts owed by all patients which are less than the federally established deductible applicable to Part A of the Medicare program, and instead may handle these unpaid bills pursuant to agency debt collection ~~procedures; and~~ procedures.

(5) Moneys received in the form of warrants drawn on the State Treasurer shall be deposited by the State agency directly with the State Treasurer and not through the banking system, unless otherwise approved by the State Treasurer.

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(1) Moneys deposited with the State Treasurer remain on deposit with the State Treasurer until final disbursement to the ultimate ~~payee;~~ payee.

(2) The order in which appropriations and other available resources are expended shall be subject to the provisions of G.S. 143-27 regardless of whether the State agency disbursing or expending the moneys is subject to the Executive Budget ~~Act;~~ Act.

(3) Federal and other reimbursements of expenditures paid from State funds shall be paid immediately to the source of the State ~~funds;~~ funds.

(4) Billings to the State for goods received or services rendered shall be paid neither early nor late but on the discount date or the due date to the extent ~~practicable; and~~ practicable.

(5) Disbursement cycles for each agency shall be established to the extent practicable so that the overall efficiency of the warrant disbursement system is maximized while maintaining prompt payment of bills due.

(g) Interest Maximized. -- The interest earnings of the General Fund and Highway Fund shall be maximized to the extent practicable. To this end:

(1) Interest earnings shall not be allocated to an account by the State Treasurer unless all of the moneys in the account are expressly eligible by law for receiving interest ~~allocations;~~ allocations.

(2) State officers and employees who received moneys in trust or for investment shall be solely responsible for properly segregating such funds for investment in the manner prescribed by law. The officer or employee charged with the responsibility for these moneys shall be under a duty to segregate the funds in a timely manner. No investment income shall be allocated by the State Treasurer to trust or other investment accounts until properly segregated into investment accounts as provided by law and the rules of the State Treasurer.

(h) New Technologies. -- The statewide cash management plan shall consider new technologies and procedures whenever the technologies and procedures are economically beneficial to the State as a whole. Where the new technologies and procedures may be implemented without additional legislation, the technologies and procedures shall be implemented in the plan.

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"**§ 159-32.1. Electronic payment.**

A unit of local government or public authority may, in lieu of payment by cash or check, accept payment by electronic payment as defined in G.S. 105-228.90(b) for any tax, assessment, rate, fee, charge, rent, interest, penalty, or other receivable owed to it. A unit of local government or public authority may pay any negotiated discount, processing fee, transaction fee, or other charge imposed by a credit card, charge card, or debit card company, or by a third-party merchant bank, as a condition of contracting for the unit's or the authority's acceptance of electronic payment. A unit or authority may impose the fee or charge as a surcharge on the amount paid by the person using electronic payment."

Section 6. G.S. 105-357(b) reads as rewritten:

"(b) Acceptance of ~~Checks and Credit Cards.~~ Checks and Electronic Payment. -- The tax collector may accept ~~checks, credit cards,~~ checks and electronic payments, as defined in G.S. 105-228.90(b), ~~or both~~ in payment of ~~taxes.~~ taxes, as authorized by G.S. 159-32.1. Acceptance of a check or ~~credit card~~ electronic payment is at the tax collector's own risk. A tax collector who accepts ~~credit cards in payment~~ electronic payment of taxes may add a fee to each ~~credit card~~ electronic payment transaction to offset the service charge the taxing unit pays for ~~credit card~~ electronic payment service. A tax collector who accepts ~~a credit card~~ electronic payment or check in payment of taxes may issue the tax receipt immediately or withhold the receipt until the check has been collected or the ~~credit card~~ electronic payment invoice has been honored by the issuer.

If a tax collector accepts a check or ~~a credit card~~ an electronic payment and issues a tax receipt and the check is returned unpaid (without negligence on the part of the tax collector in presenting the check for payment) or the ~~credit card~~ electronic

payment invoice is not honored by the issuer, the taxes for which the check or ~~credit card~~ electronic payment was given shall be deemed unpaid; the tax collector shall immediately correct the copy of the tax receipt and other appropriate records to show the fact of nonpayment, and shall give written notice by certified or registered mail to the person to whom the tax receipt was issued to return it to the tax collector. After correcting the records to show the fact of nonpayment, the tax collector shall proceed to collect the taxes by the use of any remedies allowed for the collection of taxes or by bringing a civil action on the check or ~~credit card.~~ electronic payment.

A financial institution with which a taxing unit has contracted for receipt of payment of taxes may accept a check in payment of taxes. If the check is honored, the financial institution shall so notify the tax collector, who shall, upon request of the taxpayer, issue a receipt for payment of the taxes. If the check is returned unpaid, the financial institution shall so notify the tax collector, who shall proceed to collect the taxes by use of any remedy allowed for collection of taxes or by bringing a civil action on the check.

(1) Effect on Tax Lien. -- If the tax collector accepts a check or ~~credit card~~ electronic payment in payment of taxes on real property and issues the receipt, and the check is later returned unpaid or the ~~credit card~~ electronic payment invoice is not honored by the issuer, the taxing unit's lien for taxes on the real property shall be inferior to the rights of purchasers for value and of persons acquiring liens of record for value if the purchasers or lienholders acquire their rights in good faith and without actual knowledge that the check has not been collected or the ~~credit card~~ electronic payment invoice has not been honored, after examination of the copy of the tax receipt in the tax collector's office during the time that record showed the taxes as paid or after examination of the official receipt issued to the taxpayer prior to the date on which the tax collector notified the taxpayer to return the receipt.

(2) Penalty. -- In addition to interest for nonpayment of taxes provided by G.S. 105-360 and in addition to any criminal penalties provided by law for the giving of worthless checks, the penalty for giving in payment of taxes a check that is returned because of insufficient funds or nonexistence of an account of the drawer is ten percent (10%) of the amount of the check, subject to a minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). This penalty does not apply if the tax collector finds that, when the check was presented for payment, the drawer of the check had sufficient funds in an account at a financial institution in this State to pay the check and, by inadvertance, the drawer of the check failed to draw the check on the account that had sufficient funds. This penalty shall be added

to and collected in the same manner as the taxes for which the check was given."

Section 7. G.S. 132-1.2 reads as rewritten:

"**§ 132-1.2. Confidential information.**

(a) Nothing in this ~~Article~~ Chapter shall be construed to require or authorize a public agency or its subdivision to disclose any information ~~which:~~ that:

(1) Meets all of the following conditions:

~~(1)~~ a. Constitutes a "trade secret" as defined in ~~G.S. 66-152(3);~~ G.S. 66-152(3).

~~(2)~~ b. Is the property of a private "person" as defined in ~~G.S. 66-152(2);~~ G.S. 66-152(2).

~~(3)~~ c. Is disclosed or furnished to the public agency in connection with the owner's performance of a public contract or in connection with a bid, application, proposal, industrial development project, or in compliance with laws, regulations, rules, or ordinances of the United States, the State, or political subdivisions of the ~~State; and~~ State.

~~(4)~~ d. Is designated or indicated as "confidential" or as a "trade secret" at the time of its initial disclosure to the public agency.

(2) Reveals an account number for electronic payment as defined in G.S. 105-228.90(b) and obtained pursuant to Articles 6A or 6B of Chapter 147 of the General Statutes or G.S. 159-32.1."

Section 8. This act is effective when it becomes law.

(Attachment #1)

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 5/19/99

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jim Kuszaj	NCEI
Ed Renfrow	OSC
Gwen Canady	OSC
Amber Young	OSC
Andy Romanet	N.C.G.M.
Jane Tinsley	AAA
Jim Blackburn	County Commissioners Association
Katherine Davis	ElectriCities
Alice Garland	ElectriCities
Roger Pierce	NC HLB
Jimmy Hughes	DOT

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 5/19/99

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Garret Perdue	Zebulon D. Alley, P.A
Denny McGuire	Commerce/ITS
Rick Webb	Commerce/ITS
Shirley Lyle	Sec. of State
Bernard Allen	SOS
Phyllis Reuter	NC Downtown Dev. Assoc.
Mary Dixon	Capital Group
Richard Carlton	American Express
Augustus Stone	NCLHA
Vicky Young	OSA
W. Potter	NCPTA
Laura DeVivo	DENR
Bill Mauney	NC Board of PT Examiners

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 5/19/99

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
David Simmons	Zebulon D. Alley, PA.
Ralph E. Hise Jr	Legislative Intern
Nate Cenetto	ALCGNA
J. Herman Burch, Jr	NCDOT
Basil McVey	NC AOC
Tom Andrews	AOC
Jeanne Bonds	AOC
Tommy Hughes	Clerk of Court - Cumb. Co.
Gardner Payne	Governor's Office
Tommy Worth	Carolina HealthCare Systems
Tammy Johnson	Zebulon D. Alley, P.A.

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 5/19/99

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Larry Heckner	Household Financial Group
Barbara Levine	Governor's Office
Dennis McCarty	NCGA
Joan Myers	NCEITA
Ralph Campbell	OSA
Brad A. Wood	OSA
Paul Lyon	OSBM
Patti Seawell	NC DOR
Laura P. Jones	DENR-DWQ-Wetlands Restoration Prog.
Coleen H. Sullins	Division Water Quality
Tommy Stevens	" " "

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

5/19/99

Name of Committee | Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
DOUG CHAPPELL	DEPT. STATE TREASURER
Tom Andrews	ADC
Tony Spence	DMV
Wayne Horton	DMV Driver License
Ruth Sappie	NCDOT
Steve Woodson	NC Farm Bureau
Stuart Reeves	Millennium Partners
Ed Regan	N.C. Assoc. of Co. Comm.
Cam Cook	BPMHL
Melissa Habel	BPMHL
Priscilla Swindell	AARP

(Attachment #2)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Wednesday, May 19, 1999

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

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

H.B. **462** Chadbourn Utility Bills

Draft Number:	PCS2352
Sequential Referral:	none
Recommended Referral:	none
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment: none

(Attachment #3)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Thursday, May 20, 1999

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

FAVORABLE

H.B.(CS)**259** Home Inspector Amendments/AB
Sequential Referral: none
Recommended Referral: none

S.B. **799** Physical Therapy Fees
Sequential Referral: none
Recommended Referral: none

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

S.B. **222** Government Accept Credit Cards
Draft Number: PCS2768
Sequential Referral: none
Recommended Referral: none
Long Title Amended: Yes

S.B. **791** Ten Year Drivers License
Draft Number: PCSA144
Sequential Referral: NONE
Recommended Referral: NONE
Long Title Amended: No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

S.B.(CS #1)**1049** Neuse River Buffer Amends
Draft Number: PCS6676
Sequential Referral: none
Recommended Referral: none
Long Title Amended: No

TOTAL REPORTED: 5

Committee Clerk Comment: These bills were heard in committee on 5-19-99

AGENDA

THURSDAY, MAY 20, 1999

11 O'ClOCK A.M. – ROOM 544

I CALL TO ORDER

II INTRODUCTION OF PAGES

III BILLS TO BE CONSIDERED

SB 1115 – Amend Bill Lee Act/Incentives – Sen. Kerr

SENATE FINANCE COMMITTEE

THURSDAY, MAY 20, 1999

11:00 A.M. - ROOM 544

The Senate Finance Committee met on Thursday, May 20, 1999, at 11 o'clock A.M. in Room 544 with Senator Hoyle presiding. There were 23 committee members present for the meeting. Senator Hoyle introduced the page – Adam Affarian from Raleigh who was sponsored by Senator Bob Martin.

SB 1115 – Amend Bill Lee Act/Incentives.

Senator Kerr was recognized to explain his Bill and on his motion, a Committee Substitute was adopted by the committee. Secretary of Commerce, Rick Carlisle spoke in favor of this Bill and also answered questions from the committee members. Senator Albertson moved for a Favorable Report and the motion carried. Copy of original Bill, Committee Substitute, Explanation and Fiscal information included in the minutes.

Meeting adjourned.

David W. Hoyle, Co-Chair
Senate Finance Committee

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

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1115

Short Title: Amend Bill Lee Act/Incentives. (Public)

Sponsors: Senator Kerr.

Referred to: Finance.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR WIDELY SHARED PROSPERITY BY AMENDING THE WILLIAM S. LEE QUALITY JOBS AND BUSINESS EXPANSION ACT, BY PROVIDING ADDITIONAL TAX INCENTIVES FOR VARIOUS BUSINESSES, AND BY MAKING RELATED CHANGES.

The General Assembly of North Carolina enacts:

TABLE OF CONTENTS

I. BILL LEE ACT CHANGES
II. SALES TAX CHANGES
III. AFFORDABLE HOUSING TAX CREDIT
IV. INDUSTRIAL DEVELOPMENT FUND CHANGES
V. EFFECTIVE DATES

PART 1. BILL LEE ACT CHANGES

Section 1. Section 10.2(3) of Chapter 13 of the 1996 Second Extra Session reads as rewritten:

"(3) Quality jobs and business expansion tax credits. -- Sections 3.5, 3.6, and 3.8 through 3.10 of Part III of this act become effective August 1, 1996. G.S. 105-129.11, as enacted by Part III of this act, becomes effective for taxable years beginning on or after January 1, 1997, and applies to training expenditures made on or after July 1, 1997. The remainder of Part III of this act is effective for taxable years beginning on or after January 1, 1996, and applies to jobs created on or after August 1, 1996, and property placed in service on or after August 1, 1996. Article 3A of Chapter 105 of the

General Statutes is repealed effective for applications for credits filed under G.S. 105-129.6 on or after January 1, ~~2002.~~ 2005. Article 3B of Chapter 105 of the General Statutes is repealed effective for business property placed in service on or after January 1, 2002."

Section 2. Article 3A of Chapter 105 of the General Statutes read as rewritten:

"ARTICLE 3A.

"Tax Incentives for New and Expanding Businesses.

"**§ 105-129.2. Definitions.**

The following definitions apply in this Article:

(1) Air courier services. -- A person is engaged in the air courier services business if the person's primary business is furnishing air delivery of individually addressed letters and packages for compensation, except by the United States Postal Service.

(2) Central administrative office. -- ~~Defined~~ Either of the following:

a. A corporate, subsidiary, or regional managing office, as defined by NAICS. ~~in the North American Industry Classification System adopted by the United States Office of Management and Budget.~~

b. An auxiliary division engaged primarily in centralized training for an interstate passenger air carrier at its hub. For the purpose of this subdivision, the terms 'interstate passenger air carrier' and 'hub' have the meanings provided in G.S. 105-164.3.

(3) Cost. -- In the case of property owned by the taxpayer, cost is determined pursuant to regulations adopted under section 1012 of the Code. In the case of property the taxpayer leases from another, cost is value as determined pursuant to G.S. 105-130.4(j)(2).

(3a) Customer service center. -- An auxiliary subdivision of a telecommunications or financial services company, as defined by NAICS, that is primarily engaged in providing support services to the company's customers by telephone to support products or services of the company. For the purpose of this definition, a subdivision is primarily engaged in providing support services by telephone if at least sixty percent (60%) of its calls are incoming.

(4) Data processing. -- Any of the following industries, as defined by NAICS: ~~Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.~~

a. Computer systems design and related services.

b. Software publishers.

c. Software reproducing.

d. Data processing services.
e. On-line information services.

(5) Development zone. -- An area designated as a development zone pursuant to G.S. 105-129.3A.

(6) Enterprise tier. -- The classification assigned to an area pursuant to G.S. 105-129.3.

(7) Full-time job. -- A position that requires at least 1,600 hours of work per year and is intended to be held by one employee during the entire year. A full-time employee is an employee who holds a full-time job.

(8) Reserved.

(9) Large investment. -- Defined in G.S. 105-129.4(b1).

(10) Machinery and equipment. -- Engines, machinery, tools, and implements used or designed to be used in the business for which the credit is claimed. The term does not include real property as defined in G.S. 105-273 or rolling stock as defined in G.S. 105-333.

(11) Manufacturing. -- ~~Defined~~ Industries in manufacturing sectors 31 through 33, as defined by NAICS, ~~in the North American Industry Classification System adopted by the United States Office of Management and Budget.~~ but not including quick printing or retail or commercial bakeries.

(11a) NAICS. -- The North American Industry Classification System adopted by the United States Office of Management and Budget.

(12) Purchase. -- Defined in section 179 of the Code.

(13) ~~Warehousing and wholesale trade. -- Defined~~ Warehousing. -- Industries in warehousing and storage subsector 493 as defined by NAICS. ~~in the North American Industry Classification System adopted by the United States Office of Management and Budget.~~

(14) Wholesale trade. -- Industries in wholesale trade sector 42 as defined by NAICS.

"**§ 105-129.3. Enterprise tier designation.**

(a) Tiers Defined. -- An enterprise tier one area is a county whose enterprise factor is one of the 10 highest in the State. An enterprise tier two area is a county whose enterprise factor is one of the next 15 highest in the State. An enterprise tier three area is a county whose enterprise factor is one of the next 25 highest in the State. An enterprise tier four area is a county whose enterprise factor is one of the next 25 highest in the State. An enterprise tier five area is any area that is not in a lower-numbered enterprise tier.

(b) Annual Designation. -- Each year, on or before December 31, the Secretary of Commerce shall assign to each county in the State an enterprise factor that is the sum of the following:

(1) The county's rank in a ranking of counties by average rate of unemployment from lowest to highest, for the preceding three years.
(2) The county's rank in a ranking of counties by average per capita income from highest to lowest, for the preceding three years.
(3) The county's rank in a ranking of counties by percentage growth in population from highest to lowest.

The Secretary of Commerce shall then rank all the counties within the State according to their enterprise factor from highest to lowest, identify all the areas of the State by enterprise tier, and provide this information to the Secretary of Revenue. An enterprise tier designation is effective only for the calendar year following the designation.

In measuring rates of unemployment and per capita income, the Secretary shall use the latest available data published by a State or federal agency generally recognized as having expertise concerning the data. In measuring population growth, the Secretary shall use the most recent estimates of population certified by the State Planning Officer.

(c) Exception for Enterprise Tier One Areas. -- Notwithstanding the provisions of this section, an enterprise tier one area may not be redesignated as a higher-numbered enterprise tier area until it has been an enterprise tier one area for at least two consecutive years.

(d) Exception for Two-County Industrial Park. -- For the purpose of this Article, an eligible two-county industrial park that meets all of the following conditions has the lower enterprise tier designation of the designations of the two counties in which it is located:

(1) It is located in two contiguous counties, one of which has a lower enterprise tier designation than the other.
(2) At least one-third of the park is located in the county with the lower tier designation.
(3) It is owned by the two counties or a joint agency of the counties.
(4) The county with the lower tier designation contributed at least one-half of the cost of developing the park.

(e) Exception for Certain Small Counties. -- A county that meets both of the conditions set out below has an enterprise tier designation one level below the designation it would otherwise have under subsection (a) of this section:

(1) Its population is less than 20,000 according to the most recent estimates of population certified by the State Planning Officer.
(2) More than eighteen percent (18%) of its population is below the federal poverty level according to the most recent federal decennial census.

"§ 105-129.3A. Development zone designation.

(a) Development Zone Defined. -- A development zone is an area comprised of one or more contiguous census tracts, census block groups, or both in the most recent federal decennial census that meets all of the following conditions:

(1) ~~It~~ Every census tract and census block group in the zone is located in whole or in part in a city with a population of more than 5,000 according to the most recent annual population estimates certified by the State Planning Officer.

(2) It has a population of 1,000 or more according to the most recent annual population estimates certified by the State Planning Officer.

(3) More than twenty percent (20%) of its population is below the poverty level according to the most recent federal decennial census.

(4) Every census tract and census block group in the zone meets at least one of the following conditions:

a. More than ten percent (10%) of its population is below the poverty level according to the most recent federal decennial census.

b. It is immediately adjacent to another census tract or census block group that is in the same zone and has more than twenty percent (20%) of its population below the poverty level according to the most recent federal decennial census.

(5) None of the census tracts or census block groups in the zone is located in another development zone designated by the Secretary of Commerce.

(b) Designation. -- Upon request of a taxpayer or a local government, the Secretary of Commerce shall designate whether an area is a development zone that meets the conditions of subsection (a) of this section. If the applicant is a taxpayer, it must notify each municipality in which part of the zone is located. The Secretary of Commerce shall make the zone designations annually effective January 1 of each year. To qualify for designation, the application must be filed by the preceding September 1. A development zone designation is effective for ~~48~~ 24 months following the designation.

(c) Relationship With Enterprise Tiers. -- For the purpose of the wage standard requirement of G.S. 105-129.3(b), the credit for investing in machinery and equipment allowed in G.S. 105-129.9, and the credit for worker training allowed in G.S. 105-129.11, a development zone is considered an enterprise tier one area. For all other purposes, a development zone has the same enterprise tier designation as the county in which it is located.

"**§ 105-129.4. Eligibility; forfeiture.**

(a) Type of Business. -- A taxpayer is eligible for a credit allowed by G.S. 105-129.12 if the real property for which the credit is claimed is used for a central administrative office that creates at least 40 new jobs. A taxpayer is eligible for the other credits allowed by this Article if the taxpayer engages in one of the following types of businesses and the jobs with respect to which a credit is claimed are created in that business, the machinery and equipment with respect to which a credit is

claimed are used in that business, and the research and development for which a credit is claimed are carried out as part of that business:

(1) Air courier services.
(2) Central administrative office that creates at least 40 new jobs.
(3) Data processing.
(4) Manufacturing.
(5) Warehousing or wholesale trade.
(6) Customer service center located in an enterprise tier one or two area.

(a1) Central Administrative Office. -- A central administrative office creates at least 40 new jobs if the taxpayer hires at least 40 additional full-time employees to fill new positions at the office either in the year the taxpayer first uses the property as a central administrative office or in the preceding 24 months while using temporary space for the central administrative office functions during completion of the administrative office property. Jobs transferred from one area in the State to another area in the State are not considered new jobs for purposes of this subsection.

(b) Wage Standard. -- A taxpayer is eligible for the credit for creating jobs or the credit for worker training if the jobs for which the credit is claimed meet the wage standard at the time the taxpayer applies for the credit. A taxpayer is eligible for the credit for investing in machinery and equipment, the credit for research and development, or the credit for investing in real property for a central administrative office if the jobs at the location with respect to which the credit is claimed meet the wage standard at the time the taxpayer applies for the credit. Jobs meet the wage standard if they pay an average weekly wage that is at least equal to the applicable percentage times the applicable average weekly wage for the county in which the jobs will be located, as computed by the Secretary of Commerce from data compiled by the Employment Security Commission for the most recent period for which data are available. The applicable percentage for jobs located in an enterprise tier one area is one hundred percent (100%). The applicable percentage for all other jobs is one hundred ten percent (110%). The applicable average weekly wage is the lowest of the following: (i) the average wage for all insured private employers in the county, (ii) the average wage for all insured private employers in the State, and (iii) the average wage for all insured private employers in the county multiplied by the county income/wage adjustment factor. The county income/wage adjustment factor is the county income/wage ratio divided by the State income/wage ratio. The county income/wage ratio is average per capita income in the county divided by the annualized average wage for all insured private employers in the county. The State income/wage ratio is the average per capita income in the State divided by the annualized average wage for all insured private employers in the State.

(b1) Large Investment. -- A taxpayer who is otherwise eligible for a tax credit under this Article becomes eligible for the large investment enhancements provided for credits under this Article if the Secretary of Commerce certifies that the taxpayer will purchase or lease, and place in service in connection with the eligible business within a two-year period, at least one hundred fifty million dollars ($150,000,000)

worth of one or more of the following: real property, machinery and equipment, or central administrative office property. If the taxpayer fails to make the level of investment certified within this two-year period, the taxpayer forfeits the large investment enhancements as provided in subsection (d) of this section.

(b2) Health Insurance. -- A taxpayer is eligible for a credit for creating jobs or for worker training under this Article if the taxpayer provides health insurance for the positions for which the credit is claimed at the time the taxpayer applies for the credit. A taxpayer is eligible for the other credits under this Article if the taxpayer provides health insurance for all of the full-time positions at the location with respect to which the credit is claimed at the time the taxpayer applies for the credit. For the purposes of this subsection, a taxpayer provides health insurance if it pays at least fifty percent (50%) of the premiums for health care coverage that equals or exceeds the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee pursuant to G.S. 58-50-125.

Each year that a taxpayer claims an installment or carryforward of a credit allowed under this Article, the taxpayer must provide with the tax return the taxpayer's certification that the taxpayer continues to provide health insurance for the jobs for which the credit was claimed or the full-time jobs at the location with respect to which the credit was claimed. If the taxpayer ceases to provide health insurance for the jobs during a taxable year, the credit expires and the taxpayer may not take any remaining installment or carryforward of the credit.

(b3) Environmental Impact. -- A taxpayer is eligible for a credit allowed under this Article only if the taxpayer has obtained a certification from the Department of Environment and Natural Resources that the business location with respect to which the credit is claimed has not had and will not have a materially adverse effect on the environment.

(b4) Safety and Health Programs. -- A taxpayer is eligible for a credit allowed under this Article only if the taxpayer has obtained a certification from the Department of Labor that, at the business location with respect to which the credit is claimed, the taxpayer has established and implemented a safety and health program in compliance with the requirements of G.S. 95-251.

(c) Repealed by Session Laws 1998-55, s. 1.

(d) Forfeiture. -- A taxpayer forfeits a credit allowed under this Article if the taxpayer was not eligible for the credit at the time the taxpayer applied for the credit. In addition, a taxpayer forfeits a large investment enhancement of a tax credit if the taxpayer fails to make the level of investment certified by the Secretary of Commerce under subsection (b1) of this section within the required two-year period. A taxpayer that forfeits a credit under this Article is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236. If a taxpayer forfeits the credit for creating jobs or the credit for investing in machinery and equipment, the taxpayer also forfeits any credit

for worker training claimed for the jobs for which the credit for creating jobs was claimed or the jobs at the location with respect to which the credit for investing in machinery and equipment was claimed.

(e) Change in Ownership of Business. -- The sale, merger, acquisition, or bankruptcy of a business, or any transaction by which an existing business reformulates itself as another business, does not create new eligibility in a succeeding business with respect to credits for which the predecessor was not eligible under this Article. A successor business may, however, take any installment of or carried-over portion of a credit that its predecessor could have taken if it had a tax liability. The acquisition of a business is a new investment that creates new eligibility in the acquiring taxpayer under this Article if any of the following conditions are met:

(1) The business closed before it was acquired.

(2) The business was required to file a notice of plant closing or mass layoff under the federal Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2102, before it was acquired.

(3) The business was acquired by its employees through an employee stock option transaction or another similar mechanism.

(f) Development Zone Project Credit. -- Subsections (a) through (b4) of this section to not apply to the credit for development zone projects.

"**§ 105-129.5. Tax election; cap.**

(a) Tax Election. -- The credits provided in this Article are allowed against the franchise tax levied in Article 3 of this ~~Chapter and~~ Chapter, the income taxes levied in Article 4 of this ~~Chapter. The credit for investing in central administrative office property provided in G.S. 105-129.12 is also allowed against~~ Chapter, and the gross premiums tax levied in Article 8B of this Chapter. The taxpayer shall elect the tax against which a credit will be claimed when filing the return on which the first installment of the credit is claimed. This election is binding. Any carryforwards of the credit must be claimed against the same tax.

(b) Cap. -- The credits allowed under this Article may not exceed fifty percent (50%) of the tax against which they are claimed for the taxable year, reduced by the sum of all other credits allowed against that tax, except tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of credit, including carryforwards, claimed by the taxpayer under this Article against each tax for the taxable year. Any unused portion of a credit with respect to a large investment may be carried forward for the succeeding 20 years. Any unused portion of any other credit may be carried forward for the succeeding five years.

"**§ 105-129.6. Application; reports.**

(a) Application. -- To claim the credits allowed by this Article, the taxpayer must provide with the tax return the certification of the Secretary of Commerce that the taxpayer meets all of the eligibility requirements of G.S. 105-129.4 or G.S. 105-129.13, as applicable, with respect to each credit. A taxpayer shall apply to the Secretary of Commerce for certification of eligibility. The application must be on a form provided by the Secretary of Commerce and must contain any information necessary for the Secretary of Commerce to determine whether the taxpayer meets the eligibility

requirements. In addition, the application must state the number of jobs to be created that are located within a development zone, the number of jobs to be created that will be filled by employees residing within the development zone, and the number of jobs to be created that will be filled by employees residing within a census tract or census block group that has more than twenty percent (20%) of its population below the poverty level according to the most recent federal decennial census.

If the Secretary of Commerce determines that the taxpayer meets all of the eligibility requirements of G.S. 105-129.4 or G.S. 105-129.13, as applicable, with respect to a credit, the Secretary shall issue a certificate describing the location with respect to which the credit is claimed, outlining the eligibility requirements for the credit, and stating that the taxpayer meets the eligibility requirements. If the Secretary of Commerce determines that the taxpayer does not meet all of the eligibility requirements of G.S. 105-129.4 or G.S. 105-129.13, as applicable, with respect to a credit, the Secretary must advise the taxpayer in writing of the eligibility requirements the taxpayer fails to meet. The Secretary of Commerce may adopt rules in accordance with Chapter 150B of the General Statutes that are needed to carry out the Secretary of Commerce's responsibilities under this section.

(a1) Fee. -- When filing an application for certification under this section, the taxpayer must pay the Department of Commerce a fee ~~of seventy-five dollars ($75.00). Fees collected under this subsection are receipts of the Department of Commerce.~~ of five hundred dollars ($500.00) for each credit the taxpayer intends to claim with respect to a location that is in an enterprise tier three, four, or five area, subject to a maximum fee of one thousand five hundred dollars ($1,500) per taxpayer per taxable year. If the taxpayer applies for certification for a credit that relates to locations in more than one enterprise tier area, the fee is based on the highest-numbered enterprise tier area.

The Secretary of Commerce shall retain one-fourth of the proceeds of the fee imposed in this section for the costs of administering this section. The Secretary of Commerce shall credit the remaining proceeds of the fee imposed in this section to the Department of Revenue for the costs of administering and auditing the credits allowed in this Article. The proceeds of the fee are receipts of the Department to which they are credited.

(b) Reports. -- The Department of Commerce shall report to the Department of Revenue and to the Fiscal Research Division of the General Assembly by May 1 of each year the following information for the 12-month period ending the preceding April 1:

(1) The number of applications for each credit allowed in this Article.

(2) The number and enterprise tier area of new jobs with respect to which credits were applied for.

(3) The cost of machinery and equipment with respect to which credits were applied for.

(4) The number of new jobs created within development zones, and the percentage of those jobs that were filled by residents of the zones.

"**§ 105-129.7. Substantiation.**

To claim a credit allowed by this Article, the taxpayer must provide any information required by the Secretary of Revenue. Every taxpayer claiming a credit under this Article shall maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving eligibility for the credit and the amount of the credit shall rest upon the taxpayer, and no credit shall be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection.

"**§ 105-129.8. Credit for creating jobs.**

(a) Credit. -- A taxpayer that meets the eligibility requirements set out in G.S. 105-129.4, has five or more employees for at least 40 weeks during the taxable year, and hires an additional full-time employee during that year to fill a position located in this State is allowed a credit for creating a new full-time job. The amount of the credit for each new full-time job created is set out in the table below and is based on the enterprise tier of the area in which the position is located. In addition, if the position is located in a development zone, the amount of the credit is increased by four thousand dollars ($4,000) per job.

Area Enterprise Tier	Amount of Credit
Tier One	$12,500
Tier Two	4,000
Tier Three	3,000
Tier Four	1,000
Tier Five	500

A position is located in an area if more than fifty percent (50%) of the employee's duties are performed in the area. The credit may not be taken in the taxable year in which the additional employee is hired. Instead, the credit shall be taken in equal installments over the four years following the taxable year in which the additional employee was hired and shall be conditioned on the continued employment by the taxpayer of the number of full-time employees the taxpayer had upon hiring the employee that caused the taxpayer to qualify for the credit.

If, in one of the four years in which the installment of a credit accrues, the number of the taxpayer's full-time employees falls below the number of full-time employees the taxpayer had in the year in which the taxpayer qualified for the credit, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5.

Jobs transferred from one area in the State to another area in the State shall not be considered new jobs for purposes of this section. If, in one of the four years in which the installment of a credit accrues, the position filled by the employee is moved to an area in a higher- or lower-numbered enterprise tier, or is moved from a development

zone to an area that is not a development zone, the remaining installments of the credit shall be calculated as if the position had been created initially in the area to which it was moved.

(b) Repealed by Session Laws 1989, c. 111, s. 1.

(b1), (c) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3.

(d) Planned Expansion. -- A taxpayer that signs a letter of commitment with the Department of Commerce to create at least twenty new full-time jobs in a specific area within two years of the date the letter is signed qualifies for the credit in the amount allowed by this section based on the area's enterprise tier and development zone designation for that year even though the employees are not hired that year. The credit shall be available in the taxable year after at least twenty employees have been hired if the hirings are within the two-year commitment period. The conditions outlined in subsection (a) apply to a credit taken under this subsection except that if the area is redesignated to a higher-numbered enterprise tier or loses its development zone designation after the year the letter of commitment was signed, the credit is allowed based on the area's enterprise tier and development zone designation for the year the letter was signed. If the taxpayer does not hire the employees within the two-year period, the taxpayer does not qualify for the credit. However, if the taxpayer qualifies for a credit under subsection (a) in the year any new employees are hired, the taxpayer may take the credit under that subsection.

(e), (f) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3 for taxable years beginning on or after January 1, 1996.

"**§ 105-129.9. Credit for investing in machinery and equipment.**

(a) Credit. -- If a taxpayer that has purchased or leased eligible machinery and equipment places it in service in this State during the taxable year, the taxpayer is allowed a credit equal to seven percent (7%) of the excess of the eligible investment amount over the applicable threshold. Machinery and equipment is eligible if it is capitalized by the taxpayer for tax purposes under the Code and is not leased to another party. In addition, in the case of a large investment, machinery and equipment that is not capitalized by the taxpayer is eligible if the taxpayer leases it from another party. The credit may not be taken for the taxable year in which the equipment is placed in service but shall be taken in equal installments over the seven years following the taxable year in which the equipment is placed in service.

(b) Eligible Investment Amount. -- The eligible investment amount is the lesser of (i) the cost of the eligible machinery and equipment and (ii) the amount by which the cost of all of the taxpayer's eligible machinery and equipment that is in service in this State on the last day of the taxable year exceeds the cost of all of the taxpayer's eligible machinery and equipment that was in service in this State on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer had the most eligible machinery and equipment in service in this State.

(c) Threshold. -- The applicable threshold is the appropriate amount set out in the following table based on the enterprise tier of the area where the eligible machinery and equipment are placed in service during the taxable year. If the taxpayer places

eligible machinery and equipment in service in more than one area during the taxable year, the threshold applies separately to the eligible machinery and equipment placed in service in each area. If the taxpayer places eligible machinery and equipment in service in an area over the course of a two-year period, the applicable threshold for the second taxable year is reduced by the eligible investment amount for the previous taxable year.

Area Enterprise Tier	Threshold
Tier One	$ -0-
Tier Two	100,000
Tier Three	200,000
Tier Four	500,000
Tier Five	1,000,000

(d) Expiration. -- If, in one of the seven years in which the installment of a credit accrues, the machinery and equipment with respect to which the credit was claimed are disposed of, taken out of service, or moved out of State, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5.

If, in one of the seven years in which the installment of a credit accrues, the machinery and equipment with respect to which the credit was claimed are moved to an area in a higher-numbered enterprise tier, or are moved from a development zone to an area that is not a development zone, the remaining installments of the credit are allowed only to the extent they would have been allowed if the machinery and equipment had been placed in service initially in the area to which they were moved.

(e) Planned Expansion. -- A taxpayer that signs a letter of commitment with the Department of Commerce to place specific eligible machinery and equipment in service in an area within two years after the date the letter is signed may, in the year the eligible machinery and equipment are placed in service in that area, calculate the credit for which the taxpayer qualifies based on the area's enterprise tier and development zone designation for the year the letter was signed. All other conditions apply to the credit, but if the area has been redesignated to a higher-numbered enterprise tier or has lost its development zone designation after the year the letter of commitment was signed, the credit is allowed based on the area's enterprise tier and development zone designation for the year the letter was signed. If the taxpayer does not place part or all of the specified eligible machinery and equipment in service within the two-year period, the taxpayer does not qualify for the benefit of this subsection with respect to the machinery and equipment not placed in service within the two-year period. However, if the taxpayer qualifies for a credit in the year the eligible machinery and equipment are placed in service, the taxpayer may take the credit for that year as if no letter of commitment had been signed pursuant to this subsection.

"**§ 105-129.10. Credit for research and development.**

(a) General Credit. -- A taxpayer that claims for the taxable year a federal income tax credit under section 41(a) of the Code for increasing research activities is allowed

a credit equal to five percent (5%) of the State's apportioned share of the taxpayer's expenditures for increasing research activities. The State's apportioned share of a taxpayer's expenditures for increasing research activities is the excess of the taxpayer's qualified research expenses for the taxable year over the base amount, as determined under section 41 of the Code, multiplied by a percentage equal to the ratio of the taxpayer's qualified research expenses in this State for the taxable year to the taxpayer's total qualified research expenses for the taxable year.

(b) Alternative Credit. -- A taxpayer that claims the alternative incremental credit under section 41(c)(4) of the Code for increasing research activities is allowed a credit equal to twenty-five percent (25%) of the State's apportioned share of the federal credit claimed. The State's apportioned share of the federal credit claimed is the amount of the alternative incremental credit the taxpayer claimed under section 41(c)(4) of the Code for the taxable year multiplied by a percentage equal to the ratio of the taxpayer's qualified research expenses in this State for the taxable year to the taxpayer's total qualified research expenses for the taxable year. For the purpose of this subsection, the amount of the alternative incremental credit claimed by a taxpayer is determined without regard to any reduction elected under section 280C(c) of the Code.

(c) Definitions. -- As used in this section, the terms "qualified research expenses" and "base amount" have the meaning provided in section 41 of the Code.

"**§ 105-129.11. Credit for worker training.**

(a) Credit. -- A taxpayer that provides worker training for five or more of its eligible employees during the taxable year is allowed a credit equal to the wages paid to the eligible employees during the training. Wages paid to an employee performing his or her job while being trained are not eligible for the credit. For positions located in an enterprise tier one area, the credit may not exceed one thousand dollars ($1,000) per employee trained during the taxable year. For other positions, the credit may not exceed five hundred dollars ($500.00) per employee trained during the taxable year. A position is located in an area if more than fifty percent (50%) of the employee's duties are performed in the area.

(b) Eligibility. -- An employee is eligible if the employee is in a full-time position not classified as exempt under the Fair Labor Standards Act, 29 U.S.C. § 213(a)(1) and meets one or more of the following conditions:

(1) The employee occupies a job for which the taxpayer is eligible to claim an installment of the credit for creating jobs.

(2) The employee is being trained to operate machinery and equipment for which the taxpayer is eligible to claim an installment of the credit for investing in machinery and equipment.

"**§ 105-129.12. Credit for investing in central administrative office property.**

(a) Credit. -- If a taxpayer that has purchased or leased real property in this State begins to use the property as a central administrative office during the taxable year, the taxpayer is allowed a credit equal to seven percent (7%) of the eligible investment amount. The eligible investment amount is the lesser of (i) the cost of the property and (ii) the amount by which the cost of all of the property the taxpayer is

using in this State as central administrative offices on the last day of the taxable year exceeds the cost of all of the property the taxpayer was using in this State as central administrative offices on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer was using the most property in this State as central administrative offices. In the case of property that is leased, the cost of the property is not determined as provided in G.S. 105-129.2 but is considered to be the taxpayer's lease payments over a seven-year period, plus any expenditures made by the taxpayer to improve the property before it is used as the taxpayer's central administrative office if the expenditures are not reimbursed or credited by the lessor. The maximum credit allowed a taxpayer under this section for property used as a central administrative office is five hundred thousand dollars ($500,000). The entire credit may not be taken for the taxable year in which the property is first used as a central administrative office but shall be taken in equal installments over the seven years following the taxable year in which the property is first used as a central administrative office. The basis in any real property for which a credit is allowed under this section shall be reduced by the amount of credit allowable.

(b) Mixed Use Property. -- If the taxpayer uses only part of the property as the taxpayer's central administrative office, the amount of the credit allowed under this section is reduced by multiplying it by a fraction the numerator of which is the square footage of the property used as the taxpayer's central administrative office and the denominator of which is the total square footage of the property.

(c) Expiration. -- If, in one of the seven years in which the installment of a credit accrues, the property with respect to which the credit was claimed is no longer used as a central administrative office, the credit expires and the taxpayer may not take any remaining installment of the credit. If, in one of the seven years in which the installment of a credit accrues, part of the property with respect to which the credit was claimed is no longer used as a central administrative office, the remaining installments of the credit shall be reduced by multiplying it by the fraction described in subsection (b) of this section. If, in one of the seven years in which the installment of a credit accrues, the total number of employees the taxpayer employs at all of its central administrative offices in this State drops by 40 or more, the credit expires and the taxpayer may not take any remaining installment of the credit.

In each of these cases, the taxpayer may nonetheless take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5.

"**§ 105-129.13. Credit for development zone projects.**

(a) Credit. -- A taxpayer who contributes cash or property to a development zone agency for an improvement project in a development zone is allowed a credit equal to twenty-five percent (25%) of the value of the contribution. A contribution is for an improvement project for the purposes of this section if the agency receiving the contribution contracts in writing to use the contribution for the project and agrees in the contract to repay to the taxpayer, with interest, any part of the contribution not used for the project. The credit may not be taken for the year in which the

contribution is made but must be taken for the taxable year beginning during the calendar year in which the application for the credit becomes effective as provided in this section.

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

(1) Community development corporation. -- A nonprofit corporation that meets all of the following conditions:

a. It is chartered pursuant to Chapter 55A of the General Statutes and is tax-exempt pursuant to section 501(c)(3) of the Code.

b. Its primary mission is to develop and improve low-income communities and neighborhoods through economic and related development.

c. Its activities and decisions are initiated, managed, and controlled by the constituents of those local communities.

d. Its primary function is to act as deal maker and packager of projects and activities that will increase its constituency's opportunities to become owners, managers, and producers of small businesses, to obtain affordable housing, and to obtain jobs designed to produce positive cash flow and curb blight in the targeted community.

(2) Control. -- A person controls an entity if the person owns, directly or indirectly, more than ten percent (10%) of the voting securities of that entity. As used in this subdivision, the term 'voting security' means a security that (i) confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business or (ii) is convertible into, or entitles the holder to receive upon its exercise, a security that confers such a right to vote. A general partnership interest is a voting security.

(3) Development zone agency. -- Any of the following agencies that the Department of Commerce certifies will undertake an improvement project in a development zone:

a. A community development corporation.

b. A community development financial institution certified by the United States Department of the Treasury under the Community Development Banking and Financial Institutions Act of 1994, 12 U.S.C. § 4701, et seq.

c. A local housing authority created under Article 1 of Chapter 157 of the General Statutes.

(4) Improvement project. -- A project to construct or improve residential, commercial, or public real property located in a development zone. The term includes services provided by a development zone agency directly related to the construction or

improvement, and project development fees charged by a developer for the construction or improvement.

(c) Certification. -- The Secretary of Commerce shall not certify a development zone agency under this section if the agency, any of the agency's officers or directors, or any partner of the agency has ever used any part of a contribution made under this section for any purpose other than an improvement project.

(d) Limitations. -- A taxpayer who claims a credit under this subsection must identify in the application the development zone agencies to which the taxpayer made contributions and the amount contributed to each. No credit is allowed for a contribution if the taxpayer is related to the development zone agency as defined in section 1313 of the Code or if the taxpayer controls, is controlled by, or is under common control with an affiliate of the development zone agency. No credit is allowed to the extent the taxpayer receives anything of value in exchange for the contribution.

(e) Application. -- To be eligible for the tax credit provided in this section, in addition to the application required under G.S. 105-129.6, the taxpayer must file an application for the credit with the Secretary of Revenue on or before April 15 of the year following the calendar year in which the contribution was made. The Secretary may grant extensions of this deadline, as the Secretary finds appropriate, upon the request of the taxpayer, except that the application may not be filed after September 15 of the year following the calendar year in which the contribution was made. An application is effective for the year in which it is timely filed. The application must be on a form prescribed by the Secretary and must include any supporting documentation that the Secretary may require. If a contribution for which a credit is applied for was of property rather than cash, the taxpayer must include with the application a certified appraisal of the value of the property contributed.

(f) Ceiling. -- The total amount of all tax credits allowed to taxpayers under this section for contributions made in a calendar year may not exceed four million dollars ($4,000,000). The Secretary of Revenue must calculate the total amount of tax credits claimed from the applications filed under this section. If the total amount of tax credits claimed for contributions made in a calendar year exceeds four million dollars ($4,000,000), the Secretary must allow a portion of the credits claimed by allocating a total of four million dollars ($4,000,000) in tax credits in proportion to the size of the credit claimed by each taxpayer. If a credit is reduced pursuant to this subsection, the Secretary must notify the taxpayer of the amount of the reduction of the credit on or before December 31 of the year the application was filed. The Secretary's allocations based on applications filed pursuant to this section are final and will not be adjusted to account for credits applied for but not claimed.

(g) Forfeiture. -- A taxpayer forfeits a credit allowed under this section to the extent the development zone agency uses the taxpayer's contribution for any purpose other than an improvement project. Each development zone agency certified by the Department of Commerce must file with the Department of Commerce annual financial statements audited in accordance with generally accepted accounting principles and in accordance with Government Audit Standards developed by the

Comptroller General of the United States. The annual statements are required each time the agency receives a contribution eligible for the credit allowed under this section until the entire contribution has been used for improvement projects. If the Department of Commerce determines that a development zone agency has used part or all of a contribution for any purpose other than an improvement project, the Department must notify the Secretary of Revenue of the forfeiture, the taxpayer who made the contribution, and the amount forfeited."

PART II. SALES TAX CHANGES

Section 3.(a) G.S. 105-164.4(a)(1d)a. through k. are recodified as G.S. 105-164.4A.

Section 3.(b) G.S. 105-164.4(a)(1d), as amended by this section, reads as rewritten:

"(1d) The rate of one percent (1%) applies to the sales price of the ~~following articles.~~ articles listed in G.S. 105-164.4A. The maximum tax is eighty dollars ($80.00) per article."

Section 3.(c) G.S. 105-164.4A, as recodified by this section, reads as rewritten:

"**§ 105-164.4A. Articles taxed at one percent (1%), eighty dollars ($80.00).**

The following articles are taxable under G.S. 105-164.4(a)(1d):

~~a.~~(1) Farm machinery. -- Sales to a farmer of machines and machinery, and parts and accessories for these machines and machinery, for use by the farmer in the planting, cultivating, harvesting, or curing of farm crops or in the production of dairy products, eggs, or animals. A "farmer" includes a dairy operator, a poultry farmer, an egg producer, a livestock farmer, a farmer of crops, and a farmer of an aquatic species, as defined in G.S. 106-758. Items that are exempt from tax under G.S. 105-164.13(4c) are not subject to tax under ~~this section.~~ G.S. 105-164.4.

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

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

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

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

~~b.~~(2) Manufacturing machinery. -- Sales of mill machinery or mill machinery parts and accessories to manufacturing industries and plants, and sales to contractors and subcontractors purchasing mill machinery or mill machinery parts and accessories for use by them in the performance of contracts with manufacturing industries and plants, and sales to subcontractors purchasing mill machinery or mill machinery parts and accessories for use by them in the performance of contracts with general contractors who have contracts with manufacturing industries and plants. As used in this paragraph, the term "manufacturing industries and plants" does not include delicatessens, cafes, cafeterias, restaurants, and other similar retailers that are principally engaged in the retail sale of foods prepared by them for consumption on or off their premises.

~~c.~~(3) Telephone company property. -- Sales of central office equipment and switchboard and private branch exchange equipment to telephone companies regularly engaged in providing telephone service to subscribers on a commercial basis, and sales to these companies of prewritten computer programs used in providing telephone service to their subscribers.

~~d.~~(4) Laundry machinery. -- Sales to commercial laundries or to pressing and dry cleaning establishments of machinery used in the direct performance of the laundering or the pressing and cleaning service and of parts and accessories thereto.

~~e.~~(5) Freezer plant machinery. -- Sales to freezer locker plants of machinery used in the direct operation of ~~said~~ the freezer locker plant and of parts and accessories thereto.

~~f.~~(6) Broadcasting machinery. -- Sales of broadcasting equipment and parts and accessories thereto and towers to commercial radio and television companies which are under the regulation and supervision of the Federal Communications Commission.

~~g.~~(7) Tobacco equipment. -- Sales to farmers of bulk tobacco barns and racks and all parts and accessories thereto and similar apparatus used for the curing and drying of any farm produce.

~~h.~~(8) Farm storage facilities. -- Sales to farmers of grain, feed or soybean storage facilities and accessories thereto, whether or not dryers are attached, and all similar apparatus and accessories thereto for the storage of grain, feed or soybeans.

~~i.~~(9) Farm containers. -- Sales of containers to farmers or producers for use in the planting, producing, harvesting, curing, marketing, packaging, sale, or transporting or delivery of their products when

such containers do not go with and become part of the sale of their products at wholesale or retail.

~~j.~~(10) Recycling facility equipment. -- Sales to a major recycling facility of the following tangible personal property for use in connection with the facility: cranes, structural steel crane support systems, foundations related to the cranes and support systems, port and dock facilities, rail equipment, and material handling equipment.

~~k.~~(11) (Effective January 1, 2001) Air courier equipment. -- Sales of the following items to an interstate air courier for use at its hub: materials handling equipment, racking systems, and related parts and accessories, for the storage or handling and movement of tangible personal property at an airport or in a warehouse or distribution facility."

Section 4. G.S. 105-164.4A, as recodified by this act, is amended by adding a new subdivision to read:

"(12) Distress tier equipment. -- Sales of machinery and equipment as defined in G.S. 105-129.2 to a person engaged in one of the businesses listed in G.S. 105-129.4(a) for use in an enterprise tier one area or an enterprise tier two area, as defined in G.S. 105-129.3."

Section 5. G.S. 105-164.14 is amended by adding a new subsection to read:

"(h) Nonprofit Insurance Companies. --

(1) Refunds. -- An eligible nonprofit insurance company is allowed an annual refund of sales and use taxes paid by it under this Article before January 1, 2005, on building materials, building supplies, fixtures, and equipment that become a part of its real property. Liability incurred indirectly by the company for sales and use taxes on these items is considered tax paid by the company. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the insurance company's fiscal year. Refunds applied for after the due date are barred.

(2) Eligibility. -- An insurance company is eligible for the refund provided in this subsection if it meets all of the following conditions:

a. It is a nonprofit corporation.

b. It is operated for the exclusive purpose of providing insurance and annuity contracts to or for the benefit of organizations exempt from federal income tax under section 501(c)(3) of the Code, and their employees.

c. The Secretary of Commerce has certified that the insurance company will invest at least ten million dollars ($10,000,000) in constructing a facility in this State for the conduct of its operations.

(3) Forfeiture. -- If an eligible insurance company does not make the required minimum investment within five years after its first refund under this subsection, it loses its eligibility and forfeits all refunds already received under this subsection. Upon forfeiture, the company is liable for tax under this Article equal to the amount of all past taxes refunded under this subsection, plus interest at the rate established in G.S. 105-241.1(i), computed from the date the taxes would have been due if the tax refunds had not been received. The tax and interest are due 30 days after the date of the forfeiture. A company that fails to pay the tax and interest is subject to the penalties provided in G.S. 105-236."

Section 6.(a) G.S. 105-164.3 is amended by adding a new subdivision to read:

"(6e) Interstate passenger air carrier. -- A person whose primary business is scheduled passenger air transportation, as defined in the North American Industry Classification System adopted by the United States Office of Management and Budget, in interstate commerce."

Section 6.(b) G.S. 105-164.3(6b), as enacted by S.L. 1998-55, becomes effective May 1, 1999.

Section 6.(c) G.S. 105-164.3(6b) reads as rewritten:

"(6b) Hub. -- ~~An interstate air courier's~~ Either of the following:

a. An interstate air courier's hub is the airport in this State that meets all of the following conditions:

~~a.~~ 1. The air courier has allocated to the airport under G.S. ~~105-388~~ 105-338 more than sixty percent (60%) of its aircraft value apportioned to this State.

~~b.~~ 2. The air courier's primary function at the airport is to sort and distribute letters and packages received from multiple consolidation locations.

~~c.~~ 3. The air courier's primary function at the airport is not to consolidate letters and packages and deliver them to another airport for sorting and distribution.

b. An interstate passenger air carrier's hub is the airport in this State that meets both of the following conditions:

1. The air carrier has allocated to the airport under G.S. 105-338 more than sixty percent (60%) of its aircraft value apportioned to this State.

2. The majority of the air carrier's passengers boarding at the airport are connecting from other airports rather than originating at that airport."

Section 7.(a) Section 9 of S.L. 1998-55 is repealed.

Section 7.(b) G.S. 105-164.13 is amended by adding a new subdivision to read:

"(45) Sales of the following items to an interstate passenger air carrier for use at its hub: aircraft lubricants, aircraft repair parts, and aircraft accessories."

Section 7(c). Effective January 1, 2001, G.S. 105-164.13(45), as enacted by this act, reads as rewritten:

"(45) Sales of the following items to an interstate passenger air carrier or an interstate air courier for use at its hub: aircraft lubricants, aircraft repair parts, and aircraft accessories."

Section 8. G.S. 105-164.4A, as recodified by this act, is amended by adding a new subdivision to read:

"(13) Pilot training equipment. -- Sales to an interstate passenger air carrier or an interstate air courier of aircraft simulators for pilot training for use at the air carrier or air courier's hub."

Section 9. G.S. 105-164.14(a) reads as rewritten:

"(a) Interstate Carriers. -- An interstate carrier is allowed a refund, in accordance with this section, of part of the sales and use taxes paid by it on fuel, lubricants, repair parts, and accessories purchased in this State for a motor vehicle, railroad car, locomotive, or airplane the carrier operates. An 'interstate carrier' is a person who is engaged in transporting persons or property in interstate commerce for compensation. The Secretary shall prescribe the periods of time, whether monthly, quarterly, semiannually, or otherwise, with respect to which refunds may be claimed, and shall prescribe the time within which, following these periods, an application for refund may be made.

An applicant for refund shall furnish the following information and any proof of the information required by the Secretary:

(1) A list identifying the lubricants, repair parts, and accessories purchased by the applicant inside or outside this State during the refund period.

(2) The purchase price of the items listed in subdivision (1) of this subsection.

(3) The sales and use taxes paid in this State on the listed items.

(4) The number of miles the applicant's motor vehicles, railroad cars, locomotives, and airplanes were operated both inside and outside this State during the refund period.

(5) Any other information required by the Secretary.

For each applicant, the Secretary shall compute the amount to be refunded as follows. First, the Secretary shall determine the ratio of the number of miles the applicant operated its motor vehicles, railroad cars, locomotives, and airplanes in this

State during the refund period to the number of miles it operated them both inside and outside this State during the refund period. Second, the Secretary shall determine the applicant's proportional liability for the refund period by multiplying this mileage ratio by the purchase price of the items identified in subdivision (1) of this subsection and then multiplying the resulting product by the tax rate that would have applied to the items if they had all been purchased in this State. Third, the Secretary shall refund to each applicant the excess of the amount of sales and use taxes the applicant paid in this State during the refund period on these items over the applicant's proportional liability for the refund period."

PART III. AFFORDABLE HOUSING TAX CREDIT

Section 10. The title of Article 3B of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 3B.

"Business Tax ~~Credit.~~ Credits."

Section 11. Article 3B of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-129.16A. Credit for low-income housing.**

(a) Credit. -- A taxpayer that is allowed for the taxable year a federal income tax credit for low-income housing under section 42 of the Code with respect to a qualified North Carolina low-income building, is allowed a credit under this Article equal to twenty-five percent (25%) of the federal credit allowed with respect to that building. The credit must be taken in equal installments over the five years beginning in the first taxable year in which the federal credit is claimed for that building.

(b) Definitions. -- The definitions in section 42 of the Code apply in this section. In addition, as used in this section the term 'qualified North Carolina low-income building' means a qualified low-income building that meets either of the following conditions:

(1) It is located in a tier one or two enterprise area, as defined in G.S. 105-129.3, or in a development zone, as defined in G.S. 105-129.3A.

(2) It is located in a tier three, four, or five enterprise area and forty percent (40%) of its residential units are both rent-restricted and occupied by individuals whose income is thirty-five percent (35%) or less of area median gross income.

(c) Forfeiture. -- If the taxpayer is required under section 42(j) of the Code to recapture all or part of a federal credit under that section with respect to a qualified North Carolina low-income building, the taxpayer forfeits the corresponding part of the credit allowed under this section with respect to that qualified North Carolina low-income building. A taxpayer that forfeits a credit under this section is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the

date the credit is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236."

Section 12. Reserved.

Section 13. G.S. 105-129.17 reads as rewritten:

"**§ 105-129.17. Tax election; cap.**

(a) Tax Election. -- The ~~credit~~ credits allowed in this Article ~~is~~ are allowed against the franchise tax levied in Article 3 of this Chapter or the income taxes levied in Article 4 of this Chapter. The taxpayer must elect the tax against which ~~the~~ a credit will be claimed when filing the return on which the first installment of the credit is claimed. This election is binding. Any carryforwards of ~~the~~ a credit must be claimed against the same tax.

(b) Cap. -- The ~~credit~~ total credits allowed in this Article may not exceed fifty percent (50%) of the tax against which ~~it is~~ they are claimed for the taxable year, reduced by the sum of all other credits allowed against that tax, except tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of credit, including carryforwards, claimed by the taxpayer under this Article against each tax for the taxable year. Any unused portion of the ~~credit~~ credits may be carried forward for the succeeding five years."

Section 14. G.S. 105-129.18 reads as rewritten:

"**§ 105-129.18. Substantiation.**

To claim the ~~credit~~ credits allowed by this Article, the taxpayer must provide any information required by the Secretary of Revenue. Every taxpayer claiming a credit under this Article must maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving eligibility for the credit and the amount of the credit rests upon the taxpayer, and no credit may be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection."

Section 15. G.S. 105-129.19 reads as rewritten:

"**§ 105-129.19. Reports.**

The Department of Revenue shall report to the Legislative Research Commission and to the Fiscal Research Division of the General Assembly by May 1 of each year the following information for the 12-month period ending the preceding April 1:

(1) The number of taxpayers that claimed the ~~credit~~ credits allowed in this Article.

(2) The cost of business property with respect to which business property credits were claimed.

(2a) The location of each qualified North Carolina low-income building with respect to which a low-income housing credit was claimed.

(3) The total cost to the General Fund of the credits claimed."

Section 16. G.S. 105-241.1(e) reads as rewritten:

"(e) Statute of Limitations. -- There is no statute of limitations and the Secretary may propose an assessment of tax due from a taxpayer at any time if (i) the taxpayer did not file a proper application for a license or did not file a return, (ii) the taxpayer

filed a false or fraudulent application or return, or (iii) the taxpayer attempted in any manner to fraudulently evade or defeat the tax.

If a taxpayer files a return reflecting a federal determination as provided in G.S. 105-29, 105-130.20, 105-159, 105-160.8, 105-163.6A, or 105-197.1, the Secretary must propose an assessment of any tax due within one year after the return is filed or within three years of when the original return was filed or due to be filed, whichever is later. If there is a federal determination and the taxpayer does not file the required return, the Secretary must propose an assessment of any tax due within three years after the date the Secretary received the final report of the federal determination. ~~If~~

If a taxpayer forfeits a tax credit ~~pursuant to G.S. 105-163.014 or Article 3A of~~ or tax benefit pursuant to forfeiture provisions of this Chapter, the Secretary must assess any tax due as a result of the forfeiture within three years after the date of the forfeiture. If a taxpayer elects under section 1033(a)(2)(A) of the Code not to recognize gain from involuntary conversion of property into money, the Secretary must assess any tax due as a result of the conversion or election within the applicable period provided under section 1033(a)(2)(C) or section 1033(a)(2)(D) of the Code. If a taxpayer sells at a gain the taxpayer's principal residence, the Secretary must assess any tax due as a result of the sale within the period provided under section 1034(j) of the Code.

In all other cases, the Secretary must propose an assessment of any tax due from a taxpayer within three years after the date the taxpayer filed an application for a license or a return or the date the application or return was required by law to be filed, whichever is later.

If the Secretary proposes an assessment of tax within the time provided in this section, the final assessment of the tax is timely.

A taxpayer may make a written waiver of any of the limitations of time set out in this subsection, for either a definite or an indefinite time. If the Secretary accepts the taxpayer's waiver, the Secretary may propose an assessment at any time within the time extended by the waiver."

PART IV. INDUSTRIAL DEVELOPMENT FUND CHANGES

Section 17. G.S. 143B-437.01(a) reads as rewritten:

"(a) Creation and Purpose of Fund. -- There is created in the Department of Commerce the Industrial Development Fund to provide funds to assist the local government units of the most economically distressed counties in the State in creating jobs in certain industries. The Department of Commerce shall adopt rules providing for the administration of the program. Those rules shall include the following provisions, which shall apply to each grant from the fund:

(1) The funds shall be used for (i) installation of or purchases of equipment for eligible industries, (ii) structural repairs, improvements, or renovations of existing buildings to be used for expansion of eligible industries, or (iii) construction of or improvements to new or existing water, sewer, gas, or electrical utility distribution lines or equipment for existing or new or proposed industrial buildings to be used for eligible industries.

To be eligible for funding, the water, sewer, gas, or electrical utility lines or facilities shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the specific eligible industrial activity.

(1a) The funds shall be used for projects located in economically distressed counties except that the Secretary of Commerce may use up to one hundred thousand dollars ($100,000) to provide emergency economic development assistance in any county that is documented to be experiencing a major economic dislocation.

(2) The funds shall be used by the city and county governments for projects that will directly result in the creation of new jobs. The funds shall be expended at a maximum rate of five thousand dollars ($5,000) per new job created up to a maximum of five hundred thousand dollars ($500,000) per project.

(3) There shall be no local match requirement if the project is located in an enterprise tier one area as defined in G.S. 105-129.3.

(4) The Department may authorize a local government that receives funds under this section to use up to two percent (2%) of the funds, if necessary, to verify that the funds are used only in accordance with law and to otherwise administer the grant or loan.

(5) No project shall be funded unless the Secretary of Commerce finds that the proposed project will not have a materially adverse effect on the environment. The Secretary of Commerce shall not make this finding unless the Secretary has first received a certification from the Department of Environment and Natural Resources that the proposed project will not have a materially adverse effect on the environment."

PART V. EFFECTIVE DATES

Section 18. NAICS Code and Customer Service Center Changes. -- G.S. 105-129.2(2)b., as enacted by Section 2 of this act, is effective retroactively as of January 1, 1999. G.S. 105-129.2(3a), as enacted by Section 2 of this act, becomes effective for taxable years beginning on or after January 1, 2000. The remaining amendments to G.S. 105-129.2 made by Section 2 of this act are effective when this act becomes law. G.S. 105-129.4(a)(6), as enacted by Section 2 of this act, becomes effective for taxable years beginning on or after January 1, 2000.

Section 19. Small County Enhancements. -- G.S. 105-129.3(e), as enacted by Section 2 of this act, becomes effective for taxable years beginning on or after January 1, 2000.

Section 20. Development Zone Definitions. -- The amendments to G.S. 105-129.3A made by Section 2 of this act become effective July 1, 1999, and apply to applications filed on or after that date. Notwithstanding the provisions of G.S.

105-129.3A(b), a development zone designation made in 1998 or 1999 is effective until January 1, 2001.

Section 21. Quality Jobs Assurance. -- G.S. 105-129.4(b2), (b3), and (b4), as enacted by Section 2 of this act, become effective for taxable years beginning on or after January 1, 2000.

Section 22. All Credits Against Gross Premiums Tax. -- The amendment to G.S. 105-129.5(a) made by Section 2 of this act is effective for taxable years beginning on or after January 1, 1998.

Section 23. Application Fees and Information. -- The amendments to G.S. 105-129.6(a) and (a1) made by Section 2 of this act become effective July 1, 1999.

Section 24. Development Zone Projects Credit. -- G.S. 105-129.13, as enacted by Section 2 of this act, is effective for taxable years beginning on or after January 1, 2000.

Section 25. Sales Tax Technical Change. -- Section 3 of this act is effective when it becomes law.

Section 26. Sales Tax Preference for Tiers One and Two Equipment. -- G.S. 105-164.4A(12), as enacted by Section 4 of this act, becomes effective January 1, 2000, and applies to sales made on or after that date.

Section 27. Temporary Sales Tax Refund for Nonprofit Insurance Companies. -- Section 5 of this act becomes effective January 1, 2000, and applies to taxes paid on or after that date. Section 5 of this act expires January 1, 2005.

Section 28. Sales Tax Preferences for Interstate Air Carriers. -- Sections 6 through 8 of this act become effective May 1, 1999, and apply to sales made on or after that date.

Section 29. Affordable Housing Credit. -- Part III of this act is effective for taxable years beginning on or after January 1, 2000.

Section 30. Industrial Development Fund Changes. -- Part IV of this act becomes effective July 1, 1999.

Section 31. Remainder. -- The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 1115
Proposed Committee Substitute S1115-PCSX6678-LC

Short Title: William S. Lee Act/1999. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR WIDELY SHARED PROSPERITY BY AMENDING THE WILLIAM S. LEE QUALITY JOBS AND BUSINESS EXPANSION ACT, BY PROVIDING ADDITIONAL TAX INCENTIVES FOR VARIOUS BUSINESSES, AND BY MAKING RELATED CHANGES.

The General Assembly of North Carolina enacts:

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I. BILL LEE ACT CHANGES
II. SALES TAX CHANGES
III. AFFORDABLE HOUSING TAX CREDIT
IV. INDUSTRIAL DEVELOPMENT FUND CHANGES
V. EFFECTIVE DATES

PART I. BILL LEE ACT CHANGES

Section 1. Section 10.2(3) of Chapter 13 of the 1996 Second Extra Session reads as rewritten:

"(3) Quality jobs and business expansion tax credits. -- Sections 3.5, 3.6, and 3.8 through 3.10 of Part III of this act become effective August 1, 1996. G.S. 105-129.11, as enacted by Part III of this act, becomes effective for taxable years beginning on or after January 1, 1997, and applies to training expenditures made on or after July 1, 1997. The remainder of Part III of this act is effective for taxable years beginning on or after January 1, 1996, and applies to jobs created on or after August 1, 1996, and property placed in service

on or after August 1, 1996. Article 3A of Chapter 105 of the General Statutes is repealed effective for applications for credits filed under G.S. 105-129.6 on or after January 1, ~~2002.~~ 2007. Article 3B of Chapter 105 of the General Statutes is repealed effective for business property placed in service on or after January 1, 2002."

Section 2. Article 3A of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 3A.

"Tax Incentives for New and Expanding Businesses.

"**§ 105-129.2. Definitions.**

The following definitions apply in this Article:

(1) Air courier services. -- A person is engaged in the air courier services business if the person's primary business is furnishing air delivery of individually addressed letters and packages for compensation, except by the United States Postal Service.

(2) Central administrative office. -- ~~Defined~~ Either of the following:

a. A corporate, subsidiary, or regional managing office, as defined by NAICS. ~~in the North American Industry Classification System adopted by the United States Office of Management and Budget.~~

b. An auxiliary subdivision of an interstate passenger air carrier engaged primarily in centralized training for the carrier at its hub. For the purpose of this definition, the terms 'interstate passenger air carrier' and 'hub' have the meanings provided in G.S. 105-164.3.

(3) Cost. -- In the case of property owned by the taxpayer, cost is determined pursuant to regulations adopted under section 1012 of the Code. In the case of property the taxpayer leases from another, cost is value as determined pursuant to G.S. 105-130.4(j)(2).

(3a) Customer service center. -- An auxiliary subdivision of a telecommunications or financial services company, as defined by NAICS, that is primarily engaged in providing support services to the company's customers by telephone to support products or services of the company. For the purpose of this definition, a subdivision is primarily engaged in providing support services by telephone if at least sixty percent (60%) of its calls are incoming.

(4) Data processing. -- Any of the following industries, as defined by NAICS: ~~Defined in the North American Industry Classification System adopted by the United States Office of Management and Budget.~~

a. Computer systems design and related services.

b. Software publishers.

c. Software reproducing.
d. Data processing services.
e. On-line information services.

(5) Development zone. -- An area designated as a development zone pursuant to G.S. 105-129.3A.

(6) Enterprise tier. -- The classification assigned to an area pursuant to G.S. 105-129.3.

(7) Full-time job. -- A position that requires at least 1,600 hours of work per year and is intended to be held by one employee during the entire year. A full-time employee is an employee who holds a full-time job.

(8) Reserved.

(9) Large investment. -- Defined in G.S. 105-129.4(b1).

(10) Machinery and equipment. -- Engines, machinery, equipment, tools, and implements used or designed to be used in the business for which the credit is claimed. The term does not include real property as defined in G.S. 105-273 or rolling stock as defined in G.S. 105-333.

(11) Manufacturing. -- ~~Defined~~ Industries in manufacturing sectors 31 through 33, as defined by NAICS. ~~in the North American Industry Classification System adopted by the United States Office of Management and Budget.~~ but not including quick printing or retail bakeries.

(11a) NAICS. -- The North American Industry Classification System adopted by the United States Office of Management and Budget.

(12) Purchase. -- Defined in section 179 of the Code.

(13) ~~Warehousing and wholesale trade. -- Defined~~ Warehousing. -- Industries in warehousing and storage subsector 493 as defined by NAICS. ~~in the North American Industry Classification System adopted by the United States Office of Management and Budget.~~

(14) Wholesale trade. -- Industries in wholesale trade sector 42 as defined by NAICS.

"§ 105-129.3. Enterprise tier designation.

(a) Tiers Defined. -- An enterprise tier one area is a county whose enterprise factor is one of the 10 highest in the State. An enterprise tier two area is a county whose enterprise factor is one of the next 15 highest in the State. An enterprise tier three area is a county whose enterprise factor is one of the next 25 highest in the State. An enterprise tier four area is a county whose enterprise factor is one of the next 25 highest in the State. An enterprise tier five area is any area that is not in a lower-numbered enterprise tier.

(b) Annual Designation. -- Each year, on or before December 31, the Secretary of Commerce shall assign to each county in the State an enterprise factor that is the sum of the following:

(1) The county's rank in a ranking of counties by average rate of unemployment from lowest to highest, for the preceding three years.

(2) The county's rank in a ranking of counties by average per capita income from highest to lowest, for the preceding three years.

(3) The county's rank in a ranking of counties by percentage growth in population from highest to lowest.

The Secretary of Commerce shall then rank all the counties within the State according to their enterprise factor from highest to lowest, identify all the areas of the State by enterprise tier, and provide this information to the Secretary of Revenue. An enterprise tier designation is effective only for the calendar year following the designation.

(b1) Data. -- In measuring rates of unemployment and per capita income, the Secretary shall use the latest available data published by a State or federal agency generally recognized as having expertise concerning the data. In measuring population and population growth, the Secretary shall use the most recent estimates of population certified by the State Planning Officer.

(c) Exception for Enterprise Tier One Areas. -- Notwithstanding the provisions of this section, an enterprise tier one area may not be redesignated as a higher-numbered enterprise tier area until it has been an enterprise tier one area for at least two consecutive years.

(d) Exception for Two-County Industrial Park. -- For the purpose of this Article, an eligible two-county industrial park that meets all of the following conditions has the lower enterprise tier designation of the designations of the two counties in which it is located:

(1) It is located in two contiguous counties, one of which has a lower enterprise tier designation than the other.

(2) At least one-third of the park is located in the county with the lower tier designation.

(3) It is owned by the two counties or a joint agency of the counties.

(4) The county with the lower tier designation contributed at least one-half of the cost of developing the park.

(e) Exception for Certain Small Counties. -- A county that meets both of the conditions set out below has an enterprise tier designation one level below the designation it would otherwise have under subsection (a) of this section:

(1) Its population is less than 50,000.

(2) More than eighteen percent (18%) of its population is below the federal poverty level according to the most recent federal decennial census.

(f) Exception for Small Counties. -- A county that has a population of less than 25,000 and that would otherwise be designated an enterprise four or five area under this section must be designated an enterprise tier three area.

"**§ 105-129.3A. Development zone designation.**

(a) Development Zone Defined. -- A development zone is an area comprised of one or more contiguous census tracts, census block groups, or both in the most recent federal decennial census that meets all of the following conditions:

(1) ~~It~~ Every census tract and census block group in the zone is located in whole or in part ~~in~~ within the primary corporate limits of a city with a population of more than 5,000 according to the most recent annual population estimates certified by the State Planning Officer.

(2) It has a population of 1,000 or more according to the most recent annual population estimates certified by the State Planning Officer.

(3) More than twenty percent (20%) of its population is below the poverty level according to the most recent federal decennial census.

(4) Every census tract and census block group in the zone meets at least one of the following conditions:

a. More than ten percent (10%) of its population is below the poverty level according to the most recent federal decennial census.

b. It is immediately adjacent to another census tract or census block group that is in the same zone and has more than twenty percent (20%) of its population below the poverty level according to the most recent federal decennial census.

(5) None of the census tracts or census block groups in the zone is located in another development zone designated by the Secretary of Commerce.

(b) Designation. -- Upon request of a taxpayer or a local government, the Secretary of Commerce shall designate whether an area is a development zone that meets the conditions of subsection (a) of this section. If the applicant is a taxpayer, it must notify each city in which part of the zone is located. A development zone designation is effective for ~~48~~ 24 months following the designation.

(c) Relationship With Enterprise Tiers. -- For the purpose of the wage standard requirement of G.S. 105-129.3(b), the credit for investing in machinery and equipment allowed in G.S. 105-129.9, and the credit for worker training allowed in G.S. 105-129.11, a development zone is considered an enterprise tier one area. For all other purposes, a development zone has the same enterprise tier designation as the county in which it is located.

"**§ 105-129.4. Eligibility; forfeiture.**

(a) Type of Business. -- A taxpayer is eligible for a credit allowed by G.S. 105-129.12 if the real property for which the credit is claimed is used for a central administrative office that creates at least 40 new jobs. A taxpayer is eligible for the other credits allowed by this Article if the taxpayer engages in one of the following types of businesses and the jobs with respect to which a credit is claimed are created in that business, the machinery and equipment with respect to which a credit is

claimed are used in that business, and the research and development for which a credit is claimed are carried out as part of that business:

(1) Air courier services.
(2) Central administrative office that creates at least 40 new jobs.
(3) Data processing.
(4) Manufacturing.
(5) ~~Warehousing or wholesale trade.~~ Warehousing.
(6) Wholesale trade.
(7) Customer service center located in an enterprise tier one or two area.

(a1) Central Administrative Office. -- A central administrative office creates at least 40 new jobs if the taxpayer hires at least 40 additional full-time employees to fill new positions at the office either in the year the taxpayer first uses the property as a central administrative office or in the preceding 24 months while using temporary space for the central administrative office functions during completion of the administrative office property. Jobs transferred from one area in the State to another area in the State are not considered new jobs for purposes of this subsection.

(b) Wage Standard. -- A taxpayer is eligible for the credit for creating jobs or the credit for worker training if the jobs for which the credit is claimed meet the wage standard at the time the taxpayer applies for the credit. A taxpayer is eligible for the credit for investing in machinery and equipment, the credit for research and development, or the credit for investing in real property for a central administrative office if the jobs at the location with respect to which the credit is claimed meet the wage standard at the time the taxpayer applies for the credit. Jobs meet the wage standard if they pay an average weekly wage that is at least equal to the applicable percentage times the applicable average weekly wage for the county in which the jobs will be located, as computed by the Secretary of Commerce from data compiled by the Employment Security Commission for the most recent period for which data are available. The applicable percentage for jobs located in an enterprise tier one area is one hundred percent (100%). The applicable percentage for all other jobs is one hundred ten percent (110%). The applicable average weekly wage is the lowest of the following: (i) the average wage for all insured private employers in the county, (ii) the average wage for all insured private employers in the State, and (iii) the average wage for all insured private employers in the county multiplied by the county income/wage adjustment factor. The county income/wage adjustment factor is the county income/wage ratio divided by the State income/wage ratio. The county income/wage ratio is average per capita income in the county divided by the annualized average wage for all insured private employers in the county. The State income/wage ratio is the average per capita income in the State divided by the annualized average wage for all insured private employers in the State.

(b1) Large Investment. -- A taxpayer who is otherwise eligible for a tax credit under this Article becomes eligible for the large investment enhancements provided for credits under this Article if the Secretary of Commerce certifies that the taxpayer will purchase or lease, and place in service in connection with the eligible business

within a two-year period, at least one hundred fifty million dollars ($150,000,000) worth of one or more of the following: real property, machinery and equipment, or central administrative office property. If the taxpayer fails to make the level of investment certified within this two-year period, the taxpayer forfeits the large investment enhancements as provided in subsection (d) of this section.

(b2) Health Insurance. -- A taxpayer is eligible for a credit for creating jobs or for worker training under this Article if the taxpayer provides health insurance for the positions for which the credit is claimed at the time the taxpayer applies for the credit. A taxpayer is eligible for the other credits under this Article if the taxpayer provides health insurance for all of the full-time positions at the location with respect to which the credit is claimed at the time the taxpayer applies for the credit. For the purposes of this subsection, a taxpayer provides health insurance if it pays at least fifty percent (50%) of the premiums for health care coverage that equals or exceeds the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee pursuant to G.S. 58-50-125.

Each year that a taxpayer claims an installment or carryforward of a credit allowed under this Article, the taxpayer must provide with the tax return the taxpayer's certification that the taxpayer continues to provide health insurance for the jobs for which the credit was claimed or the full-time jobs at the location with respect to which the credit was claimed. If the taxpayer ceases to provide health insurance for the jobs during a taxable year, the credit expires and the taxpayer may not take any remaining installment or carryforward of the credit.

(b3) Environmental Impact. -- A taxpayer is eligible for a credit allowed under this Article only if the taxpayer certifies that, at the time the taxpayer applies for the credit, the taxpayer has not had and does not reasonably expect to have a materially adverse effect on the environment at the business location with respect to which the credit is claimed. The Secretary of Commerce will provide the Department of Environment and Natural Resources a list of all taxpayers making this certification. The Department of Environment and Natural Resources may conduct random audit checks to verify taxpayers' certifications. The Department of Environment and Natural Resources must notify the Department of Revenue of any taxpayer certifications it determines are not accurate.

(b4) Safety and Health Programs. -- A taxpayer is eligible for a credit allowed under this Article only if the taxpayer certifies that, as of the time the taxpayer applies for the credit, at the business location with respect to which the credit is claimed, the taxpayer has no outstanding citations under the Occupational Safety and Health Act and has had no serious violation as defined in G.S. 95-127 within the last three years. The Secretary of Commerce will provide the Department of Labor a list of all taxpayers making this certification. The Department of Labor may conduct random audit checks to verify taxpayers' certifications. The Department of Labor must notify the Department of Revenue of any taxpayer certifications it determines are not accurate.

(c) Repealed by Session Laws 1998-55, s. 1.

(d) Forfeiture. -- A taxpayer forfeits a credit allowed under this Article if the taxpayer was not eligible for the credit at the time the taxpayer applied for the credit. In addition, a taxpayer forfeits a large investment enhancement of a tax credit if the taxpayer fails to make the level of investment certified by the Secretary of Commerce under subsection (b1) of this section within the required two-year period. A taxpayer that forfeits a credit under this Article is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236. If a taxpayer forfeits the credit for creating jobs or the credit for investing in machinery and equipment, the taxpayer also forfeits any credit for worker training claimed for the jobs for which the credit for creating jobs was claimed or the jobs at the location with respect to which the credit for investing in machinery and equipment was claimed.

(e) Change in Ownership of Business. -- The sale, merger, acquisition, or bankruptcy of a business, or any transaction by which an existing business reformulates itself as another business, does not create new eligibility in a succeeding business with respect to credits for which the predecessor was not eligible under this Article. A successor business may, however, take any installment of or carried-over portion of a credit that its predecessor could have taken if it had a tax liability. The acquisition of a business is a new investment that creates new eligibility in the acquiring taxpayer under this Article if any of the following conditions are met:

(1) The business closed before it was acquired.

(2) The business was required to file a notice of plant closing or mass layoff under the federal Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2102, before it was acquired.

(3) The business was acquired by its employees through an employee stock option transaction or another similar mechanism.

(f) Development Zone Project Credit. -- Subsections (a) through (b4) of this section do not apply to the credit for development zone projects provided in G.S. 105-129.13.

"**§ 105-129.5. Tax election; cap.**

(a) Tax Election. -- The credits provided in this Article are allowed against the franchise tax levied in Article 3 of this ~~Chapter and~~ Chapter, the income taxes levied in Article 4 of this ~~Chapter. The credit for investing in central administrative office property provided in G.S. 105-129.12 is also allowed against~~ Chapter, and the gross premiums tax levied in Article 8B of this Chapter. The taxpayer shall elect the tax against which a credit will be claimed when filing the return on which the first installment of the credit is claimed. This election is binding. Any carryforwards of the credit must be claimed against the same tax.

(b) Cap. -- The credits allowed under this Article may not exceed fifty percent (50%) of the tax against which they are claimed for the taxable year, reduced by the sum of all other credits allowed against that tax, except tax payments made by or on

behalf of the taxpayer. This limitation applies to the cumulative amount of credit, including carryforwards, claimed by the taxpayer under this Article against each tax for the taxable year. Any unused portion of a credit with respect to a large investment may be carried forward for the succeeding 20 years. Any unused portion of any other credit may be carried forward for the succeeding five years.

"**§ 105-129.6. Application; reports.**

(a) Application. -- To claim the credits allowed by this Article, the taxpayer must provide with the tax return the certification of the Secretary of Commerce that the taxpayer meets all of the eligibility requirements of G.S. 105-129.4 or G.S. 105-129.13, as applicable, with respect to each credit. A taxpayer shall apply to the Secretary of Commerce for certification of eligibility. The application must be on a form provided by the Secretary of Commerce and must contain any information necessary for the Secretary of Commerce to determine whether the taxpayer meets the eligibility requirements. In addition, the application must state the number of jobs to be created that are located within a development zone, the number of jobs to be created that are expected to be filled by employees residing within the development zone, and the number of jobs to be created that are expected to be filled by employees residing within a census tract or census block group that has more than twenty percent (20%) of its population below the poverty level according to the most recent federal decennial census.

If the Secretary of Commerce determines that the taxpayer meets all of the eligibility requirements of G.S. 105-129.4 or G.S. 105-129.13, as applicable, with respect to a credit, the Secretary shall issue a certificate describing the location with respect to which the credit is claimed, outlining the eligibility requirements for the credit, and stating that the taxpayer meets the eligibility requirements. If the Secretary of Commerce determines that the taxpayer does not meet all of the eligibility requirements of G.S. 105-129.4 or G.S. 105-129.13, as applicable, with respect to a credit, the Secretary must advise the taxpayer in writing of the eligibility requirements the taxpayer fails to meet. The Secretary of Commerce may adopt rules in accordance with Chapter 150B of the General Statutes that are needed to carry out the Secretary of Commerce's responsibilities under this section.

(a1) Fee. -- When filing an application for certification under this section, the taxpayer must pay the Department of Commerce a fee ~~of seventy-five dollars ($75.00). Fees collected under this subsection are receipts of the Department of Commerce.~~ of five hundred dollars ($500.00) for each credit the taxpayer intends to claim with respect to a location that is in an enterprise tier three, four, or five area, subject to a maximum fee of one thousand five hundred dollars ($1,500) per taxpayer per taxable year. If the taxpayer applies for certification for a credit that relates to locations in more than one enterprise tier area, the fee is based on the highest-numbered enterprise tier area.

The Secretary of Commerce shall retain one-fourth of the proceeds of the fee imposed in this section for the costs of administering this section. The Secretary of Commerce shall credit the remaining proceeds of the fee imposed in this section to the Department of Revenue for the costs of administering and auditing the credits

allowed in this Article. The proceeds of the fee are receipts of the Department to which they are credited.

(b) Reports. -- The Department of Commerce shall report to the Department of Revenue and to the Fiscal Research Division of the General Assembly by May 1 of each year the following information for the 12-month period ending the preceding April 1:

(1) The number of applications for each credit allowed in this Article.

(2) The number and enterprise tier area of new jobs with respect to which credits were applied for.

(3) The cost of machinery and equipment with respect to which credits were applied for.

(4) The number of new jobs created within development zones, and the percentage of those jobs that were filled by residents of the zones.

"**§ 105-129.7. Substantiation.**

To claim a credit allowed by this Article, the taxpayer must provide any information required by the Secretary of Revenue. Every taxpayer claiming a credit under this Article shall maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving eligibility for the credit and the amount of the credit shall rest upon the taxpayer, and no credit shall be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection.

"**§ 105-129.8. Credit for creating jobs.**

(a) Credit. -- A taxpayer that meets the eligibility requirements set out in G.S. 105-129.4, has five or more employees for at least 40 weeks during the taxable year, and hires an additional full-time employee during that year to fill a position located in this State is allowed a credit for creating a new full-time job. The amount of the credit for each new full-time job created is set out in the table below and is based on the enterprise tier of the area in which the position is located. In addition, if the position is located in a development zone, the amount of the credit is increased by four thousand dollars ($4,000) per job.

Area Enterprise Tier	Amount of Credit
Tier One	$12,500
Tier Two	4,000
Tier Three	3,000
Tier Four	1,000
Tier Five	500

A position is located in an area if more than fifty percent (50%) of the employee's duties are performed in the area. The credit may not be taken in the taxable year in which the additional employee is hired. Instead, the credit shall be taken in equal installments over the four years following the taxable year in which the additional employee was hired and shall be conditioned on the continued employment by the

taxpayer of the number of full-time employees the taxpayer had upon hiring the employee that caused the taxpayer to qualify for the credit.

If, in one of the four years in which the installment of a credit accrues, the number of the taxpayer's full-time employees falls below the number of full-time employees the taxpayer had in the year in which the taxpayer qualified for the credit, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5.

Jobs transferred from one area in the State to another area in the State shall not be considered new jobs for purposes of this section. If, in one of the four years in which the installment of a credit accrues, the position filled by the employee is moved to an area in a higher- or lower-numbered enterprise tier, or is moved from a development zone to an area that is not a development zone, the remaining installments of the credit shall be calculated as if the position had been created initially in the area to which it was moved.

(b) Repealed by Session Laws 1989, c. 111, s. 1.

(b1), (c) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3.

(d) Planned Expansion. -- A taxpayer that signs a letter of commitment with the Department of Commerce to create at least twenty new full-time jobs in a specific area within two years of the date the letter is signed qualifies for the credit in the amount allowed by this section based on the area's enterprise tier and development zone designation for that year even though the employees are not hired that year. The credit shall be available in the taxable year after at least twenty employees have been hired if the hirings are within the two-year commitment period. The conditions outlined in subsection (a) apply to a credit taken under this subsection except that if the area is redesignated to a higher-numbered enterprise tier or loses its development zone designation after the year the letter of commitment was signed, the credit is allowed based on the area's enterprise tier and development zone designation for the year the letter was signed. If the taxpayer does not hire the employees within the two-year period, the taxpayer does not qualify for the credit. However, if the taxpayer qualifies for a credit under subsection (a) in the year any new employees are hired, the taxpayer may take the credit under that subsection.

(e), (f) Repealed by Session Laws 1996, Second Extra Session, c. 13, s. 3.3.

"§ 105-129.9. Credit for investing in machinery and equipment.

(a) Credit. -- If a taxpayer that has purchased or leased eligible machinery and equipment places it in service in this State during the taxable year, the taxpayer is allowed a credit equal to seven percent (7%) of the excess of the eligible investment amount over the applicable threshold. Machinery and equipment is eligible if it is capitalized by the taxpayer for tax purposes under the Code and is not leased to another party. In addition, in the case of a large investment, machinery and equipment that is not capitalized by the taxpayer is eligible if the taxpayer leases it from another party. The credit may not be taken for the taxable year in which the equipment is placed in service but shall be taken in equal installments over the seven years following the taxable year in which the equipment is placed in service.

(b) Eligible Investment Amount. -- The eligible investment amount is the lesser of (i) the cost of the eligible machinery and equipment and (ii) the amount by which the cost of all of the taxpayer's eligible machinery and equipment that is in service in this State on the last day of the taxable year exceeds the cost of all of the taxpayer's eligible machinery and equipment that was in service in this State on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer had the most eligible machinery and equipment in service in this State.

(c) Threshold. -- The applicable threshold is the appropriate amount set out in the following table based on the enterprise tier of the area where the eligible machinery and equipment are placed in service during the taxable year. If the taxpayer places eligible machinery and equipment in service in more than one area during the taxable year, the threshold applies separately to the eligible machinery and equipment placed in service in each area. If the taxpayer places eligible machinery and equipment in service in an area over the course of a two-year period, the applicable threshold for the second taxable year is reduced by the eligible investment amount for the previous taxable year.

Area Enterprise Tier	Threshold
Tier One	$ -0-
Tier Two	100,000
Tier Three	200,000
Tier Four	500,000
Tier Five	1,000,000

(d) Expiration. -- If, in one of the seven years in which the installment of a credit accrues, the machinery and equipment with respect to which the credit was claimed are disposed of, taken out of service, or moved out of State, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5.

If, in one of the seven years in which the installment of a credit accrues, the machinery and equipment with respect to which the credit was claimed are moved to an area in a higher-numbered enterprise tier, or are moved from a development zone to an area that is not a development zone, the remaining installments of the credit are allowed only to the extent they would have been allowed if the machinery and equipment had been placed in service initially in the area to which they were moved.

(e) Planned Expansion. -- A taxpayer that signs a letter of commitment with the Department of Commerce to place specific eligible machinery and equipment in service in an area within two years after the date the letter is signed may, in the year the eligible machinery and equipment are placed in service in that area, calculate the credit for which the taxpayer qualifies based on the area's enterprise tier and development zone designation for the year the letter was signed. All other conditions apply to the credit, but if the area has been redesignated to a higher-numbered enterprise tier or has lost its development zone designation after the year the letter of commitment was signed, the credit is allowed based on the area's enterprise tier and

development zone designation for the year the letter was signed. If the taxpayer does not place part or all of the specified eligible machinery and equipment in service within the two-year period, the taxpayer does not qualify for the benefit of this subsection with respect to the machinery and equipment not placed in service within the two-year period. However, if the taxpayer qualifies for a credit in the year the eligible machinery and equipment are placed in service, the taxpayer may take the credit for that year as if no letter of commitment had been signed pursuant to this subsection.

"**§ 105-129.10. Credit for research and development.**

(a) General Credit. -- A taxpayer that claims for the taxable year a federal income tax credit under section 41(a) of the Code for increasing research activities is allowed a credit equal to five percent (5%) of the State's apportioned share of the taxpayer's expenditures for increasing research activities. The State's apportioned share of a taxpayer's expenditures for increasing research activities is the excess of the taxpayer's qualified research expenses for the taxable year over the base amount, as determined under section 41 of the Code, multiplied by a percentage equal to the ratio of the taxpayer's qualified research expenses in this State for the taxable year to the taxpayer's total qualified research expenses for the taxable year.

(b) Alternative Credit. -- A taxpayer that claims the alternative incremental credit under section 41(c)(4) of the Code for increasing research activities is allowed a credit equal to twenty-five percent (25%) of the State's apportioned share of the federal credit claimed. The State's apportioned share of the federal credit claimed is the amount of the alternative incremental credit the taxpayer claimed under section 41(c)(4) of the Code for the taxable year multiplied by a percentage equal to the ratio of the taxpayer's qualified research expenses in this State for the taxable year to the taxpayer's total qualified research expenses for the taxable year. For the purpose of this subsection, the amount of the alternative incremental credit claimed by a taxpayer is determined without regard to any reduction elected under section 280C(c) of the Code.

(c) Definitions. -- As used in this section, the terms "qualified research expenses" and "base amount" have the meaning provided in section 41 of the Code.

"**§ 105-129.11. Credit for worker training.**

(a) Credit. -- A taxpayer that provides worker training for five or more of its eligible employees during the taxable year is allowed a credit equal to the wages paid to the eligible employees during the training. Wages paid to an employee performing his or her job while being trained are not eligible for the credit. For positions located in an enterprise tier one area, the credit may not exceed one thousand dollars ($1,000) per employee trained during the taxable year. For other positions, the credit may not exceed five hundred dollars ($500.00) per employee trained during the taxable year. A position is located in an area if more than fifty percent (50%) of the employee's duties are performed in the area.

(b) Eligibility. -- An employee is eligible if the employee is in a full-time position not classified as exempt under the Fair Labor Standards Act, 29 U.S.C. § 213(a)(1) and meets one or more of the following conditions:

(1) The employee occupies a job for which the taxpayer is eligible to claim an installment of the credit for creating jobs.

(2) The employee is being trained to operate machinery and equipment for which the taxpayer is eligible to claim an installment of the credit for investing in machinery and equipment.

"**§ 105-129.12. Credit for investing in central administrative office property.**

(a) Credit. -- If a taxpayer that has purchased or leased real property in this State begins to use the property as a central administrative office during the taxable year, the taxpayer is allowed a credit equal to seven percent (7%) of the eligible investment amount. The eligible investment amount is the lesser of (i) the cost of the property and (ii) the amount by which the cost of all of the property the taxpayer is using in this State as central administrative offices on the last day of the taxable year exceeds the cost of all of the property the taxpayer was using in this State as central administrative offices on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer was using the most property in this State as central administrative offices. In the case of property that is leased, the cost of the property is not determined as provided in G.S. 105-129.2 but is considered to be the taxpayer's lease payments over a seven-year period, plus any expenditures made by the taxpayer to improve the property before it is used as the taxpayer's central administrative office if the expenditures are not reimbursed or credited by the lessor. The maximum credit allowed a taxpayer under this section for property used as a central administrative office is five hundred thousand dollars ($500,000). The entire credit may not be taken for the taxable year in which the property is first used as a central administrative office but shall be taken in equal installments over the seven years following the taxable year in which the property is first used as a central administrative office. The basis in any real property for which a credit is allowed under this section shall be reduced by the amount of credit allowable.

(b) Mixed Use Property. -- If the taxpayer uses only part of the property as the taxpayer's central administrative office, the amount of the credit allowed under this section is reduced by multiplying it by a fraction the numerator of which is the square footage of the property used as the taxpayer's central administrative office and the denominator of which is the total square footage of the property.

(c) Expiration. -- If, in one of the seven years in which the installment of a credit accrues, the property with respect to which the credit was claimed is no longer used as a central administrative office, the credit expires and the taxpayer may not take any remaining installment of the credit. If, in one of the seven years in which the installment of a credit accrues, part of the property with respect to which the credit was claimed is no longer used as a central administrative office, the remaining installments of the credit shall be reduced by multiplying it by the fraction described in subsection (b) of this section. If, in one of the seven years in which the installment of a credit accrues, the total number of employees the taxpayer employs at all of its central administrative offices in this State drops by 40 or more, the credit expires and the taxpayer may not take any remaining installment of the credit.

In each of these cases, the taxpayer may nonetheless take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5.

"**§ 105-129.13. Credit for development zone projects.**

(a) Credit. -- A taxpayer who contributes cash or property to a development zone agency for an improvement project in a development zone is allowed a credit equal to twenty-five percent (25%) of the value of the contribution. A contribution is for an improvement project for the purposes of this section if the agency receiving the contribution contracts in writing to use the contribution for the project and agrees in the contract to repay to the taxpayer, with interest, any part of the contribution not used for the project. The credit may not be taken for the year in which the contribution is made but must be taken for the taxable year beginning during the calendar year in which the application for the credit becomes effective as provided in this section.

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

(1) Community development corporation. -- A nonprofit corporation that meets all of the following conditions:

a. It is chartered pursuant to Chapter 55A of the General Statutes and is tax-exempt pursuant to section 501(c)(3) of the Code.

b. Its primary mission is to develop and improve low-income communities and neighborhoods through economic and related development.

c. Its activities and decisions are initiated, managed, and controlled by the constituents of those local communities.

d. Its primary function is to act as deal maker and packager of projects and activities that will increase its constituency's opportunities to become owners, managers, and producers of small businesses, to obtain affordable housing, and to obtain jobs designed to produce positive cash flow and curb blight in the targeted community.

(2) Control. -- A person controls an entity if the person owns, directly or indirectly, more than ten percent (10%) of the voting securities of that entity. As used in this subdivision, the term 'voting security' means a security that (i) confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business or (ii) is convertible into, or entitles the holder to receive upon its exercise, a security that confers such a right to vote. A general partnership interest is a voting security.

(3) Development zone agency. -- Any of the following agencies that the Department of Commerce certifies will undertake an improvement project in a development zone:

a. A community-based development organization qualified under 24 C.F.R. § 570.204 to receive community development block grant funds under the Housing and Community Development Act of 1974, as amended, 42 U.S.C. § 5301, et seq., to carry out a neighborhood revitalization project, a community economic development project, or an energy conservation project.

b. A community action agency that has been officially designated as such pursuant to section 210 of the Economic Opportunity Act of 1964, Public Law 88-452, 78 Stat. 508 and which has not lost its designation as a result of a failure to comply with the provisions of that act.

c. A community development corporation.

d. A community development financial institution certified by the United States Department of the Treasury under the Community Development Banking and Financial Institutions Act of 1994, 12 U.S.C. § 4701, et seq.

e. A community housing development organization qualified under the HOME Investment Partnerships Act, 42 U.S.C. §§ 12701, 12704, and 24 C.F.R. § 92.2.

f. A local housing authority created under Article 1 of Chapter 157 of the General Statutes.

(4) Improvement project. -- A project to construct or improve residential, commercial, or public real property located in a development zone. The term includes services provided by a development zone agency directly related to the construction or improvement, and project development fees charged by a developer for the construction or improvement.

(c) Certification. -- The Secretary of Commerce shall not certify a development zone agency under this section if the agency, any of the agency's officers or directors, or any partner of the agency has ever used any part of a contribution made under this section for any purpose other than an improvement project.

(d) Limitations. -- A taxpayer who claims a credit under this subsection must identify in the application the development zone agencies to which the taxpayer made contributions and the amount contributed to each. No credit is allowed for a contribution if the taxpayer is related to the development zone agency as defined in section 1313 of the Code or if the taxpayer controls, is controlled by, or is under common control with an affiliate of the development zone agency. No credit is allowed to the extent the taxpayer receives anything of value in exchange for the contribution.

(e) Application. -- To be eligible for the tax credit provided in this section, in addition to the application required under G.S. 105-129.6, the taxpayer must file an application for the credit with the Secretary of Revenue on or before April 15 of the year following the calendar year in which the contribution was made. The Secretary

may grant extensions of this deadline, as the Secretary finds appropriate, upon the request of the taxpayer, except that the application may not be filed after September 15 of the year following the calendar year in which the contribution was made. An application is effective for the year in which it is timely filed. The application must be on a form prescribed by the Secretary and must include any supporting documentation that the Secretary may require. If a contribution for which a credit is applied for was of property rather than cash, the taxpayer must include with the application a certified appraisal of the value of the property contributed.

(f) Ceiling. -- The total amount of all tax credits allowed to taxpayers under this section for contributions made in a calendar year may not exceed four million dollars ($4,000,000). The Secretary of Revenue must calculate the total amount of tax credits claimed from the applications filed under this section. If the total amount of tax credits claimed for contributions made in a calendar year exceeds four million dollars ($4,000,000), the Secretary must allow a portion of the credits claimed by allocating a total of four million dollars ($4,000,000) in tax credits in proportion to the size of the credit claimed by each taxpayer. If a credit is reduced pursuant to this subsection, the Secretary must notify the taxpayer of the amount of the reduction of the credit on or before December 31 of the year the application was filed. The Secretary's allocations based on applications filed pursuant to this section are final and will not be adjusted to account for credits applied for but not claimed.

(g) Forfeiture. -- A taxpayer forfeits a credit allowed under this section to the extent the development zone agency uses the taxpayer's contribution for any purpose other than an improvement project. Each development zone agency certified by the Department of Commerce must file with the Department of Commerce annual financial statements audited in accordance with generally accepted accounting principles and in accordance with Government Audit Standards developed by the Comptroller General of the United States. The annual statements are required each time the agency receives a contribution eligible for the credit allowed under this section until the entire contribution has been used for improvement projects. If the Department of Commerce determines that a development zone agency has used part or all of a contribution for any purpose other than an improvement project, the Department must notify the Secretary of Revenue of the forfeiture, the taxpayer who made the contribution, and the amount forfeited."

PART II. SALES TAX CHANGES

Section 3.(a) G.S. 105-164.4(a)(1d)a. through k. are recodified as G.S. 105-164.4A.

Section 3.(b) G.S. 105-164.4(a)(1d), as amended by this section, reads as rewritten:

"(1d) The rate of one percent (1%) applies to the sales price of the ~~following articles.~~ articles listed in G.S. 105-164.4A. The maximum tax is eighty dollars ($80.00) per article."

Section 3.(c) G.S. 105-164.4A, as recodified by this section, reads as rewritten:

"**§ 105-164.4A. Articles taxed at one percent (1%), eighty dollars ($80.00).**

The following articles are taxable under G.S. 105-164.4(a)(1d):

~~a.~~(1) Farm machinery. -- Sales to a farmer of machines and machinery, and parts and accessories for these machines and machinery, for use by the farmer in the planting, cultivating, harvesting, or curing of farm crops or in the production of dairy products, eggs, or animals. A "farmer" includes a dairy operator, a poultry farmer, an egg producer, a livestock farmer, a farmer of crops, and a farmer of an aquatic species, as defined in G.S. 106-758. Items that are exempt from tax under G.S. 105-164.13(4c) are not subject to tax under ~~this section.~~ G.S. 105-164.4.

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

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

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

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

~~b.~~(2) Manufacturing machinery. -- Sales of mill machinery or mill machinery parts and accessories to manufacturing industries and plants, and sales to contractors and subcontractors purchasing mill machinery or mill machinery parts and accessories for use by them in the performance of contracts with manufacturing industries and plants, and sales to subcontractors purchasing mill machinery or mill machinery parts and accessories for use by them in the performance of contracts with general contractors who have contracts with manufacturing industries and plants. As used in this paragraph, the term "manufacturing industries and plants" does not include delicatessens, cafes, cafeterias, restaurants, and other similar retailers that are principally engaged in the retail sale of foods prepared by them for consumption on or off their premises.

~~c.~~(3) Telephone company property. -- Sales of central office equipment and switchboard and private branch exchange equipment to telephone companies regularly engaged in providing telephone

service to subscribers on a commercial basis, and sales to these companies of prewritten computer programs used in providing telephone service to their subscribers.

~~d.~~(4) Laundry machinery. -- Sales to commercial laundries or to pressing and dry cleaning establishments of machinery used in the direct performance of the laundering or the pressing and cleaning service and of parts and accessories thereto.

~~e.~~(5) Freezer plant machinery. -- Sales to freezer locker plants of machinery used in the direct operation of ~~said~~ the freezer locker plant and of parts and accessories thereto.

~~f.~~(6) Broadcasting machinery. -- Sales of broadcasting equipment and parts and accessories thereto and towers to commercial radio and television companies which are under the regulation and supervision of the Federal Communications Commission.

~~g.~~(7) Tobacco equipment. -- Sales to farmers of bulk tobacco barns and racks and all parts and accessories thereto and similar apparatus used for the curing and drying of any farm produce.

~~h.~~(8) Farm storage facilities. -- Sales to farmers of grain, feed or soybean storage facilities and accessories thereto, whether or not dryers are attached, and all similar apparatus and accessories thereto for the storage of grain, feed or soybeans.

~~i.~~(9) Farm containers. -- Sales of containers to farmers or producers for use in the planting, producing, harvesting, curing, marketing, packaging, sale, or transporting or delivery of their products when such containers do not go with and become part of the sale of their products at wholesale or retail.

~~j.~~(10) Recycling facility equipment. -- Sales to a major recycling facility of the following tangible personal property for use in connection with the facility: cranes, structural steel crane support systems, foundations related to the cranes and support systems, port and dock facilities, rail equipment, and material handling equipment.

~~k.~~(11) (Effective January 1, 2001) Air courier equipment. -- Sales of the following items to an interstate air courier for use at its hub: materials handling equipment, racking systems, and related parts and accessories, for the storage or handling and movement of tangible personal property at an airport or in a warehouse or distribution facility."

Section 4. G.S. 105-164.14 is amended by adding a new subsection to read:

"(h) Low Enterprise Tier Businesses. --

(1) Refunds. -- An eligible person is allowed an annual refund of sales and use taxes paid by it under this Article at the general rate of tax on eligible machinery and equipment it purchases for use in an enterprise tier one area or an enterprise tier two area.

as defined in G.S. 105-129.3. Liability incurred indirectly by the taxpayer for sales and use taxes on these items is considered tax paid by the taxpayer. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the State's fiscal year. Refunds applied for after the due date are barred.

(2) Eligibility. -- A person is eligible for the refund provided in this subsection if it is engaged primarily in one of the businesses listed in G.S. 105-129.4(a) in an enterprise tier one area or an enterprise tier two area, as defined in G.S. 105-129.3.

(3) Machinery and equipment. -- For the purpose of this subsection, the term 'machinery and equipment' means engines, machinery, equipment, tools, and implements used or designed to be used in one of the businesses listed in G.S. 105-129.4(a). Machinery and equipment are eligible for the refund provided in this subsection if the taxpayer places it in service in an enterprise tier one area or an enterprise tier two area, as defined in G.S. 105-129.3, capitalizes it for tax purposes under the Code, and does not lease it to another party."

Section 5. G.S. 105-164.14 is amended by adding a new subsection to read:

"(i) Nonprofit Insurance Companies. --

(1) Refunds. -- An eligible nonprofit insurance company is allowed an annual refund of sales and use taxes paid by it under this Article before January 1, 2005, on building materials, building supplies, fixtures, and equipment that become a part of its real property. Liability incurred indirectly by the company for sales and use taxes on these items is considered tax paid by the company. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the insurance company's fiscal year. Refunds applied for after the due date are barred.

(2) Eligibility. -- An insurance company is eligible for the refund provided in this subsection if it meets all of the following conditions:

a. It is a nonprofit corporation.

b. It is operated for the exclusive purpose of providing insurance and annuity contracts to or for the benefit of organizations exempt from federal income tax under section 501(c)(3) of the Code, and their employees.

c. The Secretary of Commerce has certified that the insurance company will invest at least ten million dollars ($10,000,000)

in constructing a facility in this State for the conduct of its operations.

(3) Forfeiture. -- If an eligible insurance company does not make the required minimum investment within five years after its first refund under this subsection, it loses its eligibility and forfeits all refunds already received under this subsection. Upon forfeiture, the company is liable for tax under this Article equal to the amount of all past taxes refunded under this subsection, plus interest at the rate established in G.S. 105-241.1(i), computed from the date the taxes would have been due if the tax refunds had not been received. The tax and interest are due 30 days after the date of the forfeiture. A company that fails to pay the tax and interest is subject to the penalties provided in G.S. 105-236."

Section 6.(a) G.S. 105-164.3 is amended by adding a new subdivision to read:

"(6e) Interstate passenger air carrier. -- A person whose primary business is scheduled passenger air transportation, as defined in the North American Industry Classification System adopted by the United States Office of Management and Budget, in interstate commerce."

Section 6.(b) G.S. 105-164.3(6b), as enacted by S.L. 1998-55, becomes effective May 1, 1999.

Section 6.(c) G.S. 105-164.3(6b) reads as rewritten:

"(6b) Hub. -- ~~An interstate air courier's~~ Either of the following:

a. An interstate air courier's hub is the airport in this State that meets all of the following conditions:

~~a.~~ 1. The air courier has allocated to the airport under G.S. ~~105-388~~ 105-338 more than sixty percent (60%) of its aircraft value apportioned to this State.

~~b.~~ 2. The air courier's primary function at the airport is to sort and distribute letters and packages received from multiple consolidation locations.

~~c.~~ 3. The air courier's primary function at the airport is not to consolidate letters and packages and deliver them to another airport for sorting and distribution.

b. An interstate passenger air carrier's hub is the airport in this State that meets both of the following conditions:

1. The air carrier has allocated to the airport under G.S. 105-338 more than sixty percent (60%) of its aircraft value apportioned to this State.

2. The majority of the air carrier's passengers boarding at the airport are connecting from other airports rather than originating at that airport."

Section 7.(a) Section 9 of S.L. 1998-55 is repealed.

Section 7.(b) G.S. 105-164.13 is amended by adding a new subdivision to read:

"(45) Sales of the following items to an interstate passenger air carrier for use at its hub: aircraft lubricants, aircraft repair parts, and aircraft accessories."

Section 7.(c) Effective January 1, 2001, G.S. 105-164.13(45), as enacted by this act, reads as rewritten:

"(45) Sales of the following items to an interstate passenger air carrier or an interstate air courier for use at its hub: aircraft lubricants, aircraft repair parts, and aircraft accessories."

Section 8. G.S. 105-164.4A, as recodified by this act, is amended by adding a new subdivision to read:

"(13) Flight crew training equipment. -- Sales to an interstate passenger air carrier or an interstate air courier of aircraft simulators for flight crew training for use at the air carrier or air courier's hub."

Section 9. G.S. 105-164.14(a) reads as rewritten:

"(a) Interstate Carriers. -- An interstate carrier is allowed a refund, in accordance with this section, of part of the sales and use taxes paid by it on fuel, lubricants, repair parts, and accessories purchased in this State for a motor vehicle, railroad car, locomotive, or airplane the carrier operates. An 'interstate carrier' is a person who is engaged in transporting persons or property in interstate commerce for compensation. The Secretary shall prescribe the periods of time, whether monthly, quarterly, semiannually, or otherwise, with respect to which refunds may be claimed, and shall prescribe the time within which, following these periods, an application for refund may be made.

An applicant for refund shall furnish the following information and any proof of the information required by the Secretary:

(1) A list identifying the fuel, lubricants, repair parts, and accessories purchased by the applicant inside or outside this State during the refund period.

(2) The purchase price of the items listed in subdivision (1) of this subsection.

(3) The sales and use taxes paid in this State on the listed items.

(4) The number of miles the applicant's motor vehicles, railroad cars, locomotives, and airplanes were operated both inside and outside this State during the refund period.

(5) Any other information required by the Secretary.

For each applicant, the Secretary shall compute the amount to be refunded as follows. First, the Secretary shall determine the ratio of the number of miles the applicant operated its motor vehicles, railroad cars, locomotives, and airplanes in this State during the refund period to the number of miles it operated them both inside and outside this State during the refund period. Second, the Secretary shall determine the applicant's proportional liability for the refund period by multiplying

this mileage ratio by the purchase price of the items identified in subdivision (1) of this subsection and then multiplying the resulting product by the tax rate that would have applied to the items if they had all been purchased in this State. Third, the Secretary shall refund to each applicant the excess of the amount of sales and use taxes the applicant paid in this State during the refund period on these items over the applicant's proportional liability for the refund period."

PART III. AFFORDABLE HOUSING TAX CREDIT

Section 10. The title of Article 3B of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 3B.

"Business Tax ~~Credit.~~ Credits."

Section 11. Article 3B of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-129.16A. Credit for low-income housing.**

(a) Credit. -- A taxpayer that is allowed for the taxable year a federal income tax credit for low-income housing under section 42 of the Code with respect to a qualified North Carolina low-income building, is allowed a credit under this Article equal to twenty-five percent (25%) of the total federal credit allowed during the 10-year federal credit period with respect to that building. The credit must be taken in equal installments over the five years beginning in the first taxable year in which the federal credit is claimed for that building.

(b) Definitions. -- The definitions in section 42 of the Code apply in this section. In addition, as used in this section the term 'qualified North Carolina low-income building' means a qualified low-income building that meets any of the following conditions:

(1) It is located in an area that, at the time the federal credit is allocated to the building, is a tier one or two enterprise area, as defined in G.S. 105-129.3, or is a development zone, as defined in G.S. 105-129.3A.

(2) It is located in an area that, at the time the federal credit is allocated to the building, is a tier three or four enterprise area, and forty percent (40%) of its residential units are both rent-restricted and occupied by individuals whose income is fifty percent (50%) or less of area median gross income as defined in the Code.

(3) It is located in an area that, at the time the federal credit is allocated to the building, is a tier five enterprise area, and forty percent (40%) of its residential units are both rent-restricted and occupied by individuals whose income is thirty-five percent (35%) or less of area median gross income as defined in the Code.

(c) Expiration. -- If, in one of the five years in which an installment of the credit under this section accrues, the taxpayer is no longer eligible for the corresponding federal credit with respect to the same qualified North Carolina low-income building, then the credit under this section expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of

an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.17.

(d) Forfeiture. -- If the taxpayer is required under section 42(j) of the Code to recapture all or part of a federal credit under that section with respect to a qualified North Carolina low-income building, the taxpayer forfeits the corresponding part of the credit allowed under this section with respect to that qualified North Carolina low-income building. A taxpayer that forfeits a credit under this section is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236."

Section 12. Reserved.

Section 13. G.S. 105-129.17 reads as rewritten:

"**§ 105-129.17. Tax election; cap.**

(a) Tax Election. -- The ~~credit~~ credits allowed in this Article ~~is~~ are allowed against the franchise tax levied in Article 3 of this Chapter or the income taxes levied in Article 4 of this Chapter. The taxpayer must elect the tax against which ~~the~~ a credit will be claimed when filing the return on which the first installment of the credit is claimed. This election is binding. Any carryforwards of ~~the~~ a credit must be claimed against the same tax.

(b) Cap. -- The ~~credit~~ total credits allowed in this Article may not exceed fifty percent (50%) of the tax against which ~~it is~~ they are claimed for the taxable year, reduced by the sum of all other credits allowed against that tax, except tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of credit, including carryforwards, claimed by the taxpayer under this Article against each tax for the taxable year. Any unused portion of the ~~credit~~ credits may be carried forward for the succeeding five years."

Section 14. G.S. 105-129.18 reads as rewritten:

"**§ 105-129.18. Substantiation.**

To claim the ~~credit~~ credits allowed by this Article, the taxpayer must provide any information required by the Secretary of Revenue. Every taxpayer claiming a credit under this Article must maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving eligibility for the credit and the amount of the credit rests upon the taxpayer, and no credit may be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection."

Section 15. G.S. 105-129.19 reads as rewritten:

"**§ 105-129.19. Reports.**

The Department of Revenue shall report to the Legislative Research Commission and to the Fiscal Research Division of the General Assembly by May 1 of each year the following information for the 12-month period ending the preceding April 1:

(1) The number of taxpayers that claimed the ~~credit~~ credits allowed in this Article.
(2) The cost of business property with respect to which business property credits were claimed.
(2a) The location of each qualified North Carolina low-income building with respect to which a low-income housing credit was claimed.
(3) The total cost to the General Fund of the credits claimed."

Section 16. G.S. 105-241.1(e) reads as rewritten:

"(e) Statute of Limitations. -- There is no statute of limitations and the Secretary may propose an assessment of tax due from a taxpayer at any time if (i) the taxpayer did not file a proper application for a license or did not file a return, (ii) the taxpayer filed a false or fraudulent application or return, or (iii) the taxpayer attempted in any manner to fraudulently evade or defeat the tax.

If a taxpayer files a return reflecting a federal determination as provided in G.S. 105-29, 105-130.20, 105-159, 105-160.8, 105-163.6A, or 105-197.1, the Secretary must propose an assessment of any tax due within one year after the return is filed or within three years of when the original return was filed or due to be filed, whichever is later. If there is a federal determination and the taxpayer does not file the required return, the Secretary must propose an assessment of any tax due within three years after the date the Secretary received the final report of the federal determination. ~~If~~

If a taxpayer forfeits a tax credit ~~pursuant to G.S. 105-163.014 or Article 3A of~~ or tax benefit pursuant to forfeiture provisions of this Chapter, the Secretary must assess any tax due as a result of the forfeiture within three years after the date of the forfeiture. If a taxpayer elects under section 1033(a)(2)(A) of the Code not to recognize gain from involuntary conversion of property into money, the Secretary must assess any tax due as a result of the conversion or election within the applicable period provided under section 1033(a)(2)(C) or section 1033(a)(2)(D) of the Code. If a taxpayer sells at a gain the taxpayer's principal residence, the Secretary must assess any tax due as a result of the sale within the period provided under section 1034(j) of the Code.

In all other cases, the Secretary must propose an assessment of any tax due from a taxpayer within three years after the date the taxpayer filed an application for a license or a return or the date the application or return was required by law to be filed, whichever is later.

If the Secretary proposes an assessment of tax within the time provided in this section, the final assessment of the tax is timely.

A taxpayer may make a written waiver of any of the limitations of time set out in this subsection, for either a definite or an indefinite time. If the Secretary accepts the taxpayer's waiver, the Secretary may propose an assessment at any time within the time extended by the waiver."

PART IV. INDUSTRIAL DEVELOPMENT FUND CHANGES

Section 17. G.S. 143B-437.01(a) reads as rewritten:

"(a) Creation and Purpose of Fund. -- There is created in the Department of Commerce the Industrial Development Fund to provide funds to assist the local

government units of the most economically distressed counties in the State in creating jobs in certain industries. The Department of Commerce shall adopt rules providing for the administration of the program. Those rules shall include the following provisions, which shall apply to each grant from the fund:

(1) The funds shall be used for (i) installation of or purchases of equipment for eligible industries, (ii) structural repairs, improvements, or renovations of existing buildings to be used for expansion of eligible industries, or (iii) construction of or improvements to new or existing water, sewer, gas, or electrical utility distribution lines or equipment for existing or new or proposed industrial buildings to be used for eligible industries. To be eligible for funding, the water, sewer, gas, or electrical utility lines or facilities shall be located on the site of the building or, if not located on the site, shall be directly related to the operation of the specific eligible industrial activity.

(1a) The funds shall be used for projects located in economically distressed counties except that the Secretary of Commerce may use up to one hundred thousand dollars ($100,000) to provide emergency economic development assistance in any county that is documented to be experiencing a major economic dislocation.

(2) The funds shall be used by the city and county governments for projects that will directly result in the creation of new jobs. The funds shall be expended at a maximum rate of five thousand dollars ($5,000) per new job created up to a maximum of five hundred thousand dollars ($500,000) per project.

(3) There shall be no local match requirement if the project is located in an enterprise tier one area as defined in G.S. 105-129.3.

(4) The Department may authorize a local government that receives funds under this section to use up to two percent (2%) of the funds, if necessary, to verify that the funds are used only in accordance with law and to otherwise administer the grant or loan.

(5) No project shall be funded unless the Secretary of Commerce finds that the proposed project will not have a materially adverse effect on the environment. The Secretary of Commerce shall not make this finding unless the Secretary has first received a certification from the Department of Environment and Natural Resources that the proposed project will not have a materially adverse effect on the environment."

PART V. EFFECTIVE DATES

Section 18. NAICS Code and Customer Service Center Changes. -- G.S. 105-129.2(2)b., as enacted by Section 2 of this act, is effective retroactively as of January 1, 1999. G.S. 105-129.2(3a), as enacted by Section 2 of this act, becomes

effective for taxable years beginning on or after January 1, 2000. The remaining amendments to G.S. 105-129.2 made by Section 2 of this act are effective when this act becomes law. G.S. 105-129.4(a)(6), as enacted by Section 2 of this act, becomes effective for taxable years beginning on or after January 1, 2000.

Section 19. Small County Enhancements. -- G.S. 105-129.3(e) and (f), as enacted by Section 2 of this act, become effective for taxable years beginning on or after January 1, 2000.

Section 20. Development Zone Definitions. -- The amendments to G.S. 105-129.3A made by Section 2 of this act become effective July 1, 1999, and apply to applications filed on or after that date. Notwithstanding the provisions of G.S. 105-129.3A(b), a development zone designation made in 1998 or 1999 is effective until January 1, 2001.

Section 21. Quality Jobs Assurance. -- G.S. 105-129.4(b2), (b3), and (b4), as enacted by Section 2 of this act, become effective for taxable years beginning on or after January 1, 2000, and apply to credits for which applications are filed on or after that date.

Section 22. All Credits Against Gross Premiums Tax. -- The amendment to G.S. 105-129.5(a) made by Section 2 of this act is effective for taxable years beginning on or after January 1, 1999.

Section 23. Application Fees and Information. -- The amendments to G.S. 105-129.6(a) and (a1) made by Section 2 of this act are effective 30 days after this act becomes law, and apply to applications filed on or after that date.

Section 24. Development Zone Projects Credit. -- G.S. 105-129.13, as enacted by Section 2 of this act, is effective for taxable years beginning on or after January 1, 2000.

Section 25. Sales Tax Technical Change. -- Section 3 of this act is effective when it becomes law.

Section 26. Sales Tax Refund for Tiers One and Two Equipment. -- Section 4 of this act becomes effective January 1, 2000, and applies to taxes paid on or after that date.

Section 27. Temporary Sales Tax Refund for Nonprofit Insurance Companies. -- Section 5 of this act becomes effective January 1, 2000, and applies to taxes paid on or after that date. Section 5 of this act expires January 1, 2005.

Section 28. Sales Tax Preferences for Interstate Air Carriers. -- Sections 6 through 8 of this act are effective retroactively as of May 1, 1999, and apply to sales made on or after that date.

Section 29. Affordable Housing Credit. -- Part III of this act is effective for taxable years beginning on or after January 1, 2000, and applies to buildings to which federal credits are allocated on or after January 1, 2000.

Section 30. Industrial Development Fund Changes. -- Part IV of this act becomes effective July 1, 1999.

Section 31. Remainder. -- The remainder of this act is effective when it becomes law.

SENATE BILL 1115:
William S Lee Act 1999

BILL ANALYSIS

Committee:	Senate Finance	Sponsor:	Sen. Kerr
Date:	May 20, 1999	Summary by:	Martha H. Harris
Version:	Proposed Committee Substitute		Staff Attorney

SUMMARY: Senate Bill 1115 would make the following changes:

1. *Extend sunset on Bill Lee Act from 2002 to 2007 (Section 1)*
2. *Add passenger air carrier training center to credit for central administrative office, effective 1/1/1999 (page 2)*
3. *Allow an interstate passenger air carrier a sales tax exemption for aircraft parts and accessories purchased for use at its hub in this State, effective 5/1/1999 (Section 7, page 22)*
4. *Reduce sales tax from 6% to 1% with an $80 cap for flight crew training aircraft simulators purchased by an interstate passenger air carrier for use at its hub in this State, effective 5/1/1999 (Section 8, page 22)*
5. *Allow a five-year sales tax refund to certain nonprofit insurance companies for taxes paid on building materials, effective 1/1/2000 (Section 5, pages 20 - 21)*
6. *Extend Bill Lee Act credits to customer service centers in tiers one and two, effective 1/1/2000 (pages 2, 6)*
7. *Allow annual refund of 6% sales taxes paid on capitalized machinery and equipment sold to businesses eligible for Bill Lee Act credits and located in tier one or two, effective 1/1/2000 (Section 4, pages 19-20)*
8. *Give a more favorable tier designation to small counties, effective 1/1/2000 (page 4)*
9. *Close loopholes in definition of development zones, effective 7/1/1999 (pages 4 - 5)*
10. *Allow a 25% credit for contributions to nonprofits for capital projects within development zones, effective 1/1/2000 (pages 15 - 17)*
11. *Allow a credit for rehabilitating or constructing affordable housing, effective for new projects beginning 1/1/2000 (Sections 10 - 16, pages 23 - 25)*
12. *Allow all Bill Lee Act credits to be taken against insurance premiums tax, effective 1/1/1999 (page 8)*
13. *Require businesses to provide health insurance and meet environmental, safety, and health standards in order to qualify for Bill Lee Act credits, effective 1/1/2000 (page 7)*

14. *Eliminate the $75 application fee for Bill Lee Act credits in tiers one and two and increase the fee to $500 per credit in other tiers, with a cap of $1,500 per applica effective 30 days after the bill becomes law (page 9)*
15. *Require applicants for Bill Lee Act credits to provide additional information to enable Commerce to evaluate the effectiveness of the credits in providing employment to residents of development zones, effective 7/1/1999 (page 9)*
16. *Clarify definitions of industries covered by Bill Lee Act, effective immediately (pages 2 - 3), and clarify sales tax refunds for sales of fuel to interstate air carriers (Section 9)*
17. *Require projects to obtain an environmental certification in order to qualify for funding from the Industrial Development Fund (Building Renovation Fund), effective 7/1/1999 (Section 17, pages 25 - 26)*

Extend Bill Lee Act Sunset. The William S. Lee Quality Jobs and Business Expansion Act was enacted in 1996, effective beginning with the 1996 tax year with a sunset effective in 2002. The Act required the Department of Commerce to report annually on the credits allowed by the Act. Before 1996, North Carolina had made little use of tax incentives to lure businesses to the State. Even without incentives, North Carolina was consistently one of the top states in attracting industry. The array of credits authorized by the William S. Lee Act was viewed as an experiment, to be evaluated in five years to determine whether the incentives were cost effective and actually affected behavior, or merely provided tax reductions to businesses that would hav located or expanded in any case. Section 1 of this bill would extend the 2002 sunset for a additional five years, to 2007.

Incentives for Interstate Passenger Air Carrier Hubs. This bill would provide three incentives for interstate passenger air carriers with hubs in this State. A hub is defined in Section 6 of the bill as the airport where the carrier has allocated at least 60% of its aircraft property tax value and at which the majority of its boarding passengers are connecting from other airports, not originating at that airport. The only carrier that meets this definition in North Carolina at this time is U.S. Airways, whose hub is in Charlotte.

The first incentive provided in the bill is to allow the existing credit for central administrative offices to apply to centralized training offices at an air carrier's hub, effective beginning with the 1999 tax year. The credit is allowed to taxpayers who purchase or lease real property to be used as central administrative office property with 40 or more employees. The amount of the credit is equal to 7% of the eligible investment amount and may not exceed $500,000. The credit is taken in seven equal installments over the seven years following the taxable year in which the property is first used as a central administrative office.

The second incentive for passenger air carriers is a sales tax exemption for the carrier's purchases of aircraft lubricants, parts, and accessories for use at its hub, effective beginning May 1, 1999. These purchases would otherwise be subject to sales tax at 6%, but interstate air carriers

are allowed a partial refund of the tax under G.S. 105-164.14(a). In 1998, the General Assembly enacted a similar exemption for air couriers (Federal Express), effective January 1, 2001.

The third incentive for passenger air carriers is a sales tax reduction from 6% to 1% with an $80 cap, for purchases of aircraft simulators for flight crew training for use at the hub, effective beginning May 1, 1999. The tax reduction would also apply to interstate air couriers. U.S. Airways plans to establish a flight crew training center at its Charlotte hub, where it would use aircraft simulators.

Incentive for Nonprofit Insurance Companies. Section 5 of this bill would provide a sales tax refund to certain nonprofit insurance companies for State and local taxes they pay on building materials, supplies, fixtures, and equipment that become a part of their real property. The refund would apply to taxes paid between January 1, 2000, and January 1, 2005. To qualify for this refund, the insurance company must be operated for the exclusive purpose of providing insurance products to nonprofit charitable organizations and their employees. In addition, the Secretary of Commerce must have certified that the insurance company will invest at least $10 million in this State. TIAA, which has announced plans to build an office in Mecklenburg County, fits this description.[1] If TIAA fails to make the $10 million investment within five years after it first receives a refund, it forfeits all refunds it received as a result of this incentive.

Incentives for Enterprise Tiers One and Two. The bill would provide two incentives for development in enterprise tier one and two counties, which are the counties considered most in need of economic development based on high unemployment, low per capita income, and low population growth.[2] The first incentive extends all of the Bill Lee Act credits to certain customer service centers located in an enterprise tier one or two county. An eligible customer service center is a subdivision of a telecommunications or financial services company that provides support services to the company's customers by telephone to support the company's products and services. To qualify, at least 60% of the center's calls must be incoming. This requirement will prevent telemarketing operations from qualifying. The credits allowed under the Bill Lee Act are the credit for creating jobs, the credit for investing in machinery and equipment, the credit for research and development, the credit for worker training, and the credit for investing in central administrative office property.

The second incentive allows an annual sales tax refund on taxes paid at 6% (6.5% in Mecklenburg County) on capitalized machinery and equipment sold to a taxpayer engaged in one of the businesses eligible for Bill Lee Act credits, for use in an enterprise tier one or two county. This provision would become effective for taxes paid on or after January 1, 2000. In addition to tier one and two customer service centers discussed above, the following businesses

[1] There may be one or more other nonprofit insurance companies that could qualify, but only if they make a $10 million investment.

[2] The following 13 counties are in tier one: Bertie, Edgecombe, Graham, Halifax, Hertford, Hyde, Martin, Northampton, Richmond, Swain, Tyrrell, Warren, and Washington. The following 15 counties are in tier two: Alleghany, Anson, Ashe, Beaufort, Cherokee, Columbus, Mitchell, Montgomery, Onslow, Perquimans, Robeson, Rutherford, Scotland, Vance, and Yancey.

are eligible for Bill Lee Act credits: air courier services, central administrative office (with at least 40 new jobs), data processing, manufacturing, warehousing, and wholesale trade.

Incentives for Small Counties. This bill would allow certain counties to qualify for a lower enterprise tier designation, effective January 1, 2000. Under the Bill Lee Act, all counties are divided into five enterprise tiers, ranked by economic distress as measured by a formula that combines unemployment, per capita income, and population growth. Those counties in lower-numbered tiers receive more favorable incentives than those in higher tiers. First, this bill changes the rules for assigning enterprise tier designations to provide that the tier number that would otherwise be assigned by the formula is reduced by one for counties that have a population of less than 50,000 and also have more than 18% of their residents below the federal poverty level. Under this provision, Alleghany, Ashe, Beaufort, Cherokee, Perquimans, Scotland, Vance, and Yancey Counties would move from tier two to tier one; Bladen, Hoke, Jones, Madison, Pamlico, and Pasquotank Counties would move from tier three to tier two; and Duplin, Greene, and Watauga Counties would move from tier four to tier three.

Second, the bill provides that a county that has a population of less than 25,000 cannot be designated higher than tier three. Under this provision, Polk and Currituck Counties would move from tier five to tier three.

Close Development Zone Loopholes. In 1998, the General Assembly amended the Bill Lee Act to provide additional incentives for businesses that locate or expand in development zones, which are economically distressed areas located within cities. The statutory conditions for qualifying as a development zone were designed to target only these relatively small economically distressed areas. The statutory conditions contained loopholes, however, that allowed large areas outside of cities to qualify, even if they were not economically distressed throughout. This bill would close those loopholes, effective for development zone designations made on or after January 1, 2000.

The 1998 legislation defined a development zone as an area that meets all of the following conditions: (1) consists of one or more contiguous census tracts, block groups, or both, (2) has a population of 1,000 or more, at least 20% of whom are below the poverty level, and (3) is located at least partly in city with a population over 5,000. This bill closes the loopholes in this definition by requiring that:

- Every census tract and census block group in the zone must be located in whole or in part within the primary corporate limits of the city.
- Every census tract and census block group in the zone must have more than 10% of its population below the poverty level, or must be immediately adjacent to a tract or group that has more than 20% of its population below the poverty level.
- None of the census tracts or census bock groups may be located in another development zone.

This bill would also shorten the period during which designation as a development zone is effective, from four years to two years, and require zone applicants to notify every city in which part of the proposed zone would be located.

The following enhanced incentives apply in development zones: If a business locates in a development zone, the wage standard it has to meet is the same as for tier one counties - slightly lower than the standard for other counties. In addition, if a business locates in a development zone, its maximum worker training credit is $1,000 rather than $500, it receives an additional $4,000 per job on its jobs tax credit, and there is no threshold for the credit for investing in machinery and equipment.

Credit for Development Zone Projects. This bill would create a new tax credit for taxpayers that contribute cash or property to certain nonprofit agencies to be used for an improvement project in a development zone. An improvement project is a project to construct or improve residential, commercial, or public real property. The new credit would become effective beginning with the 2000 tax year.

The credit allowed is 25% of the amount contributed by the taxpayer. The total amount of credits that may be allowed in a taxable year is capped at $4 million. Taxpayers are required to apply to the Secretary of Revenue for these credits. If the total amount applied for in a year exceeds $4 million, the Secretary will reduce each applicant's credit proportionally.

The credit is allowed for contributions to a development zone agency, defined as a community action agency, a community-based development organization, a community development corporation, a community development financial institution, a community housing development organization, or a local housing authority. To qualify for the credit, all of the following conditions must be met:

- The agency must contract in writing to use the contribution for an improvement project in a development zone and to repay the taxpayer with interest if the contribution is not so used.
- The Department of Commerce must certify that the agency will undertake an improvement project in a development zone.[3]
- The taxpayer must be unrelated to the agency and must not control, be controlled by, or be under common control with the agency.
- The taxpayer must not receive anything of value for the contribution.

A taxpayer forfeits the tax credit for a contribution to the extent the development zone agency uses the contribution for anything other than an improvement project in a zone. Development zone agencies are required to file with the Department of Commerce annual, audited financial statements. If the Department of Commerce finds that any part of a contribution was used for a purpose other than an improvement project, it must notify the Department of Revenue of the resulting forfeiture.

[3] The Secretary of Commerce may not certify a development zone agency if it, any of its officers or directors, or any partner of the agency has ever used part of an improvement project contribution for any purpose other than the improvement project.

Affordable Housing Tax Credit. Section 11 of the bill would create a new tax credit for rehabilitating or constructing low-income housing, effective for buildings allocated federal credits on or after January 1, 2000. The credit is equal to 25% of the amount of the taxpayer's federal credit for low-income housing with respect to North Carolina low-income housing that meets one of the following conditions:

- It is located in an enterprise tier one or two enterprise area or in a development zone.
- It is located in a tier three or four enterprise area and has at least 40% of its residential units that are rent-restricted and are occupied by individuals whose income is 50% or less of area median gross income.
- It is located in a tier five enterprise area and has at least 40% of its residential units that are rent-restricted and are occupied by individuals whose income is 35% or less of area median gross income.

The credit is not taken in one year but is spread out over five years beginning when the federal credit is first claimed for the building. The federal credit is first claimed either when the building is placed in service, or the next year, at the taxpayer's election. The federal credit is taken over ten years.

The federal credit requires that either (1) at least 20% of the residential units are rent-restricted and occupied by individuals whose income is 50% or less of area median gross income or (2) at least 40% of the residential units are rent-restricted and occupied by individuals whose income is 60% or less of area gross income. By limiting the State credit to projects that are either in distressed areas or serve lower-income residents, the bill is designed to steer investments toward these projects.

The federal credit requires that the low-income housing be used for that purpose for at least 30 years. If this requirement is not met, all or part of the taxpayer's credit is recaptured. Under the proposed State credit, if federal recapture is required, the taxpayer forfeits the North Carolina credit to the same extent.

Under federal law, a limited amount of credit is allowed to each state each year, and these credits are allocated among applicants based on selection criteria designed to reward projects that will serve the lowest income tenants for the longest periods. At least 10% of the credits each year must be set aside for projects sponsored by nonprofits. The amount of federal credit allocated to North Carolina will be $9.2 million for the 2000 through 2002 tax years and is expected to increase to $13 million for the 2003 and 2004 tax years. By limiting the State credit to 25% of the federal credit, the bill automatically caps the potential revenue loss to the State.

Extend Bill Lee Act Credits to Insurance Company Administrative Offices. This bill would allow all the Bill Lee Act credits to be taken against gross premiums tax, effective beginning in the 1999 tax year. Currently, only the real property credit for central administrative offices may be taken against gross premiums tax.

In 1997, the General Assembly (1) extended the Bill Lee Act credits to central administrative offices that created at least 40 new jobs and (2) created a new tax credit for taxpayers wh

purchase or lease real property to be used as central administrative office property. In 1998, the General Assembly allowed the real property credit for central administrative offices to be taken against the gross premiums tax as well as against the income tax and the corporate franchise tax. Insurance companies pay gross premiums tax in lieu of income tax. The 1998 legislation did not change the rule that the other Bill Lee Act credits could be taken against only income tax and corporate franchise tax. The 1998 change created a situation in which insurance companies and other businesses are treated differently with respect to central administrative offices. A business, other than an insurance company, that builds a central administrative office can take against income tax not only the real property credit for that office, but also the jobs credit, the investment tax credit, and the worker training credit. An insurance company can take against gross premiums tax only the real property credit, but not the jobs credit, the investment tax credit, or the worker training credit. By extending the other Bill Lee Act credits to gross premiums tax, this bill would provide uniform treatment for insurance companies and other businesses that build central administrative offices.

Quality Jobs Assurance. The purpose of the original William S. Lee Act was to provide incentives for "high quality jobs." Accordingly, under current law, only certain industries qualify for the Bill Lee Act credits and a taxpayer must meet a wage standard with respect to the jobs at the locations for which it claims a credit. This bill would add three additional standards to assure that credits are allowed only with respect to high quality jobs. First, the taxpayer would be required to pay at least 50% of basic health insurance coverage for the full-time positions for which it takes a credit. Second, the taxpayer would be required to certify that the business location with respect to which it claims a credit has not had and will not have a materially adverse effect on the environment. Third, the taxpayer would be required to certify that the business location with respect to which it claims a credit has no outstanding or unresolved OSHA citations and has had no serious violation within the last three years. The Department of Environment and Natural Resources and the Department of Labor would be authorized to audit the environmental and OSHA certifications, respectively, and report to the Department of Revenue if they determine that a certification was inaccurate.

Application and Fee Changes. A taxpayer that wishes to claim a Bill Lee Act credit must apply to the Department of Commerce for certification that it meets the eligibility requirements for the credit. The application must include information to enable the Department of Commerce to determine the applicant's eligibility, and be accompanied by a $75 fee to defray part of the costs of administering the program. This bill would require applicants to include information necessary to enable the Department of Commerce to provide data required in its periodic reports to the General Assembly. This data will assist the General Assembly in evaluating the cost effectiveness of the Bill Lee Act credits. The bill would also eliminate the $75 fee for credits claimed with respect to enterprise tier one and two counties. For other credits, the fee is increased to $500 per credit claimed, not to exceed $1,500 per taxpayer. The Department of Commerce would retain ¼ of the fee proceeds for the costs of administering the program, and remit the remaining proceeds to the Department of Revenue for its use in administering and auditing the Bill Lee Act credits. These changes become effective 30 days after the bill becomes law.

Clarify Business Definitions and Refunds. This bill would clarify the statutory definitions of the types of businesses that are eligible for the Bill Lee Act credits. In 1998, the General Assembly changed the statutory references from the Standard Industrial Classifications (SIC) to the North American Industrial Classification System (NAICS) to conform to the federal system adopted effective January 1, 1999. This system is used to classify most of the data available about industries or kinds of business in the economy. Upon review of the NAICS system, it was discovered that further terminology changes were needed to the Bill Lee Act definitions to assure that the credits would be available to the types of businesses covered by the prior law definitions.

Section 9 of this bill would clarify that interstate air carriers are allowed a partial refund of sales taxes paid on fuel. This clarification will not change the way the law is currently administered.

Industrial Development Fund Environmental Certification. Section 17 of this bill would require, as a condition for funding from the Industrial Development Fund (Building Renovation Fund), that a project receive certification from the Department of Environment and Natural Resources that it will not have a materially adverse effect on the environment. This change would become effective July 1, 1999.

1999 TIER	COUNTY	POPULATION GROWTH 1990-1997		PER CAPITA INCOME 3 YR AVG. 1994-1996		UNEMP.-36 MTH AVG JULY '95-JUNE '98		DISTRESSED COUNTY SUM	POPULATION	POVERTY RATE
		% CHANGE	RANK	INCOME	RANK	RATE	RANK	1997-1998	1999	1990
XXX	NORTH CAROLINA	12.00%	XXX	$21,081	XXX	3.97%	XXX	XXX	7,660,519	13.0
1	TYRRELL COUNTY	-4.77%	99	$15,068	93	8.91%	93	285	3,590	25.0
1	GRAHAM COUNTY	4.29%	78	$14,109	97	11.22%	99	274	7,577	24.9
1	HALIFAX COUNTY	0.59%	91	$15,687	88	9.07%	95	274	55,091	25.6
1	EDGECOMBE COUNTY	-2.29%	95	$16,654	77	10.27%	98	270	54,696	20.9
1	RICHMOND COUNTY	2.56%	86	$15,812	86	9.39%	96	268	45,894	16.8
1	SWAIN COUNTY	6.44%	64	$13,672	99	16.41%	100	263	12,324	27.6
1	MARTIN COUNTY	2.19%	87	$16,349	79	8.92%	94	260	25,551	22.3
1	WARREN COUNTY	5.07%	73	$13,956	98	7.91%	89	260	18,290	28.2
1	BERTIE COUNTY	-0.68%	93	$15,448	90	6.07%	76	259	20,068	25.9
1	NORTHAMPTON COUNTY	0.01%	92	$16,167	81	7.35%	86	259	20,833	23.6
1	WASHINGTON COUNTY	-5.00%	100	$16,873	72	7.43%	87	259	12,948	20.4
1	HYDE COUNTY	-2.42%	96	$16,977	71	8.08%	90	257	5,268	24.0
1	HERTFORD COUNTY	-2.70%	97	$15,418	91	5.15%	61	249	21,594	25.0
2	MITCHELL COUNTY	2.05%	88	$16,637	78	6.35%	78	244	14,764	16.0
2	ROBESON COUNTY	7.16%	58	$15,295	92	8.47%	92	242	114,644	24.1
2	BEAUFORT COUNTY	2.65%	85	$17,374	62	7.91%	88	235	43,596	19.5
2	ASHE COUNTY	6.25%	66	$17,108	67	9.43%	97	230	24,041	18.4
2	SCOTLAND COUNTY	3.68%	81	$17,261	65	7.07%	84	230	35,330	18.6
2	ANSON COUNTY	1.62%	89	$17,590	57	7.06%	83	229	23,922	17.6
2	YANCEY COUNTY	6.03%	67	$14,994	94	5.54%	66	227	16,588	18.7
2	ONSLOW COUNTY	-1.66%	94	$14,757	95	3.73%	34	223	149,341	12.1
2	MONTGOMERY COUNTY	4.80%	74	$16,688	76	5.95%	72	222	24,820	14.4
2	PERQUIMANS COUNTY	4.34%	77	$15,540	89	4.57%	51	217	11,129	21.5
2	ALLEGHANY COUNTY	0.88%	90	$18,376	45	6.44%	80	215	9,714	20.1
2	COLUMBUS COUNTY	4.76%	75	$17,513	58	6.64%	81	214	52,510	24.0
2	VANCE COUNTY	5.37%	70	$17,493	59	7.30%	85	214	41,771	19.6
2	CHEROKEE COUNTY	11.14%	35	$14,439	96	6.68%	82	213	23,000	20.4
2	RUTHERFORD COUNTY	4.35%	76	$17,608	56	6.00%	74	206	59,888	12.3

Over

1999 TIER	COUNTY	POPULATION GROWTH 1990-1997		PER CAPITA INCOME 3 YR AVG. 1994-1996		UNEMP.-36 MTH AVG JULY '95-JUNE '98		DISTRESSED COUNTY SUM	POPULATION	POVERTY RATE
		% CHANGE	RANK	INCOME	RANK	RATE	RANK	1997-1998	1999	1990
3	JACKSON COUNTY	8.56%	51	$16,288	80	5.55%	67	198	29,621	16.7
3	BLADEN COUNTY	5.76%	68	$17,740	54	5.99%	73	195	30,752	21.9
3	PAMLICO COUNTY	5.32%	71	$16,749	75	4.48%	48	194	12,126	18.9
3	CLAY COUNTY	12.73%	29	$15,797	87	6.27%	77	193	8,340	17.9
3	WILSON COUNTY	4.03%	79	$20,026	22	8.19%	91	192	69,499	19.7
3	LENOIR COUNTY	3.09%	83	$18,858	37	5.80%	69	189	59,133	20.0
3	ROCKINGHAM COUNTY	3.59%	82	$18,539	41	4.92%	57	180	89,998	12.2
3	CHOWAN COUNTY	5.28%	72	$17,685	55	4.50%	49	176	14,392	17.7
3	CLEVELAND COUNTY	7.01%	59	$18,527	42	6.02%	75	176	92,138	11.0
3	CASWELL COUNTY	6.57%	61	$15,812	85	3.51%	29	175	22,591	16.2
3	STANLY COUNTY	6.50%	62	$18,140	50	5.37%	63	175	56,180	11.0
3	MADISON COUNTY	8.12%	55	$16,002	83	4.06%	36	174	18,773	20.4
3	WAYNE COUNTY	8.14%	54	$17,042	69	4.52%	50	173	115,250	15.2
3	HOKE COUNTY	26.36%	5	$12,323	100	5.37%	64	169	30,510	21.1
3	MCDOWELL COUNTY	10.49%	40	$17,389	61	5.50%	65	166	41,008	11.4
3	AVERY COUNTY	3.99%	80	$19,433	30	4.72%	53	163	15,674	14.6
3	CAMDEN COUNTY	6.84%	60	$16,792	74	3.48%	28	162	6,365	16.1
3	PASQUOTANK COUNTY	10.27%	42	$17,333	64	4.83%	56	162	35,569	19.7
3	GATES COUNTY	6.49%	63	$15,813	84	2.94%	13	160	10,058	15.7
3	JONES COUNTY	-4.53%	98	$19,801	24	4.15%	38	160	8,709	20.2
3	PERSON COUNTY	9.08%	49	$18,353	47	5.13%	60	156	33,708	13.0
3	BRUNSWICK COUNTY	27.88%	3	$16,813	73	6.43%	79	155	69,453	15.4
3	CUMBERLAND COUNTY	7.48%	57	$18,046	51	4.46%	47	155	297,542	14.4
3	HAYWOOD COUNTY	9.22%	47	$18,257	49	5.08%	58	154	52,407	12.7
3	GASTON COUNTY	2.85%	84	$20,547	20	4.30%	46	150	181,713	10.6
3	WILKES COUNTY	6.25%	65	$18,614	40	4.26%	45	150	64,116	13.3

1999 TIER	COUNTY	POPULATION GROWTH 1990-1997		PER CAPITA INCOME 3 YR AVG. 1994-1996		UNEMP.-36 MTH AVG JULY '95-JUNE '98		DISTRESSED COUNTY SUM	POPULATION	POVERTY RATE
		% CHANGE	RANK	INCOME	RANK	RATE	RANK	1997-1998	1999	1990
4	CALDWELL COUNTY	5.69%	69	$18,641	39	4.00%	35	143	76,249	10.8
4	CRAVEN COUNTY	8.40%	52	$19,198	33	4.60%	52	137	90,373	13.6
4	BURKE COUNTY	9.78%	44	$18,301	48	4.21%	40	132	85,020	10.1
4	SURRY COUNTY	8.31%	53	$19,246	32	4.24%	43	128	68,297	11.4
4	GRANVILLE COUNTY	11.64%	33	$17,200	66	3.41%	27	126	44,253	13.5
4	HARNETT COUNTY	19.94%	10	$16,113	82	3.73%	33	125	85,272	17.5
4	PENDER COUNTY	28.95%	2	$17,452	60	5.17%	62	124	39,560	17.2
4	SAMPSON COUNTY	11.32%	34	$20,118	21	5.60%	68	123	54,260	20.7
4	CARTERET COUNTY	12.38%	30	$18,729	38	4.78%	54	122	60,719	11.6
4	DUPLIN COUNTY	10.21%	43	$20,644	19	5.08%	59	121	45,126	19.1
4	NASH COUNTY	13.60%	27	$19,954	23	5.87%	70	120	89,865	13.6
4	GREENE COUNTY	14.74%	22	$17,369	63	3.67%	32	117	18,348	19.1
4	WATAUGA COUNTY	10.57%	39	$17,097	68	2.57%	9	116	41,582	21.5
4	FRANKLIN COUNTY	19.43%	11	$16,993	70	3.60%	31	112	45,346	14.5
4	MACON COUNTY	17.71%	15	$17,846	53	4.25%	44	112	28,905	16.5
4	PITT COUNTY	11.94%	32	$19,776	25	4.82%	55	112	125,017	22.1
4	DARE COUNTY	20.40%	9	$19,570	29	5.91%	71	109	29,032	8.3
4	LINCOLN COUNTY	15.06%	21	$18,929	36	4.16%	39	96	60,193	9.6
4	ROWAN COUNTY	11.00%	36	$19,065	35	3.24%	24	95	126,455	9.4
4	ALEXANDER COUNTY	12.82%	28	$18,492	43	3.12%	20	91	32,040	9.8
4	TRANSYLVANIA COUNTY	9.10%	48	$19,630	27	2.78%	12	87	28,500	13.5
4	CATAWBA COUNTY	9.40%	45	$22,689	11	3.59%	30	86	132,869	7.1
4	YADKIN COUNTY	15.46%	19	$18,448	44	3.17%	23	86	36,468	12.0
4	DAVIDSON COUNTY	10.87%	37	$19,269	31	2.96%	15	83	144,259	9.8
4	ALAMANCE COUNTY	10.73%	38	$21,074	17	3.35%	26	81	123,500	8.9

Over

1999 TIER	COUNTY	POPULATION GROWTH 1990-1997		PER CAPITA INCOME 3 YR AVG. 1994-1996		UNEMP.-36 MTH AVG JULY '95-JUNE '98		DISTRESSED COUNTY SUM	POPULATION	POVERTY RATE
		% CHANGE	RANK	INCOME	RANK	RATE	RANK	1997-1998	1999	1990
5	STOKES COUNTY	15.12%	20	$18,011	52	2.48%	5	77	44,431	9.8
5	BUNCOMBE COUNTY	9.35%	46	$21,723	14	3.00%	16	76	194,516	11.4
5	FORSYTH COUNTY	8.01%	56	$26,387	3	2.95%	14	73	294,026	10.5
5	LEE COUNTY	16.92%	17	$21,670	15	4.23%	41	73	50,396	14.7
5	CURRITUCK COUNTY	20.56%	8	$18,356	46	3.02%	18	72	17,326	10.1
5	RANDOLPH COUNTY	14.08%	25	$19,697	26	3.06%	19	70	126,665	8.3
5	DURHAM COUNTY	8.72%	50	$23,605	9	2.53%	7	66	202,426	11.9
5	GUILFORD COUNTY	10.29%	41	$25,412	4	3.14%	21	66	393,496	10.1
5	DAVIE COUNTY	11.97%	31	$23,791	8	3.32%	25	64	32,352	8.4
5	NEW HANOVER COUNTY	21.88%	7	$21,785	13	4.24%	42	62	153,326	14.0
5	IREDELL COUNTY	17.22%	16	$20,870	18	3.15%	22	56	113,751	9.4
5	MOORE COUNTY	17.80%	13	$24,707	6	4.14%	37	56	72,257	11.1
5	HENDERSON COUNTY	14.16%	24	$22,764	10	2.58%	10	44	81,856	10.5
5	UNION COUNTY	26.02%	6	$19,105	34	2.43%	4	44	113,113	18.4
5	CABARRUS COUNTY	17.76%	14	$22,182	12	3.01%	17	43	121,801	8.1
5	CHATHAM COUNTY	16.44%	18	$21,493	16	2.48%	6	40	46,996	9.7
5	JOHNSTON COUNTY	26.91%	4	$19,608	28	2.55%	8	40	109,865	14.3
5	POLK COUNTY	13.72%	26	$24,612	7	2.33%	3	36	16,920	9.6
5	ORANGE COUNTY	14.28%	23	$25,177	5	1.55%	1	29	110,581	13.9
5	MECKLENBURG COUNTY	19.04%	12	$28,715	1	2.76%	11	24	638,570	9.6
5	WAKE COUNTY	30.62%	1	$27,006	2	1.90%	2	5	593,937	8.4

NOTES

1. Population growth was determined using years 1990 and 1997 as reported on LINC.
2. Per Capita Income is a three year average from 1994-1996 using BEA data.
3. The Unemployment Rate is the average rate from July 1995 to June 1998, not seasonally adjusted, provied by the Labor Market Market Information Division of the Employment Security Commission.

FISCAL IMPACT OF PCS FOR SB 1115
STATE GENERAL FUND ($ MILLIONS)

Description	Effective Date	99-00	00-01	01-02	02-03	03-04	04-05	05-06
Change references to industry classification (technical)	Immed.	-	-	-	-	-	-	-
Subject companies applying for credits to provide for health insurance benefits and meet enviornmental and OSHA standards	1/1/00	-	-	-	-	-	-	-
Extend Bill Lee Act Sunset from 1/1/02 to 1/1/07	1/1/02				-13.1	-19.4	-27.0	-38.1
Close loopholes in definition of State Development Zones	7/1/99	-	0.1	0.1	0.6	0.3	-	-
Establish investment tax credit of 25% of contribution or investment to nonprofit organization in Development Zone ($4 mil. limit)	1/1/00	-	-	-2.5	-4.0	-4.0	-4.0	-4.0
Reorganize application fees for Lee Act credits	7/1/99	NA	NA	NA	NA	NA	NA	NA
Allow tax credit for construction or rehab of low-income housing (25% of federal credit)	1/1/00	-	-	-1.5	-3.4	-5.3	-7.6	-10.1
Require environmental certificate to qualify for Industrial Development Fund	7/1/99	-	-	-	-	-	-	-
Tier 1 & 2 enhancements:								
Extend Lee Act to customer call centers	1/1/00	-	-	-0.6	-1.2	-1.8	-2.4	-2.4
Sales tax refund for machinery & equipment purchased by Bill Lee Act companies	1/1/00		-0.1	-0.2	-0.3	-0.6	-0.8	-1.0
Allow nonprofit insurance companies sales tax refund on construction materials	1/1/00	-	-0.5	-1.0	-0.5	-	-	-
Air Carrier Hubs Incentives:								
1%, $80 sales tax to training equipment	5/1/99	-0.4	-0.4	-0.4	-0.4	-0.4	-0.4	-0.4
Sales tax exemption on repair parts, lubricants, etc.	5/1/99	-1.2	-1.2	-1.2	-1.2	-1.2	-1.2	-1.2
Total-SB 1115		**-1.6**	**-2.1**	**-7.3**	**-23.5**	**-32.4**	**-43.4**	**-57.2**
NA=Data not available at present time								

William S. Lee Quality Jobs & Business Expansion Act

Progress Report
May 1999

North Carolina Department of Commerce
Rick Carlisle, Secretary

ACKNOWLEDGMENTS

Several Commerce Department staff worked to make this report a reality. Jonathan Morgan, Director of Policy & Research, provided analysis and coordinated production of the document. LeAnn Davis, Policy Development Analyst, assisted with analysis, editing, graphics and layout. Avery Johnson, Publications Assistant, helped with final document production.

In addition, the Department would like to thank the members of the William S. Lee Act Incentives Task Force and consultants, Joanne Scharer and Mike Luger, for their analysis, advice and helpful technical assistance.

VISITOR REGISTRATION SHEET

SENATE FINANCE THURSDAY, MAY 20, 1999

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
George Everett	Duke Energy
Kelli Kukuna	DuPont
Bill Rowe	NC Justice Center
Ron Aycock	N.C. Assoc. County Comm.
John Bain	NCDOR
Andy Ellen	NCRMA
Fran Preston	NCRMA
Ed Rego	N.C.A.C.C.
Ralph E Hise Jr	Intern
Amy Fullbright	Hunton & Wms.
Kim Hibbard	NCLM

VISITOR REGISTRATION SHEET

SENATE FINANCE — THURSDAY, MAY 20, 1999

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Catherine Davis	ElectriCities
Alice Garland	ElectriCities
Marty Wiggins	NC State Pol. Sci.
Paul Green	OSBM
Barbara Wyse	Sierra Club
Tammy Johnson	Zebulon D. Alley
David Simmons	" "
Garrett Perdue	" "
Gardner Payne	Governor's Office
Lennie Collins	NC DOR
Patti Seawell	NC DOR

VISITOR REGISTRATION SHEET

SENATE FINANCE — THURSDAY, MAY 20, 1999

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Charles Collin	DOR
Andy Sasol	DOR
Greg Radford	DOR
LeAnn Davis	Commerce
Jonathan Morgan	DOC
Phyllis Stephens	NCDOA
Violet Bajour.	Staff [NCGA]
Bill Owens	N.C. House
[illegible]	[illegible]
Joan Myers	NCEITA
Shawna Barnett	NCEITA

VISITOR REGISTRATION SHEET

SENATE FINANCE THURSDAY, MAY 20, 1999

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Herb Crenshaw	NCGITA

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Thursday, May 20, 1999

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

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

S.B. **1115** Amend Bill Lee Act/Incentives.

Draft Number:	PCSX6678
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment: SB1115

AGENDA
SENATE FINANCE MEETING
Tuesday, May 25, 1999
1:30 PM – ROOM 544

MEETING CALLED TO ORDER – SENATOR HOYLE

INTRODUCTION OF PAGES

BILLS TO BE CONSIDERED:

HB 708 – Airport Authority Refunds – Rep. Cox
HB 852 - Hickory/Mocksville Annexations - Rep.Buchanan
HB 899 - Real Estate Licensure - Rep.Bridgeman
HB 1009 - Funds for Agricultural Research - Reps. Hill,Brown,Mitchell

MEETING ADJOURNED.

SENATE FINANCE COMMITTEE

TUESDAY, MAY 25, 1999

1:30 PM – ROOM 544

The Senate Finance Committee met on Tuesday, May 25, 1999, at 1:30 PM in Room 544 with Senator Hoyle presiding. There were 20 committee members present. Brooke Agner from Cherryville, North Carolina, sponsored by Senator Hoyle and Jason Dixon-Acosta from Burlington, North Carolina, sponsored by Senator Webster were introduced as the pages for the Meeting. Candice Ward was welcomed as a new member of the Senate Sergeant-at-Arms.

HB 1009 – Funds for Agricultural Research

Representative Hill was recognized to explain this bill and at the conclusion of his explanation, Senator Soles moved to give the bill a "Favorable Report", motion passed. Copy of Bill and supporting documents included in the minutes.

SB 708 – Airport Authority Refunds

Senator Harris was recognized to explain this bill for Representative Cox and at the conclusion of his explanation, Senator Weinstein moved to give the bill a "Favorable Report", motion passed. Copy of Bill and supporting documents included in the minutes.

HB 852 – Hickory/Mocksville Annexations

Representative Buchanan was recognized to explain the bill. Senator Hoyle sent forth amendment #1 and moved that it be adopted, motion passed. Senator Soles sent forth amendment #2 and moved that it be adopted, motion passed. Senator Allran sent forth amendment #3 and moved that it be adopted, motion passed. Senator Clodfelter moved to give the Bill a "Favorable Report as amended and rolled into a Committee Substitute", motion passed. Copy of Bill and supporting documents include in the minutes.

HB 899 – Real Estate Licensure

Representative Bridgeman was recognized to explain the bill. After his explanation, there was considerable discussion of the increase in hours to obtain a Real Estate License. Mr. Don Walston of Howard, Perry and Walston Realty and the owner of a Real Estate School and Mr. John Morisey of Fonville and Morisey Realty and the owner of a Real Estate School, both spoke in opposition to increasing the hours from 30 to 75. They both stated that they would prefer only an increase to 65 hours. Mr. Paul Outlaw of the N. C. Real Estate Board spoke in support of the bill. After further discussion and debate, the

Chairman of the Senate Finance Committee decided to displace the bill for discussion until Tuesday, June 1st, 1999.

Meeting was adjourned.

David W. Hoyle, Co-Chair

John H. Kerr, III Co-Chair

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

Visitors' Sign Up Sheet is Attachment #1
Committee Report dated May 25, 1999 is Attachment #2
Committee Report dated May 26, 1999 is Attachment #3

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1009*

Short Title: Funds for Agriculture Research. (Public)

Sponsors: Representatives Hill, Brown, Mitchell; Yongue, and Bonner.

Referred to: Agriculture.

April 13, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FUNDS FOR AGRICULTURAL RESEARCH BY INCREASING THE ASSESSMENT ON FERTILIZER, COMMERCIAL FEED, OR THEIR INGREDIENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 106-568.2 reads as rewritten:

"**§ 106-568.2. Policy as to referendum and assessment.**

It is declared to be in the public interest and highly advantageous to the economic development of the State that farmers, producers, and growers of agricultural commodities using commercial feed and/or fertilizers or their ingredients be permitted by referendum held among themselves to levy upon themselves an assessment of ~~ten cents (10¢)~~ fifteen cents (15¢) per ton on mixed fertilizers, commercial feed, and their ingredients (except lime and land plaster) to provide funds through the Agricultural Foundation to supplement the established program of agricultural research and dissemination of research facts.

It is further declared to be in the public interest and highly advantageous to the economic development of the State that tobacco producers be permitted by referendum to levy upon themselves an assessment not to exceed ten cents (10¢) per hundred pounds of tobacco marketed to provide funds through the North Carolina Tobacco Research Commission for research and dissemination of research facts concerning tobacco."

Section 2. G.S. 106-568.8(a) reads as rewritten:

"(a) Fertilizer and feed assessments. In the event two-thirds or more of the eligible farmers and producers participating in said referendum vote in favor of such

assessment, then said assessment shall be collected for a period of six years under rules, regulations, and methods as provided for in this Article. The assessments shall be added to the wholesale purchase price of each ton of fertilizer, commercial feed, and/or their ingredients (except lime and land plaster) by the manufacturer of said fertilizer and feed. The assessment so collected shall be paid by the manufacturer into the hands of the North Carolina Commissioner of Agriculture on the same tonnage and at the same time and in the same manner as prescribed for the reporting of the inspection tax on commercial feeds and fertilizers as prescribed by G.S. 106-284.40 and 106-671. The Commissioner shall then remit ~~said ten cents (10¢) per ton~~ the assessment for the total tonnage as reported by all manufacturers of commercial feeds, fertilizers, and their ingredients to the treasurer of the North Carolina Agricultural Foundation, Inc., who shall disburse such funds for the purposes herein enumerated and not inconsistent with provisions contained in the charter and bylaws of the North Carolina Agricultural Foundation, Inc. Signed copies of the receipts for such remittances made by the Commissioner to the treasurer of the North Carolina Agricultural Foundation, Inc., shall be furnished the Commissioner of Agriculture, the North Carolina Farm Bureau Federation, and the North Carolina State Grange. The treasurer of the North Carolina Agricultural Foundation, Inc., shall make an annual report at each annual meeting of the Foundation directors of total receipts and disbursements for the year and shall file a copy of said report with the Commissioner of Agriculture and shall make available a copy of said report for publication.

It shall be the duty of the Commissioner of Agriculture to audit and check the remittances of ~~ten cents (10¢) per ton~~ the assessment by the manufacturer to the Commissioner in the same manner and at the same time as audits and checks are made of remittances of the inspection tax on commercial feeds and fertilizers.

Any commercial feed excluded from the payment of the inspection fee required by G.S. 106-284.40 shall nevertheless be subject to the assessment provided for by this Article and to quarterly tonnage reports to the Department of Agriculture and Consumer Services as provided for in G.S. 106-284.40(c)."

Section 3. This act is effective when it becomes law; however, the increased assessment of five cents (5¢) per ton under G.S. 106-568.2, as amended by Section 1 of this act, shall not be levied nor collected before January 1, 2001.

HOUSE BILL 1009:
Funds for Agriculture Research

BILL ANALYSIS

Committee: Senate Finance
Date: May 24, 1999
Version: 1st Edition

Introduced by: Rep. Hill
Summary by: Martha K. Walston
Committee Counsel

SUMMARY: ***House Bill 1009 would allow farmers to vote on whether to levy an assessment of fifteen cents (15¢) per ton on mixed fertilizers, commercial fee, and their ingredients. This assessment would be a five cent (5¢) increase over the current assessment amount. The proceeds of the assessment would be used by the Agricultural Foundation for agricultural research and dissemination of research facts. The bill becomes effective when it becomes law; however, the increased assessment of five cents (5¢) per ton could not be levied before January 1, 2001.***

House Bill 1009 is identical to Senate Bill 1082 introduced by Senator Albertson. Senate Bill 1082 is now in House Agriculture.

CURRENT LAW AND BILL ANAYSIS: In 1951, the General Assembly gave North Carolina farmers the ability to levy upon themselves as assessment on' mixed fertilizers, commercial feed, and their ingredients, except lime and land plaster. The purpose of the assessment is to provide funds for agricultural research and dissemination of research facts through the North Carolina Agricultural Foundation. For the assessment to be levied, two thirds or more of the farmers voting in the referendum must vote in favor of the levying and collection of the assessment. If two thirds of the farmers vote in favor of the assessment, the assessment is levied annually for the next six years. A new referendum may be called and conducted during the sixth year on the question of whether or not the assessment shall be continued for the next ensuing six years. The sixth year period ends this year. In the past, the assessment has been supported by a 90% vote in favor of the assessment. The current assessment amount is ten cents (10¢). **House Bill 1009 would increase the assessment amount five cents (5¢), from ten cents (10¢) to fifteen cents (15¢).** This amount has not been increased since 1981.

The governing boards of the North Carolina Farm Bureau Federation, the North Carolina State Grange, and the North Carolina Agricultural Foundation, Inc., arrange for and manage the referendum. They must publicly announce in each county the date, hours, and polling places in that county for voting in the referendum at least 60 days before the date the referendum will be held. They must also disclose the amount of the proposed assessment and the general purposes for which the funds collected will be used.

The manufacturer of the fertilizer and feed adds the assessment to the wholesale purchase price of each ton of fertilizer, commercial feed, and their ingredients. The manufacturer collects the assessment amount and remits it to the North Carolina Commissioner of Agriculture on the same tonnage and at the same time and in the same manner as prescribed for the reporting of the inspection tax on commercial feed. The inspection tax is due by the last day of January, April, July, and October of each year. The Commissioner then remits the assessment to the treasurer of the North Carolina Agricultural Foundation, Inc. If a farmer does not want to pay the assessment, the farmer may request a refund in writing from the North Carolina Agricultural Foundation. The refund must be requested within 30 days from the date the assessment is paid.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: H.B. 1009 Funds for Agricultural Research

SHORT TITLE: Funds for Agricultural Research

SPONSOR(S): Representatives Hill, Brown, Mitchell, Yongue, and Bonner.

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
General Fund		*** No General Fund Impact ***			
N.C. Agricultural Foundation		**$187,500**	**$375,000**	**$375,000**	**$375,000**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: N.C. Department of Agriculture, N.C. Agricultural Foundation, North Carolina State University.

EFFECTIVE DATE: The act is effective when it becomes law. The increased assessment shall not be levied nor collected before January 1, 2001.

BILL SUMMARY: Currently farmers, producers, and growers of agricultural commodities pay a $0.10 assessment on each ton of mixed fertilizers, commercial feed, and the ingredients for feed and fertilizer. This assessment is added to the wholesale purchase price. Lime and land plasters are exempt from the assessment. The assessment was levied after a required referendum vote of eligible farmers and producers. The levy must be renewed by referendum every six years. The proceeds of the assessment are collected by the Department of Agriculture and deposited in the North Carolina Agricultural Foundation. The bill increases the assessment on these items to $0.15 per ton.

ASSUMPTIONS AND METHODOLOGY: Funds from the assessment are deposited with the North Carolina Agricultural Foundation, Inc. The Agricultural Foundation is a non-profit, charitable and educational corporation as defined in Internal Revenue Service code 501(c) 3. The Agricultural Foundation was formed in 1944 "to aid and promote, by financial assistance and otherwise, all types of education and research in agriculture at or through the North Carolina State University at Raleigh." North Carolina State University administers the program.

According to documents from N.C. State University, total cash receipts for the Foundation were approximately $9.5 million in 1998. This was a significant increase from the $6.2 million experienced the previous year. Approximately $700,000 - $775,000 of this amount came from the $0.10 assessment on mixed fertilizers and commercial feed. This assessment is generally referred to in the agricultural community as "nickels for know how".

Officials at N.C. State University expect "nickels for know how" income to continue to hover at the $700,000 - $775,000 range for the next five years. Assuming the farmers approve the fifty-percent increase (from $0.10 to $0.15 per ton), the added revenue generated by the bill will be approximately $375,000.

Under current law farmers must vote on the "nickels for know now" funding every six years. The next referendum must be held in 1999. Generally voting is done in October or November. For the new rate, or any rate, to apply the measure must pass with a 2/3-majority vote. N.C. State reports that the referendum has always been endorsed by at least 90% of those voting. Therefore, Fiscal Research assumes, for the purposes of the note, that this measure will also be approved. The 2000-01 fiscal impact has been adjusted to account for the January 1 effective date.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Linda Struyk Millsaps

APPROVED BY: Tom Covington

DATE: Monday, May 10, 1999

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 708*
Second Edition Engrossed 5/10/99

Short Title: Sanford-Lee Airport Authority Refunds. (Local)

Sponsors: Representative Cox.

Referred to: Local Government II.

March 30, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE SANFORD-LEE REGIONAL AIRPORT AUTHORITY AND THE BRUNSWICK COUNTY AIRPORT COMMISSION TO RECEIVE SALES TAX REFUNDS.

The General Assembly of North Carolina enacts:

Section 1. Section 3(a) of Chapter 903 of the 1991 Session Laws is amended by adding a new subdivision to read:

"Sec. 3. (a) The authority shall, in addition to the powers conferred in Chapter 63 of the General Statutes of North Carolina, have the following powers:

(11) To receive refunds of sales and use taxes under G.S. 105-164.14(c)."

Section 2. Section 2 of Chapter 411 of the 1961 Session Laws is amended by adding a new subdivision to read:

"**Sec. 2.** Said Airport Commission shall, in addition to the powers conferred in Chapter 63 of the General Statutes of North Carolina, have the following powers:

. . .

(5) To receive refunds of sales and use taxes under G.S. 105-164.14(c)."

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

HOUSE BILL 708:
Sanford-Lee Airport Authority Refunds

BILL ANALYSIS

Committee: Senate Finance
Date: May 24, 1999
Version: 2nd Edition

Introduced by: Representative Cox
Summary by: Cindy Avrette and Martha Walston, Staff Attorneys, and Mary Shuping, Rsch. Asst.

SUMMARY: ***House Bill 708 allows the Sanford-Lee County Regional Airport Authority to receive an annual refund of State and local sales taxes paid by it. The second version of House Bill 708 was amended in the House to add the Brunswick County Airport Commission. Senate Bill 571, introduced by Senator Harris, is the companion bill. It differs from House Bill 708 in that it does not contain the reference to the Brunswick County Airport Commission. Both bills are in Senate Finance.***

CURRENT LAW: A local airport authority created by the General Assembly is entitled to an annual refund of State and local sales taxes paid by it if it has at least one of the following characteristics:

- It has all of the rights of a municipality.
- A local act of the General Assembly declares it to be a municipality.
- A local act of the General Assembly specifically authorizes it to receive a refund.

The refunds apply to direct purchases of tangible personal property. They also apply to sales and use tax liability indirectly incurred by a local regional airport authority on building materials, supplies, fixtures, and equipment that become a part of any building that is owned or leased by the authority and is being built, altered, or repaired for use by the authority. To obtain a sales and use tax refund, an authority must request the refund in writing within six months after the end of its fiscal year. The request must include any information and documentation required by the Secretary of Revenue.

BILL ANALYSIS: Section 1 of House Bill 708 amends the local act that created the Sanford-Lee Regional Airport Authority in 1991 to specify that it may receive refunds of sales and use taxes paid under G.S. 105-164.14(c). Under this statute, 25 types of governmental entities, including local regional airport authorities that meet one of the conditions listed above, may receive a sales tax refund of the taxes paid on items they purchased subject to sales and use tax, other than sales of electricity, piped natural gas, and telecommunications services.
Section 2 amends the local act that created the Brunswick County Airport Commission to specify the same sales and use tax refund.
There are approximately 35 local regional airport authorities. At least half of those are entitled to an annual sales tax refund.

BACKGROUND: Prior to 1961, the State granted sales and use tax exemptions to State and local governmental entities, including public schools, and nonprofit entities. Because of the number of abuses involving the exemption and the difficulty of auditing these transactions, the legislature changed the law in 1961 to allow refunds as opposed to outright exemptions. The statute lists those entities that are entitled to a refund. Nonprofit educational institutions, as well as most other nonprofit entities, are entitled to a semiannual refund of State and local sales and use tax.

FRD DRAFT
INTERNAL USE ONLY

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: H.B. 708 (2nd Edition of the Bill)

SHORT TITLE: Sanford-Lee Airport Authority Refunds

SPONSOR(S): Rep. Cox

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
General Fund	**($1500)**	**($1500)**	**($1500)**	**($1500)**	**($1500)**
Local Governments	**($750)**	**($750)**	**($750)**	**($750)**	**($750)**
Sanford-Lee Airport Auth.	**$900**	**$900**	**$900**	**$900**	**$900**
Brunswick County A.A.	**$1350**	**$1350**	**$1350**	**$1350**	**$1350**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue, Sales Tax Division, and Sanford-Lee Airport Authority, Brunswick County Airport Authority.

EFFECTIVE DATE: When it becomes law.

BILL SUMMARY: Under G.S. 105-164.14(c), certain government entities are eligible for refund of the sales taxes they paid on purchases in the previous fiscal year. This refund is issued annually. The types of government organizations that are currently eligible for the refund include city and county governments, municipal sewer districts, water and sewer authorities, public health authorities, a council of government, schools, and regional pubic transportation authorities. The law also states that local airport authorities, created by the General Assembly, may be eligible for the refund if the authority meets at least one of the following criteria: it has all the rights of a municipality, a local act of the General Assembly declares it to be a municipality, or a local act of the General Assembly specifically authorizes it to receive the refund. This bill is a local act that would specifically authorize the Sanford – Lee Airport Authority and the Brunswick Airport Authority to receive the sales tax refund.

ASSUMPTIONS AND METHODOLOGY: The bill impacts two airport authorities: Sanford-Lee and Brunswick County.

Sanford-Lee: Prior to FY 1995-96 the Sanford – Lee Airport Authority has been receiving a sales tax refund. Airport officials estimate that this refund was approximately $500 - $700 per year. In 1996 the Sales Tax Division of the Department of Revenue notified the Sanford – Lee Airport Authority that they were ineligible to receive the refund. The Airport Authority has not received a refund since that time.

According to the Sanford Director of Finance, who maintains the authority's financial records, in FY 1997-98 the Authority made taxable purchases of $12,185. As such, the total sales tax charged was $731 ($12,185 X 6%). While the Authority has only paid $578 in sales taxes this year, this number is expected to return to near $750. (The airport authority is in the process of closing their existing facility, and opening a new airport. As such, it appears they are delaying many of their taxable purchases until the new facility is open. The construction costs are being funded primarily through federal grants and are handled as a federal government purchase. As such, a change in the status of the airport authority will have no impact on construction related purchases).

Assuming the authority continues to make approximately $12,500 to $15,000 in taxable purchases each year, total lost tax revenue would be approximately $750 to $900 per year. Two-thirds of this revenue loss ($500 to $600) will be to the State and one-third ($250 to $300) will be to local governments. The larger number in the range in used for estimate purposes.

Brunswick County: According to the Brunswick County Finance Office, because of the structure of state and federal airport grants, all major construction dollars for the airport are handled by the county. Therefore, the purchases for major construction projects will also be handled by the county, which already receives a sales tax refund. Day to day purchases are made directly by the Airport Authority. The Authority estimates their sales tax refund for the past fiscal year would have been $1308.51, if they had been able to claim a refund. They do not anticipate any significant change in this number in the next five years. The fiscal note assumes an annual tax refund of $1350.00. Two-thirds of this amount will be a loss to the state. The balance is a local loss.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Linda Struyk Millsaps

APPROVED BY:

DATE:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 3

HOUSE BILL 852
Committee Substitute Favorable 4/20/99
Third Edition Engrossed 4/23/99

Short Title: Hickory/Mocksville Annexations. (Local)

Sponsors:

Referred to:

April 1, 1999

A BILL TO BE ENTITLED

AN ACT CONCERNING ANNEXATION OF NONCONTIGUOUS AREAS BY THE CITY OF HICKORY, AND ANNEXATION OF CERTAIN DESCRIBED PROPERTY BY THE TOWN OF MOCKSVILLE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-58.1(b)(2) shall not apply to the City of Hickory or the Town of Brookford as to any property if the City or Town has entered into an annexation agreement pursuant to Part 6 of Article 4A of Chapter 160A of the General Statutes with the city to which a point on the proposed satellite corporate limits is closer and that agreement states that the other city will not annex the property, except that this modification shall not apply to the boundary agreement between the City of Hickory and the City of Newton dated May 7, 1996.

Section 2. The following described property is added to the corporate limits of the Town of Mocksville:

Beginning at a concrete monument set, said monument being located N 59° 50' 17" W 2511.7' from the intersection of North Main St. and Campbell Road in the Town of Mocksville, North Carolina, also being further located N° 02 27' 33" E 71.62' from the Southeast corner of a Mocksville Annexation Map as recorded in Plat Book 6, page 131, Davie County Registry, thence;

N 02°27'33" E 549.70', TO A CONCRETE MON. FOUND
N 02°27'33" E 996.50', TO A POINT CL CAMPBELL RD.
N 02°27'33" E 586.50', TO A .75" IRON NORTH SIDE CREEK

		S 61°04'29" E	120.56', TO A POINT IN CREEK
		N 71°42'10" E	327.39', TO A POINT IN CREEK
		N 63°23'29" E	291.04', TO A POINT IN CREEK
		N 77°18'07" E	401.50', TO A POINT IN CREEK
		N 61°34'10" E	240.46', TO A POINT IN CREEK
		N 39°26'56" E	244.24', TO A POINT IN CREEK
		N 58°10'43" E	442.61', TO A POINT IN CREEK
		N 62°22'28" E	193.44', TO A POINT IN CREEK
		N 58°47'38" E	280.10', TO AN AXLE NORTH SIDE CREEK
		S 01°32'31" W	1644.56', TO AN IRON PLACED
		S 40°24'40" W	455.40', TO AN IRON PLACED
		S 31°14'59" W	132.00', TO A 0.75" SOLID IRON FOUND
		N 68°45'01" W	167.34', TO A LEAF SPRING FOUND
		S 42°14'59" W	87.12', TO AN UNMARKED POINT
		S 30°05'50" W	138.05', TO AN UNMARKED POINT
		S 82°30'57" E	211.20', TO A 0.5" IRON FOUND
		S 04°59'04" E	82.78', TO A 0.5" IRON FOUND
		S 28°26'07" E	95.35', TO A 0.5" IRON FOUND
		S 28°12'02" E	100.28', TO A 0.5" IRON FOUND
		S 28°32'14" E	77.59', TO A 0.5" IRON FOUND
		S 53°29'41" E	160.61', TO AN UNMARKED POINT
		S 58°03'55" E	613.64', TO AN IRON PLACED
		S 21°59'37" W	32.15', TO A CONCRETE MON. FOUND
		S 58°16'00" E	33.33', TO A 0.75" IRON FOUND
		S 27°17'18" W	120.04', TO A 1.5" IRON FOUND
		S 27°22'16" W	125.14', TO A CONCRETE MON. FOUND
		S 25°31'34" W	24.55', TO A 0.5" IRON FOUND
		N 62°48'48" W	260.19', TO AN IRON PLACED
		S 27°03'32" W	100.14', TO A 0.5" REBAR FOUND
		S 27°03'46" W	99.65', TO A 0.5" IRON FOUND
		S 27°03'19" W	99.83', TO A 0.5" IRON FOUND
		S 26°59'36" W	296.54', TO A 0.75" IRON FOUND
		S 26°59'46" W	206.54', TO A 0.5" IRON FOUND
		S 01°24'53" W	55.08', TO A CONCRETE MON. SET
		N 59°52'17" W	566.80', TO A CONCRETE MON. SET
	(ARC =	567.07, RADIUS =	5280.00)
		N 28°59'18" E	29.26', TO AN UNMARKED POINT
		N 45°50'52" W	107.94', TO AN UNMARKED POINT
		N 47°20'22" W	107.50', TO A 0.5" IRON FOUND
		S 39°58'19" W	71.28', TO A POINT IN HILLCREST ST.
		S 48°24'43" E	88.38', TO A POINT IN HILLCREST ST.
		N 71°52'36" W	1369.48', TO A CONCRETE MON. SET
	(ARC =	1373.35, RADIUS =	5280.00).

Section 3. This act is effective when it becomes law. Section 1 of this act expires December 31, 1999.

HOUSE BILL 852:
Hickory/Mocksville Annexations

BILL ANALYSIS

Committee:	Senate Finance Committee	**Introduced by:**	Rep. Buchanan and Howard
Date:	May 25, 1999	**Summary by:**	Martha K. Walston
Version:	3rd Edition		Committee Counsel

SUMMARY: ***House Bill 852 is a local bill that gives the City of Hickory or the Town of Brookford the ability to annex property that is closer to the primary corporate limits of the other muncipality than to the primary corporate limits of the annexing municipality, if there is an agreement with the other municipality. House Bill 852 describes the property to be added to the corporate limits of Mocksville. The 3rd Edition of the Bill differs from the original in that it applies the annexation modification to the Town of Brookford and sunsets the annexation modification.***

CURRENT LAW: G.S. 160A-58.1 governs the voluntary annexation of noncontiguous property. Property owners may petition a city for voluntary annexation of noncontiguous property if the property meets all of the following standards.

1. The nearest point on the proposed satellite corporate limits must be not more than 3 miles from the primary corporate limits of the annexing city.
2. No point on the proposed satellite corporate limits may be closer to the primary corporate limits of another city than to the primary corporate limits of the annexing city.
3. The area must be so situated that the annexing city will be able to provide the same services within the proposed satellite corporate limits that it provides within its primary corporate limits.
4. If the area proposed for annexation is a subdivision, all of the subdivision must be included.
5. The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed ten percent (10%) of the area within the primary corporate limits of the annexing city.

BILL ANALYSIS: **Section 1 of House Bill 852** exempts the City of Hickory or the Town of Brookford from the second standard if certain conditions are met. This will allow Hickory to annex an area closer to Brookford if Brookford has agreed in a joint agreement not to annex the area, and it will allow Brookford to annex an area closer to Hickory if Hickory has agreed in a joint agreement not to annex the area. This modification does not apply to the May 7, 1996 boundary agreement between Hickory and Newton. Section 1 is effective when it becomes law and expires December 31, 1999.

Section 2 of House Bill 852 describes the property to be added to the corporate limits of the Town of Mocksville. Section 2 is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 852

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

H852-ARB-2

Page 1 of __

Date _____,1999

Comm. Sub. [YES]
Amends Title []
Third Edition

Senator Hoyle

1 moves to amend the bill on page 1, line 3, by inserting immediately
2 before the comma the phrase "AND THE TOWN OF BROOKFORD".

SIGNED _____
Amendment Sponsor

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

ADOPTED ✓ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 852

AMENDMENT NO. 2
(to be filled in by
Principal Clerk)

H852-ARBX-1

Page 1 of __

Date _____ ,1999

Comm. Sub. [YES]
Amends Title []
Third Edition

Senator Soles

moves to amend the bill on page 3, lines 1 and 2, by rewriting those lines to read:

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

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 852

AMENDMENT NO. 3
(to be filled in by
Principal Clerk)

H852-ARB-3

Page 1 of __

Date _____,1999

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

Senator Allran

moves to amend the bill on page 1, line 12, by inserting the following after the period:
"This section shall have no effect on the ability of the City of Hickory to annex property under Part 4 of Chapter 160A of the General Statutes if the property is closer to the Town of Maiden than it is to the City of Hickory."

and on page 3, line 1, by inserting a new Section 3 immediately before that line to read:
"Section 3. This act shall have no effect on any cases pending in the courts in this State.";

and by renumbering the remaining section accordingly.

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 852
Committee Substitute Favorable 4/20/99
Third Edition Engrossed 4/23/99
Proposed Senate Committee Substitute H852-PSCS8136-LA

Short Title: Hickory/Mocksville Annexations. (Local)

Sponsors:

Referred to:

April 1, 1999

A BILL TO BE ENTITLED

AN ACT CONCERNING ANNEXATION OF NONCONTIGUOUS AREAS BY THE CITY OF HICKORY AND THE TOWN OF BROOKFORD, AND ANNEXATION OF CERTAIN DESCRIBED PROPERTY BY THE TOWN OF MOCKSVILLE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-58.1(b)(2) shall not apply to the City of Hickory or the Town of Brookford as to any property if the City or Town has entered into an annexation agreement pursuant to Part 6 of Article 4A of Chapter 160A of the General Statutes with the city to which a point on the proposed satellite corporate limits is closer and that agreement states that the other city will not annex the property, except that this modification shall not apply to the boundary agreement between the City of Hickory and the City of Newton dated May 7, 1996. This section shall have no effect on the ability of the City of Hickory to annex property under Part 4 of Chapter 160A of the General Statutes if the property is closer to the Town of Maiden than it is to the City of Hickory.

Section 2. The following described property is added to the corporate limits of the Town of Mocksville:

Beginning at a concrete monument set, said monument being located N 59° 50' 17" W 2511.7' from the intersection of North Main St. and Campbell Road in the Town of Mocksville, North Carolina, also being further located N 02° 27' 33" E

71.62' from the Southeast corner of a Mocksville Annexation Map as recorded in Plat Book 6, page 131, Davie County Registry, thence;

N 02°27'33" E	549.70',	TO A CONCRETE MON. FOUND
N 02°27'33" E	996.50',	TO A POINT CL CAMPBELL RD.
N 02°27'33" E	586.50',	TO A .75" IRON NORTH SIDE CREEK
S 61°04'29" E	120.56',	TO A POINT IN CREEK
N 71°42'10" E	327.39',	TO A POINT IN CREEK
N 63°23'29" E	291.04',	TO A POINT IN CREEK
N 77°18'07" E	401.50',	TO A POINT IN CREEK
N 61°34'10" E	240.46',	TO A POINT IN CREEK
N 39°26'56" E	244.24',	TO A POINT IN CREEK
N 58°10'43" E	442.61',	TO A POINT IN CREEK
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N 58°47'38" E	280.10',	TO AN AXLE NORTH SIDE CREEK
S 01°32'31" W	1644.56',	TO AN IRON PLACED
S 40°24'40" W	455.40',	TO AN IRON PLACED
S 31°14'59" W	132.00',	TO A 0.75" SOLID IRON FOUND
N 68°45'01" W	167.34',	TO A LEAF SPRING FOUND
S 42°14'59" W	87.12',	TO AN UNMARKED POINT
S 30°05'50" W	138.05',	TO AN UNMARKED POINT
S 82°30'57" E	211.20',	TO A 0.5" IRON FOUND
S 04°59'04" E	82.78',	TO A 0.5" IRON FOUND
S 28°26'07" E	95.35',	TO A 0.5" IRON FOUND
S 28°12'02" E	100.28',	TO A 0.5" IRON FOUND
S 28°32'14" E	77.59',	TO A 0.5" IRON FOUND
S 53°29'41" E	160.61',	TO AN UNMARKED POINT
S 58°03'55" E	613.64',	TO AN IRON PLACED
S 21°59'37" W	32.15',	TO A CONCRETE MON. FOUND
S 58°16'00" E	33.33',	TO A 0.75" IRON FOUND
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N 62°48'48" W	260.19',	TO AN IRON PLACED
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S 27°03'46" W	99.65',	TO A 0.5" IRON FOUND
S 27°03'19" W	99.83',	TO A 0.5" IRON FOUND
S 26°59'36" W	296.54',	TO A 0.75" IRON FOUND
S 26°59'46" W	206.54',	TO A 0.5" IRON FOUND
S 01°24'53" W	55.08',	TO A CONCRETE MON. SET
N 59°52'17" W	566.80',	TO A CONCRETE MON. SET
(ARC= 567.07, RADIUS= 5280.00)		
N 28°59'18" E	29.26',	TO AN UNMARKED POINT
N 45°50'52" W	107.94',	TO AN UNMARKED POINT
N 47°20'22" W	107.50',	TO A 0.5" IRON FOUND

S 39°58'19" W 71.28', TO A POINT IN HILLCREST ST.
S 48°24'43" E 88.38', TO A POINT IN HILLCREST ST.
N 71°52'36" W 1369.48', TO A CONCRETE MON. SET
(ARC = 1373.35, RADIUS = 5280.00).

Section 3. This act shall have no effect on any cases pending in the courts in this State.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 899

Short Title: Real Estate Salesman/Broker Licensure. (Public)

Sponsors: Representatives Bridgeman, Howard; Dedmon and Morris.

Referred to: Ways and Means.

April 1, 1999

A BILL TO BE ENTITLED

AN ACT AMENDING CERTAIN REQUIREMENTS FOR LICENSURE OF REAL ESTATE BROKERS AND SALESMEN.

The General Assembly of North Carolina enacts:

Section 1. G.S. 93A-4 reads as rewritten:

"**§ 93A-4. Applications for licenses; fees; qualifications; examinations; ~~bond;~~ privilege licenses; renewal or reinstatement of license; power to enforce provisions.**

(a) Any person, partnership, ~~association, or corporation~~ corporation, limited liability company, association, or other business entity hereafter desiring to enter into business of and obtain a license as a real estate broker or real estate salesman shall make written application for such license to the Commission ~~on such forms as are~~ in the form and manner prescribed by the Commission. Each applicant for a license as a real estate broker or real estate salesman shall be at least 18 years of age. Each applicant for a license as a real estate salesman shall, within ~~five~~ three years preceding the date application is made, have satisfactorily completed, at a school approved by the Commission, a real estate fundamentals course consisting of at least ~~30~~ 75 hours of classroom instruction in subjects determined by the Commission, or shall possess real estate education or experience in real estate transactions which the Commission shall find equivalent to the course. Each applicant for a license as a real estate broker shall, within ~~five~~ three years preceding the date the application is made, ~~either have been actively engaged on a full-time basis as a licensed real estate salesman for at least two years, or~~ have satisfactorily completed, at a school approved by the Commission, ~~advanced courses in Real Estate Law, Real Estate Finance, and Real Estate Brokerage Operations, each~~ an education program consisting of at least

~~30~~ 60 hours of classroom ~~instruction, these courses to~~ instruction in subjects determined by the Commission, which shall be in addition to ~~those~~ the course required for a real estate salesman license, or shall possess real estate education or experience in real estate transactions which the Commission shall find equivalent to the ~~above requirements.~~ education program. Each ~~application~~ applicant for a license as a real estate broker or real estate salesman shall be ~~accompanied by~~ required to pay a fee, fixed by the Commission but not to exceed thirty dollars ($30.00). ~~Each application for license as a real estate salesman shall be accompanied by a fee, fixed by the Commission but not to exceed thirty dollars ($30.00).~~

(b) ~~Any~~ Except as otherwise provided in this Chapter, any person who ~~files such~~ submits an application to the Commission in proper manner for a license as real estate broker or a license as real estate salesman shall be required to take an oral or written ~~examination to~~ examination. The Commission may allow an applicant to elect to take the examination by computer as an alternative to the written or oral examination and may require the applicant to pay the Commission or a provider contracted by the Commission the actual cost of administering the computerized examination. The cost of the computerized examination shall be in addition to any other fees the applicant is required to pay under subsection (a) of this section. The examination shall determine ~~his~~ the applicant's qualifications with due regard to the paramount interests of the public as to the ~~honesty, truthfulness, integrity and competency of the applicant.~~ applicant's competency. A person holding a real estate salesman license in this State and applying for a real estate broker license shall not be required to take an additional examination under this subsection.

~~The Commission may make such investigation as it deems necessary into the ethical background of the applicant.~~ An applicant for licensure under this Chapter shall satisfy the Commission that he or she possesses the competency, honesty, truthfulness, integrity, and general moral character necessary to protect the public interest and promote public confidence in the real estate brokerage business. If the results of ~~the~~ any required competency examination and investigation of the applicant's moral character shall be satisfactory to the Commission, then the Commission shall issue to ~~such a person~~ the applicant a license, authorizing ~~such person~~ the applicant to act as a real estate broker or real estate salesman in the State of North Carolina, upon the payment of privilege taxes now required by law or that may hereafter be required by law.

~~Provided, however, that any person who, at the time of the passage or at the effective date of this Chapter, has a license to engage in, and is engaged in business as a real estate broker or real estate salesman and who shall file a sworn application with the Commission setting forth his qualifications, including a statement that such applicant has not within five years preceding the filing of the application been convicted of any felony or any misdemeanor involving moral turpitude, shall not be required to take or pass such examination, but all such persons shall be entitled to receive such license from the Commission under the provisions of this Chapter on proper application therefor and payment of a fee of ten dollars ($10.00).~~

(c) All licenses issued by the Commission under the provisions of this Chapter shall expire on the 30th day of June following issuance or on any other date that the Commission may determine and shall become invalid after that date unless reinstated. A license may be renewed 45 days prior to the expiration date by filing an application with and paying to the Executive Director of the Commission the license renewal fee. The license renewal fee is thirty dollars ($30.00) unless the Commission sets the fee at a higher amount. The Commission may set the license renewal fee at an amount that does not exceed fifty dollars ($50.00). The license renewal fee may not increase by more than five dollars ($5.00) during a 12-month period. The Commission may adopt rules establishing a system of license renewal in which the licenses expire annually with varying expiration dates. These rules shall provide for prorating the annual fee to cover the initial renewal period so that no licensee shall be charged an amount greater than the annual fee for any 12-month period. All licenses reinstated after the expiration date thereof shall be subject to a late filing fee of five dollars ($5.00) in addition to the required renewal fee. In the event a licensee fails to obtain a reinstatement of such license within 12 months after the expiration date thereof, the Commission may, in its discretion, consider such person as not having been previously licensed, and thereby subject to the provisions of this Chapter relating to the issuance of an original license, including the examination requirements set forth herein. Duplicate licenses may be issued by the Commission upon payment of a fee of five dollars ($5.00) by the licensee. Commission certification of a licensee's license history shall be made only after the payment of a fee of ten dollars ($10.00).

(d) The Commission is expressly vested with the power and authority to make and enforce any and all ~~such~~ reasonable rules and regulations connected with ~~the application for any license~~ license application, examination, renewal, and reinstatement as shall be deemed necessary to administer and enforce the provisions of this Chapter. The Commission is further authorized to adopt reasonable rules and regulations necessary for the approval of real estate ~~schools and such rules and regulations may, in accordance with G.S. 93A-4(a),~~ schools, instructors, and textbooks and rules that prescribe specific requirements pertaining to ~~the teaching of mechanics and law governing real estate transactions at such schools.~~ instruction, administration, and content of required education courses and programs.

(e) Nothing contained in this Chapter shall be construed as giving any authority to the Commission nor any licensee of the Commission as authorizing any licensee ~~whether by examination or under the grandfather clause or by comity~~ to engage in the practice of law or to render any legal service as specifically set out in G.S. 84-2.1 or any other legal service not specifically referred to in said section."

Section 2. This act becomes effective October 1, 2000.

HOUSE BILL 899:
Real Estate Salesman/Broker Licensure

BILL ANALYSIS

Committee: Senate Finance Committtee
Date: May 21, 1999
Version: 1st Edition

Introduced by: Rep. Bridgeman
Summary by: O. Walker Reagan and Martha K. Walston, Staff Attorneys

SUMMARY: ***House Bill 899 amends the real estate licensing law to require that the salesman real estate course be increased from 30 hours to 75 hours and taken within 3 (now 5) years prior to licensure, requires that the broker real estate course be decreased from 90 to 60 hours and taken within 3 (now 5) years prior to licensure, eliminates the broker exam if the person already holds a real estate salesman license, clarifies the ethical standard for licensure, and clarifies the Real Estate commission's rule making authority for licensing matters and real estate instruction. House Bill 899 was given a favorable report in House Ways & Means and House Commerce.***

CURRENT LAW: Under current law a person who applies for a real estate salesman license must complete a 30 hour real estate fundamentals course within 5 years preceding the license application. A real estate broker applicant must within the 5 years preceding the broker license application, either have been a full-time licensed real estate salesman for at least 2 years or have completed 90 hours of advanced courses in real estate instruction plus the 30 hours required for a salesman license. In lieu of the above requirements, the Real Estate Commission may accept equivalent real estate education or experience. The broker applicant also has to pass a broker's licensing examination. Each applicant for licensure as a broker or salesman must pay a fee not to exceed $30.00.

BILL ANALYSIS: The bill amends G.S. 93A-4 which sets out the qualifications and requirements for licensure as a real estate salesman and broker.

Subsection (a) of this statute is amended by permitting licensed real estate firms to also be in the form of a limited liability company or other business entity. This subsection is also amended to increase the required salesman course hours from 30 hours to 75 hours and to shorten the time period prior to application during which this course can be taken from 5 years to 3 years. This subsection is also amended to reduce the required broker course hours from 90 hours to 60 hours in addition to the salesman course hours. The time period for this instruction prior to application for the broker's license has also been shortened from 5 years to 3 years.

Subsection (b) is amended to permit the real estate licensing exam to be taken by computer with any additional cost associated with taking the exam by computer to be born by the applicant. This subsection also eliminates a broker's examination in addition to the salesman's examination. The outdated grandfather provision enacted in 1957 is repealed.

Subsection (d) is amended to clarify that the Commission's rulemaking authority over applications for licensure also applies to license examinations, license renewals, and license reinstatements. This subsection is also amended to clarify that the rulemaking authority for approval of real estate schools and instruction applies to the schools, the instructors, the text books and the instruction, administration and content of required education courses and programs.

EFFECTIVE DATE: The bill becomes effective October 1, 2000.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 899 (First Edition)

SHORT TITLE: Real Estate Salesman / Broker Licensure

SPONSOR(S): Reps. Bridgeman et al.

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
Special Fund					
Salesman License	$18,000	$18,000	$18,000	$18,000	$18,000
Brokers License	-	$81,000	$108,000	$108,000	$108,000
EXPENDITURES					
Special Fund					
Salesman License	$25,674	-	-	-	-
Brokers License	-	$81,000	$108,000	$108,000	$108,000
Computer Exam	-	($73,500)	($84,000)	($84,000)	($84,000)
NET IMPACT	($7,674)	$91,500	$102,000	$102,000	$102,000

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Real Estate Commission

EFFECTIVE DATE: The act is effective October 1, 2000.

BILL SUMMARY:

The bill extends application requirements for real estate brokers' licenses to limited liability companies and other business entities. Requires prospective salesmen to complete a training course with 75 (now, 30) hours of classroom instruction within 3 (now, 5) years of applying for a license. Requires prospective brokers to complete a training course with 60 (now, 30) additional hours beyond those required for salesmen, within 3 (now, 5) years of applying for a license. Permits taking examinations by computer with approval of the Real Estate Commission. Prohibits requiring additional examination for broker applicants who hold salesman licenses. Specifies moral adequacy criterion for applicants: competency, honesty, truthfulness, integrity, and general moral character necessary to protect the public interest and promote public confidence in the real estate brokerage business. Deletes grandfather provision permitting

persons with licenses at the original date of passage of the chapter to avoid examination by filing a sworn application.

ASSUMPTIONS AND METHODOLOGY:

SALESMAN LICENSE

Officials with the North Carolina Real Estate Commission project that the increased educational requirements for a real estate salesman license will increase the number of license exam applicants before the October 1, 2000 effective date. The Commission expects 1,600 additional applicants prior to October 1, 2000 and a temporary decline of 1,000 applicants after October 1, 2000. The Commission guesses that roughly one-third of the applicants will take the monthly exam in FY 1999-00 and the remaining two-thirds will take the exam in the first three months of FY 2000-01. This fiscal note rounds these numbers off to 600 additional applicants in FY 1999-00 and 1,000 in the first quarter of FY 2000-01. At $30 per application, the 600 applicants in FY 1999-00 will pay $18,000 in license fees. The Commission says it cost $42.79 to administer the exam, thus the administrative expense for 600 exams is $25,674. Assuming these 600 applicants receive their license, then the $30 annual renewal fee will generate $18,000 in revenue each year.

In FY 2000-01, the 1,000 applicants expected prior to October 1, 2000 will be offset by the projected decline of 1,000 applicants for the remainder of the fiscal year. This will produce no additional revenue or expenditures.

BROKER LICENSE

The Real Estate Commission expects 3,600 additional licensed real estate salesmen each year to apply for a broker license after October 1, 2000. At $30 per application, the revenue generated will be $108,000 per year. However, the Commission estimates that the administrative cost of the exam is also $30 or $108,000 per year. Due to the October 1 effective date, the first year numbers are three fourths of the estimate or $81,000. Since the renewal fee for a broker is the same as a salesman, there is no increased revenue from license renewals.

COMPUTERIZED EXAMS

The bill authorizes the Commission to give computerized exams after October 1, 2000. The Commission estimates that of the 8,000 exam applicants each year, 75% or 6,000 will choose a computerized exam. The Commission believes it will save $14 in administrative costs per computerized exam. At $14 per exam, the Commission will save $84,000 each year. Savings are reduced in FY 2000-01 because 1,000 salesman applicants will take the exam before computer exams are offered. Of the 7,000 exams taken after October 1, 2000, 5,250 exams will be computerized for a savings of $73,500 in FY 2000-01.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic

APPROVED BY:

DATE:

(Attachment #1)

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 5/25/'99

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
PS	"
SW	"
Ralph Hise	Legislative Intern
Drew Creech	NCTRC
Natalie English	NC Agribusiness Council
Alicia Gregory	Poyner & Spruill
Anne Wimsatt	NCSCDC
Paul Johnson	City of Hickory
Jenny Dorsten	Raleigh / Wake Board of REALTORS®
Don Walston	Howard Perry & Walston Realty
John Morisey	Fonville Morisey Realty
Jan Ramsey	NCSOS

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 5/25/'99

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
George Everett	Duke Energy
Scott Jenkins	NG News
Paul Ziglin	OSBM
Carol Lowe	Common Cause NC
Larry Outlaw	N.C. Real Estate Commission
Phillip Farlow	N.C. Mutual Life Insurance
Stephanie Mansur	NCAR

(Attachment #2)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Tuesday, May 25, 1999

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

FAVORABLE

H.B. **708** Sanford-Lee Airport Authority Refunds
Sequential Referral: None
Recommended Referral: None

H.B. **1009** Funds for Agriculture Research
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 2

Committee Clerk Comment:

(Attachment #3)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

REVISED REPORT

Wednesday, May 26, 1999

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1)**852** Hickory/Mocksville Annexations

Draft Number:	PSCS8136
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment: Bill heard in Committee on 5-25-99

AGENDA

WEDNESDAY, MAY 26, 1999

SENATE FINANCE COMMITTEE

1:30 P.M. – ROOM 544

I CALL TO ORDER

II INTRODUCTION OF PAGES

III BILLS TO BE CONSIDERED

:

SB 254 – Outdoor Advertising Control Act – Sen. Gulley

SB 285 – University Health Systems Plates – Sen. Warren

SB 570 – Update Consumer Finance Act – Sen. Hoyle

HB 178 – Jonesville Accident Reports /Weeds – Rep. Brown

HB 275 – Zero ESC Tax Rate for More/AB. – Rep. Redwine

SENATE FINANCE COMMITTEE

WEDNESDAY, MAY 26, 1999

1:30 P.M. - ROOM 544

The Senate Finance Committee met on Wednesday, May 26, 1999, at 1:30 P.M. in Room 544 with Senator Kerr presiding. The pages – Jennifer Simpson from Cherryville and Amy Passour from Dallas, both sponsored by Senator Hoyle, were introduced. There were 25 committee members present for the meeting.

SB 285 – University Health Systems Plates.

Senator Warren was recognized to explain his Bill. Senator Wellons moved for a Favorable Report and the motion carried. Copy of Bill, Explanation and Fiscal Note included in the minutes.

HB 178 – Jonesville Accident Reports/Weeds.

Representative Brown explained his Bill and Senator Dannelly moved for a Favorable Report. Motion carried. Copy of Bill and Fiscal Note included in the minutes.

HB 275 – Zero ESC Tax Rate for More/AB.

Senator Kerr explained this Bill and on motion by Senator Dannelly, a Committee Substitute was adopted. After explanation of Committee Sub by Senator Kerr, Leslie Bevacqua, representing NC Citizens for Business and Industry, was recognized and spoke in favor of this proposal. Martin Lancaster, President of the North Carolina Community Colleges, also spoke in support of this Bill. Parker Chesson, Employment Security Commission, was recognized and spoke in support of this Bill. After a general discussion of this Bill, with questions from the committee members being answered by the various parties, Senator Wellons moved for a Favorable Report for the Committee Sub and the motion carried. Copy of original Bill, Committee Sub, Explanation and Fiscal Note included in the minutes.

SB 570 – Update Consumer Finance Act.

Senator Hoyle was recognized to explain this Bill. He offered a Committee Substitute which was adopted on his motion by the committee. After explaining this Committee Sub, Senator Hoyle answered questions from the committee members. Don Laney, representing N. C. Financial Services Association, spoke in support of this Bill. Anne Winner, representing N. C. Justice and Community Development Center spoke in opposition to this Bill. Allen S. Hirsch, Attorney General's Office, was recognized and said they did not feel this Bill was needed. After a long period of discussion, Senator Ballantine moved for a Favorable Report and the motion carried. Senator Webster asked

for a division and this was noted. Copy of Bill, Committee Substitute, Explanation, Fiscal Note and other information included in the minutes.

SB 254 – Outdoor Advertising Control Act.

Senator Gulley was recognized to explain his Bill. Ruth Sappie with the Department of Transportation gave a further explanation of this Bill. Gaines Weaver, with the Transportation Division of the Attorney General's Office, addressed the committee and said they had not taken a position of this Bill. Charlie Diehl, representing the Outdoor Advertising Association, was recognized and addressed the committee stating that they could not support this bill because of the judicial process. John McMillian, representing outdoor advertisers, also told the committee that they did not support this Bill. After a long period of discussion, Senator Gulley moved for a Favorable Report and the motion carried. Copy of Bill, Explanation and Fiscal Note included in the minutes.

Meeting adjourned.

David W. Hoyle, Co-Chair
Senate Finance Committee

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

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 285

Short Title: University Health Systems Plates. (Public)

Sponsors: Senators Warren; Albertson, Clodfelter, Martin of Pitt, and Martin of Guilford.

Referred to: Finance.

March 8, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE UNIVERSITY HEALTH SYSTEMS OF EASTERN CAROLINA SPECIAL REGISTRATION PLATES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-79.4(b) reads as rewritten:

"(b) Types. -- The Division shall issue the following types of special registration plates:

(1) Administrative Officer of the Courts. -- Issuable to the Director of the Administrative Office of the Courts. The plate shall bear the phrase "J-20".

(2) Amateur Radio Operator. -- Issuable to an amateur radio operator who holds an unexpired and unrevoked amateur radio license issued by the Federal Communications Commission and who asserts to the Division that a portable transceiver is carried in the vehicle. The plate shall bear the phrase "Amateur Radio". The plate shall bear the operator's official amateur radio call letters, or call letters with numerical or letter suffixes so that an owner of more than one vehicle may have the call letters on each.

(3) American Legion. -- Issuable to a member of the American Legion. The plate shall bear the words "American Legion" and the emblem of the American Legion. The Division may not issue the

plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(3a) Bronze Star Recipient. -- Issuable to a recipient of the Bronze Star. The plate shall bear the emblem of the Bronze Star and the words "Bronze Star".

(4) Civil Air Patrol Member. -- Issuable to an active member of the North Carolina Wing of the Civil Air Patrol. The plate shall bear the phrase "Civil Air Patrol". A plate issued to an officer member shall begin with the number "201" and the number shall reflect the seniority of the member; a plate issued to an enlisted member, a senior member, or a cadet member shall begin with the number "501".

(5) Civic Club. -- Issuable to a member of a nationally recognized civic organization whose member clubs in the State are exempt from State corporate income tax under G.S. 105-130.11(a)(5). Examples of these clubs include Jaycees, Kiwanis, Optimist, Rotary, Ruritan, and Shrine. The plate shall bear a word or phrase identifying the civic club and the emblem of the civic club. The Division may not issue a civic club plate authorized by this subdivision unless it receives at least 300 applications for that civic club plate.

(6) Class D Citizen's Radio Station Operator. -- Issuable to a Class D citizen's radio station operator. For an operator who has been issued Class D citizen's radio station call letters by the Federal Communications Commission, the plate shall bear the operator's official Class D citizen's radio station call letters. For an operator who has not been issued Class D citizen's radio station call letters by the Federal Communications Commission, the plate shall bear the phrase "Citizen's Band Radio".

(7) Clerk of Superior Court. -- Issuable to a current or retired clerk of superior court. A plate issued to a current clerk shall bear the phrase "Clerk Superior Court" and the letter "C" followed by a number that indicates the county the clerk serves. A plate issued to a retired clerk shall bear the phrase "Clerk Superior Court, Retired", the letter "C" followed by a number that indicates the county the clerk served, and the letter "X" indicating the clerk's retired status.

(8) Coast Guard Auxiliary Member. -- Issuable to an active member of the United States Coast Guard Auxiliary. The plate shall bear the phrase "Coast Guard Auxiliary".

(9) Collegiate Insignia Plate. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or an insignia representing a public or private college or university.

(10) Combat Veteran. -- Issuable to a veteran of the armed forces who served in a combat zone, or in waters adjacent to a combat zone, during a period of war and who was separated from the armed forces under honorable conditions. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate. A "period of war" is any of the following:

a. World War I, which began April 16, 1917, and ended November 11, 1918.
b. World War II, which began December 7, 1941, and ended December 31, 1946.
c. The Korean Conflict, which began June 27, 1950, and ended January 31, 1955.
d. The Vietnam Era, which began August 5, 1964, and ended May 7, 1975.
e. The Persian Gulf War.
f. Any other campaign, expedition, or engagement for which the United States Department of Defense authorizes a campaign badge or medal.

(11) County Commissioner. -- Issuable to a county commissioner of a county in this State. The plate shall bear the words "County Commissioner" followed first by a number representing the commissioner's county and then by a letter or number that distinguishes plates issued to county commissioners of the same county. The number of a county shall be the order of the county in an alphabetical list of counties that assigns number one to the first county in the list and a letter or number to distinguish different cars owned by the county commissioners in that county. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(12) Disabled Veteran. -- Issuable to a veteran of the armed forces of the United States who suffered a 100% service-connected disability.

(12a) Distinguished Flying Cross. -- Issuable to a recipient of the Distinguished Flying Cross. The plate shall bear the emblem of the Distinguished Flying Cross and the words "Distinguished Flying Cross".

(13) District Attorney. -- Issuable to a North Carolina or United States District Attorney. The plate issuable to a North Carolina district attorney shall bear the letters "DA" followed by a number that represents the prosecutorial district the district attorney serves. The plate for a United States attorney shall bear the phrase "U.S. Attorney" followed by a number that represents the district the

attorney serves, with 1 being the Eastern District, 2 being the Middle District, and 3 being the Western District.

(13a) Eagle Scout. -- Issuable to a young man who has been certified as an Eagle Scout by the Boy Scouts of America, or to his parents or guardians. The plate shall bear the insignia of the Boy Scouts of America and shall bear the words "Eagle Scout". The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(14) 82nd Airborne Division Association Member. -- Issuable to a member of the 82nd Airborne Division Association, Inc. The plate shall bear the insignia of the 82nd Airborne Division Association, Inc. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(15) Fire Department or Rescue Squad Member. -- Issuable to an active regular member or volunteer member of a fire department, rescue squad, or both a fire department and rescue squad. The plate shall bear the words "Firefighter", "Rescue Squad", or "Firefighter-Rescue Squad".

(16) Future Farmers of America. -- Issuable to a member or a supporter of the National Future Farmers of America Organization. The plate shall bear the emblem of the organization and the letters "FFA". The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(16a) Girl Scout Gold Award recipient. -- Issuable to a young woman who has been certified as a Girl Scout Gold Award recipient by the Girl Scouts of the U.S.A., or to her parents or guardians. The plate shall bear the insignia of the Girl Scouts of the U.S.A. and shall bear the words "Girl Scout Gold Award". The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(17) Historic Vehicle Owner. -- Issuable for a motor vehicle that is at least 35 years old measured from the date of manufacture. The plate for an historic vehicle shall bear the word "Antique" unless the vehicle is a model year 1943 or older. The plate for a vehicle that is a model year 1943 or older shall bear the word "Antique" or the words "Horseless Carriage", at the option of the vehicle owner.

(18) Historical Attraction Plate. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or an insignia representing a publicly owned or nonprofit historical attraction located in North Carolina.

(19) Honorary Plate. -- Issuable to a member of the Honorary Consular Corps, who has been certified by the U. S. State Department, the

plate shall bear the words "Honorary Consular Corps" and a distinguishing number based on the order of issuance.

(20) Judge or Justice. -- Issuable to a sitting or retired judge or justice in accordance with G.S. 20-79.6.

(21) Legion of Valor. -- Issuable to a recipient of one of the following military decorations: the Congressional Medal of Honor, the Distinguished Service Cross, the Navy Cross, or the Air Force Cross. The plate shall bear the emblem and name of the recipient's decoration.

(22) Legislator. -- Issuable to a member of the North Carolina General Assembly. The plate shall bear "The Great Seal of the State of North Carolina" and, as appropriate, the word "Senate" or "House" followed by the Senator's or Representative's assigned seat number.

(23) Magistrate. -- Issuable to a North Carolina magistrate. The plate shall bear the letters "MJ" followed by a number indicating the district court district the magistrate serves, then by a hyphen, and then by a number indicating the seniority of the magistrate. The Division shall use the number "9" to designate District Court Districts 9 and 9B.

(24) March of Dimes. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or an insignia representing the March of Dimes Foundation.

(25) Marshal. -- Issuable to a United States Marshal. The plate shall bear the phrase "U.S. Marshal" followed by a number that represents the district the Marshal serves, with 1 being the Eastern District, 2 being the Middle District, and 3 being the Western District.

(26) Military Reservist. -- Issuable to a member of a reserve component of the armed forces of the United States. The plate shall bear the name and insignia of the appropriate reserve component. Plates shall be numbered sequentially for members of a component with the numbers 1 through 5000 reserved for officers, without regard to rank.

(27) Military Retiree. -- Issuable to an individual who has retired from the armed forces of the United States. The plate shall bear the word "Retired" and the name and insignia of the branch of service from which the individual retired. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(28) National Guard Member. -- Issuable to an active or a retired member of the North Carolina National Guard. The plate shall bear the phrase "National Guard". A plate issued to an active member shall bear a number that reflects the seniority of the

member; a plate issued to a commissioned officer shall begin with the number "1"; a plate issued to a noncommissioned officer with a rank of E7, E8, or E9 shall begin with the number "1601"; a plate issued to an enlisted member with a rank of E6 or below shall begin with the number "3001". The plate issued to a retired or separated member shall indicate the member's retired status.

(28a) Native American. -- Issuable to the registered owner of a motor vehicle. The plate may bear a phrase or an insignia representing Native Americans. The Division must receive 300 or more applications for the plate before it may be developed.

(29) Olympic Games. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or insignia representing the Olympic Games.

(30) Partially Disabled Veteran. -- Issuable to a veteran of the armed forces of the United States who suffered a service connected disability of less than 100%.

(31) Pearl Harbor Survivor. -- Issuable to a veteran of the armed forces of the United States who was present at and survived the attack on Pearl Harbor on December 7, 1941. The plate will bear the phrase "Pearl Harbor Survivor" and the insignia of the Pearl Harbor Survivors' Association.

(32) Personalized. -- Issuable to the registered owner of a motor vehicle. The plate will bear the letters or letters and numbers requested by the owner. The Division may refuse to issue a plate with a letter combination that is offensive to good taste and decency. The Division may not issue a plate that duplicates another plate.

(33) Prisoner of War. -- Issuable to the following:

a. A member or veteran member of the armed forces of the United States who has been captured and held prisoner by forces hostile to the United States while serving in the armed forces.

b. The surviving spouse of a person who had a prisoner of war plate at the time of death so long as the surviving spouse continues to renew the plate and does not remarry.

(34) Professional Sports Fan. -- Issuable to the registered owner of a motor vehicle. The plate shall bear the logo of a professional sports team located in North Carolina. The Division shall receive 300 or more applications for a professional sports fan plate before a plate may be issued. The Division shall not develop a professional sports fan plate unless the professional sports team licenses, without charge, the State to use the official team logo on the plate.

(35) Purple Heart Recipient. -- Issuable to a recipient of the Purple Heart award. The plate shall bear the phrase "Purple Heart Veteran, Combat Wounded" and the letters "PH".

(36) Register of Deeds. -- Issuable to a register of deeds. The plate shall bear the words "Register of Deeds" and the letter "R" followed by a number representing the county of the register of deeds. The number of a county shall be the order of the county in an alphabetical list of counties that assigns number one to the first county in the list.

(37) Scenic Rivers. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the words "Scenic Rivers" and a picture representing the unique beauty of the scenic rivers of North Carolina.

(38) School Technology. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or an insignia representing the public school system in North Carolina.

(39) Sheriff. -- Issuable to a current sheriff or to a retired sheriff who served as sheriff for at least 10 years before retiring. A plate issued to a current sheriff shall bear the word "Sheriff" and the letter "S" followed by a number that indicates the county the sheriff serves. A plate issued to a retired sheriff shall bear the phrase "Sheriff, Retired", the letter "S" followed by a number that indicates the county the sheriff served, and the letter "X" indicating the sheriff's retired status.

(39a) Silver Star Recipient. -- Issuable to a recipient of the Silver Star. The plate shall bear the emblem of the Silver Star and the words "Silver Star".

(40) Soil and Water Conservation. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase and picture appropriate to the subject of water quality and environmental protection in North Carolina.

(41) Special Olympics. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or an insignia representing the North Carolina Special Olympics.

(42) Square Dance Clubs. -- Issuable to a member of a recognized square dance organization exempt from corporate income tax under G.S. 105-130.11(a)(5). The plate shall bear a word or phrase identifying the club and the emblem of the club. The Division shall not issue a dance club plate authorized by this subdivision unless it receives at least 300 applications for that dance club plate.

(43) State Government Official. -- Issuable to elected and appointed members of State government in accordance with G.S. 20-79.5.

(44) State Attraction. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a

phrase or an insignia representing a publicly owned or nonprofit State or federal attraction located in North Carolina.

(45) Street Rod Owner. -- Issuable to the registered owner of a modernized private passenger motor vehicle manufactured prior to the year 1949 or designed to resemble a vehicle manufactured prior to the year 1949. The plate shall bear the phrase "Street Rod". The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(46) Transportation Personnel. -- Issuable to various members of the Divisions of the Department of Transportation. The plate shall bear the letters "DOT" followed by a number from 1 to 85, as designated by the Governor.

(47) U.S. Representative. -- Issuable to a United States Representative for North Carolina. The plate shall bear the phrase "U.S. House" and shall be issued on the basis of Congressional district numbers.

(48) U.S. Senator. -- Issuable to a United States Senator for North Carolina. The plates shall bear the phrase "U.S. Senate" and shall be issued on the basis of seniority represented by the numbers 1 and 2.

(48a) University Health Systems of Eastern Carolina. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase or insignia representing the University Health Systems of Eastern Carolina.

(49) Veterans of Foreign Wars. -- Issuable to a member or a supporter of the Veterans of Foreign Wars. The plate shall bear the words "Veterans of Foreign Wars" or "VFW" and the emblem of the VFW. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(50) Vietnam Veteran. -- Issuable to a veteran of the armed forces of the United States who served in Vietnam. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.

(51) Wildlife Resources. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear a picture representing a native wildlife species occurring in North Carolina."

Section 2. G.S. 20-79.7(a) reads as rewritten:

"(a) Fees. -- Upon request, the Division shall provide and issue free of charge one registration plate to a recipient of the Congressional Medal of Honor, a 100% disabled veteran, and an ex-prisoner of war. All other special registration plates are subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

Special Plate	Additional Fee Amount
Historical Attraction	$30.00

State Attraction	$30.00
Collegiate Insignia	$25.00
Olympic Games	$25.00
Special Olympics	$25.00
University Health Systems of Eastern Carolina	$25.00
March of Dimes	$20.00
Scenic Rivers	$20.00
School Technology	$20.00
Soil and Water Conservation	$20.00
Wildlife Resources	$20.00
Personalized	$20.00
Active Member of the National Guard	None
Purple Heart Recipient	None
All Other Special Plates	$10.00."

Section 3. G.S. 20-79.7(b) reads as rewritten:

"(b) Distribution of Fees. -- The Special Registration Plate Account and the Collegiate and Cultural Attraction Plate Account are established within the Highway Fund. The Division must credit the additional fee imposed for the special registration plates listed in subsection (a) among the Special Registration Plate Account (SRPA), the Collegiate and Cultural Attraction Plate Account (CCAPA), and the Natural Heritage Trust Fund (NHTF), which is established under G.S. 113-77.7, as follows:

Special Plate	SRPA	CCAPA	NHTF
Historical Attraction	$10	$20	0
In-State Collegiate Insignia	$10	$15	0
Out-of-state Collegiate Insignia	$10	0	$15
Personalized	$10	0	$10
Special Olympics	$10	$15	0
Olympic Games	$10	$15	0
University Health Systems of Eastern Carolina	$10	$15	0
State Attraction	$10	$20	0
March of Dimes	$10	$10	0
Scenic Rivers	$10	$10	0
School Technology	$10	$10	0
Soil and Water Conservation	$10	$10	0
Wildlife Resources	$10	$10	0
All other Special Plates	$10	0	0."

Section 4. G.S. 20-81.12 is amended by adding a new subsection to read:

"(b9) University Health Systems of Eastern Carolina. -- The Division must receive 300 or more applications for a University Health Systems of Eastern Carolina plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of

University Health Systems of Eastern North Carolina plates to the Pitt Memorial Hospital Foundation, Inc., for use in the Children's Hospital of Eastern North Carolina."

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

SENATE BILL 285:
University Health Systems Plates

BILL ANALYSIS

Committee: Senate Finance Committee
Date: May 21, 1999
Version: 1st Edition

Introduced by: Senator Warren
Summary by: Martha K. Walston
Committee Counsel

SUMMARY: SB 285 authorizes the DMV to issue University of Health Systems of Eastern Carolina special license plates for an additional $25 fee. $15 of the additional fee will go to the Pitt Memorial Hospital Foundation, Inc., for use in the Children's Hospital of Eastern North Carolina.

CURRENT LAW: Passenger vehicles and property-hauling vehicles pay an annual registration fee. Upon request, the Division of Motor Vehicles will issue special registration plates for an additional fee. Active members of the National Guard and Purple Heart recipients do not have to pay an additional fee for their special plates. Special registration plates are issued free of charge to recipients of the Congressional Medal of Honor, 100% disabled veterans, and ex-prisoners of war. All other special registration plates are subject to the regular registration fee plus an additional fee. Fees generated from special registration plates are credited to the Special Registration Plate Account and the Collegiate and Cultural Attraction Account established within the Highway Fund, and the Natural Heritage Trust Fund established under G.S. 113-77.7.

$10 of the additional fee goes to the Special Registration Plate Account. This uniform system of fees has been in place since 1991 when a study commission recommended that the special registration plate system be simplified through a uniform fee schedule. After deducting the costs of the plates from the Account, the money is distributed as follows:

Amount	Purpose
$525,000 distributed annually	Operating assistance for certain Visitor Centers
33% distributed quarterly	Department of Commerce for advertising the promotion of travel and industrial development in the State
50% distributed quarterly	Department of Transportation for beautification of highways
17% distributed quarterly	Department of Health and Human Services to promote travel accessibility for disabled persons

The portion of the special registration fee going to the Collegiate and Cultural Attraction Plate Account is transferred quarterly to the organization for which the special plate is made.

Out-of-state Collegiate Insignia and Personalized special plates distribute part of their fee to the Natural Heritage Trust Fund to be used mainly to protect land with outstanding natural or cultural heritage values.

BILL ANALYSIS: Senate Bill 285 authorizes DMV to develop a special license plate bearing a phrase or insignia representing the University Health Systems of Eastern Carolina. DMV must receive at least 300 applications for a special plate before it is issued. The cost of the plate is the regular registration fee plus an additional $25. The first $10 of the additional fee would be credited to the Special Registration Plate Fund. The remaining $15 of the additional fee would go to the Collegiate and Cultural Attraction Plate Account and transferred quarterly to the Pitt Memorial Hospital Foundation, Inc., for use in the Children's Hospital of Eastern North Carolina.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 285 University Health System Plates

SHORT TITLE: University Health System Plates

SPONSOR(S): Senator Ed Warren

FISCAL IMPACT

Yes (x) **No ( )** **No Estimate Available ( )**

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
Highway Fund					
Special Reg. Plate Account	$3,000	$3,000	$3,000	$3,000	$3,000
Pitt Memorial - Children's Hospital	$4,500	$4,500	$4,500	$4,500	$4,500
EXPENDITURES					
Special Reg. Plate Account	($856)				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Transportation, Division of Motor Vehicles, and

EFFECTIVE DATE: When it becomes law.

BILL SUMMARY: The legislation authorizes the Division of Motor Vehicles to issue University Health System of Eastern Carolina special registration plates. It instructs the Department to develop the plate only after 300 or more applications for the plate are received. A special fee of $25.00 (in addition to the regular motor vehicle registration fee) is also authorized. Ten dollars of this amount goes to the Special Registration Plate Account, and fifteen dollars will be deposited in the Collegiate and Cultural Attractions Plate Account (CCAPA). The proceeds from the plate deposited in the CCAPA are transferred quarterly to the Pitt Memorial Hospital Foundation for use in the Children's Hospital of Eastern North Carolina.

ASSUMPTIONS AND METHODOLOGY: In addition to the normal $20.00 registration fee every owner of a private passenger vehicle pays, there is a $25.00 fee for each specialized University Health System of Eastern Carolina plate. Because there is no way to determine how many of the plates will be requested, this fiscal note assumes the issuance of the minimum 300 license plates in FY 1999-00. As a result, the bill raises a total of $7,500 ($25 X 300 plates).

Three thousand dollars ($3000.00) of this amount goes to the SRPA. Four thousand five hundred dollars ($4,500.00) is deposited in the CCAPA. However, at the end of each quarter the funds deposited in the CCAPA are transferred to the Pitt Memorial Hospital Foundation. Therefore, the hospital foundation actually gains $4,500.00. The note also assumes that those plates will be renewed in the following years.

According to the Division of Motor Vehicles and the Department of Corrections, there is a one-time cost of $100 to design the new plate. There is also a production cost of $2.52 per plate (This assumes a basic one color design. If the design is more complex, or requires more color, the per plate cost increases). The total production cost for 300 basic plates is $856.00.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Linda Struyk Millsaps

APPROVED BY: Tom Covington

DATE: Wednesday, May 26, 1999

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 178

Short Title: Jonesville Accident Reports/Weeds. (Local)

Sponsors: Representatives Brown; and Holmes.

Referred to: Local Government I, if favorable, Finance.

March 1, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE TOWN OF JONESVILLE TO CHARGE A FEE NOT TO EXCEED FIVE DOLLARS FOR UNCERTIFIED COPIES OF POLICE INCIDENT OR ACCIDENT REPORTS AND TO AUTHORIZE THE TOWN TO GIVE ANNUAL NOTICE OF VIOLATION TO CHRONIC VIOLATORS OF THE CITY'S OVERGROWN VEGETATION ORDINANCE.

The General Assembly of North Carolina enacts:

Section 1. Section 3 of S.L. 1998-108 reads as rewritten:

"Section 3. This act applies to the Towns of ~~Denton and Farmville~~ Denton, Farmville, and Jonesville and the City of Greenville only."

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

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

SESSION LAW 1998-108
HOUSE BILL 1546

AN ACT TO AUTHORIZE CERTAIN MUNICIPALITIES TO CHARGE A FEE NOT TO EXCEED FIVE DOLLARS FOR UNCERTIFIED COPIES OF POLICE INCIDENT OR ACCIDENT REPORTS AND TO AUTHORIZE THE CITY TO GIVE ANNUAL NOTICE OF VIOLATION TO CHRONIC VIOLATORS OF THE CITY'S OVERGROWN VEGETATION ORDINANCE.

The General Assembly of North Carolina enacts:

Section 1. A municipality may charge a fee not to exceed five dollars ($5.00) for an uncertified copy of a police incident or accident report, except that the operator of a vehicle involved in an accident shall be entitled to one free copy of an uncertified copy. The fees collected shall be used for law enforcement purposes only.

Section 2. A municipality may notify a chronic violator of the municipality's overgrown vegetation ordinance that, if the violator's property is found to be in violation of the ordinance, the municipality shall, without further notice in the calendar year in which notice is given, take action to remedy the violation and the expense of the action shall become a lien upon the property and shall be collected as unpaid taxes. The notice shall be served by registered or certified mail. A chronic violator is a person who owns property whereupon, in the previous calendar year, the municipality took remedial action at least three times under the overgrown vegetation ordinance.

Section 3. This act applies to the Towns of Denton and Farmville and the City of Greenville only.

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

In the General Assembly read three times and ratified this the 19th day of August, 1998.

s/ Dennis A. Wicker
President of the Senate

s/ Harold J. Brubaker
Speaker of the House of Representatives

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: H.B. 178

SHORT TITLE: Jonesville Accident Reports/Weeds

SPONSOR(S): Rep. Brown

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
Jonesville		**NO GENERAL FUND IMPACT**			
EXPENDITURES					
Jonesville		**NO GENERAL FUND IMPACT**			

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Town of Jonesville.

EFFECTIVE DATE: When it becomes law.

BILL SUMMARY: This bill adds the Town of Jonesville to a list of towns given special authority for two actions. First, the bill authorizes Jonesville to charge a five dollar ($ 5.00) fee for an uncertified copy of police incident or accident report. The operator of a vehicle involved in an accident is entitled to one free uncertified copy of the report. The fees provide additional law enforcement funding. The second part of the bill addresses overgrown lots. The bill authorizes Jonesville to notify the owner of a chronically overgrown lot of the municipality's overgrown vegetation ordinance. The bill authorizes the town to "remedy" the violation, (mow, etc.) once the owner is notified and again found in violation. The cost associated with mowing becomes the equalivent of a tax lien against the property. Under the bill, notice must be given at least once during the calendar year. The bill defines a chronic violator as a person who owns property sited at least three times during the previous calendar year for overgrown vegetation.

ASSUMPTIONS AND METHODOLOGY: According to the town manager, Jonesville currently charges $4.00 for police accident and incident reports. They also report issuing approximately 200 such reports each year. Because the bill would allow Jonesville to charge an extra $1.00 per report, the town would likely see a $200.00 increase in revenues ($1.00 X 200 reports). As far as the weedy lot provision is concerned, the town manager believes the town will see some decrease in their postal expenses as a result of this provision. However, they expect the fiscal impact to be minimal.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Linda Struyk Millsaps

APPROVED BY: Tom Covington

DATE: Monday, March 22, 1999

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 275
Committee Substitute Favorable 4/1/99

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

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

Section 1. G.S. 96-9(b)(3)d3. reads as rewritten:

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

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

EXPERIENCE RATING FORMULA

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

"

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 275
Committee Substitute Favorable 4/1/99
Proposed Senate Committee Substitute H275-PCS6211-LC

Short Title: Zero ESC Tax/Training Contribution. (Public)

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT A ZERO UNEMPLOYMENT INSURANCE TAX RATE FOR MORE EMPLOYERS WITH POSITIVE EXPERIENCE RATINGS, AND TO TEMPORARILY REDUCE THE UNEMPLOYMENT INSURANCE TAX BY TWENTY PERCENT FOR MOST EMPLOYERS AND SUBSTITUTE AN EQUIVALENT CONTRIBUTION TO FUND ENHANCED EMPLOYMENT SERVICES AND WORKER TRAINING PROGRAMS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 96-9(b)(3)d3. reads as rewritten:

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

five percent (5%) and shall be reduced by sixty percent (60%) for any year in which the balance in the Unemployment Insurance Fund equals or exceeds eight hundred million dollars ($800,000,000) on the computation date, and the fund ratio determined on that date is five percent (5%) or more.

EXPERIENCE RATING FORMULA

When The Credit Ratio Is:

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

"

Section 2. Article 2 of Chapter 96 of the General Statutes is amended by adding a new section to read:

"**§ 96-6.1. Training and reemployment contribution.**

(a) Contribution. -- A mandatory training and reemployment contribution is levied upon employers at the rate of twenty percent (20%) of the amount of unemployment insurance contributions due under G.S. 96-9. The purpose of the training and reemployment contribution is to provide funds for Department of Community College training programs, Employment Security Commission reemployment services, administration and collection of the new contribution, and other needs of the State. The training and reemployment contribution is due and payable at the time and in the same manner as the unemployment insurance contributions under G.S. 96-9. The training and reemployment contribution does not apply in a calendar year if, as of August 1 of the preceding year, the amount in the Unemployment Insurance Fund equals or is less than eight hundred million dollars ($800,000,000). The collection of the training and reemployment contribution, the assessment of interest and penalties on unpaid contributions under this section, the filing of judgment liens, and the enforcement of the liens for unpaid contributions under this section are governed by the provisions of G.S. 96-10 where applicable.

Training and reemployment contributions collected under this section shall be credited to the Employment Security Commission Training and Employment Account created in this section, and refunds of these contributions shall be paid from the same account. Any interest or penalties collected on unpaid contributions under this section shall be credited to the Special Employment Security Administration Fund, and any interest or penalties refunded on contributions imposed by this section shall be paid from the same Fund.

(b) Training and Employment Account. -- There is created in the State treasury a special account separate and apart from all other public moneys or funds of this State, to be known as the Employment Security Commission Training and Employment Account. The State Treasurer is ex officio the treasurer and custodian of the Account and shall invest its funds in accordance with law. Any interest or other income derived from the Account shall be credited to the Account. Funds in the Account may be spent only pursuant to appropriation by the General Assembly and in accordance with the line item budget enacted by the General Assembly. The Account is subject to the provisions of the Executive Budget Act, except that no unexpended surplus of the Account shall revert to the General Fund. Funds appropriated from the Account that are unexpended and unencumbered at the end of the fiscal year for which they were appropriated shall revert to the credit of the Account in the State treasury in accordance with G.S. 143-18.

It is the intent of the General Assembly that eighty percent (80%) of the funds in the Account shall be appropriated annually to the Department of Community Colleges to be used for nonrecurring expenditures to provide worker training through improved continuing education, acquisition of modern training equipment, operation of specialized training centers, enhancement of small business center training, expansion of training for new and expanding industries, incentive grants for

incumbent worker training, programs funded by the Worker Training Trust Fund, and other programs of the Department of Community Colleges. It is the intent of the General Assembly that twenty percent (20%) of the funds in the Account shall be appropriated annually to the Employment Security Commission for administration and collection of the training and reemployment contribution and for nonrecurring expenditures for reemployment services."

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

"b. Notwithstanding any other provisions of this section, if the successor employer was an employer subject to this Chapter prior to the date of acquisition of the business, ~~his~~ the successor's rate of contribution for the period from ~~such~~ that date to the end of the then current contribution year shall be the same as ~~his~~ the successor's rate in effect on the date of ~~such~~ the acquisition. If the successor was not an employer prior to the date of the acquisition of the ~~business he~~ business, the successor shall be assigned a standard rate of contribution set forth in G.S. 96-9(b)(1) for the remainder of the year in which ~~he~~ the successor acquired the business of the predecessor; however, if ~~such~~ the successor makes application for the transfer of the account within 60 days after notification by the Commission of ~~his~~ the right to do so and the account is transferred, or meets the requirements for mandatory transfer, ~~he~~ the successor shall be assigned for the remainder of ~~such~~ the year the rate applicable to the predecessor employer or employers on the date of acquisition of the business, ~~provided~~ if there was only one predecessor or if more than one and the predecessors had identical rates. In the event the rates of the predecessor were not identical, the rate of the successor shall be the highest rate applicable to any of the predecessor employers on the date of acquisition of the business.

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

~~hundredths percent (2.25%)~~ provided in G.S. 96-9(b)(1) and shall continue to pay at ~~such~~ that rate until ~~he~~ the employer qualifies for a reduction, reacquires the account ~~he transferred or~~ transferred, acquires the experience rating account of another employer, or is subject to an increase in rate under the conditions prescribed in G.S. 96-9(b)(2) and (3)."

Section 4. G.S. 96-9(b)(1) reads as rewritten:

"(b) Rate of Contributions. --

(1) Beginning Rate. -- The standard beginning rate of contributions for an employer is a percentage of wages paid by the employer during a calendar year for employment occurring during that year. The rate is determined in accordance with the following table:

Percentage	Date After Which Employment Occurs
2.25%	December 31, 1986
1.8	December 31, 1993
1.2	December 31, 1995
1.0	December 31, 1999"

Section 5. G.S. 96-9(b)(3) is amended by adding a new sub-subdivision to read:

"d5. The standard contribution rate set by subdivision (b)(1) of this section applies to an employer unless the employer's account has a credit balance. Beginning January 1, 1999, the contribution rate of an employer whose account has a credit balance is determined in accordance with the rate set in the following Experience Rating Formula table for the applicable rate schedule. The contribution rate of an employer whose contribution rate is determined by this Experience Rating Formula table shall be reduced by fifty percent (50%) for any year in which the balance in the Unemployment Insurance Fund equals or exceeds eight hundred million dollars ($800,000,000) on the computation date and the fund ratio determined on that date is less than five percent (5%) and shall be reduced by sixty percent (60%) for any year in which the balance in the Unemployment Insurance Fund equals or exceeds eight hundred million dollars ($800,000,000) on the computation date, and the fund ratio determined on that date is five percent (5%) or more.

EXPERIENCE RATING FORMULA

When The Credit Ratio Is:

As Much As	But Less Than	Rate Schedules (%)								
		A	B	C	D	E	F	G	H	I
0.0%	0.2%	2.16%	2.16%	2.16%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%
0.2%	0.4%	2.16%	2.16%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%
0.4%	0.6%	2.16%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%
0.6%	0.8%	2.16%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%
0.8%	1.0%	2.00%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%
1.0%	1.2%	1.84%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%
1.2%	1.4%	1.68%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%
1.4%	1.6%	1.52%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%
1.6%	1.8%	1.36%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%
1.8%	2.0%	1.20%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%
2.0%	2.2%	1.04%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%
2.2%	2.4%	0.88%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%
2.4%	2.6%	0.72%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%
2.6%	2.8%	0.64%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%
2.8%	3.0%	0.56%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%
3.0%	3.2%	0.48%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%	0.06%
3.2%	3.4%	0.40%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%	0.06%	0.06%
3.4%	3.6%	0.32%	0.24%	0.16%	0.12%	0.08%	0.07%	0.06%	0.06%	0.05%
3.6%	3.8%	0.24%	0.15%	0.12%	0.08%	0.07%	0.06%	0.06%	0.05%	0.04%
3.8%	4.0%	0.16%	0.12%	0.08%	0.07%	0.06%	0.06%	0.05%	0.04%	0.03%
4.0%	& OVER	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%

"

Section 6. G.S. 96-9(b)(3)e. reads as rewritten:

"e. Each employer whose account as of any computation date occurring after August 1, 1964, shows a debit balance shall be assigned the rate of contributions appearing on the line opposite his debit ratio as set forth in the following Rate Schedule for Overdrawn Accounts:

RATE SCHEDULE FOR OVERDRAWN ACCOUNTS
BEGINNING WITH THE CALENDAR YEAR 1978

When the Debit Ratio Is:		
As Much As	But Less Than	Assigned Rate
0.0%	0.3%	~~2.9%~~ 2.3%
0.3	0.6	~~3.1~~ 2.5
0.6	0.9	~~3.3~~ 2.6
0.9	1.2	~~3.5~~ 2.8
1.2	1.5	~~3.7~~ 3.0

1.5	1.8	~~3.9~~ 3.1
1.8	2.1	~~4.1~~ 3.3
2.1	2.4	~~4.3~~ 3.4
2.4	2.7	~~4.5~~ 3.6
2.7	3.0	~~4.7~~ 3.8
3.0	3.3	~~4.9~~ 3.9
3.3	3.6	~~5.1~~ 4.1
3.6	3.9	~~5.3~~ 4.2
3.9	4.2	~~5.5~~ 4.4
4.2 ~~and over~~	4.5	~~5.7~~ 4.6
4.5	4.8	4.8
4.8	5.1	5.0
5.1	5.4	5.2
5.4 and over		5.4

The Rate Schedule for Overdrawn Accounts Beginning with the Calendar Year 1966 in force in any particular calendar year shall apply to all accounts for that calendar year subsequent replacement enactments notwithstanding."

Section 7. Section 1 of this act is effective with respect to calendar quarters beginning on or after April 1, 1999. The remainder of this act is effective with respect to calendar quarters beginning on or after January 1, 2000, and is repealed effective with respect to calendar quarters beginning on or after January 1, 2002.

HOUSE BILL 275:
Zero ESC Tax/Training Contribution

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Rep. Redwine
Date:	May 25, 1999	**Summary by:**	Martha H. Harris
Version:	Senate Committee Substitute		Bill Drafting

SUMMARY: This bill would make the following two changes relating to unemployment insurance taxes. The second item is added in this proposed Senate committee substitute.

1. ***Based on the current Experience Rating Formula table, employers who have a credit ratio of 5% and over have a 0% unemployment insurance tax rate schedule. Section 1 of House Bill 275 would change the minimum credit ratio of employers who are granted a zero tax rate from 5% to 4%, effective April 1, 1999.***
2. ***The remainder of House Bill 275 temporarily reduces Unemployment Insurance taxes for most employers by 20% and levies a corresponding 20% contribution to be used for enhanced reemployment services and worker training programs, effective January 1, 2000. These changes would sunset in two years.***

Section 1: Under current law, employers having a 5% or greater credit ratio pay the zero unemployment insurance tax rate. Section 1 of House Bill 275 would amend G.S. 96-9(b)d3 to grant a zero unemployment insurance tax rate to employers with a credit ratio of 4% or greater rather than the credit ratio of 5% or greater required by current law. The credit ratio is the ratio of an employer's credit balance in the Unemployment Insurance (UI) Fund relative to the employer's payroll. The UI Fund is maintained by the U.S. Treasury and funded by the State unemployment insurance tax. Section 1 of House Bill 275 is effective with respect to calendar quarters beginning on or after April 1, 1999.

According to information provided by the ESC, this change is recommended due to the solvency of North Carolina's UI Fund and the increasing stability of labor markets. ESC estimates this change would affect over 10,000 employers, with a tax savings to employers of over $1,000,000 in the first year.

Sections 2 through 6: Sections 2 through 6 of House Bill 275 would reduce the unemployment insurance taxes employers pay to the Employment Security Commission. The reduction would be 20% for most employers, slightly less for new employers, and less for 3,400 or so employers with a high debit ratio. Those employers who pay at a zero tax rate would not be affected. These sections of the bill would also levy a new tax equal to 20% of each employer's unemployment insurance tax. The tax is called a "training and reemployment contribution." When the UI tax reduction and the new contribution are netted, most employers will pay the same or slightly less under these sections of the bill. For the 3,400 high debit ratio employers, there will be a net increase, ranging from 1% to slightly less than 20% of their current unemployment insurance

taxes. Employers who pay unemployment insurance taxes at a zero tax rate would not be affected.

Sections 2 through 6 of House Bill 275 would become effective January 1, 2000, and sunset January 1, 2002. The new contribution would also automatically sunset if a reduction in the balance in the federal Unemployment Trust Fund triggers a doubling of the unemployment insurance tax rates.

The new contribution would be credited to a non-reverting account subject to appropriation by the General Assembly. The account is called the "Employment Security Commission Training and Employment Account." The bill states the intent of the General Assembly that 4/5 of the proceeds would be appropriated annually from the account to the Department of Community Colleges for nonrecurring expenditures for various worker training programs. The bill states the intent of the General Assembly that the remaining 1/5 of the proceeds would be appropriated annually from the account to the Employment Security Commission for the costs of collecting and administering the new contribution, and for nonrecurring expenditures for enhanced reemployment services.

Unemployment insurance taxes are paid by employers on a quarterly basis and deposited into the State Unemployment Insurance Trust Fund. After deducting any refunds payable from the Fund pursuant to G.S. 96-10(f), the money is deposited with the secretary of the treasury of the United States to the credit of this State's account in the Unemployment Trust Fund. Funds in the State's account earn interest that is also credited to the account. As money in the State's account is needed to pay benefits, it is transferred to the State and credited to the benefits account of the State's Unemployment Insurance Fund to be used to pay benefits to people who lose their job through no fault of their own. Federal law prohibits transfer of or payment of refunds from money in the Trust Fund.

The General Assembly reduced unemployment insurance tax rates in recent years because the balance in the federal trust fund was higher than needed to pay benefits. The tax rates will automatically double when the trust fund balance falls below $800 million. By reducing the unemployment insurance tax rates by 20% for two years, Sections 2 through 6 of this bill could cause the balance in the trust fund to fall faster, triggering an automatic tax increase earlier than might otherwise occur. On the other hand, it is hoped that the enhanced reemployment services funded by the new contribution would shorten the average period before a worker is reemployed, thereby reducing benefit payments for the trust fund. The new contribution would sunset automatically if an unemployment insurance tax increase were triggered by a drop in the trust fund balance.

Legislative History: Since 1992, the General Assembly has enacted the following legislation to reduce the amount of money in the Unemployment Insurance Fund:

- **1992** - suspended the 20% surcharge on unemployment taxes.
- **1993** - cut unemployment taxes for positive rated employers by an average of 30% for any calendar year in which the balance in the Fund equals or exceeds $800,000,000.

- **1994** - cut the unemployment taxes for positive rated employers by an average of 38.7% and cut the unemployment taxes for new employers by 20%.
- **1995** - cut the unemployment taxes for positive rated employers by an average of 23%, set a zero rate for employers with credit ratios of 5.0 or over, and reduced from 60% to 50% the percentage of annual average wages used to calculate the taxable wage base.
- **1996** - reduced unemployment taxes in three ways by (1) assigning a one-year zero unemployment insurance tax rate for all positive rated employers, (2) giving overdrawn employers additional time to make contributions to their accounts so that they may qualify for the zero tax rate in 1996, and (3) permanently reducing the tax rate for new employers from 1.8% to 1.2%.

Jeff Hudson, Staff Atty, and Mary Shuping, Research Assistant, Research Division, and Martha Walston, Staff Atty., Fiscal Research Division, contributed to this summary.

SENATE FINANCE COMMITTEE SUBSTITUTE FOR HOUSE BILL 275 RATIONALE

- As of December 31, 1991 the balance in the Unemployment Insurance Fund stood at almost $1.4 billion. The size of the balance led the General Assembly to take the following steps to help the 160,000 employers in North Carolina
  - 1992 - Suspended the 20% surcharge on unemployment taxes.
  - 1993 - Cut unemployment taxes for positive rated employers by an average of 30% for any calendar year in which the balance in the Fund equals or exceeds $800,000,000.
  - 1994 - Cut the unemployment taxes for positive rated employers by an average of 38.7% and cut the unemployment taxes for new employers by 20%.
  - 1995 - Cut the unemployment taxes for positive rated employers by an average of 23%, set a zero rate for employers with credit ratios of 5.0 or over, and reduced from 60% to 50% the percentage of annual average wages used to calculate the taxable wage base.
  - 1996 - Reduced unemployment taxes by: (1) assigning a one-year zero unemployment insurance tax rate for all positive rated employers, (2) giving overdrawn employers additional time to make contributions to their accounts so that they may qualify for the zero tax rate in 1996, and (3) permanently reducing the tax rate for new employers from 1.8% to 1.2%.
- On an annual basis, these reductions are equal to almost $500 million in current dollars.
- Even with these savings to employers, the state's healthy economy has meant that the fund balance remains at $1.2 billion as of April 30 (+$200 million in State reserve fund).
- Though the overall economy is healthy, job losses in the textile and apparel industries due a shift to overseas production and the displacement of tobacco farmers creates a need for additional job training and reemployment efforts.
- The proposed bill is a "win-win" situation for North Carolina. Under this proposal $142 million of unemployment taxes will remain in North Carolina to address worker training and reemployment needs instead of sitting in Washington.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 570

Short Title: Update Consumer Finance Act. (Public)

Sponsors: Senators Hoyle; Ballantine, Carpenter, Carter, Dalton, Forrester, Jordan, Lee, Moore, Odom, Plyler, Purcell, Reeves, Rucho, Soles, and Weinstein.

Referred to: Commerce.

March 29, 1999

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE NORTH CAROLINA CONSUMER FINANCE ACT TO REVISE THE COLLECTION OF INTEREST UNDER CERTAIN CIRCUMSTANCES, TO ALLOW BORROWERS TO CANCEL LOANS UNDER CERTAIN CONDITIONS, TO RECOGNIZE INADVERTENT LOANS IN THE LAW RESTRICTING MULTIPLE-OFFICE LOANS, TO REQUIRE DISCLOSURE ON SOLICITATION OF LOANS BY FACSIMILE OR NEGOTIABLE CHECKS, TO ALLOW LENDERS TO MAINTAIN CERTAIN RECORDS IN THE FORM OF OPTICAL IMAGE DISKS, TO SPECIFY A MAXIMUM CHARGE THAT LENDERS MAY ASSESS AT CLOSING, AND TO REQUIRE LICENSEES TO REPORT ADDITIONAL INFORMATION TO THE COMMISSIONER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 53-165(a) reads as rewritten:

"(a) 'Amount of the loan' shall mean the aggregate of the cash advance and the charges authorized either by ~~G.S. 53-173.~~ G.S. 53-173 or G.S. 53-176."

Section 2. G.S. 53-176 reads as rewritten:

"**§ 53-176. Optional rates, maturities and amounts.**

In lieu of making loans in the amount and at the charges stated in G.S. 53-173 and for the terms stated in G.S. 53-180, a licensee may at any time elect to make loans in installments not exceeding ten thousand dollars ($10,000) and which shall not be repayable in less than six months or more than 84 months and which shall not be

secured by deeds of trust or mortgages on real estate and which are repayable in substantially equal consecutive monthly payments and to charge and collect interest in connection therewith which shall not exceed the following actuarial rates:

(1) With respect to a loan not exceeding ~~seven thousand five hundred dollars ($7,500),~~ ten thousand dollars ($10,000), thirty percent (30%) per annum on that part of the unpaid principal balance not exceeding ~~one thousand dollars ($1,000)~~ two thousand dollars ($2,000) and eighteen percent (18%) per annum on the remainder of the unpaid principal balance. Interest shall be contracted for and collected at the single simple interest rate applied to the outstanding balance that would earn the same amount of interest as the above rates for payment according to schedule.

~~(2) With respect to a loan exceeding seven thousand five hundred dollars ($7,500), eighteen percent (18%) per annum on the outstanding principal balance.~~

In addition to the interest permitted in this section, a licensee may assess at closing a ~~reasonable credit investigation~~ loan charge ~~as agreed upon by the parties,~~ not to exceed ~~the actual cost of the credit investigation;~~ twenty-five dollars ($25.00); provided that such charges may not be assessed to the same borrower more than twice in any 12-month ~~period. The Commissioner of Banks may review charges assessed pursuant to this section and may adopt appropriate rules in accordance with G.S. 53-185.~~ period, and which may be included in the original principal balance of the loan and shall be earned when the loan is made.

The provisions of G.S. 53-173(b), (c) and (d) and G.S. 53-180(b), (c), (d), (e), (f), (g), (h) and (i) shall apply to loans made pursuant to this section.

Any licensee under this Article shall have the right to elect to make loans in accordance with this section by the filing of a written statement to that effect with the Commissioner and on date of such notification begin making loans regulated by this section for the following 12 months. Annually after such election a licensee may elect to make loans in accordance with this section unless the licensee notifies in writing the Commissioner of its intention to terminate such election.

The due date of the first monthly payment shall not be more than 45 days following the disbursement of funds under any such installment loan. A borrower under this section may prepay all or any part of a loan made under this section without penalty. A borrower may cancel a loan within 15 calendar days after disbursement of the loan proceeds to the borrower without incurring or paying interest so long as the amount of the loan is returned to or received by the licensee.

No individual, partnership, or corporate licensee and no corporation which is the parent, subsidiary or affiliate of a corporate licensee that is making loans under this Article except as authorized in this section, shall be permitted to make loans under the provisions of this section. Any corporate licensee or individual or partnership licensee that elects to make loans in accordance with the provisions of this section shall be bound by that election with respect to all of its offices and locations in this State and all offices and locations in this State of its parent, subsidiary or affiliated

corporate licensee, or with respect to all of his or their offices and locations in this State."

Section 3. G.S. 53-179 reads as rewritten:

"**§ 53-179. Multiple-office loan limitations.**

A licensee shall not grant a loan under this Article in one office to any borrower who already has a loan in another office operated by the same entity or by an affiliate, parent, subsidiary or under the same ownership, management or control, whether partial or ~~complete.~~ complete for the purpose, or with the effect, of obtaining charges in excess of those authorized by this Article. This section shall apply to intrastate and interstate operations. A licensee shall take every reasonable precaution to prevent granting loans in violation of this section. Such loans granted inadvertently ~~resulting in a total liability of three thousand dollars ($3,000) or less, shall be adjusted to the rates applicable under the Article to a single loan of equivalent amount, and when the total liability on such loans is in excess of three thousand dollars ($3,000), interest shall be adjusted to simple interest at eight percent (8%) per annum on the entire obligation.~~ shall be adjusted to the rates applicable under this Article to a single loan of equivalent amount. Such loans granted intentionally with the purpose to evade this Article shall be adjusted to a simple interest at eight percent (8%) per annum on the entire obligation."

Section 4. G.S. 53-181(a) is amended by adding a new subdivision to read:

"(10) In addition to any disclosures otherwise provided by law, a licensee soliciting loans using facsimile or negotiable checks shall disclose the following:

'THIS IS A SOLICITATION FOR A LOAN. READ THE ENCLOSED DISCLOSURES BEFORE SIGNING THIS AGREEMENT.'

This notice shall be printed in not less than 10-point bold type and shall appear conspicuously on the offer."

Section 5. G.S. 53-182(b) reads as rewritten:

"(b) Upon payment of any loan in full, a licensee shall cancel and return to the borrower, within a reasonable length of time, originals or copies of any note, assignment, mortgage, deed of trust, or other instrument securing such loan, which no longer secures any indebtedness of the borrower to the licensee."

Section 6. G.S. 53-184 reads as rewritten:

"**§ 53-184. Securing of information; records and reports; allocations of expense.**

(a) Each licensee shall maintain all books and records relating to loans made under this Article required by the Commissioner of Banks to be kept, and the Commissioner, his deputy, or duly authorized examiner or agent or employee is authorized and empowered to examine such records at any reasonable time. Such books and records may be maintained in the form of magnetic tape, magnetic ~~disk~~ disk, optical disk, or other form of computer, electronic or microfilm media available for examination on the basis of computer printed reproduction, video display or other medium acceptable to the Commissioner of Banks; provided, however, that such

books and records so kept must be convertible into clearly legible tangible documents within a reasonable time. Any licensee having more than one licensed office may maintain such books and records at a location other than the licensed office location if such location is approved by the Commissioner; provided that, upon such requirements as may be imposed by the Commissioner of Banks, there shall be available to the borrower at each licensed location or such other location convenient to the borrower, as designated by the licensee, complete loan information; and provided further that such books and records of each licensed office shall be clearly segregated. When a licensee maintains its books and records outside of North Carolina, the licensee shall make them available for examination at the place where they are maintained and shall pay for all reasonable and necessary expenses incurred by the Commissioner in conducting such examination. Where the data processing for any licensee is performed by a person other than the licensee, the licensee shall provide to the Commissioner of Banks a copy of a binding agreement between the licensee and the data processor which allows the Commissioner of Banks, his deputy, or duly authorized examiner or agent or employee to examine that particular data processor's activities pertaining to the licensee to the same extent as if such services were being performed by the licensee on its own premises; and, notwithstanding the provisions of G.S. 53-167 and 53-122, when billed by the Commissioner of Banks, the licensee shall reimburse the Commissioner of Banks for all costs and expenses incurred by ~~him~~ the Commissioner in such examination.

(b) Each licensee shall file annually with the Commissioner of Banks on or before the thirty-first day of March for the 12 months' period ending the preceding December 31, reports on forms prescribed by the Commissioner. Reports shall disclose in detail and under appropriate headings the assets and liabilities of the licensee, the ~~income, expense,~~ income from interest and other charges collected for loans, income from all businesses related to transactions under the act, income from other noncredit businesses authorized by the Commissioner, all expense from those businesses, gain, loss, delinquency, bad debt, bad debt recovery, and any other information as the Commissioner may ~~require.~~ require in order to make meaningful reports to the public and the General Assembly on the services and financial condition of the industry. Reports shall be verified by the oath or affirmation of the owner, manager, president, vice-president, cashier, secretary or treasurer of the licensee.

(c) If a licensee conducts another business or is affiliated with other licensees under this Article, or if any other situation exists under which allocations of expense are necessary, the licensee or licensees shall make such allocation according to appropriate and reasonable accounting principles.

(d) Repealed by Session Laws 1997-285, s. 3."

Section 7. This act becomes effective October 1, 1999, and applies to loans made on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 570
Proposed Committee Substitute S570-PCS4684-LT

Short Title: Update Consumer Finance Act. (Public)

Sponsors:

Referred to:

March 29, 1999

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE NORTH CAROLINA CONSUMER FINANCE ACT TO REVISE THE COLLECTION OF INTEREST UNDER CERTAIN CIRCUMSTANCES, TO ALLOW BORROWERS TO CANCEL LOANS UNDER CERTAIN CONDITIONS, TO INCREASE CERTAIN FEES, TO INCREASE THE LIABILITY AMOUNTS OF INADVERTENT LOANS IN THE LAW RESTRICTING MULTIPLE-OFFICE LOANS, TO REQUIRE DISCLOSURE ON SOLICITATION OF LOANS BY FACSIMILE OR NEGOTIABLE CHECKS, TO ALLOW LENDERS TO MAINTAIN CERTAIN RECORDS IN THE FORM OF OPTICAL IMAGE DISKS, AND TO SPECIFY A MAXIMUM CHARGE THAT LENDERS MAY ASSESS AT CLOSING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 53-165(a) reads as rewritten:

"(a) 'Amount of the loan' shall mean the aggregate of the cash advance and the charges authorized either by ~~G.S. 53-173.~~ G.S. 53-173 or G.S. 53-176."

Section 2. G.S. 53-168(b) reads as rewritten:

"(b) Investigation of Applicants. -- Upon the receipt of an application, the Commissioner shall investigate the facts. If the Commissioner determines from such preliminary investigation that the applicant does not satisfy the conditions set forth in subsection (a), he shall so notify the applicant who shall then be entitled to an informal hearing thereon provided he so requests in writing within 30 days after the Commissioner has caused the above-referred to notification to be mailed to the applicant. In the event of a hearing, to be held in the offices of the Commissioner of

Banks in Raleigh, the Commissioner shall reconsider the application and, after the hearing, issue a written order granting or denying such application. At the time of making such application, the applicant shall pay the Banking Department the sum of ~~two hundred fifty dollars ($250.00)~~ two hundred seventy-five dollars ($275.00) as a fee for investigating the application, which shall be retained irrespective of whether or not a license is granted the applicant."

Section 3. G.S. 53-176 reads as rewritten:

"**§ 53-176. Optional rates, maturities and amounts.**

In lieu of making loans in the amount and at the charges stated in G.S. 53-173 and for the terms stated in G.S. 53-180, a licensee may at any time elect to make loans in installments not exceeding ten thousand dollars ($10,000) and which shall not be repayable in less than six months or more than 84 months and which shall not be secured by deeds of trust or mortgages on real estate and which are repayable in substantially equal consecutive monthly payments and to charge and collect interest in connection therewith which shall not exceed the ~~following~~ actuarial ~~rates:~~

~~(1)~~ ~~With~~ rates of thirty percent (30%) per annum on that part of the unpaid principal balance not exceeding two thousand dollars ($2,000) with respect to a loan not exceeding ten thousand dollars ($10,000) ~~seven thousand five hundred dollars ($7,500), thirty percent (30%) per annum on that part of the unpaid principal balance not exceeding one thousand dollars ($1,000)~~ and eighteen percent (18%) per annum on the remainder of the unpaid principal balance. Interest shall be contracted for and collected at the single simple interest rate applied to the outstanding balance that would earn the same amount of interest as the above rates for payment according to schedule.

~~(2) With respect to a loan exceeding seven thousand five hundred dollars ($7,500), eighteen percent (18%) per annum on the outstanding principal balance.~~

In addition to the interest permitted in this section, a licensee may assess at closing a ~~reasonable credit investigation~~ loan charge ~~as agreed upon by the parties,~~ not to exceed ~~the actual cost of the credit investigation;~~ twenty-five dollars ($25.00); provided that such charges may not be assessed to the same borrower more than twice in any 12-month ~~period. The Commissioner of Banks may review charges assessed pursuant to this section and may adopt appropriate rules in accordance with G.S. 53-185.~~ period, and which may be included in the original principal balance of the loan and shall be earned when the loan is made.

The provisions of G.S. 53-173(b), (c) and (d) and G.S. 53-180(b), (c), (d), (e), (f), (g), (h) and (i) shall apply to loans made pursuant to this section.

Any licensee under this Article shall have the right to elect to make loans in accordance with this section by the filing of a written statement to that effect with the Commissioner and on date of such notification begin making loans regulated by this section for the following 12 months. Annually after such election a licensee may elect

to make loans in accordance with this section unless the licensee notifies in writing the Commissioner of its intention to terminate such election.

The due date of the first monthly payment shall not be more than 45 days following the disbursement of funds under any such installment loan. A borrower under this section may prepay all or any part of a loan made under this section without penalty. A borrower, no more than twice in a 12-month period with the same licensee, may cancel a loan within 15 calendar days after disbursement of the loan proceeds to the borrower without incurring or paying interest so long as the amount of the loan, minus any fees or charges, is returned to or received by the licensee.

No individual, partnership, or corporate licensee and no corporation which is the parent, subsidiary or affiliate of a corporate licensee that is making loans under this Article except as authorized in this section, shall be permitted to make loans under the provisions of this section. Any corporate licensee or individual or partnership licensee that elects to make loans in accordance with the provisions of this section shall be bound by that election with respect to all of its offices and locations in this State and all offices and locations in this State of its parent, subsidiary or affiliated corporate licensee, or with respect to all of his or their offices and locations in this State."

Section 4. G.S. 53-179 reads as rewritten:

"**§ 53-179. Multiple-office loan limitations.**

A licensee shall not grant a loan under this Article in one office to any borrower who already has a loan in another ~~office~~ office, licensed under this Article, operated by the same entity or by an affiliate, parent, subsidiary or under the same ownership, management or control, whether partial or ~~complete.~~ complete for the purpose, or with the effect, of obtaining charges in excess of those authorized by this Article. This section shall apply to intrastate and interstate operations. A licensee shall take every reasonable precaution to prevent granting loans in violation of this section. Such loans granted inadvertently resulting in a total liability of ~~three thousand dollars ($3,000)~~ six thousand dollars ($6,000) or less, shall be adjusted to the rates applicable under the Article to a single loan of equivalent amount, and when the total liability on such loans is in excess of ~~three thousand dollars ($3,000),~~ six thousand dollars ($6,000), interest shall be adjusted to simple interest at eight percent (8%) per annum on the entire obligation."

Section 5. G.S. 53-181(a) is amended by adding a new subdivision to read:

"(10) In addition to any disclosures otherwise provided by law, a licensee soliciting loans using facsimile or negotiable checks shall disclose the following:

'THIS IS A SOLICITATION FOR A LOAN. READ THE ENCLOSED DISCLOSURES BEFORE SIGNING THIS AGREEMENT.'

This notice shall be printed in not less than 10-point bold type and shall appear conspicuously on the offer."

Section 6. G.S. 53-182(b) reads as rewritten:

"(b) Upon payment of any loan in full, a licensee shall cancel and return to the borrower, within a reasonable length of time, originals or copies of any note, assignment, mortgage, deed of trust, or other instrument securing such loan, which no longer secures any indebtedness of the borrower to the licensee."

Section 7. G.S. 53-184(a) reads as rewritten:

"(a) Each licensee shall maintain all books and records relating to loans made under this Article required by the Commissioner of Banks to be kept, and the Commissioner, his deputy, or duly authorized examiner or agent or employee is authorized and empowered to examine such records at any reasonable time. Such books and records may be maintained in the form of magnetic tape, magnetic ~~disk~~ disk, optical disk, or other form of computer, electronic or microfilm media available for examination on the basis of computer printed reproduction, video display or other medium acceptable to the Commissioner of Banks; provided, however, that such books and records so kept must be convertible into clearly legible tangible documents within a reasonable time. Any licensee having more than one licensed office may maintain such books and records at a location other than the licensed office location if such location is approved by the Commissioner; provided that, upon such requirements as may be imposed by the Commissioner of Banks, there shall be available to the borrower at each licensed location or such other location convenient to the borrower, as designated by the licensee, complete loan information; and provided further that such books and records of each licensed office shall be clearly segregated. When a licensee maintains its books and records outside of North Carolina, the licensee shall make them available for examination at the place where they are maintained and shall pay for all reasonable and necessary expenses incurred by the Commissioner in conducting such examination. Where the data processing for any licensee is performed by a person other than the licensee, the licensee shall provide to the Commissioner of Banks a copy of a binding agreement between the licensee and the data processor which allows the Commissioner of Banks, his deputy, or duly authorized examiner or agent or employee to examine that particular data processor's activities pertaining to the licensee to the same extent as if such services were being performed by the licensee on its own premises; and, notwithstanding the provisions of G.S. 53-167 and 53-122, when billed by the Commissioner of Banks, the licensee shall reimburse the Commissioner of Banks for all costs and expenses incurred by ~~him~~ the Commissioner in such examination."

Section 8. This act becomes effective October 1, 1999, and applies to loans made on or after that date.

SENATE BILL 570:
Update Consumer Finance Act

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Senator Hoyle
Date:	May 26, 1999	**Summary by:**	Martha K. Walston
Version:	Proposed Committee Substitute		Committee Counsel

SUMMARY: ***Senate Bill 570 amends the North Carolina Consumer Finance Act by revising the collection of interest under certain circumstances , to allow borrowers to cancel loans under certain conditions, to increase certain fees, to increase the liability amounts of inadvertent loans in the law restricting multiple-office loans, to require disclosure on solicitation of loans by facsimile or negotiable checks, to allow a lender to maintain records in the form of optical image disk, and to specify maximum closing charge. The act becomes effective October 1, 1999, and applies to loans made on or after that date..***

BILL ANALYSIS: The proposed committee substitute for Senate Bill makes the following changes to the North Carolina Consumer Finance Act. This Act applies to unsecured, person loans in the State.

Section 1 amends G.S. 53-165(a) to provide that the "amount of the loan" means the aggregate of the cash advance and the charges authorized by G.S. 53-173 or G.S. 53-176(deals with installment loans).

Section 2 amends G.S. 53-168(b) to increase the application fee for a license to conduct a consumer finance business from $250.00 to $275.00. This fee is paid to the Banking Department and is used by the Banking Commissioner for investigating the application.

Section 3 amends G.S. 53-176 by changing the interest rates on installment loans not exceeding $10,000. These loans may not be paid in less than six months or more than 84 months and may not be secured by deeds of trust or mortgages. The section allows an actuarial interest rate of 30% on that part of the unpaid principal not exceeding $2,,000 (now $1,000) for loans not to exceed $10,000 (now $7,500)

This section specifies the loan charge that a licensee may assess at closing. This charge is $25.00. The current language states that the licensee may assess at closing "a reasonable credit investigation charge not to exceed the actual cost of the credit investigation." The amendment also clarifies that the charge may not be assessed against the same borrower more than twice in any 12-month period

This section also allows a borrower to cancel a loan within 15 calendar days after disbursement of the loan proceeds without paying interest so long as the borrower returns the amount of the loan, minus any fees or charges. The borrower may exercise this option no more than twice in a 12-month period with the same licensee.

Section 4 amends G.S. 53-179. This section increases the liability amount of loans inadvertently granted to a borrower who already has a loan in another licensed office that is operated or owned by the same entity or an affiliate. If the inadvertent loan amount totals $6,000 (now $3,000) the interest rate will be adjusted to the applicable rate to a single loan of equivalent amount. If the loan liability is in excess of $6,000 (now $3,000) the interest rate will be adjusted to 8%. The section clarifies that a multiple-office licensee may not make more than one loan to a borrower for the purpose, or with the effect, of obtaining charges in excess of those authorized by the Article.

Section 5 amends G.S. 53-181(a) to require a licensee soliciting loans using facsimile or negotiable checks to make the following written disclosure on the offer: "THIS IS A SOLICITATION FOR A LOAN. READ THE ENCLOSED DISCLOSURES BEFORE SIGNING THIS AGREEMENT."

Section 6 clarifies that when a loan is paid in full the licensee shall return to the borrower originals or copies of instruments securing the loan.

Section 7 amends G.S. 53-184(a) to allow a licensee to maintain the required loan books and records in the form of optical disk.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 570 (Senate Finance Committee Substitute)

SHORT TITLE: Update Consumer Finance Act

SPONSOR(S): Senators Hoyle et al.

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
Office of the Commissioners of Banks					
REVENUES					
Application Fee	$488	$650	$650	$650	$650
EXPENDITURES		No Fiscal Impact			

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: NC Banking Commission; The Office of the Commissioner of Banks

EFFECTIVE DATE: The act becomes effective October 1, 1999 and applies to loans made on or after that date.

BILL SUMMARY: The bill makes several changes to the North Carolina Consumer Finance Act.

ASSUMPTIONS AND METHODOLOGY:

Section 2 of the bill increases the fee for investigating license applications from $250 to $275. The Office of the Commissioner of Banks received 26 applications in calendar year 1998 and received 8 applications in the first three months of 1999. Since the Consumer Finance Administrator at the Office of the Commissioner of Banks described 1998 as a typical year for license applications, this fiscal note assumes 26 applications per year. A $25 increase for 26 applications equals $650. The October 1, 1999 effective date will reduce this revenue increase by one-fourth in FY 1999-00.

Current law allows consumer finance agencies to assess a reasonable credit investigation charge based on the actual cost of an investigation. Section 3 of the bill changes the law to set this charge at $25. The Office of the Commissioner of Banks reported credit investigation charges for 70 consumer finance agencies ranged from 0 to $30 in 1998. The average charge was $16 and the median charge was $15 in 1998. Only 21.4% of the reported charges were $25 or greater.

The real cost of this bill is to the consumer. There are 74 companies with 657 offices in the state that offer loans under G. S. 53-176. Current law permits maximum interest charges of 30% per year on the unpaid principal balance that does not exceed $1,000 and 18% per year on the remaining balance that does not exceed $7,500. SB 570 increases the lower threshold for the 30% tax from $1,000 to $2,000 and the upper threshold from $7,500 to $10,000. This change will increase interest paid by consumers as shown by the following example:

The Commissioner of Banks reported in the 1997 Consumer Finance Annual Report that 125,757 new loans were issued in amounts less than $1,000. In the same year, 469,509 loans worth $1,337,750,127 exceeded $1,000. Assuming an additional 12% tax (30%-18%) on $1,000 for each of the 469,509 loans exceeding $1,000, the additional cost to consumers would be $56,341,080. This estimate is for new loans issued in 1997 and does not account for previously issued loans with outstanding balances. No further data is available at this time.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic

APPROVED BY:

DATE:

Senate Bill 570

Senate Bill 570 is a bad bill for the citizens of North Carolina. It will result in higher interest rates to consumers (on those least able to afford it), when nationwide interest rates are at a 30-year historic low.

Proponents of the bill cite the following reasons for passage:

- Losing money by making loans without an increase in interest rates
- High default rate by borrowers
- Credit will be cut off or reduced to borrowers without interest increase

Let us examine one company operating in North Carolina, although the statistics pointed out are indicative of the consumer finance industry. These statistics are from an annual 10-K Securities and Exchange Commission filing more commonly known as the annual report to shareholders.

Commercial Credit Corporation is a subsidiary of the Citicorp Group, which owns Citicorp Bank, Travelers Insurance, Salomon Brothers and Smith Barney.

As of December 31, 1998, Commercial Credit had 980 branches nationwide, making it one of the largest consumer finance companies in the country (Citicorp annual report, page 9).

In North Carolina, Commercial Credit operates 80 branch offices and has outstanding consumer loans as of December 31, 1997 of $355,718,628 (NC Commissioner of Bank report, page 5).

Losing money making loans without an increase in interest rates

In 1998, Consumer Credit made $288 million in business income for Citicorp, this being an increase over $213 million in 1997, and $199 million in 1996 (Annual report, page 5). The 24% increase in 1998 reflects internal receivables growth and an improved charge off rate (Annual report, page 9).

High default rate by borrowers

These poor risk borrowers have better payment history than "normal" credit card borrowers. The net credit loss ratio of 2.74% in 1998 was **down** from 2.82% in 1997, and **down** from 3.14% in 1996. Therefore, losses to "poor risk" consumers have declined every year since 1996 (Annual report, page 9).

Credit card borrowers on the other hand, had a net credit loss ratio of 5.33% in 1998, 5.74% in 1997 and 4.95% in 1996 (Annual report, page 8 and 9).

Therefore the "normal risk" credit card borrowers had a credit loss rate of **twice** that of the poor risk consumers.

See attached chart on Annual report page 16 to compare net credit losses with all categories.

Credit will be cut off or reduced to borrowers without interest increase

In December 1998, Commercial Credit had record high loan receivables of $11.9 billion compared to $9.8 billion in 1997 and $7.1 billion in 1996 (Annual report, page 9).

Clearly, when there is an increase in credit to consumer borrowers of over $4 billion no credit is in danger of being cut off or reduced. **It is simply too profitable to keep lending.**

Licensee Home Office	Number of Offices	Loan Category	Loans Receivable
Coastal Finance Company, Inc. 3602 Market Street Wilmington, NC 28403	4	GS 53-176	5,261,211
Colonial Credit, Inc. 207 South Broad Street Edenton, NC 27932	1	GS 53-176	826,767
Commercial Credit Corporation NC 300 St. Paul Place Baltimore, MD 21202	80	GS 53-176	355,718,628
Consumer Financial Services Inc. 119 S. Van Buren Road PO Box 911 Eden, NC 27288	1	GS 53-176	1,458,895
County Finance Company 128 East Elm Street Graham, NC 27253	1	GS 53-176	370,122
Equity One, Inc. 523 Fellowship Road, Suite 220 Mt. Laurel, NJ 08054	14	GS 53-176	16,910,248
FCA of Hamlet, Inc. 801 E. Broad Avenue Rockingham, NC 28379	1	GS 53-176	343,157
Family Credit Corp. 219 West Railroad Street PO Box 400 Bethel, NC 27812	1	GS 53-173	127,781
Federal Financial Services, Inc. 262 East Main Street Elkin, NC 28621	2	GS 53-176	1,366,825
First Community Finance, Inc. 4900 Augusta Avenue, Suite 104 Richmond, Virginia 23230	8	GS 53-176	4,711,778
Foothill Credit Corporaton of Pilot Mountain 653 South Key Street PO Box 1218 Pilot Mountain, NC 27041	1	GS 53-176	518,664
Globe Finance Company 115 East Main Street Durham, NC 27701	1	GS 53-173	38,668
Green Tree Consumer Discount Company 300 Landmark Towers 345 St. Peter Street Saint Paul, MN 55102-1637	4	GS 53-176	0
Greene Finance Corporation 141 N. Main Street PO Box 630 Mount Airy, NC 27030	1	GS 53-176	1,117,744
Holiday Finance of Statesville, Inc. 220 South Center Street Statesville, NC 28677	1	GS 53-176	918,849

Merger with Citicorp

On October 8, 1998, Citicorp merged with and into a newly formed, wholly owned subsidiary of Travelers Group Inc. (TRV) (the Merger). Following the Merger, TRV changed its name to Citigroup Inc. (Citigroup). Under the terms of the Merger, approximately 1.1 billion shares of Citigroup common stock were issued in exchange for all of the outstanding shares of Citicorp common stock based on an exchange ratio of 2.5 shares of Citigroup common stock for each share of Citicorp common stock. Each share of TRV common stock automatically represented one share of Citigroup common stock. Following the exchange, former shareholders of Citicorp and TRV each owned approximately 50% of the outstanding common stock of Citigroup. Each outstanding share of Citicorp preferred stock was converted into one share of a corresponding series of preferred stock of Citigroup having identical terms (See Note 18 of Notes to Consolidated Financial Statements—Series O through Series V).

The consolidated financial statements give retroactive effect to the Merger in a transaction accounted for as a pooling of interests. The pooling of interests method of accounting requires the restatement of all periods presented as if TRV and Citicorp had always been combined. The consolidated statement of changes in stockholders' equity reflects the accounts of Citigroup together with its subsidiaries (the Company) as if the additional preferred and common stock had been issued during all the periods presented.

Upon consummation of the Merger, the Company became a bank holding company subject to the provisions of the Bank Holding Company Act of 1956 (the BHCA). The BHCA precludes a bank holding company and its affiliates from engaging in certain activities, generally including insurance underwriting. Under the BHCA in its current form, the Company has two years from the date it became a bank holding company to comply with all applicable provisions (the BHCA Compliance Period). The BHCA Compliance Period may be extended, at the discretion of the Federal Reserve Board, for three additional one-year periods so long as the extension is not deemed to be detrimental to the public interest. At this time, the Company believes that its compliance with applicable laws following the Merger will not have a material adverse effect on the Company's financial condition, results of operations, or liquidity.

There is pending federal legislation that would, if enacted, amend the BHCA to authorize a bank holding company to own certain insurance underwriters. There is no assurance that such legislation will be enacted. At the expiration of the BHCA Compliance Period, the Company will evaluate its alternatives in order to comply with whatever laws are then applicable.

Merger with Salomon

On November 28, 1997, a newly formed, wholly owned subsidiary of the Company merged with and into Salomon Inc (Salomon) (the Salomon Merger). Under the terms of the Salomon Merger, approximately 188.5 million shares of Citigroup common stock were issued in exchange for all of the outstanding shares of Salomon common stock, based on an exchange ratio of 1.695 shares of Citigroup common stock for each share of Salomon common stock. Shares of each of Salomon's series of preferred stock outstanding were exchanged for a corresponding series of Citigroup preferred stock having substantially identical terms, except that the Citigroup preferred stock issued in conjunction with the Salomon Merger has certain voting rights. Thereafter, Smith Barney Holdings Inc. (Smith Barney), a wholly owned subsidiary of Citigroup, was merged with and into Salomon to form Salomon Smith Barney Holdings Inc. (Salomon Smith Barney). The Salomon Merger was accounted for under the pooling of interests method.

Acquisition of Aetna P&C

On April 2, 1996, Travelers Property Casualty Corp. (TAP), an indirect majority-owned subsidiary of Citigroup, acquired the domestic property and casualty insurance subsidiaries of Aetna Services, Inc. (Aetna P&C) for approximately $4.2 billion in cash. This acquisition was financed in part by the issuance by TAP of common stock resulting in a minority interest in TAP of approximately 18% at that time (currently 16%). The acquisition was accounted for under the purchase method of accounting and, accordingly, the consolidated financial statements include the results of Aetna P&C's operations from the date of acquisition. TAP also owns The Travelers Indemnity Company and its subsidiaries (Travelers P&C). TAP's insurance subsidiaries are the primary vehicles through which the Company engages in the property and casualty insurance business.

Business Focus

The table below shows the business income (loss) for each of Citigroup's businesses:

In Millions of Dollars	**1998**	1997	1996
Global Consumer			
Citibanking North America	**$ 113**	$ 71	$ (12)
Mortgage Banking	**175**	117	64
Cards	**737**	523	713
Consumer Finance Services	**264**	213	199
Banking/Lending	**1,289**	924	964
Travelers Life & Annuity	**496**	424	360
Primerica Financial Services	**400**	335	273
Personal Lines	**319**	300	193
Insurance	**1,215**	1,059	826
Total North America	**2,504**	1,983	1,790
Europe, Middle East, & Africa	**155**	138	190
Asia Pacific	**410**	428	496
Latin America	**163**	273	281
Global Private Bank	**254**	281	231
Total International	**982**	1,120	1,198
e-Citi	**(142)**	(79)	(51)
Other	**(86)**	24	46
Total Global Consumer	**3,258**	3,048	2,983
Global Corporate and Investment Bank			
Salomon Smith Barney	**408**	1,438	1,638
Emerging Markets	**690**	909	1,000
Global Relationship Banking	**220**	559	510
Commercial Lines Insurance	**723**	632	499
Total Global Corporate and Investment Bank	**2,041**	3,538	3,647
Asset Management	**273**	243	208
Corporate/Other	**(159)**	(370)	(451)
Business Income	**5,413**	6,459	6,387
Investment Activities	**929**	1,292	594
Core Income	**6,342**	7,751	6,981
Restructuring charges and merger-related costs	**(535)**	(1,046)	—
Gain on sale of stock by subsidiary	**—**	—	363
Acquisition-related costs	**—**	—	(346)
Loss on disposition of subsidiary	**—**	—	(259)
Net Income	**$5,807**	$ 6,705	$6,739

Adjusted operating expenses in 1998 were up $94 million or 6% from 1997 and grew $104 million or 7% in 1997, reflecting business volume growth.

Credit costs improved to $111 million in 1998 from $131 million in 1997 and $140 million in 1996. The net credit loss ratio was 1.49% in 1998, down from 1.61% in 1997 and 1.72% in 1996.

Business income in both 1998 and 1997 benefited from a lower effective tax rate. The effective tax rates on business income (loss) before taxes were 35%, 47%, and 57%, in 1998, 1997, and 1996, respectively. Fluctuations in the effective income tax rates result from changes in the nature and geographic mix of pretax earnings.

Mortgage Banking

In Millions of Dollars	**1998**	1997	1996
Total revenues, net of interest expense	**$558**	$519	$458
Adjusted operating expenses (1)	**243**	234	219
Operating margin	**315**	285	239
Credit costs (2)	**20**	87	134
Business income before taxes and minority interest	**295**	198	105
Income taxes	**115**	81	41
Minority interest	**5**	—	—
Business income	**175**	117	64
Restructuring charges, after-tax	**6**	12	—
Net income	**$169**	$105	$ 64
Average assets *(in billions of dollars)*	**$ 25**	$ 24	$ 22
Return on assets	**0.68%**	0.44%	0.29%
Excluding restructuring charges			
Return on assets	**0.70%**	0.49%	0.29%

(1) Excludes restructuring charges.
(2) Represents provision for credit losses.

Mortgage Banking—which provides mortgages and student loans to customers across North America—reported business income of $175 million in 1998, up $58 million or 50% from 1997, reflecting lower credit costs and higher revenues resulting from increased business volumes. Net income of $169 million in 1998 and $105 million in 1997, included restructuring charges of $9 million ($6 million after-tax) and $20 million ($12 million after-tax), respectively. 1997 business income of $117 million was up from $64 million in 1996.

As shown in the following table, Mortgage Banking grew accounts, loans, and mortgage originations in both 1998 and 1997.

In Billions of Dollars	**1998**	1997	1996
Accounts *(in millions)* (1)	**2.8**	2.5	2.2
Average loans (1)	**$23.9**	$22.3	$20.8
Mortgage originations	**16.1**	8.2	5.3

(1) Includes student loans.

Revenues, net of interest expense, of $558 million in 1998 grew $39 million or 8% from 1997 and in 1997 were up $61 million or 13% from 1996, reflecting increased mortgage originations, including refinancing activity, and growth in the student loan portfolio. Adjusted operating expenses were up $9 million or 4% in 1998 and grew $15 million or 7% in 1997, reflecting additional business volumes.

Credit costs of $20 million in 1998 declined from $87 million in 1997 and $134 million in 1996. The 1998 net credit loss ratio of 0.31%, was down from 0.51% and 0.64% in 1997 and 1996, respectively, reflecting continued improvement in the mortgage portfolio. Credit costs included a benefit of $55 million and $28 million in 1998 and 1997, respectively, arising from a reduction in the allowance for credit losses attributed to Mortgage Banking, reflecting continued credit improvement in the mortgage portfolio.

Cards

In Millions of Dollars	**1998**	1997	1996
Total revenues, net of interest expense	**$4,921**	$3,717	$3,848
Effect of credit card securitization activity	**2,187**	1,713	1,392
Adjusted revenues	**7,108**	5,430	5,240
Adjusted operating expenses (1)	**2,692**	1,832	1,737
Operating margin	**4,416**	3,598	3,503
Adjusted credit costs (2)	**3,253**	2,808	2,407
Business income before taxes	**1,163**	790	1,096
Income taxes	**426**	267	383
Business income	**737**	523	713
Restructuring charges, after-tax	**39**	36	—
Net income	**$ 698**	$ 487	$ 713
Average assets *(in billions of dollars)*	**$ 28**	$ 25	$ 21
Return on assets	**2.49%**	1.95%	3.40%
Excluding restructuring charges			
Return on assets (3)	**2.63%**	2.09%	3.40%

(1) Excludes restructuring charges.
(2) Represents provision for credit losses (on a managed basis).
(3) Adjusted for the effect of credit card securitization, the return on managed assets for Cards was 1.13% in 1998, 0.97% in 1997, and 1.51% in 1996.

In 1998, Citibank acquired Universal Card Services from AT&T. As of December 31, 1998, UCS added $16.9 billion in managed customer receivables and 14 million accounts to Cards. In 1998, UCS contributed $1.082 billion to revenues, $693 million to expenses, and $500 million to credit costs, resulting in a net loss of approximately $72 million. These amounts included $320 million (pretax) of UCS acquisition premium costs (including funding costs associated with the acquisition purchase premium).

Cards—U.S. bankcards (including Travelers Bank), Diners Club, and private label cards—reported business income of $737 million, up $214 million or 41% from 1997 reflecting significant improvements in the U.S. bankcards business. Net income of $698 million in 1998 and $487 million in 1997, included restructuring charges of $58 million ($39 million after-tax) and $59 million ($36 million after-tax), respectively. Business income of $523 million in 1997 was down from $713 million in 1996, reflecting higher credit costs in U.S. bankcards.

Adjusted revenues of $7.108 billion increased $1.678 billion or 31% from 1997, reflecting the acquisition of UCS, and in other U.S. bankcards portfolios increased delinquency charges due to pricing actions and higher interchange fee revenue. Revenues in 1997 increased $190 million or 4% principally in U.S. bankcards reflecting business volume growth and increased delinquency charges, partially offset by lower spreads.

As shown in the following table, on a managed basis, the U.S. bankcard portfolio experienced strong growth in the year reflecting the acquisition of UCS and the impact of enhanced target marketing efforts in 1998 and 1997.

		Increase from 1997	
In Billions of Dollars	**1998**	%	% Ex UCS
Accounts *(in millions)*	**41**	58	4
Cards in force *(in millions)*	**69**	68	10
Charge volumes	**$140.6**	32	11
End-of-period receivables	**69.6**	40	6

Adjusted operating expenses of $2.692 billion were up $860 million or 47%, reflecting the acquisition of UCS and increased target marketing efforts in U.S. bankcards. Expenses in 1997 increased $95 million or 5% from 1996, principally in U.S. bankcards, reflecting costs associated with risk management initiatives and increased marketing efforts.

Adjusted credit costs in 1998 were $3.253 billion, up from $2.808 billion in 1997 and $2.407 billion in 1996. Managed net credit losses in U.S. bankcards were $3.123 billion, or 5.33% of average managed loans (excluding UCS $2.623 billion or 5.53% of average managed loans) compared to $2.662 billion or 5.74% in 1997 and $2.169 billion or 4.95% in 1996. The decline in the net credit loss ratio in 1998 reflects moderating industry-wide bankruptcy trends and the effect of previously implemented credit risk management initiatives.

Adjusted credit costs include a provision in excess of net credit losses to increase the allowance for credit losses by $62 million, $85 million, and $183 million in 1998, 1997, and 1996, respectively. The decline in the additional provision reflects credit improvements in the U.S. bankcards portfolio.

Consumer Finance Services

In Millions of Dollars	**1998**	1997	1996
Total revenues, net of interest expense	**$1,338**	$1,067	$917
Adjusted operating expenses (1)	**504**	422	316
Operating margin	**834**	645	601
Credit costs (2)	**419**	316	296
Business income before taxes	**415**	329	305
Income taxes	**151**	116	106
Business income	**264**	213	199
Restructuring charges, after-tax	**1**	—	—
Net income	**$ 263**	$ 213	$199
Average assets *(in billions of dollars)*	**$ 12**	$ 9	$ 8
Return on assets	**2.19%**	2.37%	2.49%
Excluding restructuring charges			
Return on assets	**2.20%**	2.37%	2.49%

(1) Excludes restructuring charges.
(2) Represents provision for credit losses.

Consumer Finance Services includes the consumer lending operations (including secured and unsecured personal loans, real estate-secured loans and consumer goods financing) of Commercial Credit Company. Also included are related credit insurance services provided through subsidiaries. The credit card operations of Commercial Credit Company are included in Cards, and accordingly, all data has been restated to reflect this.

Business income was $264 million in 1998 compared to $213 million in 1997 and $199 million in 1996. The 24% increase in 1998 reflects continued internal receivables growth in all major products, an improved charge-off rate, and the integration of Security Pacific Financial Services (Security Pacific) into the Commercial Credit branch system since July 1997. The 7% increase in 1997 reflects strong receivables growth in all major products, largely as a result of investments made over the prior year in marketing, training and systems enhancements. Net receivables at December 31, 1998 reached a record $11.9 billion compared to $9.8 billion at year-end 1997 and $7.1 billion at year-end 1996. Much of the growth in 1998 in real estate-secured loans resulted from the continued strong performance of the $.M.A.R.T. loan® program, as well as solid sales in the branch network. The receivables increase in 1997 reflects strong internal growth as well as the July 31, 1997 acquisition of Security Pacific, which contributed approximately $1.2 billion in receivables growth. Internal sources grew receivables 21% over year-end 1996 levels. The internal growth during 1998 and 1997 was led by the Primerica generated portfolio, which grew 31% to $2.95 billion in 1998 and 49% to $2.26 billion in 1997.

While total interest margin increased in 1998 from the 1997 and 1996 periods due to the increase in the portfolio, average net interest margin declined 10 basis points in 1998 to 8.46% and declined 46 basis points in 1997 to 8.56%, reflecting a decline in the average yield to 14.88% in 1998 and 15.24% in 1997. These declines were partially offset by a decrease in cost of funds over the period. The decline in the average yield has resulted from a shift in the portfolio mix towards lower yielding, higher quality real estate loans, particularly first mortgage loans. Consumer Finance borrows from the corporate treasury operations of Commercial Credit Company (CCC), a holding company subsidiary of Citigroup that raises funds externally. For fixed rate loan products, Consumer Finance is charged agreed-upon rates that generally have been set within a narrow range. For variable rate loan products, Consumer Finance is charged rates based on prevailing short-term rates. CCC's actual cost of funds may be higher or lower than rates charged to Consumer Finance, with the difference reflected in the Corporate/Other segment. Overall rates charged to Consumer Finance approximated 6.42% in 1998, 6.68% in 1997 and 6.84% in 1996.

The net credit loss ratio of 2.74% in 1998 was down from 2.82% in 1997 and 3.14% in 1996. As a result of the Security Pacific acquisition, net credit losses in the second half of 1997 reflect a short-term benefit largely from the transition of that portfolio to Commercial Credit's charge-off policies. Credit costs included a provision in excess of net credit losses of $59 million, $21 million, and $38 million for 1998, 1997, and 1996, reflecting growth in the portfolio.

As of December 31, 1998, CCC had 980 branches, making it one of the largest domestic branch networks in the consumer finance industry.

INSURANCE

Travelers Life and Annuity

In Millions of Dollars	**1998**	1997	1996
Total revenues, net of interest expense	**$3,006**	$2,670	$2,322
Policyholder claims and benefits	**1,871**	1,677	1,474
Adjusted operating expenses (1)	**376**	348	297
Business income before taxes	**759**	645	551
Income taxes	**263**	221	191
Business income (2)	**496**	424	360
Restructuring charges, after-tax	**8**	—	—
Net income	**$ 488**	$ 424	$ 360

(1) Excludes restructuring charges.
(2) Excludes investment gains/losses included in Investment Activities segment.

Consumer Loan Delinquency Amounts, Net Credit Losses, and Ratios

In Millions of Dollars, Except Loan Amounts in Billions	Total Loans 1998	90 Days or More Past Due[1] 1998	1997	1996	Average Loans 1998	Net Credit Losses[1] 1998	1997	1996
Citibanking North America	$ 8.4	$ 87	$ 142	$ 231	$ 8.3	$ 124	$ 135	$ 147
Ratio		1.04%	1.61%	2.50%		1.49%	1.61%	1.72%
Mortgage Banking	25.6	625	715	903	24.0	75	115	133
Ratio		2.44%	3.13%	4.32%		0.31%	0.51%	0.64%
U.S. Bankcards[2]	69.1	1,001	868	897	58.6	3,123	2,662	2,169
Ratio		1.45%	1.77%	1.89%		5.33%	5.74%	4.95%
Other Cards	2.3	46	37	35	2.3	68	61	55
Ratio		1.96%	1.72%	1.76%		2.91%	2.86%	2.86%
Consumer Finance Services	11.9	172	133	94	10.6	291	233	209
Ratio		1.44%	1.36%	1.33%		2.74%	2.82%	3.14%
Europe, Middle East, & Africa	17.1	937	905	959	15.8	270	267	291
Ratio		5.49%	6.00%	5.91%		1.71%	1.77%	1.68%
Asia Pacific	21.8	498	259	256	20.2	227	171	159
Ratio		2.28%	1.34%	1.23%		1.12%	0.82%	0.81%
Latin America	8.0	288	173	124	7.8	239	175	185
Ratio		3.60%	2.34%	2.05%		3.07%	2.66%	3.44%
Global Private Bank	17.0	193	110	193	15.9	5	(13)	4
Ratio		1.14%	0.72%	1.26%		0.03%	NM	0.02%
e-Citi	0.4	2	1	1	0.3	3	4	5
Ratio		0.35%	0.60%	0.56%		1.15%	1.93%	2.95%
Total managed	181.6	3,849	3,343	3,693	163.8	4,425	3,810	3,357
Ratio		2.12%	2.23%	2.54%		2.70%	2.61%	2.41%
Securitized credit card receivables	(44.3)	(658)	(481)	(501)	(36.5)	(2,053)	(1,587)	(1,392)
Loans held for sale[3]	(5.0)	(38)	(35)	—	(4.6)	(134)	(126)	—
Total loans	$132.3	$3,153	$2,827	$3,192	$122.7	$ 2,238	$2,097	$ 1,965
Ratio		2.38%	2.36%	2.66%		1.82%	1.79%	1.74%

(1) The ratios of 90 days or more past due and net credit losses are calculated based on end-of-period and average loans, respectively, both net of unearned income.
(2) Includes U.S. Bankcards and Travelers Bank. The U.S. Bankcards managed ratios of 90 days or more past due and net credit losses were reduced by 10 and 20 basis points, respectively, in 1998, due to the acquisition of the Universal Card portfolio.
(3) Commencing in 1997, Citigroup classifies credit card and mortgage loans intended for sale as loans held for sale (included in other assets), which are accounted for at the lower of cost or market value with net credit losses charged to other income.
NM Not meaningful.

Consumer Loan Balances, Net of Unearned Income

In Billions of Dollars	End of Period 1998	1997	1996	Average 1998	1997	1996
Managed	$181.6	$149.8	$145.4	$163.8	$145.7	$139.3
Securitized credit card receivables	(44.3)	(26.8)	(25.2)	(36.5)	(25.2)	(26.1)
Loans held for sale[1]	(5.0)	(3.5)	—	(4.6)	(3.6)	—
On-balance sheet	$132.3	$119.5	$120.2	$122.7	$116.9	$113.2

(1) Commencing in 1997, Citigroup classifies credit card and mortgage loans intended for sale as loans held for sale (included in other assets), which are accounted for at the lower of cost or market value with net credit losses charged to other income.

The portion of Citigroup's allowance for credit losses attributed to the consumer portfolio was $3.3 billion as of December 31, 1998, up from $2.8 billion and $2.3 billion as of December 31, 1997 and 1996, respectively, reflecting the 1998 addition of $320 million of credit loss reserves related to the acquisition of the Universal Card portfolio and the 1997 restoration to the allowance of $373 million of reserves that had previously been attributable to credit card securitization transactions. The allowance as a percentage of loans on the balance sheet was 2.50% as of December 31, 1998, compared with 2.35% and 1.93% at December 31, 1997 and 1996, respectively. The attribution of the allowance is made for analytical purposes only and the entire allowance is available to absorb probable credit losses inherent in the portfolio.

Global Consumer

In Millions of Dollars	1998	1997	1996
Allowance for credit losses	$3,310	$2,808	$2,319
As a percentage of total loans	2.50%	2.35%	1.93%

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 2

SENATE BILL 254*
Commerce Committee Substitute Adopted 4/7/99

Short Title: Outdoor Advertising Control Act/AB. (Public)

Sponsors:

Referred to:

March 8, 1999

A BILL TO BE ENTITLED

AN ACT TO INCREASE VARIOUS OUTDOOR ADVERTISING PERMIT FEES, CHANGE THE ADMINISTRATIVE REVIEW AND JUDICIAL REVIEW OF OUTDOOR ADVERTISING DECISIONS, EXPAND CURRENT NOTIFICATION REQUIREMENTS, AND MODIFY AND UPDATE THE OUTDOOR ADVERTISING CONTROL ACT WITH RESPECT TO VENUE REQUIREMENTS, DEFINITIONS, AND PARTIES RESPONSIBLE FOR PAYMENT OF REMOVAL OF ILLEGAL OUTDOOR ADVERTISING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 136-133 reads as rewritten:

"**§ 136-133. Permits required.**

No person shall erect or maintain any outdoor advertising within 660 feet of the nearest edge of the right-of-way of the interstate or primary highway system, except those allowed under G.S. 136-129, subdivisions (2) and (3) in this Article, or beyond 660 feet of the nearest edge of the right-of-way of the interstate or primary highway system, except those allowed under G.S. 136-129.1, subdivisions (2) and (3), without first obtaining a permit from the Department of Transportation or its agents pursuant to the procedures set out by rules and regulations promulgated by the Department of Transportation. The permit shall be valid until revoked for nonconformance with this Article or rules and regulations promulgated by the Department of Transportation thereunder. Any person aggrieved by the decision of the Department of Transportation or its agents in refusing to grant or in revoking a permit may appeal the decision in accordance with the rules and regulations enacted by the Department

of Transportation pursuant to this Article to the Secretary of Transportation who shall make the final decision on the agency appeal. The Department of Transportation shall have the authority to charge permit fees to defray the costs of administering the permit procedures under this Article. The fees for directional signs as set forth in G.S. 136-129(1) and G.S. 136-129.1(1) shall not exceed a ~~twenty dollar ($20.00)~~ forty dollar ($40.00) initial fee and a ~~fifteen dollar ($15.00)~~ thirty dollar ($30.00) annual renewal fee. The fees for outdoor advertising structures, as set forth in G.S. 136-129(4) and (5) shall not exceed a ~~sixty dollar ($60.00)~~ one hundred twenty dollar ($120.00) initial fee and a ~~thirty dollar ($30.00)~~ sixty dollar ($60.00) annual renewal fee."

Section 2. G.S. 136-134 reads as rewritten:

"**§ 136-134. Illegal advertising.**

Any outdoor advertising erected or maintained adjacent to the right-of-way of the interstate or primary highway system after the effective date of this Article as determined by G.S. 136-140, in violation of the provisions of this Article or rules ~~and regulations promulgated~~ adopted by the Department of Transportation, or any outdoor advertising maintained without a permit regardless of the date of erection shall be illegal and shall constitute a nuisance. The Department of Transportation or its agents shall give 30 days' notice to the owner of the illegal outdoor advertising with the exception of the owner of unlawful portable outdoor advertising for which the Department of Transportation shall give five days' notice, if such owner is known or can by reasonable diligence be ascertained, to remove the outdoor advertising or to make it conform to the provisions of this Article or rules ~~and regulations promulgated~~ adopted by the Department of Transportation hereunder. The Department of Transportation or its agents shall have the right to remove the illegal outdoor advertising at the expense of the ~~said~~ owner if the ~~said~~ owner fails to ~~act~~ remove the outdoor advertising or to make it conform to the provisions of this Article or rules issued by the Department of Transportation within 30 days after receipt of such notice or five days for owners of portable outdoor advertising. The Department of Transportation or its agents may enter upon private property for the purpose of removing the outdoor advertising prohibited by this Article or rules ~~and regulations promulgated~~ adopted by the Department of Transportation hereunder without civil or criminal liability. The costs of removing the outdoor advertising, whether by the Department of Transportation or its agents, shall be assessed against the owner of the illegal outdoor advertising by the Department of Transportation. Any person aggrieved by the decision declaring the outdoor advertising structure illegal shall be granted the right to appeal the decision in accordance with the terms of the rules and regulations enacted by the Department of Transportation pursuant to this Article to the Secretary of Transportation who shall make the final decision on the agency appeal."

Section 3. G.S. 150B-1(e) reads as rewritten:

"(e) Exemptions From Contested Case Provisions. -- The contested case provisions of this Chapter apply to all agencies and all proceedings not expressly

exempted from the Chapter. The contested case provisions of this Chapter do not apply to the following:

(1) The Department of Health and Human Services and the Department of Environment and Natural Resources in complying with the procedural safeguards mandated by Section 680 of Part H of Public Law 99-457 as amended (Education of the Handicapped Act Amendments of 1986).

(2) Repealed by Session Laws 1993, c. 501, s. 29.

(3) The North Carolina Low-Level Radioactive Waste Management Authority in administering the provisions of G.S. 104G-9, 104G-10, and 104G-11.

(4) The North Carolina Hazardous Waste Management Commission in administering the provisions of G.S. 130B-11, 130B-13, and 130B-14.

(5) Hearings required pursuant to the Rehabilitation Act of 1973, (Public Law 93-122), as amended and federal regulations promulgated thereunder. G.S. 150B-51(a) is considered a contested case hearing provision that does not apply to these hearings.

(6) The Department of Revenue.

(7) The Department of Correction.

(8) The Department of Transportation, except as provided in ~~G.S. 136-29.~~ G.S. 136-29, 136-133.1, and 136-134.1.

(9) The Occupational Safety and Health Review Board.

(10) The North Carolina Global TransPark Authority with respect to the acquisition, construction, operation, or use, including fees or charges, of any portion of a cargo airport complex.

(11) Hearings that are provided by the Department of Health and Human Services regarding the eligibility and provision of services for eligible assaultive and violent children, as defined in G.S. 122C-3(13a), shall be conducted pursuant to the provisions outlined in G.S. 122C, Article 4, Part 7."

Section 4. Chapter 136 of the General Statutes is amended by adding a new section to read:

"**§ 136-133.1. Administrative review of outdoor advertising decisions.**

(a) An applicant for an outdoor advertising permit, an outdoor advertising permit holder, or an outdoor advertising owner, who is dissatisfied with the initial decision of the Department of Transportation, may file a petition for a contested case hearing under Article 3 of Chapter 150B of the General Statutes within 30 days after the decision is made by the Department of Transportation.

(b) If outdoor advertising is under construction and the Department determines that a permit has not been issued for the outdoor advertising, the Department of Transportation may require that all work on the outdoor advertising cease until the owner of the outdoor advertising shows that the outdoor advertising does not violate G.S. 136-133. The stop work order shall be prominently posted on the outdoor

advertising structure, and no further notice of the stop work order is required. The failure of an owner of outdoor advertising to comply immediately with the stop work order shall subject the outdoor advertising to removal by the Department of Transportation or its agents. Outdoor advertising is under construction when it is in any phase of construction prior to the attachment and display of the advertising message in final position for viewing by the traveling public. The cost of removing outdoor advertising by the Department of Transportation or its agents pursuant to this section shall be assessed against the owner of the unpermitted outdoor advertising by the Department of Transportation. No stop work order may be issued when the Department of Transportation process agent has been served with a court order allowing the sign to be constructed. The party subject to a stop work order may file a petition for a contested case hearing under Article 3 of Chapter 150B of the General Statutes within 30 days after the stop work order is issued.

(c) As used in this section, the term 'initial decision' shall be defined by the Department in the rules issued pursuant to this Article."

Section 5. Chapter 136 of the General Statutes is amended by adding a new section to read:

"**§ 136-134.2. Notification requirements.**

When the Department of Transportation notifies a permit applicant, permit holder, or the owner of an outdoor advertising structure that the application is denied, the permit revoked, or the structure is in violation of this Article or rules issued pursuant to this Article, it shall do so in writing by certified mail, return receipt requested, and shall include a copy of this Article and all rules issued pursuant to this Article.

If the Department of Transportation fails to include a copy of this Article and the rules, the time period during which the permit applicant, permit holder, or owner of the outdoor advertising structure has to request a review hearing shall be tolled until the Department of Transportation provides the required materials."

Section 6. G.S. 136-134.1 reads as rewritten:

"**§ 136-134.1. Judicial review.**

~~Any person who is aggrieved by a final decision of the Secretary of Transportation after exhausting all administrative remedies made available to him by rules and regulations enacted pursuant to this Article is entitled to judicial review of such decision under this Article. In order to obtain judicial review of the Secretary of Transportation's decision under this Article, the person seeking review must file a petition in the Superior Court of Wake County within 30 days after written copy of the decision of the Secretary of Transportation is served upon the person seeking review. Failure to file such a petition within the time stated shall operate as a waiver of the right of such person to review under this Chapter.~~

~~The petition shall state explicitly what exceptions are taken to the decision of the Secretary of Transportation and what relief petitioner seeks. Within 10 days after the petition is filed with the court, the person seeking the review shall serve copies of the petition by registered mail, return receipt requested, upon the Department of Transportation. Within 30 days after receipt of the copy of the petition for review, or~~

~~within such additional time as the court may allow, the Department of Transportation shall transmit to the reviewing court a certified copy of the written decision.~~

~~At any time before or during the review proceeding, the aggrieved party may apply to the reviewing court for an order staying the operation of the decision of the Secretary of Transportation pending the outcome of the review. The court may grant or deny the stay in its discretion upon such terms as it deems proper. The review of the decision of the Secretary of Transportation under this Article shall be conducted by the court without a jury and shall hear the matter de novo pursuant to the rules of evidence as applied in the General Court of Justice. The court, after hearing the matter may affirm, reverse or modify the decision if the decision is:~~

~~(1) In violation of constitutional provisions; or~~

~~(2) Not made in accordance with this Article or rules or regulations promulgated by the Department of Transportation; or~~

~~(3) Affected by other error of law.~~

~~The party aggrieved shall have the burden of showing that the decision was violative of one of the above.~~

~~A party to the review proceedings, including the agency, may appeal to the appellate division from the final judgment of the Superior Court under the rules of procedure applicable in civil cases. The appealing party may apply to the Superior Court for a stay for its final determination or a stay of the administrative decision, whichever shall be appropriate, pending the outcome of the appeal to the appellate division.~~

Article 4 of Chapter 150B of the General Statutes shall govern judicial review of final agency decisions regarding outdoor advertising permits."

Section 7. G.S. 136-135 reads as rewritten:

"**§ 136-135. Enforcement provisions.**

Any person, firm, corporation or association, placing, erecting or maintaining outdoor advertising along the interstate system or primary system in violation of this Article or rules ~~and regulations promulgated~~ adopted by the Department of Transportation shall be guilty of a Class 1 misdemeanor. In addition thereto, the Department of Transportation may seek injunctive relief in the Superior Court of Wake County or of the county where the outdoor advertising is located and require the outdoor advertising to conform to the provisions of this Article or rules ~~and regulations promulgated~~ adopted pursuant hereto, or require the removal of the said illegal outdoor advertising."

Section 8. Chapter 136 of the General Statutes is amended by adding a new section to read:

"**§ 136-18.7. Fees.**

The fee for a selective vegetation removal permit issued pursuant to G.S. 136-18(5), (7), and (9) is two hundred dollars ($200.00)."

Section 9. G.S. 136-127 reads as rewritten:

"**§ 136-127. Declaration of policy.**

The General Assembly hereby finds and declares that outdoor advertising is a legitimate commercial use of private property adjacent to roads and highways but that

the erection and maintenance of outdoor advertising signs and devices in areas in the vicinity of the right-of-way of the interstate and primary ~~highways~~ highway systems within the State should be controlled and regulated in order to promote the safety, health, welfare and convenience and enjoyment of travel on and protection of the public investment in highways within the State, to prevent unreasonable distraction of operators of motor vehicles and to prevent interference with the effectiveness of traffic regulations and to promote safety on the highways, to attract tourists and promote the prosperity, economic well-being and general welfare of the State, and to preserve and enhance the natural scenic beauty of the highways and areas in the vicinity of the State highways and to promote the reasonable, orderly and effective display of such signs, displays and devices. It is the intention of the General Assembly to provide and declare herein a public policy and statutory basis for the regulation and control of outdoor advertising."

Section 10. G.S. 136-128 reads as rewritten:

"**§ 136-128. Definitions.**

As used in this Article:

(1) "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish.

(1a) "Illegal sign" means one which was erected and/or maintained in violation of State law.

(1b) "Information center" means an area or site established and maintained at safety rest areas for the purpose of informing the public of places of interest within the State and providing such other information as the Department of Transportation may consider desirable.

(2) "Interstate system" means that portion of the National System of Interstate and Defense Highways located within the State, as officially designated, or as may hereafter be so designated, by the Department of Transportation, or other appropriate authorities and are also so designated by interstate numbers. As to highways under construction so designated as interstate highways pursuant to the above procedures, the highway shall be a part of the interstate system for the purposes of this Article on the date the location of the highway has been approved finally by the appropriate federal authorities.

(2a) "Nonconforming sign" shall mean a sign which was lawfully erected but which does not comply with the provisions of State law or State rules and regulations passed at a later date or which later fails to comply with State law or State rules or regulations due to changed conditions. Illegally erected or maintained signs are not nonconforming signs.

(3) "Outdoor advertising" means any outdoor sign, display, light, device, figure, painting, drawing, message, plaque, poster,

billboard, or any other thing which is designed, intended or used to advertise or inform, any part of the advertising or information contents of which is visible from any place on the main-traveled way of the interstate or primary system, whether the same be permanent or portable installation.

(4) "Primary systems" ~~means that portion of connected main highways, as now officially designated, or as may hereafter be so designated by the Department of Transportation as primary system, or other appropriate authorities and are also so designated by N.C. or U.S. numbers.~~ means the federal-aid primary system in existence on June 1, 1991, and any highway which is not on that system but which is on the National Highway System. As to highways under construction so designated as primary highways pursuant to the above procedures, the highway shall be a part of the primary system for purposes of this Article on the date the location of the highway has been approved finally by the appropriate federal or State authorities.

(5) "Safety rest area" means an area or site established and maintained within or adjacent to the highway right-of-way by or under public supervision or control, for the convenience of the traveling public.

(6) "State law" means a State constitutional provision or statute, or an ordinance, rule or regulation enacted or adopted by a State agency or political subdivision of a State pursuant to a State Constitution or statute.

(7) "Unzoned area" shall mean an area where there is no zoning in effect.

(8) "Urban area" shall mean an area within the boundaries or limits of any incorporated municipality having a population of five thousand or more as determined by the latest available federal census.

(9) "Visible" means capable of being seen (whether or not legible) without visual aid by a person of normal visual acuity."

Section 11. G.S. 136-129 reads as rewritten:

"**§ 136-129. Limitations of outdoor advertising devices.**

No outdoor advertising shall be erected or maintained within 660 feet of the nearest edge of the right-of-way of the interstate or primary ~~highways~~ highway systems in this State so as to be visible from the main-traveled way thereof after the effective date of this Article as determined by G.S. 136-140, except the following:

(1) Directional and other official signs and notices, which signs and notices shall include those authorized and permitted by Chapter 136 of the General Statutes, which include but are not limited to official signs and notices pertaining to natural wonders, scenic and historic attractions and signs erected and maintained by a public utility, electric or telephone membership corporation, or municipality for the purpose of giving warning of or information as

to the location of an underground cable, pipeline or other installation.

(2) Outdoor advertising which advertises the sale or lease of property upon which it is located.

(2a) Outdoor advertising which advertises the sale of any fruit or vegetable crop by the grower at a roadside stand or by having the purchaser pick the crop on the property on which the crop is grown provided: (i) the sign is no more than two feet long on any side; (ii) the sign is located on property owned or leased by the grower where the crop is grown; (iii) the grower is also the seller; and (iv) the sign is kept in place by the grower for no more than 30 days.

(3) Outdoor advertising which advertises activities conducted on the property upon which it is located.

(4) Outdoor advertising, in conformity with the rules and regulations promulgated by the Department of Transportation, located in areas which are zoned industrial or commercial under authority of State law.

(5) Outdoor advertising, in conformity with the rules and regulations promulgated by the Department of Transportation, located in unzoned commercial or industrial areas."

Section 12. G.S. 136-129.1 reads as rewritten:

"**§ 136-129.1. Limitations of outdoor advertising devices beyond 660 feet.**

No outdoor advertising shall be erected or maintained beyond 660 feet of the nearest edge of the right-of-way of the interstate or primary ~~highways~~ highway systems in this State outside of the urban areas so as to be visible and intended to be read from the main-traveled way except the following:

(1) Directional and other official signs and notices, which signs and notices shall include those authorized and permitted by Chapter 136 of the General Statutes, which include but are not limited to official signs and notices pertaining to natural wonders, scenic and historic attractions and signs erected and maintained by a public utility, electric or telephone membership corporation, or municipality for the purpose of giving warning of or information as to the location of an underground cable, pipeline or other installation.

(2) Outdoor advertising which advertises the sale or lease of property upon which it is located.

(3) Outdoor advertising which advertises activities conducted on the property upon which it is located."

Section 13. G.S. 136-136 reads as rewritten:

"**§ 136-136. Zoning changes.**

All zoning authorities shall give written notice to the Department of Transportation of the establishment or revision of any commercial and industrial

zones within 660 feet of the right-of-way of interstate or primary ~~highways.~~ highway systems. Notice shall be by registered mail sent to the offices of the Department of Transportation in Raleigh, North Carolina, within 15 days after the effective date of the zoning change or establishment."

Section 14. Sections 1 and 8 become effective July 1, 1999. The remaining sections become effective when this act becomes law.

SENATE BILL 254:
Outdoor Advertising Control Act/AB

BILL ANALYSIS

Committee: Senate Finance Committee
Date: May 4, 1999
Version: 2nd Edition

Introduced by: Senator Gulley
Summary by: Martha Walston and Esther Manheimer, Staff Attorneys

SUMMARY: ***Senate Bill 254 increases various outdoor advertising permit fees and authorizes the Department of Transportation (DOT) to charge $200 for issuance of a selective vegetation removal permit. The bill places outdoor advertising appeals under the Administrative Procedures Act (APA) and creates a stop work order that DOT may use to stop the construction of, and in some cases remove, illegal advertising. The current version of the bill was given a favorable report by Senate Commerce.***

BLL ANALYSIS:

Section 1. Increases the maximum amounts DOT may charge for outdoor advertising permits as follows:

Type of Fee	Current fee	Proposed Fee
Directional sign	$20 initial fee	$40 initial fee
	$15 annual renewal fee	$30 annual renewal fee
Advertising structures	$60 initial fee	$120 initial fee
	$30 annual renewal fee	$60 annual renewal fee

Section 2 clarifies that DOT regulates outdoor advertising "adjacent to the right-of-way of the interstate or primary highway system". This section also clarifies that illegal outdoor advertising must be removed or made to conform to DOT rules by the owner within 30 days of the notice of illegality. The owner must pay cost of removal if DOT performs the removal.

Section 3 amends the APA Chapter to apply contested case provisions of the APA to the administrative review of outdoor advertising decisions and stop work orders. The section also applies the APA's judicial review procedures to parties of an outdoor advertising contested case.

Section 4 sets out the following administrative review procedure for outdoor advertising decisions:

- Contested Case Hearings – (1) an applicant for an outdoor advertising permit, (2) an outdoor advertising permit holder, or (3) an outdoor advertising owner, who is dissatisfied with the "initial decision" of DOT, may file a petition for a contested case hearing under the APA within 30 days after the decision is made by DOT. "Initial decision" is to be defined in DOT's rules
- Stop Work Orders – stop work orders may be issued when DOT determines that outdoor advertising is "under construction" without a permit. When the order is issued by DOT all work on the outdoor advertising must cease until the owner shows that a permit has been issued for the construction of the advertising. If construction of the advertising does not cease, DOT may remove the structure at the owner's expense. No stop work orders may be issued when DOT has been served with a court order

allowing the sign to be constructed. Parties subject to the stop work order may file a petition for contested case hearing under the APA within 30 days after the stop work order is issued.

Current law allows an aggrieved party to seek judicial review in Wake Superior Court 30 days after a final decision of DOT.

Section 5 requires DOT to give certified mail notice of adverse decisions regarding outdoor advertising.

Section 6 deletes the current judicial review procedure and adds the APA's judicial review procedure. Under the APA, when all administrative remedies are exhausted, the person seeking judicial review may petition the superior court. The current law requires that the petition be filed in Wake Superior Court.

Section 7 allows DOT to seek an injunction against a violator of the Outdoor Advertising Control Act in Wake Superior Court or in the county where the outdoor advertising is located. Current law only allows DOT to seek an injunction in Wake Superior Court.

Section 8 allows DOT to charge $200 fee for a selective vegetation removal permit. Under current law no fee is required for this permit.

Sections 9, 11, 12, and 13 delete the word "highways" and add the phrase "highway systems" in section of Chapter 136. This amendment conforms North Carolina law to federal law.

Section 10 deletes part of the current definition of "primary systems" and adds language to the definition that conforms to federal statutory language.

Effective Date. Sections 1 and 8 become effective July 1, 1999. The remaining sections become effective when the act becomes law.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: Senate Bill 254

SHORT TITLE: Outdoor Advertising Control Act

SPONSOR(S): Senator Wib Gulley

FISCAL IMPACT

Yes (x) **No ( )** **No Estimate Available ( )**

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES	$320,000	$320,000	$320,000	$320,000	$320,000
EXPENDITURES					
POSITIONS					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Transportation

EFFECTIVE DATE: Upon ratification

BILL SUMMARY:

Senate committee substitute makes the following changes to 1st edition. Retains fee provisions in GS 136-133 and raises maximum fee for directional signs from $20 to $40 for initial fee and from $15 to $30 for annual renewal fee. Fees for outdoor advertising structures may not exceed $120 (was, $60) for initial fee and $60 (was, $30) for renewal fee. Allows applicant for outdoor advertising permit who is dissatisfied with initial decision (was, final decision) to petition for administrative review under Art. 3, GS Ch. 150B within 30 days (was, 20 days) after decision is made by Dep't of Transportation. Deletes provision setting venue in Wake County. Adds to provision regarding stop work orders issued by Dep't of Transportation (new GS 136-133.1) that stop work order may not be issued when DOT process agent has been served with a court order

allowing the sign to be constructed. Sets fee for selective vegetation removal permit issued under GS 136-18(5), (7), and (9) at $200. Makes fee changes effective July 1, 1999.

ASSUMPTIONS AND METHODOLOGY:

Regulatory Permit Fees

Current law allows the Department of Transportation to charge permit fees to defray the costs of regulating outdoor advertising. However, because current law limits the amount of these fees, DOT is not fully recovering these costs. According to an audit report published by the DOT internal audit section, the Department spent about $490,000 issuing permits for outdoor advertising in fiscal year 1997-98, but only recovered $270,000 in fees from the program, a net cost of $220,000. Currently, these costs are being absorbed by the Highway Fund maintenance budgets. By allowing the Department to increase fees to the amounts specified, the bill would recover these costs, increasing Highway Fund fee income by roughly $220,000 per year.

Vegetation Removal Permit Fees

The bill would also allow the Board of Transportation to establish fees to defray the costs of administering permit procedures for removing vegetation around outdoor advertising. The Department estimates it spent about $100,000 reviewing permit requests and inspecting vegetation removal at billboards in 1998. By allowing the Board to establish a $200 fee to defray these costs, the bill would generate $100,000 annually for the Highway Fund.

Litigation Costs

The Department believes that the changes to the litigation process proposed in the bill will result in fewer appeals from outdoor advertisers, and therefore lower litigation costs. However, the Department has no way of predicting exactly how these changes will affect litigation costs.

All fiscal estimates are in constant 1998-99 dollars.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Evan Rodewald

APPROVED BY: Tom Covington

DATE:
Monday, April 19, 1999

VISITOR REGISTRATION SHEET

SENATE FINANCE — WEDNESDAY, MAY 26, 1999

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Crissy Porter	Bone and Associates
Amy Jo Bain	NC Medical Society
Jean Doucett	NCOT
Alice Garland	Electricities
Ben Murray	NCNA
Andy Romanet	N.C.L.M.
Leslie Brogan	NCCBT
Joanne Schaefer	NC Nurses Assoc.
Dan McLeod	Scenic NC, Inc.
Anne Wimsatt	NCJCDC
Bill Rowe	NC Justice Center

VISITOR REGISTRATION SHEET

SENATE FINANCE — WEDNESDAY, MAY 26, 1999

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Willie Riddick	DOR
Ralph E Hinch	Legislative Intern
Walker Price	Charlotte Chamber
John McMillan	MFDS
John M May	NC CWA Council
Guy Rollins	Albers & Co.
Rick Covert	Norwest Financial
Rowey Lamm	Commercial Credit Corp.
Linda Turner	CCCS of VA / Credit Counselors NC
Garrett Pecot	ZDA, PR
William C. Dunkelberg	Temple Univ. Philadelphia PA

VISITOR REGISTRATION SHEET

SENATE FINANCE — WEDNESDAY, MAY 26, 1999

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Kym Rygi	NCCCS
Martin Lancaster	"
Barry Russell	"
Suzanne Williams	"
J Craig Jones	PCMH
Dale H Graves	PCMH
Gaines M. Weaver	Dept. of Justice – Transportation Section
Lacy Lane	NCDOT
Brenda Grady	NCDOT
Wayne Rogers	NCDOT
Jan T. Rayn	NCDOT

VISITOR REGISTRATION SHEET

SENATE FINANCE — WEDNESDAY, MAY 26, 1999

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ed Regan	N.C.A.C.C.
Eric Rudolph	Cherokee, NC
Ruth Sappie	NCDOT
David Gelshorn	NCDOT
Harold Webb	Auto Dealers
Mike Gleason	Capitol Group
Allan Hirsch	Atty. Gen's Office
Joyce Baffi	" " "
Phil Lehman	" " "
Denis O'Toole	Household Financial Group, Ltd
Larry Heckner	Household Financial Group.

VISITOR REGISTRATION SHEET

SENATE FINANCE — WEDNESDAY, MAY 26, 1999

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Harry Bunker	TranSouth Branch Mgr.
Richard Carlton	N.C. Financial Services Assn.
DON LANEY	N.C FINANCIAL SERVICES ASSN.
[signature]	SOG
[signature]	NCFSA
[signature]	BTC
[signature]	NC-ESC
Tom Whitaker	NC ESC
Parker Chesson	NC ESC
[signature]	NCESC
[signature]	[signature]

Back →

Name	FIRM OR AGENCY & ADDRESS
David Knight	NC Sierra Club, NC Wildlife Fed
Nat Mood	Conservation Counc. of NC
Pam Morgan	NFIB
Allison Kostrzewa	
Leah M Killian	Moore + Van Allen
Charles Diehl	NC Outdoor Advertising Association
Stephanie Mann	NC Assoc. of Realtors

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Wednesday, May 26, 1999

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

FAVORABLE

H.B. **178** Jonesville Accident Reports/Weeds.
Sequential Referral: None
Recommended Referral: None

S.B.(CS #2)**254** Outdoor Advertising Control Act/AB.
Sequential Referral: None
Recommended Referral: None

S.B. **285** University Health Systems Plates.
Sequential Referral: None
Recommended Referral: None

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

S.B. **570** Update Consumer Finance Act.
Draft Number: PCS4684
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1)**275** Zero ESC Tax Rate for More/AB.
Draft Number: PCS6211
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 5

Committee Clerk Comment: SB 254 285 570 HB 178 275

AGENDA
SENATE FINANCE COMMITTEE MEETING
WEDNESDAY, JUNE 1, 1999
1:30 PM – ROOM 544 LOB

MEETING CALLED TO ORDER – SENATOR HOYLE

INTRODUCTION OF PAGES

BILLS TO BE HEARD:

SB 55- Revenue Laws Technical Amendments -. Sen.Cochrane
SB 499 - Boat Registration Fees - Sen. Hoyle
HB 120 - Tax Lien Advertisement & Collection - Rep. Owens
HB 486 - Parade Trailers-Permanent Plates – Rep. Moore
HB 504 - Carteret Planning/Zoning Changes – Rep. Preston
HB 665 - Modify Currituck Room Tax - Rep. Owens
HB 899 - Real Estate Licensure – Rep Bridgeman
HB 900 - Gates County Fire Protection – Rep. Hunter

ADJOURNMENT OF MEETING

SENATE FINANCE COMMITTEE

WEDNESDAY, JUNE 1, 1999

1:30 PM – ROOM 544

The Senate Finance Committee met on Wednesday, June 1, 1999 at 1:30 PM in Room 544 with Senator Hoyle presiding. There were 21 committee members present. Chris Miller and Elizabeth Stallings both from Gastonia, North Carolina and both sponsored by Senator Hoyle were introduced as the pages for the meeting.

HB 486 – Parade Trailers-Permanent Plates

Senator Kerr was recognized to explain this bill for Representative Moore. Martha Walston, Staff Attorney, explained what the bill does. Senator Kerr moved for adoption of an amendment from Senator Garwood, that was received by committee from Senate floor that was pending, motion was not voted on. Carolyn Howard, Director of Division of Motor Vehicle Registration, spoke on the bill. After questions and comments from the members of the committee, it was decided to carry the bill over to the next day's meeting so that questions from members of the committee could be answered. Copy of Bill and supporting documents included in the minutes.

HB 504 – Carteret Planning/Zoning Changes

Representative Jean Preston was recognized to explain the bill and at the conclusion of her explanation, Senator Dannelly moved for a "Favorable Report", motion passed. Copy of Bill included in the minutes.

HB 900 – Gates County Fire Protection

Representative Hunter was recognized to explain this bill and at the conclusion of his explanation, Senator Lee moved for a "Favorable Report", motion passed. Copy of Bill and supporting documents included in the minutes.

HB 665 – Modify Currituck Room Tax

Representative Owens was recognized to explain this bill and at the conclusion of his explanation, Senator Lee moved for a "Favorable Report", motion passed. Copy of Bill and supporting documents included in the minutes.

HB 120 – Tax Lien Advertisement & Collection

Representative Owens was recognized to explain this bill. Mr. Ji,m Blackburn with the N. C. Association of County Commissioners and Mr. John Busssian, Trial Lawyer from Durham, North Carolina both spoke on the bill. After a time of questions and comments from committee members, Senator Hoyle stated that he was putting this bill into a subcommittee to address the questions and concerns on this bill. Copy of Bill and supporting documents included in the minutes.

HB 899 – Real Estate Licensure

Representative Bridgeman was recognized to explain this bill again. Mr. Phil Fisher from the N. C. Real Estate Board spoke on the bill. Senator Reeves had an amendment to change the hours from 75 to 63. Senator Rand had an amendment to change the hours from 75 to 67 and so moved. Senator Kerr made a substitute motion to change the hours from 75 to 63. Senator Rand withdrew his amendment and motion. Senator Soles moved to give the bill a "Favorable Report as is", motion carried. Copy of Bill and supporting documents included in the minutes.

Meeting adjourned.

David W. Hoyle, Co-Chair

John H. Kerr, III Co-Chair

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

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

NOTE: SB 55 – Revenue Laws Technical Amendments and
SB 499 – Boat Registration Fees - both not heard at this Meeting.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 4

HOUSE BILL 486
Committee Substitute Favorable 3/31/99
Third Edition Engrossed 4/5/99
Senate Finance Committee Substitute Adopted 5/13/99

Short Title: Parade Trailers -- Permanent Plates. (Public)

Sponsors:

Referred to:

March 18, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE PERMANENT REGISTRATION PLATES TO TRAILERS OWNED BY CHARITABLE ORGANIZATIONS AND USED ONLY IN PARADES AND TO CONSOLIDATE AND MODERNIZE THE STATUTES PROVIDING FOR PERMANENT REGISTRATION PLATES.

The General Assembly of North Carolina enacts:

Section 1. The caption of Part 6 of Article 3 of Chapter 20 of the General Statutes reads as rewritten:

"Part 6. Vehicles of Nonresidents of ~~State, etc.~~ State; Permanent Plates; Highway Patrol."

Section 2. G.S. 20-85 is amended by adding a new subsection to read:

"(c) The Division shall not collect a fee for a certificate of title for a motor vehicle entitled to a permanent registration plate under G.S. 20-84."

Section 3. G.S. 20-84 reads as rewritten:

"**§ 20-84. ~~Vehicles owned by State, municipalities or orphanages, etc.; certain vehicles operated by the local chapters of American National Red Cross.~~ Permanent registration plates; State Highway Patrol.**

(a) General. -- The Division may issue a permanent registration plate for a motor vehicle owned by one of the persons authorized to have a permanent registration plate in this section. To obtain a permanent registration plate, a person must provide

proof of ownership, provide proof of financial responsibility as required by G.S. 20-309, and pay a fee of six dollars ($6.00). A permanent plate issued under this section may be transferred as provided in G.S. 20-78 to a replacement vehicle of the same classification. A permanent registration plate issued under this section must be a distinctive color and bear the word "permanent". In addition, a permanent registration plate issued under subdivision (b)(1) of this section must have distinctive color and design that is readily distinguishable from all other permanent registration plates issued under this section.

(b) Permanent Registration Plates. -- The Division may issue permanent plates for the following motor vehicles:

(1) ~~The Division upon proper proof being filed with it that any motor vehicle for which registration is herein required is owned by the~~ A motor vehicle owned by the State or ~~any department thereof, or by any~~ one of its agencies.

(2) A motor vehicle owned by a county, ~~township,~~ city or ~~town, or by any~~ town.

(3) A motor vehicle owned by a board of ~~education, or by any~~ education.

(4) A motor vehicle owned by an ~~orphanage or civil~~ orphanage.

(5) A motor vehicle owned by the civil air ~~patrol, or incorporated~~ patrol.

(6) A motor vehicle owned by an incorporated emergency rescue ~~squad, or incorporated~~ squad.

(7) A motor vehicle owned by an incorporated REACT ("Radio Emergency Association of Citizen Teams") ~~Team, or for any~~ Team.

(8) A motor vehicle owned by a person and ~~involved~~ used exclusively in the support of a disaster relief ~~effort,~~ effort.

(9) A bus owned by a church and used exclusively for transporting individuals to Sunday school and church services.

(10) A motor vehicle owned by a rural fire department, agency, or association.

(11) A motor vehicle in the form of a mobile X-ray unit operated exclusively in this State for the purpose of diagnosis, treatment, and discovery of tuberculosis, and owned by the North Carolina Tuberculosis Association, Incorporated, or by a local chapter or association of the North Carolina Tuberculosis Association, Incorporated.

(12) A motor vehicle owned by a local chapter of the American National Red Cross and used for emergency or disaster work.

(13) A motor vehicle owned by a sheltered workshop recognized or approved by the Division of Vocational Rehabilitation Services.

(14) A motor vehicle owned by a nonprofit agency or organization that provides transportation for or operates programs subject to and

approved in accordance with standards adopted by the Commission for Mental Health and Human Services.

(15) A bus or trackless trolley owned by a city and operated under a franchise authorizing the use of city streets. This subdivision does not apply to a bus or trackless trolley operated under a franchise authorizing an intercity operation.

(16) A trailer owned by a nationally chartered charitable organization and used exclusively for parade floats and for transporting vehicles and structures used only in parades.

~~shall collect six dollars ($6.00) for the registration of such motor vehicles, but shall not collect any fee for application for certificate of title in the name of the State or any department thereof, or by any county, township, city or town, or by any board of education or orphanage: Provided, that the term "owned" shall be construed to mean that such motor vehicle is the actual property of the State or some department thereof or of the county, township, city or town, or of the board of education, and no motor vehicle which is the property of any officer or employee of any department named herein shall be construed as being "owned" by such department. Provided, that the above exemptions from registration fees shall also apply to any church-owned bus used exclusively for transporting children and parents to Sunday school and church services and for no other purpose.~~

~~In lieu of the annual six dollars ($6.00) registration provided for in this section, the Division may for the license year 1950 and thereafter provide for a permanent registration of the vehicles described in this section and issue permanent registration plates for such vehicles.~~

~~The permanent registration plates issued pursuant to this paragraph shall be of a distinctive color and shall bear thereon the word "permanent." Such plates may be transferred as provided in G.S. 20-78 to a replacement vehicle of the same classification. For the permanent registration and issuance of permanent registration plates provided for in this paragraph, the Division shall collect a fee of six dollars ($6.00) for each vehicle so registered and licensed.~~

~~The provisions of this section are hereby made applicable to vehicles owned by a rural fire department, agency or association.~~

~~The Division of Motor Vehicles shall issue to the North Carolina Tuberculosis Association, Incorporated, or any local chapter or association of said corporation, for a fee of six dollars ($6.00) for each plate a permanent registration plate which need not be thereafter renewed for each motor vehicle in the form of a mobile X-ray unit which is owned by said North Carolina Tuberculosis Association, Incorporated, or any local chapter or local association thereof and operated exclusively in this State for the purpose of diagnosis, treatment and discovery of tuberculosis. The initial six dollars ($6.00) fee required by this section and for this purpose shall be in full payment of the permanent registration plates issued for such vehicle operated as a mobile X-ray unit, and such plates need not thereafter be renewed, and such plates may be transferred as provided in G.S. 20-78 to replacement vehicles to be used for the purposes above described and for which the plates were originally issued.~~

~~The Division of Motor Vehicles shall issue to the American National Red Cross, upon application of any local chapter thereof and payment of a fee of six dollars ($6.00) for each plate, a permanent registration plate, which need not be thereafter renewed, for all disaster vans, bloodmobiles, handivans, and such sedans and station wagons as are used for emergency or disaster work, and operated by a local chapter in this State in the business of the American National Red Cross. Such plates may be transferred as provided in G.S. 20-78 to a replacement vehicle to be used for the purposes above described and for which the plates were originally issued. In the event of transfer of ownership to any other person, firm or corporation, or transfer or reassignment of any vehicle bearing such registration plate to any chapter or association of the American National Red Cross in any other state, territory or country, the registration plate assigned to such vehicle shall be surrendered to the Division of Motor Vehicles.~~

(c) State Highway Patrol. -- In lieu of all other registration requirements, the Commissioner shall each year assign to the State Highway Patrol, upon payment of six dollars ($6.00) per registration plate, a sufficient number of regular registration plates of the same letter prefix and in numerical sequence beginning with number 100 to meet the requirements of the State Highway Patrol for use on Division vehicles assigned to the State Highway Patrol. The commander of the Patrol shall, when such plates are assigned, issue to each member of the State Highway Patrol a registration plate for use upon the Division vehicle assigned to ~~him~~ the member pursuant to G.S. 20-190 and assign a registration plate to each Division service vehicle operated by the Patrol. An index of such assignments of registration plates shall be kept at each State Highway Patrol radio station and a copy ~~thereof~~ of it shall be furnished to the registration division of the Division. Information as to the individual assignments of ~~such~~ the registration plates shall be made available to the public upon request to the same extent and in the same manner as regular registration information. The commander, when necessary, may reassign registration plates provided that ~~such~~ the reassignment shall ~~be made to~~ appear upon the index required ~~herein~~ under this subsection within 20 days after ~~such~~ the reassignment.

~~The Division of Motor Vehicles shall, upon appropriate certification of financial responsibility, issue to sheltered workshops recognized or approved by the Division of Vocational Rehabilitation Services and to public and nonprofit agencies or organizations which provide transportation for or operate programs subject to and approved in accordance with standards adopted by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services of the Department of Health and Human Services upon application and payment of a fee of six dollars ($6.00) for each plate, a permanent registration plate for vehicles registered to and operated by such agencies. The initial six dollars ($6.00) fee required by this section and for this purpose shall be in full payment of the permanent registration plate issued for such vehicle operated by a sheltered workshop and such plates need not thereafter be renewed, and such plates may be transferred as provided in G.S. 20-78 to a replacement vehicle to be used by the sheltered workshop designated on the registration card.~~

~~On and after January 1, 1972, permanent registration plates used on all vehicles owned by the State of North Carolina or a department thereof shall be of a distinctive color and design which shall be readily distinguishable from all other permanent registration plates issued pursuant to this section or G.S. 20-84.1. For the purpose of carrying out the intent of this paragraph, all vehicles owned by the State of North Carolina or a department thereof in operation as of October 1, 1971, and bearing a permanent registration shall be reregistered during the months of October, November and December, 1971, and upon reregistration, registration plates issued for such vehicles shall be of a distinctive color and design as provided for hereinabove.~~"

Section 4. G.S. 20-84.1 is repealed.

Section 5. This act becomes effective July 1, 1999.

HOUSE BILL 486:
Parade Trailers -- Permanent Plates

BILL ANALYSIS

Committee:	Senate Finance Committee	**Introduced by:**	Rep. Moore
Date	June 1, 1999	**Summary by:**	Cindy Avrette and Martha K. Walston, Staff Attorneys
Version:	4th Edition		

SUMMARY: ***House Bill 486 would authorize the Division of Motor Vehicles to issue a permanent registration plate for trailers owned by a nationally chartered charitable organization and used only for parade floats and for transporting vehicles and structures used only in parades. The cost of the plate would be six dollars ($6.00). The bill consolidates and modernizes provisions in the permanent plate statute. The bill would become effective July 1, 1999. House Bill 486 was given a favorable report in House Finance on March 31, and passed the House on April 5. The proposed amendment would add Retired Highway Patrol to the list of persons who qualify for a special registration plate.***

CURRENT LAW: The registration fee for a trailer is $10.00. The fee is payable on or before January 1 of each year. The Division may issue a multiyear plate and registration card for a trailer for a fee of $75.00. The multiyear plate may not be transferred to a replacement vehicle.

BILL ANALYSIS: House Bill 486 would authorize the Division of Motor Vehicles to issue a permanent registration plate to a nationally chartered charitable organization for a trailer the organization owns and uses only for parade floats and for transporting vehicles and structures used only in parades. The Shriners appear to be the major organization that would benefit from this legislation. The cost of the permanent registration plate would be $6.00. The permanent plates could be transferred to another trailer that is bought to replace the one for which the plate was originally issued, so long as the use of the trailer is restricted to parades.

The statute amended by the bill, G.S. 20-84, was originally written in 1937. It has been amended many times. Many of the paragraphs repeat the same general information, such as fee and transferability, for each entity entitled to a permanent plate. The bill rewrites the statute by listing the entities entitled to a permanent plate and by consolidating the general provisions into one subsection. It also changes the caption of Part 6 of Article 3 of Chapter 20 and of G.S. 20-84 to accurately reflect their contents.

Under G.S. 20-84, there is an ambiguous provision that appears to prohibit the Division from collecting the $35 certificate of registration fee for certain motor vehicles entitled to a permanent registration plate. The Division interprets the provision to mean that any entity entitled to a permanent registration plate does not have to pay the $35 certificate of registration fee. Section 2 of the bill puts this provision in the appropriate statute concerning fees. The provision has been rewritten to conform the language with the Division's interpretation and practice.

The proposed amendment would authorize DMV to issue "SHP, Retired" special license plates for additional $10 fee. These applicants would also pay the regular registration fee. DMV must receive at least 300 applications for the special plate before it can be issued.

The $10 additional fee goes to the Special Registration Plate Account. After deducting the costs of the plates from the Account, the money is distributed as follows:

Amount	Purpose
$525,000 distributed annually	Operating assistance for certain Visitor Centers
33% distributed quarterly	Department of Commerce for advertising the promotion of travel and industrial development in the State.
50% distributed quarterly	Department of Transportation for beautification of highways.
17% distributed quarterly	Department of Health and Human Services to promote travel and accessibility for disabled persons.

The proposed amendment is identical to Senate Bill 149, introduced by Senator Moore. Senate Bill 149 is in Senate Finance.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: H 486 (First Edition)
SHORT TITLE: Parade Trailers – Permanent Plates
SPONSOR(S): Rep. Richard Moore

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES	($152)	($380)	($380)	($380)	($380)
EXPENDITURES					
POSITIONS:					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Division of Motor Vehicles (DMV)

EFFECTIVE DATE: Upon Enactment

BILL SUMMARY: DMV will make permanent registration plates available to nationally chartered charitable organizations, at a fee of $6.00, for all trailers that are used only for parade floats and for transporting vehicles and structures used only in parades.

ASSUMPTIONS AND METHODOLOGY: The Shriners appear to be the major organization that would be affected by this legislation and the three main Temples in North Carolina have a total of approximately 38 trailers that would qualify. For these trailers the annual fee of $10 would become a one time fee of $6. The loss in revenue would be $4 per trailer in the first year and $10 per trailer in subsequent years.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Robert Weiss

APPROVED BY: Tom Covington

DATE: Monday, March 22, 1999

FISCAL ANALYSIS MEMORANDUM

DATE: June 1, 1999

TO: Senate Finance

FROM: Bob Weiss and Linda Struyk Millsaps
Fiscal Research Division

RE: H486 – ALK –1
Amendment to "provide for special registration plates for members of the North Carolina Highway Patrol Retirees Association."

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
Special Plate Acct.	**$3,000**	**$3,000**	**$3,000**	**$3,000**	**$3,000**
EXPENDITURES					
Highway Fund	**$11,120**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Transportation, Division of Motor Vehicles, Vehicle Registration Section.

EFFECTIVE DATE: July 1, 1999.

AMENDMENT SUMMARY: The amendment authorizes a special plate for retired highway patrol officers. The bill requires 300 applications before the license is produced.

ASSUMPTIONS AND METHODOLOGY: Because it is not clear how many plates will be ordered, the fiscal analysis assumes the minimum 300 plates will be requested. The DMV will charges an additional $10.00 for each plate. Assuming 300 plates are ordered, the bill creates $3,000 in new revenue.

DMV indicates that the programming cost to set up a new special plate is approximately $11,120. Other start up costs are approximately $100.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 486

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

H486-ALK-1

Date_____,1999

Comm. Sub. [YES]
Amends Title [YES]
Fourth Edition

Senator Garwood

moves to amend the bill on page 1, line 6,
by rewriting that line to read:
"PERMANENT REGISTRATION PLATES AND TO PROVIDE FOR SPECIAL REGISTRATION PLATES FOR MEMBERS OF THE NORTH CAROLINA HIGHWAY PATROL RETIREES ASSOCIATION."
and further moves to amend the bill on page 5, line 9,
by inserting the following immediately after that line:
"Section 3.1. G.S. 20-79.4(b) reads as rewritten:
'(b) Types. -- The Division shall issue the following types of special registration plates:
. . .
"(36a) Retired Highway Patrol. -- Issuable to a member of the North Carolina Highway Patrol Retirees Association, Inc. A plate issued pursuant to this subdivision shall bear the phrase 'SHP, Retired.' The Division shall not issue a plate authorized by this subdivision unless it receives at least 300 applications for the plate."'"

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 504
Committee Substitute Favorable 4/7/99

Short Title: Carteret Planning/Zoning Changes. (Local)

Sponsors:

Referred to:

March 18, 1999

A BILL TO BE ENTITLED

AN ACT RELATING TO THE ADOPTION OF PLANNING, ZONING, AND SUBDIVISION ORDINANCES IN CARTERET COUNTY.

The General Assembly of North Carolina enacts:

Section 1. The County of Carteret may adopt and enforce planning, zoning, and subdivision ordinances and regulations pursuant to Chapter 1033 of the 1959 Session Laws or, in accordance with G.S. 153A-3, pursuant to Article 18 of Chapter 153A of the General Statutes. County ordinances adopted under the local act shall remain in effect until the adoption of ordinances under the general law.

Section 2. After the County of Carteret adopts ordinances, in accordance with G.S. 153A-3, pursuant to Article 18 of Chapter 153A of the General Statutes, all current members of the Carteret County Planning Board shall continue to serve as members until their respective terms expire or they resign. After the current planning board members' terms expire, then the County may replace those members pursuant to the Planning/Zoning and Subdivision ordinances or regulations that have been adopted in accordance with G.S. 153A-3 pursuant to Article 18 of Chapter 153A of the General Statutes.

Section 3. This act becomes effective October 15, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 900

Short Title: Gates County Fire Protection. (Local)

Sponsors: Representative Hunter.

Referred to: Local Government II.

April 1, 1999

A BILL TO BE ENTITLED

AN ACT ALLOWING GATES COUNTY TO IMPOSE FEES FOR FIRE PROTECTION SERVICES.

The General Assembly of North Carolina enacts:

Section 1. Article 11 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-236.1. County fire protection fees.**

(a) The board of county commissioners of a county may by ordinance impose a fee for the availability and use of fire protection services within the county. The fee imposed by the county shall not exceed the cost of providing the fire protection services.

(b) A county may adopt an ordinance providing that any fee imposed under subsection (a) of this section may be billed with property taxes, may be payable in the same manner as property taxes, and, in the case of nonpayment, may be collected in any manner by which delinquent personal or real property taxes can be collected. If an ordinance states that delinquent fees can be collected in the same manner as delinquent real property taxes, the fees are a lien on the real property described on the bill that includes the fee."

Section 2. This act applies to Gates County only.

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

HOUSE BILL 900:
Gates County Fire Protection

BILL ANALYSIS

Committee: Senate Finance
Date: June 1, 1999
Version: 1st Edition

Introduced by: Rep. Hunter
Summary by: Cindy Avrette and Martha K. Walston, Staff Attorneys

SUMMARY: ***House Bill 900 authorizes Gates County to impose a fee for the availability and use of fire protection services within the county. The bill would become effective when it becomes law. HB 900 was given a favorable report in House Committee on Local Government II and House Finance.***

CURRENT LAW: Fire protection in areas outside cities is provided through the establishment of fire protection districts. The statutes provide for the creation of three types of rural fire districts:

- **Insurance districts.** G.S. 153A-233 authorizes counties to designate fire districts and prescribe their boundaries for insurance-grading purposes. To pay for this protection, the county is authorized to appropriate funds "not otherwise limited as to use by law."
- **Tax-supported fire districts.** Article 3A of Chapter 69 of the General Statutes authorizes tax-supported fire districts. They are created by a petition and an election. To pay for this protection, a special tax is levied and collected on all taxable property in the district at a rate not exceeding 15¢ on the $100 valuation of property.
- **County service districts for fire protection.** Article 16 of Chapter 153A of the General Statutes authorizes the county commissioners to define service districts for fire protection after a public hearing. To pay for this protection, a county may levy an additional property tax within the district for the purpose of financing fire protection services. The county may also use revenues whose use is not otherwise restricted by law and it may issue general obligation bonds.

BILL ANALYSIS: House Bill 900 establishes a fourth mechanism for Gates County – **a fire protection fee.** Under the legislation, the Gates County Commissioners could, by ordinance, impose a fee for the availability and use of fire protection services within the county. The amount of the fees may not exceed the cost of providing the service. The fee may be included on the property owner's property tax bill.

The General Assembly has enacted similar legislation for Union County in 1992, Halifax County in 1993, and Richmond County in 1995. The House Finance passed a similar bill for Brunswick County last month (House Bill 651 which is now in Senate Finance). All of the bills mentioned above differ from House Bill 900 in the following respects:

- They allow the county to create districts. House Bill 900 will be implemented countywide. It does not allow for the creation of different fire districts within the county.

- They provide for a schedule of fees that vary depending upon the estimated cost of providing fire protection services to that class of property. House Bill 900 provides that the fee cannot exceed the cost of providing the fire protection services. Arguably, this language may give the county the authority to create a fee schedule.
- They establish a maximum fee amount.
- They restrict the use of the fee revenue to fire protection in that district.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: H.B. 900

SHORT TITLE: Gates County Fire Protection

SPONSOR(S): Representative Hunter

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
Gates County	**$160,000***	**$160,000**	**$160,000**	**$160,000**	**$160,000**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Gates County Government

EFFECTIVE DATE: When it becomes law.

*** If enacted by County Comissioners at the rate expected by county manager (see Assumptions, below)**

BILL SUMMARY: The legislation authorizes the Gates County Commission to establish a fire protection fee. The fees, in total, can not exceed the cost of providing fire protection services for the county. This fee can be billed with property taxes and, in the case of nonpayment, can be collected in the same manner as delinquent personal or real property taxes. It also authorizes the commission to adopt an ordinance to place a lien on the property for delinquent fire fees.

ASSUMPTIONS AND METHODOLOGY: The Gates County Manager anticipates that the county will levy an annual fire fee of approximately $40.00 per household. They expect the fee to generate about $160,000 per year for fire protection services.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Linda Struyk Millsaps

APPROVED BY: Tom Covington

DATE: Monday, May 03, 1999

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 665
Committee Substitute Favorable 5/18/99

Short Title: Modify Currituck Room Tax. (Local)

Sponsors:

Referred to:

March 29, 1999

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE CURRITUCK COUNTY ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of Chapter 209 of the 1987 Session Laws, as amended by Chapter 155 of the 1991 Session Laws, reads as rewritten:

"Section 1. Occupancy tax. (a) Authorization and scope. The Currituck County Board of Commissioners may ~~by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3), or from the rental of a campsite within the county. This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

(a1) Additional occupancy tax. In addition to the tax authorized by subsection (a) of this section, the Currituck County Board of Commissioners may levy a room occupancy tax of one percent (1%) of the gross receipts derived from the rental of accommodations taxable under subsection (a). The levy, collection, administration, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this act. Currituck County may not levy a tax under this subsection unless it also levies the tax under subsection (a).

(b) A tax levied under this act shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

~~Collection. Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The Currituck County Tax Collector shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax.~~

~~(c) Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county tax collector in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A return filed with the county tax collector under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall pay a penalty of ten dollars ($10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid. Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars ($1,000), imprisonment not to exceed six months, or both. The Board of Commissioners may, for good cause shown, compromise or forgive the tax penalties imposed by this subsection.~~

(e) Use of tax revenue. Currituck County shall use at least seventy-five percent (75%) of the net proceeds of the tax levied under subsection (a) of this section only for tourist related purposes, including construction and maintenance of public facilities and buildings, garbage, refuse, and solid waste collection and disposal, police protection, and emergency services. The remainder of the net proceeds of the tax levied under subsection (a) shall be deposited in the Currituck County General Fund and may be used for any lawful purpose. Currituck County may use the net proceeds of the tax levied under subsection (a1) of this section, to the extent that they are needed, for capital costs, operation, and maintenance of the Currituck Wildlife

Museum. Whatever is not needed for the capital costs, operation, and maintenance of the Currituck Wildlife Museum shall be used for tourist-related purposes. As used in this subsection, 'net proceeds' means gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer.

~~(f) Effective date of levy. A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

~~(g) Repeal. A tax levied under this section may be repealed by a resolution adopted by the Currituck County Board of Commissioners. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.~~"

Section 2. County Administrative Provisions. Section 3(b) of S.L. 1997-102, as amended by Section 2 of S.L. 1997-255, Section 2 of S.L. 1997-342, Section 3 of S.L. 1997-364, Section 6 of S.L. 1997-410, and Section 2 of S.L. 1998-14, reads as rewritten:

"(b) This section applies only to Avery, Brunswick, Currituck, Davie, Madison, Nash, Person, Randolph, and Scotland Counties."

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

HOUSE BILL 665:
Modify Currituck Room Tax

BILL ANALYSIS

Committee: Senate Finance
Date: June 1, 1999
Version: 2nd Edition

Introduced by: Rep. Owens
Summary by: Martha K. Walston and Cindy Avrette, Staff Attorneys

SUMMARY: ***House Bill 665 conforms the administrative provisions of the current room occupancy tax session law for Currituck County to the uniform occupancy tax provisions. The original version of House Bill 665 was amended in House Finance. This amended version is now before Senate Finance.***

HOUSE BILL 665: The **original bill** modified the penalty provisions of the Currituck County occupancy tax law. The current penalty for failure to file a return is $10 for each day's omission. In case of failure to file the return or pay the tax for a period of 30 days after it is due, the penalty is 5% of the tax due. The original bill provided that the $10 per day penalty would not apply if the return was filed within 10 business days or if no tax was due with the return. It also reduced the penalty equal to 5% of the tax due to 2% of the tax due.

House Bill 665 2nd Edition provides that the uniform penalties will apply. The uniform occupancy tax penalties in G.S. 153A-155 are the same as the penalties for failure to pay or file a return for State sales and use taxes. The uniform penalty for failure to file a return is 5% of the amount of tax due, not to exceed 25% or $5, whichever is greater. The uniform penalty for failure to pay the tax due is 10% of the tax due or $5, whichever is greater.

House Bill 665 2nd Edition also conforms the current session law governing Currituck County occupancy taxes to the uniform occupancy tax provisions. Therefore, the levy, administration, collection, and repeal of the occupancy taxes must be done in accordance with G.S. 160A-215. These provisions are substantially the same as the ones in the current session law.

The General Assembly authorized Currituck County to levy a room occupancy tax in 1987. The County is authorized to levy a 3% occupancy tax and an additional 1% occupancy tax. Seventy-five percent (75%) of the tax proceeds from the 3% tax shall be used only for tourist related purposes, including construction and maintenance of public facilities and buildings, garbage, refuse, and solid waste collection and disposal, police protection, and emergency services. The remaining tax proceeds are to be deposited in the Currituck County General Fund and used for any lawful purpose. The additional 1% occupancy tax, to the extent needed, may be used for the Currituck Wildlife Museum. Whatever is not needed shall be used for tourist-related purposes.

BACKGROUND: Since 1983, the General Assembly has authorized many units of local government to levy a room occupancy tax. In several instances, the General Assembly has authorized both a county and a city within that county to impose an occupancy tax. ***Attached you will find a map and a chart indicating the counties and cites that currently have the authority to levy and collect an occupancy tax.***

The rate of tax, the use of the tax proceeds, the administration of the tax, and the body with the authority to determine how the tax proceeds will be spent vary considerably. Over the past several years, there has been a greater effort to make the occupancy taxes uniform. In 1997, the General Assembly enacted uniform municipal and county administrative provisions for occupancy tax legislation – G.S. 153A-155

and G.S. 160A-215. These provisions provide uniformity in the areas of levy, administration, collection, repeal, and penalties.

The North Carolina Travel and Tourism Coalition has a policy statement for legislation authorizing local occupancy taxes. These principles include:

- **Rate** – The county tax rate cannot exceed 6% and the city tax rate, when combined with the county rate, cannot exceed 6%.
- **Use** – Two-thirds of the proceeds must be used to promote travel and tourism and the remainder must be used for tourism related purposes.
- **Definitions** The term "net revenues", promote travel and tourism", and "tourism related expenditures" are defined terms.
- **Administration** – The net revenues must be administered by a local tourism promotion agency that has the authority to determine how the tax proceeds will be used, is created by a local ordinance, and at least ¾ of the members must be currently active in the promotion of travel and tourism in the taxing district and 1/3 of the members must be affiliated with organizations that collect the tax.
- **Costs of Collection** – The taxing authority may retain from the revenues its actual costs of collection, not to exceed 3% of the first $500,000 collected each year plus 1% of the remainder collected each year.

There is a 32-page chart detailing the occupancy taxes authorized in North Carolina. The chart can be accessed on the North Carolina General Assembly's web page under "Latest Staff Reports". There is also a chart detailing the amount of occupancy tax revenue collect by the various localities. This chart can be accessed on the North Carolina General Assembly's Intranet web page under "Information Center", "Fiscal Research Division".

Other States - State and local governments in every state impose an occupancy tax. The taxes are usually earmarked for tourist related activities. The taxes are usually levied in addition to the general rate of sales tax. The combined state and local occupancy taxes average more than 10%.

Occupancy Tax Breakup by County, City, County & City

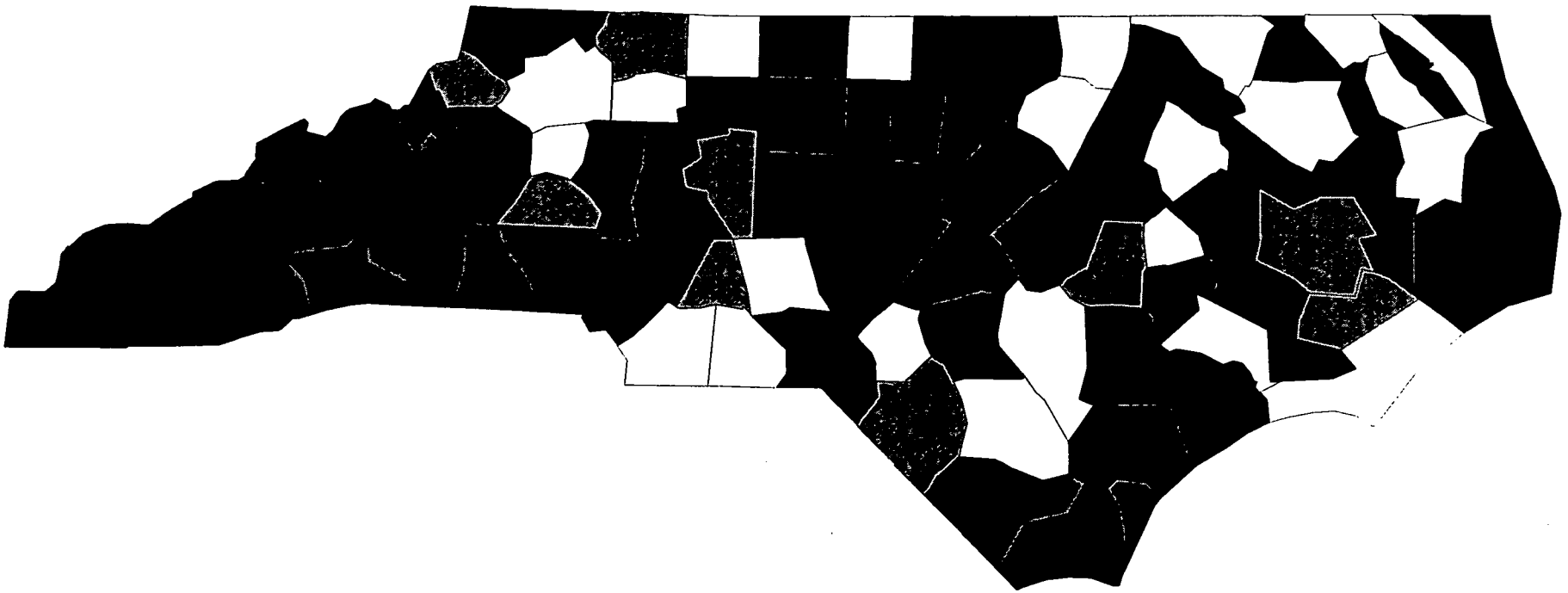
COUNTIES	County Only	City Only	County & City
Alamance	Alamance		
Alexander			
Alleghany	Alleghany		
Anson			
Ashe	Ashe		
Avery			Banner Elk
Beaufort		Washington	
Bertie			
Bladen			
Brunswick			Bald Head Island, Caswell Beach, Holden Beach, Long Beach, Ocean Isle Beach, Shallotte, Southport, Sunset Beach, Yaupon Beach
Buncombe	Buncombe		
Burke	Burke		
Cabarrus	Cabarrus		
Caldwell	Caldwell		
Camden			
Carteret	Carteret		
Caswell			
Catawba		Claremont, Conover, Hickory	
Chatham	Chatham		
Cherokee	Cherokee		
Chowan	Chowan		
Clay	Clay		
Cleveland			Shelby
Columbus	Columbus		
Craven	Craven		
Cumberland	Cumberland		
Currituck	Currituck		
Dare	Dare		
Davidson		Lexington, Thomasville	
Davie	Davie		
Duplin	Duplin		
Durham	Durham		
Edgecombe			
Forsyth	Forsyth		
Franklin			

Gaston	Gaston		
Gates			
Graham	Graham		
Granville	Granville		
Greene			
Guilford			Greensboro, High Point
Halifax	Halifax		
Harnett			Aversboro Township
Haywood	Haywood		
Henderson			Hendersonville
Hertford	Hertford		
Hoke			
Hyde	Hyde		
Iredell			Mooresville, Statesville
Jackson	Jackson		
Johnston	Johnston		
Jones			
Lee	Lee		
Lenoir			Kinston
Lincoln	Lincoln		
Macon	Macon		
Madison	Madison		
Martin	Martin		
McDowell	McDowell		
Mecklenburg	Mecklenburg		
Mitchell	Mitchell		
Montgomery			
Moore	Moore		
Nash	Nash		
New Hanover	New Hanover		
Northampton			
Onslow	Onslow		
Orange			Chapel Hill
Pamlico		Oriental	
Pasquotank			Elizabeth City
Pender			Surf City, Topsail Beach
Perquimans			
Person	Person		
Pitt	Pitt		
Polk			Columbus
Randolph	Randolph		
Richmond	Richmond		
Robeson		Lumberton, Rowland, St. Pauls	
Rockingham	Rockingham		

Rowan	Rowan		
Rutherford	Rutherford		
Sampson			
Scotland	Scotland		
Stanly		Albemarle	
Stokes			
Surry		Mount Airy	
Swain	Swain		
Transylvania	Transylvania		
Tyrrell			
Union			
Vance	Vance		
Wake			Cary, Garner, Raleigh, Wake Forest
Warren			
Washington	Washington		
Watauga		Beech Mountain, Blowing Rock, Boone	
Wayne		Goldsboro	
Wilkes			
Wilson	Wilson		
Yadkin			
Yancey	Yancey		

Kristen Crosson
House Finance Committee Assistant
April 19, 1999

Occupancy Tax in NC Counties



White: No Occupancy Tax

Light Gray: Only Certain Cities have Occupancy Tax

Dark Gray: Only County has Occupancy Tax

Black: Both County and Certain Cities have Occupancy Tax

Kristen Crosson

House Finance Committee Assistant

April 16, 1999

Report in as of 6/30/99

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 120
Committee Substitute Favorable 4/22/99

Short Title: Tax Lien Advertisement and Collection. (Public)

Sponsors:

Referred to:

February 22, 1999

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE PROCEDURES FOR NOTIFYING OWNERS AND ADVERTISING TAX LIENS ON REAL PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-369 reads as rewritten:

"**§ 105-369. Advertisement of tax liens on real property for failure to pay taxes.**

(a) Report of unpaid Taxes that are Liens on Real Property. -- ~~On the first Monday in February in each year, each county tax collector and on the second Monday in February in each year, each municipal tax collector shall~~ In February of each year, the tax collector must report to the governing body the total amount of unpaid taxes for the current fiscal year that are liens on real ~~property, and the governing body shall thereupon~~ property. A county tax collector's report is due the first Monday in February, and a municipal tax collector's report is due the second Monday in February. Upon receipt of the report, the governing body may order the tax collector to advertise ~~such~~ the tax liens. For purposes of this section, district taxes collected by county tax collectors shall be regarded as county taxes and district taxes collected by municipal tax collectors shall be regarded as municipal taxes.

(b) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1013.

(b1) Notice to Owner. -- If the governing body orders the tax collector to advertise the tax liens, the tax collector must send a notice to the listing owner and to the record owner of each affected parcel of property, as determined as of December 31 of the fiscal year for which the taxes are due. The notice must be sent to each owner's last known address by first-class mail at least 30 days before the date the

advertisement is to be published. The notice must state the principal amount of unpaid taxes that are a lien on the parcel to be advertised and inform the owner that the names of the listing owner and the record owner will appear in a newspaper advertisement of delinquent taxes if the taxes are not paid before the publication date.

(c) Time and Contents of Advertisement. -- If the governing body orders the tax collector to advertise the tax liens, this subsection governs the advertisement. A tax collector's failure to comply with this subsection does not affect the validity of the taxes or tax liens. The county tax collector shall advertise county tax liens by posting a notice of the liens at the county courthouse and by publishing each lien at least one time in one or more newspapers having general circulation in the taxing unit. The municipal tax collector shall advertise municipal tax liens by posting a notice of the liens at the city or town hall and by publishing each lien at least one time in one or more newspapers having general circulation in the taxing unit. Advertisements of tax liens shall be made during the period March 1 through June 30. The costs of newspaper advertising shall be paid by the taxing unit. ~~(~~If If the taxes of two or more taxing units are collected by the same tax collector, the tax liens of each unit shall be advertised separately unless, under the provisions of a special act or contractual agreement between the taxing units, joint advertisement is ~~permitted.)~~ permitted.

The posted notice and newspaper advertisement shall set forth the following information:

(1) ~~The~~ In the case of property that the listing owner has not transferred after January 1 preceding the fiscal year for which the tax liens are advertised, the name of each person to whom is listed real property on which the taxing unit has a lien for unpaid ~~taxes,~~ taxes, in alphabetical order.

(1a) In the case of property that the listing owner has transferred after January 1 preceding the fiscal year for which the tax liens are advertised, the name of the record owner as of December 31 of each parcel on which the taxing unit has a lien for unpaid taxes, in alphabetical order, followed by a notation that the property was transferred to the record owner and a notation of the name of the listing owner.

(1b) ~~together with a~~ After the information required by subdivision (1) or (1a) of this subsection for each parcel, a brief description of each parcel of land to which ~~such~~ a lien has attached and a statement of the principal amount of the taxes constituting a lien against the parcel.

(2) A statement that the amounts advertised will be increased by interest and costs and that the omission of interest and costs from the amounts advertised will not constitute waiver of the taxing unit's claim for those items.

(3) In the event the list of tax liens has been divided for purposes of advertisement in more than one newspaper, a statement of the

names of all newspapers in which advertisements will appear and the dates on which they will be published.

(4) A statement that the taxing unit may foreclose the tax liens and sell the real property subject to the liens in satisfaction of its claim for taxes.

~~Failure to comply with this subsection does not affect the validity of the taxes or tax liens.~~

(d) Costs. -- Each parcel of real property advertised pursuant to this section shall be assessed an advertising fee to cover the actual cost of the advertisement. Actual advertising costs per parcel shall be determined by the tax collector on any reasonable basis. Advertising costs assessed pursuant to this ~~subdivision (d) shall be deemed to be~~ subsection are taxes.

(e) Payments during Advertising Period. -- At any time during the advertisement period, any parcel may be withdrawn from the list by payment of the taxes plus interest that has accrued to the time of payment and a proportionate part of the advertising fee to be determined by the tax collector. Thereafter, the tax collector shall delete that parcel from any subsequent advertisement, but ~~if he fails to do so he shall not be liable for his~~ the tax collector is not liable for failure to make the deletion.

(f) Listing and Advertising in Wrong Name. -- No tax lien ~~shall be~~ is void because the real property to which the lien attached was listed or advertised in the name of a person other than the person in whose name the property should have been listed for taxation or because the record owner's name was omitted from the advertisement, if the property was in other respects correctly described on the abstract or in the advertisement.

(g) Wrongful Advertisement. -- Any tax collector or deputy tax collector who ~~shall willfully advertise~~ willfully advertises any tax lien knowing that the property is not subject to taxation or that the taxes advertised have been paid ~~shall be~~ is guilty of a Class 3 misdemeanor, and shall be required to pay the injured party all damages sustained in consequence."

Section 2. Article 26 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-370. Notice of delinquent taxes.**

If the governing body of a taxing unit decides not to advertise tax liens for a fiscal year, the tax collector must, at least 30 days before initiating any lien foreclosure action under G.S. 105-374, send a notice to the listing owner and the record owner of the affected parcel of property, as determined as of December 31 of the fiscal year for which the taxes are due. The notice must be sent to each owner's last known address by first-class mail. The notice must state the principal amount of unpaid taxes that are a lien on the property and inform the owner that the lien may be foreclosed to enforce collection of those taxes. Failure to mail the notice required by this section to the correct listing owner or record owner does not affect the validity of the tax lien or of any foreclosure action."

Section 3. G.S. 105-375(b) reads as rewritten:

"(b) Docketing Certificate of Taxes as Judgment. -- In lieu of following the procedure set forth in G.S. 105-374, the governing body of any taxing unit may direct the tax collector to ~~file, no earlier than six months following the advertisement of tax liens, with the clerk of superior court~~ file with the clerk of superior court, no earlier than 30 days after the tax liens were advertised or May 6 following the delinquency date, whichever occurs first, a certificate showing the following: the name of the taxpayer listing real property on which the taxes are a lien, together with the amount of taxes, penalties, interest, and costs that are a lien thereon; the year or years for which the taxes are due; and a description of the property sufficient to permit its identification by parol testimony. The fees for docketing and indexing the certificate shall be payable to the clerk of superior court at the time the taxes are collected or the property is sold."

Section 4. G.S. 105-375(e) reads as rewritten:

"(e) Special Assessments. -- Street, sidewalk, and other special assessments may be included in any judgment for taxes taken under this ~~section; or such~~ section, or the special assessments may be included in a separate judgment docketed under this ~~section, which is hereby declared to be made available~~ section. The tax collector may use such a judgment as a method of foreclosing the lien of special assessments. When used to foreclose the lien of special assessments, the procedure may be instituted at any time after the assessment or installment falls due and remains unpaid; the ~~six months'~~ waiting period required by subsection ~~(b), above, shall~~ (b) of this section does not apply to the foreclosure of special assessments."

Section 5. This act becomes effective January 1, 2001.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 120

Committee Substitute Favorable 4/22/99
Proposed Senate Committee Substitute H120-PCS1308-LA

Short Title: Tax Lien Advertisement and Collection. (Public)

Sponsors:

Referred to:

February 22, 1999

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE PROCEDURES FOR NOTIFYING OWNERS AND ADVERTISING TAX LIENS ON REAL PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-369 reads as rewritten:

"**§ 105-369. Advertisement of tax liens on real property for failure to pay taxes.**

(a) Report of unpaid Taxes that are Liens on Real Property. -- ~~On the first Monday in February in each year, each county tax collector and on the second Monday in February in each year, each municipal tax collector shall~~ In February of each year, the tax collector must report to the governing body the total amount of unpaid taxes for the current fiscal year that are liens on real ~~property, and the governing body shall thereupon~~ property. A county tax collector's report is due the first Monday in February, and a municipal tax collector's report is due the second Monday in February. Upon receipt of the report, the governing body must order the tax collector to advertise ~~such~~ the tax liens. For purposes of this section, district taxes collected by county tax collectors shall be regarded as county taxes and district taxes collected by municipal tax collectors shall be regarded as municipal taxes.

(b) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1013.

(b1) Notice to Owner. -- After the governing body orders the tax collector to advertise the tax liens, the tax collector must send a notice to the listing owner and to the record owner of each affected parcel of property, as determined as of December 31 of the fiscal year for which the taxes are due. The notice must be sent to each

owner's last known address by first-class mail at least 30 days before the date the advertisement is to be published. The notice must state the principal amount of unpaid taxes that are a lien on the parcel to be advertised and inform the listing owner that his or her name will appear in a newspaper advertisement of delinquent taxes if the taxes are not paid before the publication date. Failure to mail the notice required by this section to the correct listing owner or record owner does not affect the validity of the tax lien or of any foreclosure action.

(c) Time and Contents of Advertisement. -- A tax collector's failure to comply with this subsection does not affect the validity of the taxes or tax liens. The county tax collector shall advertise county tax liens by posting a notice of the liens at the county courthouse and by publishing each lien at least one time in one or more newspapers having general circulation in the taxing unit. The municipal tax collector shall advertise municipal tax liens by posting a notice of the liens at the city or town hall and by publishing each lien at least one time in one or more newspapers having general circulation in the taxing unit. Advertisements of tax liens shall be made during the period March 1 through June 30. The costs of newspaper advertising shall be paid by the taxing unit. ~~(If~~ If the taxes of two or more taxing units are collected by the same tax collector, the tax liens of each unit shall be advertised separately unless, under the provisions of a special act or contractual agreement between the taxing units, joint advertisement is ~~permitted.)~~ permitted.

The posted notice and newspaper advertisement shall set forth the following information:

(1) The name of each person to whom is listed real property on which the taxing unit has a lien for unpaid taxes, ~~together with~~ in alphabetical order, followed by a brief description of each parcel of land to which ~~such~~ a lien has attached and a statement of the principal amount of the taxes constituting a lien against the parcel.

(2) A statement that the amounts advertised will be increased by interest and costs and that the omission of interest and costs from the amounts advertised will not constitute waiver of the taxing unit's claim for those items.

(3) In the event the list of tax liens has been divided for purposes of advertisement in more than one newspaper, a statement of the names of all newspapers in which advertisements will appear and the dates on which they will be published.

(4) A statement that the taxing unit may foreclose the tax liens and sell the real property subject to the liens in satisfaction of its claim for taxes.

~~Failure to comply with this subsection does not affect the validity of the taxes or tax liens.~~

(d) Costs. -- Each parcel of real property advertised pursuant to this section shall be assessed an advertising fee to cover the actual cost of the advertisement. Actual advertising costs per parcel shall be determined by the tax collector on any

reasonable basis. Advertising costs assessed pursuant to this ~~subdivision (d) shall be deemed to be~~ subsection are taxes.

(e) Payments during Advertising Period. -- At any time during the advertisement period, any parcel may be withdrawn from the list by payment of the taxes plus interest that has accrued to the time of payment and a proportionate part of the advertising fee to be determined by the tax collector. Thereafter, the tax collector shall delete that parcel from any subsequent advertisement, but ~~if he fails to do so he shall not be liable for his~~ the tax collector is not liable for failure to make the deletion.

(f) Listing and Advertising in Wrong Name. -- No tax lien ~~shall be~~ is void because the real property to which the lien attached was listed or advertised in the name of a person other than the person in whose name the property should have been listed for taxation if the property was in other respects correctly described on the abstract or in the advertisement.

(g) Wrongful Advertisement. -- Any tax collector or deputy tax collector who ~~shall willfully advertise~~ willfully advertises any tax lien knowing that the property is not subject to taxation or that the taxes advertised have been paid ~~shall be~~ is guilty of a Class 3 misdemeanor, and shall be required to pay the injured party all damages sustained in consequence."

Section 2. G.S. 105-375(b) reads as rewritten:

"(b) Docketing Certificate of Taxes as Judgment. -- In lieu of following the procedure set forth in G.S. 105-374, the governing body of any taxing unit may direct the tax collector to ~~file, no earlier than six months following the advertisement of tax liens, with the clerk of superior court~~ file with the clerk of superior court, no earlier than 30 days after the tax liens were advertised, a certificate showing the following: the name of the taxpayer listing real property on which the taxes are a lien, together with the amount of taxes, penalties, interest, and costs that are a lien thereon; the year or years for which the taxes are due; and a description of the property sufficient to permit its identification by parol testimony. The fees for docketing and indexing the certificate shall be payable to the clerk of superior court at the time the taxes are collected or the property is sold."

Section 3. G.S. 105-375(e) reads as rewritten:

"(e) Special Assessments. -- Street, sidewalk, and other special assessments may be included in any judgment for taxes taken under this ~~section; or such~~ section, or the special assessments may be included in a separate judgment docketed under this ~~section, which is hereby declared to be made available~~ section. The tax collector may use such a judgment as a method of foreclosing the lien of special assessments. When used to foreclose the lien of special assessments, the procedure may be instituted at any time after the assessment or installment falls due and remains unpaid; the ~~six months'~~ waiting period required by subsection ~~(b), above, shall~~ (b) of this section does not apply to the foreclosure of special assessments."

Section 4. This act becomes effective January 1, 2001.

HOUSE BILL 120:
Tax Lien Advertisement and Collection

BILL ANALYSIS

Committee: Senate Finance
Date: June 30, 1999
Version: Proposed Committee Substitute

Introduced by: Rep. Owens
Summary by: Martha K. Walston
Committee Counsel

SUMMARY: ***The proposed committee substitute for House Bill 120 differs from the 2nd Edition of House Bill 120 in that it requires both advertisement and notification before beginning tax foreclosure proceedings. The earlier version gave counties the option to advertise tax delinquencies before beginning tax foreclosure proceedings. The PCS also differs from the earlier version in that it only requires that the listing owner's name be published in a newspaper. Both the listing owner and the record owner will receive notification by first class mail. Both the earlier version and the PCS enable the tax collector to collect the taxes in the fiscal year in which they are due, by allowing the county to begin an in rem foreclosure proceeding as early as 30 days after the tax liens were advertised.***

CURRENT LAW: Property must be listed for property tax in January of each year. The listing owner is the taxpayer who owned the property as of January 1. The taxes become due in September and become delinquent on January 6 of the following year. Although most counties send tax listing notices and tax bills to the taxpayer, they are not required by law to do so. Property owners are charged with notice that they must list their property for taxes and pay the taxes; otherwise, enforcement measures will be taken against the property. The legal effect of this law is to prevent a taxpayer from using lack of notice as an excuse for not paying property taxes or as a defense to a collection remedy against the property. If property taxes remain unpaid, the tax collector is required by statute to advertise the tax liens in a local newspaper under the name of the listing owner. If the taxes remain unpaid for six months following the advertisement, the tax collector may begin a foreclosure proceeding against the property. The earliest tax liens can be advertised is March; therefor, September is the earliest an in rem foreclosure proceeding may be initiated. Since a local government's fiscal year begins July 1, the collection of property taxes through an in rem foreclosure proceeding cannot begin until the succeeding fiscal year after the taxes are due.

BILL ANALYSIS: The bill requires the tax collector to send a notice to both the listing owner and the record owner as of December 31 if the record owner is different than the listing owner. The notice must be sent by first-class mail at least 30 days before the advertisement is published. The required advertisement shall list only the listing owner's name. (The earlier version required that the optional advertisement list both the listing owner and the record owner.) The bill allows the tax collector to initiate an in rem foreclosure proceeding as early as 30 days after the tax liens were advertised. This provision enables collectors to collect the taxes in the fiscal year in which they are due.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 120 (Senate Finance Committee Substitute)

SHORT TITLE: Tax Lien Advertisement and Collection

SPONSOR(S): Rep. Bill Owens

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
EXPENDITURES					
Local Governments		**($30,000)**			

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: County Governments.

EFFECTIVE DATE: This act becomes effective January 1, 2001.

BILL SUMMARY: The bill intends to improve the procedures for advertising tax liens on real property and for notifying delinquent taxpayers.

ASSUMPTIONS AND METHODOLOGY: This bill may have a small one-time impact on the costs of county operations, primarily in the area of computer programming and data entry. Virtually all counties will have to change their computer software to enable the advertisement of both the January 1 and the December 31 owner of real property (if different). A majority of counties will need to make minor software changes to allow notices to be mailed to both the January 1 and December 31 property owner (if different).

When working on a similar bill in 1998, Fiscal Research Division staff interviewed a sample of county tax collectors, a professor in the Institute of Government, and the chairman of the North Carolina Association of Assessing Officers. It was found that approximately 75 counties lack a fully automated way to send deed transfer information between the Register of Deeds Office and the Tax Assessor's Office, in a timely manner. The Registers of Deeds provide copies of deeds to the Tax Assessors in the form of paper, microfilm, microfiche, or CD. The tax professionals contacted in 1998 estimated that only 25 counties might incur one-time costs for computer

programming in the first year of implementing HB 120. These 25 counties might expend an average of $800 each ($20,000) for computer vendors to program county databases for this data transfer.

Data entry was another cost identified by tax professionals interviewed in 1998. It was estimated that 25 county Tax Assessors might spend approximately $400 each ($10,000) for temporary clerks to do data entry on deed transfer files in order to update the county tax files. Small counties with few land transactions do not experience a backlog in deed transfer filings. It was suggested in 1998 that temporary clerks would be needed each year due to this bill, but this fiscal note assumes that keeping deed and tax files current should be standard operating procedure for the tax listing process and is not a new requirement on county governments.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic

APPROVED BY: Tom Covington

DATE: Thursday, July 01, 1999

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 899

Short Title: Real Estate Salesman/Broker Licensure. (Public)

Sponsors: Representatives Bridgeman, Howard; Dedmon and Morris.

Referred to: Ways and Means.

April 1, 1999

A BILL TO BE ENTITLED

AN ACT AMENDING CERTAIN REQUIREMENTS FOR LICENSURE OF REAL ESTATE BROKERS AND SALESMEN.

The General Assembly of North Carolina enacts:

Section 1. G.S. 93A-4 reads as rewritten:

"**§ 93A-4. Applications for licenses; fees; qualifications; examinations; ~~bond;~~ privilege licenses; renewal or reinstatement of license; power to enforce provisions.**

(a) Any person, partnership, ~~association, or corporation~~ corporation, limited liability company, association, or other business entity hereafter desiring to enter into business of and obtain a license as a real estate broker or real estate salesman shall make written application for such license to the Commission ~~on such forms as are~~ in the form and manner prescribed by the Commission. Each applicant for a license as a real estate broker or real estate salesman shall be at least 18 years of age. Each applicant for a license as a real estate salesman shall, within ~~five~~ three years preceding the date application is made, have satisfactorily completed, at a school approved by the Commission, a real estate fundamentals course consisting of at least ~~30~~ 75 hours of classroom instruction in subjects determined by the Commission, or shall possess real estate education or experience in real estate transactions which the Commission shall find equivalent to the course. Each applicant for a license as a real estate broker shall, within ~~five~~ three years preceding the date the application is made, ~~either have been actively engaged on a full-time basis as a licensed real estate salesman for at least two years, or~~ have satisfactorily completed, at a school approved by the Commission, ~~advanced courses in Real Estate Law, Real Estate Finance, and Real Estate Brokerage Operations, each~~ an education program consisting of at least

~~30~~ 60 hours of classroom ~~instruction, these courses to~~ instruction in subjects determined by the Commission, which shall be in addition to ~~those~~ the course required for a real estate salesman license, or shall possess real estate education or experience in real estate transactions which the Commission shall find equivalent to the ~~above requirements.~~ education program. Each ~~application~~ applicant for a license as a real estate broker or real estate salesman shall be ~~accompanied by~~ required to pay a fee, fixed by the Commission but not to exceed thirty dollars ($30.00). ~~Each application for license as a real estate salesman shall be accompanied by a fee, fixed by the Commission but not to exceed thirty dollars ($30.00).~~

(b) ~~Any~~ Except as otherwise provided in this Chapter, any person who ~~files such~~ submits an application to the Commission in proper manner for a license as real estate broker or a license as real estate salesman shall be required to take an oral or written ~~examination to~~ examination. The Commission may allow an applicant to elect to take the examination by computer as an alternative to the written or oral examination and may require the applicant to pay the Commission or a provider contracted by the Commission the actual cost of administering the computerized examination. The cost of the computerized examination shall be in addition to any other fees the applicant is required to pay under subsection (a) of this section. The examination shall determine ~~his~~ the applicant's qualifications with due regard to the paramount interests of the public as to the ~~honesty, truthfulness, integrity and competency of the applicant.~~ applicant's competency. A person holding a real estate salesman license in this State and applying for a real estate broker license shall not be required to take an additional examination under this subsection.

~~The Commission may make such investigation as it deems necessary into the ethical background of the applicant.~~ An applicant for licensure under this Chapter shall satisfy the Commission that he or she possesses the competency, honesty, truthfulness, integrity, and general moral character necessary to protect the public interest and promote public confidence in the real estate brokerage business. If the results of ~~the~~ any required competency examination and investigation of the applicant's moral character shall be satisfactory to the Commission, then the Commission shall issue to ~~such a person~~ the applicant a license, authorizing ~~such person~~ the applicant to act as a real estate broker or real estate salesman in the State of North Carolina, upon the payment of privilege taxes now required by law or that may hereafter be required by law.

~~Provided, however, that any person who, at the time of the passage or at the effective date of this Chapter, has a license to engage in, and is engaged in business as a real estate broker or real estate salesman and who shall file a sworn application with the Commission setting forth his qualifications, including a statement that such applicant has not within five years preceding the filing of the application been convicted of any felony or any misdemeanor involving moral turpitude, shall not be required to take or pass such examination, but all such persons shall be entitled to receive such license from the Commission under the provisions of this Chapter on proper application therefor and payment of a fee of ten dollars ($10.00).~~

(c) All licenses issued by the Commission under the provisions of this Chapter shall expire on the 30th day of June following issuance or on any other date that the Commission may determine and shall become invalid after that date unless reinstated. A license may be renewed 45 days prior to the expiration date by filing an application with and paying to the Executive Director of the Commission the license renewal fee. The license renewal fee is thirty dollars ($30.00) unless the Commission sets the fee at a higher amount. The Commission may set the license renewal fee at an amount that does not exceed fifty dollars ($50.00). The license renewal fee may not increase by more than five dollars ($5.00) during a 12-month period. The Commission may adopt rules establishing a system of license renewal in which the licenses expire annually with varying expiration dates. These rules shall provide for prorating the annual fee to cover the initial renewal period so that no licensee shall be charged an amount greater than the annual fee for any 12-month period. All licenses reinstated after the expiration date thereof shall be subject to a late filing fee of five dollars ($5.00) in addition to the required renewal fee. In the event a licensee fails to obtain a reinstatement of such license within 12 months after the expiration date thereof, the Commission may, in its discretion, consider such person as not having been previously licensed, and thereby subject to the provisions of this Chapter relating to the issuance of an original license, including the examination requirements set forth herein. Duplicate licenses may be issued by the Commission upon payment of a fee of five dollars ($5.00) by the licensee. Commission certification of a licensee's license history shall be made only after the payment of a fee of ten dollars ($10.00).

(d) The Commission is expressly vested with the power and authority to make and enforce any and all ~~such~~ reasonable rules and regulations connected with ~~the application for any license~~ license application, examination, renewal, and reinstatement as shall be deemed necessary to administer and enforce the provisions of this Chapter. The Commission is further authorized to adopt reasonable rules and regulations necessary for the approval of real estate ~~schools and such rules and regulations may, in accordance with G.S. 93A-4(a),~~ schools, instructors, and textbooks and rules that prescribe specific requirements pertaining to ~~the teaching of mechanics and law governing real estate transactions at such schools.~~ instruction, administration, and content of required education courses and programs.

(e) Nothing contained in this Chapter shall be construed as giving any authority to the Commission nor any licensee of the Commission as authorizing any licensee ~~whether by examination or under the grandfather clause or by comity~~ to engage in the practice of law or to render any legal service as specifically set out in G.S. 84-2.1 or any other legal service not specifically referred to in said section."

Section 2. This act becomes effective October 1, 2000.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 899

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

H899-ALA-001

Page 1 of __

Date_____,1999

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

Senator Reeves

moves to amend the bill on page 1, line 17,
by deleting the number "75" and substituting the number "63".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

".

HOUSE BILL 899:
Real Estate Salesman/Broker Licensure

BILL ANALYSIS

Committee: Senate Finance Committtee
Date: May 21, 1999
Version: 1st Edition

Introduced by: Rep. Bridgeman
Summary by: O. Walker Reagan and Martha K. Walston, Staff Attorneys

SUMMARY: ***House Bill 899 amends the real estate licensing law to require that the salesman real estate course be increased from 30 hours to 75 hours and taken within 3 (now 5) years prior to licensure, requires that the broker real estate course be decreased from 90 to 60 hours and taken within 3 (now 5) years prior to licensure, eliminates the broker exam if the person already holds a real estate salesman license, clarifies the ethical standard for licensure, and clarifies the Real Estate commission's rule making authority for licensing matters and real estate instruction. House Bill 899 was given a favorable report in House Ways & Means and House Commerce.***

CURRENT LAW: Under current law a person who applies for a real estate salesman license must complete a 30 hour real estate fundamentals course within 5 years preceding the license application. A real estate broker applicant must within the 5 years preceding the broker license application, either have been a full-time licensed real estate salesman for at least 2 years or have completed 90 hours of advanced courses in real estate instruction plus the 30 hours required for a salesman license. In lieu of the above requirements, the Real Estate Commission may accept equivalent real estate education or experience. The broker applicant also has to pass a broker's licensing examination. Each applicant for licensure as a broker or salesman must pay a fee not to exceed $30.00.

BILL ANALYSIS: The bill amends G.S. 93A-4 which sets out the qualifications and requirements for licensure as a real estate salesman and broker.

Subsection (a) of this statute is amended by permitting licensed real estate firms to also be in the form of a limited liability company or other business entity. This subsection is also amended to increase the required salesman course hours from 30 hours to 75 hours and to shorten the time period prior to application during which this course can be taken from 5 years to 3 years. This subsection is also amended to reduce the required broker course hours from 90 hours to 60 hours in addition to the salesman course hours. The time period for this instruction prior to application for the broker's license has also been shortened from 5 years to 3 years.

Subsection (b) is amended to permit the real estate licensing exam to be taken by computer with any additional cost associated with taking the exam by computer to be born by the applicant. This subsection also eliminates a broker's examination in addition to the salesman's examination. The outdated grandfather provision enacted in 1957 is repealed.

Subsection (d) is amended to clarify that the Commission's rulemaking authority over applications for licensure also applies to license examinations, license renewals, and license reinstatements. This subsection is also amended to clarify that the rulemaking authority for approval of real estate schools and instruction applies to the schools, the instructors, the text books and the instruction, administration and content of required education courses and programs.

EFFECTIVE DATE: The bill becomes effective October 1, 2000.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 899 (First Edition)

SHORT TITLE: Real Estate Salesman / Broker Licensure

SPONSOR(S): Reps. Bridgeman et al.

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
Special Fund					
Salesman License	$18,000	$18,000	$18,000	$18,000	$18,000
Brokers License	-	$81,000	$108,000	$108,000	$108,000
EXPENDITURES					
Special Fund					
Salesman License	$25,674	-	-	-	-
Brokers License	-	$81,000	$108,000	$108,000	$108,000
Computer Exam	-	($73,500)	($84,000)	($84,000)	($84,000)
NET IMPACT	($7,674)	$91,500	$102,000	$102,000	$102,000

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Real Estate Commission

EFFECTIVE DATE: The act is effective October 1, 2000.

BILL SUMMARY:

The bill requires prospective salesmen to complete a training course with 75 (now, 30) hours of classroom instruction within 3 (now, 5) years of applying for a license. Requires prospective brokers to complete a training course with 60 (now, 90) additional hours beyond those required for salesmen, within 3 (now, 5) years of applying for a license. Makes computer examinations an option for applicants. Prohibits requiring additional examination for broker applicants who hold salesman licenses. Specifies moral adequacy criterion for applicants: competency, honesty, truthfulness, integrity, and general moral character necessary to protect the public interest and promote public confidence in the real estate brokerage business. Deletes grandfather provision permitting persons with licenses at the original date of passage of the chapter to avoid examination by filing a sworn application.

ASSUMPTIONS AND METHODOLOGY:

SALESMAN LICENSE

Officials with the North Carolina Real Estate Commission project that the increased educational requirements for a real estate salesman license will increase the number of license exam applicants before the October 1, 2000 effective date. The Commission expects 1,600 additional applicants prior to October 1, 2000 and a temporary decline of 1,000 applicants after October 1, 2000. The Commission guesses that roughly one-third of the applicants will take the monthly exam in FY 1999-00 and the remaining two-thirds will take the exam in the first three months of FY 2000-01. This fiscal note rounds these numbers off to 600 additional applicants in FY 1999-00 and 1,000 in the first quarter of FY 2000-01. At $30 per application, the 600 applicants in FY 1999-00 will pay $18,000 in license fees. The Commission says it cost $42.79 to administer the exam, thus the administrative expense for 600 exams is $25,674. Assuming these 600 applicants receive their license, then the $30 annual renewal fee will generate $18,000 in revenue each year.

In FY 2000-01, the 1,000 applicants expected prior to October 1, 2000 will be offset by the projected decline of 1,000 applicants for the remainder of the fiscal year. This will produce no additional revenue or expenditures.

BROKER LICENSE

The Real Estate Commission expects 3,600 additional licensed real estate salesmen each year to apply for a broker license after October 1, 2000. At $30 per application, the revenue generated will be $108,000 per year. However, the Commission estimates that the administrative cost of the exam is also $30 or $108,000 per year. Due to the October 1 effective date, the first year numbers are three fourths of the estimate or $81,000. Since the renewal fee for a broker is the same as a salesman, there is no increased revenue from license renewals.

COMPUTERIZED EXAMS

The bill authorizes the Commission to give computerized exams after October 1, 2000. The Commission estimates that of the 8,000 exam applicants each year, 75% or 6,000 will choose a computerized exam. The Commission believes it will save $14 in administrative costs per computerized exam. At $14 per exam, the Commission will save $84,000 each year. Savings are reduced in FY 2000-01 because 1,000 salesman applicants will take the exam before computer exams are offered. Of the 7,000 exams taken after October 1, 2000, 5,250 exams will be computerized for a savings of $73,500 in FY 2000-01.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic

APPROVED BY:

DATE:

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 6/01/'99

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
C.F. Smith	Raleigh
Ruth Sappie	NCDOT
Carol Howard	DMV - DOT
Phillip Fraley	NC Real Estate Commission
Joel Wilson	Senator Lee
Barb Rote	NCWRC
Richard Hamilton	NCWRC
George BELL	NC Real Estate Commission / G. Bell Pro.
Jenny Dorsten	Raleigh/Wake Board of REALTORS®
Mike Carpenter	NCASA
Alan Miles	Bailey & Dixon LLP

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 6/01/'99

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
JOHN BUSSIAN	NC PRESS ASSN SUITE 1100, UNIV TWR. DURHAM, NC
Steve Woodson	NC Farm Bureau Federation
Gary Harris	NC Petroleum Marketers
Cam Cruer	BPMHL
Sabra Faires	Department of Revenue
Jim Blackburn	NC Association of County Commissioners
Roz Savitt	NCCCC
Lucius Pullen	Attorney
Carolyn Johnson	TRIANGLE TRANSIT AUTHORITY
Katherine Davis	Electricities of NC
Joyce Garland	Board Assoc.

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

Name of Committee

6/01/'99

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lea McKellar	Moore & Van [illegible]
C Porter	BFM
Michelle Cotton	DMH/DD/SAS

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Tuesday, June 01, 1999

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

FAVORABLE

H.B.(CS #1)**504** Carteret Planning/Zoning Changes
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1)**665** Modify Currituck Room Rax
Sequential Referral: None
Recommended Referral: None

H.B. **899** Real Estate Salesman/Broker Licensure
Sequential Referral: None
Recommended Referral: None

H.B. **900** Gates County Fire Protection
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 4

Committee Clerk Comment:

AGENDA

WEDNESDAY, JUNE 2, 1999

SENATE FINANCE COMMITTEE

1:30 P.M. – ROOM 544

I CALL TO ORDER

II INTRODUCTION OF PAGES

III BILLS TO BE CONSIDERED

SB 55- Revenue Laws Technical Amendments -. Sen. Cochrane

SB 499 - Boat Registration Fees - Sen. Hoyle

SB 1006 - DWI Assessments – Sen. Hoyle

SB 1112 - No Sales Tax Fee/Other Changes - Sen. Kerr

HB 486 - Parade Trailers-Permanent Plates – Rep. Moore

HB 755 – Highway Lighting Service Districts – Rep.Yongue

SENATE FINANCE COMMITTEE

WEDNESDAY, JUNE 2, 1999

1:30 P.M. - ROOM 544

The Senate Finance Committee met on Wednesday, June 2, 1999, at 1:30 P.M. in Room 544 with Senator Kerr presiding. The pages – Drew Ledbetter from Lincolnton and Christy Stowe from Gastonia - sponsored by Senator Hoyle, were introduced. There were 23 committee members present for the meeting.

SB 55 – Revenue Laws Technical Amendments.

Senator Cochrane explained her Bill and offered a Committee Substitute. The Committee Substitute was adopted on her motion. After an explanation of the Committee Sub, on motion by Senator Wellons, the Committee Sub was given a Favorable Report. Copy of original Bill, Committee Sub, Explanation and Fiscal Note included in the minutes.

HB 486 – Parade Trailers-Permanent Plates.

This Bill had been discussed at a previous meeting and the discussion continued. Carol Howard, with DMV, was recognized to answer questions concerning this Bill. Senator Hoyle sent forth an Amendment to amend the Amendment that was pending which had been offered by Senator Garwood on the Senate floor. After a lengthy discussion of this Bill and the Amendments, Senator Soles moved for a Favorable Report, as amended, and the motion carried. Copy of original Bill, Amendment, new Committee Substitute, Explanation, Fiscal Note and other information included in the minutes. Copy of Senator Hoyle's Amendment not available for minutes.

SB 499 – Boat Registration Fees.

Senator Hoyle was recognized to explain his Bill and made a motion that the committee adopt a Committee Substitute. Motion carried. Senator Hoyle explained the Committee Substitute. Dick Hamilton with the North Carolina Wildlife Commission further explained the Bill and informed the committee that the Wildlife Commission supported this Bill. Senator Soles moved for a Favorable Report and the motion carried. Copy of Bill, Committee Sub, Explanation and Fiscal Note included in the minutes.

SB 1112 – No Sales Tax Fee/Other Changes.

Senator Hoyle recognized Senator Kerr to explain his Bill. Senator Kerr moved for adoption of Committee Substitute and the motion carried. Senator Kerr explained the Committee Sub and Sabra Faires, NC Department of Revenue, also spoke in support of this Bill and answered questions from the committee members. There were several concerns from committee members concerning this Bill and Senator Kerr asked that the Bill be held over and voted on at another meeting so that all questions from the committee members could be answered. Copy of original Bill, Committee Sub, Explanation and Fiscal Note included in the minutes.

Meeting adjourned.

David W. Hoyle, Co-Chair
Senate Finance Committee

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

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

Visitors' Sign Up Sheet is Attachment # 1
Committee Reports (2) are Attachment # 2

SB 1006 and HB 755 were not heard at this meeting.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 55

Short Title: Revenue Laws Technical Changes. (Public)

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

Referred to: Finance.

February 9, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AND CONFORMING CHANGES TO THE REVENUE LAWS AND RELATED STATUTES.

The General Assembly of North Carolina enacts:

Section 1. Section 7 of S.L. 1998-158 reads as rewritten:

"Section 7. ~~Section 5 of this act is effective for taxable years beginning on or after October 1, 1998. The remainder of this~~ This act is effective when it becomes law."

Section 2. G.S. 1C-1601(a)(9) reads as rewritten:

"(a) Exempt property. -- Each individual, resident of this State, who is a debtor is entitled to retain free of the enforcement of the claims of ~~his~~ creditors:

...

(9) Individual retirement ~~accounts as described in Section 408(a) of the Internal Revenue Code, individual retirement annuities as described in Section 408(b) of the Internal Revenue Code, and accounts established as part of a trust described in Section 408(c) of~~ plans as defined in the Internal Revenue Code and any plan treated in the same manner as an individual retirement plan under the Internal Revenue Code. For purposes of this subdivision, 'Internal Revenue Code' means Code as defined in G.S. 105-228.90."

Section 3.(a) G.S. 10A-4(b) reads as rewritten:

"(b) A person qualified for a notarial commission shall meet all of the following requirements:

(1) Be at least 18 years of age.

(2) Reside or work in this State.
(3) Satisfactorily complete a course of study that is approved by the Secretary and consists of not less than three hours nor more than six hours of classroom instruction provided by community colleges throughout the State, unless the person is a licensed member of the Bar of this State.
(4) Purchase and keep as a reference a manual approved by the Secretary that describes the duties, authority, and ethical responsibilities of notaries public.
(5) Submit an application containing no significant misstatement or omission of fact. The application form shall be provided by the Secretary and be available at the register of deeds office in each county. Every application shall bear the signature of the applicant written with pen and ink, and the signature shall be acknowledged by the applicant before a person authorized to administer oaths. The applicant shall also obtain the recommendation of one publicly elected official in North Carolina whose recommendation shall be contained on the application.
(6) Pay a nonrefundable fee of ~~twenty-five dollars ($25.00).~~ thirty dollars ($30.00)."

Section 3.(b) G.S. 10A-7(a) reads as rewritten:

"(a) The course of study required by G.S. 10A-4(b) shall be taught by an instructor certified in accordance with rules adopted by the Secretary. An instructor must meet the following requirements to be certified to teach a course of study for notaries public:

(1) Complete and pass a six-hour instructor's course taught by the Director or other person approved by the Secretary.
(2) Have six months of active experience as a notary public.
(3) Maintain a current commission as a notary public.
(4) Purchase the current notary public guidebook.
(5) Pay a nonrefundable fee of fifty dollars ($50.00).

~~thirty dollars ($30.00) thirty dollars ($30.00)~~"

Section 3.(c) This section becomes effective July 1, 1999.

Section 4. G.S. 28A-21-2(a) reads as rewritten:

"(a) Unless the time for filing the final account has been extended by the clerk of superior court, the personal representative or collector must file ~~his~~ the final account for settlement within one year ~~of his qualification~~ after qualifying or within six months after ~~his receipt of the State~~ receiving a State estate or inheritance tax release, whichever is later. If no estate or inheritance tax return was required to be filed for the ~~estate under G.S. 105-23 because the estate met the requirements of subsection (b) of that section,~~ estate, the personal representative or collector shall so certify in the final account filed with the clerk of superior court. Such certification shall list the amount and value of all of the decedent's property, and with respect to real estate, its particular location within or outside the State, including any property transferred by

the decedent over which ~~he~~ the decedent had retained any ~~interest as described in G.S. 105-2(a)(3),~~ interest, or any property transferred within three years prior to the date of the decedent's death, and after being filed and accepted by the clerk of the superior court shall be prima facie evidence that such property is free of any State inheritance or State estate tax liability. The personal representative or collector shall produce vouchers for all payments or verified proof for all payments in lieu of vouchers. With the approval of the clerk of superior court, such account may be filed voluntarily at any time. In all cases, the accounting shall be reviewed, audited and recorded by the clerk of superior court in the manner prescribed in G.S. 28A-21-1."

Section 5. G.S. 29-13 reads as rewritten:

"**§ 29-13. Descent and distribution upon intestacy.**

All the estate of a person dying intestate shall descend and be distributed, subject to the payment of costs of administration and other lawful claims against the estate, and subject to the payment by the recipient of State inheritance or estate taxes, as provided in this Chapter."

Section 6. G.S. 29-20 reads as rewritten:

"**§ 29-20. Descent and distribution upon intestacy of illegitimate children.**

All the estate of a person dying illegitimate and intestate shall descend and be distributed, subject to the payment of costs of administration and other lawful claims against ~~his~~ the estate, and subject to the payment by the recipient of State inheritance or estate taxes, as provided in this Article."

Section 7. G.S. 36A-100(c) reads as rewritten:

"(c) A person having the right to designate the beneficiary under a life insurance policy, employee benefit plan or group life insurance policy described in subsection (a) or (b) of this section may designate as such beneficiary a trustee named or to be named in his will whether or not the will is in existence at the time of the designation. The proceeds received by the trustee shall be held and disposed of as part of the trust estate under the terms of the will as they exist at the death of the testator. If no qualified trustee makes claim to the proceeds within six months after the death of the decedent or if within that period it is established that no trustee can qualify to receive the proceeds, payments shall be made to the personal representative of the estate of the person making the designation unless it is otherwise provided by an alternative designation or by the policy or plan. The proceeds received by the trustee shall not be subject to claims against the estate of the decedent or to estate or inheritance taxes to any greater extent than if the proceeds were payable directly to the beneficiary or beneficiaries named in the trust. The proceeds may be commingled with any other assets which may properly become part of such trust, but the proceeds shall not become part of the decedent's estate for purposes of trust administration unless the will of the decedent expressly so provides."

Section 8. G.S. 36A-125(a) reads as rewritten:

"(a) If at any time the trustee of a noncharitable irrevocable trust determines in good faith that the value of the assets held in trust is ten thousand dollars ($10,000) or less, and the continuance of the trust pursuant to its terms in relation to the cost of

its administration would defeat or substantially impair the accomplishment of the purposes of the trust, the trustee, without approval of the court, may, but is not required to, terminate the trust and distribute the trust property, including principal and undistributed income, to the beneficiaries in a manner which conforms as nearly as possible to the intention of the settlor as determined by the trustee from the trust agreement; provided, however, that the trust property, including principal and undistributed income, shall be distributed to the income beneficiary of the trust if the trust otherwise qualifies for the marital deduction for federal estate tax or North Carolina estate or inheritance tax purposes, or is a Qualified Subchapter S Trust as defined in the Internal Revenue Code. The trustee may enter into an agreement or make such other provisions that the trustee deems necessary or appropriate to protect the interests of the beneficiaries and to carry out the intent and purpose of the trust."

Section 9. G.S. 41-2.1(f) reads as rewritten:

"(f) This section does not repeal or modify any provisions of the law relating to estate or inheritance taxes."

Section 10. G.S. 41-2.2(d) reads as rewritten:

"(d) This section does not repeal or modify any provisions of the law relating to estate or inheritance taxes."

Section 11. G.S. 41-2.5(d) reads as rewritten:

"(d) ~~Nothing herein contained shall be construed to repeal or modify any of the provisions of Article 1 of Chapter 105 relating to the administration of the inheritance tax laws or any other provision of the law relating to~~ This section does not repeal or modify any provisions of the law relating to estate or inheritance taxes."

Section 12. G.S. 105-114(b)(2) reads as rewritten:

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

...

(2) Corporation. -- A domestic corporation, a foreign corporation, an electric membership corporation organized under Chapter 117 of the General Statutes or doing business in this State, or an association that is organized for pecuniary gain, has capital stock represented by shares, whether with or without par value, and has privileges not possessed by individuals or partnerships. The term includes a mutual or capital stock savings and loan association or building and loan association chartered under the laws of any state or of the United States. The term does not include a limited liability company."

Section 13. G.S. 105-122(a) reads as rewritten:

"(a) Every corporation, domestic and foreign, incorporated, or, by an act, domesticated under the laws of this State or doing business in this State, except as otherwise provided in this Article, shall, on or before the fifteenth day of the third month following the end of its income year, annually make and deliver to the Secretary in the form prescribed by the Secretary a full, accurate, and complete report and statement signed by either its president, vice-president, treasurer, assistant treasurer, secretary or assistant secretary, containing the facts and information

required by the Secretary as shown by the books and records of the corporation at the close of the income year.

There shall be annexed to the return required by this subsection the affirmation of the officer signing the return. ~~this the preparer~~".

Section 14. G.S. 105-130.16 reads as rewritten:

"**§ 105-130.16. Returns.**

(a) Every corporation doing business in this State ~~shall file with the Secretary of Revenue~~ must file with the Secretary an income tax return under affirmation, showing ~~therein~~ specifically the items of gross income and the deductions allowed by this Part, and ~~such other facts as the Secretary may require for the purpose of making~~ any other facts the Secretary requires to make any computation required by this Part.

The return of a corporation ~~shall be signed by either~~ must be signed by its president, vice-president, treasurer, assistant treasurer, ~~secretary~~ secretary, or assistant secretary. ~~There shall be annexed to the return the affirmation of the officer signing the same, which shall be in the form prescribed in G.S. 105-130.17 of this Part, and the same penalties prescribed in G.S. 105-236 shall apply to any person making wilful misstatements in said returns.~~ The officer signing the return must also furnish an oath or affirmation verifying the return, in the form required by the Secretary.

(b) When the Secretary ~~of Revenue~~ has reason to believe that any corporation so conducts its trade or business in such manner as to either directly or indirectly distort its true net income and the net income properly attributable to the State, whether by the arbitrary shifting of income, through price fixing, charges for service, or otherwise, whereby the net income is arbitrarily assigned to one or another unit in a group of taxpayers carrying on business under a substantially common control, ~~he may require such facts as he deems~~ the Secretary may require any facts the Secretary considers necessary for the proper computation of the entire net income and the net income properly attributable to the State, and in determining ~~same the Secretary of Revenue shall~~ these computations the Secretary must have regard to the fair profit which would normally arise from the conduct of the trade or business.

(c) When any corporation liable to taxation under this Part conducts its business in such a manner as to either directly or indirectly benefit the members or stockholders thereof or any person interested in ~~such~~ the business by selling its products or goods or commodities in which it deals at less than the fair price which might be obtained therefor, or ~~where~~ when a corporation, a substantial portion of whose capital stock is owned either directly or indirectly by another corporation, acquires and disposes of the products of the corporation so owning a substantial portion of its stock in such a manner as to create a loss or improper net income for either of ~~said~~ the corporations, or ~~where~~ when a corporation, owning directly or indirectly a substantial portion of the stock of another corporation, acquires and disposes of the products of the corporation of which it so owns a substantial portion of the stock in such manner as to create a loss or improper net income for either of ~~said~~ the corporations, the Secretary ~~of Revenue~~ may determine the amount of taxable income of any such corporations for the calendar or fiscal year, having due regard to the reasonable profits which, but for such arrangement or understanding, might or could have been

obtained by the ~~corporation or~~ corporations liable to taxation under this Part from dealing in such products, goods or commodities."

Section 15. G.S. 105-130.33(a) reads as rewritten:

"(a) Any corporation that constructs or installs a hydroelectric generator with a capacity of at least three kilowatts (3KW) at an existing dam or free flowing stream located in this State shall be allowed a credit against the tax imposed by this Part equal to ten percent (10%) of the installation and equipment costs of the hydroelectric generator paid during the taxable year. The credit allowed under this section may not exceed five thousand dollars ($5,000) for any single installation. No credit is allowed, however, to the extent that any of the costs of the system were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the site at the time the hydroelectric generator is installed. The credit allowed by this section may not exceed the amount of the tax imposed by this Part for the taxable year reduced by the sum of all credits ~~allowable under this Part,~~ allowable, except payments of tax made by or on behalf of the taxpayer."

Section 16. G.S. 105-131.7(d) reads as rewritten:

"(d) The agreements required to be filed pursuant to subsection (c) of this section shall be filed at the following times:

(1) At the time the annual return is required to be filed for the first taxable period for which the S Corporation becomes subject to the provisions of this ~~Division;~~ Part; and

(2) At the time the annual return is required to be filed for any taxable period in which the corporation has a nonresident shareholder on whose behalf such an agreement has not been previously filed."

Section 17. G.S. 105-154(c) reads as rewritten:

"(c) Information Returns of Partnerships. -- A partnership doing business in this State and required to file a return under the Code shall file an information return with the Secretary. A partnership that the Secretary believes to be doing business in this State and to be required to file a return under the Code shall file an information return when requested to do so by the Secretary. The information return shall contain all information required by the Secretary. It shall state specifically the items of the partnership's gross income, the deductions allowed under the Code, and the adjustments required by this Part. The information return shall also include the name and address of each person who would be entitled to share in the partnership's net income, if distributable, and the amount each person's distributive share would be. The information return shall specify the part of each person's distributive share of the net income that represents corporation dividends. The information return shall be signed by one of the partners under affirmation in the form ~~prescribed in G.S. 105-155.~~ required by the Secretary.

A partnership that files an information return under this subsection shall furnish to each person who would be entitled to share in the partnership's net income, if distributable, any information necessary for that person to properly file a State

income tax return. The information shall be in the form prescribed by the Secretary and must be furnished on or before the due date of the information return."

Section 18. G.S. 105-163.011 reads as rewritten:

"**§ 105-163.011. (Repealed effective for investments made on or after January 1, 2003) Tax credits allowed.**

(a) No Credit for Brokered Investments. -- No credit is allowed under this section for a purchase of equity securities or subordinated debt if a broker's fee or commission or other similar remuneration is paid or given directly or indirectly for soliciting the purchase.

(b) Individuals. -- Subject to the limitations contained in G.S. 105-163.012, an individual who purchases the equity securities or subordinated debt of a qualified business venture or a qualified grantee business directly from that business is allowed as a credit against the tax imposed by Part 2 of this Article for the taxable year an amount equal to twenty-five percent (25%) of the amount invested. The aggregate amount of credit allowed an individual for one or more investments in a single taxable year under this ~~Division,~~ Part, whether directly or indirectly as owner of a pass-through entity, may not exceed fifty thousand dollars ($50,000). The credit may not be taken for the year in which the investment is made but shall be taken for the taxable year beginning during the calendar year in which the application for the credit becomes effective as provided in subsection (c) of this section.

(b1) Pass-Through Entities. -- This subsection does not apply to a pass-through entity that has committed capital under management in excess of five million dollars ($5,000,000) or to a pass-through entity that is a qualified grantee business, a qualified business venture, or a North Carolina Enterprise Corporation. Subject to the limitations provided in G.S. 105-163.012, a pass-through entity that purchases the equity securities or subordinated debt of a qualified grantee business or a qualified business venture directly from the business is eligible for a tax credit equal to twenty-five percent (25%) of the amount invested. The aggregate amount of credit allowed a pass-through entity for one or more investments in a single taxable year under this ~~Division,~~ Part, whether directly or indirectly as owner of another pass-through entity, may not exceed seven hundred fifty thousand dollars ($750,000). The pass-through entity is not eligible for the credit for the year in which the investment by the pass-through entity is made but shall be eligible for the credit for the taxable year beginning during the calendar year in which the application for the credit becomes effective as provided in subsection (c) of this section.

Each individual who is an owner of a pass-through entity is allowed as a credit against the tax imposed by Part 2 of this Article for the taxable year an amount equal to the owner's allocated share of the credits for which the pass-through entity is eligible under this subsection. The aggregate amount of credit allowed an individual for one or more investments in a single taxable year under this ~~Division,~~ Part, whether directly or indirectly as owner of a pass-through entity, may not exceed fifty thousand dollars ($50,000).

If an owner's share of the pass-through entity's credit is limited due to the maximum allowable credit under this section for a taxable year, the pass-through entity and its owners may not reallocate the unused credit among the other owners.

(c) Application. -- To be eligible for the tax credit provided in this section, the taxpayer must file an application for the credit with the Secretary on or before April 15 of the year following the calendar year in which the investment was made. The Secretary may grant extensions of this deadline, as the Secretary finds appropriate, upon the request of the taxpayer, except that the application may not be filed after September 15 of the year following the calendar year in which the investment was made. An application is effective for the year in which it is timely filed. The application shall be on a form prescribed by the Secretary and shall include any supporting documentation that the Secretary may require. If an investment for which a credit is applied for was paid for other than in money, the taxpayer shall include with the application a certified appraisal of the value of the property used to pay for the investment. The application for a credit for an investment made by a pass-through entity must be filed by the pass-through entity.

(d) Penalties. -- The penalties provided in G.S. 105-236 apply in this ~~Division.~~ Part."

Section 19. G.S. 105-194 reads as rewritten:

"**§ 105-194. Death of donor within three years; time of assessment.**

~~Where~~ If a donor dies within three years after filing a return, gift taxes may be assessed at any time within ~~said~~ those three years, or on or before the date of final settlement of the donor's State estate or inheritance taxes, whichever is later."

Section 20. G.S. 105-253(a) reads as rewritten:

"(a) Any officer, trustee, or receiver of any corporation or limited liability company required to file a report with the Secretary who has custody of funds of the corporation or company and who allows the funds to be paid out or distributed to the stockholders of the corporation or company without having remitted to the Secretary any State taxes that are due is personally liable for the payment of the tax."

Section 21.(a) G.S. 105-275 is amended by adding a new subdivision to read:

"(41) Objects of art held by the North Carolina State Art Society, Incorporated."

Section 21.(b) G.S. 140-15 reads as rewritten:

"~~**§ 140-15. Exemption from taxes.**~~

~~All gifts made to the North Carolina State Art Society, Incorporated, shall be exempt from State gift and inheritance taxes, and objects of art held by the Society shall be exempt from ad valorem taxes.~~"

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

Section 23. Except as otherwise provided in this act, this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 55
Proposed Committee Substitute S55-PCSX8611-LA

Short Title: Revenue Laws Technical Changes. (Public)

Sponsors:

Referred to:

February 9, 1999

A BILL TO BE ENTITLED

AN ACT TO CONFORM THE TAX BASE OF THE REGIONAL TRANSIT AUTHORITY VEHICLE RENTAL TAX TO THE TAX BASE OF THE ALTERNATE HIGHWAY USE TAX ON SHORT-TERM VEHICLE RENTALS, AND TO MAKE TECHNICAL AND CONFORMING CHANGES TO THE REVENUE LAWS AND RELATED STATUTES.

The General Assembly of North Carolina enacts:

PART I. MODIFICATION OF THE VEHICLE RENTAL TAX.

Section 1. G.S. 105-550 reads as rewritten:

"**§ 105-550. Definitions.**

The definitions in G.S. 105-164.3 and the following definitions apply in this Article:

(1) Authority. -- A regional public transportation authority or a regional transportation authority created pursuant to Article 26 or Article 27 of Chapter 160A of the General Statutes.

(2) Long-term lease or rental. -- Defined in G.S. 105-187.1.

(2a) Motor vehicle. -- Defined in G.S. 105-164.3.

(3) Motorcycle. -- Defined in G.S. 20-4.01.

(4) Repealed by Session Laws 1998-98, s. 33.

(5) Public transportation system. -- Any combination of real and personal property established for purposes of public transportation. The systems may include one or more of the following: structures, improvements, buildings, equipment, vehicle parking or passenger

transfer facilities, railroads and railroad rights-of-way, rights-of-way, bus services, shared-ride services, high-occupancy vehicle facilities, carpool and vanpool programs, voucher programs, telecommunications and information systems, integrated fare systems, bus lanes, and busways. The term does not include, however, streets, roads, or highways except to the extent they are dedicated to public transportation vehicles or to the extent they are necessary for access to vehicle parking or passenger transfer facilities.

(6) Short-term lease or rental. -- A lease or rental that is not a long-term lease or rental.

~~(7) U-drive-it passenger vehicle. -- Defined in G.S. 20-4.01.~~"

Section 2. G.S. 105-551(a) reads as rewritten:

"(a) Tax. -- The board of trustees of an Authority may levy a privilege tax on a retailer who is engaged in the business of leasing or renting ~~U-drive-it passenger vehicles or motorcycles~~ motor vehicles based on the gross receipts derived by the retailer from the short-term lease or rental of these vehicles. The tax rate must be a percentage and may not exceed five percent (5%). A tax levied under this section applies to short-term leases or rentals made by a retailer whose place of business or inventory is located within the territorial jurisdiction of the Authority. This tax is in addition to all other taxes."

Section 3. G.S. 105-552(b) reads as rewritten:

"(b) Collection. -- A tax levied by an Authority under this Article shall be collected by the Authority but shall otherwise be administered in the same manner as the optional gross receipts tax levied by G.S. 105-187.5. Like the optional gross receipts tax, a tax levied under this Article is to be added to the lease or rental price of a ~~U-drive-it passenger vehicle or motorcycle~~ motor vehicle and thereby be paid by the person to whom it is leased or rented.

A tax levied under this Article applies regardless of whether the retailer who leases or rents the ~~U-drive-it passenger vehicle or motorcycle~~ motor vehicle has elected to pay the optional gross receipts tax on the lease or rental receipts from the vehicle. A tax levied under this Article must be paid to the Authority that levied the tax by the date an optional gross receipts tax would be payable to the Secretary of Revenue under G.S. 105-187.5 if the retailer who leases or rents the ~~U-drive-it passenger vehicle or motorcycle~~ motor vehicle had elected to pay the optional gross receipts tax."

Section 4. This Part becomes effective July 1, 1999, and applies to contracts entered into on or after that date.

PART II. REVENUE LAWS TECHNICAL CHANGES.

Section 5. Section 7 of S.L. 1998-158 reads as rewritten:

"Section 7. ~~Section 5 of this act is effective for taxable years beginning on or after October 1, 1998. The remainder of this~~ This act is effective when it becomes law."

Section 6. G.S. 1C-1601(a)(9) reads as rewritten:

"(a) Exempt property. -- Each individual, resident of this State, who is a debtor is entitled to retain free of the enforcement of the claims of ~~his~~ creditors:

. . .

(9) Individual retirement ~~accounts as described in Section 408(a) of the Internal Revenue Code, individual retirement annuities as described in Section 408(b) of the Internal Revenue Code, and accounts established as part of a trust described in Section 408(c) of~~ plans as defined in the Internal Revenue Code and any plan treated in the same manner as an individual retirement plan under the Internal Revenue Code. For purposes of this subdivision, 'Internal Revenue Code' means Code as defined in G.S. 105-228.90."

Section 7.(a) G.S. 10A-4(b) reads as rewritten:

"(b) A person qualified for a notarial commission shall meet all of the following requirements:

(1) Be at least 18 years of age.

(2) Reside or work in this State.

(3) Satisfactorily complete a course of study that is approved by the Secretary and consists of not less than three hours nor more than six hours of classroom instruction provided by community colleges throughout the State, unless the person is a licensed member of the Bar of this State.

(4) Purchase and keep as a reference a manual approved by the Secretary that describes the duties, authority, and ethical responsibilities of notaries public.

(5) Submit an application containing no significant misstatement or omission of fact. The application form shall be provided by the Secretary and be available at the register of deeds office in each county. Every application shall bear the signature of the applicant written with pen and ink, and the signature shall be acknowledged by the applicant before a person authorized to administer oaths. The applicant shall also obtain the recommendation of one publicly elected official in North Carolina whose recommendation shall be contained on the application.

(6) Pay a nonrefundable fee of ~~twenty-five dollars ($25.00).~~ thirty dollars ($30.00)."

Section 7.(b) G.S. 10A-7(a) reads as rewritten:

"(a) The course of study required by G.S. 10A-4(b) shall be taught by an instructor certified in accordance with rules adopted by the Secretary. An instructor must meet the following requirements to be certified to teach a course of study for notaries public:

(1) Complete and pass a six-hour instructor's course taught by the Director or other person approved by the Secretary.

(2) Have six months of active experience as a notary public.

(3) Maintain a current commission as a notary public.
(4) Purchase the current notary public guidebook.
(5) Pay a nonrefundable fee of fifty dollars ($50.00).

~~thirty dollars ($30.00) thirty dollars ($30.00)~~"

Section 7.(c) This section becomes effective July 1, 1999.

Section 8. G.S. 28A-21-2(a) reads as rewritten:

"(a) Unless the time for filing the final account has been extended by the clerk of superior court, the personal representative or collector must file ~~his~~ the final account for settlement within one year ~~of his qualification~~ after qualifying or within six months after ~~his receipt of the State~~ receiving a State estate or inheritance tax release, whichever is later. If no estate or inheritance tax return was required to be filed for the ~~estate under G.S. 105-23 because the estate met the requirements of subsection (b) of that section,~~ estate, the personal representative or collector shall so certify in the final account filed with the clerk of superior court. Such certification shall list the amount and value of all of the decedent's property, and with respect to real estate, its particular location within or outside the State, including any property transferred by the decedent over which ~~he~~ the decedent had retained any ~~interest as described in G.S. 105-2(a)(3),~~ interest, or any property transferred within three years prior to the date of the decedent's death, and after being filed and accepted by the clerk of the superior court shall be prima facie evidence that such property is free of any State inheritance or State estate tax liability. The personal representative or collector shall produce vouchers for all payments or verified proof for all payments in lieu of vouchers. With the approval of the clerk of superior court, such account may be filed voluntarily at any time. In all cases, the accounting shall be reviewed, audited and recorded by the clerk of superior court in the manner prescribed in G.S. 28A-21-1."

Section 9. G.S. 29-13 reads as rewritten:

"**§ 29-13. Descent and distribution upon intestacy.**

All the estate of a person dying intestate shall descend and be distributed, subject to the payment of costs of administration and other lawful claims against the estate, and subject to the payment ~~by the recipient~~ of State inheritance or estate taxes, as provided in this Chapter."

Section 10. G.S. 29-20 reads as rewritten:

"**§ 29-20. Descent and distribution upon intestacy of illegitimate children.**

All the estate of a person dying illegitimate and intestate shall descend and be distributed, subject to the payment of costs of administration and other lawful claims against ~~his~~ the estate, and subject to the payment ~~by the recipient~~ of State inheritance or estate taxes, as provided in this Article."

Section 11. G.S. 36A-100(c) reads as rewritten:

"(c) A person having the right to designate the beneficiary under a life insurance policy, employee benefit plan or group life insurance policy described in subsection (a) or (b) of this section may designate as such beneficiary a trustee named or to be named in his will whether or not the will is in existence at the time of the designation. The proceeds received by the trustee shall be held and disposed of as part of the trust estate under the terms of the will as they exist at the death of the

testator. If no qualified trustee makes claim to the proceeds within six months after the death of the decedent or if within that period it is established that no trustee can qualify to receive the proceeds, payments shall be made to the personal representative of the estate of the person making the designation unless it is otherwise provided by an alternative designation or by the policy or plan. The proceeds received by the trustee shall not be subject to claims against the estate of the decedent or to estate or inheritance taxes to any greater extent than if the proceeds were payable directly to the beneficiary or beneficiaries named in the trust. The proceeds may be commingled with any other assets which may properly become part of such trust, but the proceeds shall not become part of the decedent's estate for purposes of trust administration unless the will of the decedent expressly so provides."

Section 12. G.S. 36A-125(a) reads as rewritten:

"(a) If at any time the trustee of a noncharitable irrevocable trust determines in good faith that the value of the assets held in trust is ten thousand dollars ($10,000) or less, and the continuance of the trust pursuant to its terms in relation to the cost of its administration would defeat or substantially impair the accomplishment of the purposes of the trust, the trustee, without approval of the court, may, but is not required to, terminate the trust and distribute the trust property, including principal and undistributed income, to the beneficiaries in a manner which conforms as nearly as possible to the intention of the settlor as determined by the trustee from the trust agreement; provided, however, that the trust property, including principal and undistributed income, shall be distributed to the income beneficiary of the trust if the trust otherwise qualifies for the marital deduction for federal estate tax or North Carolina estate or inheritance tax purposes, or is a Qualified Subchapter S Trust as defined in the Internal Revenue Code. The trustee may enter into an agreement or make such other provisions that the trustee deems necessary or appropriate to protect the interests of the beneficiaries and to carry out the intent and purpose of the trust."

Section 13. G.S. 41-2.1(f) reads as rewritten:

"(f) This section does not repeal or modify any provisions of the law relating to estate or inheritance taxes."

Section 14. G.S. 41-2.2(d) reads as rewritten:

"(d) This section does not repeal or modify any provisions of the law relating to estate or inheritance taxes."

Section 15. G.S. 41-2.5(d) reads as rewritten:

"(d) ~~Nothing herein contained shall be construed to repeal or modify any of the provisions of Article 1 of Chapter 105 relating to the administration of the inheritance tax laws or any other provision of the law relating to~~ This section does not repeal or modify any provisions of the law relating to estate or inheritance taxes."

Section 16. G.S. 93B-15 reads as rewritten:

"**§ 93B-15. Payment of license fees by members of the armed forces.**

An individual who is serving in the armed forces of the United States and to whom G.S. 105-249.2 grants an extension of time to file a tax return is granted an extension of time to pay any license fee charged by an occupational licensing board

~~or~~ as a condition of retaining a license granted by the board. The extension is for the same period that would apply if the license fee were a tax."

Section 17. G.S. 105-32.8 reads as rewritten:

"**§ 105-32.8. Federal determination that changes the amount of tax payable to the State.**

If the federal government corrects or otherwise determines the amount of the maximum state death tax credit allowed an estate under section 6166 of the Code, the personal representative must, within two years after being notified of the correction or final determination by the federal government, file an estate tax return with the Secretary reflecting the correct amount of tax payable under this Article. If the federal government corrects or otherwise determines the amount of the maximum state generation-skipping transfer tax credit allowed under section 2604 of the Code, the person who made the transfer must, within two years after being notified of the correction or final determination by the federal government, file a tax return with the Secretary reflecting the correct amount of tax payable under this Article.

The Secretary must assess and collect any additional tax due as provided in Article 9 of this Chapter and must refund any overpayment of tax as provided in Article 9 of this Chapter. A person who fails to report a federal correction or determination in accordance with this section ~~is subject to the penalties in G.S. 105-236 and~~ forfeits the right to any refund due by reason of the determination."

Section 18.(a) G.S. 105-37.1 reads as rewritten:

"~~**§ 105-37.1. (Effective July 1, 1999) Amusements -- Forms of amusement not otherwise taxed.**~~

~~(a) Every person engaged in the business of giving, offering, or managing any form of entertainment or amusement not otherwise taxed under this Article, for which an admission is charged, shall pay a tax upon the gross receipts of the business at the rate of three percent (3%). Reports shall be made to the Secretary within the first 10 days of each month covering all the gross receipts for the previous month, and the tax shall be paid monthly at the time the reports are made.~~

~~Every person giving, offering, or managing any dance or athletic contest of any kind, except high school and elementary school athletic contests, for which an admission fee in excess of fifty cents (50¢) is charged, shall pay a tax upon the gross receipts derived from admission charges at the rate of three percent (3%). The tax upon gross receipts shall be levied and collected as prescribed by the Secretary.~~

~~(b) Counties shall not levy any license tax on the business taxed under this section, but cities may levy a license tax not in excess of twenty five dollars ($25.00).~~

~~(c), (d) Repealed by Session Laws 1998-95, s. 4, effective July 1, 1999.~~

§ 105-37.1. (Effective July 1, 1999) Dances, athletic events, shows, exhibitions, and other entertainments.

(a) Scope. -- A privilege tax is imposed on the gross receipts of a person who is engaged in any of the following:

(1) Giving, offering, or managing a dance or an athletic contest for which an admission fee in excess of fifty cents (50¢) is charged.

(2) Giving, offering, or managing a form of amusement or entertainment that is not taxed by another provision of this Article and for which an admission fee is charged.

(3) Exhibiting a performance, show, or exhibition, such as a circus or dog show, that is not taxed by another provision of this Article.

(b) Rate and Payment. -- The rate of the privilege tax is three percent (3%) of the gross receipts from the activities described in subsection (a) of this section. The tax is due when a return is due. A return is due by the 10th day after the end of each month and covers the gross receipts received during the previous month.

(c) Advance Report. -- A person who owns or controls a performance, show, or exhibition subject to the tax imposed by this section and who plans to bring the performance to this State from outside the State must file a statement with the Secretary that lists the dates, times, and places of the performance, show, or exhibition. The statement must be filed no less than five days before the first performance, show, or exhibition in this State.

(d) Local Taxes. -- Cities may levy a license tax on a person taxed under subdivision (a)(1) or (a)(2) of this section; however, the tax may not exceed twenty-five dollars ($25.00). Cities may levy a license tax on a person taxed under subdivision (a)(3) of this section; however, the tax may not exceed twenty-five dollars ($25.00) for each day or part of a day the performance, show, or exhibition is given at each location.

Counties may not levy a license tax on a person taxed under subdivision (a)(1) or (a)(2) of this section. Counties may levy a license tax on a person taxed under subdivision (a)(3) to the same extent as a city."

Section 18.(b) G.S. 105-38 is repealed.

Section 18.(c) This section becomes effective July 1, 1999.

Section 19.(a) G.S. 105-38.1 reads as rewritten:

"**§ 105-38.1. ~~Amusements -~~ Motion picture ~~shows.~~ show admissions.**

~~(a) Tax. -- A privilege~~ An admissions tax at the rate of one percent (1%) is imposed as a privilege tax on the gross receipts of a person who is engaged in the business of operating a motion picture show for which an admission is charged. The tax is due when a return is due. A return is due by the 10th day after the end of each month and covers the gross receipts received during the previous month. If a person offers an entertainment or amusement that includes both a motion picture taxable under this section and an entertainment or amusement taxable under ~~G.S. 105-37.1 or G.S. 105-38,~~ G.S. 105-37.1, the tax in ~~G.S. 105-37.1 or G.S. 105-38, as appropriate,~~ that statute applies to the entire gross receipts and the tax levied in this section does not apply.

~~(b) Exemption. -- Gross receipts from a motion picture show promoted and managed by a qualifying corporation that operates a center for the performing and visual arts is exempt from the tax imposed under this section if the motion picture is shown at the center and if the showing of motion pictures is not the primary purpose of the center. As used in this subsection, "qualifying corporation" and "center for the performing and visual arts" have the same meaning as in G.S. 105-40.~~"

Section 19.(b) G.S. 105-40(7) reads as rewritten:

"(7) All ~~dances~~ dances, motion picture shows, and other amusements promoted and managed by a qualifying corporation that operates a center for the performing and visual arts if the dance or other amusement is held at the center. "Qualifying corporation" means a corporation that is exempt from income tax under G.S. 105-130.11(a)(3). "Center for the performing and visual arts" means a facility, having a fixed location, that provides space for dramatic performances, studios, classrooms, and similar accommodations to organized arts groups and individual artists. This exemption does not apply to athletic events."

Section 19.(c) This section becomes effective July 1, 1999.

Section 20. G.S. 105-109.1 is repealed.

Section 21. G.S. 105-113 is repealed.

Section 22. G.S. 105-113.27(c) reads as rewritten:

"(c) The possession of more than six hundred cigarettes ~~bearing the tax stamp of~~ on which tax has been paid to another state or country, by any person other than a licensed distributor, ~~shall be~~ is prima facie evidence that the cigarettes are possessed in violation of this Part."

Section 23. G.S. 105-114(b)(2) reads as rewritten:

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

. . .

(2) Corporation. -- A domestic corporation, a foreign corporation, an electric membership corporation organized under Chapter 117 of the General Statutes or doing business in this State, or an association that is organized for pecuniary gain, has capital stock represented by shares, whether with or without par value, and has privileges not possessed by individuals or partnerships. The term includes a mutual or capital stock savings and loan association or building and loan association chartered under the laws of any state or of the United States. The term does not include a limited liability company."

Section 24. G.S. 105-122(c)(1) reads as rewritten:

"(c) (1) After ascertaining and determining the amount of its capital stock, surplus and undivided profits, as provided herein, every corporation permitted to allocate and apportion its net income for income tax purposes under the provisions of Article 4 of this Chapter shall apportion said capital stock, surplus and undivided profits to this State through use of the fraction computed for apportionment of its business income under said Article. A corporation that is subject to franchise tax under this Article but is not subject to income tax under Article 4 of this Chapter must apportion its capital stock, surplus, and undivided profits to this

State by using the apportionment formula that would apply to the corporation if it were subject to Article 4.

Provided, that although a corporation is authorized by the Tax Review Board to apportion its business income by use of an alternative formula or method, the corporation may not use such alternative formula or method for apportioning its capital stock, surplus and undivided profits unless specifically authorized to do so by order of the Tax Review Board.

Provided, further, that a corporation which is required to pay an income tax to this State on its entire net income shall apportion its entire capital stock, surplus and undivided profits to this State."

Section 25. G.S. 105-130.16 reads as rewritten:

"**§ 105-130.16. Returns.**

(a) Return. -- Every corporation doing business in this State ~~shall file with the Secretary of Revenue~~ must file with the Secretary an income tax return ~~under affirmation,~~ showing ~~therein~~ specifically the items of gross income and the deductions allowed by this ~~Part,~~ Part and ~~such other facts as the Secretary may require for the purpose of making~~ any other facts the Secretary requires to make any computation required by this Part. The return of a corporation ~~shall be signed by either~~ must be signed by its president, vice-president, treasurer, assistant treasurer, ~~secretary~~ secretary, or assistant secretary. ~~There shall be annexed to the return the affirmation of the officer signing the same, which shall be in the form prescribed in G.S. 105-130.17 of this Part, and the same penalties prescribed in G.S. 105-236 shall apply to any person making wilful misstatements in said returns.~~ The officer signing the return must furnish an affirmation verifying the return. The affirmation must be in the form required by the Secretary.

(b) Correction of Distortions. -- When the Secretary ~~of Revenue~~ has reason to believe that any corporation so conducts its trade or business in such manner as to either directly or indirectly distort its true net income and the net income properly attributable to the State, whether by the arbitrary shifting of income, through price fixing, charges for service, or otherwise, whereby the net income is arbitrarily assigned to one or another unit in a group of taxpayers carrying on business under a substantially common control, ~~he may require such facts as he deems~~ the Secretary may require any facts the Secretary considers necessary for the proper computation of the entire net income and the net income properly attributable to the State, and in determining ~~same the Secretary of Revenue shall~~ these computations, the Secretary must have regard to the fair profit ~~which~~ that would normally arise from the conduct of the trade or business.

(c) Other Corrections. -- When any corporation liable to taxation under this Part conducts its business in such a manner as to either directly or indirectly benefit the members or stockholders thereof or any person interested in ~~such~~ the business by selling its products or goods or commodities in which it deals at less than the fair price which might be obtained therefor, or ~~where~~ when a corporation, a substantial

portion of whose capital stock is owned either directly or indirectly by another corporation, acquires and disposes of the products of the corporation so owning a substantial portion of its stock in such a manner as to create a loss or improper net income for either of ~~said~~ the corporations, or ~~where~~ when a corporation, owning directly or indirectly a substantial portion of the stock of another corporation, acquires and disposes of the products of the corporation of which it so owns a substantial portion of the stock in such manner as to create a loss or improper net income for either of ~~said~~ the corporations, the Secretary ~~of Revenue~~ may determine the amount of taxable income of ~~any~~ the such corporations for the calendar or fiscal year, having due regard to the reasonable profits which, but for such arrangement or understanding, might or could have been obtained by the ~~corporation or~~ corporations liable to taxation under this Part from dealing in such products, goods or commodities."

Section 26. G.S. 105-130.33(a) reads as rewritten:

"(a) Any corporation that constructs or installs a hydroelectric generator with a capacity of at least three kilowatts (3KW) at an existing dam or free flowing stream located in this State shall be allowed a credit against the tax imposed by this Part equal to ten percent (10%) of the installation and equipment costs of the hydroelectric generator paid during the taxable year. The credit allowed under this section may not exceed five thousand dollars ($5,000) for any single installation. No credit is allowed, however, to the extent that any of the costs of the system were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the site at the time the hydroelectric generator is installed. The credit allowed by this section may not exceed the amount of the tax imposed by this Part for the taxable year reduced by the sum of all credits ~~allowable under this Part,~~ allowable, except payments of tax made by or on behalf of the taxpayer."

Section 27. G.S. 105-131.7(d) reads as rewritten:

"(d) The agreements required to be filed pursuant to subsection (c) of this section shall be filed at the following times:

(1) At the time the annual return is required to be filed for the first taxable period for which the S Corporation becomes subject to the provisions of this ~~Division; and~~ Part.

(2) At the time the annual return is required to be filed for any taxable period in which the corporation has a nonresident shareholder on whose behalf such an agreement has not been previously filed."

Section 28. G.S. 105-152(e) reads as rewritten:

"(e) Joint Returns. -- A husband and wife shall file a single income tax return jointly if (i) their federal taxable income is determined on a joint federal return and (ii) both spouses are residents of this State or both spouses have North Carolina taxable income. Except as otherwise provided in this Part, a wife and husband filing jointly are treated as one taxpayer for the purpose of determining the tax imposed by this Part. A husband and wife filing jointly are jointly and severally liable for the tax

imposed by this Part reduced by the sum of all credits allowable including tax payments made by or on behalf of the husband and wife. However, if a spouse has been relieved of liability for federal tax attributable to a substantial understatement by the other spouse pursuant to section ~~6013~~ 6015 of the Code, that spouse is not liable for the corresponding tax imposed by this Part attributable to the same substantial understatement by the other spouse. A wife and husband filing jointly have expressly agreed that if the amount of the payments made by them with respect to the taxes for which they are liable, including withheld and estimated taxes, exceeds the total of the taxes due, refund of the excess may be made payable to both spouses jointly or, if either is deceased, to the survivor alone."

Section 29. G.S. 105-154(c) reads as rewritten:

"(c) Information Returns of Partnerships. -- A partnership doing business in this State and required to file a return under the Code shall file an information return with the Secretary. A partnership that the Secretary believes to be doing business in this State and to be required to file a return under the Code shall file an information return when requested to do so by the Secretary. The information return shall contain all information required by the Secretary. It shall state specifically the items of the partnership's gross income, the deductions allowed under the Code, and the adjustments required by this Part. The information return shall also include the name and address of each person who would be entitled to share in the partnership's net income, if distributable, and the amount each person's distributive share would be. The information return shall specify the part of each person's distributive share of the net income that represents corporation dividends. The information return shall be signed by one of the partners under affirmation in the form ~~prescribed in G.S. 105-155.~~ required by the Secretary.

A partnership that files an information return under this subsection shall furnish to each person who would be entitled to share in the partnership's net income, if distributable, any information necessary for that person to properly file a State income tax return. The information shall be in the form prescribed by the Secretary and must be furnished on or before the due date of the information return."

Section 30. G.S. 105-163.011 reads as rewritten:

"**§ 105-163.011. (Repealed effective for investments made on or after January 1, 2003) Tax credits allowed.**

(a) No Credit for Brokered Investments. -- No credit is allowed under this section for a purchase of equity securities or subordinated debt if a broker's fee or commission or other similar remuneration is paid or given directly or indirectly for soliciting the purchase.

(b) Individuals. -- Subject to the limitations contained in G.S. 105-163.012, an individual who purchases the equity securities or subordinated debt of a qualified business venture or a qualified grantee business directly from that business is allowed as a credit against the tax imposed by Part 2 of this Article for the taxable year an amount equal to twenty-five percent (25%) of the amount invested. The aggregate amount of credit allowed an individual for one or more investments in a single taxable year under this ~~Division,~~ Part, whether directly or indirectly as owner of a

pass-through entity, may not exceed fifty thousand dollars ($50,000). The credit may not be taken for the year in which the investment is made but shall be taken for the taxable year beginning during the calendar year in which the application for the credit becomes effective as provided in subsection (c) of this section.

(b1) Pass-Through Entities. -- This subsection does not apply to a pass-through entity that has committed capital under management in excess of five million dollars ($5,000,000) or to a pass-through entity that is a qualified grantee business, a qualified business venture, or a North Carolina Enterprise Corporation. Subject to the limitations provided in G.S. 105-163.012, a pass-through entity that purchases the equity securities or subordinated debt of a qualified grantee business or a qualified business venture directly from the business is eligible for a tax credit equal to twenty-five percent (25%) of the amount invested. The aggregate amount of credit allowed a pass-through entity for one or more investments in a single taxable year under this ~~Division,~~ Part, whether directly or indirectly as owner of another pass-through entity, may not exceed seven hundred fifty thousand dollars ($750,000). The pass-through entity is not eligible for the credit for the year in which the investment by the pass-through entity is made but shall be eligible for the credit for the taxable year beginning during the calendar year in which the application for the credit becomes effective as provided in subsection (c) of this section.

Each individual who is an owner of a pass-through entity is allowed as a credit against the tax imposed by Part 2 of this Article for the taxable year an amount equal to the owner's allocated share of the credits for which the pass-through entity is eligible under this subsection. The aggregate amount of credit allowed an individual for one or more investments in a single taxable year under this ~~Division,~~ Part, whether directly or indirectly as owner of a pass-through entity, may not exceed fifty thousand dollars ($50,000).

If an owner's share of the pass-through entity's credit is limited due to the maximum allowable credit under this section for a taxable year, the pass-through entity and its owners may not reallocate the unused credit among the other owners.

(c) Application. -- To be eligible for the tax credit provided in this section, the taxpayer must file an application for the credit with the Secretary on or before April 15 of the year following the calendar year in which the investment was made. The Secretary may grant extensions of this deadline, as the Secretary finds appropriate, upon the request of the taxpayer, except that the application may not be filed after September 15 of the year following the calendar year in which the investment was made. An application is effective for the year in which it is timely filed. The application shall be on a form prescribed by the Secretary and shall include any supporting documentation that the Secretary may require. If an investment for which a credit is applied for was paid for other than in money, the taxpayer shall include with the application a certified appraisal of the value of the property used to pay for the investment. The application for a credit for an investment made by a pass-through entity must be filed by the pass-through entity.

(d) Penalties. -- The penalties provided in G.S. 105-236 apply in this ~~Division.~~ Part."

Section 31.(a) G.S. 105-164.3(8b) is recodified as G.S. 105-164.3(8c) and reads as rewritten:

"**§ 105-164.3. Definitions.**

The following definitions apply in this Article, except when the context clearly indicates a different meaning:

. . .

~~(8b)~~ (8c) "Motor vehicle" means a vehicle that is designed primarily for use upon the highways and is either self-propelled or propelled by a self-propelled vehicle, but does not include:

a. A ~~moped as defined in G.S. 20-4.01(27)(d1).~~ moped.

b. Special mobile ~~equipment as defined in G.S. 20-4.01(44).~~ equipment.

c. A tow dolly that is exempt from motor vehicle title and registration requirements under G.S. 20-51(10) or (11).

d. A farm tractor or other implement of husbandry.

e. A manufactured home, a mobile office, or a mobile classroom.

f. Road construction or road maintenance machinery or equipment."

Section 31.(b) G.S. 105-164.3 is amended by adding the following new subdivisions in the appropriate alphabetical order:

"(8b) Moped. -- A vehicle that has two or three wheels, no external shifting device, and a motor that does not exceed 50 cubic centimeters piston displacement and cannot propel the vehicle at a speed greater than 20 miles per hour on a level surface.

. . .

(16b) Special mobile equipment. -- Any of the following:

a. A vehicle that has a permanently attached crane, mill, well-boring apparatus, ditch-digging apparatus, air compressor, electric welder, feed mixer, grinder, or other similar apparatus is driven on the highway only to get to and from a nonhighway job and is not designed or used primarily for the transportation of persons or property.

b. A vehicle that has permanently attached special equipment and is used only for parade purposes.

c. A vehicle that is privately owned, has permanently attached fire-fighting equipment, and is used only for fire-fighting purposes.

d. A vehicle that has permanently attached playground equipment and is used only for playground purposes."

Section 31.(c) G.S. 20-4.01(21a) reads as rewritten:

"(21a) Moped. -- A type of passenger vehicle as defined in ~~G.S. 20-4.01(27).~~ G.S. 105-164.3."

Section 31.(d) G.S. 20-4.01(27)d1. reads as rewritten:

"d1. Moped. -- ~~A vehicle that has two or three wheels, no external shifting device, and a motor that does not exceed 50 cubic centimeters piston displacement and cannot propel the vehicle at a speed greater than 20 miles per hour on a level surface.~~ Defined in G.S. 105-164.3."

Section 31.(e) G.S. 20-4.01(44) reads as rewritten:

"(44) Special Mobile Equipment. -- ~~Any of the following:~~

~~a. A vehicle that has a permanently attached crane, mill, well-boring apparatus, ditch-digging apparatus, air compressor, electric welder, feed mixer, grinder, or other similar apparatus, is driven on the highway only to get to and from a nonhighway job, and is not designed or used primarily for the transportation of persons or property.~~

~~b. A vehicle that has permanently attached special equipment and is used only for parade purposes.~~

~~c. A vehicle that is privately owned, has permanently attached fire-fighting equipment, and is used only for fire-fighting purposes.~~

~~d. A vehicle that has permanently attached playground equipment and is used only for playground purposes.~~ Defined in G.S. 105-164.3."

Section 32. G.S. 105-164.4(a)(4) reads as rewritten:

"**§ 105-164.4. Tax imposed on retailers.**

(a) **(Effective July 1, 1999)** A privilege tax is imposed on a retailer at the following percentage rates of the retailer's net taxable sales or gross receipts, as appropriate. The general rate of tax is four percent (4%).

. . .

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

Section 33. G.S. 105-164.4(c) reads as rewritten:

"(c) Certificate of Registration. -- Before a person may engage in business as a retailer or a wholesale merchant, the person must obtain a certificate of registration from the Department. To obtain a certificate of registration, a person must register with the Department and pay fifteen dollars ($15.00).

A certificate of registration is valid unless it is revoked for failure to comply with the provisions of this Article or becomes void. A certificate ~~issued to a retailer~~ becomes void if, for a period of 18 months, the retailer or wholesale merchant to whom it was issued files no returns or files returns showing no sales."

Section 34. G.S. 105-164.13(4d) reads as rewritten:

"(4d) The lease or rental of ~~burlap~~ tobacco sheets used in handling tobacco in the warehouse and transporting tobacco to and from the warehouse."

Section 35.(a) G.S. 105-187.43 reads as rewritten:

"**§ 105-187.43. (Effective July 1, 1999) Payment of the tax.**

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

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

(c) Return. -- A return is due quarterly. A quarterly return covers a calendar quarter and is due by the last day of the month that follows the quarter covered by the return."

Section 35.(b) G.S. 105-187.44 reads as rewritten:

"**§ 105-187.44. (Effective July 1, 1999) Distribution of part of tax proceeds to cities.**

(a) City Information. -- A ~~monthly~~ quarterly return filed under this Article must indicate the amount of tax attributable to the following:

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

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

If a tax return does not state this information, the Secretary must determine how much of the tax proceeds are to be attributed to each city.

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

amount of tax attributable to that city for that quarter under subsection (a) of this section."

Section 36. G.S. 105-194 reads as rewritten:

"**§ 105-194. Death of donor within three years; time of assessment.**

~~Where~~ If a donor dies within three years after filing a return, gift taxes may be assessed at any time within ~~said~~ those three years, or on or before the date of final settlement of the donor's State estate or inheritance taxes, whichever is later."

Section 37. G.S. 105-253(a) reads as rewritten:

"(a) Any officer, trustee, or receiver of any corporation or limited liability company required to file a report with the Secretary who has custody of funds of the corporation or company and who allows the funds to be paid out or distributed to the stockholders of the corporation or company without having remitted to the Secretary any State taxes that are due is personally liable for the payment of the tax."

Section 38.(a) G.S. 105-275 is amended by adding a new subdivision to read:

"(41) Objects of art held by the North Carolina State Art Society, Incorporated."

Section 38.(b) G.S. 140-15 reads as rewritten:

"~~**§ 140-15. Exemption from taxes.**~~

~~All gifts made to the North Carolina State Art Society, Incorporated, shall be exempt from State gift and inheritance taxes, and objects of art held by the Society shall be exempt from ad valorem taxes.~~"

Section 39. G.S. 160A-31(e2), as enacted by S.L. 1999-19, as it applies to the Town of Huntersville, reads as rewritten:

"(e2) Annexation of property subject to annexation under subsection (e1) of this section shall become effective as to each tract of such property or such part thereof on the last day of the month in which that tract or part thereof becomes ineligible for classification pursuant to ~~G.S. 105-227.4~~ G.S. 105-277.4 and no longer meets the requirements of subdivision (e1)(2) of this section. Until annexation of a tract or a part of a tract becomes effective pursuant to this subsection, the tract or part of a tract is not subject to taxation by the city under Article 12 of Chapter 105 of the General Statutes, nor is the tract or part of the tract entitled to services provided by the city. When annexation becomes effective pursuant to this subsection as to a tract or part of a tract, the city shall provide all required services upon payment of city taxes."

Section 40. This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before the effective date of its amendment or repeal; nor does it affect the right to any refund or credit of a tax that accrued under the amended or repealed statute before the effective date of its amendment or repeal.

Section 41. Except as otherwise provided in this act, this act is effective when it becomes law.

SENATE BILL 55:
Revenue Laws Technical Changes

BILL ANALYSIS

Committee:	Senate Finance Committee	**Introduced by:**	Senator Cochrane
Date:	June 2, 1999	**Summary by:**	Martha K. Walston and Martha Harris, Staff Attorneys
Version:	Proposed Committee Substitute		

SUMMARY: ***Senate Bill 55 makes a number of technical and clarifying changes to various revenue laws and related statutes and makes one substantive change. The substantive change broadens the scope of the transit authority vehicle leasing tax to include more types of vehicles. The original version of the bill consisted only of technical and clarifying changes, and was recommended by the Revenue Laws Study Committee. The proposed committee substitute adds the above described substantive change and additional technical and clarifying changes to various revenue laws and related statutes that were recommended by the Department of Revenue.***

BILL ANALYSIS: Part I of Senate Bill 55, in sections 1 through 4, broadens the scope of the transit authority vehicle leasing tax to include more vehicles, effective July 1, 1999. Under current law, a regional public transportation authority or a regional transportation authority may levy a privilege tax on a retailer who leases or rents U-drive-it passenger vehicles or motorcycles. The tax rate may not exceed 5% of the gross receipts derived from the short-term (less than 365 continuous days) lease or rental of these vehicles. This tax is added to the lease or rental price and paid by the lessee. Senate Bill 55 broadens the scope of this tax to apply to all motor vehicles as defined in G.S. 105-164.3.

"Motor vehicle" means a vehicle that is designed primarily for use upon the highways and is either self-propelled or propelled by a self-propelled vehicle. Motor vehicle does not include the following: a moped, special mobile equipment, tow dolly exempt from title and registration requirements, implements of husbandry, a manufactured home, mobile office, or a mobile classroom, and road construction or road maintenance machinery or equipment.

"U-drive-it passenger vehicles" are passenger vehicles rented or leased and to be operated by the lessee. They do not include vehicles leased or rented to public school authorities for driver-training instruction. Passenger vehicles also do not include pickup trucks and other property hauling vehicles.

Part II. of Senate Bill 55 makes numerous technical and clarifying changes to the revenue laws and related statutes. The following table provides a section-by-section analysis of the proposed changes.

Section	Explanation
5	Corrects an incorrect effective date for the income tax treatment of enhanced wireless 911 fees.
6	Updates list of debtors' property that is retained free of creditors' claims, to add Roth IRAs to regular IRAs and to update terminology for regular IRAs.
7	Reinstates increase in notary commission fee from $25 to $30 that was enacted in the 1998 budget bill but was deleted inadvertently by another 1998 bill. This fee increase would become effective July 1, 1999.

8 – 15 Changes references to the inheritance tax, which was replaced with an estate tax effective for the estates of decedents dying on or after January 1, 1999.

16 Corrects a grammatical error by deleting the word "or" in G.S. 93B-15.

17 Deletes language in G.S. 105-32.8 that a person "is subject to the penalties in G.S. 105-236" when that person fails to report a federal correction or determination of the maximum state death tax credit allowed an estate or of the maximum state generation-skipping transfer tax credit allowed. Failure to report to the Secretary of Revenue would still result in forfeiture of the right to any refund due by reason of the determination. Since repeal of the inheritance tax laws, there are no penalties in G.S. 105-236 that apply to this section.

18 Combines G.S. 105-37.1(Amusements) and G.S. 105-38 (Amusements-Circuses and other traveling amusements) into one statute. These are the amusements subject to 3% gross receipts tax.

19 Clarifies that tax on motion picture shows is an admissions tax. This tax is imposed at the rate of 1% on gross receipts. Also moves the exemption language for certain motion pictures to the list of exemptions in G.S. 104-40 (Amusements exempt from tax).

20 Repeals G.S. 105-109.1 because it is no longer needed. This statute provides that interest will be assessed on the taxes on gross receipts levied on amusements in G.S. 105-37.1 and G.S. 105-38, the tax on installment paper dealers, and the tax on publishers of newsprint publications. This interest runs from the time these taxes were due until paid. This statute is no longer needed now that Article 9 (General Administration; Penalties and Remedies) applies to the privilege license statutes. This repeal also clarifies that interest applies to late payments of the 1% gross receipts tax on movies.

21 Repeals G.S. 105-113 because it is obsolete. This statute requires the sheriff of each county and clerk of the board of alderman of each city to make an annual report to the Secretary of Revenue containing the name and business of every person in his county or city required to obtain a State license under Article 2 of Chapter 105 of the General Statutes.

22 Clarifies that the possession of more than six hundred cigarettes <u>on which tax has been paid to</u> (was "bearing the tax stamp of") another state or country, by any person other than a licensed distributor, is prima facie evidence that the cigarettes are possessed in violation of the Article governing the tobacco products tax. The underlined language clarifies how the Department currently administers this Article. This change is needed because there are states that do not use stamps.

23 Clarifies scope of franchise tax to include savings and loan associations, as enacted in 1998.

24 Clarifies that a corporation that owes franchise tax but not income tax must apportion its franchise tax using the apportionment formula that would apply to income tax if the corporation were subject to that tax. The law is silent on this issue, and this new language sets out the Department's position.

25 Removes references to repealed statutes and modernizes statutory language.

26 Restores the word "generator" which was inadvertently deleted in 1998.

27 Changes "Division" to "Part" to conform to new terms enacted in 1998.

28 Changes the reference to the Code section in G.S. 105-152(e). This statute concerns joint tax liability and the innocent spouse. In the IRS Restructuring Act of 1998, the Code section 6013(e) was deleted and substituted in section 6015.

29 Removes reference to repealed statute.

30 Changes "Division" to "Part" to conform to new terms enacted in 1998.

31 Transfers the definitions of "moped" and "special mobile equipment" from Chapter 20 to the sales tax statute in Chapter 105, and then places a cross-reference to the sales tax statute in Chapter 20. These items are subject to sales tax. The Department of Revenue, rather than the DMV, administers the sales tax on special mobile equipment.

32 Adds the term "card-operated" to the sales tax exemption from receipts derived from coin or token-operated washing machines, extractors, and dryers. New technology permits the use of credit and debit cards on this equipment, and the Department has administratively allowed the sales tax exclusion for equipment operated with cards.

33 Extends to wholesalers the provision that the certificate of registration filed with the Department by a retailer is void if for a period of 18 months the retailer files no returns or files returns showing no sales.

34 Deletes the word "burlap" from the reference to the sales tax exemption for the lease or rental of burlap tobacco sheets used in handling tobacco in the warehouse and transporting tobacco to and from the warehouse. This change is necessary because tobacco sheets are now made of other material.

35 Clarifies the filing requirement for the excise tax on piped natural gas. Payment is required monthly and a return is required quarterly. The Department is currently administering the filing requirement this way.

36 Changes references to the inheritance tax, which was replaced with an estate tax effective for the estates of decedents dying on or after January 1, 1999.

37 Adds reference to limited liability companies to conform to remainder of statute.

38 Revises and recodifies a statute that included redundant references to the taxability of property transferred to a tax-exempt nonprofit corporation.

39 Corrects an incorrect statute reference.

40 Savings clause

41 Effective date

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: Senate Bill 55 (Proposed Senate Finance Committee Substitute)

SHORT TITLE: Revenue Laws Technical Changes

SPONSOR(S): Senators Cochrane, et al.

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
Triangle Transit Authority	$1,000,000	$1,000,000	$1,000,000	$1,000,000	$1,000,000
General Fund Notary Fee	(See Assumptions and Methodology)				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of the Secretary of State, Department of Revenue, Triangle Transit Authority

EFFECTIVE DATE: Part I (Triangle Transit Authority) is effective July 1, 1999 and applies to contracts entered into on or after that date. Part II, section 7 (notary fee) becomes effective July 1, 1999. All remaining sections become effective when it becomes law.

BILL SUMMARY: Part one of the bill broadens the tax base for the Triangle Transit Authority's 5% gross receipts tax on rental vehicles. Part two of the bill makes numerous technical and conforming changes to the Revenue Laws and related statutes.

ASSUMPTIONS AND METHODOLOGY:

Part One – Triangle Transit Authority

Part one of the bill allows the Triangle Transit Authority to begin taxing the short-term rental of heavy trucks and trailers. G.S. 105 – 551permits a regional public transportation authority or a regional transportation authority to levy a privilege tax of up to 5% on businesses leasing or renting U-drive-it passenger vehicles or motorcycles. This bill broadens the tax base for these authorities by striking the words "U-drive-it passenger vehicles or motorcycles" and replacing

them with the term "motor vehicles". A motor vehicles is defined in GS 105-164.3 as a vehicle "designed primarily for use upon the highways and is either self propelled or propelled by a self-propelled vehicle". A motor vehicle does not include a moped, special mobile equipment, tow dolly, farm tractor, or road construction equipment.

The Department of Revenue's Tax Research Division has determined that a 5% tax on the gross receipts of heavy truck and trailer rental businesses in Durham, Orange, and Wake counties will generate an additional $1 million in revenue each year for the Triangle Transit Authority. This estimate is based on highway use tax returns from four major truck and/or trailer leasing companies in the state that account for 75% of the business in this market. The tax returns are for the 8% gross receipts tax on short-term rentals these businesses pay to the state. Since Durham, Orange, and Wake counties have 12% of the population and motor vehicle registrations in North Carolina, it was assumed that 12% of the truck and trailer leasing business in the state is done in these three counties.

Part Two – Revenue Laws Technical Changes

Except for Section 7, the changes in this bill have no fiscal impact on the General Fund. Section 7 reinstates a $5 increase in the notary commission fee that was enacted by the 1998 General Assembly in SB 1366 (Chapter 212). Section 29A.9 of SB 1366 increased the nonrefundable fee for notarial commissions from $25 to $30. Unfortunately, SB 1552 (Chapter 228) was also enacted to make changes in the Notary Act and it did not increase the fee. When statute 10A-7 was codified, it was determined that the fee would remain $25 despite legislative intent to increase the fee.

The $5 notarial fee increase is estimated to generate the following revenue:

1999-2000	$74,635
2000-2001	76,665
2001-2002	78,750
2002-2003	80,890

Since this estimate was included in the budgeted revenues for 1998-99 and in future year projections, these revenues will not increase the budget. However, failure to pass this bill will result in the reduction of estimated General Fund revenues.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Richard Bostic

APPROVED BY:

DATE:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 4

HOUSE BILL 486
Committee Substitute Favorable 3/31/99
Third Edition Engrossed 4/5/99
Senate Finance Committee Substitute Adopted 5/13/99

Short Title: Parade Trailers -- Permanent Plates. (Public)

Sponsors:

Referred to:

March 18, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE PERMANENT REGISTRATION PLATES TO TRAILERS OWNED BY CHARITABLE ORGANIZATIONS AND USED ONLY IN PARADES AND TO CONSOLIDATE AND MODERNIZE THE STATUTES PROVIDING FOR PERMANENT REGISTRATION PLATES.

The General Assembly of North Carolina enacts:

Section 1. The caption of Part 6 of Article 3 of Chapter 20 of the General Statutes reads as rewritten:

"Part 6. Vehicles of Nonresidents of ~~State, etc.~~ State; Permanent Plates; Highway Patrol."

Section 2. G.S. 20-85 is amended by adding a new subsection to read:

"(c) The Division shall not collect a fee for a certificate of title for a motor vehicle entitled to a permanent registration plate under G.S. 20-84."

Section 3. G.S. 20-84 reads as rewritten:

"**§ 20-84. ~~Vehicles owned by State, municipalities or orphanages, etc.; certain vehicles operated by the local chapters of American National Red Cross.~~ Permanent registration plates; State Highway Patrol.**

(a) General. -- The Division may issue a permanent registration plate for a motor vehicle owned by one of the persons authorized to have a permanent registration plate in this section. To obtain a permanent registration plate, a person must provide

proof of ownership, provide proof of financial responsibility as required by G.S. 20-309, and pay a fee of six dollars ($6.00). A permanent plate issued under this section may be transferred as provided in G.S. 20-78 to a replacement vehicle of the same classification. A permanent registration plate issued under this section must be a distinctive color and bear the word "permanent". In addition, a permanent registration plate issued under subdivision (b)(1) of this section must have distinctive color and design that is readily distinguishable from all other permanent registration plates issued under this section.

(b) Permanent Registration Plates. -- The Division may issue permanent plates for the following motor vehicles:

(1) ~~The Division upon proper proof being filed with it that any motor vehicle for which registration is herein required is owned by the~~ A motor vehicle owned by the State or ~~any department thereof, or by any~~ one of its agencies.

(2) A motor vehicle owned by a county, ~~township,~~ city or ~~town, or by any~~ town.

(3) A motor vehicle owned by a board of ~~education, or by any~~ education.

(4) A motor vehicle owned by an ~~orphanage or civil~~ orphanage.

(5) A motor vehicle owned by the civil air ~~patrol, or incorporated~~ patrol.

(6) A motor vehicle owned by an incorporated emergency rescue ~~squad, or incorporated~~ squad.

(7) A motor vehicle owned by an incorporated REACT ("Radio Emergency Association of Citizen Teams") ~~Team, or for any~~ Team.

(8) A motor vehicle owned by a person and ~~involved~~ used exclusively in the support of a disaster relief ~~effort,~~ effort.

(9) A bus owned by a church and used exclusively for transporting individuals to Sunday school and church services.

(10) A motor vehicle owned by a rural fire department, agency, or association.

(11) A motor vehicle in the form of a mobile X-ray unit operated exclusively in this State for the purpose of diagnosis, treatment, and discovery of tuberculosis, and owned by the North Carolina Tuberculosis Association, Incorporated, or by a local chapter or association of the North Carolina Tuberculosis Association, Incorporated.

(12) A motor vehicle owned by a local chapter of the American National Red Cross and used for emergency or disaster work.

(13) A motor vehicle owned by a sheltered workshop recognized or approved by the Division of Vocational Rehabilitation Services.

(14) A motor vehicle owned by a nonprofit agency or organization that provides transportation for or operates programs subject to and

approved in accordance with standards adopted by the Commission for Mental Health and Human Services.

(15) A bus or trackless trolley owned by a city and operated under a franchise authorizing the use of city streets. This subdivision does not apply to a bus or trackless trolley operated under a franchise authorizing an intercity operation.

(16) A trailer owned by a nationally chartered charitable organization and used exclusively for parade floats and for transporting vehicles and structures used only in parades.

~~shall collect six dollars ($6.00) for the registration of such motor vehicles, but shall not collect any fee for application for certificate of title in the name of the State or any department thereof, or by any county, township, city or town, or by any board of education or orphanage: Provided, that the term "owned" shall be construed to mean that such motor vehicle is the actual property of the State or some department thereof or of the county, township, city or town, or of the board of education, and no motor vehicle which is the property of any officer or employee of any department named herein shall be construed as being "owned" by such department. Provided, that the above exemptions from registration fees shall also apply to any church-owned bus used exclusively for transporting children and parents to Sunday school and church services and for no other purpose.~~

~~In lieu of the annual six dollars ($6.00) registration provided for in this section, the Division may for the license year 1950 and thereafter provide for a permanent registration of the vehicles described in this section and issue permanent registration plates for such vehicles.~~

~~The permanent registration plates issued pursuant to this paragraph shall be of a distinctive color and shall bear thereon the word "permanent." Such plates may be transferred as provided in G.S. 20-78 to a replacement vehicle of the same classification. For the permanent registration and issuance of permanent registration plates provided for in this paragraph, the Division shall collect a fee of six dollars ($6.00) for each vehicle so registered and licensed.~~

~~The provisions of this section are hereby made applicable to vehicles owned by a rural fire department, agency or association.~~

~~The Division of Motor Vehicles shall issue to the North Carolina Tuberculosis Association, Incorporated, or any local chapter or association of said corporation, for a fee of six dollars ($6.00) for each plate a permanent registration plate which need not be thereafter renewed for each motor vehicle in the form of a mobile X-ray unit which is owned by said North Carolina Tuberculosis Association, Incorporated, or any local chapter or local association thereof and operated exclusively in this State for the purpose of diagnosis, treatment and discovery of tuberculosis. The initial six dollars ($6.00) fee required by this section and for this purpose shall be in full payment of the permanent registration plates issued for such vehicle operated as a mobile X-ray unit, and such plates need not thereafter be renewed, and such plates may be transferred as provided in G.S. 20-78 to replacement vehicles to be used for the purposes above described and for which the plates were originally issued.~~

~~The Division of Motor Vehicles shall issue to the American National Red Cross, upon application of any local chapter thereof and payment of a fee of six dollars ($6.00) for each plate, a permanent registration plate, which need not be thereafter renewed, for all disaster vans, bloodmobiles, handivans, and such sedans and station wagons as are used for emergency or disaster work, and operated by a local chapter in this State in the business of the American National Red Cross. Such plates may be transferred as provided in G.S. 20-78 to a replacement vehicle to be used for the purposes above described and for which the plates were originally issued. In the event of transfer of ownership to any other person, firm or corporation, or transfer or reassignment of any vehicle bearing such registration plate to any chapter or association of the American National Red Cross in any other state, territory or country, the registration plate assigned to such vehicle shall be surrendered to the Division of Motor Vehicles.~~

(c) State Highway Patrol. -- In lieu of all other registration requirements, the Commissioner shall each year assign to the State Highway Patrol, upon payment of six dollars ($6.00) per registration plate, a sufficient number of regular registration plates of the same letter prefix and in numerical sequence beginning with number 100 to meet the requirements of the State Highway Patrol for use on Division vehicles assigned to the State Highway Patrol. The commander of the Patrol shall, when such plates are assigned, issue to each member of the State Highway Patrol a registration plate for use upon the Division vehicle assigned to ~~him~~ the member pursuant to G.S. 20-190 and assign a registration plate to each Division service vehicle operated by the Patrol. An index of such assignments of registration plates shall be kept at each State Highway Patrol radio station and a copy ~~thereof~~ of it shall be furnished to the registration division of the Division. Information as to the individual assignments of ~~such~~ the registration plates shall be made available to the public upon request to the same extent and in the same manner as regular registration information. The commander, when necessary, may reassign registration plates provided that ~~such~~ the reassignment shall ~~be made to~~ appear upon the index required ~~herein~~ under this subsection within 20 days after ~~such~~ the reassignment.

~~The Division of Motor Vehicles shall, upon appropriate certification of financial responsibility, issue to sheltered workshops recognized or approved by the Division of Vocational Rehabilitation Services and to public and nonprofit agencies or organizations which provide transportation for or operate programs subject to and approved in accordance with standards adopted by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services of the Department of Health and Human Services upon application and payment of a fee of six dollars ($6.00) for each plate, a permanent registration plate for vehicles registered to and operated by such agencies. The initial six dollars ($6.00) fee required by this section and for this purpose shall be in full payment of the permanent registration plate issued for such vehicle operated by a sheltered workshop and such plates need not thereafter be renewed, and such plates may be transferred as provided in G.S. 20-78 to a replacement vehicle to be used by the sheltered workshop designated on the registration card.~~

~~On and after January 1, 1972, permanent registration plates used on all vehicles owned by the State of North Carolina or a department thereof shall be of a distinctive color and design which shall be readily distinguishable from all other permanent registration plates issued pursuant to this section or G.S. 20-84.1. For the purpose of carrying out the intent of this paragraph, all vehicles owned by the State of North Carolina or a department thereof in operation as of October 1, 1971, and bearing a permanent registration shall be reregistered during the months of October, November and December, 1971, and upon reregistration, registration plates issued for such vehicles shall be of a distinctive color and design as provided for hereinabove.~~"

Section 4. G.S. 20-84.1 is repealed.

Section 5. This act becomes effective July 1, 1999.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 486

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

H486-ALK-1

Page 1 of __

Date_____,1999

Comm. Sub. [YES]
Amends Title [YES]
Fourth Edition

Senator Garwood

moves to amend the bill on page 1, line 6,
by rewriting that line to read:
"PERMANENT REGISTRATION PLATES AND TO PROVIDE FOR SPECIAL REGISTRATION PLATES FOR MEMBERS OF THE NORTH CAROLINA HIGHWAY PATROL RETIREES ASSOCIATION."
and further moves to amend the bill on page 5, line 9,
by inserting the following immediately after that line:
"Section 3.1. G.S. 20-79.4(b) reads as rewritten:
'(b) Types. -- The Division shall issue the following types of special registration plates:
. . .
"(36a) Retired Highway Patrol. -- Issuable to a member of the North Carolina Highway Patrol Retirees Association, Inc. A plate issued pursuant to this subdivision shall bear the phrase 'SHP, Retired.' The Division shall not issue a plate authorized by this subdivision unless it receives at least 300 applications for the plate."'"

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 486
Committee Substitute Favorable 3/31/99
Third Edition Engrossed 4/5/99
Senate Finance Committee Substitute Adopted 5/13/99
Proposed Senate Committee Substitute H486-PCS3434-LA

Short Title: Parade Trailers -- Permanent Plates. (Public)

Sponsors:

Referred to:

March 18, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE PERMANENT REGISTRATION PLATES TO TRAILERS OWNED BY CHARITABLE ORGANIZATIONS AND USED ONLY IN PARADES AND TO CONSOLIDATE AND MODERNIZE THE STATUTES PROVIDING FOR PERMANENT REGISTRATION PLATES AND TO PROVIDE FOR SPECIAL REGISTRATION PLATES FOR INDIVIDUALS WHO ARE RETIRED FROM THE NORTH CAROLINA HIGHWAY PATROL.

The General Assembly of North Carolina enacts:

Section 1. The caption of Part 6 of Article 3 of Chapter 20 of the General Statutes reads as rewritten:

"Part 6. Vehicles of Nonresidents of ~~State, etc.~~ State; Permanent Plates; Highway Patrol."

Section 2. G.S. 20-85 is amended by adding a new subsection to read:

"(c) The Division shall not collect a fee for a certificate of title for a motor vehicle entitled to a permanent registration plate under G.S. 20-84."

Section 3. G.S. 20-84 reads as rewritten:

"**§ 20-84. ~~Vehicles owned by State, municipalities or orphanages, etc.; certain vehicles operated by the local chapters of American National Red Cross.~~ Permanent registration plates; State Highway Patrol.**

(a) General. -- The Division may issue a permanent registration plate for a motor vehicle owned by one of the persons authorized to have a permanent registration plate in this section. To obtain a permanent registration plate, a person must provide proof of ownership, provide proof of financial responsibility as required by G.S. 20-309, and pay a fee of six dollars ($6.00). A permanent plate issued under this section may be transferred as provided in G.S. 20-78 to a replacement vehicle of the same classification. A permanent registration plate issued under this section must be a distinctive color and bear the word "permanent". In addition, a permanent registration plate issued under subdivision (b)(1) of this section must have distinctive color and design that is readily distinguishable from all other permanent registration plates issued under this section.

(b) Permanent Registration Plates. -- The Division may issue permanent plates for the following motor vehicles:

(1) ~~The Division upon proper proof being filed with it that any motor vehicle for which registration is herein required is owned by the~~ A motor vehicle owned by the State or ~~any department thereof, or by any~~ one of its agencies.

(2) A motor vehicle owned by a county, ~~township,~~ city or ~~town, or by any~~ town.

(3) A motor vehicle owned by a board of ~~education, or by any~~ education.

(4) A motor vehicle owned by an ~~orphanage or civil~~ orphanage.

(5) A motor vehicle owned by the civil air ~~patrol, or incorporated~~ patrol.

(6) A motor vehicle owned by an incorporated emergency rescue ~~squad, or incorporated~~ squad.

(7) A motor vehicle owned by an incorporated REACT ("Radio Emergency Association of Citizen Teams") ~~Team, or for any~~ Team.

(8) A motor vehicle owned by a person and ~~involved~~ used exclusively in the support of a disaster relief ~~effort,~~ effort.

(9) A bus owned by a church and used exclusively for transporting individuals to Sunday school and church services.

(10) A motor vehicle owned by a rural fire department, agency, or association.

(11) A motor vehicle in the form of a mobile X-ray unit operated exclusively in this State for the purpose of diagnosis, treatment, and discovery of tuberculosis, and owned by the North Carolina Tuberculosis Association, Incorporated, or by a local chapter or association of the North Carolina Tuberculosis Association, Incorporated.

(12) A motor vehicle owned by a local chapter of the American National Red Cross and used for emergency or disaster work.

(13) A motor vehicle owned by a sheltered workshop recognized or approved by the Division of Vocational Rehabilitation Services.

(14) A motor vehicle owned by a nonprofit agency or organization that provides transportation for or operates programs subject to and approved in accordance with standards adopted by the Commission for Mental Health and Human Services.

(15) A bus or trackless trolley owned by a city and operated under a franchise authorizing the use of city streets. This subdivision does not apply to a bus or trackless trolley operated under a franchise authorizing an intercity operation.

(16) A trailer owned by a nationally chartered charitable organization and used exclusively for parade floats and for transporting vehicles and structures used only in parades.

~~shall collect six dollars ($6.00) for the registration of such motor vehicles, but shall not collect any fee for application for certificate of title in the name of the State or any department thereof, or by any county, township, city or town, or by any board of education or orphanage. Provided, that the term "owned" shall be construed to mean that such motor vehicle is the actual property of the State or some department thereof or of the county, township, city or town, or of the board of education, and no motor vehicle which is the property of any officer or employee of any department named herein shall be construed as being "owned" by such department. Provided, that the above exemptions from registration fees shall also apply to any church-owned bus used exclusively for transporting children and parents to Sunday school and church services and for no other purpose.~~

~~In lieu of the annual six dollars ($6.00) registration provided for in this section, the Division may for the license year 1950 and thereafter provide for a permanent registration of the vehicles described in this section and issue permanent registration plates for such vehicles.~~

~~The permanent registration plates issued pursuant to this paragraph shall be of a distinctive color and shall bear thereon the word "permanent." Such plates may be transferred as provided in G.S. 20-78 to a replacement vehicle of the same classification. For the permanent registration and issuance of permanent registration plates provided for in this paragraph, the Division shall collect a fee of six dollars ($6.00) for each vehicle so registered and licensed.~~

~~The provisions of this section are hereby made applicable to vehicles owned by a rural fire department, agency or association.~~

~~The Division of Motor Vehicles shall issue to the North Carolina Tuberculosis Association, Incorporated, or any local chapter or association of said corporation, for a fee of six dollars ($6.00) for each plate a permanent registration plate which need not be thereafter renewed for each motor vehicle in the form of a mobile X-ray unit which is owned by said North Carolina Tuberculosis Association, Incorporated, or any local chapter or local association thereof and operated exclusively in this State for the purpose of diagnosis, treatment and discovery of tuberculosis. The initial six dollars ($6.00) fee required by this section and for this purpose shall be in full~~

~~payment of the permanent registration plates issued for such vehicle operated as a mobile X-ray unit, and such plates need not thereafter be renewed, and such plates may be transferred as provided in G.S. 20-78 to replacement vehicles to be used for the purposes above described and for which the plates were originally issued.~~

~~The Division of Motor Vehicles shall issue to the American National Red Cross, upon application of any local chapter thereof and payment of a fee of six dollars ($6.00) for each plate, a permanent registration plate, which need not be thereafter renewed, for all disaster vans, bloodmobiles, handivans, and such sedans and station wagons as are used for emergency or disaster work, and operated by a local chapter in this State in the business of the American National Red Cross. Such plates may be transferred as provided in G.S. 20-78 to a replacement vehicle to be used for the purposes above described and for which the plates were originally issued. In the event of transfer of ownership to any other person, firm or corporation, or transfer or reassignment of any vehicle bearing such registration plate to any chapter or association of the American National Red Cross in any other state, territory or country, the registration plate assigned to such vehicle shall be surrendered to the Division of Motor Vehicles.~~

(c) State Highway Patrol. -- In lieu of all other registration requirements, the Commissioner shall each year assign to the State Highway Patrol, upon payment of six dollars ($6.00) per registration plate, a sufficient number of regular registration plates of the same letter prefix and in numerical sequence beginning with number 100 to meet the requirements of the State Highway Patrol for use on Division vehicles assigned to the State Highway Patrol. The commander of the Patrol shall, when such plates are assigned, issue to each member of the State Highway Patrol a registration plate for use upon the Division vehicle assigned to ~~him~~ the member pursuant to G.S. 20-190 and assign a registration plate to each Division service vehicle operated by the Patrol. An index of such assignments of registration plates shall be kept at each State Highway Patrol radio station and a copy ~~thereof~~ of it shall be furnished to the registration division of the Division. Information as to the individual assignments of ~~such~~ the registration plates shall be made available to the public upon request to the same extent and in the same manner as regular registration information. The commander, when necessary, may reassign registration plates provided that ~~such~~ the reassignment shall ~~be made to~~ appear upon the index required ~~herein~~ under this subsection within 20 days after ~~such~~ the reassignment.

~~The Division of Motor Vehicles shall, upon appropriate certification of financial responsibility, issue to sheltered workshops recognized or approved by the Division of Vocational Rehabilitation Services and to public and nonprofit agencies or organizations which provide transportation for or operate programs subject to and approved in accordance with standards adopted by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services of the Department of Health and Human Services upon application and payment of a fee of six dollars ($6.00) for each plate, a permanent registration plate for vehicles registered to and operated by such agencies. The initial six dollars ($6.00) fee required by this section and for this purpose shall be in full payment of the permanent registration plate~~

~~issued for such vehicle operated by a sheltered workshop and such plates need not thereafter be renewed, and such plates may be transferred as provided in G.S. 20-78 to a replacement vehicle to be used by the sheltered workshop designated on the registration card.~~

~~On and after January 1, 1972, permanent registration plates used on all vehicles owned by the State of North Carolina or a department thereof shall be of a distinctive color and design which shall be readily distinguishable from all other permanent registration plates issued pursuant to this section or G.S. 20-84.1. For the purpose of carrying out the intent of this paragraph, all vehicles owned by the State of North Carolina or a department thereof in operation as of October 1, 1971, and bearing a permanent registration shall be reregistered during the months of October, November and December, 1971, and upon reregistration, registration plates issued for such vehicles shall be of a distinctive color and design as provided for hereinabove.~~"

Section 3.1. G.S. 20-79.4(b) reads as rewritten:

"(b) Types. -- The Division shall issue the following types of special registration plates:

. . .

(36a) Retired Highway Patrol. - Issuable to an individual who has retired from the North Carolina Highway Patrol. The plate shall bear the phrase 'SHP, Retired.' The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate."

Section 4. G.S. 20-84.1 is repealed.

Section 5. This act becomes effective July 1, 1999.

HOUSE BILL 486:
Parade Trailers -- Permanent Plates

BILL ANALYSIS

Committee: Senate Finance Committee
Date June 1, 1999
Version: 4th Edition

Introduced by: Rep. Moore
Summary by: Cindy Avrette and Martha K. Walston, Staff Attorneys

SUMMARY: ***House Bill 486 would authorize the Division of Motor Vehicles to issue a permanent registration plate for trailers owned by a nationally chartered charitable organization and used only for parade floats and for transporting vehicles and structures used only in parades. The cost of the plate would be six dollars ($6.00). The bill consolidates and modernizes provisions in the permanent plate statute. The bill would become effective July 1, 1999. House Bill 486 was given a favorable report in House Finance on March 31, and passed the House on April 5. The proposed amendment would add Retired Highway Patrol to the list of persons who qualify for a special registration plate.***

CURRENT LAW: The registration fee for a trailer is $10.00. The fee is payable on or before January 1 of each year. The Division may issue a multiyear plate and registration card for a trailer for a fee of $75.00. The multiyear plate may not be transferred to a replacement vehicle.

BILL ANALYSIS: House Bill 486 would authorize the Division of Motor Vehicles to issue a permanent registration plate to a nationally chartered charitable organization for a trailer the organization owns and uses only for parade floats and for transporting vehicles and structures used only in parades. The Shriners appear to be the major organization that would benefit from this legislation. The cost of the permanent registration plate would be $6.00. The permanent plates could be transferred to another trailer that is bought to replace the one for which the plate was originally issued, so long as the use of the trailer is restricted to parades.

The statute amended by the bill, G.S. 20-84, was originally written in 1937. It has been amended many times. Many of the paragraphs repeat the same general information, such as fee and transferability, for each entity entitled to a permanent plate. The bill rewrites the statute by listing the entities entitled to a permanent plate and by consolidating the general provisions into one subsection. It also changes the caption of Part 6 of Article 3 of Chapter 20 and of G.S. 20-84 to accurately reflect their contents.

Under G.S. 20-84, there is an ambiguous provision that appears to prohibit the Division from collecting the $35 certificate of registration fee for certain motor vehicles entitled to a permanent registration plate. The Division interprets the provision to mean that any entity entitled to a permanent registration plate does not have to pay the $35 certificate of registration fee. Section 2 of the bill puts this provision in the appropriate statute concerning fees. The provision has been rewritten to conform the language with the Division's interpretation and practice.

The proposed amendment would authorize DMV to issue "SHP, Retired" special license plates for additional $10 fee. These applicants would also pay the regular registration fee. DMV must receive at least 300 applications for the special plate before it can be issued.

The $10 additional fee goes to the Special Registration Plate Account. After deducting the costs of the plates from the Account, the money is distributed as follows:

Amount	Purpose
$525,000 distributed annually	Operating assistance for certain Visitor Centers
33% distributed quarterly	Department of Commerce for advertising the promotion of travel and industrial development in the State.
50% distributed quarterly	Department of Transportation for beautification of highways.
17% distributed quarterly	Department of Health and Human Services to promote travel and accessibility for disabled persons.

The proposed amendment is identical to Senate Bill 149, introduced by Senator Moore. Senate Bill 149 is in Senate Finance.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: H 486 (First Edition)
SHORT TITLE: Parade Trailers – Permanent Plates
SPONSOR(S): Rep. Richard Moore

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES	($152)	($380)	($380)	($380)	($380)
EXPENDITURES					
POSITIONS:					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Division of Motor Vehicles (DMV)

EFFECTIVE DATE: Upon Enactment

BILL SUMMARY: DMV will make permanent registration plates available to nationally chartered charitable organizations, at a fee of $6.00, for all trailers that are used only for parade floats and for transporting vehicles and structures used only in parades.

ASSUMPTIONS AND METHODOLOGY: The Shriners appear to be the major organization that would be affected by this legislation and the three main Temples in North Carolina have a total of approximately 38 trailers that would qualify. For these trailers the annual fee of $10 would become a one time fee of $6. The loss in revenue would be $4 per trailer in the first year and $10 per trailer in subsequent years.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Robert Weiss

APPROVED BY: Tom Covington

DATE: Monday, March 22, 1999

FISCAL ANALYSIS MEMORANDUM

DATE: June 1, 1999

TO: Senate Finance

FROM: Bob Weiss and Linda Struyk Millsaps
Fiscal Research Division

RE: H486 – ALK –1
Amendment to "provide for special registration plates for members of the North Carolina Highway Patrol Retirees Association."

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
Special Plate Acct.	**$3,000**	**$3,000**	**$3,000**	**$3,000**	**$3,000**
EXPENDITURES					
Highway Fund	**$11,120**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Transportation, Division of Motor Vehicles, Vehicle Registration Section.

EFFECTIVE DATE: July 1, 1999.

AMENDMENT SUMMARY: The amendment authorizes a special plate for retired highway patrol officers. The bill requires 300 applications before the license is produced.

ASSUMPTIONS AND METHODOLOGY: Because it is not clear how many plates will be ordered, the fiscal analysis assumes the minimum 300 plates will be requested. The DMV will charges an additional $10.00 for each plate. Assuming 300 plates are ordered, the bill creates $3,000 in new revenue.

DMV indicates that the programming cost to set up a new special plate is approximately $11,120. Other start up costs are approximately $100.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 499

Short Title: Boat Registration Fees/AB. (Public)

Sponsors: Senator Hoyle.

Referred to: Finance.

March 25, 1999

A BILL TO BE ENTITLED

AN ACT TO REQUIRE CANOES AND KAYAKS TO BE REGISTERED AND TO INCREASE THE FEES FOR REGISTRATION OF BOATS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 75A-4 reads as rewritten:

"**§ 75A-4. Identification numbers required.**

Every vessel on the waters of this State shall be ~~numbered.~~ numbered, except those vessels exempted from numbering under G.S. 75A-7. No person shall operate or give permission for the operation of any vessel on such waters unless the vessel is numbered in accordance with this Chapter, or in accordance with applicable federal law, or in accordance with a federally approved numbering system of another state, and unless

(1) The certificate of number awarded to such vessel is in full force and effect, and

(2) The identifying number set forth in the certificate of number is displayed on each side of the bow of such vessel."

Section 2. G.S. 75A-5(a) reads as rewritten:

"(a) The owner of each vessel requiring numbering by this State shall file an application for number with the Wildlife Resources Commission on forms approved by it. The application shall be signed by the owner of the vessel, or his agent, and shall be accompanied by a fee of ~~eight dollars ($8.00)~~ ten dollars ($10.00) for a one-year period or by a fee of ~~twenty dollars ($20.00)~~ twenty-five dollars ($25.00) for a three-year period; provided, however, there shall be no fee charged for vessels owned and operated by nonprofit rescue squads if they are operated exclusively for

rescue purposes, including rescue training. The applicant shall have the option of selecting a one-year numbering period or a three-year numbering period. Upon receipt of the application in approved form, the Commission shall have the same entered upon the records of its office and issue to the applicant a certificate of number stating the number awarded to the vessel and the name and address of the owner, and a validation decal indicating the expiration date of the certificate of number. The owner shall paint on or attach to each side of the bow of the vessel the identification number in such manner as may be prescribed by rules of the Commission in order that it may be clearly visible. The number shall be maintained in legible condition. The validation decal shall be displayed on the starboard bow of the vessel immediately following the number. The certificate of number shall be pocket size and shall be available at all times for inspection on the vessel for which issued, whenever such vessel is in operation. Provided, however, any person charged with failing to so carry such certificate of number shall not be convicted if he produces in court a certificate of number theretofore issued to him and valid at the time of his arrest."

Section 3. G.S. 75A-5(c) reads as rewritten:

"(c) Should the ownership of a vessel change, a new application form with a fee of ~~eight dollars ($8.00)~~ ten dollars ($10.00) for a one-year period or by a fee of ~~twenty dollars ($20.00)~~ twenty-five dollars ($25.00) for a three-year period shall be filed with the Wildlife Resources Commission and a new certificate bearing the same number shall be awarded the new owner in the manner as provided for in an original award of number. In case a certificate should become lost, a new certificate bearing the same number shall be issued upon payment of a fee of two dollars ($2.00). Possession of the certificate shall in cases involving prosecution for violation of any provision of this Chapter be prima facie evidence that the person whose name appears therein is the owner of the boat referred to therein."

Section 4. G.S. 75A-3(c) reads as rewritten:

"(c) The Boating Account is established within the Wildlife Resources Fund created under G.S. 143-250. All moneys collected pursuant to the numbering and titling provisions of this Chapter shall be credited to this Account. Gasoline excise tax revenue is credited to the Account under G.S. 105-449.126. Revenue in the Account shall be used by the Wildlife Resources Commission, subject to the Executive Budget Act and the Personnel Act, for the administration and enforcement of this Chapter; for activities relating to boating and water safety including education and waterway marking and improvement; and for boating access area acquisition, development, and maintenance. At least three dollars from each boat registration fee collected under the numbering provisions of G.S. 75A-5(c) shall be used for boating access area acquisition, development, and maintenance."

Section 5. G.S. 75A-7(a) reads as rewritten:

(a) A vessel shall not be required to be numbered under this Chapter if it is:

(1) A vessel which is required to be awarded a number pursuant to federal law or a federally approved numbering system of another state, and for which a number has been so awarded: Provided, that

any such boat shall not have been within this State for a period in excess of 90 consecutive days.

(2) A vessel from a country other than the United States temporarily using the waters of this State.

(3) A vessel whose owner is the United States, a state or a subdivision thereof.

(4) A ship's lifeboat.

(5) A vessel which has a valid marine document issued by the Bureau of Customs of the United States government or any federal agency successor thereto.

(6) A sailboat of not more than 14 feet on the load water line (LWL).

(7) A vessel other than a canoe or a kayak with no means of propulsion other than drifting or manual paddling, poling, or rowing.

Section 5. Section 4 of this act becomes effective January 1, 2000, and applies to fees collected from each boat registration in effect on or after that date. The remainder of this act becomes effective January 1, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 499
Proposed Committee Substitute S499-PCSA147-LA

Short Title: Boat Registration Fees/AB. (Public)

Sponsors:

Referred to:

March 25, 1999

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE FEES FOR REGISTRATION OF BOATS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 75A-4 reads as rewritten:

"**§ 75A-4. Identification numbers required.**

Every vessel on the waters of this State shall be ~~numbered.~~ numbered, except those vessels exempted from numbering under G.S. 75A-7. No person shall operate or give permission for the operation of any vessel on such waters unless the vessel is numbered in accordance with this Chapter, or in accordance with applicable federal law, or in accordance with a federally approved numbering system of another state, and unless

(1) The certificate of number awarded to such vessel is in full force and effect, and

(2) The identifying number set forth in the certificate of number is displayed on each side of the bow of such vessel."

Section 2. G.S. 75A-5(a) reads as rewritten:

"(a) The owner of each vessel requiring numbering by this State shall file an application for number with the Wildlife Resources Commission on forms approved by it. The application shall be signed by the owner of the vessel, or his agent, and shall be accompanied by a fee of ~~eight dollars ($8.00)~~ ten dollars ($10.00) for a one-year period or by a fee of ~~twenty dollars ($20.00)~~ twenty-five dollars ($25.00) for a three-year period; provided, however, there shall be no fee charged for vessels owned and operated by nonprofit rescue squads if they are operated exclusively for

rescue purposes, including rescue training. The applicant shall have the option of selecting a one-year numbering period or a three-year numbering period. Upon receipt of the application in approved form, the Commission shall have the same entered upon the records of its office and issue to the applicant a certificate of number stating the number awarded to the vessel and the name and address of the owner, and a validation decal indicating the expiration date of the certificate of number. The owner shall paint on or attach to each side of the bow of the vessel the identification number in such manner as may be prescribed by rules of the Commission in order that it may be clearly visible. The number shall be maintained in legible condition. The validation decal shall be displayed on the starboard bow of the vessel immediately following the number. The certificate of number shall be pocket size and shall be available at all times for inspection on the vessel for which issued, whenever such vessel is in operation. Provided, however, any person charged with failing to so carry such certificate of number shall not be convicted if he produces in court a certificate of number theretofore issued to him and valid at the time of his arrest."

Section 3. G.S. 75A-5(c) reads as rewritten:

"(c) Should the ownership of a vessel change, a new application form with a fee of ~~eight dollars ($8.00)~~ ten dollars ($10.00) for a one-year period or by a fee of ~~twenty dollars ($20.00)~~ twenty-five dollars ($25.00) for a three-year period shall be filed with the Wildlife Resources Commission and a new certificate bearing the same number shall be awarded the new owner in the manner as provided for in an original award of number. In case a certificate should become lost, a new certificate bearing the same number shall be issued upon payment of a fee of two dollars ($2.00). Possession of the certificate shall in cases involving prosecution for violation of any provision of this Chapter be prima facie evidence that the person whose name appears therein is the owner of the boat referred to therein."

Section 4. G.S. 75A-5(h) reads as rewritten:

"(h) **(Effective July 1, 1999)** Each certificate of number awarded pursuant to this Chapter must be renewed on or before the first day of the month next succeeding that during which the same expires; otherwise, such certificate shall lapse and be void until such time as it may thereafter be renewed. Application for renewal shall be submitted on a form approved by the Wildlife Resources Commission and shall be accompanied by a fee of ~~eight dollars ($8.00)~~ ten dollars ($10.00) for a one-year period or by a fee of ~~twenty dollars ($20.00)~~ twenty-five dollars ($25.00) for a three-year period; provided, there shall be no fee required for renewal of certificates of number which have been previously issued to commercial fishing vessels as defined in G.S. 75A-5.1, upon compliance with all of the requirements of that section."

Section 5. G.S. 75A-3(c) reads as rewritten:

"(c) The Boating Account is established within the Wildlife Resources Fund created under G.S. 143-250. All moneys collected pursuant to the numbering and titling provisions of this Chapter shall be credited to this Account. Gasoline excise tax revenue is credited to the Account under G.S. 105-449.126. Revenue in the Account shall be used by the Wildlife Resources Commission, subject to the Executive Budget

Act and the Personnel Act, for the administration and enforcement of this Chapter; for activities relating to boating and water safety including education and waterway marking and improvement; and for boating access area acquisition, development, and maintenance. At least three dollars ($3.00) from each boat registration fee collected under the numbering provisions of G.S. 75A-5 shall be used for boating access area acquisition, development, and maintenance."

Section 6. Section 5 of this act becomes effective January 1, 2000, and applies to fees collected from each boat registration in effect on or after that date. The remainder of this act becomes effective January 1, 2000.

SENATE BILL 499:
Boat Registration Fees/AB

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Sen. Hoyle
Date:	June 1, 1999	**Summary by:**	Martha K. Walston
Version:	Proposed Committee Substitute		Committee Counsel

SUMMARY: ***The proposed committee substitute for Senate Bill 499 increases the application fees for identification numbers on boats. The fee for a one-year period is increased from $8.00 to $10.00 and the fee for a three-year period is increased from $20.00 to $25.00. If ownership of the boat changes, the new owner must file a new application and pay the corresponding increased fees. The new owner will receive a new certificate bearing the same number. At least $3.00 of each boat registration fee collected must be used for boating access area acquisition, development, and maintenance. The original bill added canoes and kayaks to the types of boats that must apply for an identification number and did not apply the fee increase to renewals of identification numbers.***

CURRENT LAW: Under the North Carolina Boating Safety Act, most vessels on the waters of the State must have an identification number displayed on each side of the bow of the vessel. The owner of these vessels must apply for the identification number with the Wildlife Resources Commission. The application must be accompanied by an $8.00 fee for a one-year numbering period or a $20.00 fee for a three-year numbering period. The applicant has the option of selecting either numbering period. The fees collected go into the Boating Account within the Wildlife Resources Fund. Revenue in this Account is used by the Wildlife Resources Commission for the administration and enforcement of the Boating and Water Safety Act; for activities relating to boating and water safety including education and waterway marking and improvement; and for boating access area acquisition, development, and maintenance.

BILL ANALYSIS: **Section 1** of the proposed committee substitute clarifies that all vessels on the waters of this State must be numbered, except those specifically exempted. Under current law, the following vessels are exempt from the numbering requirements: (1) vessels required to be numbered under federal law or a federally approved numbering system of another state, (2) a foreign vessel temporarily using the State's waters, (3) a vessel owned by the U.S., a state, or a subdivision of a state, (4) a ship's lifeboat, (5) a vessel having a valid marine document issued by the U.S. Bureau of Customs, (6) a sailboat of not more than 14 feet on the load water line, and (7) a vessel with no means of propulsion other than drifting or manual paddling, poling, or rowing.

Section 2 increases the application fees for the identification number as follows:

Application	Current Fee	Proposed Fee
Certificate of number for 1-year period	$8.00	10.00
Certificate of number for 3-year period	$20.00	$25.00

Section 3 of the proposed committee substitute also applies the proposed fee increase when the ownership of the boat changes and the new owner applies for a new application.

Section 4 applies the proposed fee increases to renewals of the identification numbers. Each certificate of number must be renewed by the first day of the month following expiration of the number.

Section 5 provides that at least $3.00 of each fee collected under the numbering provisions in G.S. 75A-5 must be used for boating access area acquisition, development, and maintenance.

Effective Dates. Section 5 of the act becomes effective January 1, 2000 and applies to fees collected from each boat registration in effect on or after that date. The remaining sections become effective January 1, 2000.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 499 (Senate Finance Committee Substitute)

SHORT TITLE: Boat Registration Fees/AB

SPONSOR(S): Senator Hoyle

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
Wildlife Resources Fund					
Boating Account	$251,338	$691,806	$381,056	$502,676	$691,806
EXPENDITURES					
Wildlife Resources Fund					
Boating Account	Not Yet Determined				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Wildlife Resources Commission

EFFECTIVE DATE: Section 5 (boating access) of the act becomes effective January 1, 2000 and applies to fees collected from each boat registration in effect on or after that date. The remainder of the act becomes effective January 1, 2000.

BILL SUMMARY:

The bill increases the application and renewal fees for identification numbers on boats from $8 to $10 for a one year period and from $20 to $25 for a three year period. The same fee increase applies to the change in boat ownership. The bill mandates that at least $3 of the registration fee shall be used for boating access area acquisition, development, and maintenance.

BACKGROUND:

The Boating Account in the Wildlife Resources Fund received $2.6 million in revenue in FY 1997-98. Revenues deposited into the Account come from 1) fees from boat identification numbers and 2) gasoline excise tax credited to the account from the Highway Fund.

ASSUMPTIONS AND METHODOLOGY:

The Wildlife Resources Commission has a computerized vessel (boat) registration system that tracks the issuance and renewal of boat identification numbers. The number of three and one year registration renewals for the next five fiscal years (shown below) was obtained from this system. The agency could not project the growth in three year registrations, but it is clear that one year registrations are flat. Most boat owners are taking advantage of the discount for three year registration.

	FY 99-00	FY00-01	FY01-02	FY02-03	FY 03-04
3 Year Registration	96,198	134,024	71,874	96,198	134,024
Fee Increase	$5	$5	$5	$5	$5
Revenue	$480,990	$670,120	$359,370	$480,990	$670,120
1 Year Registration	10,843	10,843	10,843	10,843	10,843
Fee Increase	$2	$2	$2	$2	$2
Revenue	$21,686	$21,686	$21,686	$21,686	$21,686
Total Revenue	$502,676	$691,806	$381,056	$502,676	$691,806

With a January 1, 2000 effective date, the FY 1999-00 revenue is half of the $502,676 projected for that year.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic

APPROVED BY:

DATE:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

SENATE BILL 1112

Short Title: No Sales Tax Fee/Other Changes. (Public)

Sponsors: Senator Kerr.

Referred to: Finance.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO PROMOTE ELECTRONIC COMMERCE BY REPEALING THE SALES TAX REGISTRATION FEE AND TO MAKE OTHER CHANGES TO THE TAX LAWS AND RELATED STATUTES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-164.4(c) reads as rewritten:

"(c) Certificate of Registration. -- Before a person may engage in business as a retailer or a wholesale merchant, the person must obtain a certificate of registration from the Department. To obtain a certificate of registration, a person must register with the ~~Department and pay fifteen dollars ($15.00).~~ Department.

A certificate of registration is valid unless it is revoked for failure to comply with the provisions of this Article or becomes void. A certificate issued to a retailer becomes void if, for a period of 18 months, the retailer files no returns or files returns showing no sales."

Section 2. G.S. 105-88 reads as rewritten:

"**§ 105-88. Loan agencies or brokers.**

(a) Every person, firm, or corporation engaged in or soliciting any of the following businesses, and maintaining a place of business for conducting the business, must pay for the privilege of engaging in that business an annual tax of seven hundred fifty dollars ($750.00) for each location at which the business is conducted:

(1) The ~~the regular~~ business of making loans or lending money, accepting liens on, or contracts of assignments of, salaries or wages, or any part thereof, or other security or evidence of debt for repayment of such loans in installment payment or ~~otherwise, and~~

~~maintaining in connection with same any office or other located or established place for the conduct, negotiation, or transaction of such business and/or advertising or soliciting such business in any manner whatsoever, shall be deemed a loan agency, and shall apply for and procure from the Secretary of Revenue a State license for the privilege of transacting or negotiating such business at each office or place so maintained, and shall pay for such license a tax of seven hundred fifty dollars ($750.00).~~ otherwise.

(2) The business of check cashing regulated under Article 22 of Chapter 53 of the General Statutes.

(3) The business of pawnbroker regulated under Chapter 91A of the General Statutes.

(b) This section does not apply to banks, industrial banks, trust companies, savings and loan associations, cooperative credit unions, the business of negotiating loans on real estate as described in G.S. 105-41, ~~pawnbrokers lending or advancing money on specific articles of personal property,~~ or insurance premium finance companies licensed under Article 35 of Chapter 58 of the General Statutes. This section applies to those persons or concerns operating what are commonly known as loan companies or finance companies and whose business is as hereinbefore described, and those persons, firms, or corporations pursuing the business of lending money and taking as security for the payment of the loan and interest an assignment of wages or an assignment of wages with power of attorney to collect the amount due, or other order or chattel mortgage or bill of sale upon household or kitchen furniture. No real estate mortgage broker is required to obtain a privilege license under this section merely because the broker advances the broker's own funds and takes a security interest in real estate to secure the advances and when, at the time of the advance, the broker has already made arrangements with others for the sale or discount of the obligation at a later date and does so sell or discount the obligation within the period specified in the arrangement or extensions thereof; or when, at the time of the advance the broker intends to sell the obligation to others at a later date and does, within 12 months from date of initial advance, make arrangements with others for the sale of the obligation and does sell the obligation within the period specified in the arrangement or extensions thereof; or because the broker advances the broker's own funds in temporary financing directly involved in the production of permanent-type loans for sale to others; and no real estate mortgage broker whose mortgage lending operations are essentially as described above is required to obtain a privilege license under this section.

(c) At the time of making any such loan, the person, or officer of the firm or corporation making the ~~same;~~ loan, shall give to the borrower in writing in convenient form a statement showing the amount received by the borrower, the amount to be paid back by the borrower, ~~and~~ the time in which ~~said~~ the amount is to be paid, and the rate of interest and discount agreed upon.

(d) ~~Any such person, firm, or corporation failing, refusing, or neglecting to pay the tax herein levied shall be guilty of a Class 1 misdemeanor in addition to double~~

~~the tax due. No such loan shall be~~ A loan is not collectible at law in the courts of this State in any case where the person making ~~such~~ the loan has failed to pay the tax levied ~~herein, and/or otherwise complied~~ in this section or otherwise failed to comply with the provisions of this section.

(e) Counties, cities, and towns may levy a license tax on the business taxed under this section not in excess of one hundred dollars ($100.00)."

Section 3. G.S. 105-164.3(25) reads as rewritten:

"(25) 'Utility' means ~~an electric power company or a telephone company that is subject to a privilege tax based on gross receipts under G.S. 105-116 or 105-120, a~~ any of the following:

a. A business entity that provides local, toll, or private telecommunications service as defined by G.S. ~~105-120(e), or a~~ 105-120(e).

b. A business entity or a municipality that sells electric ~~power, other than a municipality whose only wholesale supplier of electric power is a federal agency and who is required by a contract with that federal agency to make payments in lieu of taxes.~~ power."

Section 4. G.S. 105-164.13 is amended by adding a new subdivision to read:

"(46) Sales of electricity by a municipality whose only wholesale supplier of electric power is a federal agency and who is required by a contract with that federal agency to make payments in lieu of taxes."

Section 5. G.S. 105-164.13(13b) reads as rewritten:

"(13b) Prescription ~~drugs distributed free of charge by the manufacturer,~~ drugs, including the constituent elements and ingredients used to produce the drugs, the packaging materials, and any instructions or information about the product included in the package with the drugs."

Section 6. G.S. 20-50(a) reads as rewritten:

"(a) ~~Except as otherwise provided in this Article, every owner of a~~ A vehicle intended to be operated upon any highway of this State must be registered with the Division in accordance with G.S. 20-52 and the owner of the vehicle must comply with G.S. 20-52 before operating the vehicle. A vehicle that is leased to an individual who is a resident of this State is a vehicle intended to be operated upon a highway of this State. ~~and required by this Article to be registered shall, before the same is so operated, apply to the Division for and obtain the registration thereof, the registration plates therefor and a certificate of title therefor, and attach the registration plates to the vehicle, except when an owner is permitted to operate a vehicle under the registration provisions relating to manufacturers, dealers and nonresidents contained in G.S. 20-79, or under temporary registration plates as provided in this Article: Provided that the~~

The Commissioner of Motor Vehicles or ~~his~~ the Commissioner's duly authorized agent is empowered to grant a special one-way trip permit to move a vehicle without license upon good cause being shown. ~~It is further provided that when~~ When the owner of a vehicle leases ~~such~~ the vehicle to a carrier of passengers or property and ~~it~~ the vehicle is actually used by ~~such~~ the carrier in the operation of its business, the ~~registration~~ license plates may be obtained by the lessee, upon written consent of the owner, after the certificate of title has been obtained by the owner. ~~Provided further that when~~ When the owner of a vehicle leases ~~such~~ the vehicle to a farmer and ~~it~~ the vehicle is actually used by ~~such~~ the farmer in the operation of ~~his~~ a farm, the ~~registration~~ license plates may be obtained by the farmer at the applicable farmer rate, upon written consent of the owner, after the certificate of title has been obtained by the owner. The lessee shall make application on an appropriate form furnished by the Division and file such evidence of the lease as the Division may require."

Section 7. G.S. 105-449.87(a)(1) reads as rewritten:

"(a) Tax. -- An excise tax at the motor fuel rate is imposed on the following:

(1) Dyed diesel fuel that is used to operate a highway vehicle for a use that is not a nontaxable use under § 4082(b) of the Code. The tax does not apply, however, to dyed diesel fuel that is used to operate special mobile equipment."

Section 8. G.S. 105-449.106 reads as rewritten:

"**§ 105-449.106. Quarterly refunds for certain local governmental entities, nonprofit organizations, ~~and taxicabs.~~ taxicabs, and special mobile equipment.**

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

~~(1) A county or a municipal corporation.~~

~~(2) A private, nonprofit organization that transports passengers under contract with or at the express designation of a unit of local government.~~

~~(3) A volunteer fire department.~~

~~(4) A volunteer rescue squad.~~

~~(5) A sheltered workshop recognized by the Department of Health and Human Services.~~

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

Any of the following entities may receive a refund under this subsection:

(1) A county or a municipal corporation.

(2) A private, nonprofit organization that transports passengers under contract with or at the express designation of a unit of local government.
(3) A volunteer fire department.
(4) A volunteer rescue squad.
(5) A sheltered workshop recognized by the Department of Health and Human Services.

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

(c) Special Mobile Equipment. -- A person who purchases and uses motor fuel to operate special mobile equipment off-highway may receive a quarterly refund, for the excise tax paid during the preceding quarter, at a rate equal to the flat cents-per-gallon rate plus the variable cents-per-gallon rate in effect during the quarter for which the refund is claimed, less the amount of sales and use tax due on the fuel under this chapter as determined in accordance with G.S. 105-449.107(c). An application for a refund must be made in accordance with this Part."

Section 9. G.S. 20-140.5 reads as rewritten:

"**§ 20-140.5. Special mobile equipment may tow certain vehicles.**

Special mobile equipment may ~~tow any of the following vehicles:~~ not tow any vehicle other than the following:

(1) A single passenger vehicle that can carry no more than nine ~~passengers and is not loaded, in whole or in part, with passengers or property.~~ passengers, is carrying no passengers, and is carrying no more than its registered weight in property.
(2) A single property-hauling vehicle that has a registered weight of 5,000 pounds or ~~less and is not loaded, in whole or in part, with passengers or property.~~ less, is carrying no passengers, and is carrying no more than its registered weight in property.

~~Special mobile equipment may not tow a vehicle that is not listed in this section.~~"

Section 10. G.S. 20-116(a) reads as rewritten:

"(a) The total outside width of any vehicle or the load thereon shall not exceed 96 inches, except as otherwise provided in this ~~section: Provided that when~~ section. When hogsheads of tobacco are being transported, a tolerance of six inches ~~shall be allowed and that when~~ is allowed. When sheet or bale tobacco is being transported the load ~~does~~ must not exceed a width of 114 inches at the top of the load and the bottom of the load at the truck bed ~~does~~ must not exceed the width of 102 inches inclusive of allowance for load shifting or settling. ~~Provided, further, that vehicles~~ Vehicles (other than passenger buses) ~~which~~ that do not exceed the overall width of

102 inches and otherwise provided in this section may be operated in accordance with G.S. 20-115.1(c), (f), and (g). Special mobile equipment is allowed a total outside width of 102 inches."

Section 11. G.S. 105-449.116 reads as rewritten:

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

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

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

Section 12. G.S. 105-122(d) reads as rewritten:

"(d) After determining the proportion of its total capital stock, surplus and undivided profits as set out in subsection (c) of this section, which amount so determined shall in no case be less than ~~fifty-five percent (55%) of the appraised value as determined for ad valorem taxation of all the real and tangible personal property in this State of each such corporation plus the total appraised value of intangible property returned for taxation of intangible personal property as herein specified nor less than~~ its total actual investment in tangible property in this State, every corporation taxed under this section shall annually pay to the Secretary of Revenue, at the time the report and statement are due, a franchise or privilege tax, which is hereby levied at the rate of one dollar and fifty cents ($1.50) per one thousand dollars ($1,000) of the total amount of capital stock, surplus and undivided profits as herein provided. The tax imposed in this section shall in no case be less than thirty-five dollars ($35.00) and shall be for the privilege of carrying on, doing business, and/or the continuance of articles of incorporation or domestication of each such corporation in this State. ~~Appraised value of tangible property including real estate shall be the ad valorem valuation for the calendar year next preceding the due date of the franchise tax return. Appraised value of intangible property shall be the total gross valuation required to be reported for intangible tax purposes on April 15 coincident with or next preceding the due date of the franchise tax return.~~ The term

'total actual investment in tangible property' as used in this section shall be construed to mean the total original purchase price or consideration to the reporting taxpayer of its tangible properties, including real estate, in this State plus additions and improvements thereto less reserve for depreciation as permitted for income tax ~~purposes, and also less any indebtedness incurred and existing by virtue of the purchase of any real estate and any permanent improvements made thereon.~~ purposes. In computing 'total actual investment in tangible personal property' there shall also be deducted reserves for the entire cost of any air-cleaning device or sewage or waste treatment plant, including waste lagoons, and pollution abatement equipment purchased or constructed and installed which reduces the amount of air or water pollution resulting from the emission of air contaminants or the discharge of sewage and industrial wastes or other polluting materials or substances into the outdoor atmosphere or into streams, lakes, or rivers, upon condition that the corporation claiming such deduction shall furnish to the Secretary a certificate from the Department of Environment and Natural Resources or from a local air pollution control program for air-cleaning devices located in an area where the Environmental Management Commission has certified a local air pollution control program pursuant to G.S. 143-215.112 certifying that said Department or local air pollution control program has found as a fact that the air-cleaning device, waste treatment plant or pollution abatement equipment purchased or constructed and installed as above described has actually been constructed and installed and that such device, plant or equipment complies with the requirements of the Environmental Management Commission or local air pollution control program with respect to such devices, plants or equipment, that such device, plant or equipment is being effectively operated in accordance with the terms and conditions set forth in the permit, certificate of approval, or other document of approval issued by the Environmental Management Commission or local air pollution control program and that the primary purpose thereof is to reduce air or water pollution resulting from the emission of air contaminants or the discharge of sewage and waste and not merely incidental to other purposes and functions. The cost of constructing facilities of any private or public utility built for the purpose of providing sewer service to residential and outlying areas shall be treated as deductible for the purposes of this section; the deductible liability allowed by this section shall apply only with respect to such pollution abatement plants or equipment constructed or installed on or after January 1, 1955."

Section 13. Section 1 of this act becomes effective January 1, 2000. Sections 2 through 4, 7, and 9 through 11 of this act become effective July 1, 1999. Section 5 of this act becomes effective October 1, 1999. Section 8 of this act is effective when it becomes law and applies to taxes paid on or after January 1, 1999. Section 12 of this act becomes effective for taxable years beginning on or after January 1, 2000. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 1112
Proposed Committee Substitute S1112-CSRBX-6/1
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: No Sales Tax Fee/Other Changes. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO PROMOTE ELECTRONIC COMMERCE BY REPEALING THE SALES TAX REGISTRATION FEE AND TO MAKE OTHER CHANGES TO THE TAX LAWS AND RELATED STATUTES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-164.4(c) reads as rewritten:

"(c) Certificate of Registration. -- Before a person may engage in business as a retailer or a wholesale merchant, the person must obtain a certificate of registration from the Department. To obtain a certificate of registration, a person must register with the ~~Department and pay fifteen dollars ($15.00).~~ Department.

A certificate of registration is valid unless it is revoked for failure to comply with the provisions of this Article or becomes void. A certificate issued to a retailer becomes void if, for a period of 18 months, the retailer files no returns or files returns showing no sales."

Section 2. G.S. 105-88 reads as rewritten:

"**§ 105-88. Loan ~~agencies or brokers.~~ agencies.**

(a) Every person, firm, or corporation engaged in any of the following businesses must pay for the privilege of engaging in

that business an annual tax of seven hundred fifty dollars ($750.00) for each location at which the business is conducted:

(1) The ~~the regular~~ business of making loans or lending money, accepting liens on, or contracts of assignments of, salaries or wages, or any part thereof, or other security or evidence of debt for repayment of such loans in installment payment or ~~otherwise, and maintaining in connection with same any office or other located or established place for the conduct, negotiation, or transaction of such business and/or advertising or soliciting such business in any manner whatsoever, shall be deemed a loan agency, and shall apply for and procure from the Secretary of Revenue a State license for the privilege of transacting or negotiating such business at each office or place so maintained, and shall pay for such license a tax of seven hundred fifty dollars ($750.00).~~ otherwise.

(2) The business of check cashing regulated under Article 22 of Chapter 53 of the General Statutes.

(3) The business of pawnbroker regulated under Chapter 91A of the General Statutes.

(b) This section does not apply to banks, industrial banks, trust companies, savings and loan associations, cooperative credit unions, the business of negotiating loans on real estate as described in G.S. 105-41, ~~pawnbrokers lending or advancing money on specific articles of personal property,~~ or insurance premium finance companies licensed under Article 35 of Chapter 58 of the General Statutes. This section applies to those persons or concerns operating what are commonly known as loan companies or finance companies and whose business is as hereinbefore described, and those persons, firms, or corporations pursuing the business of lending money and taking as security for the payment of the loan and interest an assignment of wages or an assignment of wages with power of attorney to collect the amount due, or other order or chattel mortgage or bill of sale upon household or kitchen furniture. No real estate mortgage broker is required to obtain a privilege license under this section merely because the broker advances the broker's own funds and takes a security interest in real estate to secure the advances and when, at the time of the advance, the broker has already made arrangements with others for the sale or discount of the obligation at a later date and does so sell or discount the obligation within the period specified in the arrangement or extensions thereof; or

when, at the time of the advance the broker intends to sell the obligation to others at a later date and does, within 12 months from date of initial advance, make arrangements with others for the sale of the obligation and does sell the obligation within the period specified in the arrangement or extensions thereof; or because the broker advances the broker's own funds in temporary financing directly involved in the production of permanent-type loans for sale to others; and no real estate mortgage broker whose mortgage lending operations are essentially as described above is required to obtain a privilege license under this section.

(c) At the time of making any such loan, the person, or officer of the firm or corporation making the ~~same,~~ loan, shall give to the borrower in writing in convenient form a statement showing the amount received by the borrower, the amount to be paid back by the borrower, ~~and~~ the time in which ~~said~~ the amount is to be paid, and the rate of interest and discount agreed upon.

(d) ~~Any such person, firm, or corporation failing, refusing, or neglecting to pay the tax herein levied shall be guilty of a Class 1 misdemeanor in addition to double the tax due. No such loan shall be~~ A loan is not collectible at law in the courts of this State in any case where the person making ~~such~~ the loan has failed to pay the tax levied ~~herein, and/or otherwise complied~~ in this section or otherwise failed to comply with the provisions of this section.

(e) Counties, cities, and towns may levy a license tax on the business taxed under this section not in excess of one hundred dollars ($100.00)."

Section 3. G.S. 105-164.3(25) reads as rewritten:

"(25) 'Utility' means ~~an electric power company or a telephone company that is subject to a privilege tax based on gross receipts under G.S. 105-116 or 105-120, a~~ any of the following:

a. A business entity that provides local, toll, or private telecommunications service as defined by G.S. ~~105-120(e), or a~~ 105-120(e).

b. A business entity or a municipality that sells electric ~~power, other than a municipality whose only wholesale supplier of electric power is a federal agency and who is required by a contract with that federal agency to make payments in lieu of taxes.~~ power."

Section 4. G.S. 105-164.13(13) reads as rewritten:

"(13) All of the following drugs, including the constituent elements and ingredients used to produce the drugs, the packaging materials, and any instructions or information about the product included in the package with the drugs:

a. Prescription drugs.

b. ~~Medicines~~ Nonprescription drugs sold on prescription of physicians, dentists, or ~~veterinarians; insulin whether or not sold on prescription.~~ veterinarians.

c. Insulin."

Section 5. G.S. 105-164.13(13b) is repealed.

Section 6. G.S. 105-164.13(35) reads as rewritten:

"(35) Sales by a nonprofit civic, charitable, educational, scientific, ~~literary~~ literary, or fraternal organization ~~continuously chartered or incorporated within North Carolina for at least two years~~ when ~~such~~ all of the following conditions are met:

a. The sales are conducted only upon an annual basis for the purpose of raising funds for ~~its activities, and when~~ the organization's activities.

b. ~~the~~ The proceeds ~~thereof~~ of the sale are actually used for ~~such purposes; provided, however, that no such sale shall be exempt if not actually consummated~~ the organization's activities.

c. The products sold are delivered to the purchaser within 60 days after the first solicitation of any sale made during ~~said~~ the organization's annual sales period."

Section 7. G.S. 105-164.13(39) is repealed.

Section 8. G.S. 105-164.13(42) reads as rewritten:

"(42) Tangible personal property that is purchased by a retailer for resale or is manufactured or purchased by a wholesale merchant for resale and then withdrawn from inventory and donated by the retailer or wholesale merchant to either a governmental entity or a nonprofit organization, contributions to which are deductible as charitable contributions for federal income tax purposes."

Section 9. G.S. 105-164.13 is amended by adding a new subdivision to read:

"(46) Sales of electricity by a municipality whose only wholesale supplier of electric power is a federal agency and who is required by a contract with that federal agency to make payments in lieu of taxes."

Section 10. G.S. 105-164.13A reads as rewritten:

"**§ 105-164.13A. Service charges on food, beverages, or meals.**

When a service charge is imposed on food, beverages, or meals, so much of ~~said~~ the service charge ~~as does~~ that not exceed ~~fifteen percent (15%)~~ twenty percent (20%) of the sales price is considered a tip and is specifically exempted from the tax imposed by this Article ~~when the service charge:~~ if it meets both of the following conditions:

(1) Is separately stated in the price list, menu, or written proposal and also in the invoice or ~~bill; and~~ bill.

(2) Is turned over to the personnel directly involved in the service of the food, beverages, or meals, in accordance with G.S. 95-25.6.

~~Such service charge shall be considered to be a tip.~~"

Section 11. G.S. 105-236(1) reads as rewritten:

"(1) Penalty for Bad Checks. -- When the bank upon which any uncertified check tendered to the Department of Revenue in payment of any obligation due to the Department returns the check because of insufficient funds or the nonexistence of an account of the drawer, the Secretary shall assess a penalty equal to ten percent (10%) of the check, subject to a minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). This penalty does not apply if the Secretary finds that, when the check was presented for payment, the drawer of the check had sufficient funds in an account at a financial institution in this State to pay the check and, by inadvertence, the drawer of the check failed to draw the check on the account that had sufficient funds. ~~The penalty imposed may not be waived or diminished by the Secretary.~~"

Section 12. G.S. 105-236(5) reads as rewritten:

"(5) Negligence. --

a. Finding of negligence. -- For negligent failure to comply with any of the provisions to which this Article applies, or rules issued pursuant thereto, without intent to defraud, the Secretary shall assess a penalty equal to ten percent (10%) of the deficiency due to the negligence.

b. Large individual income tax deficiency. -- In the case of individual income tax, if a taxpayer understates taxable income, by any means, by an amount equal to twenty-five percent (25%) or more of gross income, the Secretary shall assess a penalty equal to twenty-five percent (25%) of the deficiency. For purposes of this subdivision, "gross income" means gross income as defined in section 61 of the Code.

c. Other large tax deficiency. -- In the case of a tax other than individual income tax, if a taxpayer understates tax liability by twenty-five percent (25%) or more, the Secretary shall assess a penalty equal to twenty-five percent (25%) of the deficiency.

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

e. Inheritance and gift tax deficiencies. -- This subdivision does not apply to inheritance, estate, and gift tax deficiencies that are the result of valuation understatements."

Section 13. G.S. 105-237(a) reads as rewritten:

"(a) Waiver. -- The Secretary may, upon making a record of the reasons therefor, reduce or waive any penalties provided for in this ~~Subchapter, except the penalty provided in G.S. 105-236 relating to unpaid checks.~~ Subchapter."

Section 14. G.S. 105-259(b)(15) reads as rewritten:

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

...

(15) To exchange information concerning a tax imposed by Articles 2A, 2B, 2C, or 2D of this Chapter with one of the following agencies when the information is needed to fulfill a duty imposed on the Department or the agency:
a. The North Carolina Alcoholic Beverage Control Commission.
b. The Division of Alcohol Law Enforcement of the Department of Crime Control and Public Safety.
c. The Bureau of Alcohol, Tobacco, and Firearms of the United States Treasury Department.
d. Local law enforcement agencies."

Section 15. G.S. 105-266(c)(1) reads as rewritten:

"(c) Statute of Limitations. -- The period in which a refund must be demanded or discovered under this section is determined as follows:

(1) General Rule. -- No overpayment shall be refunded, whether upon discovery or receipt of written demand, if the discovery is not made or the demand is not received within three years after the date set by the statute for the filing of the return or within six months after the payment of the tax alleged to be an overpayment, whichever is later. An agreement by a taxpayer to extend the time in which the Department can assess the taxpayer for an underpayment automatically extends the time in which the taxpayer can request a refund."

Section 16. G.S. 105-449.87(a)(1) reads as rewritten:

"(a) Tax. -- An excise tax at the motor fuel rate is imposed on the following:

(1) Dyed diesel fuel that is used to operate a highway vehicle for a use that is not a nontaxable use under § 4082(b) of the Code. The tax does not apply, however, to dyed diesel fuel that is used to operate special mobile equipment."

Section 17. G.S. 105-449.106 reads as rewritten:

"**§ 105-449.106. Quarterly refunds for certain local governmental entities, nonprofit organizations, ~~and taxicabs.~~ taxicabs, and special mobile equipment.**

(a) Government and Nonprofits. -- A local governmental entity or a nonprofit organization listed below that purchases and uses motor fuel may receive a quarterly refund, for the excise tax

paid during the preceding quarter, at a rate equal to the amount of the flat cents-per-gallon rate plus the variable cents-per-gallon rate in effect during the quarter for which the refund is claimed, less one cent (1¢) per gallon. ~~Any of the following entities may receive a refund under this section:~~

~~(1) A county or a municipal corporation.~~

~~(2) A private, nonprofit organization that transports passengers under contract with or at the express designation of a unit of local government.~~

~~(3) A volunteer fire department.~~

~~(4) A volunteer rescue squad.~~

~~(5) A sheltered workshop recognized by the Department of Health and Human Services.~~

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

Any of the following entities may receive a refund under this subsection:

(1) A county or a municipal corporation.

(2) A private, nonprofit organization that transports passengers under contract with or at the express designation of a unit of local government.

(3) A volunteer fire department.

(4) A volunteer rescue squad.

(5) A sheltered workshop recognized by the Department of Health and Human Services.

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

(c) Special Mobile Equipment. -- A person who purchases and uses motor fuel to operate special mobile equipment off-highway may receive a quarterly refund, for the excise tax paid during the preceding quarter, at a rate equal to the flat

cents-per-gallon rate plus the variable cents-per-gallon rate in effect during the quarter for which the refund is claimed, less the amount of sales and use tax due on the fuel under this Chapter, as determined in accordance with G.S. 105-449.107(c). An application for a refund must be made in accordance with this Part."

Section 18. G.S. 105-449.116 is repealed.

Section 19. G.S. 20-50(a) reads as rewritten:

"(a) ~~Except as otherwise provided in this Article, every owner of a~~ A vehicle intended to be operated upon any highway of this State must be registered with the Division in accordance with G.S. 20-52 and the owner of the vehicle must comply with G.S. 20-52 before operating the vehicle. A vehicle that is leased to an individual who is a resident of this State is a vehicle intended to be operated upon a highway of this State. ~~and required by this Article to be registered shall, before the same is so operated, apply to the Division for and obtain the registration thereof, the registration plates therefor and a certificate of title therefor, and attach the registration plates to the vehicle, except when an owner is permitted to operate a vehicle under the registration provisions relating to manufacturers, dealers and nonresidents contained in G.S. 20-79, or under temporary registration plates as provided in this Article: Provided that the~~

The Commissioner of Motor Vehicles or ~~his~~ the Commissioner's duly authorized agent is empowered to grant a special one-way trip permit to move a vehicle without license upon good cause being shown. ~~It is further provided that when~~ When the owner of a vehicle leases ~~such~~ the vehicle to a carrier of passengers or property and ~~it~~ the vehicle is actually used by ~~such~~ the carrier in the operation of its business, the ~~registration~~ license plates may be obtained by the lessee, upon written consent of the owner, after the certificate of title has been obtained by the owner. ~~Provided further that when~~ When the owner of a vehicle leases ~~such~~ the vehicle to a farmer and ~~it~~ the vehicle is actually used by ~~such~~ the farmer in the operation of ~~his~~ a farm, the ~~registration~~ license plates may be obtained by the farmer at the applicable farmer rate, upon written consent of the owner, after the certificate of title has been obtained by the owner. The lessee shall make application on an appropriate form furnished by the Division and file such evidence of the lease as the Division may require."

Section 20. G.S. 20-87(10) reads as rewritten:

"(10) Special Mobile Equipment. -- The fee for special mobile equipment for the license year or any part of the license year is ~~the same as~~ two times the fee in subdivision (5) for a private passenger motor vehicle of not more than 15 passengers."

Section 21. G.S. 20-116(a) reads as rewritten:

"(a) The total outside width of any vehicle or the load thereon shall not exceed 96 inches, except as otherwise provided in this ~~section: Provided that when~~ section. When hogsheads of tobacco are being transported, a tolerance of six inches ~~shall be allowed and that when~~ is allowed. When sheet or bale tobacco is being transported the load ~~does~~ must not exceed a width of 114 inches at the top of the load and the bottom of the load at the truck bed ~~does~~ must not exceed the width of 102 inches inclusive of allowance for load shifting or settling. ~~Provided, further, that vehicles~~ Vehicles (other than passenger buses) ~~which~~ that do not exceed the overall width of 102 inches and otherwise provided in this section may be operated in accordance with G.S. 20-115.1(c), (f), and (g). Special mobile equipment is allowed a total outside width of 102 inches."

Section 22. G.S. 20-140.5 reads as rewritten:

"**§ 20-140.5. Special mobile equipment may tow certain vehicles.**

Special mobile equipment may ~~tow any of the following vehicles:~~ not tow any vehicle other than the following:

(1) A single passenger vehicle that can carry no more than nine ~~passengers and is not loaded, in whole or in part, with passengers or property.~~ passengers and is carrying no passengers.

(2) A single property-hauling vehicle that has a registered weight of 5,000 pounds or ~~less and is not loaded, in whole or in part, with passengers or property.~~ less, is carrying no passengers, and does not exceed its registered weight.

~~Special mobile equipment may not tow a vehicle that is not listed in this section.~~"

Section 23. G.S. 110-129.2(g) reads as rewritten:

(g) Other Uses of Directory Information. -- The ~~Employment Security Commission~~ following agencies may access information entered into the Directory from employer reports for the ~~purpose~~ purposes stated:

1. The Employment Security Commission for the purpose of administering employment security programs.

2. The North Carolina Industrial Commission ~~may access information entered into the Directory from employer reports~~ for the purpose of administering workers' compensation programs.

3. The Department of Revenue for the purpose of administering the taxes it has a duty to collect under Chapter 105 of the General Statutes."

Section 24. This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before the effective date of its amendment or repeal; nor does it affect the right to any refund or credit of a tax that accrued under the amended or repealed statute before the effective date of its amendment or repeal.

Section 25. Sections 1 and 20 of this act become effective January 1, 2000. Section 2 of this act becomes effective July 1, 1999. Sections 4 through 8, 10 through 13, and 16 of this act become effective October 1, 1999; Sections 11 through 13 apply to penalties assessed on or after that date. The remainder of this act is effective when it becomes law; Section 17 applies to taxes paid on or after January 1, 1999.

SENATE BILL 1112:
No Sales Tax Fee/Other Changes

BILL ANALYSIS

Committee:	Senate Finance	**Sponsor:**	Senator Kerr
Date:	June 2, 1999	**Summary by:**	Martha H. Harris & Cindy Avrette
Version:	PCS for 1st Edition S1112-CSRBX-6/1		Staff Attorney

SUMMARY: ***Promotes electronic commerce by repealing the sales tax registration fee and makes other changes to the tax laws and related statutes.***

BILL ANALYSIS:

Section 1 repeals the $15 sales tax registration fee effective January 1, 2000. This fee is payable at the time a person applies for and obtains a sales tax registration number. The elimination of the fee will better enable the Department to begin receiving sales and use tax reports electronically.

Section 2 provides that check cashers and pawnbrokers are subject to the same annual $750 privilege license tax as loan agencies, effective July 1, 1999. The tax must be paid for each location.

Sections 3 and 9 clarify the definition of a utility for sales tax purposes and move an exemption from the definition section to the exemption section. These sections become effective when they become law.

Sections 4 and 5 provide that all prescription drugs are exempt from sales tax, effective October 1, 1999. All of the drugs exempt from sales tax are placed in one statutory subdivision. Section 5 repeals one of the exemptions because it is incorporated into Section 4.

Section 6 deletes the language that a nonprofit corporation must be chartered or incorporated within North Carolina for two years before its sales are tax exempt. This restriction is constitutionally suspect because there appears to be no rational basis for the distinction. This section becomes effective October 1, 1999.

Section 7 repeals an unconstitutional sales tax exemption for the sale of paper, ink, and other tangible personal property to commercial printers and commercial publishers for use as component parts of free circulation publications that contain advertising of a general nature. The exemption applies primarily to publications such as "The Village Advocate". It does not apply to other free circulation publications, such as a real estate guide. To be constitutional, the exemption needs to be expanded to include all free circulation publications or it needs to be repealed. This section repeals it. This section becomes effective October 1, 1999.

Section 8 adds "governmental entity" as a donee in the sales tax exemption of tangible personal property that is purchased by a retailer for resale or is manufactured or purchased by a wholesale merchant for resale and then withdrawn from inventory and donated by the retailer or merchant to a nonprofit organization. This change would allow contributions to governmental entities such as schools to qualify for the sales tax exemption. This section becomes effective October 1, 1999.

Section 10 increases the percentage that may be added to a patron's bill as a tip without that amount being subject to sales tax, effective October 1, 1999. A service charge, or tip, imposed on a meal is subject to sales tax if it exceeds 15% of the amount charged for the meal. Some restaurants add a slightly higher

gratuity to a meal served to large parties. This section increases the amount that may be added to a bill as a tip without being subject to sales tax from 15% to 20%.

Sections 11 and 13 provide that the Secretary of Revenue may waive the penalty for bad checks, effective October 1, 1999. The Secretary has the authority to waive all other tax penalties for good cause.

Section 12 rewrites the tax penalties for negligence, effective October 1, 1999. Currently, in the case of income tax, a 25% penalty applies if the taxpayer understates taxable income by an amount equal to or greater than ¼ of gross income. For other taxes, the 25% penalty applies if the taxpayer understates tax liability by an amount equal to or greater than ¼ of actual liability. Thus, the 25% penalty is harder to trigger for income taxes than for other taxes. This section would limit the trigger based on gross income to individual income taxes. Thus, corporate income taxes would trigger the 25% penalty if liability is understated by at least ¼, not just if taxable income is understated by at least ¼ of gross income.

Section 14 amends the tax secrecy statute to allow the Department to communicate with local law enforcement officers concerning administration of the unauthorized substances tax. This section is effective when it becomes law.

Section 15 amends G.S. 105-266(c)(1) to give taxpayers the same amount of time to request a refund that the Department has to make an assessment. The Department can currently assess for a longer period of time than a person can get a refund. Taxpayers voluntarily extend the time for the Department to assess in some circumstance, but this does not extend the time for getting refund if any overpayments are found. This amendment would automatically extend the time to request a refund when the taxpayers agrees to extend the time the Department can assess. This section becomes effective when it becomes law.

Sections 16, 17, and 20 address a problem of special mobile equipment and the motor fuel tax. Special mobile equipment is a vehicle that has a permanently attached crane, mill, ditch-digging apparatus, or similar apparatus. The vehicle is driven on the highway only to get to and from a non-highway job. It is not designed or used primarily for the transportation of persons or property. It should not be paying motor fuel tax on the fuel used for a non-highway purpose. However, under the current law, it cannot use dyed (untaxed) diesel fuel nor can it receive a refund of the motor fuel tax paid on clear (taxed) diesel fuel. Section 16 provides that dyed (untaxed) diesel fuel may be used in special mobile equipment, effective October 1, 1999. Section 17 allows a quarterly refund for tax paid on fuel used in special mobile equipment, effective for taxes paid on or after January 1, 1999. As a result of these changes, the motor fuel used in special mobile equipment will be subject to sales tax, which is credited to the General Fund, as opposed to the motor fuel tax, which is credited to the Highway Fund and the Highway Trust Fund. Section 20 seeks to reduce the loss to the Highway Fund by increasing the registration fee for special mobile equipment from $20 to $40, effective January 1, 2000.

Section 18 repeals an unnecessary statute requiring certain fuel importers to register, effective when it becomes law.

Section 19 clarifies that vehicles leased to individuals who live in this State must be registered in this State, effective when this act becomes law.

Section 21 expands the maximum width of special mobile equipment from 96 inches to 102 inches, effective when this act becomes law.

Section 22 clarifies that vehicles towed by special mobile equipment may carry property that does not exceed the weight of the towed vehicle, effective when this act becomes law.

Section 23 allows the Department of Revenue to use information in the State Directory of New Hires for the purpose of administering the taxes it has a duty to collect. The State Directory of New Hires was established in 1997 to assist in the location of persons owing child support.. The Department of Health and Human Services maintains it. Every employer in the State must report to the Directory the hiring of every employee for whom a federal W-4 form is required to be completed. The report must contain the name, address, and social security number of the newly hired employee and the name, address, and federal and State tax ID number of the employer. This section becomes effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 1112 (Proposed Senate Finance Committee Substitute)

SHORT TITLE: No Sales Tax Fee / Other Changes

SPONSOR(S): Senator Kerr

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
General Fund					
Sales Tax Reg. Fee	($270,000)	($540,000)	($540,000)	($540,000)	($540,000)
Check cashing	$750,000	$750,000	$750,000	$750,000	$750,000
Pawnbrokers	$337,500	$337,500	$337,500	$337,500	$337,500
Prescription Drugs	($1,200,000)	($1,872,000)	($2,190,000)	($2,560,000)	($3,000,000)
Shoppers' Guides	$1,875,000	$2,500,000	$2,500,000	$2,500,000	$2,500,000
Net General Fund	$1,492,500	$1,175,500	$857,500	$487,500	$47,500
Local Govts.					
Prescription Drugs	($600,000)	($936,000)	($1,095,000)	($1,280,000)	($1,500,000)
Shoppers' Guides	$937,500	$1,250,000	$1,250,000	$1,250,000	$1,250,000
New Local Govt.	$337,500	$314,000	$155,000	($30,000)	($250,000)
Highway Fund					
Special Mobile Equipment	$41,160	$41,160	$41,160	$41,160	$41,160

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue, Department of Transportation – Division of Motor Vehicles

EFFECTIVE DATE: Sections 1 (sales tax registration fee) and 20 (vehicle registration for special mobile equipment) of this act become effective January 1, 2000. Section 2 (check cashers & pawnbrokers) becomes effective July 1, 1999. Sections 4 and 5 (prescription drugs), sections 6 and 8 (nonprofit sales), section 10 (tips), section 11 & 13 (bad checks), section 12 (income tax penalty), and section 16 (fuel in special mobile equipment) become effective October 1, 1999. Section 17 (fuel tax refunds to special mobile equipment) applies to taxes paid on or after January 1, 1999. The remainder of this act is effective when it becomes law.

BILL SUMMARY: This bill amends various tax laws and related statutes.

ASSUMPTIONS AND METHODOLOGY:
The following is a section by section analysis of SB 1112 PCS:

Section 1
This section repeals the $15 sales tax certificate of registration fee charged to new businesses. The number of registrations in recent years is as follows:

FY 1995-96	34,559
FY 1996-97	38,193
FY 1997-98	36,609

In 1998 and 1999, sales tax registrations are averaging approximately 3,000 a month. Assuming the continuation of the current registration rate, this section will eliminate the $15 fee for 36,000 businesses each year. The General Fund revenue loss will be $540,000 per year. The FY 1999-00 revenue loss will be $270,000 due to a January 1, 2000 effective date.

Section 2
This section imposes an annual $750 privilege license tax on each location of a check cashing or pawnbroker business. As of May 28, 1999, there are 195 check cashing businesses in North Carolina with 975 locations. The number of check cashing businesses has grown tremendously since 1997 when the state approved SB 312 (1997 SL, chapter 391) regulating the industry and approving the delayed deposit of personal checks. The Consumer Finance Administrator at the Office of the Commissioner of Banks thinks the check cashing market has now reached a saturation point and receives only two or three applications per month for new locations. This fiscal note assumes the number of check cashing businesses will peak at 1,000 in FY 1999-00. The $750,000 in revenue from the $750 tax on 1,000 locations will be deposited in the General Fund. With the 1997 law scheduled to sunset on July 1, 2001, it is uncertain how many locations will exist in FY 2001-02 and beyond.

As for pawnbrokers, there is no exact data on the number of businesses in the state. Prior to 1997, pawnbrokers were subject to an annual privilege license tax of $275 (formerly GS 105-50). The Department of Revenue reports that the number of pawnbrokers paying the privilege tax declined from 584 in FY 1993-94 to 356 in FY 1996-97. The past chair of the NC Pawn Brokers Association estimates there are 450 pawnbrokers in the state. The Consumer Finance Administrator at the Office of the Commissioner of Banks found 500 pawnbrokers in an internet phone directory search in 1997. This fiscal note will assume 450 pawnbroker locations and no future growth. The $750 annual privilege tax will result in $337,500 in revenue to the General Fund each year.

Section 3
No fiscal impact – clarifies definition of utility.

Section 4
Section 4 repeals the remaining state and local sales tax on prescription drugs. Most prescription drugs are either exempt from State and local sales and use taxes or are refundable. Drugs

purchased with a prescription, prescription drugs distributed free of charge by the manufacturer of the drugs, and prescription drugs purchased for use in the commercial production of animals are already exempt from sales tax. Most hospitals receive refunds of State and local sales and use taxes paid on prescription drugs acquired by the hospital. The only entities that pay tax on prescription drugs are 1) physicians and other medical professionals who buy the drugs to administer to patients in the course of their practice and 2) state hospitals, (other than the UNC hospitals), four state psychiatric hospitals, Alcohol and Drug Treatment Centers, and Mental Retardation Centers.

The Department of Revenue Sales and Use Tax Division estimates the state and local tax loss from this exemption to be $2.4 million in FY 1999-00. This estimate is considerably less than an estimate made in 1997 for SB 41 due to recent Tax Review Board decisions which held that physicians can be retail sellers of prescription drugs and therefore sales are exempt. The estimate is based on information obtained from sales and use tax audits of medical and dental practices and from an AMA survey. The number of medical professionals was obtained from the Census of Service Industries for North Carolina. The Department did not estimate any growth in the volume of prescription sales or in prescription drug prices. Data from State Employee Health Benefit Plan's self-insured indemnity program show that prescription drug prices increase 15% to 19% a year. This fiscal note uses a 17% inflation rate, the midpoint of this range. The October 1, 1999 effective date will reduce the FY 1999-00 revenue loss by one fourth.

Section 5

No fiscal impact - incorporates the exemption of prescription drugs distributed free of charge by the drug manufacturer into the language in Section 4.

Section 6

This section deletes the requirement that a nonprofit corporation must be chartered or incorporated in North Carolina for two years before its sales are tax exempt. The Director of the Sales Tax Division of the Department of Revenue believes the fiscal impact of this section is negligible, because few nonprofits are rejected for tax exemption status.

Section 7

This section repeals a sales tax exemption for free circulation publications such as shoppers' guides. The Department of Revenue Sales and Use Tax Division reports that the state tax loss for this exemption is $2.5 million a year. Thus repeal of this exemption will provide a revenue gain of $2.5 million to the General Fund each year. The corresponding local sales tax gain will be $1.25 million each year. The October 1, 1999 effective date will reduce the FY 1999-00 revenue gain to $1,875,000 for the General Fund and $937,500 for local governments.

Section 8

This section allows a sales tax exemption for corporate contributions of inventory to governmental entities. There have been no taxpayer complaints about the existing law, but Department officials perceive this as a future problem. No fiscal estimate is available, but the Department of Revenue believes that the impact is insignificant.

Section 9

No fiscal impact – this existing language is being moved to the exemption section of the sales tax statutes.

Section 10
No fiscal impact – this increases the allowable service charge or tip on meals from 15% to 20%.

Sections 11 & 13
No estimate available – the language allowing the Secretary of Revenue to waive penalties for bad checks is permissive. If the Secretary of Revenue chooses to waive a substantial number of penalties, there will be a small revenue loss.

Section 12
No estimate available. The Department of Revenue assesses very few penalties for negligence. This section could produce a small revenue gain for the General Fund if penalties are easier to assess on corporate taxpayers.

Section 14
No fiscal impact – technical change.

Section 15
No estimate available. By extending the time a taxpayer can request a refund, this section might produce a small revenue loss. However, the Department of Revenue has received only a small number of complaints about the current refund policy.

Sections 16 & 17
No estimate available. These sections will produce a small revenue loss to the Highway Fund and the Highway Trust Fund, but the Department of Revenue cannot provide the data needed to quantify the loss. Currently operators of special mobile equipment buy enough tax paid clear diesel fuel to cover their miles driven on the highway. For off highway use, the equipment operators use dyed, non-tax diesel fuel. If they request a refund for tax paid on clear fuel, their refunds are processed annually. By providing that dyed fuel may be used in special mobile equipment, this section codifies an administrative practice allowed by the Department of Revenue. However, the Highway Fund will lose the tax paid currently on diesel fuel for highway use. For those that apply for a refund, it will speed up the refund process and the state will lose interest on invested funds.

Section 18
No fiscal impact – according to Revenue, the statute requiring bonded fuel importers to register is unnecessary due to the lack of importers in this category.

Section 19
No fiscal impact - codifies the administrative practice used by the Division of Motor Vehicles to register vehicles leased out of state.

Section 20

The fee for special mobile equipment is doubled by section 20. As of January 1, 2000, the fee will increase from $20 a year to $40 on 2,058 pieces of special mobile equipment. This fee increase will produce a $41,160 revenue gain for the Highway Fund each year. It is difficult to project future year growth in the volume of vehicles registered, because there has been no consistent pattern of registration in the last five years. Equipment numbers have increased and declined in recent years.

Section 21

No fiscal impact – equipment operators now can apply for overweight or oversize permits for larger width.

Section 22

No estimate available – this section may reduce DMV revenue from penalties, but no data are available to quantify the amount.

Section 23

No fiscal impact – broadens access to information.

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

VISITOR REGISTRATION SHEET

SENATE FINANCE — WEDNESDAY, JUNE 2, 1999

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
J. Mitchell Glass	DWI SERVICES OF NC 3749 BENSON DRIVE RALEIGH, NC 27609
M. Gorbachov	Eastern NC Chamber of Commerce
Ed Regan	N.C. Assoc of Co. Comm
Cam Cruz	BPMHL
Leslie Bevacqua	NCCBI
William Mintz	Kingstown
Linda Mintz	2030-B Kingston Rd Kingstown
Doug Howey	NCDMA
Howard Kramer	N. C. Pawnbrokers Assn
Susan Howard	DMV - DOT
Cleo Smith	Raleigh

VISITOR REGISTRATION SHEET

SENATE FINANCE — WEDNESDAY, JUNE 2, 1999

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bob Brueckner	Carolina Canoe Club, Raleigh, NC
Patti Seawell	NC DIR
Carla Collins	DOR
Ronnie Collins	DOR
Andy Sabol	DOR
Donna Alderman	DOR
Kerry Matthews Corley	Arthur Andersen LLP
Sabra J Faires	Dept. of Revenue
Foster Owen	City of Salisbury
Buddy Gettys	Town of Spencer
Jean Carter	Hunton & Williams (Raleigh, NC)

VISITOR REGISTRATION SHEET

SENATE FINANCE — WEDNESDAY, JUNE 2, 1999

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bob Rohr	NCMLC
Dick Hamilton	NCMLC
Brian Ellen	NCRMA
Amy Fulbright	Hunton & Wms.
Tommy Worth	Carlton Ketchum & Carlton
David Simmons	ZDA, PA
Alan Miles	Bailey & Dixon LLP
John C. Vest	City of Salisbury 400 N. Church St, Salisbury, NC 28144-4387
Paul Woodson	City of Salisbury City Council
BILL BURGIN	CITY OF SALISBURY CITY COUNCIL
Dave Treme	City of Salisbury City manager

VISITOR REGISTRATION SHEET

SENATE FINANCE — WEDNESDAY, JUNE 2, 1999

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jane Upchurch	CPCC
Joe Pennacchia	Piedmont Natural Gas
John McAlister	Duke Energy
Starsky + Hutch	CHIP
Jim Poe	UNC
Gary Harris	NC Petroleum Marketers
Doug Howey	" "
Fran Preston	NCRMA

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Wednesday, June 02, 1999

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

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

S.B. **55** Revenue Laws Technical Changes.

Draft Number:	PCSX8611
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment: SB 55

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Thursday, June 03, 1999

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

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

S.B. **499** Boat Registration Fees/AB.

Draft Number:	PCSA147
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO.1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO.2

H.B.(SCS #1)**486** Parade Trailers--Permanent Plates.

Draft Number:	PCS3434
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comment: SB 499 and HB 486

AGENDA
SENATE FINANCE COMMITTEE MEETING
ON
WEDNESDAY, June 9,1999
1:30 PM – ROOM 544

MEETING CALLED TO ORDER – SENATOR HOYLE

INTRODUCTION OF PAGES

BILLS TO BE CONSIDERED:

- SB 244 Unclaimed Property Act - Sen. Hartsell
- SB 619 Fuquay-Varina Annexations – Sen. Miller
- SB 1006 DWI Assessments - Sen Hoyle
- SB 1112 No Sales Tax Fee/Other Changes - Sen. Kerr

- HB 755 Highway Lighting Service Districts - Rep. Yongue
- HB 863 – St. James Incorporation – Rep. Redwine

ADJOURNMENT OF MEETING

SENATE FINANCE COMMITTEE

WEDNESDAY, JUNE 9, 1999

1:30 PM – Room 544

The Senate Finance Committee met on Wednesday, June 9, 1999 at 1:30 PM in Room 544 with Senator Hoyle presiding. They're 24 committee members present. Josh Bass from Moyock, North Carolina, sponsored by Senator Basnight, Courtney Farmer from Goldsboro, North Carolina, sponsored by Senator Kerr and Shea Setzer from Asheboro, North Carolina, sponsored by Senator Hoyle were introduced as the pages for the meeting.

Senator Hoyle named the subcommittee for HB 120 –Tax Lien Advertisement and Collection, they are: Senator Wellons, as Chairman, and Senators Clodfelter, Dalton, Foxx and Webster.

HB 755 – Highway Lighting Service Districts

Representative Yongue was recognized to explain the bill and at the conclusion of his explanation, Senator Weinstein moved to give the bill a "Favorable Report", motion passed. Copy of Bill and supporting documents included in the minutes.

HB 863 – St. James Incorporation

Senator Soles was recognized to explain the bill for Representative Redwine and at the conclusion of his explanation, Senator Soles moved to give the bill a "Favorable Report", motion passed. Copy of Bill is included in the minutes.

SB 619 – Fuquay-Varina Annexations

Senator Miller was recognized to explain the bill and at the conclusion of his explanation, Senator Allran moved to give the bill a "Favorable Report", motion passed. Copy of Bill is included in the minutes.

SB 244 – Unclaimed Property Act

Senator Hartsell was recognized to explain the bill. He moved for adoption of a proposed committee substitute, motion passed. He submitted Amendment #1 and made a motion for adoption, motion passed. He proceeded to explain the bill as amended. Senator Hoyle submitted Amendment #2 and moved for adoption of amendment, motion passed. Mr. Terry Allen with the Escheats Division of the State Treasurer's Office spoke to the bill.

After a series of questions by members of the committee, Senator Cooper moved to give the bill a "Favorable Report as amended and to be rolled into a new committee substitute", motion passed. Copy of Bill and supporting documents included in the minutes.

SB 1112 -No Sales Tax Fee/Other Changes

Senator Kerr was recognized to explain the bill. Senator Cooper submitted Amendment #1 and explained his amendment and moved for the adoption, motion passed. Senator Phillips submitted Amendment #2 and moved for the adoption, motion passed Senator Dannelly moved to give the bill a "Favorable Report as amended and to be rolled into a committee substitute", motion passed. Copy of Bill and supporting documents are included in the minutes. **NOTE: This incorporated SB 884 into this new committee substitute**

Senator Kerr took over conducting the Meeting so that Senator Hoyle could explain the following bill.

SB 1006 – DWI Assessments

Senator Hoyle was recognized to explain the bill. Mr. Pete Martin and Ms. Michelle Cotton of the Division of Mental Health, Disability Division, Substance Abuse Service spoke on the bill and answered questions from committee members on this Bill. After a time of discussion, Senator Hoyle stated that the Bill would be carried over to the next meeting. Copy of Bill and supporting documents included in the minutes.

Meeting adjourned.

David W. Hoyle, Co-Chair

John H. Kerr, III Co-Chair

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

Visitors' Sign Up Sheet is Attachment #1
Committee Report dated June 9, 1999 is Attachment #2
Committee Report dated June 14, 1999 is Attachment #3
Committee Report dated June 15, 1999 is Attachment #4

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 3

HOUSE BILL 755
Committee Substitute Favorable 4/20/99
Third Edition Engrossed 4/23/99

Short Title: Highway Lighting Service Districts. (Public)

Sponsors:

Referred to:

March 31, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CERTAIN MUNICIPALITIES TO CREATE SERVICE DISTRICTS TO FINANCE LIGHTING AT INTERSTATE HIGHWAY INTERCHANGES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-536 is amended by adding a new subdivision to read:

"(3b) Lighting at interstate highway interchange ramps."

Section 2. This act applies only to towns that, at the time the district is created, have a population of between 2,000 and 2,500 and are located in a county that has a land area of more than 946 square miles according to the 1990 federal census.

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

HOUSE BILL 755:
Highway Lighting Service Districts

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Rep. Yongue
Date:	June 1, 1999	**Summary by:**	Martha K. Walston
Version:	3rd Edition		Committee Counsel

SUMMARY: ***House Bill 755 authorizes certain towns to create a service district in order to finance, provide, or maintain for the district the following service: lighting at interstate highway interchange ramps. The bill applies only to towns that have a population of between 2,000 and 2,500 and are located in a county that has a land area of more than 946 square miles according to the 1990 federal census. The current version of the bill differs from the version that passed House Finance by adding the language "according to the 1990 federal census". The act is effective when it becomes law.***

CURRENT LAW: Article 23 of Chapter 160A sets out "The Municipal Service District Act of 1973". This Act allows a city council, by resolution, to define a service district upon finding that a proposed district is in need of one or more of the services, facilities or functions listed in the Act to a demonstrably greater extent than the remainder of the city. A service district may be established for the following purposes: (1) beach erosion control and flood and hurricane protection; (1a) certain services that preserve the character of an historic district; (2) downtown revitalization projects; (3) drainage projects; (4) off-street parking facilities; and (5) watershed improvement projects. A city may levy property taxes within defined service districts in addition to those levied throughout the city. The property taxes may not be in excess of a rate on each $100 value of property subject to taxation which, when added to the rate levied city wide, would exceed a maximum combined rate of $1.50 on the $100 appraised value of property subject to taxation. A city may also issue general obligation bonds to finance the services provided in a service district.

BILL ANALYSIS: Senate Bill 755 adds "lighting at interstate highway interchange ramps" to the purposes for which a service district may be established. The bill applies only to towns that, at the time the district is created, have a population of between 2,000 and 2,500 and are located in a county that has a land area of more than 946 square miles according to the 1990 federal census.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 755 (House Finance Committee Substitute)

SHORT TITLE: Highway Lighting Service Districts

SPONSOR(S): Representative Yongue

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
Special District Fund	$6,000	$6,000	$6,000	$6,000	$6,000

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Town of St. Pauls in Robeson County

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

BILL SUMMARY: The bill authorizes the creation of a service district to finance lighting at interstate highway interchanges for municipalities with a population between 2,000 and 2,500 and located in a county that has an area more than 945 square miles.

ASSUMPTIONS AND METHODOLOGY: This bill applies specifically to St. Pauls in Robeson County. The town wishes to create a service district to install lights in the area of the on and off ramps of Exit 31 on Interstate 95. The town has the approval of the 10 property owners in the proposed district. The proposed tax is 10 cents per $100 of property value. With a property value of $6 million in the proposed district, the tax will generate $6,000 a year. The town has contracted with CP&L to install and maintain the street lights for $7,500 a year. The town will pay the remaining $1,500 a year from its General Fund.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic

APPROVED BY: Tom Covington

DATE: Tuesday, April 20, 1999

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 863

Short Title: St. James Incorporation. (Local)

Sponsors: Representatives Redwine; and Hill.

Referred to: Finance.

April 1, 1999

A BILL TO BE ENTITLED

AN ACT TO INCORPORATE THE TOWN OF ST. JAMES.

The General Assembly of North Carolina enacts:

Section 1. A Charter for the Town of St. James is enacted to read:

"CHARTER OF THE TOWN OF ST. JAMES.

"CHAPTER I.

"INCORPORATION AND CORPORATE POWERS.

"Section 1.1. **Incorporation.** The inhabitants of the Town of St. James are a body corporate and politic under the name 'Town of St. James'. Under that name they shall have all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general law of North Carolina.

"CHAPTER II.

"CORPORATE BOUNDARIES.

"Section 2.1. **Corporate Boundaries.** Until modified in accordance with the law, the corporate boundaries of the Town of St. James are as follows:

Beginning at a point in Brunswick County in the southern right-of-way of N.C. Highway 211 (150' right-of-way) where it intersects the eastern right-of-way of St. James Drive (60' right-of-way), said point having the following NCGS (NAD 1983) coordinates: (N) 78344.141 (E) 2276451.136 and being located N 77^ 16'46"W 2,027.09' from NCGS Monument "System" having NCGS (NAD 1983) coordinates: (N) 77897.789 (E) 2278428.469 thence from said beginning point and with the southern right-of-way of N.C. Highway 211 N74^25'16"W a distance of 99.99' to a point; thence leaving the right-of-way of N.C. 211 S 15^34'51" W a distance of 800.35' to a point; thence with a curve turning to the left with an arc length of

587.75', with a radius of 1680.00', with a chord bearing of S 05^33'29" W, with a chord length of 584.76' to a point, thence S 04^27'52" E a distance of 148.27' to a point; thence with a curve turning to the left with an arc length of 236.19', with a radius of 550.00', with a chord bearing of S 16^46'00" E, with a chord length of 234.38' to a point, thence S 29^04'08" E a distance of 66.08' to a point; thence with a curve turning to the right with an arc length of 182.71', with a radius of 450.00', with a chord bearing of S 17^26'15" E, with a chord length of 181.46' to a point, thence S 05^48'21" E a distance of 527.02' to a point; thence with a curve turning to the right with an arc length of 207.11', with a radius of 600.00', with a chord bearing of S 04^04'59" W, with a chord length of 206.09' to a point, thence S 13^57'20" W a distance of 402.85' to a point; thence with a curve turning to the right with an arc length of 148.95', with a radius of 300.00', with a chord bearing of S 28^10'45" W, with a chord length of 147.42' to a point, thence S 42^24'10" W a distance of 12.48' to a point; thence with a curve turning to the left with an arc length of 90.86', with a radius of 400.00', with a chord bearing of S 35^53'45" W, with a chord length of 90.66' to a point, thence S 29^23'19" W a distance of 517.06' to a point; thence with a curve turning to the right with an arc length of 42.51', with a radius of 450.00', with a chord bearing of S 32^05'42" W, with a chord length of 42.50' to a point, thence S 34^48'06" W a distance of 237.35' to a point; thence with a curve turning to the left with an arc length of 32.93', with a radius of 550.00', with a chord bearing of S 33^05'11" W, with a chord length of 32.93' to a point, thence S 31^22'15" W a distance of 183.56' to a point; thence with a curve turning to the right with an arc length of 215.42', with a radius of 450.00', with a chord bearing of S 45^05'06" W, with a chord length of 213.37' to a point, thence S 58^47'57" W a distance of 260.77' to a point; thence with a curve turning to the left with an arc length of 314.67', with a radius of 328.00', with a chord bearing of S 31^18'57" W, with a chord length of 302.74' to a point, thence S 03^49'57" W a distance of 147.44' to a point; thence with a curve turning to the right with an arc length of 124.44', with a radius of 450.00', with a chord bearing of S 11^45'04" W, with a chord length of 124.05' to a point, thence S 19^40'24" W a distance of 170.28' to a point; thence with a curve turning to the right with an arc length of 60.46', with a radius of 450.00', with a chord bearing of S 23^31'17" W, with a chord length of 60.42' to a point, thence S 27^22'15" W a distance of 138.07' to a point; thence with a curve with a curve turning to the right with an arc length of 83.11', with a radius of 125.00', with a chord bearing of S 46^25'01" W, with a chord length of 81.58' to a point, thence S 65^27'48" W a distance of 123.95' to a point; thence with a curve turning to the left with an arc length of 243.93', with a radius of 360.00', with a chord bearing of S 46^03'06" W, with a chord length of 239.29' to a point, thence leaving the western right-of-way of St. James Drive S 26^38'25" W a distance of 1361.82' to a point; thence N 83^47'32" W a distance of 76.07' to a point; thence N 40^40'56" W a distance of 389.99' to a point; thence S 89^54'30" W a distance of 595.97' to a point; thence N 57^29'54" W a distance of 381.45' to a point; thence N 61^14'54" W a distance of 748.22' to a point; thence N 67^14'54" W a distance of 498.86' to a point; thence N 61^59'54" W a distance of 698.34' to a point; thence N 68^59'54" W a distance of 868.05' to a

point; thence N 71˚44'54" W a distance of 798.25' to a point; thence S 35˚45'39" W a distance of 1597.66' to a point; thence N 72˚33'51" W a distance of 334.89' to a point; thence N 22˚03'26" W a distance of 63.98' to a point; thence N 34˚28'38" W a distance of 406.82' to a point; thence N 61˚10'21" W a distance of 529.33' to a point; thence S 68˚51'52" W a distance of 404.85' to a point; thence N 45˚42'34" W a distance of 286.92' to a point; thence S 39˚00'35" W a distance of 1149.41' to a point; thence N 52˚51'07" W a distance of 245.46' to a point; thence N 66˚04'17" W a distance of 387.18' to a point; thence S 88˚51'54" W a distance of 641.57' to a point; thence S 64˚35'37" W a distance of 888.62' to a point; thence S 08˚35'12" E a distance of 162.83' to a point; thence S 14˚40'o7" E a distance of 51.93' to a point; thence S 16˚48'58" W a distance of 172.04' to a point; thence S 14˚59'46" W a distance of 60.34' to a point; thence S 35˚15'21" W a distance of 213.23' to a point; thence N 39˚03'27" W a distance of 74.23' to a point; thence S 82˚56'36" W a distance of 129.24' to a point; thence S 16˚00'33" W a distance of 157.32' to a point; thence S 05˚00'25" E a distance of 573.17' to a point; thence S 26˚37'19" E a distance of 69.25' to a point; thence N 88˚50'46" E a distance of 127.72' to a point; thence S 26˚26'11" E a distance of 379.07' to a point; thence S 29˚18'59" W a distance of 70.19' to a point; thence S 21˚44'24" E a distance of 460.72' to a point; thence S 35˚06'09" W a distance of 693.95' to a point; thence S 80˚09'13" W a distance of 138.01' to a point; thence S 54˚51'56" W a distance of 523.31' to a point; thence N 83˚48'10" W a distance of 374.97' to a point; thence S 89˚20'38" W a distance of 632.24' to a point; thence N 81˚36'14" W a distance of 267.30' to a point; thence S 73˚37'12" W a distance of 120.84' to a point; thence S 10˚29'33" W a distance of 1059.23' to a point; thence S 10˚26'52" W a distance of 2270.42' to a point; thence S 10˚38'39" W a distance of 435.51' to the high water line of the Atlantic Intracoastal Waterway; thence along the high water line of said waterway S 81˚26'39" E approximately 9626' to a point where said high water line intersects the centerline of Beaver Dam Creek; thence up the run of said creek the following courses and distances; thence N 10˚39'50" E a distance of 664.72' to a point; thence N 18˚40'49" E a distance of 1432.05' to a point; thence N 22˚15'28" E a distance of 2039.03' to a point; thence N 43˚48'33" E a distance of 948.32' to a point; thence N 42˚52'26" E a distance of 1522.17' to a point; thence N 68˚08'26" E a distance of 1452.60' to a point; thence leaving Beaver Dam Creek runs S 23˚10'45" E a distance of 88.75' to a point; thence S 78˚14'49" E a distance of 797.09' to a point; thence N 59˚31'41" E a distance of 662.46' to a point; thence S 00˚15'02" E a distance of 1047.01' to a point; thence N 89˚03'59" E a distance of 210.00' to a point; thence N 88˚56'40" E a distance of 873.45' to a point; thence N 89˚04'29" E a distance of 867.18' to a point; thence N 00˚18'37" W a distance of 1803.88' to a point in the run of Potter's Branch; thence up the run of Potter's Branch the following courses and distances; N 50˚49'02" E a distance of 190.05' to a point; thence N 56˚42'21" E a distance of 188.26' to a point; thence N 84˚44'46" E a distance of 208.46' to a point; thence N 86˚28'01" E a distance of 187.48' to a point; thence N 88˚55'48" E a distance of 380.47' to a point; thence N 85˚06'54" E a distance of 251.03' to a point; thence S 86˚26'56" E a distance of 183.19' to a point; thence N 70˚06'46" E a

distance of 137.97' to a point; thence S 89^02'13" E a distance of 382.85' to a point; thence leaving the run of Potter's Branch runs N 16^54'14" E a distance of 806.35' to a point; thence N 73^02'44" W a distance of 700.00' to a point; thence N 17^09'58" E a distance of 491.73' to a point; thence N 62^34'11" W a distance of 2005.89' to a point; thence S 71^20'44" W a distance of 114.00' to a point; thence S 08^08'11" E a distance of 120.00' to a point; thence S 43^22'41" W a distance of 760.00' to a point; thence S 80^45'54" W a distance of 330.00' to a point; thence S 38^31'29" W a distance of 210.00' to a point; thence N 85^44'21" W a distance of 461.62' to a point; thence S 15^16'24" W a distance of 320.00' to a point; thence N 83^33'24" W a distance of 140.00' to a point; thence S 44^52'03" W a distance of 260.00' to a point; thence S 15^24'13" W a distance of 80.83' to a point; thence S 80^18'26" W a distance of 229.77' to a point; thence N 37^25'39" W a distance of 464.86' to a point in the centerline of Beaver Dam Creek; thence up the run of said creek the following courses and distances; N 38^32'50" W a distance of 42.26' to a point; thence N 07^42'45" E a distance of 26.22' to a point; thence N 19^15'32" E a distance of 972.45' to a point; thence N 19^35'28" E a distance of 120.47' to a point; thence N 25^52'47" E a distance of 1255.95' to a point; thence N 21^13'23" E a distance of 409.89' to a point; thence N 19^25'25" E a distance of 518.51' to a point; thence N 34^12'30" E a distance of 59.41' to a point; thence N 22^57'53" E a distance of 137.07' to a point; thence N 75^17'57" E a distance of 53.72' to a point; thence N 10^34'41" E a distance of 9.60' to a point; thence leaving Beaver Dam Creek runs N 72^56'48" W a distance of 899.70' to a point in the eastern right-of-way of St. James Drive (60' right-of-way); thence with the eastern right-of-way of St. James Drive N 05^48'21" W a distance of 302.71' to a point; thence with a curve turning to the left with an arc length of 223.31', with a radius of 550.00', with a chord bearing of N 17^26'15" W, with a chord length of 221.78' to a point, thence N 29^04'08" W a distance of 66.08' to a point; thence with a curve turning to the right with an arc length of 193.24', with a radius of 450.00', with a chord bearing of N 16^46'00" W, with a chord length of 191.76' to a point, thence N 04^27'52" W a distance of 148.27' to a point; thence with a curve turning to the right with an arc length of 552.76', with a radius of 1580.00', with a chord bearing of N 05^33'29" E, with a chord length of 549.95' to a point, thence N 15^34'50" E a distance of 800.35', to the place and point of beginning. Containing 2,343.1 acres more or less.

"CHAPTER III.

"GOVERNING BODY.

"Section 3.1. **Town Governing Body; Temporary Officers.** The Town Council shall be the governing body of the Town of St. James. Until such time as a Town election is held in accordance with the provisions of this Charter, the governing body of the Town shall be: Earl Dye, who shall also serve as the Mayor, Dennis Becker, Harry Comer, Joan Madsen, and Henry Ulrichs.

"Section 3.2. **Town Council; Composition; Terms of Office; Vacancies.** The Town Council shall be composed of five members who shall be elected by all the qualified voters of the Town. Council members shall be elected at large and shall serve two-year terms. If a member cannot fully serve his or her term, the remaining Council

members shall appoint a person to fill the vacancy and that person shall serve until the next biennial election.

"Section 3.3. **Mayor; Term of Office; Duties.** The Mayor shall be elected by the Council from among its membership at the first organizational meeting after the biennial election and the Mayor shall serve a two-year term. The Mayor shall be the official head of the Town government and shall preside at meetings of the Council and shall have the right to vote on all matters before the Council.

"Section 3.4. **Meetings.** In accordance with general law, the Council shall establish a suitable time and place for its regular meetings. Special and emergency meetings may be held as provided by general law.

"Section 3.5. **Quorum; Voting Requirements.** Official actions of the Council and all votes shall be taken in accordance with applicable provisions of general law, particularly G.S. 160A-75. The quorum provisions of G.S. 160A-74 shall apply.

"Section 3.6. **Qualifications for Office; Compensation.** The qualifications of Mayor and Council members shall be in accordance with general law. The Mayor and Council members shall be reimbursed for ordinary and necessary expenses and may receive salaries and honoraria only upon a majority vote of all qualified voters of the Town in a special referendum with respect thereto.

"CHAPTER IV.

"ELECTIONS.

"Section 4.1. **Regular Municipal Elections.** Regular municipal elections shall be held every two years in accordance with the uniform municipal election laws of North Carolina. Elections shall be conducted on a nonpartisan basis and the results determined using the nonpartisan plurality method as provided in G.S. 163-292.

"Section 4.2. **Election of Council Members.** Council members appointed upon ratification of this Charter shall serve until their successors are elected and qualified. Council members shall first be elected at a regular municipal election to be held in 1999. Thereafter, elections shall be held biennially.

"Section 4.3. **Special Elections and Referenda.** Special elections and referenda may be held only as provided by general law or applicable local acts of the General Assembly or as provided for in this Charter.

"CHAPTER V.

"ORGANIZATION AND ADMINISTRATION.

"Section 5.1. **Form of Government.** The Town shall operate under the Council-Manager form of government in accordance with Part 2 of Article 7 of Chapter 160A of the General Statutes.

"Section 5.2. **Town Manager; Appointment; Powers and Duties.** The Council may appoint a Town Manager who shall be responsible for all operating departments of the Town government, except as otherwise directed by the Council. The Town Manager shall have all the powers and duties conferred by general law, except as expressly limited by the provisions of this Charter, and shall have additional powers and duties conferred by the Council insofar as they are authorized by general law.

"Section 5.3. **Manager's Personnel Authority; Role of Elected Officials.** As chief administrative officer, the Town Manager shall have the power to appoint, suspend,

and remove all officers, department heads, and employees in the administrative service of the Town, with the exception of the Town Attorney, the Town Clerk, and any other official whose appointment or removal is vested in the Council by this Charter or by general law. Neither the Council nor any of its members shall take part in the appointment or removal of officers or employees in the administrative service of the Town, except as provided by this Charter. Except for the purpose of inquiry or for consultation with the Town Attorney, the Council and its members shall address issues related to administrative service only through contact with the Town Manager or Acting Manager, and neither the Council nor any of its members shall give any specific orders to any subordinates of the Town Manager or Acting Manager either publicly or privately.

"Section 5.4. **Town Attorney.** The Town Council shall appoint a Town Attorney licensed to practice law in North Carolina. It shall be the duty of the Town Attorney to represent the Town, advise Town officials, and perform other duties required by law or as the Council may direct.

"Section 5.5. **Town Clerk.** The Town Council shall appoint a Town Clerk to keep a journal of the proceedings of the Council, to maintain official records and documents, to give notice of meetings, and to perform such other duties as are required by law or as the Council may direct.

"Section 5.6. **Other Administrative Officers and Employees.** The Council may authorize other offices and positions, appoint persons to fill such offices and positions, or authorize such offices and positions to be filled by appointment by the Town Manager, and may organize the Town government as deemed appropriate, subject to the requirements of general law.

"Section 5.7. **Consolidation of Functions.** The Council may consolidate any two or more positions subject to the provisions of the laws and regulations of this State.

"CHAPTER VI.

"TAXATION.

"Section 6.1. **Powers of the Council.** The Council may levy taxes and fees as authorized by law. The ad valorem tax rate may be changed from the rate of the prior year only when a majority of the entire legally constituted Council votes in favor of such a change.

"Section 6.2. **Commencement of Collection of Taxes.** From and after the effective date of this act, the citizens and property of the Town of St. James shall be subject to municipal taxes levied for the year beginning July 1, 1999, and for that purpose the Town shall obtain from Brunswick County a record of property in the area herein incorporated which was listed for taxes as of January 1, 1999. The Town may adopt a budget ordinance for fiscal year 1999-2000 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year 1999-2000 ad valorem taxes may be paid at par or face amount within 90 days of adoption of the budget ordinance, and thereafter in accordance with the schedule in G.S. 105-360 as if the taxes had been due and payable on September 1, 1999. If this act is ratified before July 1, 1999, the Town may adopt a budget ordinance for fiscal year 1998-1999

without following the timetable in the Local Government and Budget Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical, but no ad valorem taxes may be levied for the 1998-1999 fiscal year.

"CHAPTER VII.

"ORDINANCES.

"Section 7.1. **Ordinances.** Except as otherwise provided in this Charter, the Town is authorized to adopt such ordinances as the Council deems necessary for the governance of the Town, in accordance with and subject to the provisions of general law.

"Section 7.2. **Planning and Regulation of Development.** Notwithstanding any other provisions of this Charter or the provisions of general law, including the provisions of Article 19 of Chapter 160A of the General Statutes, the Town shall not, prior to December 31, 2009, adopt any ordinance creating a planning agency, regulating or restricting the subdivision, zoning, or use of any land, or providing for building inspections. During such time, all planning duties, regulation of development, and building inspections within the jurisdiction of the Town shall be conducted by Brunswick County and governed by the applicable ordinances of Brunswick County as if the area was not in the corporate limits of any municipality. As of December 31, 2009, either the Town or Brunswick County may terminate such powers of Brunswick County within the jurisdiction of the Town upon 60 days' notice whereupon the Town may adopt subdivision and zoning ordinances and shall become responsible for building inspections in accordance with general law.

"CHAPTER VIII.

"MISCELLANEOUS.

"Section 8.1. **Conflicts of Interest.** No person or immediate family member of such person who is employed by or an official of the Town shall do business with the Town unless the Council specifically approves such activity. All appointed officials shall apprise the Council of any and all conflicts of interest, and failure to do so shall constitute grounds for immediate dismissal for cause. No official may accept any gratuity from any business, person, or other official if such gratuity is related to his or her official duties.

"Section 8.2. **Enlargement of Council.** The Council may vote to enlarge its numbers in accordance with the provisions of Part 4 of Article 5 of Chapter 160A of the General Statutes. The electorate may seek to enlarge the number of members on the Council by submitting to the Council a petition to the effect signed by twenty percent (20%) of the registered voters of the Town. Upon passage of a resolution or receipt of a valid petition, the Council shall take those steps provided in Part 4 of Article 5 of Chapter 160A of the General Statutes to determine by referendum whether the number of Council members should be increased. The referendum shall be held at the earliest possible date to elect the new Council members.

"Section 8.3. **Changes to Charter.** The Council may propose and enact changes to the Charter in accordance with Part 4 of Article 5 of Chapter 160A of the General Statutes. However, no change to the Charter shall become final until the residents of the Town have been notified of the proposed change and afforded an opportunity to

comment thereon. Notwithstanding the provisions of G.S. 160A-103, residents may file a petition requesting a change to the Charter, but the Council need not consider the proposed change unless it is determined that twenty percent (20%) of the qualified voters of the Town have signed the petition.

"Section 8.4. **Provision of Services and Administration of Functions.** The Council may enter into agreements with other governmental bodies and private enterprises for the provision of services and the administration of corporate functions in order to provide such services and administer such functions in the most efficient and cost-effective manner possible."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 619

Short Title: Fuquay-Varina Annexations. (Local)

Sponsors: Senator Miller.

Referred to: Finance.

March 30, 1999

A BILL TO BE ENTITLED

AN ACT CONCERNING SATELLITE ANNEXATIONS BY THE TOWN OF FUQUAY-VARINA.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of Chapter 432 of the 1997 Session Laws reads as rewritten:

"Section 1. (a) G.S. 160A-58.1(b) is amended by adding a new subdivision to read:

'(2a) If any territory proposed for annexation under this Part is an area that another city has agreed not to annex under an agreement with the annexing city under Part 6 of this Article, then the proximity to that other city shall not be considered in applying subdivision (2) of this subsection. This subdivision applies only where the annexing ~~city is~~ cities are the ~~Town of~~ Towns of Fuquay-Varina and Wake Forest.'

(b) Section 2(b) of Chapter 882 of the 1989 Session Laws reads as rewritten:

'(b) Except as provided by G.S. 160A-58.1(b)(2a) or subsection (a) of this section, the provisions of Part 4 of Article 4A of Chapter 160A of the General Statutes shall continue to apply to the ~~Town of~~ Towns of Fuquay-Varina and Wake Forest.'"

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 2

SENATE BILL 244*
Judiciary I Committee Substitute Adopted 5/26/99

Short Title: Unclaimed Property Act/AB. (Public)

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO ENACT THE NORTH CAROLINA UNCLAIMED PROPERTY ACT AND TO MAKE CONFORMING AMENDMENTS TO THE GENERAL STATUTES, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION, AND TO MAKE OTHER CHANGES TO THE ESCHEATS LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 116B-4 reads as rewritten:

"**§ 116B-4. Claim for escheated property.**

Any escheated property or proceeds from the sale of escheated property held by the Escheat Fund pursuant to ~~G.S. 116B-27~~ G.S. 116B-5 may be claimed by an heir of the decedent or by a creditor of the decedent who is not barred from presenting a claim under the provisions of Article 19 of ~~Chapter 28A.~~ Chapter 28A of the General Statutes. ~~The claim shall be made on a form prescribed by the Treasurer and shall be presented to the Treasurer. If the Treasurer determines that the claimant is entitled to all or a portion of the escheated property or the proceeds from its sale, he shall make payment of the claim or return of the property. The claimant shall agree to indemnify the State, the State Treasurer and the Escheat Fund from any claim arising out of or in connection with refund of the property claimed.~~ The provisions of ~~G.S. 116B-38(b) and (c)~~ G.S. 116B-67(a), (c), (d), and (e) and G.S. 116B-68 shall apply to a claim under this ~~subsection.~~ section."

Section 2. Article 2 of Chapter 116B of the General Statutes is repealed.

Section 3.(a) Except as provided in subsection (b) of this section, Article 3 of Chapter 116B of the General Statutes is repealed.

Section 3.(b) G.S. 116B-27 is recodified as G.S. 116B-5 within Article 1 of Chapter 116B of the General Statutes. G.S. 116B-36 is recodified as G.S. 116B-6 within Article 1 of Chapter 116B of the General Statutes. G.S. 116B-37 is recodified as G.S. 116B-7 within Article 1 of Chapter 116B of the General Statutes. G.S. 116B-47 is recodified as G.S. 116B-8 within Article 1 of Chapter 116B of the General Statutes.

Section 4.(a) G.S. 116B-6(b), as recodified by subsection (b) of Section 3 of this act, reads as rewritten:

"(b) Investment and Transfer of Assets; Income. -- The Treasurer ~~shall be~~ is the trustee of the Escheat Account and ~~shall have~~ has full power to invest and reinvest the assets of the Escheat Account and the Escheat Fund. Subject to the Treasurer's withholding an amount necessary to accomplish ~~his~~ the Treasurer's duties as set out in this Chapter, including subsections (e), (f) and (g) of this section, the Treasurer shall transfer, at least annually, to the Escheat Account all moneys then in ~~his~~ the Treasurer's custody received as, or derived from the disposition of, escheated and abandoned property and shall disburse to the State Education Assistance Authority, as provided in ~~G.S. 116B-37,~~ G.S. 116B-7, the income derived from the investment of the Escheat Account and the Escheat Fund. All moneys transferred to the Escheat Account under this section shall be accounted for and administered separately from other assets and money in the trust fund created under G.S. 116-209."

Section 4.(b) G.S. 116B-6(h) as recodified by subsection (b) of Section 3 of this act, reads as rewritten:

"(h) Expenditures. -- The Treasurer may expend the funds in the Escheat Fund, other than funds in the Escheat Account, for the payment of claims for refunds to owners, holders and claimants under G.S. 116B-4; for the payment of costs of maintenance and upkeep of abandoned or escheated property; costs of preparing lists of names of owners of abandoned property to be furnished to clerks of superior court; costs of notice and publication; costs of appraisals; fees of persons employed pursuant to ~~G.S. 116B-47;~~ G.S. 116B-8 costs involved in determining whether a decedent died without heirs; costs of a title search of real property that has escheated; and costs of auction or sale under this Chapter. All other costs, including salaries of personnel, necessary to carry out the duties of the Treasurer under this Chapter, shall be appropriated from the funds of the Escheat Fund pursuant to the provisions of Article 1, Chapter 143 of the General Statutes."

Section 5. G.S. 116B-8, as recodified by subsection (b) of Section 3 of this act, reads as rewritten:

"**§ 116B-8. Employment of persons with specialized skills or knowledge.**

The Treasurer may employ the services of such independent consultants, real estate managers and other persons possessing specialized skills or knowledge as ~~he shall deem~~ the Treasurer deems necessary or appropriate for the administration of this Chapter, ~~including, but specifically not limited to,~~ including valuation, maintenance, upkeep, management, sale and conveyance of property and

determination of sources of unreported abandoned property. The Treasurer may also employ the services of an attorney to perform a title search or to provide an accurate legal description of real property which ~~he~~ the Treasurer has reason to believe may have escheated. Persons whose services are employed by the Treasurer pursuant to this section to determine sources and amounts of unreported property are subject to the same policies, including confidentiality and ethics, as employees of the Department of State Treasurer assigned to determine sources and amounts of unreported property. Compensation of persons whose services are employed pursuant to this section on a contingent fee basis shall be limited to ten percent (10%) of the final assessment."

Section 6. Chapter 116B of the General Statutes is amended by adding the following new article to read:

"ARTICLE 4.

"North Carolina Unclaimed Property Act.

"**§ 116B-51. Short title.**

This Article may be cited as the 'North Carolina Unclaimed Property Act.'

"**§ 116B-52. Definitions.**

In this Chapter:

(1) 'Apparent owner' means a person whose name appears on the records of a holder as the person entitled to property held, issued, or owing by the holder.

(2) 'Business association' means a corporation, joint stock company, investment company, partnership, unincorporated association, joint venture, limited liability company, business trust, trust company, land bank, safe deposit company, safekeeping depository, financial organization, insurance company, mutual fund, utility, or other business entity consisting of one or more persons, whether or not for profit.

(3) 'Domicile' means the state of incorporation of a corporation and the state of the principal place of business of a holder other than a corporation.

(4) 'Financial organization' means a savings and loan association, building and loan association, savings bank, industrial bank, bank, banking organization, or credit union.

(5) 'Holder' means a person obligated to hold for the account of or deliver or pay to the owner property that is subject to this Chapter.

(6) 'Insurance company' means an association, corporation, or fraternal or mutual benefit organization, whether or not for profit, engaged in the business of providing life endowments, annuities, or insurance, including accident, burial, casualty, credit life, contract performance, dental, disability, fidelity, fire, health, hospitalization, illness, life, malpractice, marine, mortgage, surety, wage protection, and workers' compensation insurance.

(7) 'Mineral' means gas, oil, coal, other gaseous, liquid, and solid hydrocarbons, oil shale, cement material, sand and gravel, road material, building stone, chemical raw material, gemstone, fissionable and nonfissionable ores, colloidal and other clay, steam and other geothermal resource, or any other substance defined as a mineral by the law of this State.

(8) 'Mineral proceeds' means amounts payable for the extraction, production, or sale of minerals, or, upon the abandonment of those payments, all payments that become payable thereafter. The term includes amounts payable:

a. For the acquisition and retention of a mineral lease, including bonuses, royalties, compensatory royalties, shut-in royalties, minimum royalties, and delay rentals;

b. For the extraction, production, or sale of minerals, including net revenue interests, royalties, overriding royalties, extraction payments, and production payments; and

c. Under an agreement or option, including a joint operating agreement, unit agreement, pooling agreement, and farm-out agreement.

(9) 'Owner' means a person who has a legal or equitable interest in property subject to this Chapter or the person's legal representative. The term includes a depositor in the case of a deposit, a beneficiary in the case of a trust other than a deposit in trust, and a creditor, claimant, or payee in the case of other property.

(10) 'Person' means an individual, business association, financial organization, estate, trust, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(11) 'Property' means tangible personal property physically located within this State or a fixed and certain interest in intangible property that is held, issued, or owed in the course of a holder's business, or by a government, governmental subdivision, agency, or instrumentality, and all income or increments therefrom. The term includes property that is referred to as or evidenced by:

a. Money, a check, draft, deposit, interest, or dividend;

b. Credit balance, customer's overpayment, gift certificate, security deposit, refund, credit memorandum, unpaid wage, unused ticket, mineral proceeds, or unidentified remittance;

c. Stock or other evidence of ownership of an interest in a business association;

d. A bond, debenture, note, or other evidence of indebtedness;

e. Money deposited to redeem stocks, bonds, coupons, or other securities, or to make distributions;

f. An amount due and payable under the terms of an annuity or insurance policy, including policies providing life insurance, property and casualty insurance, workers' compensation insurance, or health and disability insurance; and

g. An amount distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefits.

(12) 'Record' means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(13) 'State' means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(14) 'Treasurer' means the Treasurer of the State of North Carolina or the Treasurer's designated agent.

(15) 'Utility' means a person who owns or operates for public use any plant, equipment, real property, franchise, or license for the transportation of the public, the transmission of communications, or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

"**§ 116B-53. Presumptions of abandonment.**

(a) Property is unclaimed if the apparent owner has not communicated in writing or by other means reflected in a contemporaneous record prepared by or on behalf of the holder, with the holder concerning the property or the account in which the property is held, and has not otherwise indicated an interest in the property. A communication with an owner by a person (other than the holder or its representative) who has not, in writing, identified the property to the owner is not an indication of interest in the property by the owner.

(b) An indication of an interest in property includes:

(1) The presentment of a check or other instrument of payment of a dividend or other distribution made with respect to an account or underlying stock or other interest in a business association or, in the case of a distribution made by electronic or similar means, evidence that the distribution has been received;

(2) The presentment of a check or other instrument of payment of interest made with respect to debt of a business association or, in the case of an interest payment made by electronic or similar means, evidence that the interest payment has been received;

(3) Owner-directed activity in the account in which the property is held, including a direction by the owner to increase, decrease, or change the amount or type of property held in the account;

(4) The making of a deposit to or withdrawal from an account in a financial organization;

(5) Owner activity in another account with the holder of a deposit described in subdivisions (c)(2) and (c)(6) of this section; and

(6) The payment of a premium with respect to a property interest in an insurance policy; but the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from maturing or terminating if the insured has died or the insured or the beneficiary of the policy has otherwise become entitled to the proceeds before the depletion of the cash surrender value of a policy by the application of those provisions.

(c) Property is presumed abandoned if it is unclaimed by the apparent owner during the time set forth below for the particular property:

(1) Traveler's check, 15 years after issuance;

(2) Time deposit, including a deposit that is automatically renewable, 10 years after the later of initial maturity or the date of the last indication by the owner of interest in the property;

(3) Money order, cashier's check, teller's check, and certified check, seven years after issuance;

(4) Stock or other equity interest in a business association, including a security entitlement under Article 8 of the Uniform Commercial Code, Chapter 25 of the General Statutes, five years after the earlier of:

a. The date of a cash dividend or other cash distribution unclaimed by the apparent owner, or

b. The date of the second mailing of a stock certificate or other evidence of ownership, a statement of account, or other notification or communication which second mailing was returned as undeliverable or the date the holder discontinued mailings, notifications, or communications to the apparent owner;

(5) Debt of a business association, other than a bearer bond or an original issue discount bond, five years after the date of an interest payment unclaimed by the apparent owner;

(6) Demand or savings deposit, five years after the date of the last indication by the owner of interest in the property;

(7) Money or credits owed to a customer as a result of a retail business transaction, three years after the obligation accrued;

(8) Any gift certificate or electronic gift card bearing an expiration date and remaining unredeemed or dormant for more than three years after the gift certificate or electronic gift card was sold is deemed abandoned. The amount abandoned is deemed to be sixty

percent (60%) of the unredeemed portion of the face value of the gift certificate or the electronic gift card;

(9) Amount owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated, three years after the obligation to pay arose or, in the case of a policy or annuity payable upon proof of death, three years after the insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve is based;

(10) Property distributable by a business association in a course of dissolution, one year after the property becomes distributable;

(11) Property received by a court as proceeds of a class action, and not distributed pursuant to the judgment, one year after the distribution date;

(12) Property held by a court, government, governmental subdivision, agency, or instrumentality, one year after the property becomes distributable;

(13) Wages or other compensation for personal services, one year after the compensation becomes payable;

(14) Deposit or refund owed to a subscriber by a utility, one year after the deposit or refund becomes payable;

(15) Property in an individual retirement account, defined benefit plan, or other account or plan that is qualified for tax deferral under the income tax laws of the United States, three years after the earliest of the date of the distribution or attempted distribution of the property, the date of the required distribution as stated in the plan or trust agreement governing the plan, or the date, if determinable by the holder, specified in the income tax laws of the United States by which distribution of the property must begin in order to avoid a tax penalty; and

(16) All other property, five years after the owner's right to demand the property or after the obligation to pay or distribute the property arises, whichever first occurs.

(d) At the time that an interest in property is presumed abandoned under subsection (c) of this section, any other property right accrued or accruing to the owner as a result of the interest, and not previously presumed abandoned, is also presumed abandoned.

(e) Property is payable or distributable for purposes of this Chapter notwithstanding the owner's failure to make demand or present an instrument or document otherwise required to obtain payment or distribution.

"§ 116B-54. Exclusion for forfeited reservation deposits, certain gift certificates or electronic gift cards, prepaid calling cards, certain manufactured home buyer deposits, and certain credit balances.

(a) A forfeited reservation deposit is not abandoned property. For the purposes of this section, the term 'reservation deposit' means an amount of money paid to a

business association to guarantee that the business association holds a specific service, such as a room accommodation at a hotel, seating at a restaurant, or an appointment with a doctor, for a specified date and place. The term 'reservation deposit' does not include an application fee, a utility deposit, or a deposit made toward the purchase of real property.

(b) A gift certificate or electronic gift card is not unclaimed or abandoned property when the gift certificate or electronic gift card:

(1) Conspicuously states that the gift certificate or electronic gift card does not expire;

(2) Bears no expiration date; or

(3) States that a date of expiration printed on the gift certificate or electronic gift card is not applicable in North Carolina.

(c) A prepaid calling card issued by a public utility as defined in G.S. 62-3(23)a.6. is not unclaimed or abandoned property.

(d) A buyer deposit that a dealer is authorized to retain under either G.S. 143-143.21A or G.S. 143-143.21B is not unclaimed or abandoned property and is not subject to this Article.

(e) Credit balances as shown on the records of a business association to or for the benefit of another business association, shall not constitute abandoned or unclaimed property. For purposes of this section, the term 'credit balances' means items such as overpayments or underpayments on the sale of goods or services.

"§ 116B-55. Contents of safe deposit box or other safekeeping depository.

Contents of a safe deposit box or other safekeeping depository held by a financial organization is presumed abandoned if the apparent owner has not claimed the property within the period established by G.S. 53-43.7 and shall be delivered to the Treasurer as provided by that section. If the contents include property described in G.S. 116B-53, the Treasurer shall hold the property for the remainder of the applicable period set forth in that section before the property is deemed to be received for purpose of sale under G.S. 116B-65.

"§ 116B-56. Rules for taking custody.

(a) Except as otherwise provided in this Chapter or by other statute of this State, property that is presumed abandoned, whether located in this or another state, is subject to the custody of this State if:

(1) The last known address of the apparent owner, as shown on the records of the holder, is in this State;

(2) The records of the holder do not reflect the identity of the person entitled to the property, and it is established that the last known address of the person entitled to the property is in this State;

(3) The records of the holder do not reflect the last known address of the apparent owner and it is established that:

a. The last known address of the person entitled to the property is in this State; or

b. The holder is domiciled in this State or is a government or governmental subdivision, agency, or instrumentality of this

State and has not previously paid or delivered the property to the state of the last known address of the apparent owner or other person entitled to the property;

(4) The last known address of the apparent owner, as shown on the records of the holder, is in a state that does not provide for the escheat or custodial taking of the property, and the holder is domiciled in this State or is a government or governmental subdivision, agency, or instrumentality of this State;

(5) The last known address of the apparent owner, as shown on the records of the holder, is in a foreign country, and the holder is domiciled in this State or is a government or governmental subdivision, agency, or instrumentality of this State;

(6) The transaction out of which the property arose occurred in this State, the holder is domiciled in a state that does not provide for the escheat or custodial taking of the property, and the last known address of the apparent owner or other person entitled to the property is unknown or is in a state that does not provide for the escheat or custodial taking of the property; or

(7) The property is a traveler's check or money order purchased in this State or the issuer of the traveler's check or money order has its principal place of business in this State and the issuer's records show that the instrument was purchased in a state that does not provide for the escheat or custodial taking of the property or do not show the state in which the instrument was purchased.

(b) In the case of an amount payable under the terms of an annuity or insurance policy, the last known address of the person entitled to the property is presumed to be the same as the last known address of the insured or the principal, as shown on the records of the insurance company, if:

(1) A person other than the insured or the principal is entitled to the property; and

(2) Either:

a. No address of the person is known to the insurance company; or

b. The records of the insurance company do not reflect the identity of the person.

"§ 116B-57. Dormancy charge.

A holder may deduct from property presumed abandoned a reasonable charge imposed by reason of the owner's failure to claim the property within a specified time only if there is a valid and enforceable written contract between the holder and the owner under which the holder may impose the charge and the holder regularly imposes the charge, which is not regularly reversed or otherwise canceled.

"§ 116B-58. Burden of proof as to property evidenced by record of check or draft.

A record of the issuance of a check, draft, or similar instrument is prima facie evidence of an obligation. In claiming property from a holder who is also the issuer,

the Treasurer's burden of proof as to the existence and amount of the property and its abandonment is satisfied by showing issuance of the instrument and passage of the requisite period of abandonment. Defenses of payment, satisfaction, discharge, and want of consideration are affirmative defenses that must be established by the holder.

"**§ 116B-59. Notice by holders to apparent owners.**

(a) A holder of property presumed abandoned shall make a good faith effort to locate an apparent owner.

(b) The holder shall send written notice, by first-class mail, to the apparent owner, not more than 120 days or less than 60 days before filing the report required by G.S. 116B-60, to the last known address of the apparent owner as reflected in the holder's records, if the value of the property is fifty dollars ($50.00) or more.

(c) The notice must contain:

(1) A statement that, according to the records of the holder, property is being held to which the addressee appears entitled and the amount or description of the property;

(2) The name and address of the person holding the property and any necessary information regarding changes of name and address of the holder;

(3) A statement that, if satisfactory proof of claim is not presented by the owner to the holder by the following October 1 or, if the holder is an insurance company, by the following April 1, the property will be placed in the custody of the Treasurer, to whom all further claims shall be directed.

"**§ 116B-60. Report of abandoned property; certification by holders with tax return.**

(a) A holder of property presumed abandoned shall make a report to the Treasurer concerning the property.

(b) The report must be verified and must contain:

(1) A description of the property;

(2) Except with respect to a traveler's check or money order, the name, if known, and last known address, if any, and the social security number or taxpayer identification number, if readily ascertainable, of the apparent owner of property of the value of fifty dollars ($50.00) or more;

(3) An aggregated amount of items valued under fifty dollars ($50.00) each;

(4) In the case of an amount of fifty dollars ($50.00) or more held or owing under an annuity or a life or endowment insurance policy, the full name and last known address of the annuitant or insured and of the beneficiary;

(5) The date, if any, on which the property became payable, demandable, or returnable, and the date of the last transaction or communication with the apparent owner with respect to the property; and

(6) Other information that the Treasurer by rule prescribes as necessary for the administration of this Chapter.

(c) If a holder of property presumed abandoned is a successor to another person who previously held the property for the apparent owner or the holder has changed its name while holding the property, the holder shall file with the report its former names, if any, and the known names and addresses of all previous holders of the property.

(d) The report must be filed before November 1 of each year and cover the 12 months next preceding July 1 of that year, but a report with respect to a life insurance company must be filed before May 1 of each year for the calendar year next preceding.

(e) Before the date for filing the report, the holder of property presumed abandoned may request the Treasurer to extend the time for filing the report. A request for an extension for filing a report shall be accompanied by an extension processing fee of ten dollars ($10.00). The Treasurer may grant the extension for good cause. The holder, upon receipt of the extension, may make an interim payment on the amount the holder estimates will ultimately be due, which terminates the accrual of additional interest on the amount paid.

(f) The holder of property presumed abandoned shall file with the report an affidavit stating that the holder has complied with G.S. 116B-59.

(g) Every business association holding property presumed abandoned under this Chapter shall certify the holding in the income tax return required by Chapter 105 of the General Statutes. The certification shall be a part of the tax return with which it is filed. If the business association is not required to file an income tax return under Chapter 105, the certification shall be made in the form and manner required by the Secretary of Revenue. The information appearing on the certification is not privileged or confidential, and this information shall be furnished by the Secretary of Revenue to the Escheat Fund on October 1 of each year, or if this date shall fall on a weekend or holiday, on the next regular business day.

"**§ 116B-61. Payment or delivery of abandoned property.**

(a) Upon filing the report required by G.S. 116B-60, the holder of property presumed abandoned shall pay, deliver, or cause to be paid or delivered to the Treasurer the property described in the report, but if the property is an automatically renewable deposit, and a penalty or forfeiture in the payment of interest would result, the time for compliance is extended to the next filing and delivery date at which a penalty or forfeiture would no longer result.

(b) If the property reported to the Treasurer is a security or security entitlement under Article 8 of Chapter 25 of the General Statutes, the Treasurer is an appropriate person to make an indorsement, instruction, or entitlement order on behalf of the apparent owner to invoke the duty of the issuer or its transfer agent or the securities intermediary to transfer or dispose of the security or the security entitlement in accordance with Article 8 of Chapter 25 of the General Statutes.

(c) If the holder of property reported to the Treasurer is the issuer of a certificated security, the Treasurer has the right to obtain a replacement certificate pursuant to G.S. 25-8-405, but an indemnity bond is not required.

(d) An issuer, the holder, and any transfer agent or other person acting pursuant to the instructions of and on behalf of the issuer or holder in accordance with this section is not liable to the apparent owner and must be indemnified against claims of any person in accordance with G.S. 116B-63.

"**§ 116B-62. Preparation of list of owners by Treasurer.**

(a) There shall be delivered to the clerk of superior court of each county prior to June 30 of each year a list prepared by the Treasurer of escheated and abandoned property reported to the Treasurer. The list shall contain:

(1) The names, if known, in alphabetical order of surname, and last known addresses, if any, of apparent owners of escheated and abandoned property;

(2) The names and addresses of the holders of the abandoned property; and

(3) A statement that claim and proof of legal entitlement to escheated or abandoned property shall be presented by the owner to the Treasurer, which statement shall set forth where further information may be obtained.

(b) At the time the lists are distributed to the clerks of superior court, the Treasurer shall cause to be published once each week for two consecutive weeks, in at least two newspapers having general circulation in this State, a notice stating the nature of the lists and that the lists are available for inspection at the offices of the respective clerks of superior court, together with any other information the Treasurer deems appropriate to appear in the notice.

(c) The Treasurer is not required to include in any list any item of a value, as determined by the Treasurer, in the Treasurer's discretion, of less than fifty dollars ($50.00), unless the Treasurer deems inclusion of items of lesser amounts to be in the public interest.

(d) The clerks of superior court shall retain the lists on permanent file in their offices and shall make them available for public inspection.

(e) The lists prepared by the Treasurer shall include only escheated and abandoned property reported for the current reporting date and are not required to be cumulative lists of escheated and abandoned property previously reported.

(f) Notwithstanding the provisions of Chapter 132 of the General Statutes, the supporting data and lists of apparent owners of escheated and abandoned property may be confidential until six months after the notice to clerks of superior court required by subsection (b) of this section has been distributed. This subsection shall not apply to owners of reported property making inquiries about their property to the Escheat Fund.

"**§ 116B-63. Custody by State; recovery by holder; defense of holder.**

(a) In this section, payment or delivery is made in 'good faith' if:

(1) Payment or delivery was made in a reasonable attempt to comply with this Chapter;

(2) The holder was not then in breach of a fiduciary obligation with respect to the property and had a reasonable basis for believing, based on the facts then known, that the property was presumed abandoned; and

(3) There is no showing that the records under which the payment or delivery was made did not meet reasonable commercial standards of practice.

(b) Upon payment or delivery of property to the Treasurer, the State assumes custody and responsibility for the safekeeping of the property. A holder who pays or delivers property to the Treasurer in good faith is relieved of all liability arising thereafter with respect to the property.

(c) A holder who has paid money to the Treasurer pursuant to this Chapter may subsequently make payment to a person reasonably appearing to the holder to be entitled to payment. Upon a filing by the holder of proof of payment and proof that the payee was entitled to the payment, the Treasurer shall promptly reimburse the holder for the payment without imposing a fee or other charge. If reimbursement is sought for a payment made on a negotiable instrument, including a traveler's check or money order, the holder must be reimbursed upon filing proof that the instrument was duly presented and that payment was made to a person who reasonably appeared to be entitled to payment. The holder must be reimbursed for payment made even if the payment was made to a person whose claim was barred under G.S. 116B-71(a).

(d) A holder who has delivered property other than money to the Treasurer pursuant to this Chapter may reclaim the property if it is still in the possession of the Treasurer,without paying any fee or other charge, upon filing proof that the apparent owner has claimed the property from the holder.

(e) The Treasurer may accept a holder's affidavit as sufficient proof of the holder's right to recover money and property under this section.

(f) If a holder pays or delivers property to the Treasurer in good faith and thereafter another person claims the property from the holder or another state claims the money or property under its laws relating to escheat or abandoned or unclaimed property, the Treasurer, upon written notice of the claim, shall defend the holder against the claim and indemnify the holder against any liability on the claim resulting from payment or delivery of the property to the Treasurer.

"§ 116B-64. Income or gain accruing after payment or delivery.

If property other than money is delivered to the Treasurer under this Chapter, the owner is entitled to receive from the Treasurer any income or gain realized or accruing on the property at or before liquidation or conversion of the property into money. If the property is interest-bearing or pays dividends, the interest or dividends shall be paid until the date on which the amount of the deposits, accounts, or funds, or the shares must be remitted or delivered to the Treasurer under G.S. 116B-61. Otherwise, when property is delivered or paid to the Treasurer, the Treasurer shall hold the property without liability for income or gain.

"**§ 116B-65. Public sale of abandoned property.**

(a) Except as otherwise provided in this section, the Treasurer, within three years after the receipt of abandoned property, shall sell it to the highest bidder at public sale at a location in the State which in the judgment of the Treasurer affords the most favorable market for the property. The Treasurer may decline the highest bid and reoffer the property for sale if the Treasurer considers the bid to be insufficient. The Treasurer need not offer the property for sale if the Treasurer considers that the probable cost of sale will exceed the proceeds of the sale. A sale held under this section must be preceded by a single publication of notice, at least three weeks before sale, in a newspaper of general circulation in the county in which the property is to be sold. The Treasurer is not required to sell money unless it is a collector's species having value greater than the face value of the money as cash.

(b) Securities listed on an established stock exchange must be sold at prices prevailing on the exchange at the time of sale. Other securities may be sold over the counter at prices prevailing at the time of sale or by any reasonable method selected by the Treasurer. If securities are sold by the Treasurer before the expiration of three years after their delivery to the Treasurer, a person making a claim under this Chapter before the end of the three-year period is entitled to the proceeds of the sale of the securities or the market value of the securities at the time the claim is made, whichever is greater, less any deduction for expenses of sale. A person making a claim under this Chapter after the expiration of the three-year period is entitled to receive the securities delivered to the Treasurer by the holder, if they still remain in the custody of the Treasurer, or the net proceeds received from sale, and is not entitled to receive any appreciation in the value of the property occurring after delivery to the Treasurer, except in a case of intentional misconduct by the Treasurer.

(c) A purchaser of property at a sale conducted by the Treasurer pursuant to this Chapter takes the property free of all claims of the owner or previous holder and of all persons claiming through or under them. The Treasurer shall execute all documents necessary to complete the transfer of ownership.

"**§ 116B-66. Claim of another state to recover property.**

(a) After property has been paid or delivered to the Treasurer under this Article, another state may recover the property if:

(1) The property was paid or delivered to the custody of this State because the records of the holder did not reflect a last known location of the apparent owner within the borders of the other state, and the other state establishes that the apparent owner or other person entitled to the property was last known to be located within the borders of that state and under the laws of that state the property has escheated or become subject to a claim of abandonment by that state;

(2) The property was paid or delivered to the custody of this State because the laws of the other state did not provide for the escheat or custodial taking of the property, and under the laws of that state

subsequently enacted, the property has escheated or become subject to a claim of abandonment by that state;

(3) The records of the holder were erroneous in that they did not accurately identify the owner of the property and the last known location of the owner within the borders of another state, and under the laws of that state the property has escheated or become subject to a claim of abandonment by that state;

(4) The property was subjected to custody by this State under G.S. 116B-56(6), and under the laws of the state of domicile of the holder, the property has escheated or become subject to a claim of abandonment by that state; or

(5) The property is a sum payable on a traveler's check, money order, or similar instrument that was purchased in the other state and delivered into the custody of this State under G.S. 116B-56(7), and under the laws of the other state, the property has escheated or become subject to a claim of abandonment by that state.

(b) A claim of another state to recover escheated or abandoned property must be presented in a form prescribed by the Treasurer, who shall decide the claim within 90 days after it is presented. The Treasurer shall allow the claim upon determining that the other state is entitled to the abandoned property under subsection (a) of this section.

(c) The Treasurer shall require another state, before recovering property under this section, to agree to indemnify this State and its officers and employees against any liability on a claim to the property.

"**§ 116B-67. Claim for property paid or delivered to the Treasurer.**

(a) A person, excluding another state, claiming property paid or delivered to the Treasurer may file a claim on a form prescribed by the Treasurer and verified by the claimant.

(b) At the discretion of the Treasurer, the claim shall be made to the holder or to the holder's successor. If the holder is satisfied that the claim is valid and that the claimant is the owner of the property, the holder shall so certify to the Treasurer by written statement attested by the holder under oath, or in the case of a corporation, by two principal officers, or one principal officer and an authorized employee of the corporation. The determination of the holder that the claimant is the owner shall, in the absence of fraud, be binding upon the Treasurer and upon receipt of the certificate of the holder to this effect, the Treasurer shall forthwith authorize and make payment of the claim or return of the property, or if the property has been sold, the amount received from the sale, to the owner, or to the holder in the event the owner has assigned the claim to the holder and the certificate of the holder is accompanied by an assignment. In the event the holder rejects the claim, the claimant may appeal to the Treasurer.

If the holder, or the holder's successor, is not available, the owner may file a claim with the Treasurer on a form prescribed by the Treasurer. In addition to any other

information, the claim shall state the facts surrounding the unavailability of the holder and the lack of a successor.

(c) Within 90 days after a claim is filed, the Treasurer shall allow or deny the claim and give written notice of the decision to the claimant. If the claim is denied, the Treasurer shall inform the claimant of the reasons for the denial and specify what additional evidence is required before the claim will be allowed. The claimant may then file a new claim with the Treasurer or maintain an action under G.S. 116B-68.

(d) Within 30 days after a claim is allowed, the property or the net proceeds of a sale of the property must be delivered or paid by the Treasurer to the claimant.

(e) The claimant or claimants and the holder, if the holder either certifies that the claimant is the owner under subsection (b) of this section or recovers money and property from the Treasurer under G.S. 116B-63, shall agree to indemnify, save harmless, and defend the State, the Treasurer, and the Escheat Fund from any claim arising out of or in connection with refund of the property claimed. In like manner, the claimant shall also agree to indemnify, save harmless, and defend the holder, if the holder certifies the claim under subsection (b) of this section or pays or delivers property to the claimant under G.S. 116B-63.

"**§ 116B-68. Action to establish claim.**

A person aggrieved by a decision of the Treasurer or whose claim has not been acted upon within 90 days after its filing may maintain an original action to establish the claim in the Superior Court of Wake County, naming the Treasurer as a defendant.

"**§ 116B-69. Election to take payment or delivery.**

(a) The Treasurer may decline to receive property reported under this Chapter which the Treasurer considers to have a value less than the expenses of notice and sale.

(b) A holder, with the written consent of the Treasurer and upon conditions and terms prescribed by the Treasurer, may report and deliver property before the property is presumed abandoned. Property so delivered must be held by the Treasurer and is not presumed abandoned until it otherwise would be presumed abandoned under this Article.

"**§ 116B-70. Destruction or disposition of property having no substantial commercial value; immunity from liability; property of historical significance.**

(a) If the Treasurer determines after investigation that property delivered under this Chapter has no substantial commercial value, the Treasurer may destroy or otherwise dispose of the property at any time. An action or proceeding may not be maintained against the State or any officer, employee, or agent of the State, both past and present, in the person's individual and official capacity, or against the holder for or on account of an act of the Treasurer under this subsection, except for intentional misconduct.

(b) Notwithstanding the provisions of G.S. 116B-65, the Treasurer may retain any tangible property delivered to the Treasurer, if the property has recognized historic significance. The historic significance shall be certified by the Treasurer, with the advice of the Secretary of Cultural Resources; and a statement of the appraised value

of the property shall be filed with the certification. Historic property retained under this subsection may be stored and displayed at any suitable location.

"**§ 116B-71. Periods of limitation.**

(a) The expiration, before or after the effective date of this Article, of a period of limitation on the owner's right to receive or recover property, whether specified by contract, statute, or court order, does not preclude the property from being presumed abandoned or affect a duty of a holder to file a report or to pay or deliver or transfer property to the Treasurer as required by this Article.

(b) An action or proceeding may not be maintained by the Treasurer to enforce this Article in regard to the reporting, delivery, or payment of property more than 10 years after the holder filed a report with the Treasurer in which the holder specifically identified property, should have but failed to identify property, or gave express notice to the Treasurer of a dispute regarding property. In the absence of such a report or other express notice, the period of limitation is tolled. The period of limitation is also tolled by the filing of a report that is fraudulent.

"**§ 116B-72. Requests for reports and examination of records.**

(a) The Treasurer may require a person who has not filed a report, or a person who the Treasurer believes has filed an inaccurate, incomplete, or false report, to file a verified report in a form specified by the Treasurer. The report must state whether the person is holding property reportable under this Chapter, describe property not previously reported or as to which the Treasurer has made inquiry, and specifically identify and state the value of property that may be in issue.

(b) The Treasurer, at reasonable times and upon reasonable notice, may examine the records of any person to determine whether the person has complied with this Chapter. The Treasurer may conduct the examination even if the person believes it is not in possession of any property that must be reported, paid, or delivered under this Chapter. The Treasurer may contract with any other person to conduct the examination on behalf of the Treasurer.

(c) The Treasurer at reasonable times may examine the records of an agent, including a dividend disbursing agent or transfer agent, of a business association that is the holder of property presumed abandoned if the Treasurer has given the notice required by subsection (b) of this section to both the association and the agent at least 90 days before the examination.

(d) Documents and working papers obtained or compiled by the Treasurer, or the Treasurer's agents, employees, or designated representatives, in the course of conducting an examination are confidential, but the documents and papers may be:

(1) Used by the Treasurer in the course of an action to collect unclaimed property or otherwise enforce this Chapter;

(2) Used in joint examinations conducted with or pursuant to an agreement with another state, the federal government, or any other governmental subdivision, agency, or instrumentality;

(3) Produced pursuant to subpoena or court order; or

(4) Disclosed to the abandoned property office of another state for that state's use in circumstances equivalent to those described in this

subsection, if the other state is bound to keep the documents and papers confidential.

(e) If an examination results in the disclosure of property reportable under this Chapter, the Treasurer may assess, against a holder who made a fraudulent report, the cost of the examination at the rate of two hundred dollars ($200.00) a day for each examiner, or a greater amount that is reasonable and was incurred, but the assessment may not exceed the value of the property found to be reportable. The cost of an examination made pursuant to subsection (c) of this section may be assessed only against the business association.

(f) If a holder does not maintain the records required by G.S. 116B-73 and the records of the holder available for the periods subject to this Chapter are insufficient to permit the preparation of a report, the Treasurer may require the holder to report and pay to the Treasurer the amount the Treasurer reasonably estimates, on the basis of any available records of the holder or by any other reasonable method of estimation, should have been, but was not reported.

"**§ 116B-73. Retention of records.**

(a) Except as otherwise provided in subsection (b) of this section, a holder required to file a report under G.S. 116B-60 shall maintain the records containing the information required to be included in the report for 10 years after the holder files the report, unless a shorter period is provided by rule of the Treasurer.

(b) A business association that sells, issues, or provides to others for sale or issue in this State, traveler's checks, money orders, or similar instruments other than third-party bank checks, on which the business association is directly liable, shall maintain a record of the instruments while they remain outstanding, indicating the state and date of issue, for three years after the holder files the report.

"**§ 116B-73.1. Discretionary precompliance review.**

A holder may request the Treasurer to conduct a precompliance review of the holder's compliance program to educate the holder's employees on the unclaimed property laws and filing procedures and to recommend ways to facilitate the holder's compliance with the law. Subject to the availability of staff, the Treasurer may conduct a precompliance review upon request. The Treasurer may charge the holder a precompliance review fee of up to five hundred dollars ($500.00) per day for conducting this review.

"**§ 116B-74. Enforcement.**

(a) The Treasurer may maintain an action in this or another state to enforce this Chapter.

(b) The Treasurer may order a person required to report, pay, or deliver property under this Chapter, or an officer or employee of the person, or a person having possession, custody, care, or control of records relevant to the matter under inquiry, or any other person having knowledge of the property or records, to appear before the Treasurer, at a time and place named in the order, and to produce the records and to give such testimony under oath or affirmation relevant to the inquiry. For purposes of this subsection, the Treasurer may administer oaths or affirmations. If a person refuses to obey an order of the Treasurer, the Treasurer may apply to the

Superior Court of Wake County for an order requiring the person to obey the order of the Treasurer. Failure to comply with the court order is punishable for contempt.

"**§ 116B-75. Interstate agreements and cooperation; joint and reciprocal actions with other states.**

(a) The Treasurer may enter into an agreement with another state to exchange information relating to abandoned property or its possible existence. The agreement may permit the other state, or another person acting on behalf of a state, to examine records as authorized in G.S. 116B-72. The Treasurer by rule may require the reporting of information needed to enable compliance with an agreement made under this section and prescribe the form.

(b) The Treasurer may join with another state to seek enforcement of this Chapter against any person who is or may be holding property reportable under this Chapter.

(c) At the request of another state, the Attorney General of this State may maintain an action on behalf of the other state to enforce, in this State, the unclaimed property laws of the other state against a holder of property subject to escheat or a claim of abandonment by the other state, if the other state has agreed to pay expenses incurred by the Attorney General in maintaining the action.

(d) The Treasurer may request that the attorney general of another state or another attorney commence an action in the other state on behalf of the Treasurer. With the approval of the Attorney General of this State, the Treasurer may retain any other attorney to commence an action in this State on behalf of the Treasurer. This State shall pay all expenses, including attorneys' fees, in maintaining an action under this subsection. With the Treasurer's approval, the expenses and attorneys' fees may be paid from money received under this Chapter. The Treasurer may agree to pay expenses and attorneys' fees based in whole or in part on a percentage of the value of any property recovered in the action. Any expenses or attorneys' fees paid under this subsection may not be deducted from the amount that is subject to the claim by the owner under this Chapter.

(e) The Treasurer is authorized to make such expenditures from the funds of the Escheat Fund as may be necessary to effectuate the provisions of this section.

"**§ 116B-76. Interest and penalties; waiver.**

(a) A holder who fails to report, pay, or deliver property within the time prescribed by this Chapter shall pay to the Treasurer interest at the rate established pursuant to this subsection on the property or value of the property from the date the property should have been reported, paid, or delivered. On or before June 1 and December 1 of each year, the Treasurer shall establish the interest rate to be in effect during the six-month period beginning on the next succeeding July 1 and January 1, respectively, after giving due consideration to current market conditions. If no new rate is established, the rate in effect during the preceding six-month period shall continue in effect. The rate established by the Treasurer may not be less than five percent (5%) per year and may not exceed sixteen percent (16%) per year.

(b) A holder who willfully fails to report, pay, or deliver property within the time prescribed by this Chapter, or willfully fails to perform other duties imposed by this Chapter, shall pay to the Treasurer, in addition to interest as provided in subsection

(a) of this section , a civil penalty of one thousand dollars ($1,000) for each day the report, payment, or delivery is withheld, or the duty is not performed, up to a maximum of twenty-five thousand dollars ($25,000), plus twenty-five percent (25%) of the value of any property that should have been but was not reported.

(c) A holder who makes a fraudulent report shall pay to the Treasurer, in addition to interest as provided in subsection (a) of this section, a civil penalty of one thousand dollars ($1,000) for each day from the date a report under this Chapter was due, up to a maximum of twenty-five thousand dollars ($25,000), plus twenty-five percent (25%) of the value of any property that should have been but was not reported.

(d) The Treasurer for good cause may waive, in whole or in part, interest under subsection (a) of this section and penalties under subsection (b) of this section.

"**§ 116B-77. Agreement to locate property.**

(a) An agreement by an owner, the primary purpose of which is to locate, deliver, recover, or assist in the recovery of property that is presumed abandoned, is void and unenforceable if it was entered into during the period commencing on the date the property was presumed abandoned and extending to a time that is 24 months after the date the property is paid or delivered to the Treasurer. This subsection does not apply to an owner's agreement with an attorney to file a claim as to identified property or contest the Treasurer's denial of a claim.

(b) An agreement by an owner, the primary purpose of which is to locate, deliver, recover, or assist in the recovery of property, is enforceable only if the agreement is in writing, clearly sets forth the nature of the property and the services to be rendered, is signed by the owner, and states the value of the property before and after the fee or other compensation has been deducted.

(c) If an agreement covered by this section applies to mineral proceeds and the agreement contains a provision to pay compensation that includes a portion of the underlying minerals or any mineral proceeds not then presumed abandoned, the provision is void and unenforceable.

(d) An agreement covered by this section that provides for compensation in an amount greater than twenty-five percent (25%) of the actual value of the property recovered, or is otherwise unconscionable, is unenforceable except by the owner. An owner who has made an agreement to pay compensation that is unenforceable, or the Treasurer on behalf of the owner, may maintain an action to reduce the compensation. The court may award reasonable attorneys' fees to an owner who prevails in the action.

(e) This section does not preclude an owner from asserting that an agreement covered by this section is invalid on grounds other than as provided in subsection (d) of this section.

(f) Any person who enters into an agreement covered by this section with an owner shall register annually with the Treasurer. The information to be required under this subsection shall include the person's name, address, telephone number, state of incorporation or residence, as applicable, and the person's federal identification number. A registration fee of one hundred dollars ($100.00) shall be

paid to the Treasurer at the time of the filing of the registration information. Fees received under this subsection shall be credited to the General Fund.

"**§ 116B-78. Transitional provisions.**

(a) An initial report filed under this Article for property that was not required to be reported before the effective date of this Article but which is subject to this Article must include all items of property that would have been presumed abandoned during the 10-year period next preceding the effective date of this Article as if this Article had been in effect during that period.

(b) This Article does not relieve a holder of a duty that arose before the effective date of this Article to report, pay, or deliver property. Except as otherwise provided in G.S 116B-71(b) and G.S. 116B-76(d), a holder who did not comply with the law in effect before the effective date of this Article is subject to the applicable provisions for enforcement and penalties which then existed, which are continued in effect for the purpose of this section.

"**§ 116B-79. Rules.**

The Treasurer may adopt rules necessary to carry out this Chapter."

Section 7. G.S. 44A-4(b)(1) reads as rewritten:

"(b) Notice and Hearings. --

(1) If the property upon which the lien is claimed is a motor vehicle that is required to be registered, the lienor following the expiration of the relevant time period provided by subsection (a) shall give notice to the Division of Motor Vehicles that a lien is asserted and sale is proposed and shall remit to the Division a fee of ten dollars ($10.00). The Division of Motor Vehicles shall issue notice by registered or certified mail, return receipt requested, to the person having legal title to the property, if reasonably ascertainable, to the person with whom the lienor dealt if different, and to each secured party and other person claiming an interest in the property who is actually known to the Division or who can be reasonably ascertained. The notice shall state that a lien has been asserted against specific property and shall identify the lienor, the date that the lien arose, the general nature of the services performed and materials used or sold for which the lien is asserted, the amount of the lien, and that the lienor intends to sell the property in satisfaction of the lien. The notice shall inform the recipient that the recipient has the right to a judicial hearing at which time a determination will be made as to the validity of the lien prior to a sale taking place. The notice shall further state that the recipient has a period of 10 days from the date of receipt in which to notify the Division by registered or certified mail, return receipt requested, that a hearing is desired and that if the recipient wishes to contest the sale of his property pursuant to such lien, the recipient should notify the Division that a hearing is desired. The notice shall state the required information in simplified terms and

shall contain a form whereby the recipient may notify the Division that a hearing is desired by the return of such form to the Division. The Division shall notify the lienor whether such notice is timely received by the Division. In lieu of the notice by the lienor to the Division and the notices issued by the Division described above, the lienor may issue notice on a form approved by the Division pursuant to the notice requirements above. If notice is issued by the lienor, the recipient shall return the form requesting a hearing to the lienor, and not the Division, within 10 days from the date the recipient receives the notice if a judicial hearing is requested. Failure of the recipient to notify the Division or lienor, as specified in the notice, within 10 days of the receipt of such notice that a hearing is desired shall be deemed a waiver of the right to a hearing prior to the sale of the property against which the lien is asserted, and the lienor may proceed to enforce the lien by public or private sale as provided in this section and the Division shall transfer title to the property pursuant to such sale. If the Division or lienor, as specified in the notice, is notified within the 10-day period provided above that a hearing is desired prior to sale, the lien may be enforced by sale as provided in this section and the Division will transfer title only pursuant to the order of a court of competent jurisdiction.

If the registered or certified mail notice has been returned as undeliverable, or if the name of the person having legal title to the vehicle cannot reasonably be ascertained and the fair market value of the vehicle is less than eight hundred dollars ($800.00), the lienor may institute a special proceeding in the county where the vehicle is being held, for authorization to sell that vehicle. Market value shall be determined by the schedule of values adopted by the Commissioner under G.S. 105-187.3.

In such a proceeding a lienor may include more than one vehicle, but the proceeds of the sale of each shall be subject only to valid claims against that vehicle, and any excess proceeds of the sale shall ~~escheat to the State and~~ be paid immediately to the ~~treasurer~~ Treasurer for disposition pursuant to Chapter 116B of the General Statutes. ~~A vehicle owner or possessor claiming an interest in such proceeds shall have a right of action under G.S. 116B-38.~~

The application to the clerk in such a special proceeding shall contain the notice of sale information set out in subsection (f) hereof. If the application is in proper form the clerk shall enter an order authorizing the sale on a date not less than 14 days therefrom, and the lienor shall cause the application and order to be sent immediately by first-class mail pursuant to G.S. 1A-1, Rule 5, to each person to whom notice was mailed pursuant to this

subsection. Following the authorized sale the lienor shall file with the clerk a report in the form of an affidavit, stating that the lienor has complied with the public or private sale provisions of G.S. 44A-4, the name, address, and bid of the high bidder or person buying at a private sale, and a statement of the disposition of the sale proceeds. The clerk then shall enter an order directing the Division to transfer title accordingly.

If prior to the sale the owner or legal possessor contests the sale or lien in a writing filed with the clerk, the proceeding shall be handled in accordance with G.S. 1-399."

Section 8. G.S. 29-12 reads as rewritten:

"**§ 29-12. Escheats.**

If there is no person entitled to take under G.S. 29-14 or ~~29-15,~~ G.S. 29-15, or if in case of an illegitimate intestate, there is no one entitled to take under G.S. 29-21 or ~~29-22~~ G.S. 29-22 the net estate shall escheat as provided in ~~G.S. 116A-2.~~ G.S. 116B-2."

Section 9. G.S. 53-43.7(b)

"(b) Any property, including documents or writings of a private nature, which has little or no apparent value, need not be sold but may be destroyed ~~by the Treasurer or~~ by the ~~lessor, if retained by the lessor pursuant to a determination by the Treasurer under G.S. 116B-31(e).~~ lessor if the Treasurer declines to receive the property under G.S. 116B-69(a)."

Section 10. G.S. 53-43.7(d) reads as rewritten:

"(d) The lessor shall submit to the Treasurer a verified inventory of all of the contents of the safe-deposit box upon delivery of the contents of the box or such part thereof as shall be required by the Treasurer under ~~G.S. 116B-31(e);~~ G.S. 116B-55; but the lessor may deduct from any cash of the lessee in the safe-deposit box an amount equal to accumulated charges for rental and shall submit to the Treasurer a verified statement of such charges and deduction. If there is no cash, or insufficient cash to pay accumulated charges, in the safe-deposit box, the lessor may submit to the Treasurer a verified statement of accumulated charges or balance of accumulated charges due, and the Treasurer shall remit to the lessor the charges or balance due, up to the value of the property in the safe-deposit box delivered to ~~him,~~ the Treasurer, less any costs or expenses of sale; but if the charges or balance due exceeds the value of such property, the Treasurer shall remit only the value of the property, less costs or expenses of sale. Any accumulated charges for safe-deposit box rental paid by the Treasurer to the lessor shall be deducted from the value of the property of the lessee delivered to the Treasurer."

Section 11. G.S. 53B-4 reads as rewritten:

"**§ 53B-4. Access to financial records.**

Notwithstanding any other provision of law, no government authority may have access to a customer's financial record held by a financial institution unless the financial record is described with reasonable specificity and access is sought pursuant to:

(1) Customer authorization that meets the requirements of the Right to Financial Privacy Act § 1104, 12 U.S.C. § 3404, provided, however, a customer authorization received by a State agency or a county department of social services for the purpose of determining eligibility for the programs of public assistance under Chapter 108A of the General Statutes, or for purposes of a government inquiry concerning these same programs of public assistance, cannot be revoked and shall remain valid for 12 months unless a shorter period is specified in the authorization, or a customer authorization that is given by a licensed attorney with respect to an account in which the attorney holds funds as a fiduciary;

(2) Authorization under G.S. 105-251, 105-251.1, or 105-258;

(3) Search warrant as provided in Article 11 of Chapter 15A of the General Statutes;

(4) Statutory authority of a supervisory agency to examine or have access to financial records in the exercise of its supervisory, regulatory, or monetary functions with respect to a financial institution;

(5) The authority granted under ~~G.S. 116B-39;~~ G.S. 116B-72 and G.S. 116B-74;

(6) Examination and review by the State Auditor or his authorized representative under G.S. 147-64.6(c)(9) or ~~147-64.7(a);~~ G.S. 147-64.7(a);

(7) Request by a government authority authorized to buy and sell student loan notes under Article 23 of Chapter 116 of the General Statutes for financial records relating to insured student loans;

(8) Pending litigation to which the government authority and the customer are parties;

(9) Subpoena or court order in connection with a grand jury proceeding;

(10) A writ of execution under Article 28 of Chapter 1 of the General Statutes; or

(11) Other court order or administrative or judicial subpoena authorized by law if the requirements of G.S. 53B-5 are met.

As used in this section, the term 'reasonable specificity' means that degree of specificity reasonable under all the circumstances, ~~and~~ and, with respect to requests under G.S. 116B-72 and G.S. 116B-74, may include designation by general type or ~~class as authorized in G.S. 116B-39.~~ class."

Section 12. G.S. 116-209.3 reads as rewritten:

"**§ 116-209.3. Additional powers.**

The Authority is authorized to develop and administer programs and perform all functions necessary or convenient to promote and facilitate the making and insuring of student loans and providing such other student loan assistance and services as the

Authority shall deem necessary or desirable for carrying out the purposes of this Article and for qualifying for loans, grants, insurance and other benefits and assistance under any program of the United States now or hereafter authorized fostering student loans. There shall be established and maintained a trust fund which shall be designated 'State Education Assistance Authority Loan Fund' (the 'Loan Fund') which may be used by the Authority in making student loans directly or through agents or independent contractors, insuring student loans, acquiring, purchasing, endorsing or guaranteeing promissory notes, contracts, obligations or other legal instruments evidencing student loans made by banks, educational institutions, nonprofit corporations or other eligible lenders, and for defraying the expenses of operation and administration of the Authority for which other funds are not available to the Authority. There shall be deposited to the credit of such Loan Fund the proceeds (exclusive of accrued interest) derived from the sale of its revenue bonds by the Authority and any other moneys made available to the Authority for the making or insuring of student loans or the purchase of obligations. There shall also be deposited to the credit of the Loan Fund surplus funds from time to time transferred by the Authority from the sinking fund. Such Loan Fund shall be maintained as a revolving fund. There is also deposited to the credit of the Loan Fund the income derived from the investment or deposit of the Escheat Fund distributed to the Authority pursuant to ~~G.S. 116B-37.~~ G.S. 116B-7. The income shall be held, administered and applied by the Authority as provided in any resolution adopted or trust agreement approved by the Authority, subject to the provisions of Chapter 116B of the General Statutes and this Article.

In lieu of or in addition to the Loan Fund, the Authority may provide in any resolution authorizing the issuance of bonds or any trust agreement securing such bonds that any other trust funds or accounts may be established as may be deemed necessary or convenient for securing the bonds or for making student loans, acquiring obligations or otherwise carrying out its other powers under this Article, and there may be deposited to the credit of any such fund or account proceeds of bonds or other money available to the Authority for the purposes to be served by such fund or account."

Section 13. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect the provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 14. The Revisor of Statutes shall cause to be printed with this act all explanatory comments of the drafters of this act as the Revisor may deem appropriate.

Section 15. This act becomes effective January 1, 2000, and shall apply to property existing on or after that date. G.S. 116B-54(d), as enacted in Section 6 of this act, is intended to clarify and not change existing law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

Com sub #2

S D

SENATE BILL 244*
Judiciary I Committee Substitute Adopted 5/26/99
Proposed Committee Substitute S244-PCS8613-LA

Short Title: Unclaimed Property Act/AB. (Public)

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO ENACT THE NORTH CAROLINA UNCLAIMED PROPERTY ACT AND TO MAKE CONFORMING AMENDMENTS TO THE GENERAL STATUTES, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION, AND TO MAKE OTHER CHANGES TO THE ESCHEATS LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 116B-4 reads as rewritten:

"**§ 116B-4. Claim for escheated property.**

Any escheated property or proceeds from the sale of escheated property held by the Escheat Fund pursuant to ~~G.S. 116B-27~~ G.S. 116B-5 may be claimed by an heir of the decedent or by a creditor of the decedent who is not barred from presenting a claim under the provisions of Article 19 of ~~Chapter 28A.~~ Chapter 28A of the General Statutes. ~~The claim shall be made on a form prescribed by the Treasurer and shall be presented to the Treasurer. If the Treasurer determines that the claimant is entitled to all or a portion of the escheated property or the proceeds from its sale, he shall make payment of the claim or return of the property. The claimant shall agree to indemnify the State, the State Treasurer and the Escheat Fund from any claim arising out of or in connection with refund of the property claimed.~~ The provisions of ~~G.S. 116B-38(b) and (c)~~ G.S. 116B-67(a), (c), (d), and (e) and G.S. 116B-68 shall apply to a claim under this ~~subsection.~~ section."

Section 2. Article 2 of Chapter 116B of the General Statutes is repealed.

Section 3.(a) Except as provided in subsection (b) of this section, Article 3 of Chapter 116B of the General Statutes is repealed.

Section 3.(b) G.S. 116B-27 is recodified as G.S. 116B-5 within Article 1 of Chapter 116B of the General Statutes. G.S. 116B-36 is recodified as G.S. 116B-6 within Article 1 of Chapter 116B of the General Statutes. G.S. 116B-37 is recodified as G.S. 116B-7 within Article 1 of Chapter 116B of the General Statutes. G.S. 116B-47 is recodified as G.S. 116B-8 within Article 1 of Chapter 116B of the General Statutes.

Section 4.(a) G.S. 116B-6(b), as recodified by subsection (b) of Section 3 of this act, reads as rewritten:

"(b) Investment and Transfer of Assets; Income. -- The Treasurer ~~shall be~~ is the trustee of the Escheat Account and ~~shall have~~ has full power to invest and reinvest the assets of the Escheat Account and the Escheat Fund. Subject to the Treasurer's withholding an amount necessary to accomplish ~~his~~ the Treasurer's duties as set out in this Chapter, including subsections (e), (f) and (g) of this section, the Treasurer shall transfer, at least annually, to the Escheat Account all moneys then in ~~his~~ the Treasurer's custody received as, or derived from the disposition of, escheated and abandoned property and shall disburse to the State Education Assistance Authority, as provided in ~~G.S. 116B-37,~~ G.S. 116B-7, the income derived from the investment of the Escheat Account and the Escheat Fund. All moneys transferred to the Escheat Account under this section shall be accounted for and administered separately from other assets and money in the trust fund created under G.S. 116-209."

Section 4.(b) G.S. 116B-6(h) as recodified by subsection (b) of Section 3 of this act, reads as rewritten:

"(h) Expenditures. -- The Treasurer may expend the funds in the Escheat Fund, other than funds in the Escheat Account, for the payment of claims for refunds to owners, holders and claimants under G.S. 116B-4; for the payment of costs of maintenance and upkeep of abandoned or escheated property; costs of preparing lists of names of owners of abandoned property to be furnished to clerks of superior court; costs of notice and publication; costs of appraisals; fees of persons employed pursuant to ~~G.S. 116B-47;~~ G.S. 116B-8 costs involved in determining whether a decedent died without heirs; costs of a title search of real property that has escheated; and costs of auction or sale under this Chapter. All other costs, including salaries of personnel, necessary to carry out the duties of the Treasurer under this Chapter, shall be appropriated from the funds of the Escheat Fund pursuant to the provisions of Article 1, Chapter 143 of the General Statutes."

Section 5. G.S. 116B-8, as recodified by subsection (b) of Section 3 of this act, reads as rewritten:

"**§ 116B-8. Employment of persons with specialized skills or knowledge.**

The Treasurer may employ the services of such independent consultants, real estate managers and other persons possessing specialized skills or knowledge as ~~he shall deem~~ the Treasurer deems necessary or appropriate for the administration of this Chapter, ~~including, but specifically not limited to,~~ including valuation, maintenance, upkeep, management, sale and conveyance of property and

determination of sources of unreported abandoned property. The Treasurer may also employ the services of an attorney to perform a title search or to provide an accurate legal description of real property which ~~he~~ the Treasurer has reason to believe may have escheated. Persons whose services are employed by the Treasurer pursuant to this section to determine sources and amounts of unreported property are subject to the same policies, including confidentiality and ethics, as employees of the Department of State Treasurer assigned to determine sources and amounts of unreported property. Compensation of persons whose services are employed pursuant to this section on a contingent fee basis shall be limited to ten percent (10%) of the final assessment."

Section 6. Chapter 116B of the General Statutes is amended by adding the following new article to read:

"ARTICLE 4.

"North Carolina Unclaimed Property Act.

"**§ 116B-51. Short title.**

This Article may be cited as the 'North Carolina Unclaimed Property Act.'

"**§ 116B-52. Definitions.**

In this Chapter:

(1) 'Apparent owner' means a person whose name appears on the records of a holder as the person entitled to property held, issued, or owing by the holder.

(2) 'Business association' means a corporation, joint stock company, investment company, partnership, unincorporated association, joint venture, limited liability company, business trust, trust company, land bank, safe deposit company, safekeeping depository, financial organization, insurance company, mutual fund, utility, or other business entity consisting of one or more persons, whether or not for profit.

(3) 'Domicile' means the state of incorporation of a corporation and the state of the principal place of business of a holder other than a corporation.

(4) 'Financial organization' means a savings and loan association, building and loan association, savings bank, industrial bank, bank, banking organization, or credit union.

(5) 'Holder' means a person obligated to hold for the account of or deliver or pay to the owner property that is subject to this Chapter.

(6) 'Insurance company' means an association, corporation, or fraternal or mutual benefit organization, whether or not for profit, engaged in the business of providing life endowments, annuities, or insurance, including accident, burial, casualty, credit life, contract performance, dental, disability, fidelity, fire, health, hospitalization, illness, life, malpractice, marine, mortgage, surety, wage protection, and workers' compensation insurance.

(7) 'Mineral' means gas, oil, coal, other gaseous, liquid, and solid hydrocarbons, oil shale, cement material, sand and gravel, road material, building stone, chemical raw material, gemstone, fissionable and nonfissionable ores, colloidal and other clay, steam and other geothermal resource, or any other substance defined as a mineral by the law of this State.

(8) 'Mineral proceeds' means amounts payable for the extraction, production, or sale of minerals, or, upon the abandonment of those payments, all payments that become payable thereafter. The term includes amounts payable:

a. For the acquisition and retention of a mineral lease, including bonuses, royalties, compensatory royalties, shut-in royalties, minimum royalties, and delay rentals;

b. For the extraction, production, or sale of minerals, including net revenue interests, royalties, overriding royalties, extraction payments, and production payments; and

c. Under an agreement or option, including a joint operating agreement, unit agreement, pooling agreement, and farm-out agreement.

(9) 'Owner' means a person who has a legal or equitable interest in property subject to this Chapter or the person's legal representative. The term includes a depositor in the case of a deposit, a beneficiary in the case of a trust other than a deposit in trust, and a creditor, claimant, or payee in the case of other property.

(10) 'Person' means an individual, business association, financial organization, estate, trust, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(11) 'Property' means tangible personal property physically located within this State or a fixed and certain interest in intangible property that is held, issued, or owed in the course of a holder's business, or by a government, governmental subdivision, agency, or instrumentality, and all income or increments therefrom. The term includes property that is referred to as or evidenced by:

a. Money, a check, draft, deposit, interest, or dividend;

b. Credit balance, customer's overpayment, gift certificate, security deposit, refund, credit memorandum, unpaid wage, unused ticket, mineral proceeds, or unidentified remittance;

c. Stock or other evidence of ownership of an interest in a business association;

d. A bond, debenture, note, or other evidence of indebtedness;

e. Money deposited to redeem stocks, bonds, coupons, or other securities, or to make distributions;

f. An amount due and payable under the terms of an annuity or insurance policy, including policies providing life insurance, property and casualty insurance, workers' compensation insurance, or health and disability insurance; and

g. An amount distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefits.

(12) 'Record' means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(13) 'State' means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(14) 'Treasurer' means the Treasurer of the State of North Carolina or the Treasurer's designated agent.

(15) 'Utility' means a person who owns or operates for public use any plant, equipment, real property, franchise, or license for the transportation of the public, the transmission of communications, or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

"§ 116B-53. Presumptions of abandonment.

(a) Property is unclaimed if the apparent owner has not communicated in writing or by other means reflected in a contemporaneous record prepared by or on behalf of the holder, with the holder concerning the property or the account in which the property is held, and has not otherwise indicated an interest in the property. A communication with an owner by a person (other than the holder or its representative) who has not, in writing, identified the property to the owner is not an indication of interest in the property by the owner.

(b) An indication of an interest in property includes:

(1) The presentment of a check or other instrument of payment of a dividend or other distribution made with respect to an account or underlying stock or other interest in a business association or, in the case of a distribution made by electronic or similar means, evidence that the distribution has been received;

(2) The presentment of a check or other instrument of payment of interest made with respect to debt of a business association or, in the case of an interest payment made by electronic or similar means, evidence that the interest payment has been received;

(3) Owner-directed activity in the account in which the property is held, including a direction by the owner to increase, decrease, or change the amount or type of property held in the account;

(4) The making of a deposit to or withdrawal from an account in a financial organization;

(5) Owner activity in another account with the holder of a deposit described in subdivisions (c)(2) and (c)(6) of this section; and

(6) The payment of a premium with respect to a property interest in an insurance policy; but the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from maturing or terminating if the insured has died or the insured or the beneficiary of the policy has otherwise become entitled to the proceeds before the depletion of the cash surrender value of a policy by the application of those provisions.

(c) Property is presumed abandoned if it is unclaimed by the apparent owner during the time set forth below for the particular property:

(1) Traveler's check, 15 years after issuance;

(2) Time deposit, including a deposit that is automatically renewable, 10 years after the later of initial maturity or the date of the last indication by the owner of interest in the property;

(3) Money order, cashier's check, teller's check, and certified check, seven years after issuance;

(4) Stock or other equity interest in a business association, including a security entitlement under Article 8 of the Uniform Commercial Code, Chapter 25 of the General Statutes, five years after the earlier of:

a. The date of a cash dividend or other cash distribution unclaimed by the apparent owner, or

b. The date of the second mailing of a stock certificate or other evidence of ownership, a statement of account, or other notification or communication which second mailing was returned as undeliverable or the date the holder discontinued mailings, notifications, or communications to the apparent owner;

(5) Debt of a business association, other than a bearer bond or an original issue discount bond, five years after the date of an interest payment unclaimed by the apparent owner;

(6) Demand or savings deposit, five years after the date of the last indication by the owner of interest in the property;

(7) Money or credits owed to a customer as a result of a retail business transaction, three years after the obligation accrued;

(8) Any gift certificate or electronic gift card bearing an expiration date and remaining unredeemed or dormant for more than three years after the gift certificate or electronic gift card was sold is deemed abandoned. The amount abandoned is deemed to be sixty

percent (60%) of the unredeemed portion of the face value of the gift certificate or the electronic gift card;

(9) Amount owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated, three years after the obligation to pay arose or, in the case of a policy or annuity payable upon proof of death, three years after the insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve is based;

(10) Property distributable by a business association in a course of dissolution, one year after the property becomes distributable;

(11) Property received by a court as proceeds of a class action, and not distributed pursuant to the judgment, one year after the distribution date;

(12) Property held by a court, government, governmental subdivision, agency, or instrumentality, one year after the property becomes distributable;

(13) Wages or other compensation for personal services, one year after the compensation becomes payable;

(14) Deposit or refund owed to a subscriber by a utility, one year after the deposit or refund becomes payable;

(15) Property in an individual retirement account, defined benefit plan, or other account or plan that is qualified for tax deferral under the income tax laws of the United States, three years after the earliest of the date of the distribution or attempted distribution of the property, the date of the required distribution as stated in the plan or trust agreement governing the plan, or the date, if determinable by the holder, specified in the income tax laws of the United States by which distribution of the property must begin in order to avoid a tax penalty; and

(16) All other property, five years after the owner's right to demand the property or after the obligation to pay or distribute the property arises, whichever first occurs.

(d) At the time that an interest in property is presumed abandoned under subsection (c) of this section, any other property right accrued or accruing to the owner as a result of the interest, and not previously presumed abandoned, is also presumed abandoned.

(e) Property is payable or distributable for purposes of this Chapter notwithstanding the owner's failure to make demand or present an instrument or document otherwise required to obtain payment or distribution.

"§ 116B-54. Exclusion for forfeited reservation deposits, certain gift certificates or electronic gift cards, prepaid calling cards, certain manufactured home buyer deposits, and certain credit balances.

(a) A forfeited reservation deposit is not abandoned property. For the purposes of this section, the term 'reservation deposit' means an amount of money paid to a

business association to guarantee that the business association holds a specific service, such as a room accommodation at a hotel, seating at a restaurant, or an appointment with a doctor, for a specified date and place. The term 'reservation deposit' does not include an application fee, a utility deposit, or a deposit made toward the purchase of real property.

(b) A gift certificate or electronic gift card is not abandoned property when the gift certificate or electronic gift card:

(1) Conspicuously states that the gift certificate or electronic gift card does not expire;

(2) Bears no expiration date; or

(3) States that a date of expiration printed on the gift certificate or electronic gift card is not applicable in North Carolina.

(c) A prepaid calling card issued by a public utility as defined in G.S. 62-3(23)a.6. is not abandoned property.

(d) A buyer deposit that a dealer is authorized to retain under either G.S. 143-143.21A or G.S. 143-143.21B is not abandoned property and is not subject to this Article.

(e) Credit balances as shown on the records of a business association to or for the benefit of another business association, shall not constitute abandoned property. For purposes of this section, the term 'credit balances' means items such as overpayments or underpayments on the sale of goods or services.

"**§ 116B-55. Contents of safe deposit box or other safekeeping depository.**

Contents of a safe deposit box or other safekeeping depository held by a financial organization is presumed abandoned if the apparent owner has not claimed the property within the period established by G.S. 53-43.7 and shall be delivered to the Treasurer as provided by that section. If the contents include property described in G.S. 116B-53, the Treasurer shall hold the property for the remainder of the applicable period set forth in that section before the property is deemed to be received for purpose of sale under G.S. 116B-65.

"**§ 116B-56. Rules for taking custody.**

(a) Except as otherwise provided in this Chapter or by other statute of this State, property that is presumed abandoned, whether located in this or another state, is subject to the custody of this State if:

(1) The last known address of the apparent owner, as shown on the records of the holder, is in this State;

(2) The records of the holder do not reflect the identity of the person entitled to the property, and it is established that the last known address of the person entitled to the property is in this State;

(3) The records of the holder do not reflect the last known address of the apparent owner and it is established that:

a. The last known address of the person entitled to the property is in this State; or

b. The holder is domiciled in this State or is a government or governmental subdivision, agency, or instrumentality of this

State and has not previously paid or delivered the property to the state of the last known address of the apparent owner or other person entitled to the property;

(4) The last known address of the apparent owner, as shown on the records of the holder, is in a state that does not provide for the escheat or custodial taking of the property, and the holder is domiciled in this State or is a government or governmental subdivision, agency, or instrumentality of this State;

(5) The last known address of the apparent owner, as shown on the records of the holder, is in a foreign country, and the holder is domiciled in this State or is a government or governmental subdivision, agency, or instrumentality of this State;

(6) The transaction out of which the property arose occurred in this State, the holder is domiciled in a state that does not provide for the escheat or custodial taking of the property, and the last known address of the apparent owner or other person entitled to the property is unknown or is in a state that does not provide for the escheat or custodial taking of the property; or

(7) The property is a traveler's check or money order purchased in this State or the issuer of the traveler's check or money order has its principal place of business in this State and the issuer's records show that the instrument was purchased in a state that does not provide for the escheat or custodial taking of the property or do not show the state in which the instrument was purchased.

(b) In the case of an amount payable under the terms of an annuity or insurance policy, the last known address of the person entitled to the property is presumed to be the same as the last known address of the insured or the principal, as shown on the records of the insurance company, if:

(1) A person other than the insured or the principal is entitled to the property; and

(2) Either:

a. No address of the person is known to the insurance company; or

b. The records of the insurance company do not reflect the identity of the person.

"§ 116B-57. Dormancy charge; other lawful charges.

(a) A holder may deduct from property presumed abandoned a reasonable charge imposed by reason of the owner's failure to claim the property within a specified time only if there is a valid and enforceable written contract between the holder and the owner under which the holder may impose the charge and the holder regularly imposes the charge, which is not regularly reversed or otherwise canceled.

(b) This Chapter does not prevent a holder from deducting from property presumed abandoned other lawful charges specifically authorized by statute or by a valid and enforceable contract.

"**§ 116B-58. Burden of proof as to property evidenced by record of check or draft.**

A record of the issuance of a check, draft, or similar instrument is prima facie evidence of an obligation. In claiming property from a holder who is also the issuer, the Treasurer's burden of proof as to the existence and amount of the property and its abandonment is satisfied by showing issuance of the instrument and passage of the requisite period of abandonment. Defenses of payment, satisfaction, discharge, and want of consideration are affirmative defenses that must be established by the holder.

"**§ 116B-59. Notice by holders to apparent owners.**

(a) A holder of property presumed abandoned shall make a good faith effort to locate an apparent owner.

(b) The holder shall send written notice, by first-class mail, to the apparent owner, not more than 120 days or less than 60 days before filing the report required by G.S. 116B-60, to the last known address of the apparent owner as reflected in the holder's records, if the value of the property is fifty dollars ($50.00) or more.

(c) The notice must contain:

(1) A statement that, according to the records of the holder, property is being held to which the addressee appears entitled and the amount or description of the property;

(2) The name and address of the person holding the property and any necessary information regarding changes of name and address of the holder;

(3) A statement that, if satisfactory proof of claim is not presented by the owner to the holder by the following October 1 or, if the holder is an insurance company, by the following April 1, the property will be placed in the custody of the Treasurer, to whom all further claims shall be directed.

"**§ 116B-60. Report of abandoned property; certification by holders with tax return.**

(a) A holder of property presumed abandoned shall make a report to the Treasurer concerning the property.

(b) The report must be verified and must contain:

(1) A description of the property;

(2) Except with respect to a traveler's check or money order, the name, if known, and last known address, if any, and the social security number or taxpayer identification number, if readily ascertainable, of the apparent owner of property of the value of fifty dollars ($50.00) or more;

(3) An aggregated amount of items valued under fifty dollars ($50.00) each;

(4) In the case of an amount of fifty dollars ($50.00) or more held or owing under an annuity or a life or endowment insurance policy, the full name and last known address of the annuitant or insured and of the beneficiary;

(5) The date, if any, on which the property became payable, demandable, or returnable, and the date of the last transaction or

communication with the apparent owner with respect to the property; and

(6) Other information that the Treasurer by rule prescribes as necessary for the administration of this Chapter.

(c) If a holder of property presumed abandoned is a successor to another person who previously held the property for the apparent owner or the holder has changed its name while holding the property, the holder shall file with the report its former names, if any, and the known names and addresses of all previous holders of the property.

(d) The report must be filed before November 1 of each year and cover the 12 months next preceding July 1 of that year, but a report with respect to a life insurance company must be filed before May 1 of each year for the calendar year next preceding.

(e) Before the date for filing the report, the holder of property presumed abandoned may request the Treasurer to extend the time for filing the report. A request for an extension for filing a report shall be accompanied by an extension processing fee of ten dollars ($10.00). The Treasurer may grant the extension for good cause. The holder, upon receipt of the extension, may make an interim payment on the amount the holder estimates will ultimately be due, which terminates the accrual of additional interest on the amount paid.

(f) The holder of property presumed abandoned shall file with the report an affidavit stating that the holder has complied with G.S. 116B-59.

(g) Every business association holding property presumed abandoned under this Chapter shall certify the holding in the income tax return required by Chapter 105 of the General Statutes. The certification shall be a part of the tax return with which it is filed. If the business association is not required to file an income tax return under Chapter 105, the certification shall be made in the form and manner required by the Secretary of Revenue. The information appearing on the certification is not privileged or confidential, and this information shall be furnished by the Secretary of Revenue to the Escheat Fund on October 1 of each year, or if this date shall fall on a weekend or holiday, on the next regular business day.

"**§ 116B-61. Payment or delivery of abandoned property.**

(a) Upon filing the report required by G.S. 116B-60, the holder of property presumed abandoned shall pay, deliver, or cause to be paid or delivered to the Treasurer the property described in the report, but if the property is an automatically renewable deposit, and a penalty or forfeiture in the payment of interest would result, the time for compliance is extended to the next filing and delivery date at which a penalty or forfeiture would no longer result.

(b) If the property reported to the Treasurer is a security or security entitlement under Article 8 of Chapter 25 of the General Statutes, the Treasurer is an appropriate person to make an indorsement, instruction, or entitlement order on behalf of the apparent owner to invoke the duty of the issuer or its transfer agent or the securities intermediary to transfer or dispose of the security or the security entitlement in accordance with Article 8 of Chapter 25 of the General Statutes.

(c) If the holder of property reported to the Treasurer is the issuer of a certificated security, the Treasurer has the right to obtain a replacement certificate pursuant to G.S. 25-8-405, but an indemnity bond is not required.

(d) An issuer, the holder, and any transfer agent or other person acting pursuant to the instructions of and on behalf of the issuer or holder in accordance with this section is not liable to the apparent owner and must be indemnified against claims of any person in accordance with G.S. 116B-63.

"**§ 116B-62. Preparation of list of owners by Treasurer.**

(a) There shall be delivered to the clerk of superior court of each county prior to June 30 of each year a list prepared by the Treasurer of escheated and abandoned property reported to the Treasurer. The list shall contain:

(1) The names, if known, in alphabetical order of surname, and last known addresses, if any, of apparent owners of escheated and abandoned property;

(2) The names and addresses of the holders of the abandoned property; and

(3) A statement that claim and proof of legal entitlement to escheated or abandoned property shall be presented by the owner to the Treasurer, which statement shall set forth where further information may be obtained.

(b) At the time the lists are distributed to the clerks of superior court, the Treasurer shall cause to be published once each week for two consecutive weeks, in at least two newspapers having general circulation in this State, a notice stating the nature of the lists and that the lists are available for inspection at the offices of the respective clerks of superior court, together with any other information the Treasurer deems appropriate to appear in the notice.

(c) The Treasurer is not required to include in any list any item of a value, as determined by the Treasurer, in the Treasurer's discretion, of less than fifty dollars ($50.00), unless the Treasurer deems inclusion of items of lesser amounts to be in the public interest.

(d) The clerks of superior court shall retain the lists on permanent file in their offices and shall make them available for public inspection.

(e) The lists prepared by the Treasurer shall include only escheated and abandoned property reported for the current reporting date and are not required to be cumulative lists of escheated and abandoned property previously reported.

(f) Notwithstanding the provisions of Chapter 132 of the General Statutes, the supporting data and lists of apparent owners of escheated and abandoned property may be confidential until six months after the notice to clerks of superior court required by subsection (b) of this section has been distributed. This subsection shall not apply to owners of reported property making inquiries about their property to the Escheat Fund.

"**§ 116B-63. Custody by State; recovery by holder; defense of holder.**

(a) In this section, payment or delivery is made in 'good faith' if:

(1) Payment or delivery was made in a reasonable attempt to comply with this Chapter;

(2) The holder was not then in breach of a fiduciary obligation with respect to the property and had a reasonable basis for believing, based on the facts then known, that the property was presumed abandoned; and

(3) There is no showing that the records under which the payment or delivery was made did not meet reasonable commercial standards of practice.

(b) Upon payment or delivery of property to the Treasurer, the State assumes custody and responsibility for the safekeeping of the property. A holder who pays or delivers property to the Treasurer in good faith is relieved of all liability arising thereafter with respect to the property.

(c) A holder who has paid money to the Treasurer pursuant to this Chapter may subsequently make payment to a person reasonably appearing to the holder to be entitled to payment. Upon a filing by the holder of proof of payment and proof that the payee was entitled to the payment, the Treasurer shall promptly reimburse the holder for the payment without imposing a fee or other charge. If reimbursement is sought for a payment made on a negotiable instrument, including a traveler's check or money order, the holder must be reimbursed upon filing proof that the instrument was duly presented and that payment was made to a person who reasonably appeared to be entitled to payment. The holder must be reimbursed for payment made even if the payment was made to a person whose claim was barred under G.S. 116B-71(a).

(d) A holder who has delivered property other than money to the Treasurer pursuant to this Chapter may reclaim the property if it is still in the possession of the Treasurer,without paying any fee or other charge, upon filing proof that the apparent owner has claimed the property from the holder.

(e) The Treasurer may accept a holder's affidavit as sufficient proof of the holder's right to recover money and property under this section.

(f) If a holder pays or delivers property to the Treasurer in good faith and thereafter another person claims the property from the holder or another state claims the money or property under its laws relating to escheat or abandoned or unclaimed property, the Treasurer, upon written notice of the claim, shall defend the holder against the claim and indemnify the holder against any liability on the claim resulting from payment or delivery of the property to the Treasurer.

"§ 116B-64. Income or gain accruing after payment or delivery.

If property other than money is delivered to the Treasurer under this Chapter, the owner is entitled to receive from the Treasurer any income or gain realized or accruing on the property at or before liquidation or conversion of the property into money. If the property is interest-bearing or pays dividends, the interest or dividends shall be paid until the date on which the amount of the deposits, accounts, or funds, or the shares must be remitted or delivered to the Treasurer under G.S. 116B-61. Otherwise, when property is delivered or paid to the Treasurer, the Treasurer shall hold the property without liability for income or gain.

"**§ 116B-65. Public sale of abandoned property.**

(a) Except as otherwise provided in this section, the Treasurer, within three years after the receipt of abandoned property, shall sell it to the highest bidder at public sale at a location in the State which in the judgment of the Treasurer affords the most favorable market for the property. The Treasurer may decline the highest bid and reoffer the property for sale if the Treasurer considers the bid to be insufficient. The Treasurer need not offer the property for sale if the Treasurer considers that the probable cost of sale will exceed the proceeds of the sale. A sale held under this section must be preceded by a single publication of notice, at least three weeks before sale, in a newspaper of general circulation in the county in which the property is to be sold. The Treasurer is not required to sell money unless it is a collector's species having value greater than the face value of the money as cash.

(b) Securities listed on an established stock exchange must be sold at prices prevailing on the exchange at the time of sale. Other securities may be sold over the counter at prices prevailing at the time of sale or by any reasonable method selected by the Treasurer. If securities are sold by the Treasurer before the expiration of three years after their delivery to the Treasurer, a person making a claim under this Chapter before the end of the three-year period is entitled to the proceeds of the sale of the securities or the market value of the securities at the time the claim is made, whichever is greater, less any deduction for expenses of sale. A person making a claim under this Chapter after the expiration of the three-year period is entitled to receive the securities delivered to the Treasurer by the holder, if they still remain in the custody of the Treasurer, or the net proceeds received from sale, and is not entitled to receive any appreciation in the value of the property occurring after delivery to the Treasurer, except in a case of intentional misconduct by the Treasurer.

(c) A purchaser of property at a sale conducted by the Treasurer pursuant to this Chapter takes the property free of all claims of the owner or previous holder and of all persons claiming through or under them. The Treasurer shall execute all documents necessary to complete the transfer of ownership.

"**§ 116B-66. Claim of another state to recover property.**

(a) After property has been paid or delivered to the Treasurer under this Article, another state may recover the property if:

(1) The property was paid or delivered to the custody of this State because the records of the holder did not reflect a last known location of the apparent owner within the borders of the other state, and the other state establishes that the apparent owner or other person entitled to the property was last known to be located within the borders of that state and under the laws of that state the property has escheated or become subject to a claim of abandonment by that state;

(2) The property was paid or delivered to the custody of this State because the laws of the other state did not provide for the escheat or custodial taking of the property, and under the laws of that state

subsequently enacted, the property has escheated or become subject to a claim of abandonment by that state;

(3) The records of the holder were erroneous in that they did not accurately identify the owner of the property and the last known location of the owner within the borders of another state, and under the laws of that state the property has escheated or become subject to a claim of abandonment by that state;

(4) The property was subjected to custody by this State under G.S. 116B-56(6), and under the laws of the state of domicile of the holder, the property has escheated or become subject to a claim of abandonment by that state; or

(5) The property is a sum payable on a traveler's check, money order, or similar instrument that was purchased in the other state and delivered into the custody of this State under G.S. 116B-56(7), and under the laws of the other state, the property has escheated or become subject to a claim of abandonment by that state.

(b) A claim of another state to recover escheated or abandoned property must be presented in a form prescribed by the Treasurer, who shall decide the claim within 90 days after it is presented. The Treasurer shall allow the claim upon determining that the other state is entitled to the abandoned property under subsection (a) of this section.

(c) The Treasurer shall require another state, before recovering property under this section, to agree to indemnify this State and its officers and employees against any liability on a claim to the property.

"§ 116B-67. Claim for property paid or delivered to the Treasurer.

(a) A person, excluding another state, claiming property paid or delivered to the Treasurer may file a claim on a form prescribed by the Treasurer and verified by the claimant.

(b) At the discretion of the Treasurer, the claim shall be made to the holder or to the holder's successor. If the holder is satisfied that the claim is valid and that the claimant is the owner of the property, the holder shall so certify to the Treasurer by written statement attested by the holder under oath, or in the case of a corporation, by two principal officers, or one principal officer and an authorized employee of the corporation. The determination of the holder that the claimant is the owner shall, in the absence of fraud, be binding upon the Treasurer and upon receipt of the certificate of the holder to this effect, the Treasurer shall forthwith authorize and make payment of the claim or return of the property, or if the property has been sold, the amount received from the sale, to the owner, or to the holder in the event the owner has assigned the claim to the holder and the certificate of the holder is accompanied by an assignment. In the event the holder rejects the claim, the claimant may appeal to the Treasurer.

If the holder, or the holder's successor, is not available, the owner may file a claim with the Treasurer on a form prescribed by the Treasurer. In addition to any other

information, the claim shall state the facts surrounding the unavailability of the holder and the lack of a successor.

(c) Within 90 days after a claim is filed, the Treasurer shall allow or deny the claim and give written notice of the decision to the claimant. If the claim is denied, the Treasurer shall inform the claimant of the reasons for the denial and specify what additional evidence is required before the claim will be allowed. The claimant may then file a new claim with the Treasurer or maintain an action under G.S. 116B-68.

(d) Within 30 days after a claim is allowed, the property or the net proceeds of a sale of the property must be delivered or paid by the Treasurer to the claimant.

(e) The claimant or claimants and the holder, if the holder either certifies that the claimant is the owner under subsection (b) of this section or recovers money and property from the Treasurer under G.S. 116B-63, shall agree to indemnify, save harmless, and defend the State, the Treasurer, and the Escheat Fund from any claim arising out of or in connection with refund of the property claimed. In like manner, the claimant shall also agree to indemnify, save harmless, and defend the holder, if the holder certifies the claim under subsection (b) of this section or pays or delivers property to the claimant under G.S. 116B-63.

"§ 116B-68. Action to establish claim.

A person aggrieved by a decision of the Treasurer or whose claim has not been acted upon within 90 days after its filing may maintain an original action to establish the claim in the Superior Court of Wake County, naming the Treasurer as a defendant.

"§ 116B-69. Election to take payment or delivery.

(a) The Treasurer may decline to receive property reported under this Chapter which the Treasurer considers to have a value less than the expenses of notice and sale.

(b) A holder, with the written consent of the Treasurer and upon conditions and terms prescribed by the Treasurer, may report and deliver property before the property is presumed abandoned. Property so delivered must be held by the Treasurer and is not presumed abandoned until it otherwise would be presumed abandoned under this Article.

"§ 116B-70. Destruction or disposition of property having no substantial commercial value; immunity from liability; property of historical significance.

(a) If the Treasurer determines after investigation that property delivered under this Chapter has no substantial commercial value, the Treasurer may destroy or otherwise dispose of the property at any time. An action or proceeding may not be maintained against the State or any officer, employee, or agent of the State, both past and present, in the person's individual and official capacity, or against the holder for or on account of an act of the Treasurer under this subsection, except for intentional misconduct.

(b) Notwithstanding the provisions of G.S. 116B-65, the Treasurer may retain any tangible property delivered to the Treasurer, if the property has recognized historic significance. The historic significance shall be certified by the Treasurer, with the advice of the Secretary of Cultural Resources; and a statement of the appraised value

of the property shall be filed with the certification. Historic property retained under this subsection may be stored and displayed at any suitable location.

"**§ 116B-71. Periods of limitation.**

(a) The expiration, before or after the effective date of this Article, of a period of limitation on the owner's right to receive or recover property, whether specified by contract, statute, or court order, does not preclude the property from being presumed abandoned or affect a duty of a holder to file a report or to pay or deliver or transfer property to the Treasurer as required by this Article.

(b) An action or proceeding may not be maintained by the Treasurer to enforce this Article in regard to the reporting, delivery, or payment of property more than 10 years after the holder filed a report with the Treasurer in which the holder specifically identified property, should have but failed to identify property, or gave express notice to the Treasurer of a dispute regarding property. In the absence of such a report or other express notice, the period of limitation is tolled. The period of limitation is also tolled by the filing of a report that is fraudulent.

"**§ 116B-72. Requests for reports and examination of records.**

(a) The Treasurer may require a person who has not filed a report, or a person who the Treasurer believes has filed an inaccurate, incomplete, or false report, to file a verified report in a form specified by the Treasurer. The report must state whether the person is holding property reportable under this Chapter, describe property not previously reported or as to which the Treasurer has made inquiry, and specifically identify and state the value of property that may be in issue.

(b) The Treasurer, at reasonable times and upon reasonable notice, may examine the records of any person to determine whether the person has complied with this Chapter. The Treasurer may conduct the examination even if the person believes it is not in possession of any property that must be reported, paid, or delivered under this Chapter. The Treasurer may contract with any other person to conduct the examination on behalf of the Treasurer.

(c) The Treasurer at reasonable times may examine the records of an agent, including a dividend disbursing agent or transfer agent, of a business association that is the holder of property presumed abandoned if the Treasurer has given the notice required by subsection (b) of this section to both the association and the agent at least 90 days before the examination.

(d) Documents and working papers obtained or compiled by the Treasurer, or the Treasurer's agents, employees, or designated representatives, in the course of conducting an examination are confidential, but the documents and papers may be:

(1) Used by the Treasurer in the course of an action to collect unclaimed property or otherwise enforce this Chapter;

(2) Used in joint examinations conducted with or pursuant to an agreement with another state, the federal government, or any other governmental subdivision, agency, or instrumentality;

(3) Produced pursuant to subpoena or court order; or

(4) Disclosed to the abandoned property office of another state for that state's use in circumstances equivalent to those described in this

subsection, if the other state is bound to keep the documents and papers confidential.

(e) If an examination results in the disclosure of property reportable under this Chapter, the Treasurer may assess, against a holder who made a fraudulent report, the cost of the examination at the rate of two hundred dollars ($200.00) a day for each examiner, or a greater amount that is reasonable and was incurred, but the assessment may not exceed the value of the property found to be reportable. The cost of an examination made pursuant to subsection (c) of this section may be assessed only against the business association.

(f) If a holder does not maintain the records required by G.S. 116B-73 and the records of the holder available for the periods subject to this Chapter are insufficient to permit the preparation of a report, the Treasurer may require the holder to report and pay to the Treasurer the amount the Treasurer reasonably estimates, on the basis of any available records of the holder or by any other reasonable method of estimation, should have been, but was not reported.

"**§ 116B-73. Retention of records.**

(a) Except as otherwise provided in subsection (b) of this section, a holder required to file a report under G.S. 116B-60 shall maintain the records containing the information required to be included in the report for 10 years after the holder files the report, unless a shorter period is provided by rule of the Treasurer.

(b) A business association that sells, issues, or provides to others for sale or issue in this State, traveler's checks, money orders, or similar instruments other than third-party bank checks, on which the business association is directly liable, shall maintain a record of the instruments while they remain outstanding, indicating the state and date of issue, for three years after the holder files the report.

"**§ 116B-73.1. Discretionary precompliance review.**

A holder may request the Treasurer to conduct a precompliance review of the holder's compliance program to educate the holder's employees on the unclaimed property laws and filing procedures and to recommend ways to facilitate the holder's compliance with the law. Subject to the availability of staff, the Treasurer may conduct a precompliance review upon request. The Treasurer may charge the holder a precompliance review fee of up to five hundred dollars ($500.00) per day for conducting this review.

"**§ 116B-74. Enforcement.**

(a) The Treasurer may maintain an action in this or another state to enforce this Chapter.

(b) The Treasurer may order a person required to report, pay, or deliver property under this Chapter, or an officer or employee of the person, or a person having possession, custody, care, or control of records relevant to the matter under inquiry, or any other person having knowledge of the property or records, to appear before the Treasurer, at a time and place named in the order, and to produce the records and to give such testimony under oath or affirmation relevant to the inquiry. For purposes of this subsection, the Treasurer may administer oaths or affirmations. If a person refuses to obey an order of the Treasurer, the Treasurer may apply to the

Superior Court of Wake County for an order requiring the person to obey the order of the Treasurer. Failure to comply with the court order is punishable for contempt.

"§ 116B-75. Interstate agreements and cooperation; joint and reciprocal actions with other states.

(a) The Treasurer may enter into an agreement with another state to exchange information relating to abandoned property or its possible existence. The agreement may permit the other state, or another person acting on behalf of a state, to examine records as authorized in G.S. 116B-72. The Treasurer by rule may require the reporting of information needed to enable compliance with an agreement made under this section and prescribe the form.

(b) The Treasurer may join with another state to seek enforcement of this Chapter against any person who is or may be holding property reportable under this Chapter.

(c) At the request of another state, the Attorney General of this State may maintain an action on behalf of the other state to enforce, in this State, the unclaimed property laws of the other state against a holder of property subject to escheat or a claim of abandonment by the other state, if the other state has agreed to pay expenses incurred by the Attorney General in maintaining the action.

(d) The Treasurer may request that the attorney general of another state or another attorney commence an action in the other state on behalf of the Treasurer. With the approval of the Attorney General of this State, the Treasurer may retain any other attorney to commence an action in this State on behalf of the Treasurer. This State shall pay all expenses, including attorneys' fees, in maintaining an action under this subsection. With the Treasurer's approval, the expenses and attorneys' fees may be paid from money received under this Chapter. The Treasurer may agree to pay expenses and attorneys' fees based in whole or in part on a percentage of the value of any property recovered in the action. Any expenses or attorneys' fees paid under this subsection may not be deducted from the amount that is subject to the claim by the owner under this Chapter.

(e) The Treasurer is authorized to make such expenditures from the funds of the Escheat Fund as may be necessary to effectuate the provisions of this section.

"§ 116B-76. Interest and penalties; waiver.

(a) A holder who fails to report, pay, or deliver property within the time prescribed by this Chapter shall pay to the Treasurer interest at the rate established pursuant to this subsection on the property or value of the property from the date the property should have been reported, paid, or delivered. On or before June 1 and December 1 of each year, the Treasurer shall establish the interest rate to be in effect during the six-month period beginning on the next succeeding July 1 and January 1, respectively, after giving due consideration to current market conditions. If no new rate is established, the rate in effect during the preceding six-month period shall continue in effect. The rate established by the Treasurer may not be less than five percent (5%) per year and may not exceed sixteen percent (16%) per year.

(b) A holder who willfully fails to report, pay, or deliver property within the time prescribed by this Chapter, or willfully fails to perform other duties imposed by this Chapter, shall pay to the Treasurer, in addition to interest as provided in subsection

(a) of this section , a civil penalty of one thousand dollars ($1,000) for each day the report, payment, or delivery is withheld, or the duty is not performed, up to a maximum of twenty-five thousand dollars ($25,000), plus twenty-five percent (25%) of the value of any property that should have been but was not reported.

(c) A holder who makes a fraudulent report shall pay to the Treasurer, in addition to interest as provided in subsection (a) of this section, a civil penalty of one thousand dollars ($1,000) for each day from the date a report under this Chapter was due, up to a maximum of twenty-five thousand dollars ($25,000), plus twenty-five percent (25%) of the value of any property that should have been but was not reported.

(d) The Treasurer for good cause may waive, in whole or in part, interest under subsection (a) of this section and penalties under subsection (b) of this section.

"**§ 116B-77. Agreement to locate property.**

(a) An agreement by an owner, the primary purpose of which is to locate, deliver, recover, or assist in the recovery of property that is presumed abandoned, is void and unenforceable if it was entered into during the period commencing on the date the property was presumed abandoned and extending to a time that is 24 months after the date the property is paid or delivered to the Treasurer. This subsection does not apply to an owner's agreement with an attorney to file a claim as to identified property or contest the Treasurer's denial of a claim.

(b) An agreement by an owner, the primary purpose of which is to locate, deliver, recover, or assist in the recovery of property, is enforceable only if the agreement is in writing, clearly sets forth the nature of the property and the services to be rendered, is signed by the owner, and states the value of the property before and after the fee or other compensation has been deducted.

(c) If an agreement covered by this section applies to mineral proceeds and the agreement contains a provision to pay compensation that includes a portion of the underlying minerals or any mineral proceeds not then presumed abandoned, the provision is void and unenforceable.

(d) An agreement covered by this section that provides for compensation in an amount greater than twenty-five percent (25%) of the actual value of the property recovered, or is otherwise unconscionable, is unenforceable except by the owner. An owner who has made an agreement to pay compensation that is unenforceable, or the Treasurer on behalf of the owner, may maintain an action to reduce the compensation. The court may award reasonable attorneys' fees to an owner who prevails in the action.

(e) This section does not preclude an owner from asserting that an agreement covered by this section is invalid on grounds other than as provided in subsection (d) of this section.

(f) Any person who enters into an agreement covered by this section with an owner shall register annually with the Treasurer. The information to be required under this subsection shall include the person's name, address, telephone number, state of incorporation or residence, as applicable, and the person's federal identification number. A registration fee of one hundred dollars ($100.00) shall be

paid to the Treasurer at the time of the filing of the registration information. Fees received under this subsection shall be credited to the General Fund.

"**§ 116B-78. Transitional provisions.**

(a) An initial report filed under this Article for property that was not required to be reported before the effective date of this Article but which is subject to this Article must include all items of property that would have been presumed abandoned during the 10-year period next preceding the effective date of this Article as if this Article had been in effect during that period.

(b) This Article does not relieve a holder of a duty that arose before the effective date of this Article to report, pay, or deliver property. Except as otherwise provided in G.S 116B-71(b) and G.S. 116B-76(d), a holder who did not comply with the law in effect before the effective date of this Article is subject to the applicable provisions for enforcement and penalties which then existed, which are continued in effect for the purpose of this section.

"**§ 116B-79. Rules.**

The Treasurer may adopt rules necessary to carry out this Chapter."

Section 7. G.S. 44A-4(b)(1) reads as rewritten:

"(b) Notice and Hearings. --

(1) If the property upon which the lien is claimed is a motor vehicle that is required to be registered, the lienor following the expiration of the relevant time period provided by subsection (a) shall give notice to the Division of Motor Vehicles that a lien is asserted and sale is proposed and shall remit to the Division a fee of ten dollars ($10.00). The Division of Motor Vehicles shall issue notice by registered or certified mail, return receipt requested, to the person having legal title to the property, if reasonably ascertainable, to the person with whom the lienor dealt if different, and to each secured party and other person claiming an interest in the property who is actually known to the Division or who can be reasonably ascertained. The notice shall state that a lien has been asserted against specific property and shall identify the lienor, the date that the lien arose, the general nature of the services performed and materials used or sold for which the lien is asserted, the amount of the lien, and that the lienor intends to sell the property in satisfaction of the lien. The notice shall inform the recipient that the recipient has the right to a judicial hearing at which time a determination will be made as to the validity of the lien prior to a sale taking place. The notice shall further state that the recipient has a period of 10 days from the date of receipt in which to notify the Division by registered or certified mail, return receipt requested, that a hearing is desired and that if the recipient wishes to contest the sale of his property pursuant to such lien, the recipient should notify the Division that a hearing is desired. The notice shall state the required information in simplified terms and

shall contain a form whereby the recipient may notify the Division that a hearing is desired by the return of such form to the Division. The Division shall notify the lienor whether such notice is timely received by the Division. In lieu of the notice by the lienor to the Division and the notices issued by the Division described above, the lienor may issue notice on a form approved by the Division pursuant to the notice requirements above. If notice is issued by the lienor, the recipient shall return the form requesting a hearing to the lienor, and not the Division, within 10 days from the date the recipient receives the notice if a judicial hearing is requested. Failure of the recipient to notify the Division or lienor, as specified in the notice, within 10 days of the receipt of such notice that a hearing is desired shall be deemed a waiver of the right to a hearing prior to the sale of the property against which the lien is asserted, and the lienor may proceed to enforce the lien by public or private sale as provided in this section and the Division shall transfer title to the property pursuant to such sale. If the Division or lienor, as specified in the notice, is notified within the 10-day period provided above that a hearing is desired prior to sale, the lien may be enforced by sale as provided in this section and the Division will transfer title only pursuant to the order of a court of competent jurisdiction.

If the registered or certified mail notice has been returned as undeliverable, or if the name of the person having legal title to the vehicle cannot reasonably be ascertained and the fair market value of the vehicle is less than eight hundred dollars ($800.00), the lienor may institute a special proceeding in the county where the vehicle is being held, for authorization to sell that vehicle. Market value shall be determined by the schedule of values adopted by the Commissioner under G.S. 105-187.3.

In such a proceeding a lienor may include more than one vehicle, but the proceeds of the sale of each shall be subject only to valid claims against that vehicle, and any excess proceeds of the sale shall ~~escheat to the State and~~ be paid immediately to the ~~treasurer~~ Treasurer for disposition pursuant to Chapter 116B of the General Statutes. ~~A vehicle owner or possessor claiming an interest in such proceeds shall have a right of action under G.S. 116B-38.~~

The application to the clerk in such a special proceeding shall contain the notice of sale information set out in subsection (f) hereof. If the application is in proper form the clerk shall enter an order authorizing the sale on a date not less than 14 days therefrom, and the lienor shall cause the application and order to be sent immediately by first-class mail pursuant to G.S. 1A-1, Rule 5, to each person to whom notice was mailed pursuant to this

subsection. Following the authorized sale the lienor shall file with the clerk a report in the form of an affidavit, stating that the lienor has complied with the public or private sale provisions of G.S. 44A-4, the name, address, and bid of the high bidder or person buying at a private sale, and a statement of the disposition of the sale proceeds. The clerk then shall enter an order directing the Division to transfer title accordingly.

If prior to the sale the owner or legal possessor contests the sale or lien in a writing filed with the clerk, the proceeding shall be handled in accordance with G.S. 1-399."

Section 8. G.S. 29-12 reads as rewritten:

"**§ 29-12. Escheats.**

If there is no person entitled to take under G.S. 29-14 or ~~29-15,~~ G.S. 29-15, or if in case of an illegitimate intestate, there is no one entitled to take under G.S. 29-21 or ~~29-22~~ G.S. 29-22 the net estate shall escheat as provided in ~~G.S. 116A-2.~~ G.S. 116B-2."

Section 9. G.S. 53-43.7(b)

"(b) Any property, including documents or writings of a private nature, which has little or no apparent value, need not be sold but may be destroyed ~~by the Treasurer or~~ by the ~~lessor, if retained by the lessor pursuant to a determination by the Treasurer under G.S. 116B-31(e).~~ lessor if the Treasurer declines to receive the property under G.S. 116B-69(a)."

Section 10. G.S. 53-43.7(d) reads as rewritten:

"(d) The lessor shall submit to the Treasurer a verified inventory of all of the contents of the safe-deposit box upon delivery of the contents of the box or such part thereof as shall be required by the Treasurer under ~~G.S. 116B-31(e);~~ G.S. 116B-55; but the lessor may deduct from any cash of the lessee in the safe-deposit box an amount equal to accumulated charges for rental and shall submit to the Treasurer a verified statement of such charges and deduction. If there is no cash, or insufficient cash to pay accumulated charges, in the safe-deposit box, the lessor may submit to the Treasurer a verified statement of accumulated charges or balance of accumulated charges due, and the Treasurer shall remit to the lessor the charges or balance due, up to the value of the property in the safe-deposit box delivered to ~~him,~~ the Treasurer, less any costs or expenses of sale; but if the charges or balance due exceeds the value of such property, the Treasurer shall remit only the value of the property, less costs or expenses of sale. Any accumulated charges for safe-deposit box rental paid by the Treasurer to the lessor shall be deducted from the value of the property of the lessee delivered to the Treasurer."

Section 11. G.S. 53B-4 reads as rewritten:

"**§ 53B-4. Access to financial records.**

Notwithstanding any other provision of law, no government authority may have access to a customer's financial record held by a financial institution unless the financial record is described with reasonable specificity and access is sought pursuant to:

(1) Customer authorization that meets the requirements of the Right to Financial Privacy Act § 1104, 12 U.S.C. § 3404, provided, however, a customer authorization received by a State agency or a county department of social services for the purpose of determining eligibility for the programs of public assistance under Chapter 108A of the General Statutes, or for purposes of a government inquiry concerning these same programs of public assistance, cannot be revoked and shall remain valid for 12 months unless a shorter period is specified in the authorization, or a customer authorization that is given by a licensed attorney with respect to an account in which the attorney holds funds as a fiduciary;

(2) Authorization under G.S. 105-251, 105-251.1, or 105-258;

(3) Search warrant as provided in Article 11 of Chapter 15A of the General Statutes;

(4) Statutory authority of a supervisory agency to examine or have access to financial records in the exercise of its supervisory, regulatory, or monetary functions with respect to a financial institution;

(5) The authority granted under ~~G.S. 116B-39;~~ G.S. 116B-72 and G.S. 116B-74;

(6) Examination and review by the State Auditor or his authorized representative under G.S. 147-64.6(c)(9) or ~~147-64.7(a);~~ G.S. 147-64.7(a);

(7) Request by a government authority authorized to buy and sell student loan notes under Article 23 of Chapter 116 of the General Statutes for financial records relating to insured student loans;

(8) Pending litigation to which the government authority and the customer are parties;

(9) Subpoena or court order in connection with a grand jury proceeding;

(10) A writ of execution under Article 28 of Chapter 1 of the General Statutes; or

(11) Other court order or administrative or judicial subpoena authorized by law if the requirements of G.S. 53B-5 are met.

As used in this section, the term 'reasonable specificity' means that degree of specificity reasonable under all the circumstances, ~~and~~ and, with respect to requests under G.S. 116B-72 and G.S. 116B-74, may include designation by general type or ~~class as authorized in G.S. 116B-39.~~ class."

Section 12. G.S. 116-209.3 reads as rewritten:

"**§ 116-209.3. Additional powers.**

The Authority is authorized to develop and administer programs and perform all functions necessary or convenient to promote and facilitate the making and insuring of student loans and providing such other student loan assistance and services as the

Authority shall deem necessary or desirable for carrying out the purposes of this Article and for qualifying for loans, grants, insurance and other benefits and assistance under any program of the United States now or hereafter authorized fostering student loans. There shall be established and maintained a trust fund which shall be designated 'State Education Assistance Authority Loan Fund' (the 'Loan Fund') which may be used by the Authority in making student loans directly or through agents or independent contractors, insuring student loans, acquiring, purchasing, endorsing or guaranteeing promissory notes, contracts, obligations or other legal instruments evidencing student loans made by banks, educational institutions, nonprofit corporations or other eligible lenders, and for defraying the expenses of operation and administration of the Authority for which other funds are not available to the Authority. There shall be deposited to the credit of such Loan Fund the proceeds (exclusive of accrued interest) derived from the sale of its revenue bonds by the Authority and any other moneys made available to the Authority for the making or insuring of student loans or the purchase of obligations. There shall also be deposited to the credit of the Loan Fund surplus funds from time to time transferred by the Authority from the sinking fund. Such Loan Fund shall be maintained as a revolving fund. There is also deposited to the credit of the Loan Fund the income derived from the investment or deposit of the Escheat Fund distributed to the Authority pursuant to ~~G.S. 116B-37.~~ G.S. 116B-7. The income shall be held, administered and applied by the Authority as provided in any resolution adopted or trust agreement approved by the Authority, subject to the provisions of Chapter 116B of the General Statutes and this Article.

In lieu of or in addition to the Loan Fund, the Authority may provide in any resolution authorizing the issuance of bonds or any trust agreement securing such bonds that any other trust funds or accounts may be established as may be deemed necessary or convenient for securing the bonds or for making student loans, acquiring obligations or otherwise carrying out its other powers under this Article, and there may be deposited to the credit of any such fund or account proceeds of bonds or other money available to the Authority for the purposes to be served by such fund or account."

Section 13. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect the provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 14. The Revisor of Statutes shall cause to be printed with this act all explanatory comments of the drafters of this act as the Revisor may deem appropriate.

Section 15. This act becomes effective January 1, 2000, and shall apply to property existing on or after that date. G.S. 116B-54(d), as enacted in Section 6 of this act, is intended to clarify and not change existing law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 244*
Judiciary I Committee Substitute Adopted 5/26/99
Finance Committee Substitute No. 2 Adopted 6/9/99
Proposed Committee Substitute S244-PCS1755-LA

Short Title: Unclaimed Property Act/AB. (Public)

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO ENACT THE NORTH CAROLINA UNCLAIMED PROPERTY ACT AND TO MAKE CONFORMING AMENDMENTS TO THE GENERAL STATUTES, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION, AND TO MAKE OTHER CHANGES TO THE ESCHEATS LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 116B-4 reads as rewritten:

"§ 116B-4. Claim for escheated property.

Any escheated property or proceeds from the sale of escheated property held by the Escheat Fund pursuant to ~~G.S. 116B-27~~ G.S. 116B-5 may be claimed by an heir of the decedent or by a creditor of the decedent who is not barred from presenting a claim under the provisions of Article 19 of ~~Chapter 28A.~~ Chapter 28A of the General Statutes. ~~The claim shall be made on a form prescribed by the Treasurer and shall be presented to the Treasurer. If the Treasurer determines that the claimant is entitled to all or a portion of the escheated property or the proceeds from its sale, he shall make payment of the claim or return of the property. The claimant shall agree to indemnify the State, the State Treasurer and the Escheat Fund from any claim arising out of or in connection with refund of the property claimed.~~ The provisions of ~~G.S. 116B-38(b) and (c)~~ G.S. 116B-67(a), (c), (d), and (e) and G.S. 116B-68 shall apply to a claim under this ~~subsection.~~ section."

Section 2. Article 2 of Chapter 116B of the General Statutes is repealed.

Section 3.(a) Except as provided in subsection (b) of this section, Article 3 of Chapter 116B of the General Statutes is repealed.

Section 3.(b) G.S. 116B-27 is recodified as G.S. 116B-5 within Article 1 of Chapter 116B of the General Statutes. G.S. 116B-36 is recodified as G.S. 116B-6 within Article 1 of Chapter 116B of the General Statutes. G.S. 116B-37 is recodified as G.S. 116B-7 within Article 1 of Chapter 116B of the General Statutes. G.S. 116B-47 is recodified as G.S. 116B-8 within Article 1 of Chapter 116B of the General Statutes.

Section 4.(a) G.S. 116B-6(b), as recodified by subsection (b) of Section 3 of this act, reads as rewritten:

"(b) Investment and Transfer of Assets; Income. -- The Treasurer ~~shall be~~ is the trustee of the Escheat Account and ~~shall have~~ has full power to invest and reinvest the assets of the Escheat Account and the Escheat Fund. Subject to the Treasurer's withholding an amount necessary to accomplish ~~his~~ the Treasurer's duties as set out in this Chapter, including subsections (e), (f) and (g) of this section, the Treasurer shall transfer, at least annually, to the Escheat Account all moneys then in ~~his~~ the Treasurer's custody received as, or derived from the disposition of, escheated and abandoned property and shall disburse to the State Education Assistance Authority, as provided in ~~G.S. 116B-37,~~ G.S. 116B-7, the income derived from the investment of the Escheat Account and the Escheat Fund. All moneys transferred to the Escheat Account under this section shall be accounted for and administered separately from other assets and money in the trust fund created under G.S. 116-209."

Section 4.(b) G.S. 116B-6(h) as recodified by subsection (b) of Section 3 of this act, reads as rewritten:

"(h) Expenditures. -- The Treasurer may expend the funds in the Escheat Fund, other than funds in the Escheat Account, for the payment of claims for refunds to owners, holders and claimants under G.S. 116B-4; for the payment of costs of maintenance and upkeep of abandoned or escheated property; costs of preparing lists of names of owners of abandoned property to be furnished to clerks of superior court; costs of notice and publication; costs of appraisals; fees of persons employed pursuant to ~~G.S. 116B-47;~~ G.S. 116B-8 costs involved in determining whether a decedent died without heirs; costs of a title search of real property that has escheated; and costs of auction or sale under this Chapter. All other costs, including salaries of personnel, necessary to carry out the duties of the Treasurer under this Chapter, shall be appropriated from the funds of the Escheat Fund pursuant to the provisions of Article 1, Chapter 143 of the General Statutes."

Section 5. G.S. 116B-8, as recodified by subsection (b) of Section 3 of this act, reads as rewritten:

"§ 116B-8. Employment of persons with specialized skills or knowledge.

The Treasurer may employ the services of such independent consultants, real estate managers and other persons possessing specialized skills or knowledge as ~~he shall deem~~ the Treasurer deems necessary or appropriate for the administration of this Chapter, ~~including, but specifically not limited to,~~ including valuation,

maintenance, upkeep, management, sale and conveyance of property and determination of sources of unreported abandoned property. The Treasurer may also employ the services of an attorney to perform a title search or to provide an accurate legal description of real property which ~~he~~ the Treasurer has reason to believe may have escheated. Persons whose services are employed by the Treasurer pursuant to this section to determine sources and amounts of unreported property are subject to the same policies, including confidentiality and ethics, as employees of the Department of State Treasurer assigned to determine sources and amounts of unreported property. Compensation of persons whose services are employed pursuant to this section on a contingent fee basis shall be limited to ten percent (10%) of the final assessment."

Section 6. Chapter 116B of the General Statutes is amended by adding the following new article to read:

"ARTICLE 4.

"North Carolina Unclaimed Property Act.

"§ 116B-51. Short title.

This Article may be cited as the 'North Carolina Unclaimed Property Act.'

"§ 116B-52. Definitions.

In this Chapter:

(1) 'Apparent owner' means a person whose name appears on the records of a holder as the person entitled to property held, issued, or owing by the holder.

(2) 'Business association' means a corporation, joint stock company, investment company, partnership, unincorporated association, joint venture, limited liability company, business trust, trust company, land bank, safe deposit company, safekeeping depository, financial organization, insurance company, mutual fund, utility, or other business entity consisting of one or more persons, whether or not for profit.

(3) 'Domicile' means the state of incorporation of a corporation and the state of the principal place of business of a holder other than a corporation.

(4) 'Financial organization' means a savings and loan association, building and loan association, savings bank, industrial bank, bank, banking organization, or credit union.

(5) 'Holder' means a person obligated to hold for the account of or deliver or pay to the owner property that is subject to this Chapter.

(6) 'Insurance company' means an association, corporation, or fraternal or mutual benefit organization, whether or not for profit, engaged in the business of providing life endowments, annuities, or insurance, including accident, burial, casualty, credit life, contract performance, dental, disability, fidelity, fire, health, hospitalization, illness, life, malpractice, marine, mortgage, surety, wage protection, and workers' compensation insurance.

(7) 'Mineral' means gas, oil, coal, other gaseous, liquid, and solid hydrocarbons, oil shale, cement material, sand and gravel, road material, building stone, chemical raw material, gemstone, fissionable and nonfissionable ores, colloidal and other clay, steam and other geothermal resource, or any other substance defined as a mineral by the law of this State.

(8) 'Mineral proceeds' means amounts payable for the extraction, production, or sale of minerals, or, upon the abandonment of those payments, all payments that become payable thereafter. The term includes amounts payable:

a. For the acquisition and retention of a mineral lease, including bonuses, royalties, compensatory royalties, shut-in royalties, minimum royalties, and delay rentals;

b. For the extraction, production, or sale of minerals, including net revenue interests, royalties, overriding royalties, extraction payments, and production payments; and

c. Under an agreement or option, including a joint operating agreement, unit agreement, pooling agreement, and farm-out agreement.

(9) 'Owner' means a person who has a legal or equitable interest in property subject to this Chapter or the person's legal representative. The term includes a depositor in the case of a deposit, a beneficiary in the case of a trust other than a deposit in trust, and a creditor, claimant, or payee in the case of other property.

(10) 'Person' means an individual, business association, financial organization, estate, trust, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(11) 'Property' means tangible personal property physically located within this State or a fixed and certain interest in intangible property that is held, issued, or owed in the course of a holder's business, or by a government, governmental subdivision, agency, or instrumentality, and all income or increments therefrom. The term includes property that is referred to as or evidenced by:

a. Money, a check, draft, deposit, interest, or dividend;

b. Credit balance, customer's overpayment, gift certificate, security deposit, refund, credit memorandum, unpaid wage, unused ticket, mineral proceeds, or unidentified remittance;

c. Stock or other evidence of ownership of an interest in a business association;

d. A bond, debenture, note, or other evidence of indebtedness;

e. Money deposited to redeem stocks, bonds, coupons, or other securities, or to make distributions;

f. An amount due and payable under the terms of an annuity or insurance policy, including policies providing life insurance, property and casualty insurance, workers' compensation insurance, or health and disability insurance; and

g. An amount distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefits.

(12) 'Record' means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(13) 'State' means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(14) 'Treasurer' means the Treasurer of the State of North Carolina or the Treasurer's designated agent.

(15) 'Utility' means a person who owns or operates for public use any plant, equipment, real property, franchise, or license for the transportation of the public, the transmission of communications, or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

"**§ 116B-53. Presumptions of abandonment.**

(a) Property is unclaimed if the apparent owner has not communicated in writing or by other means reflected in a contemporaneous record prepared by or on behalf of the holder, with the holder concerning the property or the account in which the property is held, and has not otherwise indicated an interest in the property. A communication with an owner by a person (other than the holder or its representative) who has not, in writing, identified the property to the owner is not an indication of interest in the property by the owner.

(b) An indication of an interest in property includes:

(1) The presentment of a check or other instrument of payment of a dividend or other distribution made with respect to an account or underlying stock or other interest in a business association or, in the case of a distribution made by electronic or similar means, evidence that the distribution has been received;

(2) The presentment of a check or other instrument of payment of interest made with respect to debt of a business association or, in the case of an interest payment made by electronic or similar means, evidence that the interest payment has been received;

(3) Owner-directed activity in the account in which the property is held, including a direction by the owner to increase, decrease, or change the amount or type of property held in the account;

(4) The making of a deposit to or withdrawal from an account in a financial organization;

(5) Owner activity in another account with the holder of a deposit described in subdivisions (c)(2) and (c)(6) of this section; and

(6) The payment of a premium with respect to a property interest in an insurance policy; but the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from maturing or terminating if the insured has died or the insured or the beneficiary of the policy has otherwise become entitled to the proceeds before the depletion of the cash surrender value of a policy by the application of those provisions.

(c) Property is presumed abandoned if it is unclaimed by the apparent owner during the time set forth below for the particular property:

(1) Traveler's check, 15 years after issuance;

(2) Time deposit, including a deposit that is automatically renewable, 10 years after the later of initial maturity or the date of the last indication by the owner of interest in the property;

(3) Money order, cashier's check, teller's check, and certified check, seven years after issuance;

(4) Stock or other equity interest in a business association, including a security entitlement under Article 8 of the Uniform Commercial Code, Chapter 25 of the General Statutes, five years after the earlier of:

a. The date of a cash dividend or other cash distribution unclaimed by the apparent owner, or

b. The date of the second mailing of a stock certificate or other evidence of ownership, a statement of account, or other notification or communication which second mailing was returned as undeliverable or the date the holder discontinued mailings, notifications, or communications to the apparent owner;

(5) Debt of a business association, other than a bearer bond or an original issue discount bond, five years after the date of an interest payment unclaimed by the apparent owner;

(6) Demand or savings deposit, five years after the date of the last indication by the owner of interest in the property;

(7) Money or credits owed to a customer as a result of a retail business transaction, three years after the obligation accrued;

(8) Any gift certificate or electronic gift card bearing an expiration date and remaining unredeemed or dormant for more than three years after the gift certificate or electronic gift card was sold is deemed abandoned. The amount abandoned is deemed to be sixty

percent (60%) of the unredeemed portion of the face value of the gift certificate or the electronic gift card;

(9) Amount owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated, three years after the obligation to pay arose or, in the case of a policy or annuity payable upon proof of death, three years after the insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve is based;

(10) Property distributable by a business association in a course of dissolution, one year after the property becomes distributable;

(11) Property received by a court as proceeds of a class action, and not distributed pursuant to the judgment, one year after the distribution date;

(12) Property held by a court, government, governmental subdivision, agency, or instrumentality, one year after the property becomes distributable;

(13) Wages or other compensation for personal services, one year after the compensation becomes payable;

(14) Deposit or refund owed to a subscriber by a utility, one year after the deposit or refund becomes payable;

(15) Property in an individual retirement account, defined benefit plan, or other account or plan that is qualified for tax deferral under the income tax laws of the United States, three years after the earliest of the date of the distribution or attempted distribution of the property, the date of the required distribution as stated in the plan or trust agreement governing the plan, or the date, if determinable by the holder, specified in the income tax laws of the United States by which distribution of the property must begin in order to avoid a tax penalty; and

(16) All other property, five years after the owner's right to demand the property or after the obligation to pay or distribute the property arises, whichever first occurs.

(d) At the time that an interest in property is presumed abandoned under subsection (c) of this section, any other property right accrued or accruing to the owner as a result of the interest, and not previously presumed abandoned, is also presumed abandoned.

(e) Property is payable or distributable for purposes of this Chapter notwithstanding the owner's failure to make demand or present an instrument or document otherwise required to obtain payment or distribution.

"§ 116B-54. Exclusion for forfeited reservation deposits, certain gift certificates or electronic gift cards, prepaid calling cards, certain manufactured home buyer deposits, and certain credit balances.

(a) A forfeited reservation deposit is not abandoned property. For the purposes of this section, the term 'reservation deposit' means an amount of money paid to a

business association to guarantee that the business association holds a specific service, such as a room accommodation at a hotel, seating at a restaurant, or an appointment with a doctor, for a specified date and place. The term 'reservation deposit' does not include an application fee, a utility deposit, or a deposit made toward the purchase of real property.

(b) A gift certificate or electronic gift card is not abandoned property when the gift certificate or electronic gift card:

(1) Conspicuously states that the gift certificate or electronic gift card does not expire;

(2) Bears no expiration date; or

(3) States that a date of expiration printed on the gift certificate or electronic gift card is not applicable in North Carolina.

(c) A prepaid calling card issued by a public utility as defined in G.S. 62-3(23)a.6. is not abandoned property.

(d) A buyer deposit that a dealer is authorized to retain under either G.S. 143-143.21A or G.S. 143-143.21B is not abandoned property and is not subject to this Article.

(e) Credit balances as shown on the records of a business association to or for the benefit of another business association, shall not constitute abandoned property. For purposes of this section, the term 'credit balances' means items such as overpayments or underpayments on the sale of goods or services.

"§ 116B-55. Contents of safe deposit box or other safekeeping depository.

Contents of a safe deposit box or other safekeeping depository held by a financial organization is presumed abandoned if the apparent owner has not claimed the property within the period established by G.S. 53-43.7 and shall be delivered to the Treasurer as provided by that section. If the contents include property described in G.S. 116B-53, the Treasurer shall hold the property for the remainder of the applicable period set forth in that section before the property is deemed to be received for purpose of sale under G.S. 116B-65.

"§ 116B-56. Rules for taking custody.

(a) Except as otherwise provided in this Chapter or by other statute of this State, property that is presumed abandoned, whether located in this or another state, is subject to the custody of this State if:

(1) The last known address of the apparent owner, as shown on the records of the holder, is in this State;

(2) The records of the holder do not reflect the identity of the person entitled to the property, and it is established that the last known address of the person entitled to the property is in this State;

(3) The records of the holder do not reflect the last known address of the apparent owner and it is established that:

a. The last known address of the person entitled to the property is in this State; or

b. The holder is domiciled in this State or is a government or governmental subdivision, agency, or instrumentality of this

State and has not previously paid or delivered the property to the state of the last known address of the apparent owner or other person entitled to the property;

(4) The last known address of the apparent owner, as shown on the records of the holder, is in a state that does not provide for the escheat or custodial taking of the property, and the holder is domiciled in this State or is a government or governmental subdivision, agency, or instrumentality of this State;

(5) The last known address of the apparent owner, as shown on the records of the holder, is in a foreign country, and the holder is domiciled in this State or is a government or governmental subdivision, agency, or instrumentality of this State; or

(6) The property is a traveler's check or money order purchased in this State or the issuer of the traveler's check or money order has its principal place of business in this State and the issuer's records show that the instrument was purchased in a state that does not provide for the escheat or custodial taking of the property or do not show the state in which the instrument was purchased.

(b) In the case of an amount payable under the terms of an annuity or insurance policy, the last known address of the person entitled to the property is presumed to be the same as the last known address of the insured or the principal, as shown on the records of the insurance company, if:

(1) A person other than the insured or the principal is entitled to the property; and

(2) Either:

a. No address of the person is known to the insurance company; or

b. The records of the insurance company do not reflect the identity of the person.

"§ 116B-57. Dormancy charge; other lawful charges.

(a) A holder may deduct from property presumed abandoned a reasonable charge imposed by reason of the owner's failure to claim the property within a specified time only if there is a valid and enforceable written contract between the holder and the owner under which the holder may impose the charge and the holder regularly imposes the charge, which is not regularly reversed or otherwise canceled.

(b) This Chapter does not prevent a holder from deducting from property presumed abandoned other lawful charges specifically authorized by statute or by a valid and enforceable contract.

"§ 116B-58. Burden of proof as to property evidenced by record of check or draft.

A record of the issuance of a check, draft, or similar instrument is prima facie evidence of an obligation. In claiming property from a holder who is also the issuer, the Treasurer's burden of proof as to the existence and amount of the property and its abandonment is satisfied by showing issuance of the instrument and passage of the

requisite period of abandonment. Defenses of payment, satisfaction, discharge, and want of consideration are affirmative defenses that must be established by the holder.

"§ 116B-59. Notice by holders to apparent owners.

(a) A holder of property presumed abandoned shall make a good faith effort to locate an apparent owner.

(b) The holder shall send written notice, by first-class mail, to the apparent owner, not more than 120 days or less than 60 days before filing the report required by G.S. 116B-60, to the last known address of the apparent owner as reflected in the holder's records, if the value of the property is fifty dollars ($50.00) or more.

(c) The notice must contain:

(1) A statement that, according to the records of the holder, property is being held to which the addressee appears entitled and the amount or description of the property;

(2) The name and address of the person holding the property and any necessary information regarding changes of name and address of the holder;

(3) A statement that, if satisfactory proof of claim is not presented by the owner to the holder by the following October 1 or, if the holder is an insurance company, by the following April 1, the property will be placed in the custody of the Treasurer, to whom all further claims shall be directed.

"§ 116B-60. Report of abandoned property; certification by holders with tax return.

(a) A holder of property presumed abandoned shall make a report to the Treasurer concerning the property.

(b) The report must be verified and must contain:

(1) A description of the property;

(2) Except with respect to a traveler's check or money order, the name, if known, and last known address, if any, and the social security number or taxpayer identification number, if readily ascertainable, of the apparent owner of property of the value of fifty dollars ($50.00) or more;

(3) An aggregated amount of items valued under fifty dollars ($50.00) each;

(4) In the case of an amount of fifty dollars ($50.00) or more held or owing under an annuity or a life or endowment insurance policy, the full name and last known address of the annuitant or insured and of the beneficiary;

(5) The date, if any, on which the property became payable, demandable, or returnable, and the date of the last transaction or communication with the apparent owner with respect to the property; and

(6) Other information that the Treasurer by rule prescribes as necessary for the administration of this Chapter.

(c) If a holder of property presumed abandoned is a successor to another person who previously held the property for the apparent owner or the holder has changed its name while holding the property, the holder shall file with the report its former names, if any, and the known names and addresses of all previous holders of the property.

(d) The report must be filed before November 1 of each year and cover the 12 months next preceding July 1 of that year, but a report with respect to a life insurance company must be filed before May 1 of each year for the calendar year next preceding.

(e) Before the date for filing the report, the holder of property presumed abandoned may request the Treasurer to extend the time for filing the report. A request for an extension for filing a report shall be accompanied by an extension processing fee of ten dollars ($10.00). The Treasurer may grant the extension for good cause. The holder, upon receipt of the extension, may make an interim payment on the amount the holder estimates will ultimately be due, which terminates the accrual of additional interest on the amount paid.

(f) The holder of property presumed abandoned shall file with the report an affidavit stating that the holder has complied with G.S. 116B-59.

(g) Every business association holding property presumed abandoned under this Chapter shall certify the holding in the income tax return required by Chapter 105 of the General Statutes. The certification shall be a part of the tax return with which it is filed. If the business association is not required to file an income tax return under Chapter 105, the certification shall be made in the form and manner required by the Secretary of Revenue. The information appearing on the certification is not privileged or confidential, and this information shall be furnished by the Secretary of Revenue to the Escheat Fund on October 1 of each year, or if this date shall fall on a weekend or holiday, on the next regular business day.

"§ 116B-61. Payment or delivery of abandoned property.

(a) Upon filing the report required by G.S. 116B-60, the holder of property presumed abandoned shall pay, deliver, or cause to be paid or delivered to the Treasurer the property described in the report, but if the property is an automatically renewable deposit, and a penalty or forfeiture in the payment of interest would result, the time for compliance is extended to the next filing and delivery date at which a penalty or forfeiture would no longer result.

(b) If the property reported to the Treasurer is a security or security entitlement under Article 8 of Chapter 25 of the General Statutes, the Treasurer is an appropriate person to make an indorsement, instruction, or entitlement order on behalf of the apparent owner to invoke the duty of the issuer or its transfer agent or the securities intermediary to transfer or dispose of the security or the security entitlement in accordance with Article 8 of Chapter 25 of the General Statutes.

(c) If the holder of property reported to the Treasurer is the issuer of a certificated security, the Treasurer has the right to obtain a replacement certificate pursuant to G.S. 25-8-405, but an indemnity bond is not required.

(d) An issuer, the holder, and any transfer agent or other person acting pursuant to the instructions of and on behalf of the issuer or holder in accordance with this section is not liable to the apparent owner and must be indemnified against claims of any person in accordance with G.S. 116B-63.

"§ 116B-62. Preparation of list of owners by Treasurer.

(a) There shall be delivered to the clerk of superior court of each county prior to June 30 of each year a list prepared by the Treasurer of escheated and abandoned property reported to the Treasurer. The list shall contain:

(1) The names, if known, in alphabetical order of surname, and last known addresses, if any, of apparent owners of escheated and abandoned property;

(2) The names and addresses of the holders of the abandoned property; and

(3) A statement that claim and proof of legal entitlement to escheated or abandoned property shall be presented by the owner to the Treasurer, which statement shall set forth where further information may be obtained.

(b) At the time the lists are distributed to the clerks of superior court, the Treasurer shall cause to be published once each week for two consecutive weeks, in at least two newspapers having general circulation in this State, a notice stating the nature of the lists and that the lists are available for inspection at the offices of the respective clerks of superior court, together with any other information the Treasurer deems appropriate to appear in the notice.

(c) The Treasurer is not required to include in any list any item of a value, as determined by the Treasurer, in the Treasurer's discretion, of less than fifty dollars ($50.00), unless the Treasurer deems inclusion of items of lesser amounts to be in the public interest.

(d) The clerks of superior court shall retain the lists on permanent file in their offices and shall make them available for public inspection.

(e) The lists prepared by the Treasurer shall include only escheated and abandoned property reported for the current reporting date and are not required to be cumulative lists of escheated and abandoned property previously reported.

(f) Notwithstanding the provisions of Chapter 132 of the General Statutes, the supporting data and lists of apparent owners of escheated and abandoned property may be confidential until six months after the notice to clerks of superior court required by subsection (b) of this section has been distributed. This subsection shall not apply to owners of reported property making inquiries about their property to the Escheat Fund.

"§ 116B-63. Custody by State; recovery by holder; defense of holder.

(a) In this section, payment or delivery is made in 'good faith' if:

(1) Payment or delivery was made in a reasonable attempt to comply with this Chapter;

(2) The holder was not then in breach of a fiduciary obligation with respect to the property and had a reasonable basis for believing,

based on the facts then known, that the property was presumed abandoned; and

(3) There is no showing that the records under which the payment or delivery was made did not meet reasonable commercial standards of practice.

(b) Upon payment or delivery of property to the Treasurer, the State assumes custody and responsibility for the safekeeping of the property. A holder who pays or delivers property to the Treasurer in good faith is relieved of all liability arising thereafter with respect to the property.

(c) A holder who has paid money to the Treasurer pursuant to this Chapter may subsequently make payment to a person reasonably appearing to the holder to be entitled to payment. Upon a filing by the holder of proof of payment and proof that the payee was entitled to the payment, the Treasurer shall promptly reimburse the holder for the payment without imposing a fee or other charge. If reimbursement is sought for a payment made on a negotiable instrument, including a traveler's check or money order, the holder must be reimbursed upon filing proof that the instrument was duly presented and that payment was made to a person who reasonably appeared to be entitled to payment. The holder must be reimbursed for payment made even if the payment was made to a person whose claim was barred under G.S. 116B-71(a).

(d) A holder who has delivered property other than money to the Treasurer pursuant to this Chapter may reclaim the property if it is still in the possession of the Treasurer,without paying any fee or other charge, upon filing proof that the apparent owner has claimed the property from the holder.

(e) The Treasurer may accept a holder's affidavit as sufficient proof of the holder's right to recover money and property under this section.

(f) If a holder pays or delivers property to the Treasurer in good faith and thereafter another person claims the property from the holder or another state claims the money or property under its laws relating to escheat or abandoned or unclaimed property, the Treasurer, upon written notice of the claim, shall defend the holder against the claim and indemnify the holder against any liability on the claim resulting from payment or delivery of the property to the Treasurer.

"§ 116B-64. Income or gain accruing after payment or delivery.

If property other than money is delivered to the Treasurer under this Chapter, the owner is entitled to receive from the Treasurer any income or gain realized or accruing on the property at or before liquidation or conversion of the property into money. If the property is interest-bearing or pays dividends, the interest or dividends shall be paid until the date on which the amount of the deposits, accounts, or funds, or the shares must be remitted or delivered to the Treasurer under G.S. 116B-61. Otherwise, when property is delivered or paid to the Treasurer, the Treasurer shall hold the property without liability for income or gain.

"§ 116B-65. Public sale of abandoned property.

(a) Except as otherwise provided in this section, the Treasurer, within three years after the receipt of abandoned property, shall sell it to the highest bidder at public sale at a location in the State which in the judgment of the Treasurer affords the most

favorable market for the property. The Treasurer may decline the highest bid and reoffer the property for sale if the Treasurer considers the bid to be insufficient. The Treasurer need not offer the property for sale if the Treasurer considers that the probable cost of sale will exceed the proceeds of the sale. A sale held under this section must be preceded by a single publication of notice, at least three weeks before sale, in a newspaper of general circulation in the county in which the property is to be sold. The Treasurer is not required to sell money unless it is a collector's species having value greater than the face value of the money as cash.

(b) Securities listed on an established stock exchange must be sold at prices prevailing on the exchange at the time of sale. Other securities may be sold over the counter at prices prevailing at the time of sale or by any reasonable method selected by the Treasurer. If securities are sold by the Treasurer before the expiration of three years after their delivery to the Treasurer, a person making a claim under this Chapter before the end of the three-year period is entitled to the proceeds of the sale of the securities or the market value of the securities at the time the claim is made, whichever is greater, less any deduction for expenses of sale. A person making a claim under this Chapter after the expiration of the three-year period is entitled to receive the securities delivered to the Treasurer by the holder, if they still remain in the custody of the Treasurer, or the net proceeds received from sale, and is not entitled to receive any appreciation in the value of the property occurring after delivery to the Treasurer, except in a case of intentional misconduct by the Treasurer.

(c) A purchaser of property at a sale conducted by the Treasurer pursuant to this Chapter takes the property free of all claims of the owner or previous holder and of all persons claiming through or under them. The Treasurer shall execute all documents necessary to complete the transfer of ownership.

"**§ 116B-66. Claim of another state to recover property.**

(a) After property has been paid or delivered to the Treasurer under this Article, another state may recover the property if:

(1) The property was paid or delivered to the custody of this State because the records of the holder did not reflect a last known location of the apparent owner within the borders of the other state, and the other state establishes that the apparent owner or other person entitled to the property was last known to be located within the borders of that state and under the laws of that state the property has escheated or become subject to a claim of abandonment by that state;

(2) The property was paid or delivered to the custody of this State because the laws of the other state did not provide for the escheat or custodial taking of the property, and under the laws of that state subsequently enacted, the property has escheated or become subject to a claim of abandonment by that state;

(3) The records of the holder were erroneous in that they did not accurately identify the owner of the property and the last known location of the owner within the borders of another state, and

under the laws of that state the property has escheated or become subject to a claim of abandonment by that state;

(4) The property was subjected to custody by this State under G.S. 116B-56(6), and under the laws of the state of domicile of the holder, the property has escheated or become subject to a claim of abandonment by that state; or

(5) The property is a sum payable on a traveler's check, money order, or similar instrument that was purchased in the other state and delivered into the custody of this State under G.S. 116B-56(7), and under the laws of the other state, the property has escheated or become subject to a claim of abandonment by that state.

(b) A claim of another state to recover escheated or abandoned property must be presented in a form prescribed by the Treasurer, who shall decide the claim within 90 days after it is presented. The Treasurer shall allow the claim upon determining that the other state is entitled to the abandoned property under subsection (a) of this section.

(c) The Treasurer shall require another state, before recovering property under this section, to agree to indemnify this State and its officers and employees against any liability on a claim to the property.

"§ 116B-67. Claim for property paid or delivered to the Treasurer.

(a) A person, excluding another state, claiming property paid or delivered to the Treasurer may file a claim on a form prescribed by the Treasurer and verified by the claimant.

(b) At the discretion of the Treasurer, the claim shall be made to the holder or to the holder's successor. If the holder is satisfied that the claim is valid and that the claimant is the owner of the property, the holder shall so certify to the Treasurer by written statement attested by the holder under oath, or in the case of a corporation, by two principal officers, or one principal officer and an authorized employee of the corporation. The determination of the holder that the claimant is the owner shall, in the absence of fraud, be binding upon the Treasurer and upon receipt of the certificate of the holder to this effect, the Treasurer shall forthwith authorize and make payment of the claim or return of the property, or if the property has been sold, the amount received from the sale, to the owner, or to the holder in the event the owner has assigned the claim to the holder and the certificate of the holder is accompanied by an assignment. In the event the holder rejects the claim, the claimant may appeal to the Treasurer.

If the holder, or the holder's successor, is not available, the owner may file a claim with the Treasurer on a form prescribed by the Treasurer. In addition to any other information, the claim shall state the facts surrounding the unavailability of the holder and the lack of a successor.

(c) Within 90 days after a claim is filed, the Treasurer shall allow or deny the claim and give written notice of the decision to the claimant. If the claim is denied, the Treasurer shall inform the claimant of the reasons for the denial and specify what

additional evidence is required before the claim will be allowed. The claimant may then file a new claim with the Treasurer or maintain an action under G.S. 116B-68.

(d) Within 30 days after a claim is allowed, the property or the net proceeds of a sale of the property must be delivered or paid by the Treasurer to the claimant.

(e) The claimant or claimants and the holder, if the holder either certifies that the claimant is the owner under subsection (b) of this section or recovers money and property from the Treasurer under G.S. 116B-63, shall agree to indemnify, save harmless, and defend the State, the Treasurer, and the Escheat Fund from any claim arising out of or in connection with refund of the property claimed. In like manner, the claimant shall also agree to indemnify, save harmless, and defend the holder, if the holder certifies the claim under subsection (b) of this section or pays or delivers property to the claimant under G.S. 116B-63.

"§ 116B-68. Action to establish claim.

A person aggrieved by a decision of the Treasurer or whose claim has not been acted upon within 90 days after its filing may maintain an original action to establish the claim in the Superior Court of Wake County, naming the Treasurer as a defendant.

"§ 116B-69. Election to take payment or delivery.

(a) The Treasurer may decline to receive property reported under this Chapter which the Treasurer considers to have a value less than the expenses of notice and sale.

(b) A holder, with the written consent of the Treasurer and upon conditions and terms prescribed by the Treasurer, may report and deliver property before the property is presumed abandoned. Property so delivered must be held by the Treasurer and is not presumed abandoned until it otherwise would be presumed abandoned under this Article.

"§ 116B-70. Destruction or disposition of property having no substantial commercial value; immunity from liability; property of historical significance.

(a) If the Treasurer determines after investigation that property delivered under this Chapter has no substantial commercial value, the Treasurer may destroy or otherwise dispose of the property at any time. An action or proceeding may not be maintained against the State or any officer, employee, or agent of the State, both past and present, in the person's individual and official capacity, or against the holder for or on account of an act of the Treasurer under this subsection, except for intentional misconduct.

(b) Notwithstanding the provisions of G.S. 116B-65, the Treasurer may retain any tangible property delivered to the Treasurer, if the property has recognized historic significance. The historic significance shall be certified by the Treasurer, with the advice of the Secretary of Cultural Resources; and a statement of the appraised value of the property shall be filed with the certification. Historic property retained under this subsection may be stored and displayed at any suitable location.

"§ 116B-71. Periods of limitation.

(a) The expiration, before or after the effective date of this Article, of a period of limitation on the owner's right to receive or recover property, whether specified by

contract, statute, or court order, does not preclude the property from being presumed abandoned or affect a duty of a holder to file a report or to pay or deliver or transfer property to the Treasurer as required by this Article.

(b) An action or proceeding may not be maintained by the Treasurer to enforce this Article in regard to the reporting, delivery, or payment of property more than 10 years after the holder filed a report with the Treasurer in which the holder specifically identified property, should have but failed to identify property, or gave express notice to the Treasurer of a dispute regarding property. In the absence of such a report or other express notice, the period of limitation is tolled. The period of limitation is also tolled by the filing of a report that is fraudulent.

"**§ 116B-72. Requests for reports and examination of records.**

(a) The Treasurer may require a person who has not filed a report, or a person who the Treasurer believes has filed an inaccurate, incomplete, or false report, to file a verified report in a form specified by the Treasurer. The report must state whether the person is holding property reportable under this Chapter, describe property not previously reported or as to which the Treasurer has made inquiry, and specifically identify and state the value of property that may be in issue.

(b) The Treasurer, at reasonable times and upon reasonable notice, may examine the records of any person to determine whether the person has complied with this Chapter. The Treasurer may conduct the examination even if the person believes it is not in possession of any property that must be reported, paid, or delivered under this Chapter. The Treasurer may contract with any other person to conduct the examination on behalf of the Treasurer.

(c) The Treasurer at reasonable times may examine the records of an agent, including a dividend disbursing agent or transfer agent, of a business association that is the holder of property presumed abandoned if the Treasurer has given the notice required by subsection (b) of this section to both the association and the agent at least 90 days before the examination.

(d) Documents and working papers obtained or compiled by the Treasurer, or the Treasurer's agents, employees, or designated representatives, in the course of conducting an examination are confidential, but the documents and papers may be:

(1) Used by the Treasurer in the course of an action to collect unclaimed property or otherwise enforce this Chapter;

(2) Used in joint examinations conducted with or pursuant to an agreement with another state, the federal government, or any other governmental subdivision, agency, or instrumentality;

(3) Produced pursuant to subpoena or court order; or

(4) Disclosed to the abandoned property office of another state for that state's use in circumstances equivalent to those described in this subsection, if the other state is bound to keep the documents and papers confidential.

(e) If an examination results in the disclosure of property reportable under this Chapter, the Treasurer may assess, against a holder who made a fraudulent report, the cost of the examination at the rate of two hundred dollars ($200.00) a day for

each examiner, or a greater amount that is reasonable and was incurred, but the assessment may not exceed the value of the property found to be reportable. The cost of an examination made pursuant to subsection (c) of this section may be assessed only against the business association.

(f) If a holder does not maintain the records required by G.S. 116B-73 and the records of the holder available for the periods subject to this Chapter are insufficient to permit the preparation of a report, the Treasurer may require the holder to report and pay to the Treasurer the amount the Treasurer reasonably estimates, on the basis of any available records of the holder or by any other reasonable method of estimation, should have been, but was not reported.

"§ 116B-73. Retention of records.

(a) Except as otherwise provided in subsection (b) of this section, a holder required to file a report under G.S. 116B-60 shall maintain the records containing the information required to be included in the report for 10 years after the holder files the report, unless a shorter period is provided by rule of the Treasurer.

(b) A business association that sells, issues, or provides to others for sale or issue in this State, traveler's checks, money orders, or similar instruments other than third-party bank checks, on which the business association is directly liable, shall maintain a record of the instruments while they remain outstanding, indicating the state and date of issue, for three years after the holder files the report.

"§ 116B-73.1. Discretionary precompliance review.

A holder may request the Treasurer to conduct a precompliance review of the holder's compliance program to educate the holder's employees on the unclaimed property laws and filing procedures and to recommend ways to facilitate the holder's compliance with the law. Subject to the availability of staff, the Treasurer may conduct a precompliance review upon request. The Treasurer may charge the holder a precompliance review fee of up to five hundred dollars ($500.00) per day for conducting this review.

"§ 116B-74. Enforcement.

(a) The Treasurer may maintain an action in this or another state to enforce this Chapter.

(b) The Treasurer may order a person required to report, pay, or deliver property under this Chapter, or an officer or employee of the person, or a person having possession, custody, care, or control of records relevant to the matter under inquiry, or any other person having knowledge of the property or records, to appear before the Treasurer, at a time and place named in the order, and to produce the records and to give such testimony under oath or affirmation relevant to the inquiry. For purposes of this subsection, the Treasurer may administer oaths or affirmations. If a person refuses to obey an order of the Treasurer, the Treasurer may apply to the Superior Court of Wake County for an order requiring the person to obey the order of the Treasurer. Failure to comply with the court order is punishable for contempt.

"§ 116B-75. Interstate agreements and cooperation; joint and reciprocal actions with other states.

(a) The Treasurer may enter into an agreement with another state to exchange information relating to abandoned property or its possible existence. The agreement may permit the other state, or another person acting on behalf of a state, to examine records as authorized in G.S. 116B-72. The Treasurer by rule may require the reporting of information needed to enable compliance with an agreement made under this section and prescribe the form.

(b) The Treasurer may join with another state to seek enforcement of this Chapter against any person who is or may be holding property reportable under this Chapter.

(c) At the request of another state, the Attorney General of this State may maintain an action on behalf of the other state to enforce, in this State, the unclaimed property laws of the other state against a holder of property subject to escheat or a claim of abandonment by the other state, if the other state has agreed to pay expenses incurred by the Attorney General in maintaining the action.

(d) The Treasurer may request that the attorney general of another state or another attorney commence an action in the other state on behalf of the Treasurer. With the approval of the Attorney General of this State, the Treasurer may retain any other attorney to commence an action in this State on behalf of the Treasurer. This State shall pay all expenses, including attorneys' fees, in maintaining an action under this subsection. With the Treasurer's approval, the expenses and attorneys' fees may be paid from money received under this Chapter. The Treasurer may agree to pay expenses and attorneys' fees based in whole or in part on a percentage of the value of any property recovered in the action. Any expenses or attorneys' fees paid under this subsection may not be deducted from the amount that is subject to the claim by the owner under this Chapter.

(e) The Treasurer is authorized to make such expenditures from the funds of the Escheat Fund as may be necessary to effectuate the provisions of this section.

"§ 116B-76. Interest and penalties; waiver.

(a) A holder who fails to report, pay, or deliver property within the time prescribed by this Chapter shall pay to the Treasurer interest at the rate established pursuant to this subsection on the property or value of the property from the date the property should have been reported, paid, or delivered. On or before June 1 and December 1 of each year, the Treasurer shall establish the interest rate to be in effect during the six-month period beginning on the next succeeding July 1 and January 1, respectively, after giving due consideration to current market conditions. If no new rate is established, the rate in effect during the preceding six-month period shall continue in effect. The rate established by the Treasurer may not be less than five percent (5%) per year and may not exceed sixteen percent (16%) per year.

(b) A holder who willfully fails to report, pay, or deliver property within the time prescribed by this Chapter, or willfully fails to perform other duties imposed by this Chapter, shall pay to the Treasurer, in addition to interest as provided in subsection (a) of this section , a civil penalty of one thousand dollars ($1,000) for each day the report, payment, or delivery is withheld, or the duty is not performed, up to a maximum of twenty-five thousand dollars ($25,000), plus twenty-five percent (25%) of the value of any property that should have been but was not reported.

(c) A holder who makes a fraudulent report shall pay to the Treasurer, in addition to interest as provided in subsection (a) of this section, a civil penalty of one thousand dollars ($1,000) for each day from the date a report under this Chapter was due, up to a maximum of twenty-five thousand dollars ($25,000), plus twenty-five percent (25%) of the value of any property that should have been but was not reported.

(d) The Treasurer for good cause may waive, in whole or in part, interest under subsection (a) of this section and penalties under subsection (b) of this section.

"§ 116B-77. Agreement to locate property.

(a) An agreement by an owner, the primary purpose of which is to locate, deliver, recover, or assist in the recovery of property that is presumed abandoned, is void and unenforceable if it was entered into during the period commencing on the date the property was presumed abandoned and extending to a time that is 24 months after the date the property is paid or delivered to the Treasurer. This subsection does not apply to an owner's agreement with an attorney to file a claim as to identified property or contest the Treasurer's denial of a claim.

(b) An agreement by an owner, the primary purpose of which is to locate, deliver, recover, or assist in the recovery of property, is enforceable only if the agreement is in writing, clearly sets forth the nature of the property and the services to be rendered, is signed by the owner, and states the value of the property before and after the fee or other compensation has been deducted.

(c) If an agreement covered by this section applies to mineral proceeds and the agreement contains a provision to pay compensation that includes a portion of the underlying minerals or any mineral proceeds not then presumed abandoned, the provision is void and unenforceable.

(d) An agreement covered by this section that provides for compensation that is unconscionable is unenforceable except by the owner. An owner who has made an agreement to pay compensation that is unconscionable, or the Treasurer on behalf of the owner, may maintain an action to reduce the compensation to a conscionable amount. The court may award reasonable attorneys' fees to an owner who prevails in the action.

(e) This section does not preclude an owner from asserting that an agreement covered by this section is invalid on grounds other than as provided in subsection (d) of this section.

(f) Any person who enters into an agreement covered by this section with an owner shall register annually with the Treasurer. The information to be required under this subsection shall include the person's name, address, telephone number, state of incorporation or residence, as applicable, and the person's federal identification number. A registration fee of one hundred dollars ($100.00) shall be paid to the Treasurer at the time of the filing of the registration information. Fees received under this subsection shall be credited to the General Fund.

"§ 116B-78. Transitional provisions.

(a) An initial report filed under this Article for property that was not required to be reported before the effective date of this Article but which is subject to this Article

must include all items of property that would have been presumed abandoned during the 10-year period next preceding the effective date of this Article as if this Article had been in effect during that period.

(b) This Article does not relieve a holder of a duty that arose before the effective date of this Article to report, pay, or deliver property. Except as otherwise provided in G.S 116B-71(b) and G.S. 116B-76(d), a holder who did not comply with the law in effect before the effective date of this Article is subject to the applicable provisions for enforcement and penalties which then existed, which are continued in effect for the purpose of this section.

"**§ 116B-79. Rules.**

The Treasurer may adopt rules necessary to carry out this Chapter."

Section 7. G.S. 44A-4(b)(1) reads as rewritten:

"(b) Notice and Hearings. --

(1) If the property upon which the lien is claimed is a motor vehicle that is required to be registered, the lienor following the expiration of the relevant time period provided by subsection (a) shall give notice to the Division of Motor Vehicles that a lien is asserted and sale is proposed and shall remit to the Division a fee of ten dollars ($10.00). The Division of Motor Vehicles shall issue notice by registered or certified mail, return receipt requested, to the person having legal title to the property, if reasonably ascertainable, to the person with whom the lienor dealt if different, and to each secured party and other person claiming an interest in the property who is actually known to the Division or who can be reasonably ascertained. The notice shall state that a lien has been asserted against specific property and shall identify the lienor, the date that the lien arose, the general nature of the services performed and materials used or sold for which the lien is asserted, the amount of the lien, and that the lienor intends to sell the property in satisfaction of the lien. The notice shall inform the recipient that the recipient has the right to a judicial hearing at which time a determination will be made as to the validity of the lien prior to a sale taking place. The notice shall further state that the recipient has a period of 10 days from the date of receipt in which to notify the Division by registered or certified mail, return receipt requested, that a hearing is desired and that if the recipient wishes to contest the sale of his property pursuant to such lien, the recipient should notify the Division that a hearing is desired. The notice shall state the required information in simplified terms and shall contain a form whereby the recipient may notify the Division that a hearing is desired by the return of such form to the Division. The Division shall notify the lienor whether such notice is timely received by the Division. In lieu of the notice by the lienor to the Division and the notices issued by the Division described above,

the lienor may issue notice on a form approved by the Division pursuant to the notice requirements above. If notice is issued by the lienor, the recipient shall return the form requesting a hearing to the lienor, and not the Division, within 10 days from the date the recipient receives the notice if a judicial hearing is requested. Failure of the recipient to notify the Division or lienor, as specified in the notice, within 10 days of the receipt of such notice that a hearing is desired shall be deemed a waiver of the right to a hearing prior to the sale of the property against which the lien is asserted, and the lienor may proceed to enforce the lien by public or private sale as provided in this section and the Division shall transfer title to the property pursuant to such sale. If the Division or lienor, as specified in the notice, is notified within the 10-day period provided above that a hearing is desired prior to sale, the lien may be enforced by sale as provided in this section and the Division will transfer title only pursuant to the order of a court of competent jurisdiction.

If the registered or certified mail notice has been returned as undeliverable, or if the name of the person having legal title to the vehicle cannot reasonably be ascertained and the fair market value of the vehicle is less than eight hundred dollars ($800.00), the lienor may institute a special proceeding in the county where the vehicle is being held, for authorization to sell that vehicle. Market value shall be determined by the schedule of values adopted by the Commissioner under G.S. 105-187.3.

In such a proceeding a lienor may include more than one vehicle, but the proceeds of the sale of each shall be subject only to valid claims against that vehicle, and any excess proceeds of the sale shall ~~escheat to the State and~~ be paid immediately to the ~~treasurer~~ Treasurer for disposition pursuant to Chapter 116B of the General Statutes. ~~A vehicle owner or possessor claiming an interest in such proceeds shall have a right of action under G.S. 116B-38.~~

The application to the clerk in such a special proceeding shall contain the notice of sale information set out in subsection (f) hereof. If the application is in proper form the clerk shall enter an order authorizing the sale on a date not less than 14 days therefrom, and the lienor shall cause the application and order to be sent immediately by first-class mail pursuant to G.S. 1A-1, Rule 5, to each person to whom notice was mailed pursuant to this subsection. Following the authorized sale the lienor shall file with the clerk a report in the form of an affidavit, stating that the lienor has complied with the public or private sale provisions of G.S. 44A-4, the name, address, and bid of the high bidder or person buying at a private sale, and a statement of the disposition of the

sale proceeds. The clerk then shall enter an order directing the Division to transfer title accordingly.

If prior to the sale the owner or legal possessor contests the sale or lien in a writing filed with the clerk, the proceeding shall be handled in accordance with G.S. 1-399."

Section 8. G.S. 29-12 reads as rewritten:

"**§ 29-12. Escheats.**

If there is no person entitled to take under G.S. 29-14 or ~~29-15,~~ G.S. 29-15, or if in case of an illegitimate intestate, there is no one entitled to take under G.S. 29-21 or ~~29-22~~ G.S. 29-22 the net estate shall escheat as provided in ~~G.S. 116A-2.~~ G.S. 116B-2."

Section 9. G.S. 53-43.7(b)

"(b) Any property, including documents or writings of a private nature, which has little or no apparent value, need not be sold but may be destroyed ~~by the Treasurer or~~ by the ~~lessor, if retained by the lessor pursuant to a determination by the Treasurer under G.S. 116B-31(e).~~ lessor if the Treasurer declines to receive the property under G.S. 116B-69(a)."

Section 10. G.S. 53-43.7(d) reads as rewritten:

"(d) The lessor shall submit to the Treasurer a verified inventory of all of the contents of the safe-deposit box upon delivery of the contents of the box or such part thereof as shall be required by the Treasurer under ~~G.S. 116B-31(e);~~ G.S. 116B-55; but the lessor may deduct from any cash of the lessee in the safe-deposit box an amount equal to accumulated charges for rental and shall submit to the Treasurer a verified statement of such charges and deduction. If there is no cash, or insufficient cash to pay accumulated charges, in the safe-deposit box, the lessor may submit to the Treasurer a verified statement of accumulated charges or balance of accumulated charges due, and the Treasurer shall remit to the lessor the charges or balance due, up to the value of the property in the safe-deposit box delivered to ~~him,~~ the Treasurer, less any costs or expenses of sale; but if the charges or balance due exceeds the value of such property, the Treasurer shall remit only the value of the property, less costs or expenses of sale. Any accumulated charges for safe-deposit box rental paid by the Treasurer to the lessor shall be deducted from the value of the property of the lessee delivered to the Treasurer."

Section 11. G.S. 53B-4 reads as rewritten:

"**§ 53B-4. Access to financial records.**

Notwithstanding any other provision of law, no government authority may have access to a customer's financial record held by a financial institution unless the financial record is described with reasonable specificity and access is sought pursuant to:

(1) Customer authorization that meets the requirements of the Right to Financial Privacy Act § 1104, 12 U.S.C. § 3404, provided, however, a customer authorization received by a State agency or a county department of social services for the purpose of determining eligibility for the programs of public assistance under

Chapter 108A of the General Statutes, or for purposes of a government inquiry concerning these same programs of public assistance, cannot be revoked and shall remain valid for 12 months unless a shorter period is specified in the authorization, or a customer authorization that is given by a licensed attorney with respect to an account in which the attorney holds funds as a fiduciary;

(2) Authorization under G.S. 105-251, 105-251.1, or 105-258;

(3) Search warrant as provided in Article 11 of Chapter 15A of the General Statutes;

(4) Statutory authority of a supervisory agency to examine or have access to financial records in the exercise of its supervisory, regulatory, or monetary functions with respect to a financial institution;

(5) The authority granted under ~~G.S. 116B-39;~~ G.S. 116B-72 and G.S. 116B-74;

(6) Examination and review by the State Auditor or his authorized representative under G.S. 147-64.6(c)(9) or ~~147-64.7(a);~~ G.S. 147-64.7(a);

(7) Request by a government authority authorized to buy and sell student loan notes under Article 23 of Chapter 116 of the General Statutes for financial records relating to insured student loans;

(8) Pending litigation to which the government authority and the customer are parties;

(9) Subpoena or court order in connection with a grand jury proceeding;

(10) A writ of execution under Article 28 of Chapter 1 of the General Statutes; or

(11) Other court order or administrative or judicial subpoena authorized by law if the requirements of G.S. 53B-5 are met.

As used in this section, the term 'reasonable specificity' means that degree of specificity reasonable under all the circumstances, ~~and~~ and, with respect to requests under G.S. 116B-72 and G.S. 116B-74, may include designation by general type or ~~class as authorized in G.S. 116B-39.~~ class."

Section 12. G.S. 116-209.3 reads as rewritten:

"**§ 116-209.3. Additional powers.**

The Authority is authorized to develop and administer programs and perform all functions necessary or convenient to promote and facilitate the making and insuring of student loans and providing such other student loan assistance and services as the Authority shall deem necessary or desirable for carrying out the purposes of this Article and for qualifying for loans, grants, insurance and other benefits and assistance under any program of the United States now or hereafter authorized fostering student loans. There shall be established and maintained a trust fund which shall be designated 'State Education Assistance Authority Loan Fund' (the 'Loan

Fund') which may be used by the Authority in making student loans directly or through agents or independent contractors, insuring student loans, acquiring, purchasing, endorsing or guaranteeing promissory notes, contracts, obligations or other legal instruments evidencing student loans made by banks, educational institutions, nonprofit corporations or other eligible lenders, and for defraying the expenses of operation and administration of the Authority for which other funds are not available to the Authority. There shall be deposited to the credit of such Loan Fund the proceeds (exclusive of accrued interest) derived from the sale of its revenue bonds by the Authority and any other moneys made available to the Authority for the making or insuring of student loans or the purchase of obligations. There shall also be deposited to the credit of the Loan Fund surplus funds from time to time transferred by the Authority from the sinking fund. Such Loan Fund shall be maintained as a revolving fund. There is also deposited to the credit of the Loan Fund the income derived from the investment or deposit of the Escheat Fund distributed to the Authority pursuant to ~~G.S. 116B-37.~~ G.S. 116B-7. The income shall be held, administered and applied by the Authority as provided in any resolution adopted or trust agreement approved by the Authority, subject to the provisions of Chapter 116B of the General Statutes and this Article.

In lieu of or in addition to the Loan Fund, the Authority may provide in any resolution authorizing the issuance of bonds or any trust agreement securing such bonds that any other trust funds or accounts may be established as may be deemed necessary or convenient for securing the bonds or for making student loans, acquiring obligations or otherwise carrying out its other powers under this Article, and there may be deposited to the credit of any such fund or account proceeds of bonds or other money available to the Authority for the purposes to be served by such fund or account."

Section 13. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect the provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 14. The Revisor of Statutes shall cause to be printed with this act all explanatory comments of the drafters of this act as the Revisor may deem appropriate.

Section 15. This act becomes effective January 1, 2000, and shall apply to property existing on or after that date. G.S. 116B-54(d), as enacted in Section 6 of this act, is intended to clarify and not change existing law.

SENATE BILL 244:
Unclaimed Property Act/AB

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Senator Hartsell
Date:	June 7, 1999	**Summary by:**	—General Statutes Commission and Martha K. Walston Committee Counsel
Version:	Proposed Committee Substitute		

SUMMARY: ***Senate Bill 244 revises the current escheat and unclaimed property laws and adopts the Uniform Unclaimed Property Act as promulgated by the National Conference of Commissioners on Uniform State Laws. The bill as originally introduced was a recommendation of the General Statutes Commission. The Second Edition of Senate Bill 244 was given a favorable report in Senate Judiciary I. The proposed committee substitute makes two changes recommended by the General Statutes Commission. The first change is the removal of unnecessary language in G.S. 116B –54, and the second change adds a provision to G.S. 116B-57 that was deleted in an earlier version. House Bill 263, a companion bill introduced by Representative Culpepper, is in House Judiciary IV.***

The following is a section by section summary of the bill. This summary was prepared by the General Statutes Commission staff. The bold underlined language sets out the changes made in the second edition of Senate Bill 244. **Senate Bill 244 is before the Senate Finance Committee because it adds three new fees to the Escheats and Abandoned Property Chapter. They are: (1) a $10.00 fee when a holder of abandoned property requests an extension of time to file a report with the Treasurer, (2) a $500 per day fee when the Treasurer conducts a precompliance review for a holder of abandoned property, and (3) a $100 registration fee for a person who agrees to assist others in locating abandoned property.**

GENERAL COMMENTS: Senate Bill 244 amends Chapter 116B (Escheats and Abandoned Property) by repealing Article 2 (Abandoned Property), repealing Article 3 (Administration of Abandoned Property) except for certain sections that are recodified within Article 1 (Escheats), and adding a new Article 4 (NC Unclaimed Property Act). The new Article 4 is based on the Uniform Unclaimed Property Act (1995), promulgated by the National Conference of Commissioners on Uniform State Laws to update, modernize, and substantially improve the law governing abandoned property. The Article, however, varies in several respects from the Uniform Act.

Senate Bill 244, among other things, sets forth in a single section the various periods after which property is presumed abandoned and the owner activity that may rebut the presumption of abandonment. It closely follows the language of the United States Supreme Court opinion in *Texas v. New Jersey,* 379 U.S. 674, 85 S.Ct. 626, 13 L.Ed. 2d 596 (1965), in describing the general rules under which a state may take custody of abandoned property. The bill changes some of the holding periods established under the current law and includes some specific kinds of property not expressly addressed under the current law. Shorter holding periods increase the likelihood of locating the missing property owner. Like the current law, the owner, at any time, may make a claim to the State for restitution of property delivered into the State's custody. Please note that the property is and remains the property of the owner. The bill also makes conforming amendments to other sections of the General Statutes.

Section 1. This section amends G.S. 116B-4 to cross refer to the appropriate provisions of the new Article 4 for filing claims with the Treasurer. The section also deletes language that is no longer necessary because the subject matter is covered in the new Article 4.

Section 2. This section repeals Article 2 of Chapter 116B (Abandoned Property) because the subject matter is covered in the new Article 4.

Section 3. This section repeals Article 3 of Chapter 116B (Administration of Abandoned Property), except for some sections of the Article which are recodified in Article 1.

Section 4. This section updates language and internal statutory references and makes the statute gender neutral.

Section 5. This section makes the statute gender neutral and updates language. **Senate Judiciary I added a provision that persons employed by the Treasurer to assist with determining the sources and amounts of unreported property are subject to the same policies, including confidentiality and ethics, as any employee of the Department of the State Treasurer who provides the same service. In addition, compensation paid on a contingency fee basis is limited to 10% of the final assessment.**

Section 6. This section amends Chapter 116B by adding a new Article 4 (North Carolina Unclaimed Property Act) and consisting of Sections 116B-51 through 116B-79.

116B-51. This section provides that the Article may be cited as the "North Carolina Unclaimed Property Act".

116B-52. This section defines key terms used in the Article.

116B-53. This section combines all dormancy periods for categories of property in one section, whereas current law sets out in separate sections the dormancy periods for each category of property. The section also reduces some of the dormancy periods under current law and includes some specific categories of property not specifically addressed under current law (e.g. IRA's and unmatured debt).

Subsection (a) specifies when property is "unclaimed" for purposes of the applicable dormancy periods set forth in subsection (c). The presumption that the property is abandoned can be rebutted by contact between the apparent owner and the holder by means of a written communication from the owner to the holder, or by some other means memorialized in the records of the holder, or by other means whereby the owner indicates an interest in the property.

Subsection (b) sets forth a nonexclusive list of actions an owner can take to indicate interest in property. These actions include presentment of a check, making deposits and withdrawals from the account in which the property is held, paying a premium, or negotiating an instrument.

Subsection (c) provides that, on the expiration of the dormancy periods specified in subdivisions (1) through (16) of the subsection, unclaimed property is presumed abandoned. **Senate Judiciary I added a provision that a gift certificate or an electronic card with an expiration date is presumed to be abandoned three years after it was sold, and 60% of the unredeemed portion of the face value is subject to escheat.** The earlier version included gift certificates in the list of unclaimed property. The certificates were presumed abandoned three years after December 31 of the year sold. If the certificate was redeemable as merchandise only, the amount abandoned was deemed to be 60% of the certificate's face value.

Subsection (d) provides that when the underlying interest, e.g. stock, is presumed abandoned, all other property accruing to the owner as a result of that interest, e.g. dividends, is then also presumed

abandoned. Subsection (d) eliminates the situation where underlying stock is presumed abandoned and delivered to the Treasurer but dividends issued on the stock within the last five years must be held by the holder because the dormancy period as to the dividends has not yet expired.

Subsection (e) provides that property is deemed payable or distributable even though the owner has not made a demand or presented an instrument or document that is required to obtain payment.

116B-54 This section brings forward current law on forfeited reservation deposits held by business associations. These deposits are not considered abandoned property. **Senate Judiciary I added the following to property not considered abandoned property: (1) gift certificates or electronic gift cards which do not expire in North Carolina, (2) prepaid calling cards issued by a telephone company, (3) a manufactured home buyer's deposit the manufactured home dealer is authorized to retain, and (4) certain credit balances between business associations. The proposed committee substitute would delete the references to unclaimed property, because abandoned property is defined as unclaimed property in G.S. 116B-53(c).**

116B-55. This section brings forward current law on taking custody of the contents of safe deposit boxes or other safekeeping depositories held by financial organizations. The contents of safe deposit boxes are presumed abandoned if the apparent owner has not claimed the property within the period established by G.S. 53-43.7. The contents are delivered to the Treasurer as provided by that statute. If the contents include property described in 116B-53, the Treasurer is required to hold the property for the remainder of the applicable dormancy period set forth in that section before the property is deemed to be received for purpose of public sale under 116B-65.

116B-56. This section describes the general rules under which this State may take custody of abandoned property.

116B-57. This section provides that dormancy charges imposed by holders for inactivity cannot be levied against property held unless there is a valid and enforceable written contract between the owner and the holder for assessing the charges. The amount of the charges must be reasonable. **The proposed committee substitute would add a new subsection (b) to state that the Chapter does not prevent the deduction of other lawful charges if they are specifically authorized by statute or by a valid and enforceable contract. This language is in a current section of the Chapter that was deleted by the bill. The retailers would like to keep this language in the statute to clarify that lay away charges and liquidated damages under section 25-2-718 of the Uniform Commercial Code may be deducted.**

116B-58. This section clarifies the Treasurer's burden of proof in situations where the property being claimed by the Treasurer is an obligation arising from the issuance of a check or similar instrument by the holder and the obligation is disputed by the holder. Under this section, a record of the issuance of the instrument is prima facie evidence of an obligation. The Treasurer's burden of proof as to the existence and amount of the property and its abandonment is satisfied by showing issuance of the instrument and passage of the requisite dormancy period. Affirmative defenses available to the holder for establishing that the holder had no obligation to the apparent owner include payment, satisfaction, discharge, and want of consideration.

116B-59. This section requires a holder of property presumed abandoned to make a good faith effort to locate the apparent owner. If the value of the property is $50.00 or more, the holder must send written notice, by first-class mail, to the apparent owner not more than 120 days or less than 60 days before filing the report of abandoned property with the Treasurer. The section also brings forward current law specifying the contents of the notice.

116B-60. This section requires the holder of property presumed abandoned to file a report with the Treasurer and specifies the contents of the report. The report must be filed before November 1 of each year and must cover the 12 months next preceding July 1 of that year, except that a report with respect to a life insurance company must be filed before May 1 of each year and must cover the calendar year next preceding. Before the date for filing the report, the holder may request an extension of time for filing the report, and the Treasurer may grant the extension for good cause. **Senate Judiciary I added language to require a $10.00 fee when a holder makes a request for an extension for filing a report.** The section brings forward current law requiring a business association holding property presumed abandoned to certify the holding in its income tax return and requiring the Secretary of Revenue to furnish to the Escheat Fund the information appearing on the certification.

116B-61. Subsection (a) requires the holder to pay or deliver the property described in the report upon filing the report. However, if the property is an automatic renewal deposit and a penalty or forfeiture in the payment of interest would result, the time for compliance is extended to the next filing and delivery date at which a penalty or forfeiture would no longer result.

Subsection (b) provides that with respect to securities and security entitlements that have been reported as abandoned property, the Treasurer is an "appropriate person" to make an indorsement, instruction, or entitlement order under Article 8 of Chapter 25. Accordingly, the Treasurer has the same rights under Article 8 as other persons who succeed by operation of law to securities or security entitlements, such as the executor or administrator of a decedent.

Where the holder is itself the issuer of a certificated security and does not have the original certificate to turn over to the Treasurer, subsection (c) allows the Treasurer to obtain a replacement certificate without giving an indemnity bond. G.S. 25-8-405 enables the owner of a certificated security to obtain a replacement of a lost, destroyed, or stolen certificate, provided that reasonable requirements are satisfied and a sufficient indemnity bond is supplied.

Subsection (d) indemnifies a person causing a replacement certificate to be issued to the Treasurer from any claims that the person acted wrongfully in so doing. This indemnification is desirable in that it eliminates any duty of the transferring authority to make an independent investigation into whether the listed owner of the security is in fact missing, or into other factors which might affect the Treasurer's right to obtain custody of the property.

116B-62. This section brings forward current law requiring the Treasurer to prepare a list of apparent owners to be delivered to the clerks of superior court and to publish notice of the list.

116B-63. Subsection (a) defines when property is paid or delivered to the Treasurer in "good faith". Subsection (b) relieves a holder of all liability for any property paid or delivered to the Treasurer in good faith. Subsection (c) requires the Treasurer to reimburse a holder who pays unclaimed money to the Treasurer and subsequently pays a person reasonably appearing to the holder to be entitled to the money. Subsection (d) allows a holder to reclaim property other than money upon filing proof that the apparent owner has claimed the property from the holder. Subsection (e) allows the Treasurer to accept a holder's affidavit as sufficient proof of the holder's right to recover money and property. Subsection (f) provides that if any person or another state makes a claim on a holder for property paid or delivered to the Treasurer, the Treasurer, upon written notice of the claim, is required to defend the holder and provide indemnification against any liability on the claim resulting from payment or delivery of the property in good faith to the Treasurer.

116B-64. This section provides that if property other than money is delivered to the Treasurer, the owner is entitled to receive from the Treasurer any income or gain realized or accruing on the property at or before liquidation or conversion of the property into money. If the property is interest-bearing or pays dividends, the interest or dividends must be paid until the property is delivered to the Treasurer.

116B-65. Subsection (a) requires the public sale of abandoned property, other than securities, within three years after receipt of the property. Subsection (b) governs the sale of securities. Subsection (c) provides that a purchaser takes the property free of all claims of the owner or previous holder and of all persons claiming through or under them.

116B-66. This section and 116B-56 (rules for taking custody) are designed to carry out the priority scheme enunciated in *Texas v. New Jersey.* In general the state in which the owner had his or her last known address is entitled to claim abandoned property. Where there is insufficient information to permit this assertion of custody, the state of the holder's domicile takes the property subject to a later claim by the owner's state.

116B-67. This section allows the owner to make a claim to the State for restitution of property delivered into the State's custody.

116B-68. This section provides that a person aggrieved by a decision of the Treasurer or whose claim has not been acted upon within 90 days after filing may commence an action to establish the claim in the Superior Court of Wake County.

116B-69. Subsection (a) allows the Treasurer to decline to receive property which the Treasurer considers to have a value less than the expenses of notice and sale. Subsection (b) allows the holder, with the consent of the Treasurer, to report and deliver property before the property is presumed abandoned; however, the Treasurer must hold the property until the dormancy period runs before the property would be subject to other provisions of Chapter 116B. This authority will enable the Treasurer to take possession of property when the holder is terminating business but the property is not yet reportable.

116B-70. Subsection (a) allows the Treasurer to destroy or otherwise dispose of property which has no substantial commercial value. The subsection provides immunity from liability, except for intentional misconduct. Subsection (b) brings forward current law in expressly providing for the retention of property having historic significance.

116B-71. Subsection (a) brings forward current law (G.S. 116B-34), providing that the expiration of a period of limitation on a claim by an owner does not relieve a holder of the duties imposed by this Article.

Subsection (b), which has no counterpart in current law, prohibits the Treasurer from commencing an enforcement action more than ten years after the holder filed a report in which the holder specifically identified property, should have but failed to identify property, or gave express notice of a dispute regarding property. The period of limitation is tolled if the report is not filed, the notice of dispute is not given, or the report is fraudulent.

116B-72. This section is designed to facilitate compliance with Chapter 116B. Subsection (a) authorizes the Treasurer to require a person who has not filed a report or who has filed an inaccurate, incomplete, or false report to file a verified report in a form specified by the Treasurer. Subsection (b) authorizes the Treasurer to examine or to contract with any other person to examine the records of any person to determine whether the person has complied with Chapter 116B. Subsection (c) authorizes the Treasurer to examine the records of an agent of a business association, e.g., a dividend disbursing agent or

transfer agent, that is the holder of property presumed abandoned. Subsection (d) provides for th confidentiality of documents and working papers obtained or compiled in the course of an examinatio and lists the circumstances under which the documents and papers may be disclosed. If an examination results in the disclosure of reportable property, subsection (e) authorizes the Treasurer to assess against a holder who made a fraudulent report, the cost of the examination at the rate of $200 a day for each examiner, or a greater amount that is reasonable and was incurred, but the assessment may not exceed the value of the property found to be reportable. **Senate Judiciary I deleted the language authorizing the Treasurer to assess the cost of an examination against a holder who willfully fails to file a report.** Subsection (f) permits the use of estimates in instances where the holder has failed to report and deliver property and no longer has reasonably accessible records sufficient to prepare a specific report.

116B-73. Except as provided in subsection (b), subsection (a) requires a holder to maintain records containing information required to be included in a report for 10 years after the holder filed the report, unless a shorter period is provided by rule. Subsection (b) requires the issuer of travelers checks and money orders to maintain records of the instruments for three years after the holder filed the report.

116B-73.1. Senate Judiciary I added this new section to allow a holder to ask the Treasurer to conduct a precompliance review. A fee of $500.00 per day may be charged by the Treasurer for conducting this review. This program would educate the holder's employees on the unclaimed property laws and filing procedures and would recommend ways to facilitate the holder's compliance.

116B-74. Subsection (a) authorizes the Treasurer to commence an enforcement action in this or another state. Subsection (b) brings forward current law allowing the Treasurer to order persons required to report, pay, or deliver property to appear and to produce records and give testimony.

116B-75. This section deals with interstate cooperation and joint actions. Subsection (a) allows an exchange of information relating to abandoned property or its possible existence. Subsection (b) explicitly permits the Treasurer to join with another state to seek enforcement of Chapter 116B. Subsection (c) explicitly permits the Attorney General to commence an enforcement action on behalf of another state if the state agrees to pay the expenses incurred by the Attorney General. Subsection (d) explicitly permits the Treasurer to request that the attorney general of another state or another attorney commence an enforcement action in the other state on behalf of the Treasurer and also allows the Treasurer, with the approval of the Attorney General, to retain an outside attorney to commence an enforcement action in this State on behalf of the Treasurer. The Treasurer may agree to base the attorneys' fees upon a percentage of the value of the property recovered for the State. Subsection (e) continues the authorization of the Treasurer to make expenditures from the Escheat Fund as may be necessary to effectuate this section.

116B-76. This section requires a holder who fails to report, pay, or deliver property to pay interest on the property or value of the property from the date the property should have been reported, paid, or delivered. The section also provides civil penalties for willful failure to report, pay, or deliver property and for making a fraudulent report. A holder who willfully fails to report, pay, or deliver property within the prescribed time, or willfully fails to perform other duties under Chapter 116B must pay a penalty of $10.00 for each day the required act is withheld or the duty is not performed, up to a maximum of $25,000, plus 25% of the value of any property that should have been but was not reported. The penalty for making a fraudulent report is $1,000 for each day from the date a report was due, up to a maximum of $25,000, plus 25% of the value of property that was not reported. The Treasurer is expressly authorized to waive, in whole or in part, interest and penalties; however, this authorization does not include the

penalty for fraudulent reporting. The current law imposes a civil penalty of $300 for each failure, neglect, refusal or false report, and an additional sum of $10.00 for each day of the period of default, or a sum equal to ½ of the value of the property, whichever is greater.

116B-77. This section governs agreements between owners and "unclaimed property locators" or "heir finders" to locate abandoned property and is intended to enhance the likelihood that the owner of the property will be located by the efforts of the Treasurer and will receive a return of the property without payment of a "finder's fee". Subsection (a) voids any unclaimed property locator's or heir finder's agreement with the apparent owner if it was entered into during the period commencing on the date the property was presumed abandoned and extending to a time that is 24 months after the date the property is paid or delivered to the Treasurer. Subsection (b) requires that the agreement be in writing, identify the property, state its value before and after deduction of the fee, and specify the services to be rendered. Subsection (c) voids a provision of an agreement that provides for compensation that includes a portion of the underlying minerals or the mineral proceeds not yet presumed abandoned. Subsection (d) limits the locator's compensation to an amount that is not greater than 25% of the actual value of the property recovered. An owner who has made an agreement to pay compensation that is unenforceable, or the Treasurer on behalf of the owner, may bring an action to reduce the compensation. The court may award attorneys' fees to an owner who prevails in the action. Subsections (b) and (d) apply to all agreements, regardless of when the agreement was made, including agreements with an owner as a result of a holder providing to private parties the holder's information regarding an inactive account. Subsection (e) provides that an owner is not precluded from asserting that an agreement is invalid on grounds other than as provided in subsection (d). **Senate Judiciary I added a new subsection (f) to require a person who enters into an agreement to assist another in locating abandoned or unclaimed property to register with the Treasurer. The registration fee is set at $100.**

116B-78. This section sets forth transitional provisions.

116B-79. This section authorizes Treasurer to adopt rules necessary to carry out Chapter 116B.

Sections 7 through 12. These sections make conforming amendments. The amendments update statutory cross references, delete language believed to be no longer necessary, and make provisions gender neutral.

Section 13. This section is a general severability clause.

Section 14. This section authorizes the printing of drafters' comments.

Section 15. This section provides a delayed effective date of January 1, 2000.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 244 (Second Edition)

SHORT TITLE: Unclaimed Property Act/ AB

SPONSOR(S):

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
Escheat Fund					
Gift Certificates	($250,000)	($500,000)	($500,000)	($500,000)	($500,000)
Manufactured Homes	($1,200,000)				
Bus. Credit Balances	($125,000)	($250,000)	($250,000)	($250,000)	($250,000)
Extension Request	$250	$500	$500	$500	$500
EXPENDITURES					
State Education Assistance Authority		($94,485)	($139,455)	($184,425)	($229,395)

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of State Treasurer – Escheat and Unclaimed Property Program

EFFECTIVE DATE: The act becomes effective January 1, 2000.

BILL SUMMARY: This bill rewrites the escheat and unclaimed property laws in North Carolina.

ASSUMPTIONS AND METHODOLOGY:
The following sections of SB 244 have a potential fiscal impact on the Escheat Fund:

Section 5 – G.S. 116B-8
This section has no fiscal impact. This section limits the compensation the State Treasurer pays companies to uncover unreported, escheatable property. The limit will be 10% of the final assessment of property escheated to the state. This provision will not affect the Treasurer's current contracts with two firms. The state contract with the National Abandoned Property Processing Corp. pays 10% of the recovered property. The state contract with the Unclaimed

Property Clearinghouse pays 12% (6% for an audit and 6% for processing) for recovered property. This 12% is really for two separate functions that are paid as one fee. The provision would force the Treasurer to make two payments for these services.

Section 6 – G.S. 116B-53(c) & G.S. 116B-54(b)

Amending these statutes will produce a loss of revenue for the Escheat Fund by exempting gift certificates, manufactured home buyer's deposits, and credit balances between businesses from the definition of abandoned property. As for prepaid calling cards and electronic gift cards, there is no revenue loss because the Treasurer has never escheated these items. However, assuming that these items are eligible for escheat, there is a potential revenue loss that cannot be estimated at this time.

I. Gift Certificates

The Director of the Escheat and Unclaimed Property Program estimates that the Escheat Fund will lose $500,000 per year in unclaimed assets by eliminating gift certificates from escheat. Since the Escheat and Unclaimed Property Program does not record whether a gift certificate has an expiration date or not, this estimate assumes all unclaimed gift certificates are eligible to escheat. In 1998, the state received $117,522 from five companies that listed gift certificates as a specific property type. However, officials in the Escheat and Unclaimed Property Program believe that most gift certificates and gift cards are grouped together with other property types that are reported by businesses. The state collected $6.9 million in unclaimed property from businesses other than banks, insurance companies, and utilities in 1998. It is unknown what percentage of this amount is from gift certificates.

The Director of the Escheat and Unclaimed Property Program believes his agency has only begun discovering unclaimed gift certificates, phone cards, and electronic gift cards. The State Treasurer has six auditors and two contract audit firms that search for unclaimed property in North Carolina and in other states. A recent multi-state audit of a large retail chain found $1 million in unclaimed gift certificates in North Carolina. This $1 million will be remitted to the state over the next four years unless prohibited by SB 244.

To gauge whether North Carolina's estimate of escheated gift certificates was reasonable, unclaimed property programs in other states were surveyed by e-mail by legislative staff. Of the small number of states that responded, gift certificate collections in Indiana and Maine appear to validate the $500,000 estimate for North Carolina. An official with the Indiana Office of the Attorney General reported that $425,000 in gift certificates were escheated to the state in 1998. Indiana has a population of 5.8 million versus North Carolina's 7.4 million. Maine, state population 1.24 million, had $209,100 in gift certificates escheated in 1998. Some states reported that they grouped many classes of property together like North Carolina. Other states escheated gift certificates but admitted their low collections were due to noncompliance by retailers and the state's lack of aggressiveness in seeking unclaimed gift certificates.

II. Manufactured Home Buyers' Deposit

The Escheat and Unclaimed Property Program conducted an audit of a major mobile home manufacturer in North Carolina and found **$1.2 million in unclaimed buyers' deposits.** Passage of SB 244 would prevent the deposit of these funds into the Escheat Fund. There is also an annual revenue loss to the Escheat Fund from this exemption, but no estimate is available from the Treasurer's staff at this time.

III. Credit Balances

It is estimated that the Escheat Fund will lose $250,000 a year if credit balances between businesses are exempted from escheat. Since 1988, the Escheat Fund has received $1.46 million in unclaimed credit balances from in-state and out-of-state property holders. In the last four fiscal years, business to business credit balances have averaged $250,000 a year.

Section 6 – 116B-60

This section will generate annual revenue of $500 for the Escheat Fund. The Treasurer receives approximately 50 requests a year from property holders who request extensions for filing a report. Fifty requests times the $10 fee is $500.

Section 6 – 116B-72

No estimate available. The Escheat and Unclaimed Property Program did 57 record examinations in FY 97-98. This section would allow the Treasurer to charge $200 a day for an exam of a property holder who made a fraudulent report of unclaimed property. The Treasurer's staff does not think this power will be used often due to the difficulty of proving fraud.

Section 6 – 116B-73.1

No fiscal impact. This section states that the Treasurer may charge $500 per day for precompliance reviews. Heretofore, the Treasurer has provided five property holder seminars a year and offered free precompliance advice. The Treasurer's staff does not intend to charge for their compliance efforts.

Section 6 – 116B-76

No estimate available. This section will reduce the interest rate on holders who fail to report, pay, or deliver property in a prescribed time. The interest rate reduction from 12% to the market rate will reduce interest earnings for the Escheat Fund. No estimate is available for the increase in the civil penalty for fraudulent reporting because the Treasurer has not used this authority.

Section 6 – 116B-77

No fiscal impact. The $100 registration fee for third party tracers is not anticipated to be used because there are none presently operating in North Carolina.

SEAA

The interest from the Escheat Fund is deposited with the North Carolina State Education Assistance Authority (SEAA) to provide financial assistance to students in state supported schools of higher education. The interest on Escheat Fund investments in future years is calculated at 6% per year. This is the short-term investment rate recommended by the State Treasurer. It is assumed that the interest will accrue the year after the property is escheated. This interest would have been deposited with the State Education Assistance Authority to be used for student loans. The interest lost each year is as follows:

	Cumulative	Interest
FY 1999-00	$1,574,750	
FY 2000-01	$2,324,250	$94,485
FY 2001-02	$3,073,750	$139,455
FY 2002-03	$3,823,250	$184,425
FY 2003-04	$4,572,750	$229,395

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic

APPROVED BY:

DATE:

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 244

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

S244-ALA-003

Date _____,1999

Comm. Sub. [YES]
Amends Title []
S244-PCS8613-LA

Senator

moves to amend the bill on page 20, lines 30 through 36, by rewriting the lines to read:

"(d) An agreement covered by this section that provides for compensation that is unconscionable is unenforceable except by the owner. An owner who has made an agreement to pay compensation that is unconscionable, or the Treasurer on behalf of the owner, may maintain an action to reduce the compensation to a conscionable amount. The court may award reasonable attorneys' fees to an owner who prevails in the action."

SIGNED Holcomb Hartsell Jr.
Amendment Sponsor

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

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 244

AMENDMENT NO. #2
(to be filled in by
Principal Clerk)

S244-ALA-001

Date _____,1999

Comm. Sub. [YES]
Amends Title []
S244-PCS8613-LA

Senator Hoyle

moves to amend the bill on page 9, lines 12 through 18, by rewriting those lines to read:

"subdivision, agency, or instrumentality of this State; or";

and on page 9, line 19 by substituting the number "(6)" for the number "(7)".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 1112
Proposed Committee Substitute S1112-CSRBX-6/1
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: No Sales Tax Fee/Other Changes. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO PROMOTE ELECTRONIC COMMERCE BY REPEALING THE SALES TAX REGISTRATION FEE AND TO MAKE OTHER CHANGES TO THE TAX LAWS AND RELATED STATUTES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-164.4(c) reads as rewritten:

"(c) Certificate of Registration. -- Before a person may engage in business as a retailer or a wholesale merchant, the person must obtain a certificate of registration from the Department. To obtain a certificate of registration, a person must register with the ~~Department and pay fifteen dollars ($15.00).~~ Department.

A certificate of registration is valid unless it is revoked for failure to comply with the provisions of this Article or becomes void. A certificate issued to a retailer becomes void if, for a period of 18 months, the retailer files no returns or files returns showing no sales."

Section 2. G.S. 105-88 reads as rewritten:

"**§ 105-88. Loan ~~agencies or brokers.~~ agencies.**

(a) Every person, firm, or corporation engaged in any of the following businesses must pay for the privilege of engaging in

that business an annual tax of seven hundred fifty dollars ($750.00) for each location at which the business is conducted:

(1) The ~~the regular~~ business of making loans or lending money, accepting liens on, or contracts of assignments of, salaries or wages, or any part thereof, or other security or evidence of debt for repayment of such loans in installment payment or ~~otherwise, and maintaining in connection with same any office or other located or established place for the conduct, negotiation, or transaction of such business and/or advertising or soliciting such business in any manner whatsoever, shall be deemed a loan agency, and shall apply for and procure from the Secretary of Revenue a State license for the privilege of transacting or negotiating such business at each office or place so maintained, and shall pay for such license a tax of seven hundred fifty dollars ($750.00).~~ otherwise.

(2) The business of check cashing regulated under Article 22 of Chapter 53 of the General Statutes.

(3) The business of pawnbroker regulated under Chapter 91A of the General Statutes.

(b) This section does not apply to banks, industrial banks, trust companies, savings and loan associations, cooperative credit unions, the business of negotiating loans on real estate as described in G.S. 105-41, ~~pawnbrokers lending or advancing money on specific articles of personal property,~~ or insurance premium finance companies licensed under Article 35 of Chapter 58 of the General Statutes. This section applies to those persons or concerns operating what are commonly known as loan companies or finance companies and whose business is as hereinbefore described, and those persons, firms, or corporations pursuing the business of lending money and taking as security for the payment of the loan and interest an assignment of wages or an assignment of wages with power of attorney to collect the amount due, or other order or chattel mortgage or bill of sale upon household or kitchen furniture. No real estate mortgage broker is required to obtain a privilege license under this section merely because the broker advances the broker's own funds and takes a security interest in real estate to secure the advances and when, at the time of the advance, the broker has already made arrangements with others for the sale or discount of the obligation at a later date and does so sell or discount the obligation within the period specified in the arrangement or extensions thereof; or

when, at the time of the advance the broker intends to sell the obligation to others at a later date and does, within 12 months from date of initial advance, make arrangements with others for the sale of the obligation and does sell the obligation within the period specified in the arrangement or extensions thereof; or because the broker advances the broker's own funds in temporary financing directly involved in the production of permanent-type loans for sale to others; and no real estate mortgage broker whose mortgage lending operations are essentially as described above is required to obtain a privilege license under this section.

(c) At the time of making any such loan, the person, or officer of the firm or corporation making the ~~same,~~ loan, shall give to the borrower in writing in convenient form a statement showing the amount received by the borrower, the amount to be paid back by the borrower, ~~and~~ the time in which ~~said~~ the amount is to be paid, and the rate of interest and discount agreed upon.

(d) ~~Any such person, firm, or corporation failing, refusing, or neglecting to pay the tax herein levied shall be guilty of a Class 1 misdemeanor in addition to double the tax due. No such loan shall be~~ A loan is not collectible at law in the courts of this State in any case where the person making ~~such~~ the loan has failed to pay the tax levied ~~herein, and/or otherwise complied~~ in this section or otherwise failed to comply with the provisions of this section.

(e) Counties, cities, and towns may levy a license tax on the business taxed under this section not in excess of one hundred dollars ($100.00)."

Section 3. G.S. 105-164.3(25) reads as rewritten:

"(25) 'Utility' means ~~an electric power company or a telephone company that is subject to a privilege tax based on gross receipts under G.S. 105-116 or 105-120, a~~ any of the following:

a. A business entity that provides local, toll, or private telecommunications service as defined by G.S. ~~105-120(e), or a~~ 105-120(e).

b. A business entity or a municipality that sells electric ~~power, other than a municipality whose only wholesale supplier of electric power is a federal agency and who is required by a contract with that federal agency to make payments in lieu of taxes.~~ power."

Section 4. G.S. 105-164.13(13) reads as rewritten:

"(13) All of the following drugs, including the constituent elements and ingredients used to produce the drugs, the packaging materials, and any instructions or information about the product included in the package with the drugs:
a. Prescription drugs.
b. ~~Medicines~~ Nonprescription drugs sold on prescription of physicians, dentists, or ~~veterinarians; insulin whether or not sold on prescription.~~ veterinarians.
c. Insulin."

Section 5. G.S. 105-164.13(13b) is repealed.

Section 6. G.S. 105-164.13(35) reads as rewritten:

"(35) Sales by a nonprofit civic, charitable, educational, scientific, ~~literary~~ literary, or fraternal organization ~~continuously chartered or incorporated within North Carolina for at least two years~~ when ~~such~~ all of the following conditions are met:
a. The sales are conducted only upon an annual basis for the purpose of raising funds for ~~its activities, and when~~ the organization's activities.
b. ~~the~~ The proceeds ~~thereof~~ of the sale are actually used for ~~such purposes; provided, however, that no such sale shall be exempt if not actually consummated~~ the organization's activities.
c. The products sold are delivered to the purchaser within 60 days after the first solicitation of any sale made during ~~said~~ the organization's annual sales period."

Section 7. G.S. 105-164.13(39) is repealed.

Section 8. G.S. 105-164.13(42) reads as rewritten:

"(42) Tangible personal property that is purchased by a retailer for resale or is manufactured or purchased by a wholesale merchant for resale and then withdrawn from inventory and donated by the retailer or wholesale merchant to either a governmental entity or a nonprofit organization, contributions to which are deductible as charitable contributions for federal income tax purposes."

Section 9. G.S. 105-164.13 is amended by adding a new subdivision to read:

"(46) Sales of electricity by a municipality whose only wholesale supplier of electric power is a federal agency and who is required by a contract with that federal agency to make payments in lieu of taxes."

Section 10. G.S. 105-164.13A reads as rewritten:

"**§ 105-164.13A. Service charges on food, beverages, or meals.**

When a service charge is imposed on food, beverages, or meals, so much of ~~said~~ the service charge ~~as does~~ that not exceed ~~fifteen percent (15%)~~ twenty percent (20%) of the sales price is considered a tip and is specifically exempted from the tax imposed by this Article ~~when the service charge:~~ if it meets both of the following conditions:

(1) Is separately stated in the price list, menu, or written proposal and also in the invoice or ~~bill; and~~ bill.

(2) Is turned over to the personnel directly involved in the service of the food, beverages, or meals, in accordance with G.S. 95-25.6.

~~Such service charge shall be considered to be a tip.~~"

Section 11. G.S. 105-236(1) reads as rewritten:

"(1) Penalty for Bad Checks. -- When the bank upon which any uncertified check tendered to the Department of Revenue in payment of any obligation due to the Department returns the check because of insufficient funds or the nonexistence of an account of the drawer, the Secretary shall assess a penalty equal to ten percent (10%) of the check, subject to a minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). This penalty does not apply if the Secretary finds that, when the check was presented for payment, the drawer of the check had sufficient funds in an account at a financial institution in this State to pay the check and, by inadvertence, the drawer of the check failed to draw the check on the account that had sufficient funds. ~~The penalty imposed may not be waived or diminished by the Secretary.~~"

Section 12. G.S. 105-236(5) reads as rewritten:

"(5) Negligence. --

a. Finding of negligence. -- For negligent failure to comply with any of the provisions to which this Article applies, or rules issued pursuant thereto, without intent to defraud, the Secretary shall assess a penalty equal to ten percent (10%) of the deficiency due to the negligence.

b. Large individual income tax deficiency. -- In the case of individual income tax, if a taxpayer understates taxable income, by any means, by an amount equal to twenty-five percent (25%) or more of gross income, the Secretary shall assess a penalty equal to twenty-five percent (25%) of the deficiency. For purposes of this subdivision, "gross income" means gross income as defined in section 61 of the Code.

c. Other large tax deficiency. -- In the case of a tax other than individual income tax, if a taxpayer understates tax liability by twenty-five percent (25%) or more, the Secretary shall assess a penalty equal to twenty-five percent (25%) of the deficiency.

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

e. Inheritance and gift tax deficiencies. -- This subdivision does not apply to inheritance, estate, and gift tax deficiencies that are the result of valuation understatements."

Section 13. G.S. 105-237(a) reads as rewritten:

"(a) Waiver. -- The Secretary may, upon making a record of the reasons therefor, reduce or waive any penalties provided for in this ~~Subchapter, except the penalty provided in G.S. 105-236 relating to unpaid checks.~~ Subchapter."

Section 14. G.S. 105-259(b)(15) reads as rewritten:

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

...

(15) To exchange information concerning a tax imposed by Articles 2A, 2B, 2C, or 2D of this Chapter with one of the following agencies when the information is needed to fulfill a duty imposed on the Department or the agency:
a. The North Carolina Alcoholic Beverage Control Commission.
b. The Division of Alcohol Law Enforcement of the Department of Crime Control and Public Safety.
c. The Bureau of Alcohol, Tobacco, and Firearms of the United States Treasury Department.
d. Local law enforcement agencies."

Section 15. G.S. 105-266(c)(1) reads as rewritten:

"(c) Statute of Limitations. -- The period in which a refund must be demanded or discovered under this section is determined as follows:

(1) General Rule. -- No overpayment shall be refunded, whether upon discovery or receipt of written demand, if the discovery is not made or the demand is not received within three years after the date set by the statute for the filing of the return or within six months after the payment of the tax alleged to be an overpayment, whichever is later. An agreement by a taxpayer to extend the time in which the Department can assess the taxpayer for an underpayment automatically extends the time in which the taxpayer can request a refund."

Section 16. G.S. 105-449.87(a)(1) reads as rewritten:

"(a) Tax. -- An excise tax at the motor fuel rate is imposed on the following:

(1) Dyed diesel fuel that is used to operate a highway vehicle for a use that is not a nontaxable use under § 4082(b) of the Code. The tax does not apply, however, to dyed diesel fuel that is used to operate special mobile equipment."

Section 17. G.S. 105-449.106 reads as rewritten:

"**§ 105-449.106. Quarterly refunds for certain local governmental entities, nonprofit organizations, ~~and taxicabs.~~ taxicabs, and special mobile equipment.**

(a) Government and Nonprofits. -- A local governmental entity or a nonprofit organization listed below that purchases and uses motor fuel may receive a quarterly refund, for the excise tax

paid during the preceding quarter, at a rate equal to the amount of the flat cents-per-gallon rate plus the variable cents-per-gallon rate in effect during the quarter for which the refund is claimed, less one cent (1¢) per gallon. ~~Any of the following entities may receive a refund under this section:~~

~~(1) A county or a municipal corporation.~~

~~(2) A private, nonprofit organization that transports passengers under contract with or at the express designation of a unit of local government.~~

~~(3) A volunteer fire department.~~

~~(4) A volunteer rescue squad.~~

~~(5) A sheltered workshop recognized by the Department of Health and Human Services.~~

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

Any of the following entities may receive a refund under this subsection:

(1) A county or a municipal corporation.

(2) A private, nonprofit organization that transports passengers under contract with or at the express designation of a unit of local government.

(3) A volunteer fire department.

(4) A volunteer rescue squad.

(5) A sheltered workshop recognized by the Department of Health and Human Services.

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

(c) Special Mobile Equipment. -- A person who purchases and uses motor fuel to operate special mobile equipment off-highway may receive a quarterly refund, for the excise tax paid during the preceding quarter, at a rate equal to the flat

cents-per-gallon rate plus the variable cents-per-gallon rate in effect during the quarter for which the refund is claimed, less the amount of sales and use tax due on the fuel under this Chapter, as determined in accordance with G.S. 105-449.107(c). An application for a refund must be made in accordance with this Part."

Section 18. G.S. 105-449.116 is repealed.

Section 19. G.S. 20-50(a) reads as rewritten:

"(a) ~~Except as otherwise provided in this Article, every owner of a~~ A vehicle intended to be operated upon any highway of this State must be registered with the Division in accordance with G.S. 20-52 and the owner of the vehicle must comply with G.S. 20-52 before operating the vehicle. A vehicle that is leased to an individual who is a resident of this State is a vehicle intended to be operated upon a highway of this State. ~~and required by this Article to be registered shall, before the same is so operated, apply to the Division for and obtain the registration thereof, the registration plates therefor and a certificate of title therefor, and attach the registration plates to the vehicle, except when an owner is permitted to operate a vehicle under the registration provisions relating to manufacturers, dealers and nonresidents contained in G.S. 20-79, or under temporary registration plates as provided in this Article: Provided that the~~

The Commissioner of Motor Vehicles or ~~his~~ the Commissioner's duly authorized agent is empowered to grant a special one-way trip permit to move a vehicle without license upon good cause being shown. ~~It is further provided that when~~ When the owner of a vehicle leases ~~such~~ the vehicle to a carrier of passengers or property and ~~it~~ the vehicle is actually used by ~~such~~ the carrier in the operation of its business, the ~~registration~~ license plates may be obtained by the lessee, upon written consent of the owner, after the certificate of title has been obtained by the owner. ~~Provided further that when~~ When the owner of a vehicle leases ~~such~~ the vehicle to a farmer and ~~it~~ the vehicle is actually used by ~~such~~ the farmer in the operation of ~~his~~ a farm, the ~~registration~~ license plates may be obtained by the farmer at the applicable farmer rate, upon written consent of the owner, after the certificate of title has been obtained by the owner. The lessee shall make application on an appropriate form furnished by the Division and file such evidence of the lease as the Division may require."

Section 20. G.S. 20-87(10) reads as rewritten:

"(10) Special Mobile Equipment. -- The fee for special mobile equipment for the license year or any part of the license year is ~~the same as~~ two times the fee in subdivision (5) for a private passenger motor vehicle of not more than 15 passengers."

Section 21. G.S. 20-116(a) reads as rewritten:

"(a) The total outside width of any vehicle or the load thereon shall not exceed 96 inches, except as otherwise provided in this ~~section: Provided that when~~ section. When hogsheads of tobacco are being transported, a tolerance of six inches ~~shall be allowed and that when~~ is allowed. When sheet or bale tobacco is being transported the load ~~does~~ must not exceed a width of 114 inches at the top of the load and the bottom of the load at the truck bed ~~does~~ must not exceed the width of 102 inches inclusive of allowance for load shifting or settling. ~~Provided, further, that vehicles~~ Vehicles (other than passenger buses) ~~which~~ that do not exceed the overall width of 102 inches and otherwise provided in this section may be operated in accordance with G.S. 20-115.1(c), (f), and (g). Special mobile equipment is allowed a total outside width of 102 inches."

Section 22. G.S. 20-140.5 reads as rewritten:

"**§ 20-140.5. Special mobile equipment may tow certain vehicles.**

Special mobile equipment may ~~tow any of the following vehicles:~~ not tow any vehicle other than the following:

(1) A single passenger vehicle that can carry no more than nine ~~passengers and is not loaded, in whole or in part, with passengers or property.~~ passengers and is carrying no passengers.

(2) A single property-hauling vehicle that has a registered weight of 5,000 pounds or ~~less and is not loaded, in whole or in part, with passengers or property.~~ less, is carrying no passengers, and does not exceed its registered weight.

~~Special mobile equipment may not tow a vehicle that is not listed in this section.~~"

Section 23. G.S. 110-129.2(g) reads as rewritten:

(g) Other Uses of Directory Information. -- The ~~Employment Security Commission~~ following agencies may access information entered into the Directory from employer reports for the ~~purpose~~ purposes stated:

1. The Employment Security Commission for the purpose of administering employment security programs.

2. The North Carolina Industrial Commission ~~may access information entered into the Directory from employer reports~~ for the purpose of administering workers' compensation programs.

3. The Department of Revenue for the purpose of administering the taxes it has a duty to collect under Chapter 105 of the General Statutes."

Section 24. This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before the effective date of its amendment or repeal; nor does it affect the right to any refund or credit of a tax that accrued under the amended or repealed statute before the effective date of its amendment or repeal.

Section 25. Sections 1 and 20 of this act become effective January 1, 2000. Section 2 of this act becomes effective July 1, 1999. Sections 4 through 8, 10 through 13, and 16 of this act become effective October 1, 1999; Sections 11 through 13 apply to penalties assessed on or after that date. The remainder of this act is effective when it becomes law; Section 17 applies to taxes paid on or after January 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

SENATE BILL 1112

Short Title: No Sales Tax Fee/Other Changes. (Public)

Sponsors: Senator Kerr.

Referred to: Finance.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO PROMOTE ELECTRONIC COMMERCE BY REPEALING THE SALES TAX REGISTRATION FEE AND TO MAKE OTHER CHANGES TO THE TAX LAWS AND RELATED STATUTES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-164.4(c) reads as rewritten:

"(c) Certificate of Registration. -- Before a person may engage in business as a retailer or a wholesale merchant, the person must obtain a certificate of registration from the Department. To obtain a certificate of registration, a person must register with the ~~Department and pay fifteen dollars ($15.00).~~ Department.

A certificate of registration is valid unless it is revoked for failure to comply with the provisions of this Article or becomes void. A certificate issued to a retailer becomes void if, for a period of 18 months, the retailer files no returns or files returns showing no sales."

Section 2. G.S. 105-88 reads as rewritten:

"**§ 105-88. Loan agencies or brokers.**

(a) Every person, firm, or corporation engaged in or soliciting any of the following businesses, and maintaining a place of business for conducting the business, must pay for the privilege of engaging in that business an annual tax of seven hundred fifty dollars ($750.00) for each location at which the business is conducted:

(1) The ~~the regular~~ business of making loans or lending money, accepting liens on, or contracts of assignments of, salaries or wages, or any part thereof, or other security or evidence of debt for repayment of such loans in installment payment or ~~otherwise, and~~

~~maintaining in connection with same any office or other located or established place for the conduct, negotiation, or transaction of such business and/or advertising or soliciting such business in any manner whatsoever, shall be deemed a loan agency, and shall apply for and procure from the Secretary of Revenue a State license for the privilege of transacting or negotiating such business at each office or place so maintained, and shall pay for such license a tax of seven hundred fifty dollars ($750.00).~~ otherwise.

(2) The business of check cashing regulated under Article 22 of Chapter 53 of the General Statutes.

(3) The business of pawnbroker regulated under Chapter 91A of the General Statutes.

(b) This section does not apply to banks, industrial banks, trust companies, savings and loan associations, cooperative credit unions, the business of negotiating loans on real estate as described in G.S. 105-41, ~~pawnbrokers lending or advancing money on specific articles of personal property,~~ or insurance premium finance companies licensed under Article 35 of Chapter 58 of the General Statutes. This section applies to those persons or concerns operating what are commonly known as loan companies or finance companies and whose business is as hereinbefore described, and those persons, firms, or corporations pursuing the business of lending money and taking as security for the payment of the loan and interest an assignment of wages or an assignment of wages with power of attorney to collect the amount due, or other order or chattel mortgage or bill of sale upon household or kitchen furniture. No real estate mortgage broker is required to obtain a privilege license under this section merely because the broker advances the broker's own funds and takes a security interest in real estate to secure the advances and when, at the time of the advance, the broker has already made arrangements with others for the sale or discount of the obligation at a later date and does so sell or discount the obligation within the period specified in the arrangement or extensions thereof; or when, at the time of the advance the broker intends to sell the obligation to others at a later date and does, within 12 months from date of initial advance, make arrangements with others for the sale of the obligation and does sell the obligation within the period specified in the arrangement or extensions thereof; or because the broker advances the broker's own funds in temporary financing directly involved in the production of permanent-type loans for sale to others; and no real estate mortgage broker whose mortgage lending operations are essentially as described above is required to obtain a privilege license under this section.

(c) At the time of making any such loan, the person, or officer of the firm or corporation making the ~~same,~~ loan, shall give to the borrower in writing in convenient form a statement showing the amount received by the borrower, the amount to be paid back by the borrower, ~~and~~ the time in which ~~said~~ the amount is to be paid, and the rate of interest and discount agreed upon.

(d) ~~Any such person, firm, or corporation failing, refusing, or neglecting to pay the tax herein levied shall be guilty of a Class 1 misdemeanor in addition to double~~

~~the tax due. No such loan shall be~~ A loan is not collectible at law in the courts of this State in any case where the person making ~~such~~ the loan has failed to pay the tax levied ~~herein, and/or otherwise complied~~ in this section or otherwise failed to comply with the provisions of this section.

(e) Counties, cities, and towns may levy a license tax on the business taxed under this section not in excess of one hundred dollars ($100.00)."

Section 3. G.S. 105-164.3(25) reads as rewritten:

"(25) 'Utility' means ~~an electric power company or a telephone company that is subject to a privilege tax based on gross receipts under G.S. 105-116 or 105-120, a~~ any of the following:

a. A business entity that provides local, toll, or private telecommunications service as defined by G.S. ~~105-120(e), or a~~ 105-120(e).

b. A business entity or a municipality that sells electric ~~power, other than a municipality whose only wholesale supplier of electric power is a federal agency and who is required by a contract with that federal agency to make payments in lieu of taxes.~~ power."

Section 4. G.S. 105-164.13 is amended by adding a new subdivision to read:

"(46) Sales of electricity by a municipality whose only wholesale supplier of electric power is a federal agency and who is required by a contract with that federal agency to make payments in lieu of taxes."

Section 5. G.S. 105-164.13(13b) reads as rewritten:

"(13b) Prescription ~~drugs distributed free of charge by the manufacturer,~~ drugs, including the constituent elements and ingredients used to produce the drugs, the packaging materials, and any instructions or information about the product included in the package with the drugs."

Section 6. G.S. 20-50(a) reads as rewritten:

"(a) ~~Except as otherwise provided in this Article, every owner of a~~ A vehicle intended to be operated upon any highway of this State must be registered with the Division in accordance with G.S. 20-52 and the owner of the vehicle must comply with G.S. 20-52 before operating the vehicle. A vehicle that is leased to an individual who is a resident of this State is a vehicle intended to be operated upon a highway of this State. ~~and required by this Article to be registered shall, before the same is so operated, apply to the Division for and obtain the registration thereof, the registration plates therefor and a certificate of title therefor, and attach the registration plates to the vehicle, except when an owner is permitted to operate a vehicle under the registration provisions relating to manufacturers, dealers and nonresidents contained in G.S. 20-79, or under temporary registration plates as provided in this Article. Provided that the~~

The Commissioner of Motor Vehicles or ~~his~~ the Commissioner's duly authorized agent is empowered to grant a special one-way trip permit to move a vehicle without license upon good cause being shown. ~~It is further provided that when~~ When the owner of a vehicle leases ~~such~~ the vehicle to a carrier of passengers or property and ~~it~~ the vehicle is actually used by ~~such~~ the carrier in the operation of its business, the ~~registration~~ license plates may be obtained by the lessee, upon written consent of the owner, after the certificate of title has been obtained by the owner. ~~Provided further that when~~ When the owner of a vehicle leases ~~such~~ the vehicle to a farmer and ~~it~~ the vehicle is actually used by ~~such~~ the farmer in the operation of ~~his~~ a farm, the ~~registration~~ license plates may be obtained by the farmer at the applicable farmer rate, upon written consent of the owner, after the certificate of title has been obtained by the owner. The lessee shall make application on an appropriate form furnished by the Division and file such evidence of the lease as the Division may require."

Section 7. G.S. 105-449.87(a)(1) reads as rewritten:

"(a) Tax. -- An excise tax at the motor fuel rate is imposed on the following:

(1) Dyed diesel fuel that is used to operate a highway vehicle for a use that is not a nontaxable use under § 4082(b) of the Code. The tax does not apply, however, to dyed diesel fuel that is used to operate special mobile equipment."

Section 8. G.S. 105-449.106 reads as rewritten:

"**§ 105-449.106. Quarterly refunds for certain local governmental entities, nonprofit organizations, ~~and taxicabs.~~ taxicabs, and special mobile equipment.**

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

~~(1) A county or a municipal corporation.~~

~~(2) A private, nonprofit organization that transports passengers under contract with or at the express designation of a unit of local government.~~

~~(3) A volunteer fire department.~~

~~(4) A volunteer rescue squad.~~

~~(5) A sheltered workshop recognized by the Department of Health and Human Services.~~

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

Any of the following entities may receive a refund under this subsection:

(1) A county or a municipal corporation.

(2) A private, nonprofit organization that transports passengers under contract with or at the express designation of a unit of local government.
(3) A volunteer fire department.
(4) A volunteer rescue squad.
(5) A sheltered workshop recognized by the Department of Health and Human Services.

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

(c) Special Mobile Equipment. -- A person who purchases and uses motor fuel to operate special mobile equipment off-highway may receive a quarterly refund, for the excise tax paid during the preceding quarter, at a rate equal to the flat cents-per-gallon rate plus the variable cents-per-gallon rate in effect during the quarter for which the refund is claimed, less the amount of sales and use tax due on the fuel under this chapter as determined in accordance with G.S. 105-449.107(c). An application for a refund must be made in accordance with this Part."

Section 9. G.S. 20-140.5 reads as rewritten:

"**§ 20-140.5. Special mobile equipment may tow certain vehicles.**

Special mobile equipment may ~~tow any of the following vehicles:~~ not tow any vehicle other than the following:

(1) A single passenger vehicle that can carry no more than nine ~~passengers and is not loaded, in whole or in part, with passengers or property.~~ passengers, is carrying no passengers, and is carrying no more than its registered weight in property.
(2) A single property-hauling vehicle that has a registered weight of 5,000 pounds or ~~less and is not loaded, in whole or in part, with passengers or property.~~ less, is carrying no passengers, and is carrying no more than its registered weight in property.

~~Special mobile equipment may not tow a vehicle that is not listed in this section.~~"

Section 10. G.S. 20-116(a) reads as rewritten:

"(a) The total outside width of any vehicle or the load thereon shall not exceed 96 inches, except as otherwise provided in this ~~section: Provided that when~~ section. When hogsheads of tobacco are being transported, a tolerance of six inches ~~shall be allowed and that when~~ is allowed. When sheet or bale tobacco is being transported the load ~~does~~ must not exceed a width of 114 inches at the top of the load and the bottom of the load at the truck bed ~~does~~ must not exceed the width of 102 inches inclusive of allowance for load shifting or settling. ~~Provided, further, that vehicles~~ Vehicles (other than passenger buses) ~~which~~ that do not exceed the overall width of

102 inches and otherwise provided in this section may be operated in accordance with G.S. 20-115.1(c), (f), and (g). Special mobile equipment is allowed a total outside width of 102 inches."

Section 11. G.S. 105-449.116 reads as rewritten:

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

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

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

Section 12. G.S. 105-122(d) reads as rewritten:

"(d) After determining the proportion of its total capital stock, surplus and undivided profits as set out in subsection (c) of this section, which amount so determined shall in no case be less than ~~fifty-five percent (55%) of the appraised value as determined for ad valorem taxation of all the real and tangible personal property in this State of each such corporation plus the total appraised value of intangible property returned for taxation of intangible personal property as herein specified nor less than~~ its total actual investment in tangible property in this State, every corporation taxed under this section shall annually pay to the Secretary of Revenue, at the time the report and statement are due, a franchise or privilege tax, which is hereby levied at the rate of one dollar and fifty cents ($1.50) per one thousand dollars ($1,000) of the total amount of capital stock, surplus and undivided profits as herein provided. The tax imposed in this section shall in no case be less than thirty-five dollars ($35.00) and shall be for the privilege of carrying on, doing business, and/or the continuance of articles of incorporation or domestication of each such corporation in this State. ~~Appraised value of tangible property including real estate shall be the ad valorem valuation for the calendar year next preceding the due date of the franchise tax return. Appraised value of intangible property shall be the total gross valuation required to be reported for intangible tax purposes on April 15 coincident with or next preceding the due date of the franchise tax return.~~ The term

'total actual investment in tangible property' as used in this section shall be construed to mean the total original purchase price or consideration to the reporting taxpayer of its tangible properties, including real estate, in this State plus additions and improvements thereto less reserve for depreciation as permitted for income tax ~~purposes, and also less any indebtedness incurred and existing by virtue of the purchase of any real estate and any permanent improvements made thereon.~~ purposes. In computing 'total actual investment in tangible personal property' there shall also be deducted reserves for the entire cost of any air-cleaning device or sewage or waste treatment plant, including waste lagoons, and pollution abatement equipment purchased or constructed and installed which reduces the amount of air or water pollution resulting from the emission of air contaminants or the discharge of sewage and industrial wastes or other polluting materials or substances into the outdoor atmosphere or into streams, lakes, or rivers, upon condition that the corporation claiming such deduction shall furnish to the Secretary a certificate from the Department of Environment and Natural Resources or from a local air pollution control program for air-cleaning devices located in an area where the Environmental Management Commission has certified a local air pollution control program pursuant to G.S. 143-215.112 certifying that said Department or local air pollution control program has found as a fact that the air-cleaning device, waste treatment plant or pollution abatement equipment purchased or constructed and installed as above described has actually been constructed and installed and that such device, plant or equipment complies with the requirements of the Environmental Management Commission or local air pollution control program with respect to such devices, plants or equipment, that such device, plant or equipment is being effectively operated in accordance with the terms and conditions set forth in the permit, certificate of approval, or other document of approval issued by the Environmental Management Commission or local air pollution control program and that the primary purpose thereof is to reduce air or water pollution resulting from the emission of air contaminants or the discharge of sewage and waste and not merely incidental to other purposes and functions. The cost of constructing facilities of any private or public utility built for the purpose of providing sewer service to residential and outlying areas shall be treated as deductible for the purposes of this section; the deductible liability allowed by this section shall apply only with respect to such pollution abatement plants or equipment constructed or installed on or after January 1, 1955."

Section 13. Section 1 of this act becomes effective January 1, 2000. Sections 2 through 4, 7, and 9 through 11 of this act become effective July 1, 1999. Section 5 of this act becomes effective October 1, 1999. Section 8 of this act is effective when it becomes law and applies to taxes paid on or after January 1, 1999. Section 12 of this act becomes effective for taxable years beginning on or after January 1, 2000. The remainder of this act is effective when it becomes law.

SENATE BILL 1112:
No Sales Tax Fee/Other Changes

BILL ANALYSIS

Committee:	Senate Finance	**Sponsor:**	Senator Kerr
Date:	June 2, 1999	**Summary by:**	Martha H. Harris & Cindy Avrette
Version:	PCS for 1st Edition S1112-CSRBX-6/1		Staff Attorney

SUMMARY: ***Promotes electronic commerce by repealing the sales tax registration fee and makes other changes to the tax laws and related statutes.***

BILL ANALYSIS:

Section 1 repeals the $15 sales tax registration fee effective January 1, 2000. This fee is payable at the time a person applies for and obtains a sales tax registration number. The elimination of the fee will better enable the Department to begin receiving sales and use tax reports electronically.

Section 2 provides that check cashers and pawnbrokers are subject to the same annual $750 privilege license tax as loan agencies, effective July 1, 1999. The tax must be paid for each location.

Sections 3 and 9 clarify the definition of a utility for sales tax purposes and move an exemption from the definition section to the exemption section. These sections become effective when they become law.

Sections 4 and 5 provide that all prescription drugs are exempt from sales tax, effective October 1, 1999. All of the drugs exempt from sales tax are placed in one statutory subdivision. Section 5 repeals one of the exemptions because it is incorporated into Section 4.

Section 6 deletes the language that a nonprofit corporation must be chartered or incorporated within North Carolina for two years before its sales are tax exempt. This restriction is constitutionally suspect because there appears to be no rational basis for the distinction. This section becomes effective October 1, 1999.

Section 7 repeals an unconstitutional sales tax exemption for the sale of paper, ink, and other tangible personal property to commercial printers and commercial publishers for use as component parts of free circulation publications that contain advertising of a general nature. The exemption applies primarily to publications such as "The Village Advocate". It does not apply to other free circulation publications, such as a real estate guide. To be constitutional, the exemption needs to be expanded to include all free circulation publications or it needs to be repealed. This section repeals it. This section becomes effective October 1, 1999.

Section 8 adds "governmental entity" as a donee in the sales tax exemption of tangible personal property that is purchased by a retailer for resale or is manufactured or purchased by a wholesale merchant for resale and then withdrawn from inventory and donated by the retailer or merchant to a nonprofit organization. This change would allow contributions to governmental entities such as schools to qualify for the sales tax exemption. This section becomes effective October 1, 1999.

Section 10 increases the percentage that may be added to a patron's bill as a tip without that amount being subject to sales tax, effective October 1, 1999. A service charge, or tip, imposed on a meal is subject to sales tax if it exceeds 15% of the amount charged for the meal. Some restaurants add a slightly higher

gratuity to a meal served to large parties. This section increases the amount that may be added to a bill as a tip without being subject to sales tax from 15% to 20%.

Sections 11 and 13 provide that the Secretary of Revenue may waive the penalty for bad checks, effective October 1, 1999. The Secretary has the authority to waive all other tax penalties for good cause.

Section 12 rewrites the tax penalties for negligence, effective October 1, 1999. Currently, in the case of income tax, a 25% penalty applies if the taxpayer understates taxable income by an amount equal to or greater than ¼ of gross income. For other taxes, the 25% penalty applies if the taxpayer understates tax liability by an amount equal to or greater than ¼ of actual liability. Thus, the 25% penalty is harder to trigger for income taxes than for other taxes. This section would limit the trigger based on gross income to individual income taxes. Thus, corporate income taxes would trigger the 25% penalty if liability is understated by at least ¼, not just if taxable income is understated by at least ¼ of gross income.

Section 14 amends the tax secrecy statute to allow the Department to communicate with local law enforcement officers concerning administration of the unauthorized substances tax. This section is effective when it becomes law.

Section 15 amends G.S. 105-266(c)(1) to give taxpayers the same amount of time to request a refund that the Department has to make an assessment. The Department can currently assess for a longer period of time than a person can get a refund. Taxpayers voluntarily extend the time for the Department to assess in some circumstance, but this does not extend the time for getting refund if any overpayments are found. This amendment would automatically extend the time to request a refund when the taxpayers agrees to extend the time the Department can assess. This section becomes effective when it becomes law.

Sections 16, 17, and 20 address a problem of special mobile equipment and the motor fuel tax. Special mobile equipment is a vehicle that has a permanently attached crane, mill, ditch-digging apparatus, or similar apparatus. The vehicle is driven on the highway only to get to and from a non-highway job. It is not designed or used primarily for the transportation of persons or property. It should not be paying motor fuel tax on the fuel used for a non-highway purpose. However, under the current law, it cannot use dyed (untaxed) diesel fuel nor can it receive a refund of the motor fuel tax paid on clear (taxed) diesel fuel. Section 16 provides that dyed (untaxed) diesel fuel may be used in special mobile equipment, effective October 1, 1999. Section 17 allows a quarterly refund for tax paid on fuel used in special mobile equipment, effective for taxes paid on or after January 1, 1999. As a result of these changes, the motor fuel used in special mobile equipment will be subject to sales tax, which is credited to the General Fund, as opposed to the motor fuel tax, which is credited to the Highway Fund and the Highway Trust Fund. Section 20 seeks to reduce the loss to the Highway Fund by increasing the registration fee for special mobile equipment from $20 to $40, effective January 1, 2000.

Section 18 repeals an unnecessary statute requiring certain fuel importers to register, effective when it becomes law.

Section 19 clarifies that vehicles leased to individuals who live in this State must be registered in this State, effective when this act becomes law.

Section 21 expands the maximum width of special mobile equipment from 96 inches to 102 inches, effective when this act becomes law.

Section 22 clarifies that vehicles towed by special mobile equipment may carry property that does not exceed the weight of the towed vehicle, effective when this act becomes law.

Section 23 allows the Department of Revenue to use information in the State Directory of New Hires for the purpose of administering the taxes it has a duty to collect. The State Directory of New Hires was established in 1997 to assist in the location of persons owing child support.. The Department of Health and Human Services maintains it. Every employer in the State must report to the Directory the hiring of every employee for whom a federal W-4 form is required to be completed. The report must contain the name, address, and social security number of the newly hired employee and the name, address, and federal and State tax ID number of the employer. This section becomes effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 1112 (Proposed Senate Finance Committee Substitute)

SHORT TITLE: No Sales Tax Fee / Other Changes

SPONSOR(S): Senator Kerr

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
General Fund					
Sales Tax Reg. Fee	($270,000)	($540,000)	($540,000)	($540,000)	($540,000)
Check cashing	$750,000	$750,000	$750,000	$750,000	$750,000
Pawnbrokers	$337,500	$337,500	$337,500	$337,500	$337,500
Prescription Drugs	($1,200,000)	($1,872,000)	($2,190,000)	($2,560,000)	($3,000,000)
Shoppers' Guides	$1,875,000	$2,500,000	$2,500,000	$2,500,000	$2,500,000
Net General Fund	$1,492,500	$1,175,500	$857,500	$487,500	$47,500
Local Govts.					
Prescription Drugs	($600,000)	($936,000)	($1,095,000)	($1,280,000)	($1,500,000)
Shoppers' Guides	$937,500	$1,250,000	$1,250,000	$1,250,000	$1,250,000
New Local Govt.	$337,500	$314,000	$155,000	($30,000)	($250,000)
Highway Fund					
Special Mobile Equipment	$41,160	$41,160	$41,160	$41,160	$41,160

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue, Department of Transportation – Division of Motor Vehicles

EFFECTIVE DATE: Sections 1 (sales tax registration fee) and 20 (vehicle registration for special mobile equipment) of this act become effective January 1, 2000. Section 2 (check cashers & pawnbrokers) becomes effective July 1, 1999. Sections 4 and 5 (prescription drugs), sections 6 and 8 (nonprofit sales), section 10 (tips), section 11 & 13 (bad checks), section 12 (income tax penalty), and section 16 (fuel in special mobile equipment) become effective October 1, 1999. Section 17 (fuel tax refunds to special mobile equipment) applies to taxes paid on or after January 1, 1999. The remainder of this act is effective when it becomes law.

BILL SUMMARY: This bill amends various tax laws and related statutes.

ASSUMPTIONS AND METHODOLOGY:
The following is a section by section analysis of SB 1112 PCS:

Section 1
This section repeals the $15 sales tax certificate of registration fee charged to new businesses. The number of registrations in recent years is as follows:

FY 1995-96	34,559
FY 1996-97	38,193
FY 1997-98	36,609

In 1998 and 1999, sales tax registrations are averaging approximately 3,000 a month. Assuming the continuation of the current registration rate, this section will eliminate the $15 fee for 36,000 businesses each year. The General Fund revenue loss will be $540,000 per year. The FY 1999-00 revenue loss will be $270,000 due to a January 1, 2000 effective date.

Section 2
This section imposes an annual $750 privilege license tax on each location of a check cashing or pawnbroker business. As of May 28, 1999, there are 195 check cashing businesses in North Carolina with 975 locations. The number of check cashing businesses has grown tremendously since 1997 when the state approved SB 312 (1997 SL, chapter 391) regulating the industry and approving the delayed deposit of personal checks. The Consumer Finance Administrator at the Office of the Commissioner of Banks thinks the check cashing market has now reached a saturation point and receives only two or three applications per month for new locations. This fiscal note assumes the number of check cashing businesses will peak at 1,000 in FY 1999-00. The $750,000 in revenue from the $750 tax on 1,000 locations will be deposited in the General Fund. With the 1997 law scheduled to sunset on July 1, 2001, it is uncertain how many locations will exist in FY 2001-02 and beyond.

As for pawnbrokers, there is no exact data on the number of businesses in the state. Prior to 1997, pawnbrokers were subject to an annual privilege license tax of $275 (formerly GS 105-50). The Department of Revenue reports that the number of pawnbrokers paying the privilege tax declined from 584 in FY 1993-94 to 356 in FY 1996-97. The past chair of the NC Pawn Brokers Association estimates there are 450 pawnbrokers in the state. The Consumer Finance Administrator at the Office of the Commissioner of Banks found 500 pawnbrokers in an internet phone directory search in 1997. This fiscal note will assume 450 pawnbroker locations and no future growth. The $750 annual privilege tax will result in $337,500 in revenue to the General Fund each year.

Section 3
No fiscal impact – clarifies definition of utility.

Section 4
Section 4 repeals the remaining state and local sales tax on prescription drugs. Most prescription drugs are either exempt from State and local sales and use taxes or are refundable. Drugs

purchased with a prescription, prescription drugs distributed free of charge by the manufacturer of the drugs, and prescription drugs purchased for use in the commercial production of animals are already exempt from sales tax. Most hospitals receive refunds of State and local sales and use taxes paid on prescription drugs acquired by the hospital. The only entities that pay tax on prescription drugs are 1) physicians and other medical professionals who buy the drugs to administer to patients in the course of their practice and 2) state hospitals, (other than the UNC hospitals), four state psychiatric hospitals, Alcohol and Drug Treatment Centers, and Mental Retardation Centers.

The Department of Revenue Sales and Use Tax Division estimates the state and local tax loss from this exemption to be $2.4 million in FY 1999-00. This estimate is considerably less than an estimate made in 1997 for SB 41 due to recent Tax Review Board decisions which held that physicians can be retail sellers of prescription drugs and therefore sales are exempt. The estimate is based on information obtained from sales and use tax audits of medical and dental practices and from an AMA survey. The number of medical professionals was obtained from the Census of Service Industries for North Carolina. The Department did not estimate any growth in the volume of prescription sales or in prescription drug prices. Data from State Employee Health Benefit Plan's self-insured indemnity program show that prescription drug prices increase 15% to 19% a year. This fiscal note uses a 17% inflation rate, the midpoint of this range. The October 1, 1999 effective date will reduce the FY 1999-00 revenue loss by one fourth.

Section 5

No fiscal impact - incorporates the exemption of prescription drugs distributed free of charge by the drug manufacturer into the language in Section 4.

Section 6

This section deletes the requirement that a nonprofit corporation must be chartered or incorporated in North Carolina for two years before its sales are tax exempt. The Director of the Sales Tax Division of the Department of Revenue believes the fiscal impact of this section is negligible, because few nonprofits are rejected for tax exemption status.

Section 7

This section repeals a sales tax exemption for free circulation publications such as shoppers' guides. The Department of Revenue Sales and Use Tax Division reports that the state tax loss for this exemption is $2.5 million a year. Thus repeal of this exemption will provide a revenue gain of $2.5 million to the General Fund each year. The corresponding local sales tax gain will be $1.25 million each year. The October 1, 1999 effective date will reduce the FY 1999-00 revenue gain to $1,875,000 for the General Fund and $937,500 for local governments.

Section 8

This section allows a sales tax exemption for corporate contributions of inventory to governmental entities. There have been no taxpayer complaints about the existing law, but Department officials perceive this as a future problem. No fiscal estimate is available, but the Department of Revenue believes that the impact is insignificant.

Section 9

No fiscal impact – this existing language is being moved to the exemption section of the sales tax statutes.

Section 10
No fiscal impact – this increases the allowable service charge or tip on meals from 15% to 20%.

Sections 11 & 13
No estimate available – the language allowing the Secretary of Revenue to waive penalties for bad checks is permissive. If the Secretary of Revenue chooses to waive a substantial number of penalties, there will be a small revenue loss.

Section 12
No estimate available. The Department of Revenue assesses very few penalties for negligence. This section could produce a small revenue gain for the General Fund if penalties are easier to assess on corporate taxpayers.

Section 14
No fiscal impact – technical change.

Section 15
No estimate available. By extending the time a taxpayer can request a refund, this section might produce a small revenue loss. However, the Department of Revenue has received only a small number of complaints about the current refund policy.

Sections 16 & 17
No estimate available. These sections will produce a small revenue loss to the Highway Fund and the Highway Trust Fund, but the Department of Revenue cannot provide the data needed to quantify the loss. Currently operators of special mobile equipment buy enough tax paid clear diesel fuel to cover their miles driven on the highway. For off highway use, the equipment operators use dyed, non-tax diesel fuel. If they request a refund for tax paid on clear fuel, their refunds are processed annually. By providing that dyed fuel may be used in special mobile equipment, this section codifies an administrative practice allowed by the Department of Revenue. However, the Highway Fund will lose the tax paid currently on diesel fuel for highway use. For those that apply for a refund, it will speed up the refund process and the state will lose interest on invested funds.

Section 18
No fiscal impact – according to Revenue, the statute requiring bonded fuel importers to register is unnecessary due to the lack of importers in this category.

Section 19
No fiscal impact - codifies the administrative practice used by the Division of Motor Vehicles to register vehicles leased out of state.

Section 20

The fee for special mobile equipment is doubled by section 20. As of January 1, 2000, the fee will increase from $20 a year to $40 on 2,058 pieces of special mobile equipment. This fee increase will produce a $41,160 revenue gain for the Highway Fund each year. It is difficult to project future year growth in the volume of vehicles registered, because there has been no consistent pattern of registration in the last five years. Equipment numbers have increased and declined in recent years.

Section 21

No fiscal impact – equipment operators now can apply for overweight or oversize permits for larger width.

Section 22

No estimate available – this section may reduce DMV revenue from penalties, but no data are available to quantify the amount.

Section 23

No fiscal impact – broadens access to information.

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

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: S.B. 884 Medical Equipment Sales Tax

SHORT TITLE: Medical Equipment Sales Tax

SPONSOR(S): Senator Cooper

FISCAL IMPACT

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

($ Millions)

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
General Fund	**(0.45)**	**(0.64)**	**(0.68)**	**(0.73)**	**(0.79)**
Local Governments	**(0.23)**	**(0.32)**	**(0.34)**	**(0.37)**	**(0.39)**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue, Sales Tax Division, and Local Governments.

EFFECTIVE DATE: October 1, 1999.

BILL SUMMARY: This legislation exempts durable medical equipment and medical sundries, that are eligible for coverage under Medicare or Medicaid, from state and local sales tax. The exemption only applies to items purchased on prescription or by a Certificate of Medical Need. While the item must be eligible under Medicare or Medicaid, it can be purchased by anyone with a prescription. Therefore, the bill exempts Medicare, Medicaid, and some private pay purchases of certain durable medical equipment and medical sundries.

BACKGROUND: Durable Medical Equipment (DME) includes a variety of medical items such as wheelchairs, IV bag holders, and cane stands. Medical sundries are easily and frequently disposed of items like latex gloves, gauze, medical tape, and syringes.

ASSUMPTIONS AND METHODOLOGY: Under current law most drugs and medical equipment items are exempt from sales tax, particularly if they are purchased under a prescription or with a Medicaid Certificate of Medical Need.

According to the Department of Revenue, there are currently 49 items that are covered by Medicare that are taxable under North Carolina law. For the most part, these items are monitors,

syringes, urinals, IV poles and hangers, latex gloves, dressings, and other related supplies. The Department determined that these items are taxable because they are not designed to "correct or alleviate a physical aliment" (G.S. 105 – 164.13(12) exempts items that correct or alleviate a physical aliment from sales tax). The tax applies to all 49 DME and sundry items, regardless of the form or type of payment. Therefore, the tax should be applied to all private pay, Medicare, and Medicaid sales.

The Department of Health and Human Services was asked to determine their annual expenditure on each on these 49 items through the Medicaid program. In total, in FY 1997-98 North Carolina's Medicaid program spent $3.6 million on taxable durable medical equipment and sundries. According to the Federal Health Care Finance Administration, Medicaid covered 14.6% of the nation's health expenditures in 1997. Using the 14.6% as a proxy for the proportion of durable medical equipment and supplies covered by Medicaid in North Carolina suggests that approximately $24.7 million is spent annually on these taxable items. (3.6 is 14.6% of 24.7). Assuming the six- percent tax rate applies to these purchases, the 1997 revenue loss would have been $1.47 million.

According to the Federal Health Care Financing Administration's Office of the Actuary, national health spending is expected to grow at a rate of 6.5% annually through 2001. Between 2001 and 2007 national health expenditures are expected to grow at 7.5% per year. In all years the growth in private sector expenditures is expected to outpace public sector growth. (The provisions of the Federal Balanced Budget Act are expected to slow growth in the public sector).

Using the above estimated growth rates, the potential annual revenue losses are as follows:

(Millions)

1997	1998	1999	2000	2001	2002	2003	2004
(1.47)	(1.57)	(1.67)	(1.78)	(1.89)	(2.03)	(2.19)	(2.35)

Once adjusted for the fiscal year basis, the state and local potential losses are as follows:

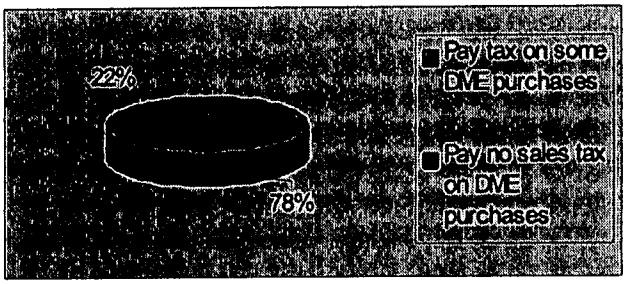
(Millions)

	1999-00	2000-01	2001-02	2002-03	2003-04
State	(1.15)	(1.22)	(1.31)	(1.41)	(1.51)
Local	(0.58)	(0.61)	(0.65)	(0.70)	(0.76)
Total	(1.73)	(1.84)	(1.96)	(2.11)	(2.27)

The above estimate assumes all taxpayers are paying the tax on durable medical equipment and supplies.

The Department of Revenue collects and enforces collection of this tax. Industry representatives believe many retailers are not paying the tax. These representatives suggest that many medical equipment and supply retailers may not realize they are liable for sales tax on these items. To determine what proportion of taxes are actually being paid the North Carolina Association of Medical Equipment Suppliers (NCAMES), in conjunction with the North Carolina Retail Merchants Association and Fiscal Research, conducted a survey of NCAMES 110 members.

Fifty-eight merchants responded, creating a 52.7% response rate. The survey asked NCAMES members if they remit sales tax on durable medical equipment sales. Of these respondents, 78% (45 respondents) said they remit sales tax on at least some of their DME sales. Assuming all 78% remit all the appropriate tax, the 1999-00 total revenue loss would be $1.35 million ($0.90 state and $0.45 local).



Total Liability	$1.73 million
- 22% not paying	-0.38 million
Total Potential Revenue Loss	$1.35 million
State Loss	$0.90 million
Local Loss	$0.45 million

However, only a small number (12% and 18% respectively) reported remitting sales tax on DME sales through Medicaid or Medicare. Assuming one-half of DME purchases are through Medicaid or Medicare, and a 15% collection rate applies (the mid-point between 12% and 18%), the actual loss associated with these purchases would be approximately $101,000. The actual loss associated with non-Medicare or Medicaid purchases would be $675,000 (1/2 of the 78% loss). As a result, the total potential loss indicated from the survey is $776,00.

Medicaid/Medicare ($1.35 million X 50% of total X 15% collections)	$101,000
Non Medicaid/Medicare ($1.35 million X 50% of total X 100% collections)	$675,000
Total Potential Loss from Survey	$776,000

Because the majority of NCAMES members are small, independent retailers these numbers may not accurately reflect the losses associated with large chain stores with sophisticated computer systems. Fiscal Research assumes these larger groups are complying with the law. A fiscal loss estimate of $900,000 is used to include the impact of large chain stores. Of this amount, 2/3 or $600,000 is the state loss and $300,000 is the local loss. The estimate assumes sales tax revenue from this source would have grown by the 6.5% and 7.5% rate the Federal Health Care Financing Administration's Office of the Actuary set as the expected growth figures for medical expenditures (see above). The fiscal loss associated with the bill is as follows:

	1999-00	2000-01	2001-02	2002-03	2003-04
State	0.60	0.64	0.68	0.73	0.79
Local	0.30	0.32	0.34	0.37	0.39
Total	0.90	0.96	1.02	1.10	1.18

The actual amount in the fiscal estimate block reflects the adjustment for the October 1, 1999 effective date.

NOTE: According to the Federal Health Care Finance Administration, the reimbursement Medicare provides to businesses and individual subscribers includes state sales tax. As such, each Medicare reimbursement calculation should include the 6% sales tax. Because most Medicaid reimbursement rates are drawn from the Medicare charts, the 6% sales tax is included in many of those provider reimbursements. However, when the state develops its own reimbursement rate, sales tax is not included. Officials from the state employees' health plan also report that they pay the 6% sales tax, when it is charged to the provider.

TECHNICAL CONSIDERATIONS: While this reflects the potential cost at this time, it is important to note that items are frequently added and removed from the Medicare and Medicaid lists. As such, this estimate provides only a snapshot of potential revenue losses. They are likely to change over time.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Linda Struyk Millsaps

APPROVED BY: Tom Covington

DATE: Friday, April 23, 1999

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 1112
Proposed Committee Substitute S1112-PCSX3832-RB

Short Title: No Sales Tax Fee/Other Changes. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO PROMOTE ELECTRONIC COMMERCE BY REPEALING THE SALES TAX REGISTRATION FEE AND TO MAKE OTHER CHANGES TO THE TAX LAWS AND RELATED STATUTES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-164.4(c) reads as rewritten:

"(c) Certificate of Registration. -- Before a person may engage in business as a retailer or a wholesale merchant, the person must obtain a certificate of registration from the Department. To obtain a certificate of registration, a person must register with the ~~Department and pay fifteen dollars ($15.00).~~ Department.

A certificate of registration is valid unless it is revoked for failure to comply with the provisions of this Article or becomes void. A certificate issued to a retailer becomes void if, for a period of 18 months, the retailer files no returns or files returns showing no sales."

Section 2. G.S. 105-88 reads as rewritten:

"**§ 105-88. Loan ~~agencies or brokers.~~ agencies.**

(a) Every person, firm, or corporation engaged in any of the following businesses must pay for the privilege of engaging in that business an annual tax of seven hundred fifty dollars ($750.00) for each location at which the business is conducted:

(1) The ~~the regular~~ business of making loans or lending money, accepting liens on, or contracts of assignments of, salaries or wages, or any part thereof, or other security or evidence of debt for repayment of such loans in installment payment or ~~otherwise, and~~

~~maintaining in connection with same any office or other located or established place for the conduct, negotiation, or transaction of such business and/or advertising or soliciting such business in any manner whatsoever, shall be deemed a loan agency, and shall apply for and procure from the Secretary of Revenue a State license for the privilege of transacting or negotiating such business at each office or place so maintained, and shall pay for such license a tax of seven hundred fifty dollars ($750.00).~~ otherwise.

(2) The business of check cashing regulated under Article 22 of Chapter 53 of the General Statutes.

(3) The business of pawnbroker regulated under Chapter 91A of the General Statutes.

(b) This section does not apply to banks, industrial banks, trust companies, savings and loan associations, cooperative credit unions, the business of negotiating loans on real estate as described in G.S. 105-41, ~~pawnbrokers lending or advancing money on specific articles of personal property,~~ or insurance premium finance companies licensed under Article 35 of Chapter 58 of the General Statutes. This section applies to those persons or concerns operating what are commonly known as loan companies or finance companies and whose business is as hereinbefore described, and those persons, firms, or corporations pursuing the business of lending money and taking as security for the payment of the loan and interest an assignment of wages or an assignment of wages with power of attorney to collect the amount due, or other order or chattel mortgage or bill of sale upon household or kitchen furniture. No real estate mortgage broker is required to obtain a privilege license under this section merely because the broker advances the broker's own funds and takes a security interest in real estate to secure the advances and when, at the time of the advance, the broker has already made arrangements with others for the sale or discount of the obligation at a later date and does so sell or discount the obligation within the period specified in the arrangement or extensions thereof; or when, at the time of the advance the broker intends to sell the obligation to others at a later date and does, within 12 months from date of initial advance, make arrangements with others for the sale of the obligation and does sell the obligation within the period specified in the arrangement or extensions thereof; or because the broker advances the broker's own funds in temporary financing directly involved in the production of permanent-type loans for sale to others; and no real estate mortgage broker whose mortgage lending operations are essentially as described above is required to obtain a privilege license under this section.

(c) At the time of making any such loan, the person, or officer of the firm or corporation making the ~~same,~~ loan, shall give to the borrower in writing in convenient form a statement showing the amount received by the borrower, the amount to be paid back by the borrower, ~~and~~ the time in which ~~said~~ the amount is to be paid, and the rate of interest and discount agreed upon.

(d) ~~Any such person, firm, or corporation failing, refusing, or neglecting to pay the tax herein levied shall be guilty of a Class 1 misdemeanor in addition to double~~

~~the tax due. No such loan shall be~~ A loan is not collectible at law in the courts of this State in any case where the person making ~~such~~ the loan has failed to pay the tax levied ~~herein, and/or otherwise complied~~ in this section or otherwise failed to comply with the provisions of this section.

(e) Counties, cities, and towns may levy a license tax on the business taxed under this section not in excess of one hundred dollars ($100.00)."

Section 3. G.S. 105-164.3(25) reads as rewritten:

"(25) 'Utility' means ~~an electric power company or a telephone company that is subject to a privilege tax based on gross receipts under G.S. 105-116 or 105-120, a~~ any of the following:

a. A business entity that provides local, toll, or private telecommunications service as defined by G.S. ~~105-120(e), or a~~ 105-120(e).

b. A business entity or a municipality that sells electric ~~power, other than a municipality whose only wholesale supplier of electric power is a federal agency and who is required by a contract with that federal agency to make payments in lieu of taxes.~~ power."

Section 4. G.S. 105-164.13(12) reads as rewritten:

"(12) Sales of any of the following items:

a. Therapeutic, prosthetic, or artificial devices, such as pulmonary respirators or medical beds, that are designed for individual personal use to correct or alleviate physical illness, disease, or incapacity and that are sold on the written prescription of a physician, dentist, or other professional person licensed to ~~prescribe, and crutches,~~ prescribe.

b. Crutches, artificial limbs, artificial eyes, hearing aids, false teeth, eyeglasses ground on prescription of a physician or an ~~optometrist, and orthopedic~~ optometrist.

c. Orthopedic appliances designed to be worn by the purchaser or user.

d. Durable medical equipment and related medical supplies that are covered under the Medicare or Medicaid program and are sold on either a certificate of medical necessity or a written prescription of a physician, dentist, or other professional person licensed to prescribe. This exemption applies whether or not the item is purchased by a Medicare or Medicaid beneficiary."

Section 5. G.S. 105-164.13(13) reads as rewritten:

"(13) All of the following drugs, including the constituent elements and ingredients used to produce the drugs, the packaging materials, and any instructions or information about the product included in the package with the drugs:

a. Prescription drugs.
b. ~~Medicines~~ Nonprescription drugs sold on prescription of physicians, dentists, or ~~veterinarians; insulin whether or not sold on prescription.~~ veterinarians.
c. Insulin."

Section 6. G.S. 105-164.13(13b) is repealed.

Section 7. G.S. 105-164.13(16) reads as rewritten:

"(16) Sales of ~~any of the following articles:~~

~~a. A used article taken in trade, or a series of trades, as a credit or part payment on the sale of a new article if tax is paid on the sales price of the new article. "New article" means the original stock in trade of the merchant and is not limited to a newly manufactured article.~~

~~b.~~ ~~An~~ an article repossessed by the vendor if tax was paid on the sales price of the article."

Section 8. G.S. 105-164.13(35) reads as rewritten:

"(35) Sales by a nonprofit civic, charitable, educational, scientific, ~~literary~~ literary, or fraternal organization ~~continuously chartered or incorporated within North Carolina for at least two years~~ when ~~such~~ all of the following conditions are met:

a. The sales are conducted only upon an annual basis for the purpose of raising funds for ~~its activities, and when~~ the organization's activities.

b. ~~the~~ The proceeds ~~thereof~~ of the sale are actually used for ~~such purposes; provided, however, that no such sale shall be exempt if not actually consummated~~ the organization's activities.

c. The products sold are delivered to the purchaser within 60 days after the first solicitation of any sale made during ~~said~~ the organization's annual sales period."

Section 9. G.S. 105-164.13(39) is repealed.

Section 10. G.S. 105-164.13(42) reads as rewritten:

"(42) Tangible personal property that is purchased by a retailer for resale or is manufactured or purchased by a wholesale merchant for resale and then withdrawn from inventory and donated by the retailer or wholesale merchant to either a governmental entity or a nonprofit organization, contributions to which are deductible as charitable contributions for federal income tax purposes."

Section 11. G.S. 105-164.13 is amended by adding a new subdivision to read:

"(46) Sales of electricity by a municipality whose only wholesale supplier of electric power is a federal agency and who is required by a contract with that federal agency to make payments in lieu of taxes."

Section 12. G.S. 105-164.13A reads as rewritten:

"**§ 105-164.13A. Service charges on food, beverages, or meals.**

When a service charge is imposed on food, beverages, or meals, so much of ~~said~~ the service charge ~~as~~ that does not exceed ~~fifteen percent (15%)~~ twenty percent (20%) of the sales price is considered a tip and is specifically exempted from the tax imposed by this Article ~~when the service charge:~~ if it meets both of the following conditions:

(1) Is separately stated in the price list, menu, or written proposal and also in the invoice or ~~bill; and~~ bill.

(2) Is turned over to the personnel directly involved in the service of the food, beverages, or meals, in accordance with G.S. 95-25.6.

~~Such service charge shall be considered to be a tip.~~"

Section 13. G.S. 105-236(1) reads as rewritten:

"(1) Penalty for Bad Checks. -- When the bank upon which any uncertified check tendered to the Department of Revenue in payment of any obligation due to the Department returns the check because of insufficient funds or the nonexistence of an account of the drawer, the Secretary shall assess a penalty equal to ten percent (10%) of the check, subject to a minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). This penalty does not apply if the Secretary finds that, when the check was presented for payment, the drawer of the check had sufficient funds in an account at a financial institution in this State to pay the check and, by inadvertence, the drawer of the check failed to draw the check on the account that had sufficient funds. ~~The penalty imposed may not be waived or diminished by the Secretary.~~"

Section 14. G.S. 105-236(5) reads as rewritten:

"(5) Negligence. --

a. Finding of negligence. -- For negligent failure to comply with any of the provisions to which this Article applies, or rules issued pursuant thereto, without intent to defraud, the Secretary shall assess a penalty equal to ten percent (10%) of the deficiency due to the negligence.

b. Large individual income tax deficiency. -- In the case of individual income tax, if a taxpayer understates taxable income, by any means, by an amount equal to twenty-five percent (25%) or more of gross income, the Secretary shall assess a penalty equal to twenty-five percent (25%) of the deficiency. For purposes of this subdivision, "gross income" means gross income as defined in section 61 of the Code.

c. Other large tax deficiency. -- In the case of a tax other than individual income tax, if a taxpayer understates tax liability by twenty-five percent (25%) or more, the Secretary shall

assess a penalty equal to twenty-five percent (25%) of the deficiency.

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

e. Inheritance and gift tax deficiencies. -- This subdivision does not apply to inheritance, estate, and gift tax deficiencies that are the result of valuation understatements."

Section 15. G.S. 105-237(a) reads as rewritten:

"(a) Waiver. -- The Secretary may, upon making a record of the reasons therefor, reduce or waive any penalties provided for in this ~~Subchapter, except the penalty provided in G.S. 105-236 relating to unpaid checks.~~ Subchapter."

Section 16. G.S. 105-259(b)(15) reads as rewritten:

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

...

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

a. The North Carolina Alcoholic Beverage Control Commission.

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

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

d. Local law enforcement agencies."

Section 17. G.S. 105-266(c)(1) reads as rewritten:

"(c) Statute of Limitations. -- The period in which a refund must be demanded or discovered under this section is determined as follows:

(1) General Rule. -- No overpayment shall be refunded, whether upon discovery or receipt of written demand, if the discovery is not made or the demand is not received within three years after the date set by the statute for the filing of the return or within six months after the payment of the tax alleged to be an overpayment, whichever is later. An agreement by a taxpayer to extend the time in which the Department can assess the taxpayer for an underpayment automatically extends the time in which the taxpayer can request a refund."

Section 18. G.S. 105-449.87(a)(1) reads as rewritten:

"(a) Tax. -- An excise tax at the motor fuel rate is imposed on the following:

(1) Dyed diesel fuel that is used to operate a highway vehicle for a use that is not a nontaxable use under § 4082(b) of the Code. The tax does not apply, however, to dyed diesel fuel that is used to operate special mobile equipment."

Section 19. G.S. 105-449.106 reads as rewritten:

"**§ 105-449.106. Quarterly refunds for certain local governmental entities, nonprofit organizations, ~~and taxicabs.~~ taxicabs, and special mobile equipment.**

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

~~(1) A county or a municipal corporation.~~

~~(2) A private, nonprofit organization that transports passengers under contract with or at the express designation of a unit of local government.~~

~~(3) A volunteer fire department.~~

~~(4) A volunteer rescue squad.~~

~~(5) A sheltered workshop recognized by the Department of Health and Human Services.~~

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

Any of the following entities may receive a refund under this subsection:

(1) A county or a municipal corporation.

(2) A private, nonprofit organization that transports passengers under contract with or at the express designation of a unit of local government.

(3) A volunteer fire department.

(4) A volunteer rescue squad.

(5) A sheltered workshop recognized by the Department of Health and Human Services.

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

(c) Special Mobile Equipment. -- A person who purchases and uses motor fuel to operate special mobile equipment off-highway may receive a quarterly refund, for the excise tax paid during the preceding quarter, at a rate equal to the flat cents-per-gallon rate plus the variable cents-per-gallon rate in effect during the quarter for which the refund is claimed, less the amount of sales and use tax due on the fuel under this Chapter, as determined in accordance with G.S. 105-449.107(c). An application for a refund must be made in accordance with this Part."

Section 20. G.S. 105-449.116 is repealed.

Section 21. G.S. 20-50(a) reads as rewritten:

"(a) ~~Except as otherwise provided in this Article, every owner of a~~ A vehicle intended to be operated upon any highway of this State must be registered with the Division in accordance with G.S. 20-52, and the owner of the vehicle must comply with G.S. 20-52 before operating the vehicle. A vehicle that is leased to an individual who is a resident of this State is a vehicle intended to be operated upon a highway of this State. ~~and required by this Article to be registered shall, before the same is so operated, apply to the Division for and obtain the registration thereof, the registration plates therefor and a certificate of title therefor, and attach the registration plates to the vehicle, except when an owner is permitted to operate a vehicle under the registration provisions relating to manufacturers, dealers and nonresidents contained in G.S. 20-79, or under temporary registration plates as provided in this Article: Provided that the~~

The Commissioner of Motor Vehicles or ~~his~~ the Commissioner's duly authorized agent is empowered to grant a special one-way trip permit to move a vehicle without license upon good cause being shown. ~~It is further provided that when~~ When the owner of a vehicle leases ~~such~~ the vehicle to a carrier of passengers or property and ~~it~~ the vehicle is actually used by ~~such~~ the carrier in the operation of its business, the ~~registration~~ license plates may be obtained by the lessee, upon written consent of the owner, after the certificate of title has been obtained by the owner. ~~Provided further that when~~ When the owner of a vehicle leases ~~such~~ the vehicle to a farmer and ~~it~~ the vehicle is actually used by ~~such~~ the farmer in the operation of ~~his~~ a farm, the ~~registration~~ license plates may be obtained by the farmer at the applicable farmer rate, upon written consent of the owner, after the certificate of title has been obtained by the owner. The lessee shall make application on an appropriate form furnished by the Division and file such evidence of the lease as the Division may require."

Section 22. G.S. 20-87(10) reads as rewritten:

"(10) Special Mobile Equipment. -- The fee for special mobile equipment for the license year or any part of the license year is ~~the same as~~ two times the fee in subdivision (5) for a private passenger motor vehicle of not more than 15 passengers."

Section 23. G.S. 20-116(a) reads as rewritten:

"(a) The total outside width of any vehicle or the load thereon shall not exceed 96 inches, except as otherwise provided in this ~~section: Provided that when~~ section. When hogsheads of tobacco are being transported, a tolerance of six inches ~~shall be allowed and that when~~ is allowed. When sheet or bale tobacco is being transported

the load ~~does~~ must not exceed a width of 114 inches at the top of the load and the bottom of the load at the truck bed ~~does~~ must not exceed the width of 102 inches inclusive of allowance for load shifting or settling. ~~Provided, further, that vehicles~~ Vehicles (other than passenger buses) ~~which~~ that do not exceed the overall width of 102 inches and otherwise provided in this section may be operated in accordance with G.S. 20-115.1(c), (f), and (g). Special mobile equipment is allowed a total outside width of 102 inches."

Section 24. G.S. 20-140.5 reads as rewritten:

"**§ 20-140.5. Special mobile equipment may tow certain vehicles.**

Special mobile equipment may ~~tow any of the following vehicles:~~ not tow any vehicle other than the following:

(1) A single passenger vehicle that can carry no more than nine ~~passengers and is not loaded, in whole or in part, with passengers or property.~~ passengers and is carrying no passengers.

(2) A single property-hauling vehicle that has a registered weight of 5,000 pounds or ~~less and is not loaded, in whole or in part, with passengers or property.~~ less, is carrying no passengers, and does not exceed its registered weight.

~~Special mobile equipment may not tow a vehicle that is not listed in this section.~~"

Section 25. G.S. 110-129.2(g) reads as rewritten:

"(g) Other Uses of Directory Information. -- The ~~Employment Security Commission~~ following agencies may access information entered into the Directory from employer reports for the ~~purpose~~ purposes stated:

(1) The Employment Security Commission for the purpose of administering employment security programs.

(2) The North Carolina Industrial Commission ~~may access information entered into the Directory from employer reports~~ for the purpose of administering workers' compensation programs.

(3) The Department of Revenue for the purpose of administering the taxes it has a duty to collect under Chapter 105 of the General Statutes."

Section 26. This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute amended or repealed by this act before the effective date of its amendment or repeal; nor does it affect the right to any refund or credit of a tax that accrued under the amended or repealed statute before the effective date of its amendment or repeal.

Section 27. Sections 1 and 22 of this act become effective January 1, 2000. Section 2 of this act becomes effective July 1, 1999. Sections 4 through 10, 12 through 15, and 18 of this act become effective October 1, 1999; Sections 13 through 15 apply to penalties assessed on or after that date. The remainder of this act is effective when it becomes law; Section 19 applies to taxes paid on or after January 1, 1999.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1112

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

S1112-ARB-1 Page 1 of __

Date ,1999

Comm. Sub. [PROPOSED]
Amends Title []
S1112-CSRBX-6/1

Senator Cooper

moves to amend the bill on page 3, line 44,by rewriting the line to read:

"Section 4. G.S. 105-164.13(12) reads as rewritten:

'(12) Sales of any of the following items:

a. Therapeutic, prosthetic, or artificial devices, such as pulmonary respirators or medical beds, that are designed for individual personal use to correct or alleviate physical illness, disease, or incapacity and that are sold on the written prescription of a physician, dentist, or other professional person licensed to ~~prescribe, and crutches,~~ prescribe.

b. Crutches, artificial limbs, artificial eyes, hearing aids, false teeth, eyeglasses ground on prescription of a physician or an ~~optometrist, and orthopedic~~ optometrist.

c. Orthopedic appliances designed to be worn by the purchaser or user.

d. Durable medical equipment and related medical supplies that are covered under the Medicare or Medicaid program and are sold on either a certificate of medical necessity or a written prescription of a physician, dentist, or other professional person licensed to prescribe. This exemption applies whether or not the item is purchased by a Medicare or Medicaid beneficiary.'

Section 5. G.S. 105-164.13(13) reads as rewritten:";

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1112

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

S1112-ARB-1 Page 2 of __

and by renumbering the remaining sections accordingly;

and on page 11, lines 15 through 21, by rewriting the lines to read:
"Section 26. Sections 1 and 21 of this act become effective January 1, 2000. Section 2 of this act becomes effective July 1, 1999. Sections 4 through 9, 11 through 14, and 17 of this act become effective October 1, 1999; Sections 12 through 14 apply to penalties assessed on or after that date. The remainder of this act is effective when it becomes law; Section 18 applies to taxes paid on or after January 1, 1999.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1112

AMENDMENT NO. #2
(to be filled in by
Principal Clerk)

S1112-ALAX-001 Page 1 of __

Date _____ ,1999

Comm. Sub. [PROPOSED]
Amends Title []
S1112-ALAX-001

Senators Phillips and Purcell

move to amend the bill on page 11, lines 7 and 8, by inserting the following new section between these lines:

"Section 24. G.S. 105-164.13(16) reads as rewritten:

'(16) Sales of ~~any of the following articles:~~

~~a. A used article taken in trade, or a series of trades, as a credit or part payment on the sale of a new article if tax is paid on the sales price of the new article. "New article" means the original stock in trade of the merchant and is not limited to a newly manufactured article.~~

~~b.~~ ~~An~~ an article repossessed by the vendor if tax was paid on the sales price of the article.'";

on page 11, line 8, by deleting "Section 24." and substituting "Section 25.";

and on page 11, lines 15 through 21, by rewriting the lines to read:

"Section 26. Sections 1 and 20 of this act become effective January 1, 2000. Section 2 of this act becomes effective July 1, 1999. Sections 4 through 8, 10 through 13, 16, and 24 of this act become effective October 1, 1999; Sections 11 through 13 apply to penalties assessed on or after that date; and Section 24 applies to sales made on or after that date. The remainder of this act is effective when it becomes law; Section

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1112

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

S1112-ALAX-001 Page 2 of __

17 applies to taxes paid on or after January 1, 1999."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1006

Short Title: DWI Assessments. (Public)

Sponsors: Senator Hoyle.

Referred to: Finance.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE FEES TO BE CHARGED TO PERSONS UNDERGOING SUBSTANCE ABUSE ASSESSMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 122C-142.1(f) reads as rewritten:

"(f) Fees. -- A person who has a substance abuse assessment conducted for the purpose of obtaining a certificate of completion shall pay to the assessing agency a fee of ~~fifty dollars ($50.00).~~ one hundred dollars ($100.00). Of this fee, the assessing agency shall retain ninety dollars ($90.00) to cover the costs of the standardized substance abuse assessment, the clinical interview, and costs incurred in the transfer of any client to a licensed facility located within or outside the State. The assessing agency shall forward ten dollars ($10.00) of each assessment fee, via agency check, to the Substance Abuse Services Section (SAS), Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, Department of Health and Human Services, by the tenth of each month for the prior month's assessments. The portion paid to the SAS Section shall be used to:

(1) Develop a system to track offender compliance with the substance abuse assessment and education or treatment required for all persons convicted of a violation of G.S. 20-138.1 (DWI), G.S. 20-138.2 (Commercial DWI), or G.S. 20-138.3 (driving while less than 21 years old after consuming alcohol or drugs), and

(2) Establish a system by which licensed substance abuse facilities may be examined and granted the privilege to provide services to the offenders listed in subdivision (1) of this subsection.

Fees received by the SAS Section shall also be used to ensure that services being offered and delivered to the offenders listed in subdivision (1) of this subsection are in full compliance with applicable State law. A person shall pay to a treatment facility or school a fee of seventy-five dollars ($75.00). If the defendant is treated by an area mental health facility, G.S. 122C-146 applies after receipt of the seventy-five dollar ($75.00) fee.

A facility that provides to a person who is required to obtain a certificate of completion a substance abuse assessment, an ADET school, or a substance abuse treatment program may require the person to pay a fee required by this subsection before it issues a certificate of completion. As stated in G.S. 122C-146, however, an area facility may not deny a service to a person because the person is unable to pay.

An area facility shall remit to the Department five percent (5%) of each fee paid to the area facility under this subsection by a person who attends an ADET school conducted by the area facility. The Department may use amounts remitted to it under this subsection only to support, evaluate, and administer ADET schools."

Section 2. G.S. 122C-142.1(i) reads as rewritten:

"(i) Report. -- The Department shall submit an annual report on substance abuse assessments to the Joint Legislative Commission on Governmental Operations. The report is due by February 1. Each facility that provides services needed by a person to obtain a certificate of completion shall file an annual report with the Department by ~~October 1~~ August 15 that contains the information for the preceding fiscal year which the Department needs in order to compile ~~the report~~ its report. ~~the Department is required to submit under this section.~~

The report submitted to the Joint Legislative Commission on Governmental Operations shall include all of the following information and any other information requested by that Commission:

(1) The number of persons required to obtain a certificate of completion during the previous fiscal year as a condition of restoring the person's drivers license under G.S. 20-17.6.

(2) The number of substance abuse assessments conducted during the previous fiscal year for the purpose of obtaining a certificate of completion.

(3) Of the number of assessments reported under subdivision (2) of this subsection, the number recommending attendance at an ADET school, the number recommending treatment, and, for those recommending treatment, the level of treatment recommended.

(4) Of the number of persons recommended for an ADET school or treatment under subdivision (3) of this subsection, the number who completed the school or treatment.

(5) The number of substance abuse assessments conducted by each facility and, of these assessments, the number that recommended attendance at an ADET school and the number that recommended treatment.

(6) The fees paid to a facility for providing services for persons to obtain a certificate of completion and the facility's costs in providing those services.

(7) The progress on the efforts funded by the portion of each assessment fee sent to the Substance Abuse Services Section pursuant to subsection (f) of this section."

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

SENATE BILL 1006:
DWI Assessments

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Sen. Hoyle
Date:	June 1, 1999	**Summary by:**	Martha K. Walston
Version:	1st Edition		Committee Counsel

SUMMARY: ***Senate Bill 1006 increases the fee charged to a person undergoing substance abuse assessments from $50 to $100 and sets out how this fee will be used. Senate Bill 1006 also adds additional information that must be included in the annual report on substance abuse assessments submitted to Governmental Operations by the Department of Health and Human Services. The Bill is effective when it becomes law.***

CURRENT LAW: The Division of Motor Vehicles requires that certain persons have a substance abuse assessment and receive a certificate of completion before the Division will restore that person's license. This requirement applies to a person whose license was revoked as a result of a conviction of any of the following offenses:

- Driving while impaired
- Commercial DWI
- Driving while less than 21 after consuming alcohol or drugs.
- Driving a commercial vehicle with an alcohol concentration of greater than 0.00 and less than 0.04 if the person's license was revoked earlier for a second or subsequent offense of the same type.
- Driving a school bus, a school activity bus, or child care vehicle with an alcohol concentration of greater than 0.00, if the person's license was revoked earlier for the same offense.

The substance abuse assessment is conducted by one of the entities authorized by the Department of Health and Human Services. The assessment may be obtained from an area facility or a private facility. It may also me obtained from an agency located in another state if DHHS approves. The assessment consists of a standardized test to determine chemical dependency and a clinical interview with the client. Based on the assessment, the facility recommends the client attend either an alcohol and drug education traffic (ADET) school or obtain treatment. After the assessment and completion of school or treatment, the facility issues a certificate of completion and forwards the original to DHHS and then to DMV.

A fee of $50 is charged for the assessment. An additional $75 is charged by the treatment facility or school. An area facility must remit 5% of each fee paid by a person who attends the school conducted by the area facility. This money may be used only to support, evaluate, and administer ADET schools.

BILL ANALYSIS: **Section 1 of Senate Bill 1006** increases the $50 fee for a substance abuse assessment to $100. The assessing agency will retain $90 of the fee to cover the costs of the standardized substance abuse assessment, the clinical interview, and costs of transferring any client to a licensed facility in or outside the State. The remaining $10 will be forwarded to the Substance Abuse Service (SAS) Section of the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services. This remaining portion of the fee must be used by Substance Abuse Services Section to:

1. Develop a system to track offender compliance with the substance abuse assessment a education or treatment required for all persons convicted of DWI, Commercial DWI, driving while less than 21 after consuming alcohol or drugs, and
2. Establish a system by which licensed substance abuse facilities may be examined and granted the privilege to provide services to the above offenders.

Fees received by the SAS Section shall also be used to ensure that the services offered to the above offenders comply with State law.

Section 2 of the bill requires a facility, which provides services necessary to obtain a certificate of completion, to file a report with DHHS by August 15 (now October 1). This report must contain information for the preceding fiscal year needed by DHHS in order to compile its annual report to Governmental Operations. Section 2 of the bill requires that the report to Governmental Operations include the progress on the efforts funded by the portion of each assessment fee sent to the Substance Abuse Services Section.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: Senate Bill 1006 DWI Assess

SHORT TITLE: DWI Assessments

SPONSOR(S): Senator David Hoyle

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES	**$262,500**	**$369,950**	**$391,040**	**$413,330**	**$436,890**
EXPENDITURES	(not yet determined)				
POSITIONS: N/A					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, and Substance Abuse Services

EFFECTIVE DATE: When the bill becomes law.

BILL SUMMARY: North Carolina statutes require an individual convicted of driving while intoxicated (DWI) to undergo a substance abuse assessment and other requirements if appropriate, prior to restoration of driving privileges (a certificate of completion must be issued by the assessing provider/agency). The statutes have set that fee at $50 for each assessment. Senate Bill 1006 amends G.S. 122C-142.1(f) to increase the substance abuse assessment fee from $50 to $100. The bill would increase the amount providers may charge by $40 per assessment. The bill also provides that $10 of every assessment fee be forwarded to the Department of Health and Human Services, Division of Mental Health, Developmental Disabilities and Substance Abuse Services (DMH/DD/SAS) to cover the development cost of an offender compliance tracking system. Fees collected would also allow the Department to establish a system to monitor and privilege providers of assessment services.

The bill would also require the DHHS to report on its progress in complying with this section.

ASSUMPTIONS AND METHODOLOGY: Data needed to provide fiscal projections are limited. Current law requires assessing providers/agencies to report on the number of assessments, fees, referrals for treatment, etc. However, providers only report on individuals who have completed the assessment process and other requirements needed to issue a certificate of completion (needed for license restoration). For example, during FY96/97 a total of 49,604 individuals were convicted of DWI and required to obtain assessments in order to have their license restored. However, only 8,734 certificates of completion were issued. The DMH/DD/SAS estimates that during 1998 approximately 41,000 individuals actually paid assessment fees in order to begin the license restoration process.

Given these caveats, the following assumptions are used:

1) Estimated number of assessments during FY99/00 is 26,250 (for 9 months);
2) The State will receive $10 per assessment (as per the bill); and
2) Assessments will increase by 5.7% each fiscal year.

TECHNICAL CONSIDERATIONS: None.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Karen Hammonds-Blanks, Senior Fiscal Analyst

APPROVED BY: Tom Covington

DATE: Monday, June 07, 1999

(Attachment #1)

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 6/09/'99

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Patti Seawell	NC DOR
Bobby Daniel	DOR
Alan Miles	Bailey & Dixon LLP
Walter Price	Ct. Chamber
Tommy Worth	Carolinas Healthcare System
Stephanie Mansur	NC Assoc. of Realtors
Jean Carter	Hunton & Williams
Amy Fallbright	Hunton & Williams
Bob Gillam	Public Staff - NCUC
Clifton B Hutchins	NCUC
Michelle Cotton	DMI/BB/SPS

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 6/09/'99

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Eddie Caldwell	H McC C+C, P.A.
Ed Rego	N.C.A.C.C.
Brenda Dougherty	Sprint
John Coleman	ATST
Jon Morrow	Sprint
W M Bird	WCOG
Earl Dye	St. James
HARRY COMER	ST JAMES
Andy Ellen	NCRMA
Fran Preston	NCRMA
Rosie Berger	NCCBI

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 6/09/99

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jim Kerr	Smith, Anderson et al
Steve Levitas	Brooks, Pierce
Dave Hanna	Smith Anderson
Ann Cave	NCRMA
Katherine Davis	Electricities
Alice Garland	"
Floyd M. Lewis	General Statutes Commission
Stephen Gaines	NCFPC
John Austin	NCFPC
Tony Cox	Arthur Andersen LLP
Anna Pope	Dept of Revenue

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 6/09/'99

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Earl Dye	St. James
Harry Comer	St. James
Alycie C. Battewood	SEAA
Andy Romanit	NCLM
Bill McMurray	PSNC
Allyson Duncan	Kilpatrick Stockton
Jeff Van Dyke	BellSouth
	NCSR
	Rowe & Assoc
	NPC
	NCAFL

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 6/09/'99

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
BARDEN GRIMES	WAKE COUNTY COURT SERVICES 3001 FALSTAFF Rd RAL 27610
PETE MARTIN	DIV. MHDDSAS
MICHAEL GLASS	DWI SERVS. OF NC 3749 BENSON DR. RAL 27609

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 6/09/'99

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Terry Allen	NC Dept. of State Treasurer
Charles Heathcock	DST
Lee Hines	"
Algie Dalewood	SEAA

(Attachment #2)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Wednesday, June 09, 1999

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

FAVORABLE

H.B.(CS #1)**755** Highway Lighting Service Districts
Sequential Referral: None
Recommended Referral: None

H.B. **863** St. James Incorporation
Sequential Referral: None
Recommended Referral: None

S.B. **619** Fuquay-Varina Annexations
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

S.B.(CS #1)**244** Unclaimed Property Act/AB
Draft Number: PCS8613
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 4

Committee Clerk Comment:

(Attachment #3)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Monday, June 14, 1999

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

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

S.B. **1112** No Sales Tax Fee/Other Changes

Draft Number:	PCSX3832
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment: This bill taken up in Sen. Finance on 6-09-99

(Attachment #4)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

REVISED COMMITTEE REPORT WITH BILL ADDED

Tuesday, June 15, 1999

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

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

S.B. **1110** Tech Commercialization Credit

Draft Number:	PCS7696
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 3

S.B.(CS #2)**244** Unclaimed Property Act/AB

Draft Number:	PCS1755
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED:2

Committee Clerk Comment: SB 244 was heard in Senate Finance Meeting on 6-9-99 and com sub #2 was reported in, which was incorrect, therefore, com sub #2 was pulled back to Senate Finance so that correct com sub #3 could be reported in.

1999

SENATE
FINANCE
COMMITTEE

MINUTES

AGENDA

SENATE FINANCE COMMITTEE MEETING

TUESDAY, JUNE 15, 1999

1:00 PM – ROOM 544

MEETING CALLED TO ORDER – SENATOR HOYLE

INTRODUCTION OF PAGES

BILL TO BE CONSIDERED:

SB 1110 – Tech. Commercialization Credit – Sen. Rand

ADJOURNMENT OF MEETING

SENATE FINANCE COMMITTEE

TUESDAY, JUNE 15, 1999

1:00 PM – ROOM 544

The Senate Finance Committee met on Tuesday, June 15, 1999 at 1:00 PM in Room 544 with Senator Hoyle presiding. There were 25 committee members present. Will Lancaster from Chapel Hill, North Carolina and Emily Harrison from Cary, North Carolina, , both sponsored by Senator Lee, were introduced as the pages for the meeting.

SB 1110 – Tech. Commercialization Credit

Senator Rand was recognized to explain this bill. He moved for adoption of proposed committee substitute, motion passed, after which he explained the committee substitute. Martha Harris, Staff Attorney, went over the explanation of the bill. Dr. Joe DeSimone from UNC at Chapel Hill and NCSU spoke on the technology of the bill as well as Mr. Ruben Carbnell from NCSU and Mr. Edward Samulski from UNC at Chapel Hill. Secretary Rick Carlisle from the Department of Commerce spoke in support of the Bill. After a time of questions and comments, Senator Albertson along with Senator Hartsell joined to move for a "Favorable Report", motion passed. Copy of Bill and supporting documents included in the minutes

Meeting adjourned,

David W. Hoyle, Co-Chair

John H. Kerr, III Co-Chair

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1110

Short Title: Tech. Commercialization Credit. (Public)

Sponsors: Senators Rand, Weinstein, Soles; and Shaw of Cumberland.

Referred to: Finance.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE AN INCENTIVE FOR BUSINESSES TO FIND COMMERCIAL USES FOR TECHNOLOGY DEVELOPED BY CONSTITUENT INSTITUTIONS OF THE UNIVERSITY OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-129.9 reads as rewritten:

"**§ 105-129.9. Credit for investing in machinery and equipment.**

(a) ~~Credit.~~ General Credit. -- If a taxpayer that has purchased or leased eligible machinery and equipment places it in service in this State during the taxable year, the taxpayer is allowed a credit equal to seven percent (7%) of the excess of the eligible investment amount over the applicable threshold. Machinery and equipment is eligible if it is capitalized by the taxpayer for tax purposes under the Code and is not leased to another party. In addition, in the case of a large investment, machinery and equipment that is not capitalized by the taxpayer is eligible if the taxpayer leases it from another party. The credit may not be taken for the taxable year in which the equipment is placed in service but shall be taken in equal installments over the seven years following the taxable year in which the equipment is placed in service.

(a1) Technology Commercialization Credit. -- A taxpayer that is eligible for the credit allowed in this section and qualifies for one of the credits allowed in G.S. 105-129.9A may choose to take one of those credits instead of the credit allowed in this section. A taxpayer may take the credit allowed in this section or one of the credits allowed in G.S. 105-129.9A during a taxable year, but not more than one of these credits.

(b) Eligible Investment Amount. -- The eligible investment amount is the lesser of (i) the cost of the eligible machinery and equipment and (ii) the amount by which the cost of all of the taxpayer's eligible machinery and equipment that is in service in this State on the last day of the taxable year exceeds the cost of all of the taxpayer's eligible machinery and equipment that was in service in this State on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer had the most eligible machinery and equipment in service in this State.

(c) Threshold. -- The applicable threshold is the appropriate amount set out in the following table based on the enterprise tier of the area where the eligible machinery and equipment are placed in service during the taxable year. If the taxpayer places eligible machinery and equipment in service in more than one area during the taxable year, the threshold applies separately to the eligible machinery and equipment placed in service in each area. If the taxpayer places eligible machinery and equipment in service in an area over the course of a two-year period, the applicable threshold for the second taxable year is reduced by the eligible investment amount for the previous taxable year.

Area Enterprise Tier	Threshold
Tier One	$ -0-
Tier Two	100,000
Tier Three	200,000
Tier Four	500,000
Tier Five	1,000,000

(d) Expiration. -- If, in one of the seven years in which the installment of a credit accrues, the machinery and equipment with respect to which the credit was claimed are disposed of, taken out of service, or moved out of State, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5.

If, in one of the seven years in which the installment of a credit accrues, the machinery and equipment with respect to which the credit was claimed are moved to an area in a higher-numbered enterprise tier, or are moved from a development zone to an area that is not a development zone, the remaining installments of the credit are allowed only to the extent they would have been allowed if the machinery and equipment had been placed in service initially in the area to which they were moved.

(e) Planned Expansion. -- A taxpayer that signs a letter of commitment with the Department of Commerce to place specific eligible machinery and equipment in service in an area within two years after the date the letter is signed may, in the year the eligible machinery and equipment are placed in service in that area, calculate the credit for which the taxpayer qualifies based on the area's enterprise tier and development zone designation for the year the letter was signed. All other conditions apply to the credit, but if the area has been redesignated to a higher-numbered enterprise tier or has lost its development zone designation after the year the letter of commitment was signed, the credit is allowed based on the area's enterprise tier and

development zone designation for the year the letter was signed. If the taxpayer does not place part or all of the specified eligible machinery and equipment in service within the two-year period, the taxpayer does not qualify for the benefit of this subsection with respect to the machinery and equipment not placed in service within the two-year period. However, if the taxpayer qualifies for a credit in the year the eligible machinery and equipment are placed in service, the taxpayer may take the credit for that year as if no letter of commitment had been signed pursuant to this subsection."

Section 2. Article 3A of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-129.9A. Technology commercialization credit.**

(a) Credit. -- A taxpayer that is eligible for the credit allowed under G.S. 105-129.9 and qualifies for the twenty percent (20%) or fifteen percent (15%) credit under this section may choose instead of the credit allowed under G.S. 105-129.9 to take one of the credits under this section for which the taxpayer qualifies. The twenty percent (20%) credit is a credit equal to twenty percent (20%) of the excess of the eligible investment amount over the applicable threshold for the taxable year. The fifteen percent (15%) credit is a credit equal to fifteen percent (15%) of the excess of the eligible investment amount over the applicable threshold for the taxable year. Except as provided in this section, the provisions of G.S. 105-129.9 apply to the credits allowed under this section. A credit allowed under this section must be taken for the taxable year in which the machinery and equipment are placed in service. A taxpayer may take the twenty percent (20%) credit allowed under this section, the fifteen percent (15%) credit allowed under this section, or the credit allowed in G.S. 105-129.9 during a taxable year, but not more than one of these credits.

(b) Twenty Percent Credit. -- A taxpayer qualifies for a twenty percent (20%) credit under this section if it meets all of the following conditions:

(1) The eligible machinery and equipment are directly related to production based on technology developed by and licensed from a constituent institution of The University of North Carolina, or are used to produce resources essential to the taxpayer's production based on technology developed by and licensed from a constituent institution of The University of North Carolina.

(2) The eligible machinery and equipment are placed in service in a tier one, two, or three enterprise area.

(3) The eligible investment amount is at least ten million dollars ($10,000,000) for the taxable year.

(4) The Secretary of Commerce has certified that the taxpayer will invest at least one hundred fifty million dollars ($150,000,000) in eligible machinery and equipment in a tier one, two, or three enterprise area by the end of the fourth year after the year in which the taxpayer first places eligible machinery and equipment in service in the enterprise area.

(5) No more than nine years have passed since the first taxable year the taxpayer claimed a credit under this subsection or subsection (c) of this section with respect to the same location.

(c) Fifteen Percent Credit. -- A taxpayer qualifies for a fifteen percent (15%) credit under this section if it meets all of the following conditions:

(1) The eligible machinery and equipment are directly related to production based on technology developed by and licensed from a constituent institution of The University of North Carolina, or are used to produce resources essential to the taxpayer's production based on technology developed by and licensed from a constituent institution of The University of North Carolina.

(2) The eligible machinery and equipment are placed in service in a tier one, two, or three enterprise area.

(3) The eligible investment amount is at least ten million dollars ($10,000,000) for the taxable year.

(4) The Secretary of Commerce has certified that the taxpayer will invest at least one hundred million dollars ($100,000,000) in eligible machinery and equipment in a tier one, two, or three enterprise area by the end of the fourth year after the year in which the taxpayer first places eligible machinery and equipment in service in the enterprise area.

(5) No more than nine years have passed since the first taxable year the taxpayer claimed a credit under this subsection or subsection (c) of this section with respect to the same location."

Section 3. G.S. 105-129.4(d) reads as rewritten:

"(d) Forfeiture. -- A taxpayer forfeits a credit allowed under this Article if the taxpayer was not eligible for the credit at the time the taxpayer applied for the credit. In addition, a taxpayer forfeits a large investment enhancement of a tax credit if the taxpayer fails to make the level of investment certified by the Secretary of Commerce under subsection (b1) of this section within the required two-year period. A taxpayer forfeits the technology commercialization credit allowed under G.S. 105-129.9A if the taxpayer fails to make the level of investment required by subsection (c) of that section within the required period or if the taxpayer fails to meet the terms of its licensing agreement with a constituent institution of The University of North Carolina or terminates the agreement. If a taxpayer claimed a twenty percent (20%) technology commercialization credit under G.S. 105-129.9A(b) and fails to make the level of investment required under that subsection within the required period, but does make the level of investment required under subsection (c) of that section within the required period, the taxpayer forfeits one-fourth of the twenty percent (20%) credit.

A taxpayer that forfeits a credit under this Article is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is

forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236. If a taxpayer forfeits the credit for creating jobs or the credit for investing in machinery and equipment, the taxpayer also forfeits any credit for worker training claimed for the jobs for which the credit for creating jobs was claimed or the jobs at the location with respect to which the credit for investing in machinery and equipment was claimed."

Section 4. G.S. 105-129.5 reads as rewritten:

"**§ 105-129.5. Tax election; cap.**

(a) Tax Election. -- The credits provided in this Article are allowed against the franchise tax levied in Article 3 of this Chapter and the income taxes levied in Article 4 of this Chapter. The credit for investing in central administrative office property provided in G.S. 105-129.12 is also allowed against the gross premiums tax levied in Article 8B of this Chapter. The taxpayer may divide the technology commercialization credit allowed in G.S. 105-129.9A between the taxes against which it is allowed. The taxpayer must take all other credits allowed in this Article against only one of the taxes against which they are allowed. The taxpayer shall elect the tax against which a credit will be claimed when filing the return on which the first installment of the credit is claimed. This election is binding. Any carryforwards of the credit must be claimed against the same tax.

(b) Cap. -- The credits allowed under this Article may not exceed fifty percent (50%) of the tax against which they are claimed for the taxable year, reduced by the sum of all other credits allowed against that tax, except tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of credit, including carryforwards, claimed by the taxpayer under this Article against each tax for the taxable year. Any unused portion of a credit with respect to a large investment or with respect to the technology commercialization credit allowed in G.S. 105-129.9A may be carried forward for the succeeding 20 years. Any unused portion of any other credit may be carried forward for the succeeding five years."

Section 5. This act is effective for taxable years beginning on or after January 1, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 1110
Proposed Committee Substitute S1110-PCS7696-LC

Short Title: Tech. Commercialization Credit. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE AN INCENTIVE FOR BUSINESSES TO FIND COMMERCIAL USES FOR TECHNOLOGY DEVELOPED BY RESEARCH UNIVERSITIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-129.9 reads as rewritten:

"**§ 105-129.9. Credit for investing in machinery and equipment.**

(a) ~~Credit.~~ General Credit. -- If a taxpayer that has purchased or leased eligible machinery and equipment places it in service in this State during the taxable year, the taxpayer is allowed a credit equal to seven percent (7%) of the excess of the eligible investment amount over the applicable threshold. Machinery and equipment is eligible if it is capitalized by the taxpayer for tax purposes under the Code and is not leased to another party. In addition, in the case of a large investment, machinery and equipment that is not capitalized by the taxpayer is eligible if the taxpayer leases it from another party. The credit may not be taken for the taxable year in which the equipment is placed in service but shall be taken in equal installments over the seven years following the taxable year in which the equipment is placed in service.

(a1) Technology Commercialization Credit. -- If a taxpayer is eligible for the credit allowed in this section with respect to eligible machinery and equipment and qualifies for one of the credits allowed in G.S. 105-129.9A with respect to the same machinery and equipment, the taxpayer may choose to take one of those credits instead of the credit allowed in this section. A taxpayer may take the credit allowed in this section or one of the credits allowed in G.S. 105-129.9A during a taxable year with respect to

eligible machinery and equipment, but may not take more than one of these credits with respect to the same machinery and equipment.

(b) Eligible Investment Amount. -- The eligible investment amount is the lesser of (i) the cost of the eligible machinery and equipment and (ii) the amount by which the cost of all of the taxpayer's eligible machinery and equipment that is in service in this State on the last day of the taxable year exceeds the cost of all of the taxpayer's eligible machinery and equipment that was in service in this State on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer had the most eligible machinery and equipment in service in this State. A taxpayer that claims a credit under this section must include with the application for certification required under G.S. 105-129.6(a) specific documentation supporting the taxpayer's calculation of the eligible investment amount under this subsection.

(c) Threshold. -- The applicable threshold is the appropriate amount set out in the following table based on the enterprise tier of the area where the eligible machinery and equipment are placed in service during the taxable year. If the taxpayer places eligible machinery and equipment in service in more than one area during the taxable year, the threshold applies separately to the eligible machinery and equipment placed in service in each area. If the taxpayer places eligible machinery and equipment in service in an area over the course of a two-year period, the applicable threshold for the second taxable year is reduced by the eligible investment amount for the previous taxable year.

Area Enterprise Tier	Threshold
Tier One	$ -0-
Tier Two	100,000
Tier Three	200,000
Tier Four	500,000
Tier Five	1,000,000

(d) Expiration. -- If, in one of the seven years in which the installment of a credit accrues, the machinery and equipment with respect to which the credit was claimed are disposed of, taken out of service, or moved out of State, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5.

If, in one of the seven years in which the installment of a credit accrues, the machinery and equipment with respect to which the credit was claimed are moved to an area in a higher-numbered enterprise tier, or are moved from a development zone to an area that is not a development zone, the remaining installments of the credit are allowed only to the extent they would have been allowed if the machinery and equipment had been placed in service initially in the area to which they were moved.

(e) Planned Expansion. -- A taxpayer that signs a letter of commitment with the Department of Commerce to place specific eligible machinery and equipment in service in an area within two years after the date the letter is signed may, in the year the eligible machinery and equipment are placed in service in that area, calculate the

credit for which the taxpayer qualifies based on the area's enterprise tier and development zone designation for the year the letter was signed. All other conditions apply to the credit, but if the area has been redesignated to a higher-numbered enterprise tier or has lost its development zone designation after the year the letter of commitment was signed, the credit is allowed based on the area's enterprise tier and development zone designation for the year the letter was signed. If the taxpayer does not place part or all of the specified eligible machinery and equipment in service within the two-year period, the taxpayer does not qualify for the benefit of this subsection with respect to the machinery and equipment not placed in service within the two-year period. However, if the taxpayer qualifies for a credit in the year the eligible machinery and equipment are placed in service, the taxpayer may take the credit for that year as if no letter of commitment had been signed pursuant to this subsection."

Section 2. Article 3A of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-129.9A. Technology commercialization credit.**

(a) Credit. -- If a taxpayer that has purchased or leased eligible machinery and equipment places it in service in this State during the taxable year, the taxpayer may qualify for a credit as provided in this section. If the taxpayer is also eligible for the credit allowed under G.S. 105-129.9 with respect to the eligible machinery and equipment, the taxpayer may choose instead of the credit allowed under G.S. 105-129.9 with respect to the machinery and equipment to take one of the credits under this section for which the taxpayer qualifies. The twenty percent (20%) credit is a credit equal to twenty percent (20%) of the excess of the eligible investment amount over the applicable threshold for the taxable year. The fifteen percent (15%) credit is a credit equal to fifteen percent (15%) of the excess of the eligible investment amount over the applicable threshold for the taxable year.

Except as provided in this section, the provisions of G.S. 105-129.9 apply to the credits allowed under this section. As used in this section, the term 'research university' means an institution of higher education classified as a Research I university or a Research II university in the most recent edition of 'A Classification of Institutions of Higher Education,' the official report of The Carnegie Foundation for the Advancement of Teaching.

A credit allowed under this section must be taken for the taxable year in which the machinery and equipment are placed in service. A taxpayer may take the twenty percent (20%) credit allowed under this section, the fifteen percent (15%) credit allowed under this section, or the credit allowed in G.S. 105-129.9 during a taxable year with respect to eligible machinery and equipment, but may not take more than one of these credits with respect to the same machinery and equipment.

(b) Eligible Investment Amount. -- In calculating the eligible investment amount under this section, for the purpose of determining the taxpayer's machinery and equipment in service in this State during the taxable year and the three immediately preceding taxable years, the following exceptions apply:

(1) Machinery and equipment that were transferred to another taxpayer during the three-year period are considered the taxpayer's machinery and equipment if they are still in service in this State during the taxable year, and the taxpayer to whom they were transferred is not entitled to claim a new credit for the investment under this Article.

(2) Machinery and equipment that were taken out of service during the three-year period are considered the taxpayer's machinery and equipment in service if all of the following conditions are met:

a. The machinery and equipment were taken out of service by the taxpayer or by the person to whom the taxpayer transferred them.

b. The machinery and equipment were taken out of service at a site separate from any site with respect to which the taxpayer claims a credit under this section.

c. The machinery and equipment were used in a business that was not and is not competitive with any business with respect to which the taxpayer claimed a credit under this section. For the purpose of this subdivision, two businesses are not competitive if both of the following conditions are met:

1. Their products and services lack reasonable interchangeability of use by the customer, based on use but without regard to quality, price, condition, or availability.

2. Their products and services lack reasonable interchangeability of production in that the businesses could not readily switch production capabilities from one product or service to the other.

(c) Documentation. -- If the taxpayer claims the exception provided in subdivision (b)(2) of this section, the Secretary of Commerce must obtain an opinion of the Attorney General that the taxpayer meets all of the conditions of subdivision (b)(2) before the Secretary certifies the application under G.S. 105-129.6(a).

(d) Twenty Percent Credit. -- A taxpayer qualifies for a twenty percent (20%) credit under this section if it meets all of the following conditions:

(1) The eligible machinery and equipment are directly related to production based on technology developed by and licensed from a research university or are used to produce resources essential to the taxpayer's production based on technology developed by and licensed from a research university.

(2) The eligible machinery and equipment are placed in service in a tier one, two, or three enterprise area.

(3) The eligible investment amount is at least ten million dollars ($10,000,000) for the taxable year.

(4) The Secretary of Commerce has certified that the taxpayer will invest at least one hundred fifty million dollars ($150,000,000) in eligible machinery and equipment in a tier one, two, or three enterprise area by the end of the fourth year after the year in which the taxpayer first places eligible machinery and equipment in service in the enterprise area.

(5) No more than nine years have passed since the first taxable year the taxpayer claimed a credit under this section with respect to the same location.

(e) Fifteen Percent Credit. -- A taxpayer qualifies for a fifteen percent (15%) credit under this section if it meets all of the following conditions:

(1) The eligible machinery and equipment are directly related to production based on technology developed by and licensed from a research university, or are used to produce resources essential to the taxpayer's production based on technology developed by and licensed from a research university.

(2) The eligible machinery and equipment are placed in service in a tier one, two, or three enterprise area.

(3) The eligible investment amount is at least ten million dollars ($10,000,000) for the taxable year.

(4) The Secretary of Commerce has certified that the taxpayer will invest at least one hundred million dollars ($100,000,000) in eligible machinery and equipment in a tier one, two, or three enterprise area by the end of the fourth year after the year in which the taxpayer first places eligible machinery and equipment in service in the enterprise area.

(5) No more than nine years have passed since the first taxable year the taxpayer claimed a credit under this section with respect to the same location."

Section 3. G.S. 105-129.4(d) reads as rewritten:

"(d) Forfeiture. -- A taxpayer forfeits a credit allowed under this Article if the taxpayer was not eligible for the credit at the time the taxpayer applied for the credit. In addition, a taxpayer forfeits a large investment enhancement of a tax credit if the taxpayer fails to make the level of investment certified by the Secretary of Commerce under subsection (b1) of this section within the required two-year period. A taxpayer forfeits the technology commercialization credit allowed under G.S. 105-129.9A if the taxpayer fails to make the level of investment required by subsection (e) of that section within the required period or if the taxpayer fails to meet the terms of its licensing agreement with a research university. If a taxpayer claimed a twenty percent (20%) technology commercialization credit under G.S. 105-129.9A(d) and fails to make the level of investment required under that subsection within the required period, but does make the level of investment required under subsection (e) of that section within the required period, the taxpayer forfeits one-fourth of the twenty percent (20%) credit.

A taxpayer that forfeits a credit under this Article is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited; a taxpayer that fails to pay the past taxes and interest by the due date is subject to the penalties provided in G.S. 105-236. If a taxpayer forfeits the credit for creating jobs or the credit for investing in machinery and equipment, the taxpayer also forfeits any credit for worker training claimed for the jobs for which the credit for creating jobs was claimed or the jobs at the location with respect to which the credit for investing in machinery and equipment was claimed."

Section 4. G.S. 105-129.5 reads as rewritten:

"**§ 105-129.5. Tax election; cap.**

(a) Tax Election. -- The credits provided in this Article are allowed against the franchise tax levied in Article 3 of this Chapter and the income taxes levied in Article 4 of this Chapter. The credit for investing in central administrative office property provided in G.S. 105-129.12 is also allowed against the gross premiums tax levied in Article 8B of this Chapter. The taxpayer may divide the technology commercialization credit allowed in G.S. 105-129.9A between the taxes against which it is allowed. The taxpayer must take any other credit allowed in this Article against only one of the taxes against which it is allowed. The taxpayer shall elect the tax against which a credit will be claimed when filing the return on which the first installment of the credit is claimed. This election is binding. Any carryforwards of the credit must be claimed against the same tax.

(b) Cap. -- The credits allowed under this Article may not exceed fifty percent (50%) of the tax against which they are claimed for the taxable year, reduced by the sum of all other credits allowed against that tax, except tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of credit, including carryforwards, claimed by the taxpayer under this Article against each tax for the taxable year. Any unused portion of a credit with respect to a large investment or with respect to the technology commercialization credit allowed in G.S. 105-129.9A may be carried forward for the succeeding 20 years. Any unused portion of any other credit may be carried forward for the succeeding five years."

Section 5. This act is effective for taxable years beginning on or after January 1, 2000.

SENATE BILL 1110:
Tech. Commercialization Credit

BILL ANALYSIS

Committee:	Senate Finance	**Sponsor:**	Senator Rand
Date:	June 15, 1999	**Analysis by:**	Martha H. Harris
Version:	Proposed Committee Substitute		Staff Attorney

SUMMARY: ***Effective beginning with the 2000 tax year, this bill would provide an enhanced investment tax credit for taxpayers who make large investments in tier one, two, and three counties of machinery and equipment used in production based on technology licensed from a research university.***

This bill would add a new investment tax credit to the Bill Lee Act. The credit, called the technology commercialization credit, would be an alternative to the existing 7% tax credit for investing in machinery and equipment. The technology commercialization credit applies only to investments in machinery and equipment used in production based on technology licensed from a research university. In addition, to qualify, the machinery and equipment must be located in a tier one, two, or three enterprise area. Finally, the taxpayer's investment must equal at least $10 million during the taxable year and must total at least $100 million over a five-year period. If the investment totals between $100 and $150 million over five years, the technology commercialization credit is equal to 15% of the amount invested. If the investment equals or exceeds $150 million over five years, the technology commercialization credit is equal to 20% of the amount invested. The technology commercialization credit remains available for 10 years of investments at a single location. The taxpayer's eligibility for the technology commercialization credit is based on the Secretary of Commerce's certification that the taxpayer will invest either $100 or $150 million over five years. If the taxpayer does not achieve the certified level of investment, the credit is forfeited.

The technology commercialization credit is more generous than the existing investment tax credit in several ways. The existing investment tax credit is 7% of the amount invested. The technology commercialization credit is 15% or 20% of the amount invested, depending upon the size of the investment.

The existing investment tax credit must be taken in seven annual installments beginning the year after the year the investment is placed in service. The technology commercialization credit may be taken in the year the investment is placed in service.

The existing investment tax credit applies only to the extent the new investment is not offset by the amount of machinery and equipment the taxpayer either sold or took out of service in the three-year period before the new investment was placed in service. This restriction limits the existing credit to net increases in North Carolina investment, and disallows it for investment that, in effect, is a replacement or relocation of pre-existing machinery and equipment. The technology commercialization credit is not required to be offset by machinery and equipment sold to another taxpayer if the new owner keeps the machinery and equipment in service in North Carolina. In addition, the technology commercialization credit is not required to be offset by machinery and equipment the taxpayer takes out of service if it was in service at a separate site and was used in a business that is not competitive with the technology commercialization business.

The existing investment tax credit, like all other Bill Lee Act credits, may be taken against the taxpayer's income tax or franchise tax, but not both. The technology commercialization credit may be taken against both income tax and franchise tax.

The existing investment tax credit, like all other Bill Lee Act credits, may be carried forward for five years unless the investment amount exceeds $150 million over a two-year period, in which case it may be carried forward for 20 years. The technology commercialization credit may be carried forward for 20 years.

FISCAL ANALYSIS MEMORANDUM

DATE: June 15, 1999
TO: Senate Finance Committee
FROM: Dave Crotts
Fiscal Research Division
RE: PCS for SB 1110 (Tech. Commercialization Credit)

FISCAL IMPACT

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

See "Assumptions and Methodology"

Note: The enactment of the bill will have no impact during the 1999-00 fiscal year.

PRINCIPAL DEPARTMENTS AFFECTED: Department of Revenue and Department of Commerce

EFFECTIVE DATE: Tax years beginning on or after January 1, 2000

BILL SUMMARY: Adds a new investment tax credit that would be an alternative to the targeted 7% credit under the Bill Lee Act. The credit would apply to investments in machinery and equipment that meet the following conditions:

(1) is used in production that is based on technology licensed from a research university.
(2) is located in a Tier 1, 2, or 3 county
(3) amounts to at least $10 million during the taxable year and at least $100 million over a 5-year period.

If the investment amount is $100-150 million during a 5-year period, the credit is equal to 15% of the amount invested. If the amount is at least $150 million, the credit is 20%. The credit is available for 10 years of investments at a single location. The credit is taken in the year the investment in placed in service and is not required to be offset by machinery and equipment sold to another taxpayer if the new owner keeps the machinery and equipment in service in North Carolina. In addition, the credit is not required to be offset by machinery and equipment the taxpayer takes out of service at a separate location and was used in a business that is not competitive with the technology commercialization business. The credit may be taken against the income tax, the franchise tax, or both and may be carried forward 20 years.

ASSUMPTIONS AND METHODOLOGY: A review was made of planned investment activity, state tax liability, and existing Bill Lee Act credit usage for a taxpayer planning a major project in a Tier 3 county in Southeastern North Carolina. Based on this date, the maximum

(OVER)

(Attachment #1)

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 6/15/'99

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[illegible]	NCA
[illegible]	Moore & Van Allen
Kelli Kukura	DuPont
[illegible]	Duke
[illegible]	Electricities
Andy Romanet	NCLM.
Larry Sessoms	Bladen County
Chuck Heustess	Bladen County
Rick Carlisle	Commerce Dept.
[illegible]	UNC-CH
Joe DeSimone	UNC-CH/NCSU

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 6/15/'99

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ruben Cardwell	NCSU
Edward SAMULSKI	UNC - Chapel Hill
Mark Benson	Capital Groups
Nancy Brothers	NCCA
Kathy Sawyer	Commerce
Susan Valvis	Nationwide
Katherine Davis	Electricities
Roslyn Smith	NCCC

(Attachment #2)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

REVISED COMMITTEE REPORT WITH BILL ADDED

Tuesday, June 15, 1999

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

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

S.B. **1110** Tech Commercialization Credit

Draft Number:	PCS7696
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 3

S.B.(CS #2)**244** Unclaimed Property Act/AB

Draft Number:	PCS1755
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED:2

Committee Clerk Comment: SB 244 was heard in Senate Finance Meeting on 6-9-99 and com sub #2 was reported in, which was incorrect, therefore, com sub #2 was pulled back to Senate Finance so that correct com sub #3 could be reported in.

AGENDA

WEDNESDAY, JUNE 16, 1999

SENATE FINANCE COMMITTEE

1:30 P.M. – ROOM 544

I CALL TO ORDER

II INTRODUCTION OF PAGES

III BILLS TO BE CONSIDERED

SB 330 – Spay/Neuter Progam. – Sen. Kinnaird

SB 941 – Manufactured Homes Law Changes. – Sen. Warren

HB 237 – Boat Agent Fees. – Rep. Gulley

HB 283 – State Treasurer's Investment Authority. – Rep. Allen

HB 830 – Modify Transylvania Room Tax. – Rep. Walend

SENATE FINANCE COMMITTEE

WEDNESDAY, JUNE 16, 1999

1:30 P.M. - ROOM 544

The Senate Finance Committee met on Wednesday, June 16, 1999, at 1:30 P.M. in Room 544 with Senator Kerr presiding. The Pages were recognized – Wayland Pond, sponsored by Senator Odom, and Ms. Lee, granddaugher of Senator Lee and sponsored by Senator Lee. There were 14 committee members present for the meeting.

HB 283 – State Treasurer's Investment Authority.

Representative Allen was recognized to explain his Bill. After his explanation of the Bill and comments by Doug Chappell from the Treasurer's Office, on motion by Senator Weinstein, the Bill was given a Favorable Report. Copy of Bill, Explanation and Fiscal Note included in the minutes.

HB 237 – Boat Agent Fees.

Representative Gulley explained his Bill. Dick Hamilton, Assistant Director of the N. C. Wildlife Commission, spoke in support of this Bill. Senator Dannelly moved for a Favorable Report and the motion carried. Copy of original Bill, Explanation and Fiscal Note included in the minutes.

HB 830 – Modify Transylvania Room Tax.

Representative Waylend explained his Bill and on motion by Senator Gulley, the Bill was given a Favorable Report. Copy of Bill and Explanation included in the minutes.

SB 941 – Manufactured Homes Law Changes.

Senator Warren was recognized to explain his Bill which had been discussed at a previous meeting. Senator Ballantine chaired a Subcommittee which had worked on this Bill. Martha Walston, Staff Attorney, explained the new Committee Substitute for this Bill, which had been suggested by the Subcommittee, and on motion by Senator Rand, the Committee Sub was adopted by the committee. Bill Hale and Dascheil Propes, both representing the N. C. Department of Insurance, were recognized and spoke in support of this Bill. On motion by Senator Gulley, the Committee Sub was given a Favorable Report by the committee. Copy of original Bill, Committee Sub, Explanation and Fiscal Note included in the minutes.

Meeting adjourned.

David W. Hoyle, Co-Chair
Senate Finance Committee

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

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

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

SB 330 and SB 1006 were not heard at this meeting.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 283
Committee Substitute Favorable 4/19/99

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

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE STATE TREASURER'S INVESTMENT AUTHORITY.

The General Assembly of North Carolina enacts:

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

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

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

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

(1) The General Fund;

(2) The Highway ~~Fund.~~ Fund and Highway Trust Fund.

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

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

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

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

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

(4) Obligations of the State of North Carolina;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

HOUSE BILL 283:
State Treasurer's Investment Authority

BILL ANALYSIS

Committee: Senate Finance
Date: June 14, 1999
Version: 2nd Edition

Introduced by: Rep. Allen
Summary by: Martha K. Walston
Committee Counsel

SUMMARY: House Bill 283 amends the statutes governing the State Treasurer's investment authority to clarify that the Treasurer has investment authority over the Highway Fund and the Highway Trust Fund, to allow the Treasurer to invest in time deposits of a financial institution that has a physical presence in the State, and to give the Treasurer investment authority over the Retiree Health Premium Reserve Account and the North Carolina National Guard Pension Fund. House Bill 283, in its current form, was given a favorable report by the House Ways & Means Committee.

BILL ANALYSIS:

References to the Highway Funds Although there are two highway funds, the Highway Fund and the Highway Trust Fund, the State Treasurer's investment authority for these two Funds refers to a singular Highway Fund. House Bill 283 clarifies that the Treasurer has investment authority over the General Fund and both the Highway Fund and the Highway Trust Fund.

Investment of Monies in the General Fund, Highway Fund, and Highway Trust Fund Currently, under G.S. 147-69.1(c)(5), the State Treasurer has the authority to invest funds from the General Fund and Highway Funds in savings certificates and certificates of deposit if they are issued by a financial institution organized under North Carolina law or having its principal office in North Carolina. House Bill 283 amends G.S. 147-69.1 (Investments authorized for General Fund and Highway Fund assets) so that the Treasurer can invest these monies in time deposits of a financial institution that merely has a physical presence in the State for the purpose of receiving commercial or retail deposits. This change in statutory language is generated by the emergence of interstate banking. The law will continue to require that any amount of these investments in excess of the amount insured by the federal government or agency of the government, be fully secured by surety bonds or fully collateralized.

Investment of Monies in the North Carolina National Guard Pension Fund and the Retiree Health Premium Reserve Account. House Bill 283 adds the North Carolina National Guard Pension Fund and the Retiree Health Premium Reserve Account to the list of special funds in G.S. 147-69.2. The statute lists the investments in which the State Treasurer may invest excess monies in these special funds. These investments include any investments authorized for the General Fund or Highway Funds; obligations of other states; obligations of North Carolina cities, counties and special districts; obligations of legal entities if the obligations bear one of the three highest ratings; notes secured by FHA mortgages or guaranteed by the VA; asset-backed securities; and common or preferred stock meeting certain requirements.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 283 (Second Edition)

SHORT TITLE: State Treasurer's Investment Authority

SPONSOR(S): Representative Allen

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of State Treasurer

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

BILL SUMMARY: The bill amends the statutes to clarify the State Treasurer's investment authority in the Highway Fund, Highway Trust Fund, the Retiree Health Premium Reserve Account, and the NC National Guard Pension Fund.

ASSUMPTIONS AND METHODOLOGY:
This bill conforms the statutory investment authority of the State Treasurer to the fiduciary role of the State Treasurer. The State Treasurer has invested the Retiree Health Premium Reserve Account in a long term fixed income portfolio and has managed the assets of the North Carolina National Guard Pension Fund the same as other pension funds. The State Auditor cited both actions in 1998 as being out of compliance with the North Carolina General Statutes. Both investment strategies have resulted in the highest possible gains for the two funds. This bill will authorize the State Treasurer to continue to do what he has been doing. As for the Highway Trust Fund, this bill also conforms the statutes to the investment practice of the State Treasurer.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic

APPROVED BY:

DATE:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 237

Short Title: Boat Agent Fees/AB. (Public)

Sponsors: Representative Gulley.

Referred to: Wildlife Resources, if favorable, Finance.

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE FEE PAID TO AGENTS OF THE WILDLIFE RESOURCES COMMISSION TO AWARD CERTIFICATES OF BOAT NUMBER OR OTHER VESSEL TRANSACTION AND TO AMEND THE DUTIES OF THE WILDLIFE RESOURCES COMMISSION WITH REGARD TO THE APPOINTMENT OF AGENTS FOR THE ISSUANCE OF BOAT NUMBERS, TO RAISE THE REPORTING REQUIREMENT FOR BOATING ACCIDENTS TO DAMAGES IN EXCESS OF FIVE HUNDRED DOLLARS, AND TO REPEAL THE LAW REQUIRING PERMITS FROM THE WILDLIFE RESOURCES COMMISSION TO HOLD REGATTAS AND OTHER EVENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 75A-5(e) reads as rewritten:

"(e) The Wildlife Resources Commission may ~~award~~ issue any ~~certificate of number~~ vessel transaction pursuant to the provisions of Article 1 or 4 of this Chapter directly or may authorize any person qualified as prescribed in subsection (l) of this section to act as agent for the ~~awarding thereof.~~ issuance of vessel transactions subject to the requirements set forth in this Chapter. ~~In the event that a person accepts such authorization, he may be assigned a block of numbers and certificates therefor which upon award,~~ Upon acceptance of this authorization, an agent's actions in issuing any vessel transaction pursuant to this Chapter ~~in conformity with this Chapter and with any rules and regulations of the Commission,~~ shall be valid as if ~~awarded~~ issued directly by the Commission. As compensation for ~~his services any such agent shall be allowed to retain for his own use fifty cents (50¢).~~ services rendered to the

Commission and to the general public, the agent shall receive the following specified commission from the statutory fee for each listed transaction:

(1) Renewal of vessel registration - $1.25.
(2) Transfer of ownership and registration of a vessel - $3.00.
(3) Issuance of new certificate of vessel number and registration - $3.00.
(4) Issuance of duplicate vessel registration - $0.50.
(5) Issuance, transfer, duplication, or lien recordation of vessel title - $3.00.

It is a Class 1 misdemeanor for any such agent to charge or accept any additional fee, remuneration, or other thing of value for such services."

Section 2. G.S. 75A-5(l) reads as rewritten:

"(l) When certificates of number are to be issued by agents as provided by subsection (e) of this section, the Wildlife Resources Commission ~~is authorized by regulation to establish the qualifications of such agents, including, but not limited to, their financial responsibility, the locations and types of business operated by them and their facilities for safekeeping of unused certificates of number, validation decals, and the monetary proceeds of certificates which have been issued; to prescribe the duties of such agents, including, but not limited to, the methods of issuing certificates of number and validation decals, the evidence of ownership of vessels to be numbered by applicants for number, the times and methods of making periodic and final reports of certificates and decals issued and remaining unissued and remittances of public moneys and unissued certificates and decals; to establish methods and procedures of ensuring accountability of such agents for the proceeds of certificates and decals issued and for certificates and decals remaining unissued; to require individual or blanket bonds of such agents in amounts sufficient to protect the State against loss of public moneys and unissued certificates and decals, the premiums for such bonds to be paid by the agents; to permit such agents to issue both original certificates of number and validation decals and renewals thereof or to limit such agents, or any of them, to the issuance of the originals only; to authorize some or all of such agents to issue temporary certificates of number for use during a limited time pending delivery of regular certificates of number and validation decals; to establish methods and procedures, including submission of the amounts and kinds of evidence which the Commission may deem sufficient, whereby any such agent may be relieved of accountability for the value of unissued certificates and validation decals, or of the monetary proceeds of those which have been issued, which have been lost or destroyed as the result of any occurrence which is beyond the control of such agent; and to prescribe such other reasonable requirements and conditions as the Commission may, in its discretion, deem necessary or desirable to expedite and control the issuance of certificates of number by such agents.~~ may establish administrative guidelines that prescribe:

(1) The qualifications of agents;
(2) The duties of agents;

(3) Methods and procedures to ensure accountability and security for proceeds and unissued certificates of number;
(4) Requirements for security bonds in amounts sufficient to protect the State against loss of public funds or documents;
(5) Methods and procedures, including submission of the kinds and amounts of evidence deemed sufficient to relieve an agent of responsibility for losses due to occurrences beyond the agent's control; and
(6) Any other reasonable requirement or condition deemed necessary and desirable to expedite and control the issuance of certificates of boat number by agents.

In accordance with ~~such regulations,~~ administrative guidelines developed pursuant to this section, the executive director ~~is authorized to prepare and distribute all forms necessary or convenient for application for and the appointment and bonding of such agents and for receipts, reports and remittances by such agents; to select and appoint such agents in areas most convenient to the boating public and to limit the number of such agents in any locality; to require prompt and accurate reporting and remission of public moneys and unissued certificates and decals by such agents, and to require periodic or special audits of their accounts; to revoke or terminate any such agency for failure to make timely reports and remittances or to comply with any administrative directive or regulation of the Commission, or when he has reason to believe that State money or property is in jeopardy; and to require immediate surrender of all agency accounts, forms, certificates, decals and State moneys in the event of such revocation or termination of any such agency.~~ may:

(1) Select and appoint agents in the areas most convenient to the boating public and limit the number of agents in any one area if necessary for efficiency of operation;
(2) Require prompt and accurate reporting and remittance of public funds or documents by agents;
(3) Conduct periodic and special audits of accounts;
(4) Terminate the authorization of any agent found to be in noncompliance with administrative guidelines or directives of the Commission or when State funds or property are reasonably believed to be in jeopardy; and
(5) Demand the immediate surrender of all accounts, forms, certificates, decals, records, and State funds and property in the event of the termination of an agency.

A person who is denied the authority to act as an agent for the issuance of certificates of number and validation decals or whose authority to do so is revoked may not commence a contested case under G.S. 150B-23. ~~Any violation of the regulations authorized by this subsection shall be a Class 1 misdemeanor.~~ If any check or draft of any agent for the issuance of certificates of boat number shall be returned by the banking facility upon which the same is drawn for lack of funds, such agent shall be liable to the Wildlife Resources Commission for a penalty of five

percent (5%) of the amount of such check or draft, but in no event shall such penalty be less than five dollars ($5.00) or more than two hundred dollars ($200.00). Agents shall be assessed a penalty of twenty-five percent (25%) of their issuing fee on all remittances to the Commission after the fifteenth day of the month immediately following the month of sale."

Section 3. G.S. 75A-11(b) reads as rewritten:

"(b) In the case of collision, accident, or other casualty involving a vessel, the operator thereof, if the collision, accident, or other casualty results in death or injury to a person or damage to property in excess of ~~one~~ five hundred dollars ~~($100.00),~~ ($500.00), shall, within 10 days, file with the Wildlife Resources Commission a full description of the collision, accident, or other casualty, including such information as said agency may, by regulation, require. Such report shall not be admissible as evidence."

Section 4. G.S. 75A-14 is repealed.

Section 5. This act becomes effective July 1, 1999.

HOUSE BILL 237:
Boat Agent Fees/AB

BILL ANALYSIS

Committee: Senate Finance
Date: June 14, 1999
Version: 1st Edition

Introduced by: Representative Gulley
Summary by: Martha K. Walston
Committee Counsel

SUMMARY: ***House Bill 237 amends the Boating Safety Act to increase the commission that authorized agents of the Wildlife Resources Commission may receive for handling various vessel transactions, assesses a penalty against agents who are late in remitting fees from vessel transactions, and makes other changes to the State boating laws to conform to changes in the U.S. Coast Guard regulations. House Bill 237 was given a favorable report in House Finance and Senate Agriculture.***

CURRENT LAW: The Wildlife Resources Commission is charged with administering the Boating Safety Act under Chapter 75A of the General Statutes. As a part of those duties, the Commission issues identification numbers to most vessels on the waters of the State, renews vessel registrations, and handles transfers of ownerships. The following vessels are exempt from the numbering requirements: (1) vessels required to be numbered under federal law or a federally approved numbering system of another state, (2) a foreign vessel temporarily using the State's waters, (3) a vessel owned by the U.S., a state or a subdivision of a state, (4) a ship's lifeboat, (5) a vessel having a valid marine document issued by the U.S. Bureau of Customs, (6) a sailboat of not more than 14 feet on the load water line, and (7) a vessel with no means of propulsion other than drifting or manual paddling, poling, or rowing.

G.S. 75A-5 provides that the Wildlife Resources Commission may authorize persons to act on behalf of the Commission in handling these vessel transactions and issuing various documents and decals. As compensation for services, agents retain 50 cents per transaction.

BILL ANALYSIS: House Bill 237 increases the amount of compensation that authorized agents of the Commission may receive according to the following schedule:

Vessel Transaction	Proposed Commission
Renewal of vessel registration	$1.25
Transfer of ownership and registration of a vessel	$3.00
Issuance of new certificate of vessel number and registration	$3.00
Issuance of duplicate vessel registration	$0.50
Issuance, transfer, duplication, or lien recordation of vessel title	$3.00

Section 2 of the bill rewrites the Commission's authority to establish administrative guidelines regarding agent qualifications, duties, methods to insure accountability, and security. The amendments also provide for a penalty of 25% of the issuing fee on all remittances made to the Commission after the 15th of the month following the month of the sale by the agent.

Section 3 of the bill increases the threshold for reporting a vessel accident from in excess of $100 to in excess of $500. This amendment is consistent with the changes in the Coast Guard regulations.

Section 4 of the bill repeals the requirement that a person file an application with the Commission for permission to hold regattas, boat races, exhibitions, and marine parades on waters of the State. This change is also made to align the State laws with Coast Guard regulations.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 237 (First Edition)

SHORT TITLE: Boat Agent Fees/AB

SPONSOR(S): Representative Gulley

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
Wildlife Receipts	($195,000)	($195,000)	($195,000)	($195,000)	($195,000)

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Wildlife Resources Commission

EFFECTIVE DATE: The act is effective July 1, 1999

BILL SUMMARY:
The bill increases the fee paid to agents of the Wildlife Resources Commission to title and register boats. The bill raises the reporting requirement for accidents involving boats from $100 in damages to $500 in damages. The bill also repeals the law requiring permits for regattas, races, marine parades, tournaments or exhibitions.

ASSUMPTIONS AND METHODOLOGY
Four hundred small businesses across the state serve as vessel registration agents for the Wildlife Resources Commission. These agents are paid 50 cents per transaction; a rate unchanged since 1979 (Chapter 761, 1979 S.L.). With the recent installation of the computerized Customer Support System, vessel registration agents are required to do the data entry of boat title and registration information in the field. The Wildlife Resources Commission requested this bill to better compensate the vessel registration agents for their increased workload. The amended fees will decrease Wildlife Resources Commission receipts by $195,000 each year. (see chart on page 2) However, the Commission calculated that the cost of doing these transaction "in-house" would require 9.4 positions at a cost of $340,768. The total cost of agent transactions at the new rates is only $249,087.

	Current Fee	Current Agent Fee	Proposed Agent Fee	Number of Transactions	Current Agent Compen.	Proposed Agent Compen.
Renewal of Vessel Registration						
1 Year	$8.00	None	None			
3 Years	$20.00	$0.50	$1.25	36,155	$18,078	$45,194
Transfer of Ownership and Registration of Vessel						
1 Year	$8.00	None	None			
3 Years	$20.00	None	$3.00	25,205	$12,603	$75,615
Issuance of New Certificate and Registration of Vessel						
1 Year	$8.00	None	None			
3 Years	$20.00	$0.50	$3.00	13,160	$6,580	$39,480
New Title and Registration						
3 Years	$40.00	$1.00	$6.00	10,484	$10,484	$62,904
Issuance of Title	$20.00	None	$3.00	1,736	$868	$5,208
Transfer of Title and Registration						
3 Years	$40.00	$1.00	$6.00	2,995	$2,995	$17,970
Duplicate Title	$10.00	None	None			
Lien Recordation	$10.00	None	None			
Duplicate Registration	$2.00	$.50	$.50	5,433	$2,717	$2,717
					$54,325	$249,087
						($54,325)
NET INCREASE TO AGENTS						**$194,762**

Note: None indicates no current agent fee allowed.

Wildlife Resources Commission staff believes the costs shown above are representative of an average year, thus the $195,000 loss in revenue is shown for the five years of the fiscal note.

Section 3 and 4 of the bill have no fiscal impact on the agency.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic

APPROVED BY: Tom Covington

DATE: Tuesday, April 27, 1999

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 830
Committee Substitute Favorable 5/17/99

Short Title: Transylvania Room Tax Penalties. (Local)

Sponsors:

Referred to:

April 1, 1999

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE PENALTIES FOR THE TRANSYLVANIA COUNTY ROOM OCCUPANCY TAX.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of Chapter 969 of the 1985 Session Laws, as it applies to Transylvania County, reads as rewritten:

"Section 1. Transylvania Occupancy Tax. (a) Authorization and Scope. The board of commissioners of ~~a county~~ Transylvania County may ~~by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

(b) Administration. A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section. ~~Collection. Every operator of a business subject to the tax levied under this act shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to~~

~~the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax.~~

~~(c) Administration. The county shall administer a tax levied under this act. A tax levied under this act is due and payable to the county finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~A return filed with the county finance officer under this act is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this act shall pay a penalty of ten dollars ($10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due for each additional month or fraction thereof until the tax is paid.~~

~~Any person who willfully attempts in any manner to evade a tax imposed under this act or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars ($1,000), imprisonment not to exceed six months, or both. The board of commissioners may, for good cause shown, compromise or forgive the penalties imposed by this subsection.~~

(e) Use of Tax Revenue. ~~Except as provided in Section 2 of this act for Durham County, a taxing county~~ Transylvania County shall place revenue collected from a tax levied under this act in a special Travel and Tourism Fund. Revenue in this Fund may be used only to promote travel and tourism and for tourism-related expenditures in ~~the county.~~ Transylvania County.

The following definitions apply in this subsection:

(1) Promote travel and tourism. -- To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in these activities.

(2) Tourism-related expenditures. -- Expenditures that, in the judgment of the governing authority, are designed to increase the use of lodging facilities, meeting facilities, and convention facilities in a county by attracting tourists or business travelers to the county. The term includes tourism-related capital expenditures.

~~(f) Effective Date of Levy. A tax levied under this act shall become effective on the date specified in the resolution levying the tax. That date must be the first day of~~

~~a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

~~(g) Repeal. A tax levied under this act may be repealed by a resolution adopted by the board of commissioners of the county. Repeal of a tax levied under this act shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this act does not affect a liability for a tax that attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.~~"

Section 2. County Administrative Provisions. Section 3(b) of S.L. 1997-102, as amended by Section 2 of S.L. 1997-255, Section 2 of S.L. 1997-342, Section 3 of S.L. 1997-364, Section 6 of S.L. 1997-410, and Section 2 of S.L. 1998-14, reads as rewritten:

"(b) This section applies only to Avery, Brunswick, Davie, Madison, Nash, Person, Randolph, ~~and Scotland~~ Scotland, and Transylvania Counties."

Section 3. This act becomes effective July 1, 1999, and applies to taxes due on or after that date.

HOUSE BILL 830:
Transylvania Room Tax Penalties

BILL ANALYSIS

Committee: Senate Finance
Date: June 14, 1999
Version: 2nd Edition

Introduced by: Representative Walend
Summary by: Martha K. Walston and Cindy Avrette, Committee Counsel

SUMMARY: ***House Bill 830 modifies the current Transylvania occupancy tax law to conform with the uniform occupancy tax penalty provisions and other administrative provisions, and sets forth the definitions for the terms "promote travel and tourism" and "tourism-related expenditures". The current version of House Bill 830 was given a favorable report in House Finance.***

HOUSE BILL 830: Under the current Transylvania occupancy tax law, the penalty for failure to file a return is $10 for each day's omission. In case of failure to file the return or pay the tax for a period of 30 days after it is due, the penalty is 5% of the tax due. House Bill 830 provides that the uniform penalties will apply. The uniform occupancy tax penalties in G.S. 153A-155 are the same as the penalties for failure to pay or file a return for State sales and use taxes. The uniform penalty for failure to file a return is 5% of the amount of tax due, not to exceed 25% or $5, whichever is greater. The uniform penalty for failure to pay the tax due is 10% of the tax due or $5, whichever is greater.

House Bill 830 also conforms the current session law governing Transylvania County occupancy taxes to the uniform occupancy tax provisions. Therefore, the levy, administration, collection, and repeal of the occupancy taxes must be done in accordance with G.S. 160A-215.

The General Assembly authorized a 3% room occupancy tax for Transylvania County in 1985. All of the revenue generated from the tax is used to promote travel and tourism. The County has a tourism development authority that the county created by local ordinance in 1986 to expend the proceeds of the occupancy tax. Although the TDA was not established by an act of the General Assembly, its membership and function are based upon those created by the General Assembly in other occupancy tax acts.

BACKGROUND: Since 1983, the General Assembly has authorized many units of local government to levy a room occupancy tax. In several instances, the General Assembly has authorized both a county and a city within that county to impose an occupancy tax. The rate of tax, the use of the tax proceeds, the administration of the tax, and the body with the authority to determine how the tax proceeds will be spent vary considerably. Over the past several years, there has been a greater effort to make the occupancy taxes uniform. In 1997, the General Assembly enacted uniform municipal and county administrative provisions for occupancy tax legislation – G.S. 153A-155 and G.S. 160A-215. These provisions provide uniformity in the areas of levy, administration, collection, repeal, and penalties.

The North Carolina Travel and Tourism Coalition has a policy statement for legislation authorizing local occupancy taxes. These principals include:

- **Rate** – The county tax rate cannot exceed 6% and the city tax rate, when combined with the county rate, cannot exceed 6%.

- **Use** – Two-thirds of the proceeds must be used to promote travel and tourism and the remainder must be used for tourism related purposes.
- **Definitions** – The term "net revenues", "promote travel and tourism", and "tourism-related expenditures" are defined terms.
- **Administration** – The net revenues must be administered by a local tourism promotion agency that has the authority to determine how the tax proceeds will be used, is created by a local ordinance, and at least ¾ of the members must be currently active in the promotion of travel and tourism in the taxing district and 1/3 of the members must be affiliated with organizations that collect the tax.
- **Costs of Collection** – The taxing authority may retain from the revenues its actual costs of collection, not to exceed 3% of the first $500,000 collected each year plus 1% of the remainder collected each year.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 2

SENATE BILL 941
Commerce Committee Substitute Adopted 4/27/99

Short Title: Manufactured Homes Law Changes. (Public)

Sponsors:

Referred to:

April 14, 1999

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE MANUFACTURED HOUSING BOARD STATUTES, TO PROVIDE FOR CONTINUING EDUCATION FOR LICENSEES, TO IMPROVE THE BUYER CANCELLATION LAW, AND TO UPDATE THE LAW ON MANUFACTURED HOME STANDARDS TO COMPLY WITH FEDERAL LAWS AND REGULATIONS.

The General Assembly of North Carolina enacts:

Section 1. Article 9A of Chapter 143 of the General Statutes reads as rewritten:

"ARTICLE 9A.

"North Carolina Manufactured Housing Board --
Manufactured Home Warranties.

"§ 143-143.8. Purpose.

The General Assembly finds that ~~mobile~~ manufactured homes have become a primary housing resource for many of the citizens of North Carolina. The General Assembly finds further that it is the responsibility of the ~~mobile~~ manufactured home industry to provide homes which are of reasonable quality and safety and to offer warranties to buyers that provide a means of remedying quality and safety defects in ~~mobile~~ manufactured homes. The General Assembly also finds that it is in the public interest to provide a means for enforcing such warranties.

Consistent with these findings and with the legislative intent to promote the general welfare and safety of ~~mobile~~ manufactured home residents in North Carolina, the General Assembly finds that the most efficient and economical way to assure

safety, quality and responsibility is to require the licensing and bonding of all segments of the ~~mobile~~ manufactured home industry. The General Assembly also finds that it is reasonable and proper for the ~~mobile~~ manufactured home industry to cooperate with the Commissioner of Insurance, through the establishment of the North Carolina Manufactured Housing Board, to provide for a comprehensive framework for industry regulations.

"§ 143-143.9. Definitions.

The following ~~words, terms and phrases, when used in this Article, shall have the meanings respectively ascribed to them in this section, except where the context clearly indicates a different meaning:~~ definitions apply in this Article:

(1) ~~"Board" means the~~ Board. -- The North Carolina Manufactured Housing Board.

(2) ~~"Buyer" means a~~ Buyer. -- A person who purchases at retail from a dealer or manufacturer a manufactured home for personal use as a residence or other related use.

(3) ~~"Code" means the appropriate~~ Code. -- Engineering standards adopted by the Commissioner.

(4) ~~"Commissioner" means the~~ Commissioner. -- The Commissioner of Insurance of the State of North Carolina.

(5) ~~"Department" means the~~ Department. -- The Department of Insurance of the State of North Carolina.

(5a) License. -- A license issued under this Article.

(5b) Licensee. -- A person who has been issued a license under this Article by the North Carolina Manufactured Housing Board.

(6) ~~"Manufactured home" or "mobile home" means a~~ Manufactured home. -- A structure, transportable in one or more sections, which, in the travelling mode, is eight feet or more in width or is 40 feet or more in length, or when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems contained therein.

(7) ~~"Manufactured home dealer" or "dealer" means any~~ Manufactured home dealer or dealer. -- Any person engaged in the business of ~~buying,~~ buying or selling ~~or dealing in~~ manufactured homes or offering or displaying manufactured homes for sale in North Carolina. Any person who ~~buys, sells or deals in~~ buys or sells three or more manufactured homes in any 12-month period, or who offers or displays for sale three or more manufactured homes in any 12-month period shall be presumed to be a manufactured home dealer. The terms 'selling' and 'sale' include lease-purchase transactions. The term 'manufactured home dealer' does not include banks and finance companies that acquire manufactured homes as an incident to their regular business.

(8) ~~"Manufactured home manufacturer" or "manufacturer" means any~~ Manufactured home manufacturer or manufacturer. -- Any person, resident or nonresident, who manufactures or assembles manufactured homes for sale to dealers in North Carolina.

(9) ~~"Manufactured home salesman" or "salesman" means any~~ Manufactured home salesperson or salesperson. -- Any person employed ~~as a salesman~~ by a manufactured home dealer to sell manufactured homes to buyers.

(10) ~~"Person" means any~~ Person. -- Any individual, natural persons, firm, partnership, association, corporation, legal representative or other recognized legal entity.

(11) ~~"Responsible party" means a~~ Responsible party. -- A manufacturer, dealer, supplier, or set-up contractor.

(12) ~~"Setup" means the~~ Setup. -- The operations performed at the occupancy site which render a manufactured home fit for habitation. ~~Such operations include, but are not limited to, transportation by a bona fide private or exempt carrier operating under the provisions of the Public Utilities Act, positioning, blocking, leveling, supporting, tying down, connecting utility systems, making minor adjustments, or assembling multiple or expandable units. Such operations do not include lawful transportation services performed by public utilities operating under certificates or permits issued by the North Carolina Utilities Commission.~~

(13) ~~"Set-up contractor" means a~~ Set-up contractor. -- A person who engages in the business of performing ~~set-up operations~~ setups for compensation in North Carolina.

(14) ~~"Substantial defect" means any~~ Substantial defect. -- Any substantial deficiency in or damage to materials or workmanship occurring in a manufactured home which has been reasonably maintained and cared for in normal use. The term also means any structural element, utility system or component part of the manufactured home which fails to comply with the Code.

(15) ~~"Supplier" means the~~ Supplier. -- The original producer of completed components, including refrigerators, stoves, hot water heaters, dishwashers, cabinets, air conditioners, heating units, and similar components, and materials such as floor coverings, panelling, siding, trusses, and similar materials, which are furnished to a manufacturer or dealer for installation in the manufactured home prior to sale to a buyer.

"§ 143-143.10. Manufactured Housing Board created; membership; terms; meetings.

(a) There is ~~hereby~~ created the North Carolina Manufactured Housing Board within the ~~Department of Insurance.~~ Department. The Board shall be composed of nine members as follows:

(1) The Commissioner of Insurance or his ~~designee~~ designee.
(2) A manufactured home ~~manufacturer~~ manufacturer.
(3) A manufactured home ~~dealer~~ dealer.
(4) A representative of the banking and finance ~~business~~ business.
(5) A representative of the insurance ~~industry~~ industry.
(6) A manufactured home ~~supplier~~ supplier.
(7) A set-up ~~contractor~~ contractor.
(8) Two representatives of the general public.

The Commissioner ~~of Insurance~~ or his designee shall ~~serve as chairman of~~ chair the Board. The Governor shall appoint to the Board the manufactured home manufacturer and the manufactured home dealer. The General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121 shall appoint the representative of the banking and finance industry and the representative of the insurance industry. The General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121 shall appoint the manufactured home supplier and set-up contractor. The Commissioner ~~of Insurance~~ shall appoint two representatives of the general public. Except for the representatives from the general public and the persons appointed by the General Assembly, each member of the Board shall be appointed by the appropriate appointing authority from a list of nominees submitted to the appropriate appointing authority by the Board of Directors of the North Carolina Manufactured Housing Institute. At least three nominations shall be submitted for each position on the Board. The members of the Board shall be residents of the State.

The members of the Board shall serve for terms of three ~~years to begin on October 1, 1981, except that the persons appointed by the General Assembly upon the recommendation of the Speaker shall serve two-year terms to expire on September 30, 1985, and the persons appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate shall serve for three-year terms to expire on September 30, 1986.~~ years. In the event of any vacancy of a position appointed by the Governor or ~~Commissioner of Insurance,~~ Commissioner, the appropriate appointing authority shall appoint a replacement in the same manner as provided for the original appointment to serve the remainder of the unexpired term. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. In the event of any vacancy, the appropriate appointing authority shall appoint a replacement to serve the remainder of the unexpired term. Such appointment shall be made in the same manner as provided for the original appointment. No member of the Board shall serve more than two consecutive, three-year terms.

The member of the Board representing the general public shall have no financial interest connected with the manufactured housing industry. No member of the Board shall participate in any proceeding before the Board involving that member's own business.

Each member of the Board, except the Commissioner ~~of Insurance~~ and any other State employee, shall receive per diem and allowances as provided with respect to

occupational licensing boards by G.S. 93B-5. All per diem and travel expenses shall be paid exclusively out of the fees received by the Board as authorized by this Article. In no case shall any salary, expense, or other obligation of the Board be charged against the ~~Treasury~~ General Fund of the State of North Carolina. All moneys and receipts shall be kept in a special fund by and for the use of the Board for the exclusive purpose of carrying out the provisions of this Article. Unexpended funds shall not revert to the General Fund.

(b) In accordance with the provisions of this Article, the ~~North Carolina Manufactured Housing~~ Board shall have the following powers and duties:

(1) To issue licenses to manufacturers, dealers, ~~salesmen~~ salespersons, and set-up ~~contractors;~~ contractors.

(2) To require that an adequate bond or other security be posted by all licensees, except manufactured housing ~~salesmen;~~ salespersons.

(3) To receive and resolve complaints from buyers of manufactured homes and from persons in the manufactured housing industry, in connection with the warranty, warranty service, licensing requirements or any other provision under this ~~Article; and~~ Article.

(4) To ~~promulgate~~ adopt rules in accordance with Chapter 150B of the General Statutes as are necessary to carry out the provisions of this Article.

(5) To file against the bond posted by a licensee for warranty repairs and service on behalf of a buyer.

"**§ 143-143.11. License required; application for license.**

(a) It shall be unlawful for any manufactured home manufacturer, dealer, ~~salesman~~ salesperson, or set-up contractor to engage in business as such in this State without first obtaining a license from the Board, as provided in this Article. The fact that a person is licensed by the Board as a set-up contractor or a dealer does not preempt any other licensing boards' applicable requirements for that person.

(b) Application for ~~such~~ the license shall be made to the Board at such time, in such form, and contain ~~such~~ information ~~as~~ the Board ~~shall require;~~ requires, and shall be accompanied by the ~~required~~ fee established by the Board. ~~Such~~ The fee shall not exceed three hundred dollars ($300.00) for any license.

(c) In ~~such~~ the application, the Board shall require information relating to the matters set forth in G.S. 143-143.13 as grounds for refusal of a license, and information relating to other pertinent matters consistent with safeguarding the public interest. All ~~such~~ of this information shall be considered by the Board in determining the fitness of the ~~applicant to engage in the business for which a license is sought.~~ applicant.

(d) All licenses ~~that are granted~~ shall expire, unless ~~sooner~~ revoked or suspended, on June 30 of each year following the date of issue.

(e) Every ~~registrant under this Chapter~~ licensee shall, on or before the first day of July of each year, obtain a renewal of a license for the ~~ensuing~~ next year, by application, accompanied by the required ~~fee; and upon~~ fee. Upon failure to renew,

~~his~~ a license ~~shall~~ automatically ~~expire; but such~~ expires. The license may be renewed at any time within one year upon payment of the ~~prescribed renewal fee and upon evidence satisfactory to the Board that the applicant has not engaged in business as a manufactured home manufacturer, dealer, salesman or set-up contractor after expiration of the license and is otherwise eligible for registration under the provisions of this Chapter.~~ renewal fee.

(f) Supplemental licenses shall be issued for each place of business, operated or proposed to be operated by the licensee, that is not contiguous to other premises for which a license is issued. The fee for a supplemental license shall be established by the Board and shall not exceed three hundred dollars ($300.00), provided that no supplemental license shall be required for a place of business operated by a licensee that is used exclusively for storage.

(g) Notwithstanding the provisions of subsection (a), the Board may provide by rule that a manufactured home ~~salesman~~ salesperson will be allowed to engage in business during the time period after making application for a license but before such license is granted.

(h) ~~To obtain~~ As a prerequisite to obtaining a license under this Article, a person ~~must~~ may be required to pass an examination prescribed by the Board that is based on the ~~North Carolina Manufactured/Mobile Home Regulations and Administrative Procedures required to enforce the Codes.~~ Code, this Article, and any other subject matter considered relevant by the Board.

"§ 143-143.11A. Notification of change of address; service of notice.

(a) Every applicant for a license shall inform the Board of the applicant's business address. Every licensee shall give written notification to the Board of any change in the licensee's business address, for whatever reason, within 10 business days after the licensee moves to a new address or a change in the address takes place. A violation of this subsection shall not constitute grounds for revocation, suspension, or non-renewal of a license or for the imposition of any other penalty by the Board.

(b) Notwithstanding any other provision of law, whenever the Board is authorized or required to give notice to a licensee under this Article, the notice may be delivered personally to the licensee or sent by first-class mail to the licensee at the address provided to the Board under subsection (a) of this section. Notice shall be deemed given four days after mailing, and any Department employee may certify that notice has been given.

"§ 143-143.11B. Continuing education.

(a) The Board may establish programs and requirements of continuing education for licensees, but shall not require licensees to complete more than eight credit hours of continuing education. Prior to the renewal of a license, a licensee shall present evidence to the Board that he or she has completed the required number of continuing education hours in courses approved by the Board during the two months immediately preceding the expiration of his or her license.

(b) The Board may establish nonrefundable fees for the purpose of providing staff and resources to administer continuing education programs, and may establish nonrefundable course application fees, not to exceed one hundred fifty dollars

($150.00), for the Board's review and approval of proposed continuing education courses. The Board may charge the sponsor of an approved course a nonrefundable fee not to exceed seventy-five dollars ($75.00) for the annual renewal of course approval. The Board may also require a course sponsor to pay a fee, not to exceed five dollars ($5.00) per credit hour per licensee, for each licensee completing an approved continuing education course conducted by the sponsor. The Board may award continuing education credit for an unapproved course or related educational activity and may prescribe procedures for a licensee to submit information on an unapproved course or related educational activity for continuing education credit and may charge the licensee a fee not to exceed fifty dollars ($50.00) for each course or activity submitted. Any unexpended revenue from the fees shall not revert to the General Fund.

(c) The Board may adopt any reasonable rules not inconsistent with this Article to give purpose and effect to the continuing education requirement, including rules that govern:

(1) The content and subject matter of continuing education courses.

(2) The criteria, standards, and procedures for the approval of courses, course sponsors, and course instructors.

(3) The methods of instruction.

(4) The computation of course credit.

(5) The ability to carry forward course credit from one year to another.

(6) The waiver of or variance from the continuing education requirement for hardship or other reasons.

(7) The procedures for compliance and sanctions for noncompliance.

(d) The license of any person who fails to comply with the continuing education requirements under this section shall lapse. The Board may, for good cause shown, grant extensions of time to licensees to comply with these requirements. Any licensee who, after obtaining an extension, offers evidence satisfactory to the Board that he or she has satisfactorily completed the required continuing education courses shall be deemed in compliance with this section.

"**§ 143-143.12. Bond required.**

(a) A person licensed as a manufactured home ~~salesman~~ salesperson shall not be required to furnish a bond, but each applicant approved by the Board for license as a manufacturer, dealer, or set-up contractor shall furnish a corporate surety bond, cash bond or fixed value equivalent ~~thereof~~ in the following amounts:

(1) For a ~~manufactured,~~ manufacturer, two thousand dollars ($2,000) per manufactured home manufactured in the prior license year, up to a maximum of one hundred thousand dollars ($100,000). When no manufactured homes were produced in the prior year, the amount required shall be based on the estimated number of manufactured homes to be produced during the current ~~year;~~ year.

(2) For a dealer ~~who buys, sells, or deals in manufactured homes and~~ who has four or less places of business, the amount shall be twenty-five thousand dollars ~~($25,000);~~ ($25,000).

(3) For a dealer ~~who buys, sells, or deals in manufactured homes and~~ who has more than four places of business, the amount shall be fifty thousand dollars ~~($50,000);~~ ($50,000).

(4) For a set-up contractor, the amount shall be five thousand dollars ($5,000).

(b) A corporate surety bond shall be approved by the Board as to form and shall be conditioned upon the obligor faithfully conforming to and abiding by the provisions of this Article. A cash bond or fixed value equivalent ~~thereof~~ shall be approved by the Board as to form and terms of deposits in order to secure the ultimate beneficiaries of the bond. A corporate surety bond shall be for a one-year period, and a new bond or a proper continuation certificate shall be delivered to the Board at the beginning of each subsequent one-year period.

(c) Any buyer of a manufactured home who suffers any loss or damage by any act of a licensee that constitutes a violation of this Article ~~shall have the right to~~ may institute an action to recover against ~~such~~ the licensee and the surety.

(d) The Board may adopt rules to assure satisfaction of claims.

"**§ 143-143.13. Grounds for denying, ~~suspending~~ suspending, or revoking ~~license~~ licenses; civil penalties.**

(a) A license may be denied, suspended or revoked by the Board on any one or more of the following grounds:

(1) ~~Material~~ Making a material misstatement in application for ~~license;~~ license.

(2) ~~Failure~~ Failing to post an adequate corporate surety bond, cash bond or fixed value ~~equivalent thereof;~~ equivalent.

(3) Engaging in the business of manufactured home manufacturer, dealer, ~~salesman~~ salesperson, or set-up contractor without first obtaining a license from the ~~Board;~~ Board.

(4) ~~Failure~~ Failing to comply with the warranty service obligations and claims procedure established by this ~~Article;~~ Article.

(5) ~~Failure~~ Failing to comply with the ~~set-up and tie-down~~ set-up requirements established by this ~~Article;~~ Article.

(6) ~~Having knowingly failed or refused~~ Failing or refusing to account for or to pay over moneys or other valuables belonging to others ~~which~~ that have come into licensee's possession arising out of the sale of manufactured ~~homes;~~ homes.

(7) ~~Use of~~ Using unfair methods of competition or committing unfair or deceptive ~~commercial~~ acts or ~~practices;~~ practices.

(8) ~~Failure~~ Failing to comply with any provision of this ~~Article;~~ Article.

(9) ~~Failure~~ Failing to appear for a hearing before the Board or for a prehearing conference with a person or persons designated by the

Board ~~upon due~~ after proper notice or failing to ~~follow directives~~ comply with orders of the Board issued pursuant to this ~~Article;~~ Article.

(10) Employing unlicensed ~~retail salesmen;~~ salespersons.

(11) ~~Knowingly offering for sale the products of manufacturers who are not licensed pursuant to this Article or selling, to dealers not licensed pursuant to this Article, manufactured homes which are to be sold in this State to buyers as defined in this Article;~~ Offering for sale manufactured homes manufactured or assembled by unlicensed manufacturers or selling manufactured homes to unlicensed dealers for sale to buyers in this State.

(12) Conviction of a felony or any crime involving moral ~~turpitude;~~ turpitude.

(13) Having had a license revoked, suspended or denied by the ~~Board under this Article;~~ Board; or having had a license revoked, suspended or denied by a similar entity in another state; or engaging in conduct in another state which conduct, if committed in this State, would have been a violation under this ~~Article;~~ Article.

(14) ~~Knowingly engaging~~ Employing or contracting with any person to perform ~~set up operations~~ setups who is not licensed by the Board as a set-up contractor.

(b) Repealed by Session Laws 1985, c. 666, s. 38.

(c) In addition to the authority to deny, suspend, or revoke a license under this Article, the Board ~~also has the authority to~~ may impose a civil penalty upon any person violating the provisions of this Article. Upon a finding by the Board of a violation of this Article, the Board shall ~~direct~~ order the payment of a penalty of not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00). In determining the amount of the penalty, the Board shall consider the degree and extent of harm caused by the violation, the amount of money that inured to the benefit of the violator as a result of the violation, whether the violation was committed willfully, and the prior record of the violator in complying or failing to comply with laws, rules, or orders applicable to the violator. Each day during which a violation occurs shall constitute a separate offense. The penalty shall be payable to the Board. The Board shall remit the clear proceeds of penalties provided for in this subsection to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

Payment of the civil penalty under this section shall be in addition to payment of any other penalty for a violation of the criminal laws of this State. Nothing in this subsection shall prevent the Board from negotiating a mutually acceptable agreement with any person as to the status of the person's license or certificate or as to any civil penalty.

"**§ 143-143.14. ~~Notice and hearing.~~ Hearings; rules.**

(a) License suspensions, revocations, and renewal refusals are subject to the provisions of Chapter 150B of the General Statutes.

(b) If the Board finds that an applicant has not met the requirements for licensure, the Board shall refuse to issue the applicant a license and shall notify the applicant in writing of the denial and the grounds for the denial. The application may also be denied for any reason for which a license may be suspended or revoked or not renewed under G.S. 143-143.13. Within 30 days after receipt of a notification that an application for a license has been denied, the applicant may make a written request for a review by a member of the Department staff designated by the ~~chairman~~ chair of the Board to determine the reasonableness of the Board's action. The review shall be completed without undue delay, and the applicant shall be notified promptly in writing as to the outcome of the review. Within 30 days after service of the notification as to the outcome, the applicant may make a written request for a hearing under Article 3A of Chapter 150B of the General Statutes if the applicant disagrees with the outcome.

(c) The Board may adopt rules for hearings and prehearing conferences under this Article, and the rules may include provisions for prefiled evidence, the use of evidence, testimony of parties, prehearing statements, prehearing conference procedures, settlement conference procedures, discovery, subpoenas, sanctions, motions, intervention, consolidation of cases, continuances, and the rights and responsibilities of parties and witnesses.

"§ 143-143.15. ~~Set-up and tie-down~~ Set-up requirements.

(a) Manufactured homes shall be set up ~~and anchored~~ in accordance with the standards adopted by the Commissioner.

(b) ~~In the event that~~ If a manufactured home is insured against damage caused by windstorm and subsequently sustains windstorm damage ~~of a nature~~ that indicates the manufactured home was not ~~anchored or tied down~~ set up in the manner required by this section, the insurer issuing the ~~homeowner's~~ insurance policy on the manufactured home shall not be relieved from meeting the obligations specified in the insurance policy with respect to such damage on the basis that the ~~mobile~~ manufactured home was not properly ~~anchored or tied down.~~ set up.

"§ 143-143.16. Warranties.

Each manufacturer, dealer and supplier of manufactured homes shall warrant each new manufactured home sold in this State ~~and the setup of each such manufactured home~~ in accordance with the warranty requirements prescribed by this section for a period of at least 12 months, measured from the date of delivery of the manufactured home to the buyer. The warranty requirements for each manufacturer, dealer, supplier and set-up contractor of manufactured homes are as follows:

(1) The manufacturer warrants that all structural elements, plumbing systems, heating, cooling and fuel burning systems, electrical systems, and any other components included by the manufacturer are manufactured and installed free from substantial ~~defect.~~ defects.

(2) The dealer warrants:

a. That any modifications or alterations made to the manufactured home by the dealer or authorized by the dealer are free from substantial defects. Alterations or modifications made by a dealer shall relieve the manufacturer of warranty responsibility as to the item altered or modified and any ~~damage resulting therefrom.~~ resulting damage.

b. That ~~set-up operations~~ a setup performed by the dealer on the manufactured home ~~are~~ is performed in compliance with ~~applicable standards adopted by the Commissioner for the installation of manufactured homes.~~ the Code.

c. ~~That, during the course of setup~~ That the setup and transportation of the manufactured home ~~performed~~ by the ~~dealer, substantial defects do not occur to the manufactured home.~~ dealer did not result in substantial defects.

(3) The supplier warrants that any warranties generally offered in the ordinary sale of his product to consumers shall be extended to buyers of manufactured homes. The manufacturer's warranty shall remain in effect notwithstanding the existence of a supplier's warranty.

(4) The set-up contractor warrants that ~~set-up operations are performed~~ the manufactured home is set up in compliance with ~~applicable standards adopted by the Commissioner for the installation of manufactured homes,~~ the Code and that ~~during the course of set-up operations performed on the manufactured home, substantial defects do not occur to the manufactured home.~~ the setup did not result in any substantial defects.

"§ 143-143.17. Presenting claims for warranties and substantial defects.

(a) Whenever a claim for warranty service or about a substantial defect is made to a licensee, it shall be handled as provided ~~by~~ in this Article. ~~A~~ The licensee shall make a record ~~shall be made~~ of the name and address of each claimant and the date, substance, and disposition of each claim about a substantial defect. The licensee may request that a claim be in writing, but must nevertheless record it as provided above, and may not delay service pending receipt of the written claim.

(b) When the licensee notified is not the responsible party, he shall in writing immediately notify the claimant ~~of that fact, and shall also in writing immediately notify~~ and the responsible party of the claim. When a responsible party is asked to remedy defects, it may not fail to remedy those defects because another party may also be responsible. Nothing ~~herein shall prevent such~~ in this section prevents a party from obtaining compensation by way of contribution or subrogation from another responsible party in accordance with any other provision of law or contract.

(c) Within the time limits provided in this Article, the licensee shall either resolve the claim or determine that it is not justified. At any time a licensee determines that a claim for warranty service is not justified in whole or in part he shall immediately

notify the claimant in writing that the claim or part of the claim is rejected and why, and shall inform the claimant that he is entitled to complain to the Board, for which a complete mailing address shall be provided. ~~Within five working days of its receipt of a complaint, the Board shall send a complete copy thereof to the Attorney General and to the Commissioner of Insurance.~~

"§ 143-143.18. Warranty service.

(a) When a service agreement exists between or among a manufacturer, dealer and supplier to provide warranty service, the agreement shall specify which party is to remedy warranty defects. Every ~~such~~ service agreement shall be in writing. Nothing contained in such an agreement shall relieve the responsible party, as provided by this Article, of responsibility to perform warranty service. However, any licensee undertaking by such agreement to perform the warranty service obligations of another shall thereby himself become responsible both to that other licensee and to the buyer for his failure adequately to perform as agreed.

(b) When no service agreement exists for warranty service, the responsible party as designated by ~~the provisions of~~ this Article is responsible for remedying the warranty defect.

(c) A substantial defect shall be remedied within 45 days ~~of~~ after the receipt of written notification from the claimant. If no written notification is given, the defect shall be remedied within 45 days ~~of~~ after the mailing of notification by the Board, unless the claim is unreasonable or bona fide reasons exist for not remedying the defect within the 45-day period. The responsible party shall respond to the claimant in writing with a copy to the Board stating its reasons for not promptly remedying the defect and stating what further action is contemplated by the responsible party. Notwithstanding the foregoing provisions of this subsection, defects, which constitute an imminent safety hazard to life and health shall be remedied within five working days of receipt of the written notification of the warranty claim. An imminent safety hazard to life and health shall include but not be limited to (i) inadequate heating in freezing weather; (ii) failure of sanitary facilities; (iii) electrical shock, leaking gas; or (iv) major structural failure. The Board may suspend this five-day time period in the event of widespread defects or damage resulting from adverse weather conditions or other natural catastrophes.

(d) When the person remedying the defect is not the responsible party as designated by the provisions of this Article, he shall be entitled to reasonable compensation paid to him by the responsible party. Conduct ~~which~~ that coerces or requires a nonresponsible party to perform warranty service is a violation of this Article.

(e) Warranty service shall be performed at the site at which the ~~mobile~~ manufactured home is initially delivered to the buyer, except for components which can be removed for service without substantial expense or inconvenience to the buyer.

(f) Any dealer, manufacturer or supplier ~~shall have the right to~~ may complain to the Board when warranty service obligations under this Article are not being enforced.

"§ 143-143.19. Dealer alterations.

(a) No alteration or modification shall be made to a manufactured home by a dealer after shipment from the manufacturer's plant, unless such alteration or modification is authorized by this Article or the manufacturer. The dealer shall ensure that all authorized alterations and modifications are performed, if so required, by qualified persons as defined in subsection (d). An unauthorized alteration or modification performed by a ~~manufactured home~~ dealer or his agent or employee shall place primary warranty responsibility for the altered or modified item upon the dealer. If the manufacturer fulfills or is required to fulfill the warranty on the altered or modified item, he shall be entitled to recover damages in the amount of his cost and attorney's fee from the dealer.

(b) An unauthorized alteration or modification of a manufactured home by the owner or his agent shall relieve the manufacturer of responsibility to remedy defects caused by such alteration or modification. A statement to this effect, together with a warning specifying those alterations or modifications which should be performed only by qualified personnel in order to preserve warranty protection, shall be displayed clearly and conspicuously on the face of the warranty. Failure to display such statement shall result in warranty responsibility on the manufacturer.

(c) The Board is authorized to ~~promulgate~~ adopt rules in accordance with Chapter 150B of the General Statutes ~~which~~ that define the alterations or modifications which must be made by qualified personnel. The Board may require qualified personnel only for those alterations and modifications which could substantially impair the structural integrity or safety of the manufactured home.

(d) In order to be designated as a person qualified to alter or modify a manufactured home, a person must comply with State licensing or competency requirements in skills relevant to performing alterations or modifications on manufactured homes.

"§ 143-143.20. Disclosure of manner used in determining length of manufactured homes.

In any advertisement or other communication regarding the length of a manufactured home, a manufacturer or dealer shall not include the coupling mechanism in describing the length of the home.

"§ 143-143.21: Repealed by Session Laws 1993, c. 409, s. 6, and applicable to purchase agreements executed on or after that date.

"§ 143-143.21A. ~~Refund of buyer deposit.~~ Purchase agreements; buyer cancellations.

(a) ~~A dealer shall record the following information in a retail~~ A purchase agreement for a manufactured ~~home:~~ home shall include all of the following:

(1) A description of the manufactured home and all accessories included in the ~~purchase;~~ purchase.

(2) The purchase price for the home and all ~~accessories;~~ accessories.

(3) The amount of ~~deposit;~~ deposit or other payment toward or payment of the purchase price of the manufactured home and accessories that is made by the buyer.

(4) The date the retail purchase agreement is ~~signed; and~~ signed.

(5) The estimated terms of financing the purchase, if any, including the estimated interest rate, number of years financed, and monthly payment.

(6) The buyer's signature.

(7) The dealer's signature.

(b) ~~A dealer must present to the buyer and obtain his signature to a retail purchase agreement at the time the deposit is received.~~ The purchase agreement shall contain, in immediate proximity to the space reserved for the signature of the buyer and in at least ten point, all upper-case Gothic type, ~~a statement in substantially~~ the following ~~form:~~ statement:

'I UNDERSTAND THAT I HAVE THE RIGHT TO CANCEL THIS PURCHASE ~~PRIOR TO~~ BEFORE MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE THAT I HAVE SIGNED THIS AGREEMENT. I UNDERSTAND THAT THIS CANCELLATION MUST BE IN WRITING. IF I ~~ATTEMPT TO~~ CANCEL THE PURCHASE AFTER THE THREE-DAY PERIOD, I UNDERSTAND THAT THE DEALER ~~HAS NO~~ MAY NOT HAVE ANY OBLIGATION TO ~~REFUND THE ENTIRE AMOUNT OF MY DEPOSIT.'~~ 'GIVE ME BACK ALL OF THE MONEY THAT I PAID THE DEALER.'

(c) ~~The~~ At the time the deposit or other payment toward or payment for the purchase price is received by the dealer, the dealer ~~must~~ shall give ~~to~~ the buyer a copy of the purchase agreement ~~along with~~ and a completed form in duplicate, captioned 'Notice of ~~Cancellation",~~ Cancellation,' which shall be attached to the purchase agreement, be easily detachable, and ~~shall~~ explain ~~in plain English~~ the buyer's right to cancel the ~~agreement~~ purchase and how that right can be exercised.

(d) ~~A dealer~~ The dealer shall ~~refund to a buyer the full amount of a deposit on the purchase of a manufactured home~~ return the deposit or other payment toward or payment for the purchase price to the buyer if the buyer cancels the purchase before midnight of the third business day after the date the buyer signed the purchase agreement. ~~In order to make an effective cancellation, the buyer must notify the dealer, in writing, of the buyer's intent to cancel the purchase agreement.~~ To make the cancellation effective, the buyer shall give the dealer written notice of the buyer's cancellation of the purchase. The dealer shall ~~make the refund promptly and, in any event,~~ return the deposit or other payment toward or payment for the purchase price to the buyer within 15 business days ~~from~~ after receipt of the notice of cancellation. For purposes of this section, 'business day' ~~shall mean Monday through Saturday, excluding~~ means any day except Sunday and legal holidays.

(e) If the buyer cancels the purchase ~~agreement~~ after the three-day cancellation period, but before the ~~home is delivered to the buyer, then,~~ sale is completed, and if:

(1) ~~If the~~ The manufactured home is in the dealer's inventory, the dealer may retain from the deposit or other payment received from the buyer actual damages up to a maximum of ten percent (10%) of the purchase price; or

(2) ~~If the~~ The manufactured home is specially ordered from the manufacturer for the buyer, the dealer may retain actual damages up to the full amount of the buyer's ~~deposit.~~ deposit or other payment received from the buyer.

"§ 143-143.22. Inspection of service records.

The Board ~~is authorized to~~ may inspect the ~~pertinent~~ service records of a manufacturer, dealer, supplier or set-up contractor relating to a written warranty claim or complaint made to the Board against ~~such~~ the manufacturer, dealer, supplier, or set-up contractor. Every licensee shall send to the Board upon request within 10 days a ~~true~~ copy of every document or record pertinent to any complaint or claim for service.

"§ 143-143.23. Other remedies not excluded.

Nothing in this ~~Article nor~~ Article, rules adopted by the Board, or any ~~decision by~~ action of the Board shall limit any right or remedy available to the buyer ~~at common law or under any other statute, nor limit~~ or any power or duty of the Attorney General.

"§ 143-143.24. Engaging in business without license a Class 1 misdemeanor.

If any person shall unlawfully act as a manufactured home manufacturer, dealer, ~~salesman,~~ salesperson, or set-up contractor without first obtaining a license from the ~~North Carolina Manufactured Housing~~ Board, as provided in this Article, he shall be guilty of a Class 1 misdemeanor.

"§ 143-143.25. Staff support for Board.

The Manufactured ~~Housing~~ Building Division of the Department shall provide clerical and other staff services required by the Board; and shall administer and enforce all provisions of this Article and all rules adopted under this Article, subject to the direction of the Board; except for powers and duties delegated by this Article to local units of government, other State agencies, or to any persons."

Section 2. Article 9B of Chapter 143 of the General Statutes reads as rewritten:

"ARTICLE 9B.

"Uniform Standards Code for Manufactured Homes.

"§ 143-144. Short title.

This Article shall be known and may be cited as 'The Uniform Standards ~~Code~~ for Manufactured Homes Act.'

"§ 143-145. Definitions.

The following definitions apply in this Article:

~~Unless clearly indicated otherwise by context, the following words when used in this Article, for the purpose of this Article, shall have the meanings respectively ascribed to them in this section:~~

(1) ~~"Certificate of compliance" means a certificate issued by an inspection department approved and licensed by the Council as being competent which certificate shall be valid only within the jurisdiction of the inspection department and on which certificate shall be recorded.~~

~~a. The inspection department issuing such certificate;~~
~~b. The date of issue;~~
~~c. The serial or other identification number of such manufactured home and the name of the manufacturer;~~
~~d. A certification that such manufactured home was on the day of inspection so opened that its entire structural, electrical, heating, plumbing and air-conditioning systems could be closely observed and inspected;~~
~~e. A certification that said manufactured home complies in full with the standards and rules and regulations prescribed in this Article.~~

Act. -- The National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. § 5401, et seq., federal regulations adopted under the Act, and any laws enacted by the United States Congress that supersede or supplement the Act.

(2) ~~"Commissioner" means the~~ Commissioner. -- The Commissioner of Insurance of the State of North ~~Carolina.~~ Carolina or an authorized designee of the Commissioner.

~~(3) "Competent" shall mean competent to technically evaluate, test, and inspect in accordance with the standards, rules and regulations prescribed in this Article: the structural features, the plumbing, heating, electrical and air-conditioning systems and the materials used in the construction of a manufactured home.~~

(4) ~~"Council" means the North Carolina State Building Code Council.~~ HUD. -- The United States Department of Housing and Urban Development or any successor agency.

(5) ~~"Inspection department" means a~~ Inspection department. -- A North Carolina city or county building inspection department authorized by Chapter ~~160~~ 160A or Chapter ~~153~~ 153A of the General Statutes.

(6) ~~"Label of compliance" shall mean a permanent label or seal permanently attached to a manufactured home at completion of construction thereof which is issued by any independent, solvent, and trustworthy person approved and licensed by the Council as being competent and as having and utilizing initial and follow-up manufacturing inspection services which provide the highest degree of quality control, and on which seal or label shall be recorded:~~
~~a. The person issuing such label or seal and the serial number of the label or seal;~~
~~b. The serial or other identification number of said manufactured home;~~
~~c. A certification that said manufactured home was evaluated, tested, and inspected in accordance with the standards and rules and regulations prescribed in this Article.~~

Label. -- The form of certification required by HUD to be permanently affixed to each transportable section of each manufactured home manufactured for sale to a purchaser in the United States to indicate that the manufactured home conforms to all applicable federal construction and safety standards.

(7) ~~"Manufactured home" means a~~ Manufactured home. -- A structure, transportable in one or more sections, which in the traveling mode is eight body feet or more in width, or 40 body feet or more in length, or, when erected on site, is 320 or more square feet; and which is built on a permanent chassis and designed to be used as a dwelling, with or without permanent foundation when connected to the required utilities, including the plumbing, heating, air conditioning and electrical systems contained therein. 'Manufactured home' includes any structure that meets all of the requirements of this subsection except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of ~~the United States Department of Housing and Urban Development~~ HUD and complies with the standards established under the ~~National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. §5401, et seq.~~ Act.

For manufactured homes built ~~prior to~~ before June 15, 1976, 'manufactured home' means a portable manufactured housing unit designed for transportation on its own chassis and placement on a temporary or semipermanent foundation having a measurement of over 32 feet in length and over eight feet in width. 'Manufactured home' also means a double-wide manufactured home, which is two or more portable manufactured housing units designed for transportation on their own chassis that connect on site for placement on a temporary or semipermanent foundation having a measurement of over 32 feet in length and over eight feet in width.

~~(8) "Person" means any corporation, partnership, association, voluntary organization or governmental agency of the United States or any state therein and does not mean an individual natural person.~~

"§ 143-146. Statement of policy; rule-making power.

(a) Manufactured homes, because of the manner of their construction, assembly and use and that of their systems, components and appliances (including heating, plumbing and electrical systems) like other finished products having concealed vital parts may present hazards to the health, life and safety of persons and to the safety of property unless properly manufactured. In the sale of manufactured homes, there is also the possibility of defects not readily ascertainable when inspected by purchasers. It is the policy and purpose of this State to provide protection to the public against those possible hazards, and for that purpose to forbid the manufacture and sale of

new manufactured homes, which are not so constructed as to provide reasonable safety and protection to their owners and users. This Article ~~is intended to provide~~ provides to the Commissioner all necessary authority to enable the State to obtain approval as a State Administrative Agency under the provisions of the ~~National Manufactured Housing Construction and Safety Standards Act of 1974.~~ Act.

~~(b) The Commissioner shall make and promulgate rules embodying the standards for construction or manufacture of manufactured homes set by the Department of Housing and Urban Development under the provisions of the National Manufactured Housing Construction and Safety Standards Act of 1974, as these standards may be amended.~~

~~(c) The Council is authorized to make and promulgate reasonable rules and regulations governing the procedure to be followed by a person or inspection department seeking to obtain a license pursuant to the provisions of this Article which shall provide opportunity for hearing before the Council on such application.~~

~~(d) In order to insure the highest degree of quality control in the manufacture of manufactured homes, the Council is further authorized and empowered to make and promulgate reasonable rules and regulations governing the initial and follow-up manufacturing inspection practices and procedures to be performed by any person granted a license to issue a label of compliance pursuant to this Article. In order to assure uniformity in standards and enforcement, such rules and regulations may also provide that any such licensee and its operations may be inspected from time to time by any other person or licensee designated by the Council who shall report the results of such examination to the Council. In such case the reasonable expense incurred by the examiner in making such inspection shall be borne by the licensee whose operations were examined.~~

(e) The Commissioner ~~is authorized to promulgate such~~ may adopt rules ~~as are necessary~~ to carry out the provisions of the Act and this Article, including rules ~~regarding~~ for consumer complaint ~~procedures, and such other~~ procedures and rules ~~as are necessary to enable the State to assume responsibility~~ for the enforcement of the ~~National Manufactured Housing Construction and Safety Standards Act of 1974.~~ standards and regulations established and adopted by HUD under the Act.

"**§ 143-147. ~~Approval and licensing of persons and inspection departments.~~** Structures built under previous standards.

~~(a) Any qualified person may make application to the Council for approval for license to issue labels of compliance. Any inspection department may make application to the Council for approval for issuing certificates of compliance. The Council after notice and hearing, if satisfied that such person or inspection department meets the qualifications prescribed in this Article, shall cause a license to be issued which license shall be valid for a consecutive period of 12 months and may be renewed for like consecutive periods on application to and approval by the Council;~~

~~(b) Any such license issued to a person other than an inspection department may be suspended or revoked after notice and hearing if such person:~~

~~(1) Is either insolvent, not competent, not independent, or untrustworthy;~~
~~(2) Has made false statements in his application to the Council for license;~~
~~(3) Fails or neglects to perform evaluations, testing, or manufacturing inspections in accordance with its proposed plans and procedures submitted to the Council or fails to comply with any applicable rules and regulations promulgated by the Council pursuant to G.S. 143-146(d);~~
~~(4) Has repeatedly, specifically or by implication authorized the attachment of its label of compliance to manufactured homes and such manufactured homes did not meet the standards and rules and regulations provided by this Article at the time said labels were attached.~~

~~(c) Any such license issued to an inspection department may be suspended or revoked after notice and hearing if such department:~~
~~(1) Is not competent;~~
~~(2) Has issued a certificate of compliance on a manufactured home when such manufactured home was not opened for inspection so that the entire structural, electrical, heating, plumbing and air-conditioning systems could be closely observed and inspected;~~
~~(3) Has issued a certificate of compliance on a manufactured home and such manufactured home did not at the time of inspection meet the standards and rules and regulations provided by this Article.~~

The legal status of any structure built before the effective date of the Act shall not be affected by any changes made in this Article by the General Assembly.

"§ 143-148. Certain structures excluded from coverage.

The Commissioner may by rule provide for the exclusion of certain structures by certification in accordance with the ~~National Manufactured Housing Construction and Safety Standards Act of 1974.~~ Act.

"§ 143-149. Necessity for obtaining label ~~or certificate~~ for purposes of sale.

No ~~individual natural person, firm, partnership, association or corporation~~ person shall ~~after September 1, 1971,~~ sell or offer for sale any manufactured home in this ~~State, which manufactured home~~ State that does not ~~bear permanently attached thereto a label of compliance or for which manufactured home the individual natural person, firm, partnership, association, or corporation selling or offering to sell such manufactured home does not have a certificate of compliance; provided it shall be~~ have a label. It is a defense to any prosecution for a violation of ~~the provisions of~~ this section if ~~such individual natural person, firm, partnership, association or corporation shall show~~ a person shows that a certificate of title for ~~such~~ the manufactured home as required by G.S. 20-52 was obtained ~~prior to September 1, 1971,~~ before June 15, 1976, or produces other satisfactory evidence on file with the North Carolina

~~Department~~ Division of Motor Vehicles that ~~such~~ the manufactured home was manufactured ~~prior to September 1, 1971.~~ before June 15, 1976.

"§ 143-150. No electricity to be furnished units not in compliance.

It is unlawful for any person to ~~initially~~ furnish electricity for use in any manufactured home without first ascertaining that the manufactured home and its electrical supply has been inspected pursuant to G.S. 143-139 by the inspection authority having jurisdiction and found to comply with the requirements of the State Electrical Code. The certificate of compliance issued by the inspection jurisdiction shall be accepted as evidence of compliance.

"§ 143-151. Penalties.

(a) ~~Whoever violates (i) the provisions of this Article; or (ii)~~ Any person who is found by the Commissioner to have violated the provisions of the Act, this Article, or any rules ~~promulgated~~ adopted under this Article, shall be liable for a civil penalty not to exceed one thousand dollars ($1,000) for each violation. Each ~~such~~ violation shall constitute a separate violation ~~with respect to~~ for each manufactured home or ~~with respect to~~ for each failure or refusal to allow or perform an act required ~~thereby, except that the~~ by the Act, this Article, or any rules adopted under this Article. The maximum civil penalty may not exceed one million dollars ($1,000,000) for any related series of violations occurring within one year ~~from~~ after the date of the first violation. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation, the amount of money that inured to the benefit of the violator as a result of the violation, whether the violation was willful, and the prior record of the violator in complying or failing to comply with laws, rules, or orders applicable to the violator. The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(b) Any individual, ~~corporation,~~ or a director, officer or agent of a corporation who knowingly and willfully violates the Act, this ~~Article~~ Article, or any rules ~~promulgated~~ adopted under this Article in a manner ~~which~~ that threatens the health or safety of any purchaser is guilty of a Class ~~1 misdemeanor.~~ I felony.

"§ 143-151.1. Enforcement.

The Commissioner ~~of Insurance or any inspection department~~ may initiate any appropriate action or proceeding to prevent, restrain, or correct any violation of the Act, this Article, or any rules adopted under this Article. The Commissioner, or any of his deputies or employees, upon showing proper credentials and in the discharge of their duties ~~pursuant to~~ under this Article, or the ~~National Manufactured Housing Construction and Safety Standards Act of 1974,~~ Act, is authorized at reasonable hours and without advance notice to enter and inspect all factories, warehouses, or establishments in ~~the State of North Carolina~~ this State in which manufactured homes are manufactured, stored or held for sale.

"§ 143-151.2. Fees.

(a) The Commissioner ~~may~~ shall establish a monitoring inspection fee in an amount ~~established~~ required by the Secretary of ~~Housing and Urban Development.~~ HUD. This monitoring inspection fee shall be an amount paid by each manufactured

home manufacturer in ~~the~~ this State for each manufactured home produced by the manufacturer in ~~that state.~~ this State.

(b) The monitoring inspection fee shall be paid by the manufacturer to the Secretary of ~~Housing and Urban Development~~ HUD or ~~such~~ the Secretary's ~~agent, who shall distribute the fees collected from all manufactured home manufacturers among the approved and conditionally approved states based on the number of manufactured homes whose first location after leaving the manufacturing plant is on the premises of a distributor, dealer, or purchaser in that state, and the extent of participation of the State in the joint monitoring team program established under the National Manufactured Housing Construction and Safety Standards Act of 1974.~~ agent.

"§ 143-151.3. Reports.

Each manufacturer, distributor, and dealer of manufactured homes shall establish and maintain such records, make such reports, and provide such information as the Commissioner or the Secretary of ~~Housing and Urban Development~~ HUD may reasonably require to be able to determine whether ~~such~~ the manufacturer, distributor, or dealer has acted or is acting in compliance with this Article, or the ~~National Manufactured Housing Construction and Safety Standards Act of 1974~~ Act and shall, upon request of a person ~~duly~~ designated by the Commissioner or the Secretary of ~~Housing and Urban Development,~~ HUD, permit ~~such~~ the person to inspect appropriate books, papers, records and documents relevant to determining whether ~~such~~ the manufacturer, distributor, or dealer has acted or is acting in compliance with this Article or the ~~National Manufactured Housing Construction and Safety Standards Act of 1974.~~ Act, and any rules adopted by the Commissioner under this Article.

"§ 143-151.4. Notification of ~~defects.~~ defects and correction procedures.

Every manufacturer of manufactured homes shall ~~furnish~~ provide for notification ~~of any defect~~ and correction procedures in any manufactured home produced by ~~such~~ the manufacturer ~~and correct such defect~~ in accordance with the Act, this Article, and any ~~procedures specified~~ rules adopted by the Commissioner.

"§ 143-151.5. Prohibited acts.

(a) No person shall:

(1) Manufacture for sale, lease, sell, offer for sale or lease, or introduce or deliver, or import into the United States, any manufactured home ~~which~~ that is manufactured on or after the effective date of any applicable manufactured home construction and safety standard under the Act or this Article and ~~which~~ that does not comply with ~~such~~ the standard, except as provided in ~~subsection (b);~~ subsections (b), (c), and (d) of this section.

(2) Fail or refuse to permit access to or copying of records, or fail to make reports or provide information, or fail or refuse to permit entry or inspection, as required under the Act or this ~~Article;~~ Article.

(3) Fail to furnish notification of any defect as required by ~~G.S. 143-151.4;~~ the Act or this Article.

(4) Fail to issue a ~~certificate of compliance,~~ label or issue a ~~certification to the effect that a manufactured home conforms to all applicable manufactured home construction and safety standards,~~ label if ~~such~~ the person in the exercise of due care has reason to know that ~~such certification~~ the label is false or misleading in a material ~~respect;~~ respect.

(5) Fail to comply with a rule adopted or an order issued by the Commissioner under this ~~Article; or~~ Article.

(6) Issue a certification pursuant to G.S. 143-148 if ~~such~~ the person in the exercise of due care has reason to know that ~~such~~ the certification is false or misleading in a material respect.

(b) (1) ~~Paragraph (1) of subsection (a) shall~~ Subdivision (a)(1) of this section does not apply to the sale, the offer for sale, or the introduction or delivery of any manufactured home after the first purchase of it in good faith for purposes other than resale.

(2) ~~Paragraph (1) of subsection (a) shall~~ Subdivision (a)(1) of this section does not apply to any person who establishes that he did not have reason to know in the exercise of due care that ~~such~~ the manufactured home was not in conformity with applicable manufactured home construction and safety ~~standards;~~ standards. ~~or~~

(c) Subdivision (a)(1) of this section shall not apply to any person who, ~~prior to such~~ before the first purchase, holds a certificate of compliance issued by the manufacturer or importer of ~~such~~ the manufactured home to the effect that ~~such mobile~~ the manufactured home conforms to all applicable manufactured home construction and safety standards, unless ~~such~~ the person knows that ~~such~~ the manufactured home does not so conform.

"**§§ 143-151.6, 143-151.7:** Reserved for future codification purposes."

Section 3. Article 9D of Chapter 143 of the General Statutes is repealed.

Section 4. G.S. 58-2-55 reads as rewritten:

"**§ 58-2-55. Designated hearing officers.**

In any contested case under ~~Articles 1 through 64, 65 and 66, 67, 69, 70, or 71 of this Chapter;~~ Chapter or Article 9A or Article 9B of Chapter 143 of the General Statutes, the Commissioner may designate a member of his staff to serve as a hearing officer. When the Commissioner is unable or elects not to hear a contested case and elects not to designate a hearing officer to hear a contested case, he shall apply to the director of the Office of Administrative Hearings for the designation of an administrative law judge to preside at the hearing of a contested case. Upon receipt of the application, the Director shall, without undue delay, assign an administrative law judge to hear the case."

Section 5. Structures built before the effective date of the Act shall not be affected by any changes made in this Article.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 941
Commerce Committee Substitute Adopted 4/27/99
Proposed Committee Substitute S941-PCSA154-LA

Short Title: Manufactured Homes Law Changes. (Public)

Sponsors:

Referred to:

April 14, 1999

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE MANUFACTURED HOUSING BOARD STATUTES, TO PROVIDE FOR CONTINUING EDUCATION FOR LICENSEES, TO IMPROVE THE BUYER CANCELLATION LAW, AND TO UPDATE THE LAW ON MANUFACTURED HOME STANDARDS TO COMPLY WITH FEDERAL LAWS AND REGULATIONS.

The General Assembly of North Carolina enacts:

Section 1. Article 9A of Chapter 143 of the General Statutes reads as rewritten:

"ARTICLE 9A.

"North Carolina Manufactured Housing Board --
Manufactured Home Warranties.

"**§ 143-143.8. Purpose.**

The General Assembly finds that ~~mobile~~ manufactured homes have become a primary housing resource for many of the citizens of North Carolina. The General Assembly finds further that it is the responsibility of the ~~mobile~~ manufactured home industry to provide homes which are of reasonable quality and safety and to offer warranties to buyers that provide a means of remedying quality and safety defects in ~~mobile~~ manufactured homes. The General Assembly also finds that it is in the public interest to provide a means for enforcing such warranties.

Consistent with these findings and with the legislative intent to promote the general welfare and safety of ~~mobile~~ manufactured home residents in North Carolina,

the General Assembly finds that the most efficient and economical way to assure safety, quality and responsibility is to require the licensing and bonding of all segments of the ~~mobile~~ manufactured home industry. The General Assembly also finds that it is reasonable and proper for the ~~mobile~~ manufactured home industry to cooperate with the Commissioner of Insurance, through the establishment of the North Carolina Manufactured Housing Board, to provide for a comprehensive framework for industry regulations.

"§ 143-143.9. Definitions.

The following ~~words, terms and phrases, when used in this Article, shall have the meanings respectively ascribed to them in this section, except where the context clearly indicates a different meaning:~~ definitions apply in this Article:

(1) ~~"Board" means the~~ Board. -- The North Carolina Manufactured Housing Board.

(2) ~~"Buyer" means a~~ Buyer. -- A person who purchases at retail from a dealer or manufacturer a manufactured home for personal use as a residence or other related use.

(3) ~~"Code" means the appropriate~~ Code. -- Engineering standards adopted by the Commissioner.

(4) ~~"Commissioner" means the~~ Commissioner. -- The Commissioner of Insurance of the State of North Carolina.

(5) ~~"Department" means the~~ Department. -- The Department of Insurance of the State of North Carolina.

(5a) License. -- A license issued under this Article.

(5b) Licensee. -- A person who has been issued a license under this Article by the North Carolina Manufactured Housing Board.

(6) ~~"Manufactured home" or "mobile home" means a~~ Manufactured home. -- A structure, transportable in one or more sections, which, in the travelling mode, is eight feet or more in width or is 40 feet or more in length, or when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems contained therein.

(7) ~~"Manufactured home dealer" or "dealer" means any~~ Manufactured home dealer or dealer. -- Any person engaged in the business of ~~buying,~~ buying or selling ~~or dealing in~~ manufactured homes or offering or displaying manufactured homes for sale in North Carolina. Any person who ~~buys, sells or deals in~~ buys or sells three or more manufactured homes in any 12-month period, or who offers or displays for sale three or more manufactured homes in any 12-month period shall be presumed to be a manufactured home dealer. The terms 'selling' and 'sale' include lease-purchase transactions. The term 'manufactured home dealer' does not

include banks and finance companies that acquire manufactured homes as an incident to their regular business.

(8) ~~"Manufactured home manufacturer" or "manufacturer" means any~~ Manufactured home manufacturer or manufacturer. -- Any person, resident or nonresident, who manufactures or assembles manufactured homes for sale to dealers in North Carolina.

(9) ~~"Manufactured home salesman" or "salesman" means any~~ Manufactured home salesperson or salesperson. -- Any person employed ~~as a salesman~~ by a manufactured home dealer to sell manufactured homes to buyers.

(10) ~~"Person" means any~~ Person. -- Any individual, natural persons, firm, partnership, association, corporation, legal representative or other recognized legal entity.

(11) ~~"Responsible party" means a~~ Responsible party. -- A manufacturer, dealer, supplier, or set-up contractor.

(12) ~~"Setup" means the~~ Setup. -- The operations performed at the occupancy site which render a manufactured home fit for habitation. ~~Such operations include, but are not limited to, transportation by a bona fide private or exempt carrier operating under the provisions of the Public Utilities Act, positioning, blocking, leveling, supporting, tying down, connecting utility systems, making minor adjustments, or assembling multiple or expandable units. Such operations do not include lawful transportation services performed by public utilities operating under certificates or permits issued by the North Carolina Utilities Commission.~~

(13) ~~"Set-up contractor" means a~~ Set-up contractor. -- A person who engages in the business of performing ~~set-up operations~~ setups for compensation in North Carolina.

(14) ~~"Substantial defect" means any~~ Substantial defect. -- Any substantial deficiency in or damage to materials or workmanship occurring in a manufactured home which has been reasonably maintained and cared for in normal use. The term also means any structural element, utility system or component part of the manufactured home which fails to comply with the Code.

(15) ~~"Supplier" means the~~ Supplier. -- The original producer of completed components, including refrigerators, stoves, hot water heaters, dishwashers, cabinets, air conditioners, heating units, and similar components, and materials such as floor coverings, panelling, siding, trusses, and similar materials, which are furnished to a manufacturer or dealer for installation in the manufactured home prior to sale to a buyer.

"§ 143-143.10. Manufactured Housing Board created; membership; terms; meetings.

(a) There is ~~hereby~~ created the North Carolina Manufactured Housing Board within the ~~Department of Insurance.~~ Department. The Board shall be composed of nine members as follows:

(1) The Commissioner of Insurance or his ~~designee~~ designee.
(2) A manufactured home ~~manufacturer~~ manufacturer.
(3) A manufactured home ~~dealer~~ dealer.
(4) A representative of the banking and finance ~~business~~ business.
(5) A representative of the insurance ~~industry~~ industry.
(6) A manufactured home ~~supplier~~ supplier.
(7) A set-up ~~contractor~~ contractor.
(8) Two representatives of the general public.

The Commissioner ~~of Insurance~~ or his designee shall ~~serve as chairman of~~ chair the Board. The Governor shall appoint to the Board the manufactured home manufacturer and the manufactured home dealer. The General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121 shall appoint the representative of the banking and finance industry and the representative of the insurance industry. The General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121 shall appoint the manufactured home supplier and set-up contractor. The Commissioner ~~of Insurance~~ shall appoint two representatives of the general public. Except for the representatives from the general public and the persons appointed by the General Assembly, each member of the Board shall be appointed by the appropriate appointing authority from a list of nominees submitted to the appropriate appointing authority by the Board of Directors of the North Carolina Manufactured Housing Institute. At least three nominations shall be submitted for each position on the Board. The members of the Board shall be residents of the State.

The members of the Board shall serve for terms of three ~~years to begin on October 1, 1981, except that the persons appointed by the General Assembly upon the recommendation of the Speaker shall serve two-year terms to expire on September 30, 1985, and the persons appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate shall serve for three-year terms to expire on September 30, 1986.~~ years. In the event of any vacancy of a position appointed by the Governor or ~~Commissioner of Insurance,~~ Commissioner, the appropriate appointing authority shall appoint a replacement in the same manner as provided for the original appointment to serve the remainder of the unexpired term. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. In the event of any vacancy, the appropriate appointing authority shall appoint a replacement to serve the remainder of the unexpired term. Such appointment shall be made in the same manner as provided for the original appointment. No member of the Board shall serve more than two consecutive, three-year terms.

The member of the Board representing the general public shall have no financial interest connected with the manufactured housing industry. No member of the Board

shall participate in any proceeding before the Board involving that member's own business.

Each member of the Board, except the Commissioner ~~of Insurance~~ and any other State employee, shall receive per diem and allowances as provided with respect to occupational licensing boards by G.S. 93B-5. All per diem and travel expenses shall be paid exclusively out of the fees received by the Board as authorized by this Article. In no case shall any salary, expense, or other obligation of the Board be charged against the ~~Treasury~~ General Fund of the State of North Carolina. All moneys and receipts shall be kept in a special fund by and for the use of the Board for the exclusive purpose of carrying out the provisions of this Article. Of the unexpended funds remaining at the end of the fiscal year, an amount equal to fifteen percent (15%) of the Board's authorized budget for that fiscal year shall be retained in the fund and any excess shall be credited to the General Fund.

(b) In accordance with the provisions of this Article, the ~~North Carolina Manufactured Housing~~ Board shall have the following powers and duties:

(1) To issue licenses to manufacturers, dealers, ~~salesmen~~ salespersons, and set-up ~~contractors;~~ contractors.

(2) To require that an adequate bond or other security be posted by all licensees, except manufactured housing ~~salesmen;~~ salespersons.

(3) To receive and resolve complaints from buyers of manufactured homes and from persons in the manufactured housing industry, in connection with the warranty, warranty service, licensing requirements or any other provision under this ~~Article; and~~ Article.

(4) To ~~promulgate~~ adopt rules in accordance with Chapter 150B of the General Statutes as are necessary to carry out the provisions of this Article.

(5) To file against the bond posted by a licensee for warranty repairs and service on behalf of a buyer.

"§ 143-143.11. License required; application for license.

(a) It shall be unlawful for any manufactured home manufacturer, dealer, ~~salesman~~ salesperson, or set-up contractor to engage in business as such in this State without first obtaining a license from the Board, as provided in this Article. The fact that a person is licensed by the Board as a set-up contractor or a dealer does not preempt any other licensing boards' applicable requirements for that person.

(b) Application for ~~such~~ the license shall be made to the Board at such time, in such form, and contain ~~such~~ information ~~as~~ the Board ~~shall require;~~ requires, and shall be accompanied by the ~~required~~ fee established by the Board. ~~Such~~ The fee shall not exceed three hundred dollars ($300.00) for any license.

(c) In ~~such~~ the application, the Board shall require information relating to the matters set forth in G.S. 143-143.13 as grounds for refusal of a license, and information relating to other pertinent matters consistent with safeguarding the public interest. All ~~such~~ of this information shall be considered by the Board in determining

the fitness of the ~~applicant to engage in the business for which a license is sought.~~ applicant.

(d) All licenses ~~that are granted~~ shall expire, unless ~~sooner~~ revoked or suspended, on June 30 of each year following the date of issue.

(e) Every ~~registrant under this Chapter~~ licensee shall, on or before the first day of July of each year, obtain a renewal of a license for the ~~ensuing~~ next year, by application, accompanied by the required ~~fee; and upon~~ fee. Upon failure to renew, ~~his~~ a license ~~shall~~ automatically ~~expire; but such~~ expires. The license may be renewed at any time within one year upon payment of the ~~prescribed renewal fee and upon evidence satisfactory to the Board that the applicant has not engaged in business as a manufactured home manufacturer, dealer, salesman or set-up contractor after expiration of the license and is otherwise eligible for registration under the provisions of this Chapter.~~ renewal fee.

(f) Supplemental licenses shall be issued for each place of business, operated or proposed to be operated by the licensee, that is not contiguous to other premises for which a license is issued. The fee for a supplemental license shall be established by the Board and shall not exceed three hundred dollars ($300.00), provided that no supplemental license shall be required for a place of business operated by a licensee that is used exclusively for storage.

(g) Notwithstanding the provisions of subsection (a), the Board may provide by rule that a manufactured home ~~salesman~~ salesperson will be allowed to engage in business during the time period after making application for a license but before such license is granted.

(h) ~~To obtain~~ As a prerequisite to obtaining a license under this Article, a person ~~must~~ may be required to pass an examination prescribed by the Board that is based on the ~~North Carolina Manufactured/Mobile Home Regulations and Administrative Procedures required to enforce the Codes.~~ Code, this Article, and any other subject matter considered relevant by the Board.

"§ 143-143.11A. Notification of change of address; service of notice.

(a) Every applicant for a license shall inform the Board of the applicant's business address. Every licensee shall give written notification to the Board of any change in the licensee's business address, for whatever reason, within 10 business days after the licensee moves to a new address or a change in the address takes place. A violation of this subsection shall not constitute grounds for revocation, suspension, or non-renewal of a license or for the imposition of any other penalty by the Board.

(b) Notwithstanding any other provision of law, whenever the Board is authorized or required to give notice to a licensee under this Article, the notice may be delivered personally to the licensee or sent by first-class mail to the licensee at the address provided to the Board under subsection (a) of this section. Notice shall be deemed given four days after mailing, and any Department employee may certify that notice has been given.

"§ 143-143.11B. Continuing education.

(a) The Board may establish programs and requirements of continuing education for licensees, but shall not require licensees to complete more than eight credit hours

of continuing education. Prior to the renewal of a license, a licensee shall present evidence to the Board that he or she has completed the required number of continuing education hours in courses approved by the Board during the two months immediately preceding the expiration of his or her license.

(b) The Board may establish nonrefundable fees for the purpose of providing staff and resources to administer continuing education programs, and may establish nonrefundable course application fees, not to exceed one hundred fifty dollars ($150.00), for the Board's review and approval of proposed continuing education courses. The Board may charge the sponsor of an approved course a nonrefundable fee not to exceed seventy-five dollars ($75.00) for the annual renewal of course approval. The Board may also require a course sponsor to pay a fee, not to exceed five dollars ($5.00) per credit hour per licensee, for each licensee completing an approved continuing education course conducted by the sponsor. The Board may award continuing education credit for a course that has not been approved by the Board or for related educational activity and may prescribe the procedures for a licensee to submit information on the course or related educational activity for continuing education credit. The Board may charge the licensee a fee not to exceed fifty dollars ($50.00) for each course or activity submitted.

(c) The Board may adopt any reasonable rules not inconsistent with this Article to give purpose and effect to the continuing education requirement, including rules that govern:

(1) The content and subject matter of continuing education courses.

(2) The criteria, standards, and procedures for the approval of courses, course sponsors, and course instructors.

(3) The methods of instruction.

(4) The computation of course credit.

(5) The ability to carry forward course credit from one year to another.

(6) The waiver of or variance from the continuing education requirement for hardship or other reasons.

(7) The procedures for compliance and sanctions for noncompliance.

(d) The license of any person who fails to comply with the continuing education requirements under this section shall lapse. The Board may, for good cause shown, grant extensions of time to licensees to comply with these requirements. Any licensee who, after obtaining an extension, offers evidence satisfactory to the Board that he or she has satisfactorily completed the required continuing education courses shall be deemed in compliance with this section.

(e) A manufactured home manufacturer or manufacturer is exempt from the requirements of this section.

"§ 143-143.12. Bond required.

(a) A person licensed as a manufactured home ~~salesman~~ salesperson shall not be required to furnish a bond, but each applicant approved by the Board for license as a manufacturer, dealer, or set-up contractor shall furnish a corporate surety bond, cash bond or fixed value equivalent ~~thereof~~ in the following amounts:

(1) For a ~~manufactured;~~ manufacturer, two thousand dollars ($2,000) per manufactured home manufactured in the prior license year, up to a maximum of one hundred thousand dollars ($100,000). When no manufactured homes were produced in the prior year, the amount required shall be based on the estimated number of manufactured homes to be produced during the current ~~year;~~ year.

(2) For a dealer ~~who buys, sells, or deals in manufactured homes and~~ who has four or less places of business, the amount shall be twenty-five thousand dollars ~~($25,000);~~ ($25,000).

(3) For a dealer ~~who buys, sells, or deals in manufactured homes and~~ who has more than four places of business, the amount shall be fifty thousand dollars ~~($50,000);~~ ($50,000).

(4) For a set-up contractor, the amount shall be five thousand dollars ($5,000).

(b) A corporate surety bond shall be approved by the Board as to form and shall be conditioned upon the obligor faithfully conforming to and abiding by the provisions of this Article. A cash bond or fixed value equivalent ~~thereof~~ shall be approved by the Board as to form and terms of deposits in order to secure the ultimate beneficiaries of the bond. A corporate surety bond shall be for a one-year period, and a new bond or a proper continuation certificate shall be delivered to the Board at the beginning of each subsequent one-year period.

(c) Any buyer of a manufactured home who suffers any loss or damage by any act of a licensee that constitutes a violation of this Article ~~shall have the right to~~ may institute an action to recover against ~~such~~ the licensee and the surety.

(d) The Board may adopt rules to assure satisfaction of claims.

"§ 143-143.13. Grounds for denying, ~~suspending~~ suspending, or revoking ~~license.~~ licenses; civil penalties.

(a) A license may be denied, suspended or revoked by the Board on any one or more of the following grounds:

(1) ~~Material~~ Making a material misstatement in application for ~~license;~~ license.

(2) ~~Failure~~ Failing to post an adequate corporate surety bond, cash bond or fixed value ~~equivalent thereof;~~ equivalent.

(3) Engaging in the business of manufactured home manufacturer, dealer, ~~salesman~~ salesperson, or set-up contractor without first obtaining a license from the ~~Board;~~ Board.

(4) ~~Failure~~ Failing to comply with the warranty service obligations and claims procedure established by this ~~Article;~~ Article.

(5) ~~Failure~~ Failing to comply with the ~~set-up and tie-down~~ set-up requirements established by this ~~Article;~~ Article.

(6) ~~Having knowingly failed or refused~~ Failing or refusing to account for or to pay over moneys or other valuables belonging to others ~~which~~ that have come into licensee's possession arising out of the sale of manufactured ~~homes;~~ homes.

(7) ~~Use of~~ Using unfair methods of competition or committing unfair or deceptive ~~commercial~~ acts or ~~practices;~~ practices.

(8) ~~Failure~~ Failing to comply with any provision of this ~~Article;~~ Article.

(9) ~~Failure~~ Failing to appear for a hearing before the Board or for a prehearing conference with a person or persons designated by the Board ~~upon due~~ after proper notice or failing to ~~follow directives~~ comply with orders of the Board issued pursuant to this ~~Article;~~ Article.

(10) Employing unlicensed ~~retail salesmen;~~ salespersons.

(11) ~~Knowingly offering for sale the products of manufacturers who are not licensed pursuant to this Article or selling, to dealers not licensed pursuant to this Article, manufactured homes which are to be sold in this State to buyers as defined in this Article;~~ Offering for sale manufactured homes manufactured or assembled by unlicensed manufacturers or selling manufactured homes to unlicensed dealers for sale to buyers in this State.

(12) Conviction of a felony or any crime involving moral ~~turpitude;~~ turpitude.

(13) Having had a license revoked, suspended or denied by the ~~Board under this Article;~~ Board; or having had a license revoked, suspended or denied by a similar entity in another state; or engaging in conduct in another state which conduct, if committed in this State, would have been a violation under this ~~Article;~~ Article.

(14) ~~Knowingly engaging~~ Employing or contracting with any person to perform ~~set up operations~~ setups who is not licensed by the Board as a set-up contractor.

(b) Repealed by Session Laws 1985, c. 666, s. 38.

(c) In addition to the authority to deny, suspend, or revoke a license under this Article, the Board ~~also has the authority to~~ may impose a civil penalty upon any person violating the provisions of this Article. Upon a finding by the Board of a violation of this Article, the Board shall ~~direct~~ order the payment of a penalty of not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00). In determining the amount of the penalty, the Board shall consider the degree and extent of harm caused by the violation, the amount of money that inured to the benefit of the violator as a result of the violation, whether the violation was committed willfully, and the prior record of the violator in complying or failing to comply with laws, rules, or orders applicable to the violator. Each day during which a violation occurs shall constitute a separate offense. The penalty shall be payable to the Board. The Board shall remit the clear proceeds of penalties provided for in this subsection to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

Payment of the civil penalty under this section shall be in addition to payment of any other penalty for a violation of the criminal laws of this State. Nothing in this subsection shall prevent the Board from negotiating a mutually acceptable agreement with any person as to the status of the person's license or certificate or as to any civil penalty.

"**§ 143-143.14. ~~Notice and hearing.~~ Hearings; rules.**

(a) License suspensions, revocations, and renewal refusals are subject to the provisions of Chapter 150B of the General Statutes.

(b) If the Board finds that an applicant has not met the requirements for licensure, the Board shall refuse to issue the applicant a license and shall notify the applicant in writing of the denial and the grounds for the denial. The application may also be denied for any reason for which a license may be suspended or revoked or not renewed under G.S. 143-143.13. Within 30 days after receipt of a notification that an application for a license has been denied, the applicant may make a written request for a review by a member of the Department staff designated by the ~~chairman~~ chair of the Board to determine the reasonableness of the Board's action. The review shall be completed without undue delay, and the applicant shall be notified promptly in writing as to the outcome of the review. Within 30 days after service of the notification as to the outcome, the applicant may make a written request for a hearing under Article 3A of Chapter 150B of the General Statutes if the applicant disagrees with the outcome.

(c) The Board may adopt rules for hearings and prehearing conferences under this Article, and the rules may include provisions for prefiled evidence, the use of evidence, testimony of parties, prehearing statements, prehearing conference procedures, settlement conference procedures, discovery, subpoenas, sanctions, motions, intervention, consolidation of cases, continuances, and the rights and responsibilities of parties and witnesses.

"**§ 143-143.15. ~~Set-up and tie-down~~ Set-up requirements.**

(a) Manufactured homes shall be set up ~~and anchored~~ in accordance with the standards adopted by the Commissioner.

(b) ~~In the event that~~ If a manufactured home is insured against damage caused by windstorm and subsequently sustains windstorm damage ~~of a nature~~ that indicates the manufactured home was not ~~anchored or tied down~~ set up in the manner required by this section, the insurer issuing the ~~homeowner's~~ insurance policy on the manufactured home shall not be relieved from meeting the obligations specified in the insurance policy with respect to such damage on the basis that the ~~mobile~~ manufactured home was not properly ~~anchored or tied down.~~ set up.

"**§ 143-143.16. Warranties.**

Each manufacturer, dealer and supplier of manufactured homes shall warrant each new manufactured home sold in this State ~~and the setup of each such manufactured home~~ in accordance with the warranty requirements prescribed by this section for a period of at least 12 months, measured from the date of delivery of the manufactured home to the buyer. The warranty requirements for each manufacturer, dealer, supplier and set-up contractor of manufactured homes are as follows:

(1) The manufacturer warrants that all structural elements, plumbing systems, heating, cooling and fuel burning systems, electrical systems, and any other components included by the manufacturer are manufactured and installed free from substantial ~~defect.~~ defects.

(2) The dealer warrants:

a. That any modifications or alterations made to the manufactured home by the dealer or authorized by the dealer are free from substantial defects. Alterations or modifications made by a dealer shall relieve the manufacturer of warranty responsibility as to the item altered or modified and any ~~damage resulting therefrom.~~ resulting damage.

b. That ~~set-up operations~~ a setup performed by the dealer on the manufactured home ~~are~~ is performed in compliance with ~~applicable standards adopted by the Commissioner for the installation of manufactured homes.~~ the Code.

c. ~~That, during the course of setup~~ That the setup and transportation of the manufactured home ~~performed~~ by the ~~dealer, substantial defects do not occur to the manufactured home.~~ dealer did not result in substantial defects.

(3) The supplier warrants that any warranties generally offered in the ordinary sale of his product to consumers shall be extended to buyers of manufactured homes. The manufacturer's warranty shall remain in effect notwithstanding the existence of a supplier's warranty.

(4) The set-up contractor warrants that ~~set-up operations are performed~~ the manufactured home is set up in compliance with ~~applicable standards adopted by the Commissioner for the installation of manufactured homes,~~ the Code and that ~~during the course of set-up operations performed on the manufactured home, substantial defects do not occur to the manufactured home.~~ the setup did not result in any substantial defects.

"§ 143-143.17. Presenting claims for warranties and substantial defects.

(a) Whenever a claim for warranty service or about a substantial defect is made to a licensee, it shall be handled as provided ~~by~~ in this Article. ~~A~~ The licensee shall make a record ~~shall be made~~ of the name and address of each claimant and the date, substance, and disposition of each claim about a substantial defect. The licensee may request that a claim be in writing, but must nevertheless record it as provided above, and may not delay service pending receipt of the written claim.

(b) When the licensee notified is not the responsible party, he shall in writing immediately notify the claimant ~~of that fact, and shall also in writing immediately notify~~ and the responsible party of the claim. When a responsible party is asked to remedy defects, it may not fail to remedy those defects because another party may

also be responsible. Nothing ~~herein shall prevent such~~ in this section prevents a party from obtaining compensation by way of contribution or subrogation from another responsible party in accordance with any other provision of law or contract.

(c) Within the time limits provided in this Article, the licensee shall either resolve the claim or determine that it is not justified. At any time a licensee determines that a claim for warranty service is not justified in whole or in part he shall immediately notify the claimant in writing that the claim or part of the claim is rejected and why, and shall inform the claimant that he is entitled to complain to the Board, for which a complete mailing address shall be provided. ~~Within five working days of its receipt of a complaint, the Board shall send a complete copy thereof to the Attorney General and to the Commissioner of Insurance.~~

"§ 143-143.18. Warranty service.

(a) When a service agreement exists between or among a manufacturer, dealer and supplier to provide warranty service, the agreement shall specify which party is to remedy warranty defects. Every ~~such~~ service agreement shall be in writing. Nothing contained in such an agreement shall relieve the responsible party, as provided by this Article, of responsibility to perform warranty service. However, any licensee undertaking by such agreement to perform the warranty service obligations of another shall thereby himself become responsible both to that other licensee and to the buyer for his failure adequately to perform as agreed.

(b) When no service agreement exists for warranty service, the responsible party as designated by ~~the provisions of~~ this Article is responsible for remedying the warranty defect.

(c) A substantial defect shall be remedied within 45 days ~~of~~ after the receipt of written notification from the claimant. If no written notification is given, the defect shall be remedied within 45 days ~~of~~ after the mailing of notification by the Board, unless the claim is unreasonable or bona fide reasons exist for not remedying the defect within the 45-day period. The responsible party shall respond to the claimant in writing with a copy to the Board stating its reasons for not promptly remedying the defect and stating what further action is contemplated by the responsible party. Notwithstanding the foregoing provisions of this subsection, defects, which constitute an imminent safety hazard to life and health shall be remedied within five working days of receipt of the written notification of the warranty claim. An imminent safety hazard to life and health shall include but not be limited to (i) inadequate heating in freezing weather; (ii) failure of sanitary facilities; (iii) electrical shock, leaking gas; or (iv) major structural failure. The Board may suspend this five-day time period in the event of widespread defects or damage resulting from adverse weather conditions or other natural catastrophes.

(d) When the person remedying the defect is not the responsible party as designated by the provisions of this Article, he shall be entitled to reasonable compensation paid to him by the responsible party. Conduct ~~which~~ that coerces or requires a nonresponsible party to perform warranty service is a violation of this Article.

(e) Warranty service shall be performed at the site at which the ~~mobile~~ manufactured home is initially delivered to the buyer, except for components which can be removed for service without substantial expense or inconvenience to the buyer.

(f) Any dealer, manufacturer or supplier ~~shall have the right to~~ may complain to the Board when warranty service obligations under this Article are not being enforced.

"§ 143-143.19. Dealer alterations.

(a) No alteration or modification shall be made to a manufactured home by a dealer after shipment from the manufacturer's plant, unless such alteration or modification is authorized by this Article or the manufacturer. The dealer shall ensure that all authorized alterations and modifications are performed, if so required, by qualified persons as defined in subsection (d). An unauthorized alteration or modification performed by a ~~manufactured home~~ dealer or his agent or employee shall place primary warranty responsibility for the altered or modified item upon the dealer. If the manufacturer fulfills or is required to fulfill the warranty on the altered or modified item, he shall be entitled to recover damages in the amount of his cost and attorney's fee from the dealer.

(b) An unauthorized alteration or modification of a manufactured home by the owner or his agent shall relieve the manufacturer of responsibility to remedy defects caused by such alteration or modification. A statement to this effect, together with a warning specifying those alterations or modifications which should be performed only by qualified personnel in order to preserve warranty protection, shall be displayed clearly and conspicuously on the face of the warranty. Failure to display such statement shall result in warranty responsibility on the manufacturer.

(c) The Board is authorized to ~~promulgate~~ adopt rules in accordance with Chapter 150B of the General Statutes ~~which~~ that define the alterations or modifications which must be made by qualified personnel. The Board may require qualified personnel only for those alterations and modifications which could substantially impair the structural integrity or safety of the manufactured home.

(d) In order to be designated as a person qualified to alter or modify a manufactured home, a person must comply with State licensing or competency requirements in skills relevant to performing alterations or modifications on manufactured homes.

"§ 143-143.20. Disclosure of manner used in determining length of manufactured homes.

In any advertisement or other communication regarding the length of a manufactured home, a manufacturer or dealer shall not include the coupling mechanism in describing the length of the home.

"§ 143-143.21: Repealed by Session Laws 1993, c. 409, s. 6, and applicable to purchase agreements executed on or after that date.

"§ 143-143.21A. ~~Refund of buyer deposit.~~ Purchase agreements; buyer cancellations.

(a) ~~A dealer shall record the following information in a retail~~ A purchase agreement for a manufactured ~~home:~~ home shall include all of the following:

(1) A description of the manufactured home and all accessories included in the ~~purchase;~~ purchase.
(2) The purchase price for the home and all ~~accessories;~~ accessories.
(3) The amount of ~~deposit;~~ deposit or other payment toward or payment of the purchase price of the manufactured home and accessories that is made by the buyer.
(4) The date the retail purchase agreement is ~~signed; and~~ signed.
(5) The estimated terms of financing the purchase, if any, including the estimated interest rate, number of years financed, and monthly payment.
(6) The buyer's signature.
(7) The dealer's signature.

(b) ~~A dealer must present to the buyer and obtain his signature to a retail purchase agreement at the time the deposit is received.~~ The purchase agreement shall contain, in immediate proximity to the space reserved for the signature of the buyer and in at least ten point, all upper-case Gothic type, ~~a statement in substantially~~ the following ~~form:~~ statement:

'I UNDERSTAND THAT I HAVE THE RIGHT TO CANCEL THIS PURCHASE ~~PRIOR TO~~ BEFORE MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE THAT I HAVE SIGNED THIS AGREEMENT. I UNDERSTAND THAT THIS CANCELLATION MUST BE IN WRITING. IF I ~~ATTEMPT TO~~ CANCEL THE PURCHASE AFTER THE THREE-DAY PERIOD, I UNDERSTAND THAT THE DEALER ~~HAS NO~~ MAY NOT HAVE ANY OBLIGATION TO ~~REFUND THE ENTIRE AMOUNT OF MY DEPOSIT.'~~ 'GIVE ME BACK ALL OF THE MONEY THAT I PAID THE DEALER.'

(c) ~~The~~ At the time the deposit or other payment toward or payment for the purchase price is received by the dealer, the dealer ~~must~~ shall give ~~to~~ the buyer a copy of the purchase agreement ~~along with~~ and a completed form in duplicate, captioned 'Notice of ~~Cancellation",~~ Cancellation,' which shall be attached to the purchase agreement, be easily detachable, and ~~shall~~ explain ~~in plain English~~ the buyer's right to cancel the ~~agreement~~ purchase and how that right can be exercised.

(d) ~~A dealer~~ The dealer shall ~~refund to a buyer the full amount of a deposit on the purchase of a manufactured home~~ return the deposit or other payment toward or payment for the purchase price to the buyer if the buyer cancels the purchase before midnight of the third business day after the date the buyer signed the purchase agreement. ~~In order to make an effective cancellation, the buyer must notify the dealer, in writing, of the buyer's intent to cancel the purchase agreement.~~ To make the cancellation effective, the buyer shall give the dealer written notice of the buyer's cancellation of the purchase. The dealer shall ~~make the refund promptly and, in any event,~~ return the deposit or other payment toward or payment for the purchase price to the buyer within 15 business days ~~from~~ after receipt of the notice of cancellation.

For purposes of this section, 'business day' ~~shall mean Monday through Saturday, excluding~~ means any day except Sunday and legal holidays.

(e) If the buyer cancels the purchase ~~agreement~~ after the three-day cancellation period, but before the ~~home is delivered to the buyer, then,~~ sale is completed, and if:

(1) ~~If the~~ The manufactured home is in the dealer's inventory, the dealer may retain from the deposit or other payment received from the buyer actual damages up to a maximum of ten percent (10%) of the purchase price; or

(2) ~~If the~~ The manufactured home is specially ordered from the manufacturer for the buyer, the dealer may retain actual damages up to the full amount of the buyer's ~~deposit.~~ deposit or other payment received from the buyer.

"§ 143-143.22. Inspection of service records.

The Board ~~is authorized to~~ may inspect the ~~pertinent~~ service records of a manufacturer, dealer, supplier or set-up contractor relating to a written warranty claim or complaint made to the Board against ~~such~~ the manufacturer, dealer, supplier, or set-up contractor. Every licensee shall send to the Board upon request within 10 days a ~~true~~ copy of every document or record pertinent to any complaint or claim for service.

"§ 143-143.23. Other remedies not excluded.

Nothing in this ~~Article nor~~ Article, rules adopted by the Board, or any ~~decision by~~ action of the Board shall limit any right or remedy available to the buyer ~~at common law or under any other statute, nor limit~~ or any power or duty of the Attorney General.

"§ 143-143.24. Engaging in business without license a Class 1 misdemeanor.

If any person shall unlawfully act as a manufactured home manufacturer, dealer, ~~salesman,~~ salesperson, or set-up contractor without first obtaining a license from the ~~North Carolina Manufactured Housing~~ Board, as provided in this Article, he shall be guilty of a Class 1 misdemeanor.

"§ 143-143.25. Staff support for Board.

The Manufactured ~~Housing~~ Building Division of the Department shall provide clerical and other staff services required by the Board; and shall administer and enforce all provisions of this Article and all rules adopted under this Article, subject to the direction of the Board; except for powers and duties delegated by this Article to local units of government, other State agencies, or to any persons."

Section 2. Article 9B of Chapter 143 of the General Statutes reads as rewritten:

"ARTICLE 9B.

"Uniform Standards Code for Manufactured Homes.

"§ 143-144. Short title.

This Article shall be known and may be cited as 'The Uniform Standards ~~Code~~ for Manufactured Homes Act.'

"§ 143-145. Definitions.

The following definitions apply in this Article:

~~Unless clearly indicated otherwise by context, the following words when used in this Article, for the purpose of this Article, shall have the meanings respectively ascribed to them in this section:~~

(1) ~~"Certificate of compliance" means a certificate issued by an inspection department approved and licensed by the Council as being competent which certificate shall be valid only within the jurisdiction of the inspection department and on which certificate shall be recorded:~~

~~a. The inspection department issuing such certificate;~~

~~b. The date of issue;~~

~~c. The serial or other identification number of such manufactured home and the name of the manufacturer;~~

~~d. A certification that such manufactured home was on the day of inspection so opened that its entire structural, electrical, heating, plumbing and air-conditioning systems could be closely observed and inspected;~~

~~e. A certification that said manufactured home complies in full with the standards and rules and regulations prescribed in this Article.~~

Act. -- The National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. § 5401, et seq., federal regulations adopted under the Act, and any laws enacted by the United States Congress that supersede or supplement the Act.

(2) ~~"Commissioner" means the~~ Commissioner. -- The Commissioner of Insurance of the State of North ~~Carolina.~~ Carolina or an authorized designee of the Commissioner.

~~(3) "Competent" shall mean competent to technically evaluate, test, and inspect in accordance with the standards, rules and regulations prescribed in this Article: the structural features, the plumbing, heating, electrical and air-conditioning systems and the materials used in the construction of a manufactured home.~~

(4) ~~"Council" means the North Carolina State Building Code Council.~~ HUD. -- The United States Department of Housing and Urban Development or any successor agency.

(5) ~~"Inspection department" means a~~ Inspection department. -- A North Carolina city or county building inspection department authorized by Chapter ~~160~~ 160A or Chapter ~~153~~ 153A of the General Statutes.

(6) ~~"Label of compliance" shall mean a permanent label or seal permanently attached to a manufactured home at completion of construction thereof which is issued by any independent, solvent, and trustworthy person approved and licensed by the Council as being competent and as having and utilizing initial and follow-up~~

~~manufacturing inspection services which provide the highest degree of quality control, and on which seal or label shall be recorded:~~

~~a. The person issuing such label or seal and the serial number of the label or seal;~~

~~b. The serial or other identification number of said manufactured home;~~

~~c. A certification that said manufactured home was evaluated, tested, and inspected in accordance with the standards and rules and regulations prescribed in this Article.~~

Label. -- The form of certification required by HUD to be permanently affixed to each transportable section of each manufactured home manufactured for sale to a purchaser in the United States to indicate that the manufactured home conforms to all applicable federal construction and safety standards.

(7) ~~"Manufactured home" means a~~ Manufactured home. -- A structure, transportable in one or more sections, which in the traveling mode is eight body feet or more in width, or 40 body feet or more in length, or, when erected on site, is 320 or more square feet; and which is built on a permanent chassis and designed to be used as a dwelling, with or without permanent foundation when connected to the required utilities, including the plumbing, heating, air conditioning and electrical systems contained therein. 'Manufactured home' includes any structure that meets all of the requirements of this subsection except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of ~~the United States Department of Housing and Urban Development~~ HUD and complies with the standards established under the ~~National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. §5401, et seq.~~ Act.

For manufactured homes built ~~prior to~~ before June 15, 1976, 'manufactured home' means a portable manufactured housing unit designed for transportation on its own chassis and placement on a temporary or semipermanent foundation having a measurement of over 32 feet in length and over eight feet in width. 'Manufactured home' also means a double-wide manufactured home, which is two or more portable manufactured housing units designed for transportation on their own chassis that connect on site for placement on a temporary or semipermanent foundation having a measurement of over 32 feet in length and over eight feet in width.

~~(8) "Person" means any corporation, partnership, association, voluntary organization or governmental agency of the United States or any state therein and does not mean an individual natural person.~~

"**§ 143-146. Statement of policy; rule-making power.**

(a) Manufactured homes, because of the manner of their construction, assembly and use and that of their systems, components and appliances (including heating, plumbing and electrical systems) like other finished products having concealed vital parts may present hazards to the health, life and safety of persons and to the safety of property unless properly manufactured. In the sale of manufactured homes, there is also the possibility of defects not readily ascertainable when inspected by purchasers. It is the policy and purpose of this State to provide protection to the public against those possible hazards, and for that purpose to forbid the manufacture and sale of new manufactured homes, which are not so constructed as to provide reasonable safety and protection to their owners and users. This Article ~~is intended to provide~~ provides to the Commissioner all necessary authority to enable the State to obtain approval as a State Administrative Agency under the provisions of the ~~National Manufactured Housing Construction and Safety Standards Act of 1974.~~ Act.

~~(b) The Commissioner shall make and promulgate rules embodying the standards for construction or manufacture of manufactured homes set by the Department of Housing and Urban Development under the provisions of the National Manufactured Housing Construction and Safety Standards Act of 1974, as these standards may be amended.~~

~~(c) The Council is authorized to make and promulgate reasonable rules and regulations governing the procedure to be followed by a person or inspection department seeking to obtain a license pursuant to the provisions of this Article which shall provide opportunity for hearing before the Council on such application.~~

~~(d) In order to insure the highest degree of quality control in the manufacture of manufactured homes, the Council is further authorized and empowered to make and promulgate reasonable rules and regulations governing the initial and follow-up manufacturing inspection practices and procedures to be performed by any person granted a license to issue a label of compliance pursuant to this Article. In order to assure uniformity in standards and enforcement, such rules and regulations may also provide that any such licensee and its operations may be inspected from time to time by any other person or licensee designated by the Council who shall report the results of such examination to the Council. In such case the reasonable expense incurred by the examiner in making such inspection shall be borne by the licensee whose operations were examined.~~

(e) The Commissioner ~~is authorized to promulgate such~~ may adopt rules ~~as are necessary~~ to carry out the provisions of the Act and this Article, including rules ~~regarding~~ for consumer complaint ~~procedures, and such other~~ procedures and rules ~~as are necessary to enable the State to assume responsibility~~ for the enforcement of the ~~National Manufactured Housing Construction and Safety Standards Act of 1974.~~ standards and regulations established and adopted by HUD under the Act.

"**§ 143-147. ~~Approval and licensing of persons and inspection departments.~~** Structures built under previous standards.

~~(a) Any qualified person may make application to the Council for approval for license to issue labels of compliance. Any inspection department may make~~

~~application to the Council for approval for issuing certificates of compliance. The Council after notice and hearing, if satisfied that such person or inspection department meets the qualifications prescribed in this Article, shall cause a license to be issued which license shall be valid for a consecutive period of 12 months and may be renewed for like consecutive periods on application to and approval by the Council;~~

~~(b) Any such license issued to a person other than an inspection department may be suspended or revoked after notice and hearing if such person:~~

~~(1) Is either insolvent, not competent, not independent, or untrustworthy;~~

~~(2) Has made false statements in his application to the Council for license;~~

~~(3) Fails or neglects to perform evaluations, testing, or manufacturing inspections in accordance with its proposed plans and procedures submitted to the Council or fails to comply with any applicable rules and regulations promulgated by the Council pursuant to G.S. 143-146(d);~~

~~(4) Has repeatedly, specifically or by implication authorized the attachment of its label of compliance to manufactured homes and such manufactured homes did not meet the standards and rules and regulations provided by this Article at the time said labels were attached.~~

~~(c) Any such license issued to an inspection department may be suspended or revoked after notice and hearing if such department:~~

~~(1) Is not competent;~~

~~(2) Has issued a certificate of compliance on a manufactured home when such manufactured home was not opened for inspection so that the entire structural, electrical, heating, plumbing and air-conditioning systems could be closely observed and inspected;~~

~~(3) Has issued a certificate of compliance on a manufactured home and such manufactured home did not at the time of inspection meet the standards and rules and regulations provided by this Article.~~

The legal status of any structure built before the effective date of the Act shall not be affected by any changes made in this Article by the General Assembly.

"§ 143-148. Certain structures excluded from coverage.

The Commissioner may by rule provide for the exclusion of certain structures by certification in accordance with the ~~National Manufactured Housing Construction and Safety Standards Act of 1974.~~ Act.

"§ 143-149. Necessity for obtaining label ~~or certificate~~ for purposes of sale.

No ~~individual natural person, firm, partnership, association or corporation~~ person shall ~~after September 1, 1971,~~ sell or offer for sale any manufactured home in this ~~State, which manufactured home~~ State that does not ~~bear permanently attached thereto a label of compliance or for which manufactured home the individual natural~~

~~person, firm, partnership, association, or corporation selling or offering to sell such manufactured home does not have a certificate of compliance; provided it shall be~~ have a label. It is a defense to any prosecution for a violation of ~~the provisions of~~ this section if ~~such individual natural person, firm, partnership, association or corporation shall show~~ a person shows that a certificate of title for ~~such~~ the manufactured home as required by G.S. 20-52 was obtained ~~prior to September 1, 1971,~~ before June 15, 1976, or produces other satisfactory evidence on file with the North Carolina ~~Department~~ Division of Motor Vehicles that ~~such~~ the manufactured home was manufactured ~~prior to September 1, 1971.~~ before June 15, 1976.

"§ 143-150. No electricity to be furnished units not in compliance.

It is unlawful for any person to ~~initially~~ furnish electricity for use in any manufactured home without first ascertaining that the manufactured home and its electrical supply has been inspected pursuant to G.S. 143-139 by the inspection authority having jurisdiction and found to comply with the requirements of the State Electrical Code. The certificate of compliance issued by the inspection jurisdiction shall be accepted as evidence of compliance.

"§ 143-151. Penalties.

(a) ~~Whoever violates (i) the provisions of this Article; or (ii)~~ Any person who is found by the Commissioner to have violated the provisions of the Act, this Article, or any rules ~~promulgated~~ adopted under this Article, shall be liable for a civil penalty not to exceed one thousand dollars ($1,000) for each violation. Each ~~such~~ violation shall constitute a separate violation ~~with respect to~~ for each manufactured home or ~~with respect to~~ for each failure or refusal to allow or perform an act required ~~thereby, except that the~~ by the Act, this Article, or any rules adopted under this Article. The maximum civil penalty may not exceed one million dollars ($1,000,000) for any related series of violations occurring within one year ~~from~~ after the date of the first violation. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation, the amount of money that inured to the benefit of the violator as a result of the violation, whether the violation was willful, and the prior record of the violator in complying or failing to comply with laws, rules, or orders applicable to the violator. The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(b) Any individual, ~~corporation,~~ or a director, officer or agent of a corporation who knowingly and willfully violates the Act, this ~~Article~~ Article, or any rules ~~promulgated~~ adopted under this Article in a manner ~~which~~ that threatens the health or safety of any purchaser is guilty of a Class ~~1 misdemeanor.~~ I felony.

"§ 143-151.1. Enforcement.

The Commissioner ~~of Insurance or any inspection department~~ may initiate any appropriate action or proceeding to prevent, restrain, or correct any violation of the Act, this Article, or any rules adopted under this Article. The Commissioner, or any of his deputies or employees, upon showing proper credentials and in the discharge of their duties ~~pursuant to~~ under this Article, or the ~~National Manufactured Housing Construction and Safety Standards Act of 1974,~~ Act, is authorized at reasonable

hours and without advance notice to enter and inspect all factories, warehouses, or establishments in ~~the State of North Carolina~~ this State in which manufactured homes are manufactured, stored or held for sale.

"§ 143-151.2. Fees.

(a) The Commissioner ~~may~~ shall establish a monitoring inspection fee in an amount ~~established~~ required by the Secretary of ~~Housing and Urban Development.~~ HUD. This monitoring inspection fee shall be an amount paid by each manufactured home manufacturer in ~~the~~ this State for each manufactured home produced by the manufacturer in ~~that state.~~ this State.

(b) The monitoring inspection fee shall be paid by the manufacturer to the Secretary of ~~Housing and Urban Development~~ HUD or ~~such~~ the Secretary's ~~agent, who shall distribute the fees collected from all manufactured home manufacturers among the approved and conditionally approved states based on the number of manufactured homes whose first location after leaving the manufacturing plant is on the premises of a distributor, dealer, or purchaser in that state, and the extent of participation of the State in the joint monitoring team program established under the National Manufactured Housing Construction and Safety Standards Act of 1974.~~ agent.

"§ 143-151.3. Reports.

Each manufacturer, distributor, and dealer of manufactured homes shall establish and maintain such records, make such reports, and provide such information as the Commissioner or the Secretary of ~~Housing and Urban Development~~ HUD may reasonably require to be able to determine whether ~~such~~ the manufacturer, distributor, or dealer has acted or is acting in compliance with this Article, or the ~~National Manufactured Housing Construction and Safety Standards Act of 1974~~ Act and shall, upon request of a person ~~duly~~ designated by the Commissioner or the Secretary of ~~Housing and Urban Development,~~ HUD, permit ~~such~~ the person to inspect appropriate books, papers, records and documents relevant to determining whether ~~such~~ the manufacturer, distributor, or dealer has acted or is acting in compliance with this Article or the ~~National Manufactured Housing Construction and Safety Standards Act of 1974.~~ Act, and any rules adopted by the Commissioner under this Article.

"§ 143-151.4. Notification of ~~defects.~~ defects and correction procedures.

Every manufacturer of manufactured homes shall ~~furnish~~ provide for notification ~~of any defect~~ and correction procedures in any manufactured home produced by ~~such~~ the manufacturer ~~and correct such defect~~ in accordance with the Act, this Article, and any ~~procedures specified~~ rules adopted by the Commissioner.

"§ 143-151.5. Prohibited acts.

(a) No person shall:

(1) Manufacture for sale, lease, sell, offer for sale or lease, or introduce or deliver, or import into the United States, any manufactured home ~~which~~ that is manufactured on or after the effective date of any applicable manufactured home construction and safety standard under the Act or this Article and ~~which~~ that

does not comply with ~~such~~ the standard, except as provided in ~~subsection (b);~~ subsections (b), (c), and (d) of this section.

(2) Fail or refuse to permit access to or copying of records, or fail to make reports or provide information, or fail or refuse to permit entry or inspection, as required under the Act or this ~~Article;~~ Article.

(3) Fail to furnish notification of any defect as required by ~~G.S. 143-151.4;~~ the Act or this Article.

(4) Fail to issue a ~~certificate of compliance;~~ label or issue a ~~certification to the effect that a manufactured home conforms to all applicable manufactured home construction and safety standards;~~ label if ~~such~~ the person in the exercise of due care has reason to know that ~~such certification~~ the label is false or misleading in a material ~~respect;~~ respect.

(5) Fail to comply with a rule adopted or an order issued by the Commissioner under this ~~Article; or~~ Article.

(6) Issue a certification pursuant to G.S. 143-148 if ~~such~~ the person in the exercise of due care has reason to know that ~~such~~ the certification is false or misleading in a material respect.

(b) (1) ~~Paragraph (1) of subsection (a) shall~~ Subdivision (a)(1) of this section does not apply to the sale, the offer for sale, or the introduction or delivery of any manufactured home after the first purchase of it in good faith for purposes other than resale.

(2) ~~Paragraph (1) of subsection (a) shall~~ Subdivision (a)(1) of this section does not apply to any person who establishes that he did not have reason to know in the exercise of due care that ~~such~~ the manufactured home was not in conformity with applicable manufactured home construction and safety ~~standards;~~ standards. ~~or~~

(c) Subdivision (a)(1) of this section shall not apply to any person who, ~~prior to such~~ before the first purchase, holds a certificate of compliance issued by the manufacturer or importer of ~~such~~ the manufactured home to the effect that ~~such mobile~~ the manufactured home conforms to all applicable manufactured home construction and safety standards, unless ~~such~~ the person knows that ~~such~~ the manufactured home does not so conform.

"**§§ 143-151.6, 143-151.7:** Reserved for future codification purposes."

Section 3. Article 9D of Chapter 143 of the General Statutes is repealed.

Section 4. G.S. 58-2-55 reads as rewritten:

"**§ 58-2-55. Designated hearing officers.**

In any contested case under ~~Articles 1 through 64, 65 and 66, 67, 69, 70, or 71 of~~ this ~~Chapter;~~ Chapter or Article 9A or Article 9B of Chapter 143 of the General Statutes, the Commissioner may designate a member of his staff to serve as a hearing officer. When the Commissioner is unable or elects not to hear a contested case and elects not to designate a hearing officer to hear a contested case, he shall apply to the

director of the Office of Administrative Hearings for the designation of an administrative law judge to preside at the hearing of a contested case. Upon receipt of the application, the Director shall, without undue delay, assign an administrative law judge to hear the case."

Section 5. Structures built before the effective date of the Act shall not be affected by any changes made in this Article.

Section 6. G.S. 143-143.21A, as amended in Section 1 of this act, becomes effective January 1, 2000. The remainder of this act is effective when it becomes law.

SENATE BILL 941:
Manufactured Homes Law Changes

BILL ANALYSIS

Committee:	Senate Finance Committee	**Introduced by:**	Senator Warren
Date:	June 8, 1999	**Summary by:**	Linwood Jones and Martha K. Walston, Staff Attorneys
Version:	Proposed Committee Substitute		

SUMMARY: ***Senate Bill 941 makes several changes to the laws governing manufactured housing. The bill is before Senate Finance because it authorizes the North Carolina Manufactured Housing Board to establish continuing education requirements for licensees and to charge fees for the courses. Senate Bill 941 was reported favorably by Senate Commerce on April 27, 1999. The committee substitute differs from the original bill in that it rewrites G.S. 143-147 to state that the legal status of any structure built before the effective date of the National Manufactured Housing Construction and Safety Standards Act of 1974 is not affected by any changes made by the General Assembly to the Uniform Standards Code for Manufactured Homes. The committee substitute also requires the Board to keep 15% of its unexpended funds and to credit the remainder to the General Fund, exempts a manufactured home manufacturer or manufacturer from the continuing education requirements, and extends the effective date for the new language in the purchase agreements to January 1, 2000.***

BILL ANALYSIS: Section 1 makes the following amendments to the law regulating manufactured housing licensees. (A manufactured home The manufacturer, dealer, salesman and set-up contractor are required to be licensed by the North Carolina Manufactured Housing Board.)

143-143.8. References to "mobile homes" are changed to "manufactured homes".

143-143.9. Definitions are added for "license" and "licensee". "Setup" is redefined to eliminate a portion of the definition that defines what "setup" operations include and exclude.

143-143.10. **A provision is added that "of the unexpended funds remaining at the end of the fiscal year, an amount equal to 15% of the Board's authorized budget for that fiscal year shall be retained in the fund and any excess shall be credited to the General Fund."**

143-143.11. The provision, allowing a licensee whose license has lapsed to renew within one year by payment of the renewal fee with proof that he or she has not engaged in the manufactured housing business since the lapse and is otherwise eligible for registration, is amended to provide that the applicant must pay the renewal fee. The current fee for a license may not exceed $300.00

143-143.11A. This new section requires an applicant to inform the Board of a change of address within 10 days, and allows the Board to serve notice on a licensee personally or by first-class mail at the address provided by the licensee. Notice is deemed delivered four days after mailing.

143-143.11B. This new section allows the Board to require up to 8 hours of continuing education for licensees and charge course application fees not to exceed $150.00. The Board may charge the sponsor of an approved course a fee not to exceed $75.00 for the annual renewal of course approval. A course sponsor may also be required to pay a fee, not to exceed $5.00 per credit hour per licensee, for each licensee completing a course conducted by the sponsor. The Board may charge a licensee a fee not to exceed $50.00 for each course **that has not been approved by the Board** or for related educational activity that the licensee submits for credit. Failure to complete the continuing education requirements

results in a lapse of the license. **A manufactured home manufacturer or manufacturer is exempt from the requirements of the continuing education section.**

143-143.13. This section is amended to allow the Board to revoke, suspend, or deny a license for failure to appear for a prehearing conference with the Board after proper notice. Failure to appear for the hearing after proper notice is already grounds for discipline.

143-143.14. This section adds language that if the Board finds an applicant has not met the requirements for licensure, the Board shall not issue a license and shall notify the applicant of the denial and the grounds for it. This section also allows the Board to adopt rules for hearings and prehearing conferences, including provisions on discovery, motions, sanctions, continuances, etc.

143-143.15. "Anchoring down" a manufactured home is changed to "setting up" the manufactured home.

143-143.17. This section eliminates the requirement that the Board forward to the Attorney General and the Commissioner of Insurance a copy of each warranty service complaint filed by consumers. (Note: The Board is housed within and staffed by the Department of Insurance.)

143-143.21A. This section provides that the following must be included in a manufactured home purchase agreement in addition to the information already required by law: amount of any payment made by the buyer towards purchase of the home or accessories (current law refers only to amount of the "deposit") and the buyer's and dealer's signatures. (Current law already requires the buyer's signature). This section also rewrites the required disclosure statement concerning buyer cancellation and refund rights.

Section 2 makes the following changes to the laws governing the standards code for manufactured home construction

143-145. Several definitions are deleted and several are added.

143-146. Several provisions authorizing the adoption of rules are deleted. The existing authority of the Commissioner to adopt rules to carry out this law is retained.

143-147. This section, relating to licenses to individuals or inspection departments to issue labels of HUD compliance to manufactured homes, is repealed. A grandfather provision is added. (The legal status of any structure built before the effective date of the National Manufactured Housing Construction and Safety Standards Act of 1974 is not affected by any changes made in the Article 9B, Uniform Standards Code for Manufactured Homes, by the General Assembly.

143-149. This section makes stylistic changes and moves the exemption date for the sale of manufactured homes without a HUD label of compliance from homes manufactured prior to September 1, 1971 to those manufactured prior to June 15, 1976.

143-151. This section adds language requiring the Commissioner, in assessing a civil penalty for a violation of these laws, to look at certain factors (such as the extent of harm caused and whether the violation was willful) in determining the amount of the penalty. The current law imposes a penalty not to exceed $1,000 for each violation. The maximum penalty may not exceed $1 million for any related series of violations occurring within one year after the date of the first violation. Any person who willfully violates the Act, the Article, or any rule that threatens the health or safety of a purchaser is guilty of a Class I felony (was Class 1 misdemeanor).

143-151.2. This section provides that the Commissioner shall (now "may") establish a monitoring inspection fee in the amount required by HUD. This fee is paid by each manufactured home manufacturer

in this State for each manufactured home produced by the manufacturer in the State. This section also repeals language that purports to direct HUD on how to distribute the fee revenue.

Section 3 repeals Article 9D of Chapter 143. Article 9D is entitled "*Enforcement of Building Code Insulation and Energy Standards*".

Section 4 amends one of the general hearing laws of the Department of Insurance to include Article 9B of Chapter 143. This provision relates to the Commissioner designating staff members as hearing officers in contested cases and referring cases to OAH for a hearing.

Section 5 provides that structures built before the effective date of this bill are not affected by the bill's provisions.

Section 6 **provides that the statute amending the language in the purchase agreements (G.S. 143-143.21A) will become effective January 1, 2000. This will give sellers time to have new agreements printed.** The remainder of the act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: S.B. 941 PCS Manufactured Homes Law Changes

SHORT TITLE: Manufactured Homes Law Changes

SPONSOR(S): Senator Warren

FISCAL IMPACT

Yes ( ) **No ( )** **No Estimate Available (x)**

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
General Fund	* May Create a General Fund Loss (See Below) *				
Man. Homes Licensing Board	* Minimum $290,000 Revenue Increase (See Below) *				
EXPENDITURES					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Manufactured Housing Board, the Department of Insurance, and Corrections.

EFFECTIVE DATE: When it becomes law.

BILL SUMMARY: The legislation makes several changes to the laws governing manufactured housing. First, it provides several updated definitions including manufactured home, license, licensee, and set up. Second, it allows the North Carolina Manufactured Housing Board to retain 15% of their unexpended funds at the end of the fiscal year. Currently all of their remaining funds revert to the general fund. Third, it provides that a licensee can renew a lapsed license within one year by paying the renewal fee and proving that they have not engaged in the industry during that time. Forth, it requires an applicant to inform the Board of a change of address in ten days, and offers other provisions for postal difficulties. Fifth, it authorizes the Board to require up to eight hours of continuing education, with fees not to exceed $150.00. The continuing education requirements do not apply to manufacturers. The Board may charge the sponsor of an approved course up to $75.00 for a course approval renewal. Sponsors may also be required to charge a fee of up to $5.00 per credit hour, per licensee. The Board can also charge a licensee fee not to exceed $50.00 for each unapproved course or related educational activity submitted for credit. Next the bill authorizes the Board to adopt rules for hearings and prehearing conferences. It adds a requirement that purchase agreements must include buyer and dealer signatures, and makes other changes to the purchasing agreement. The bill also several changes to the penalty

and violation provisions. This includes increasing the penalty for a willing violation of the Act that threatens the health or safety of a purchaser from a Class 1 misdemeanor to a Class 1 felony.

ASSUMPTIONS AND METHODOLOGY: There are three items in the bill that could have a fiscal impact. First the bill provides that 15% of board's unexpended funds do not revert to the General Fund. In the past, all remaining fund balances have returned to the General Fund. Therefore, there is a potential General Fund loss. According to the Department of Insurance, that unit has both federal funds that are non-reverting and state funds that revert to the General Fund. As a result, the Department "spends down" the state money first. Therefore, they are unlikely to revert a large sum to the General Fund. In 1997-98 the Manufactured House Licensing Board collected $596,825 in licensing fees. The Department of Insurance, who administers the program, does not expect any significant changes in this revenue stream. However, neither Fiscal Research nor the Department of Insurance has information, at this time, on reversion amounts.

The second potential fiscal impact relates to the continuing education requirements. As noted previously, the bill authorizes the Board to require continuing education. (This provision does not apply to manufacturers). It also sets the maximum fees associated with that training. The Department of Insurance reports collecting for 7,251 licenses in 1997-98. The vast majority of these (4,566) were for salesman. The next largest group of licensees is dealers. At this point there is no estimate on the number of courses that will be offered, or the number of credit hours the Board will actually require. If the Board charged the $5.00 fee on each hour, and required eight hours of training, the Board would see approximately $290,040 of new revenue. This does not include revenue from charges to trainers. Because more detailed information is not yet available, no accurate fiscal estimate is possible.

Finally, the bill could impact the prison population. Under current law it is a Class 1 misdemeanor to violate the Manufactured Housing Act in a manner that threatens the health or safety of a purchaser. The legislation moves such a violation to a Class 1 felony. According to the Administrative Office of the Courts, "Data from the Administrative Office of the Courts (AOC) did not reveal the number of charges brought under this provision of the current law. Although the penalty enhancement is significant, AOC does not expect a substantial fiscal impact on the courts from this bill. They assume that the vast majority of the businesses being regulated will comply with the requirements of the law."

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Linda Struyk Millsaps

APPROVED BY: Tom Covington

DATE: Tuesday, June 15, 1999

VISITOR REGISTRATION SHEET

SENATE FINANCE — WEDNESDAY, JUNE 16, 1999

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	NCDOJ
Pat Walker	NC DOT
Starla McKenney	NC DOI
[signature]	JD, AL
Joyce Pierce	~~HP~~
Alice Garland	Electricities
John Bowdish	Zeb Alley P.A.
Stephanie Kordick	NC DHHS
[signature]	DHHS
Ed Regan	N.C.A.C.C.
David McLeod	NCDA & CS

VISITOR REGISTRATION SHEET

SENATE FINANCE — WEDNESDAY, JUNE 16, 1999

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
WALTER PRICE	CHARLOTTE CHAMBER
Larry Bewley	Bewley and Assoc.
[illegible]	WCSR
Jack Cozort	Parker Poe Adams & Bernstein
Barb Rose	NCWRC
Richard Hamilton	NCWRC
C Markham	EGITS
Gary Hamrick	EGITS
[illegible]	NCACU
Kathy, Eric, Katelyn, + Brendan Fletcher — Observers/Visitors	
David Ferrell	HMC CC & C PA.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Wednesday, June 16, 1999

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

FAVORABLE

H.B. **237** Boat Agent Fees/AB.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1)**283** State Treasurer's Investment Authority.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1)**830** Transylvania Room Tax Penalties.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

S.B.(CS #1)**941** Manufactured Homes Law Changes.
Draft Number: PCSA154
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 4

Committee Clerk Comment: SB 941 HB 237 283 830

AGENDA

SENATE FINANCE COMMITTEE MEETING

WEDNESDAY, JUNE 23, 1999

1:30 PM – ROOM 544 LOB

MEETING CALLED TO ORDER – SENATOR HOYLE

INTRODUCTION OF PAGES

BILLS TO BE CONSIDERED:

- HB 112 - Securities Transfer on Death - Rep. Barefoot
- HB 419 - Mount Airy Satellite Annexation – Rep. Baker
- HB 734 - Chapel Hill Development Agreements - Rep. Insko
- HB 845 - Greenville Utilities Commission - Rep. McLawhorn
- HB 1095 - Clinical Pharmacist Practitioner - Rep. Allen
- HB 1134 - UNC Horace Williams Campus - Rep. Insko
- SB 251 - Modify Historic Rehab Credit - Sen. Horton
- SB 523 - Modify Greensboro Room Tax Use - Sen. Hagen
- SB 547 - Telecommunications Relay Service - Sen. Hoyle

ADJOURNMENT OF MEETING

SENATE FINANCE COMMITTEE

WEDNESDAY, JUNE 23, 1999

1:30 PM – ROOM 544

The Senate Finance Committee met on Wednesday, June 23, 1999 at 1:30 PM in Room 544 with Senator Hoyle presiding. There were 26 committee members present. Ivy Capell from Hendersonville, North Carolina, sponsored by Senator Carpenter and Robbie Hewett from Greensboro, North Carolina, sponsored by Senator Robert Shaw, were introduced as the pages for the meeting.

HB 419 – Mount Airy Satellite Annexation

Senator East was recognized to explain the bill for Representative Baker and at the conclusion of his explanation, Senator Albertson moved for a "Favorable Report", motion passed. Copy of Bill and supporting documents included in the minutes.

HB 845 – Greenville Utilities Commission

Representative McLawhorn was recognized to explain the bill and at the conclusion of his explanation, Senator Weinstein moved for a "Favorable Report", motion passed. Copy of Bill and supporting documents included in the minutes.

HB 1095 – Clinical Pharmacist Practitioner

Representative Allen was recognized to explain the bill and at the conclusion of his explanation, Senator Cochrane moved for a "Favorable Report", motion passed. Copy of Bill and supporting documents included in the minutes.

HB 112 – Securities Transfer on Death

Representative Barefoot was recognized to explain the bill. There were numerous questions and comments by the member of the committee on this bill. After a length discussion, Senator Hoyle announced that the bill would be "Held" until questions are answered and a new fiscal note is obtained. Copy of Bill and supporting documents included in the minutes along with new Fiscal Note.

HB 1134 – UNC Horace Williams Campus

Representative Insko was recognized to explain the bill and at the conclusion of his explanation, Senator Moore moved for a "Favorable Report", motion passed. Copy of Bill and supporting documents included in the minutes.

SB 251 – Modify Historic Rehab Credit

Senator Horton was recognized to explain the bill. Senator Dannelly moved for adoption of the proposed committee substitute for the purpose of discussion, motion passed At the conclusion of Senator Horton's explanation and questions from the committee members, Senator Rand moved to give the bill a "Favorable Report", motion passed. Copy of Bill and supporting documents included in the minutes.

SB 523 – Modify Greensboro Room Tax Use

Senator Hagan was recognized to explain the bill and at the conclusion of her explanation, Senator Rand moved to give the bill a "Favorable Report", motion passed. Copy of Bill and supporting documents include in the minutes.

Senator Kerr came to conduct the Meeting so that Senator Hoyle could explain the next Bill.

SB 547 – Telecommunications Relay Service

Senator Hoyle was recognized to explain the bill. After the explanation, there were questions and answers about the bill. Mr. James Little, Attorney to the Public Staff of the N. C. Utilities Commission, spoke on the Bill as well as Ms. Linda Nelson who is Head of the Telecommunications Service. After further discussion, Senator Hoyle submitted an amendment to the bill and moved that amendment be adopted, motion passed. Senator Dannelly moved that bill be given a "Favorable Report as amended and be rolled into a committee substitute", motion passed. Copy of Bill and supporting documents included in the minutes.

Meeting adjourned.

David W. Hoyle, Co-Chair

John H. Kerr, III Co-Chair

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

Visitors' Sign Up Sheet is Attachment #1
Committee Report dated June 23, 1999 is Attachment # 2
Committee Report dated June 24, 1999 is Attachment #3

NOTE: HB 734 – Chapel Hill Development Agreements not heard at this Meeting.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 3

HOUSE BILL 419
Committee Substitute Reported Without Prejudice 4/21/99
Committee Substitute #2 Favorable 4/27/99

Short Title: Mount Airy Satellite Annexation. (Local)

Sponsors:

Referred to:

March 11, 1999

A BILL TO BE ENTITLED

AN ACT CONCERNING SATELLITE ANNEXATION AND REMOVING A CERTAIN TRACT OF PROPERTY FROM THE CORPORATE LIMITS OF THE CITY OF MOUNT AIRY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-58.1(b)(5) does not apply to the City of Mount Airy.

Section 2. The following described property is removed from the corporate limits of the City of Mount Airy:

BEING a 25.954 Acre tract of land recorded in Plat Book 14 Page 98 of the Surry County Register of Deeds. Said plat is entitled "The City of Mount Airy Annexation of May 15, 1997 Index # AX93" and was surveyed by Owen Lee Osborne, Registered Land Surveyor, license number 3295. Property is shown as parcel 7162 on map 5919 of the Surry County Tax Maps.

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

HOUSE BILL 419:
Mount Airy Satellite Annexation

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Rep. Baker
Date:	June 22, 1999	**Summary by:**	Martha K. Walston
Version:	Third Edition		Committee Counsel

BILL ANALYSIS: House Bill 419 is a local act affecting the City of Mount Airy. The bill does two things:

1. It exempts Mount Airy from the voluntary satellite annexation requirement that the area proposed for annexation, when added to the area within all other satellite corporate limits, may not exceed 10% of the area within the primary corporate limits of the annexing city. The following requirements for voluntary satellite annexation would still apply:
    - The nearest point on the proposed satellite corporate limits must be not more than 3 miles from the primary corporate limits of the annexing city.
    - No point on the proposed satellite corporate limits may be closer to the primary corporate limits of another city than to the primary corporate limits of the annexing city.
    - The area must be so situated that the annexing city will be able to provide the same services within the proposed satellite corporate limits that it provides within its primary corporate limits.
    - If the area proposed for annexation is a subdivision, all of the subdivision must be included.
2. It removes certain property from the corporate limits of the City. This property is described in the bill.

The act is effective when it becomes law

BACKGROUND: The current version of House Bill 419 was given a favorable report in the House Committee on Local Government II.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 845
Committee Substitute Favorable 4/29/99

Short Title: Greenville Utilities Commission. (Local)

Sponsors:

Referred to:

April 1, 1999

A BILL TO BE ENTITLED

AN ACT EXPANDING THE PERMISSIBLE PURPOSES OF THE GREENVILLE UTILITIES COMMISSION AND AUTHORIZING THE COMMISSION TO CHARGE APPROPRIATE FEES FOR EXPANDED SERVICES.

The General Assembly of North Carolina enacts:

Section 1. In addition to the allowable public enterprises that the City of Greenville and the Greenville Utilities Commission may undertake pursuant to the provisions of Chapter 861 of the 1991 Session Laws, the City of Greenville and the Greenville Utilities Commission shall have the authority, with the approval of the City Council of the City of Greenville, to acquire, construct, establish, enlarge, improve, maintain, own, operate, or contract for the operation of the following:

(1) Steam and chilled water supply and distribution systems, if the system is located within the Greenville Industrial Park, and is located entirely within the corporate limits of the City of Greenville or its extraterritorial jurisdiction area; or

(2) Public enterprises, as defined in G.S. 160A-311, of a public or private entity other than the City of Greenville, if approved by the governing body of the entity, and if the enterprise is located within Pitt County.

Section 2. The City of Greenville and the Commission may charge appropriate fees for any expanded services offered pursuant to this act.

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

HOUSE BILL 845:
Greenville Utilities Commission

BILL ANALYSIS

Committee: Senate Finance
Date: June 22, 1999
Version: 2nd Edition

Introduced by: Rep. McLawhorn
Summary by: Martha K. Walston
Committee Counsel

BILL ANALYSIS: House Bill 845 expands the authority of the Greenville Utilities Commission so that the City of Greenville and the Commission, with the approval of the Greenville City Council, may acquire, construct, establish, enlarge, improve, maintain, own, operate, or contract for the operation of the following:

- Steam and chilled water supply and distribution systems, if the system is located within the Greenville Industrial Park, and is located entirely within the corporate limits or the extraterritorial jurisdiction area of Greenville; or
- Public enterprises of a public or private entity other than the City of Greenville, if approved by the governing body of the entity, and if the enterprise is located in Pitt County.

A public enterprise includes the following: (1) electric power generation, transmission, and distribution systems; (2) water supply and distribution systems; (3) wastewater collection, treatment, and disposal systems of all types; (4) gas production, storage, transmission, and distribution systems; (5) public transportation systems; (6) solid waste collection and disposal systems and facilities; (7) cable television systems; (8) off-street parking facilities and systems; (9) airports; and (10) structural and natural stormwater and drainage systems.

The bill authorizes the City of Greenville and the Greenville Utilities Commission to charge appropriate fees for any expanded services offered under this act.

BACKGROUND: Chapter 861 of the 1991 Session Laws revised the charter of the Greenville Utilities Commission. The Commission is composed of eight members (6 must be residents of the City and 2 must reside in Pitt County but outside the city limits of Greenville.). The Commission has supervision and control of the management, operation, maintenance, improvement, and extension of the City public utilities. These utilities include electric, natural gas, water, and sewer services. The Commission also shall fix uniform rates for all services rendered.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 4

HOUSE BILL 1095
Corrected Copy 4/19/99
Committee Substitute Favorable 4/26/99
Committee Substitute #2 Favorable 5/17/99

Short Title: Clinical Pharmacist Practitioner. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE NORTH CAROLINA MEDICAL BOARD AND THE BOARD OF PHARMACY TO ADOPT RULES TO APPROVE CLINICAL PHARMACIST PRACTITIONERS TO PRACTICE DRUG THERAPY MANAGEMENT PURSUANT TO A DRUG THERAPY MANAGEMENT AGREEMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-6 reads as rewritten:

"**§ 90-6. ~~Regulations~~ Rules governing applicants for license, examinations, etc.; appointment of ~~subcommittee.~~ subcommittees.**

(a) The North Carolina Medical Board is empowered to prescribe such ~~regulations~~ rules as it may deem proper, governing applicants for license, admission to examinations, the conduct of applicants during examinations, and the conduct of examinations proper.

(b) The North Carolina Medical Board shall appoint and maintain a subcommittee to work jointly with a subcommittee of the Board of Nursing to develop rules ~~and regulations~~ to govern the performance of medical acts by registered nurses, including the determination of reasonable fees to accompany an application for approval not to exceed one hundred dollars ($100.00) and for renewal of approval not to exceed fifty dollars ($50.00). The fee for reactivation of an inactive incomplete application shall be five dollars ($5.00). Rules ~~and regulations~~ developed by this subcommittee from

time to time shall govern the performance of medical acts by registered nurses and shall become effective when adopted by both the North Carolina Medical Board and the Board of Nursing. The North Carolina Medical Board shall have responsibility for securing compliance with these ~~regulations.~~ rules.

(c) The North Carolina Medical Board shall appoint and maintain a subcommittee of four licensed physicians to work jointly with a subcommittee of the North Carolina Board of Pharmacy to develop rules to govern the performance of medical acts by clinical pharmacist practitioners, including the determination of reasonable fees to accompany an application for approval not to exceed one hundred dollars ($100.00) and for renewal of approval not to exceed fifty dollars ($50.00). The fee for reactivation of an inactive incomplete application shall be five dollars ($5.00). Rules recommended by the subcommittee shall be adopted in accordance with Chapter 150B of the General Statutes by both the North Carolina Medical Board and the North Carolina Board of Pharmacy and shall not become effective until adopted by both Boards. The North Carolina Medical Board shall have responsibility for ensuring compliance with these rules."

Section 2. G.S. 90-18(c) is amended by adding a new subdivision to read:

"(3a) The provision of drug therapy management by a licensed pharmacist engaged in the practice of pharmacy pursuant to an agreement that is physician, pharmacist, patient, and disease specific when performed in accordance with rules and rules developed by a joint subcommittee of the North Carolina Medical Board and the North Carolina Board of Pharmacy and approved by both Boards. Drug therapy management shall be defined as: (i) the implementation of predetermined drug therapy which includes diagnosis and product selection by the patient's physician; (ii) modification of prescribed drug dosages, dosage forms, and dosage schedules; and (iii) ordering tests; (i), (ii), and (iii) shall be pursuant to an agreement that is physician, pharmacist, patient, and disease specific."

Section 3. Article 1 of Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-18.3. Limitations on clinical pharmacist practitioners.**

(a) Any pharmacist who is approved under the provisions of G.S. 90-18(c)(3a) to perform medical acts, tasks, and functions may use the title 'clinical pharmacist practitioner'. Any other person who uses the title in any form or holds himself or herself out to be a clinical pharmacist practitioner or to be so licensed shall be deemed to be in violation of this Article.

(b) Clinical pharmacist practitioners are authorized to implement predetermined drug therapy, which includes diagnosis and product selection by the patient's physician, modify prescribed drug dosages, dosage forms, and dosage schedules, and to order laboratory tests pursuant to a drug therapy management agreement that is physician, pharmacist, patient, and disease specific under the following conditions:

(1) The North Carolina Medical Board and the North Carolina Board of Pharmacy have adopted rules developed by a joint subcommittee governing the approval of individual clinical pharmacist practitioners to practice drug therapy management with such limitations that the Boards determine to be in the best interest of patient health and safety.

(2) The clinical pharmacist practitioner has current approval from both Boards.

(3) The North Carolina Medical Board has assigned an identification number to the clinical pharmacist practitioner which is shown on written prescriptions written by the clinical pharmacist practitioner.

(4) The drug therapy management agreement prohibits the substitution of a chemically dissimilar drug product by the pharmacist for the product prescribed by the physician without the explicit consent of the physician and includes a policy for periodic review by the physician of the drugs modified pursuant to the agreement or changed with the consent of the physician.

(c) Clinical pharmacist practitioners in hospitals and other health facilities that have an established pharmacy and therapeutics committee or similar group that determines the prescription drug formulary or other list of drugs to be utilized in the facility and determines procedures to be followed when considering a drug for inclusion on the formulary and procedures to acquire a nonformulary drug for a patient may order medications and tests under the following conditions:

(1) The North Carolina Medical Board and the North Carolina Board of Pharmacy have adopted rules governing the approval of individual clinical pharmacist practitioners to order medications and tests with such limitations as the Boards determine to be in the best interest of patient health and safety.

(2) The clinical pharmacist practitioner has current approval from both Boards.

(3) The supervising physician has provided to the clinical pharmacist practitioner written instructions for ordering, changing, or substituting drugs, or ordering tests with provision for review of the order by the physician within a reasonable time, as determined by the Boards, after the medication or tests are ordered.

(4) The hospital or health facility has adopted a written policy, approved by the medical staff after consultation with nursing administrators, concerning the ordering of medications and tests, including procedures for verification of the clinical pharmacist practitioner's orders by nurses and other facility employees and such other procedures that are in the best interest of patient health and safety.

(5) Any drug therapy order written by a clinical pharmacist practitioner or order for medications or tests shall be deemed to

have been authorized by the physician approved by the Boards as the supervisor of the clinical pharmacist practitioner and the supervising physician shall be responsible for authorizing the prescription order.

(d) Any registered nurse or licensed practical nurse who receives a drug therapy order from a clinical pharmacist practitioner for medications or tests is authorized to perform that order in the same manner as if the order was received from a licensed physician."

Section 4. G.S. 90-85.3 is amended by adding a new subsection to read:

"(b1) 'Clinical pharmacist practitioner' means a licensed pharmacist who meets the guidelines and criteria for such title established by the joint subcommittee of the North Carolina Medical Board and the North Carolina Board of Pharmacy and is authorized to enter into drug therapy management agreements with physicians in accordance with the provisions of G.S. 90-18.3."

Section 5. G.S. 90-85.3(r) reads as rewritten:

"(r) 'Practice of pharmacy' means the responsibility for: interpreting and evaluating drug orders, including prescription orders; compounding, dispensing and labeling prescription drugs and devices; properly and safely storing drugs and devices; maintaining proper records; and controlling pharmacy goods and services. A pharmacist may advise and educate patients and health care providers concerning therapeutic values, content, uses and significant problems of drugs and devices; assess, record and report adverse drug and device reactions; take and record patient histories relating to drug and device therapy; monitor, record and report drug therapy and device usage; perform drug utilization reviews; and participate in drug and drug source selection and device and device source selection as provided in G.S. 90-85.27 through G.S. 90-85.31. A pharmacist who has received special training may be authorized and permitted to administer drugs pursuant to a specific prescription order in accordance with rules ~~and regulations~~ adopted by each of the Boards of Pharmacy, the Board of Nursing, and the North Carolina Medical Board. ~~Such~~ The rules ~~and regulations~~ shall be designed to ensure the safety and health of the patients for whom such drugs are administered. An approved clinical pharmacist practitioner may collaborate with physicians in determining the appropriate health care for a patient, subject to the provisions of G.S. 90-18.3."

Section 6. Article 4A of Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-85.26A. Clinical pharmacist practitioners subcommittee.**

The North Carolina Board of Pharmacy shall appoint and maintain a subcommittee of the Board consisting of four licensed pharmacists to work jointly with the subcommittee of the North Carolina Medical Board to develop rules to govern the provision of drug therapy management by clinical pharmacist practitioners and to determine reasonable fees to accompany an application for approval or renewal of such approval as provided in G.S. 90-6. The rules developed by this subcommittee shall govern the performance of acts by clinical pharmacist

practitioners and shall become effective when they have been adopted by both Boards."

Section 7. Sections 2 through 5 of this act become effective July 1, 2000. The remainder of this act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1095 (House Finance Committee Substitute)

SHORT TITLE: Clinical Pharmacist Practitioner

SPONSOR(S): Representative Allen

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
Special Revenue Fund	---	$60,200	$45,100	$52,600	$60,100
EXPENDITURES					

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

EFFECTIVE DATE: Sections 2 through 5 of this act become effective July 1, 2000. The remainder of the bill is effective when it becomes law.

BILL SUMMARY: The bill authorizes the North Carolina Medical Board and the North Carolina Board of Pharmacy to adopt rules to approve clinical pharmacist practitioners to practice drug therapy management pursuant to a drug therapy management agreement.

ASSUMPTIONS AND METHODOLOGY: Based on the North Carolina Board of Pharmacy Census of Registrants, there are 6,405 active licensed pharmacists in North Carolina. The pharmacists are employed as follows:

Retail pharmacy	3,504
Hospital pharmacy	1,407
Sales and research	149
Nursing home pharmacy	134
Other	1,191

Dan Garrett, Executive Director of the North Carolina Association of Pharmacists, estimates 25% of hospital pharmacists and 5% of other pharmacists will apply for approval as clinical pharmacist practitioners the first year it is offered. That would equal 352 hospital pharmacists and 250 other pharmacists paying $100 in FY 2000-01. Over a five-year period, Mr. Garrett

expects 50% of hospital pharmacists and 10% of other pharmacists to apply for approval with the North Carolina Medical Board. On an annualized basis that would mean approximately 88 hospital pharmacists and 62 other pharmacists will apply in years FY 2001-02 through FY 2004-05. The fees from the application and renewal are shown below.

	Application	Fee $100	Renewal	Fee $50	Total
FY 1999-00					
FY 2000-01	602	$60,200		$0	$60,200
FY 2001-02	150	$15,000	602	$30,100	$45,100
FY 2002-03	150	$15,000	752	$37,600	$52,600
FY 2003-04	150	$15,000	902	$45,100	$60,100

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

APPROVED BY: Tom Covington

DATE: Thursday, May 20, 1999

HOUSE BILL 1095:
Clinical Pharmacist Practitioner

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Rep. Allen
Date:	June 21, 1999	**Summary by:**	Martha K. Walston
Version:	Fourth Edition		Committee Counsel

SUMMARY: *House Bill 1095 would permit licensed pharmacists to be approved as clinical pharmacist practitioners in accordance with rules adopted by both the NC Medical Board and the Board of Pharmacy. Clinical pharmacist practitioners would be allowed to enter into drug therapy management agreements with a supervising physician to perform certain medical tasks. A pharmacist who uses the title "clinical pharmacist practitioner" or holds oneself out to be a clinical pharmacist practitioner without Board approval would be in violation of the Medical Practices Act. The part of the bill authorizing the Boards to develop rules becomes effective immediately. The parts of the bill governing clinical pharmacist practitioners become effective July 1, 2000.*

CURRENT LAW: Under current law (G.S. 90-85.3(r)) a licensed pharmacist's scope of practice is limited to: "interpreting and evaluating drug orders, including prescription orders; compounding, dispensing, and labeling prescription drugs and devices; properly and safely storing drugs and devices; maintaining proper records; and controlling pharmacy goods and services". A pharmacist may also advise and educate patients and health care providers concerning drugs and devices. A pharmacist who has received special training may be authorized and permitted to administer drugs pursuant to a specific prescription order. While 90-18(c) provides that the practice of pharmacy does not constitute practicing medicine without a license, anything outside the pharmacist's scope of practice as defined above would constitute practicing medicine without a license.

BACKGROUND & OVERVIEW OF BILL: Currently, twenty-four states have either laws or rules governing "collaborative drug therapy management" (CDTM). CDTMs are voluntary written agreements between a specific physician and pharmacist that outline a plan for drug therapy management. (Source: NC Pharmaceutical Association). These collaborative drug therapy management agreements may include, for example, asthma management, diabetic management, diuretic therapy, and management of hypertension.

If enacted, House Bill 1095 would allow a clinical pharmacist practitioner to perform certain limited medical tasks that currently fall within a physician's scope of practice. These tasks would include the implementation of a predetermined drug therapy, modification of prescribed drug dosages, and ordering medical tests. These tasks would only be performed pursuant to a written agreement that is physician, patient, pharmacist, and disease specific.

BILL ANALYSIS: The bill would allow pharmacists to provide drug therapy management pursuant to a written agreement. It does so by addressing the issue in three different statutes in three slightly different ways:

1. It authorizes the NC Medical Board and the NC Board of Pharmacy to develop rules to govern the performance of medical acts by clinical pharmacist practitioners. It implies that a pharmacist will need to be approved by the Board to be a clinical pharmacist practitioner because it sets the maximum

fee amounts the Board may charge for application for approval and renewal of approval. **Secti[redacted] and 6 of the bill.**

2. It provides an exception to the Medical Practices Act for a licensed pharmacist to provide drug therapy management pursuant to an agreement that is physician, pharmacist, patient, and disease specific when performed in accordance with rules developed by the NC Medical Board and the NC Board of Pharmacy. It then goes on to define "drug therapy management". **Section 2 of the bill.**
3. It makes it a violation of the Medical Practices Act for a pharmacist to use the title "clinical pharmacist practitioner" or for a pharmacist to hold oneself out to be a clinical pharmacist practitioner unless the pharmacist is approved as a clinical pharmacist practitioner. **Section 3 of the bill.**

Section 3 of the bill appears to give authorization to two different groups of potential clinical pharmacist practitioners. Subsection (b) addresses clinical pharmacist practitioners. Subsection (c) addresses clinical pharmacist practitioners that work in hospitals. As written in the bill, each group is given authority to do similar, but slightly different things, and the conditions under which each group can provide drug therapy management is slightly different.

Subsection (b) of G.S. 90-18.3, as proposed in Section 3 of the Bill, provides that **clinical pharmacist practitioners** may implement predetermined drug therapy, modify prescribed drug dosages, dosage forms, and dosage schedules, and order laboratory tests (the provisions for practitioners who work in a hospital refers to "medications and tests") under the following conditions:

- The NC Medical Board and the NC Board of Pharmacy have adopted rules governing the approval of individual clinical pharmacist practitioners to practice drug therapy management. "Drug therapy management" is defined in G.S. 90-18, but it is not defined in this statute. (The provisions relating [redacted] practitioners who work in hospitals use the phrase "order medications and tests".)
- The clinical pharmacist practitioner has approval from both boards. This statement is unclear. The bill provides that the NC Medical Board has responsibility for ensuring compliance with the rules. However, this provision appears to suggest that a pharmacist who wishes to be approved as a clinical pharmacist practitioner must be approved by the Medical Board and the Pharmacy Board.
- The NC Medical Board has assigned an identification number to the practitioner that is shown on written prescriptions written by the clinical pharmacist practitioner. (The provisions relating to practitioners who work in hospitals do not include this provision.)
- The drug therapy management agreement prohibits the substitution of a chemically dissimilar drug product by the pharmacist without the explicit consent of the physician. The physician must periodically review the drugs modified or changed. The provision does not address review by the physician of laboratory tests ordered. (The provisions relating to practitioners who work in hospitals do not include a provision explicitly prohibiting the substitution of chemically dissimilar drugs.)

Subsection (c) of G.S. 20-18.3, as proposed in Section 3 of the bill, provides that **clinical pharmacist practitioners that work in a hospital or similar type of facility** may order medications and tests (the provisions for other clinical pharmacist practitioners use the phrase "implement predetermined drug therapy, modify prescribed drug dosages, dosage forms, and dosage schedules, and order laboratory tests") under the following circumstances:

- The NC Medical Board and the NC Board of Pharmacy have adopted rules governing the approval of individual clinical pharmacist practitioners to order medications and test. (The provisions relating [redacted] clinical pharmacist practitioners use the phrase "to practice drug therapy management".)

- The clinical pharmacist practitioner has approval from both boards.
- The physician has provided to the clinical pharmacist practitioner written instructions for ordering, changing, or substituting drugs, or ordering tests and the physician reviews the orders within a reasonable time.
- The hospital or similar health facility has a written policy approved by the medical staff governing clinical pharmacist practitioners.
- Any drug therapy order or order for medications or test written by a clinical pharmacist practitioner is deemed to be authorized by the physician. (The provisions that appear to govern clinical pharmacist practitioners who work outside a hospital or similar type of health facility do not provide that drug therapy orders, orders for modification of drugs, or orders for tests written by a clinical pharmacist practitioner are deemed to have been authorized by the physician.

Sections 4 and 5 of the bill make conforming changes to the Pharmacy Practice Act.

Cindy Avrette, Counsel to the House Finance Committee, and Linda Attarian, Counsel to the House Health Committee, contributed substantially to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 112
Committee Substitute Favorable 3/9/99

Short Title: Securities Transfer on Death. (Public)

Sponsors:

Referred to:

February 22, 1999

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

"ARTICLE 4.

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

"**§ 41-40. Definitions.**

In this Article, unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A security may be registered in beneficiary form if the form is authorized by this or a similar statute of the state of organization of the issuer or registering entity, the

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

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

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

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

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

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

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

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

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

"§ 41-47. Protection of registering entity.

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

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

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

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

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

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

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

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

(c) This Article does not repeal or modify any provision of law relating to estate or inheritance taxes.

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

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

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

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

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

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

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

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

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

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

"**§ 41-51. Application of Article.**

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

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

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

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

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

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

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

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

Section 3. The Revisor of Statutes shall cause to be printed along with this act all relevant portions of the Official Commentary to the Uniform TOD Security Registration Act and all explanatory comments of the drafters of this act as the Revisor may deem appropriate.

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

HOUSE BILL 112:
Securities Transfer on Death

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Rep. Barefoot
Date:	June 21, 1999	**Summary by:**	Martha K. Walston
Version:	Second Edition		Committee Counsel

SUMMARY: ***House Bill 112 would amend Chapter 41 – Estates, to allow owners of securities to register their title in transfer-on-death (TOD) form. This would allow the transfer of securities, including stocks, bonds, mutual funds, and security accounts, to a beneficiary upon death based on a prior beneficiary designation by registration. The bill would rename the title of Chapter 41 as – Estate and Interests in Property. The bill would exempt the transfer of these securities from probate fees, but the securities would still be subject to estate tax and to creditors of the estate. The current version of House Bill 112 was given a favorable report in House Judiciary II and Senate Commerce. The bill is a recommendation of the General Statutes Commission and is modeled after the Uniform Transfer on Death (TOD) Securities Registration Act. The Uniform Act has been adopted in at least 44 other states.***

BILL ANALYSIS:

Section 1 of the bill would allow the owner of securities to designate a beneficiary of the securities to be received upon the death of the owner. The owner must be the sole owner of the securities or may be multiple owners if the ownership is with right of survivorship. The owner may revoke or modify this designation at any time up until death. Also this designation does not convey any right or interest in the beneficiary until the time of death. Title to the securities would be transferred as a matter of contract (like life insurance policies or individual retirement accounts), not as a testamentary bequest, and would therefore not be part of the probate estate. On the death of the sole owner or the last to die of all multiple owners, ownership of the securities registered in beneficiary form passes to the beneficiary or beneficiaries who survive the owners.

Reduction in probate fees. -- Because the transfer of these securities would not be part of the probate estate, there would be a reduction in the collection of probate fees by the clerks of court. Probate fees are collected on all personal property that passes through the probate estate. G.S. 7A-307 of the General Statutes imposes the following probate fees for administering an estate: the sum of $26.00 plus an additional forty cents per $100.00 of the gross estate, not to exceed $3,000. The term "gross estate" includes the fair market value of all personal property when received, and all proceeds from the sale of real property coming into the hands of the fiduciary. Gross estate does not include the value of real property.

Advantages of bill. – The bill appears: (1) to provide an alternative to joint ownership with right of survivorship, avoiding the complications and restrictions of dealing with a co-owner but effecting the same transfer upon death; (2) to avoid probate of and probate fees on the securities; and (3) to simplify the process of changing names on securities after death.

Securities are subject to claims of decedent's creditors and to estate tax. -- The bill makes it clear that this act does not affect claims of creditors, who can still claim these securities if necessary to satisfy claims

against the decedent's estate in the same ways as with joint bank accounts with right of survivorship. The bill also makes it clear that this form of ownership does not affect estate or inheritance tax collection and that these securities would be counted as part of the taxable estate. These two clarifications are not found in the Uniform Act.

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

Section 3 of the bill authorizes the Revisor of Statutes to include with the published statutes, the Official Comments to the Uniform Act from the Uniform Commissioners and the explanatory comments from the drafters of the bill.

The bill would become effective October 1, 1999, and would apply to persons dying on or after that date who had registered a designation on their securities at any time prior to their death. This will ratify the designations made by people before October 1, 1999, including people who may have made such designations under the laws of other states.

Robin S. Johnson, co-counsel to the House Judiciary II Committee, contributed substantially to this summary.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 112

SHORT TITLE: Securities Transfer on Death

SPONSOR(S): Rep. Barefoot, et al.

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
EXPENDITURES					
POSITIONS:					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue*; Administrative Office of the Courts**

EFFECTIVE DATE: October. 1, 1999

* There is no fiscal impact on the Department of Revenue.
** The Administrative Office of the Courts cannot reliably estimate the loss of revenue.

BILL SUMMARY:

TO ENACT THE UNIFORM TRANSFER ON DEATH (TOD) SECURITY REGISTRATION ACT. Changes the title of ch. 41 of the General Statutes to "Estates and Interests in Property" and enacts new art. 4, ch. 41, to provide for the transfer of securities on death of the owner. Provides for the registration of securities in beneficiary form, which means that in the registration the owner designates the person who will become the owner at his or her death. Registration in beneficiary form can only be done if the registration shows sole ownership or multiple ownership by two or more individuals with right of survivorship, such as joint tenants with right of survivorship, tenants by the entireties, or owners of community property held in survivorship form, but not as tenants in common. A security may be registered in beneficiary form if the form is authorized by this or a similar statute of the state of organization of the issuer or registering entity, the location of the registering entity's principal office, the office of its

transfer agent or its office making the registration, or by this or a similar statute of the law of the state listed as the owner's address at the time of registration. A registering entity, which means a person who originates or transfers a security title, including brokers and transfer agents, is not required to offer or accept a request for security registration in beneficiary form. If it does accept such registration, it may place terms and conditions on the form of registration. On the death of the sole owner or the last to die of all multiple owners, ownership of securities registered in beneficiary form passes to the beneficiary or beneficiaries who survive the owners. Transfer on death is effective by virtue of the contract between the owner and the registering entity and this statute and is not testamentary. The interest of the decedent, however, remains liable for his or her debts in the same manner as personal property included in the decedent's estate. The act applies to registration of securities in beneficiary form made before, on, or after the effective date of the act, which is Oct. 1, 1999, by decedents dying on or after the effective date.
Source: Institute of Government, February 22, 1999.

ASSUMPTIONS AND METHODOLOGY:

Department of Revenue

According to the department, the addition of a new article to Chapter 41 to allow a change in ownership of a security resulting from a "transfer on death" will not affect inheritance or estate taxes. The provisions of G. S. 105-2 (taxation of assets) and G. S. 105-24 (tax waiver requirements) are clear, and the new section G. S. 41-48 (c) preserves the requirements of the two provisions.

Administrative Office of the Courts (AOC)

Summary
This legislation would change the way some securities and security accounts are handled during the administration of estates. Specifically, it would allow the owner of a security or account to pass the security or account directly to the named beneficiary, without passing under the owner's will or under the laws of intestacy (applies when owner has no will). As a result, the value of the securities or accounts would not be included as part of the state for probate.

The principal court-related fiscal impact would be a reduction in revenues to the General Fund from the General Court of Justice Fees dealing with estates [G. S. 7A-307(a)(2)]. Currently, the clerk collects a flat $26 fee, other fees pursuant to G. S. 7A-307, and forty cents per $100 of the gross value of personal property in the estate (referred to as ad valorem fee), up to $3,000. The ad valorem fee would no longer be collected by clerks if securities were registered in accordance with this legislation.

Estimate
The Judicial Department does have limited information that indicates the fiscal impact may be fairly substantial and could be up to $9.5 million but would probably be less. It is not possible to determine the impact more accurately with currently available data. Fiscal Year 1997-98 data shows a total of 54,768 estate cases were filed statewide and $10.9 million was collected in

estate costs. However, it is not possible for the judicial department to accurately identify how much of the $10.9 million in total estates costs are derived from each fee under G. S. 7A-307.

The department assumes the majority of these funds are collected from the basic $26 fee and the ad valorem fee. Thus, if the $26 fee were collected in all of those cases, approximately $1.4 million in estate costs could be attributed to this fee. This implies the remaining $9.5 million would include the ad valorem fee and other less significant estate fees. Some of the other fees included are a $17 fee collected for probate of a will without qualification of a personal representative and a $15 fee collected instead of the ad valorem fee for certain personal property received by a trust under a will. Even if the total $9.5 million was only ad valorem fees, the AOC does not have information on ad valorem fees collected due to the value of securities versus ad valorem fees collected on all other personal property.

The lack of separate information relating to the ad valorem fee and the ad valorem fee on securities in particular makes it very difficult to estimate the fiscal impact of this bill on general fund revenues. Subsequently, no reliable fiscal impact for the Judicial Department is available at this time.

TECHNICAL CONSIDERATIONS:

If the AOC could separately account for estate fees in the future with current resources, more accurate data would be available for fiscal impact estimates.

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Charles Perusse and Tammy Lester
APPROVED BY:

DATE: March 3, 1999

STATE OF NORTH CAROLINA
GENERAL STATUTES COMMISSION
POST OFFICE BOX 629
RALEIGH, NORTH CAROLINA 27602
(919) 716-6800

MEMORANDUM

TO: Senate Finance Committee

FROM: General Statutes Commission

DATE: June 21, 1999

RE: House Bill 112 (Securities Transfer on Death)

House Bill 112 enacts the Uniform TOD (Transfer on Death) Security Registration Act, which was adopted by the National Conference of Commissioners on Uniform State Laws in 1989 and subsequently reviewed by the General Statutes Commission and its Trusts Drafting Committee. The Act permits the owner of an investment security (that is, stocks, bonds, mutual fund shares, security accounts, etc.) to designate another person to become owner of the security when the present owner dies, in a manner similar to insurance policies. The designation is completely revocable until the death of the owner, and it eliminates the need for probate of that particular security. Estate or inheritance tax liability is not affected. The Uniform Act is endorsed by the American Bar Association and the American Association of Retired Persons and has been enacted in at least 46 states, including every state that borders this State (Vermont and Georgia enacted the Uniform Act this year).

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

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

Please note also the following specific points:

(1) Only a sole owner or multiple owners with right of survivorship can use the TOD registration process. The only type of multiple ownership with right of survivorship that

can be created in a normal investment security under North Carolina law is a joint tenancy with right of survivorship, although other types can be created in other states. Tenants in common cannot use the TOD designation. This limitation is found in the Uniform Act itself and is designed to prevent conflicting or divided beneficiary designations.

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

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

(4) This bill differs from the Uniform Act in five respects. First, it includes in the definition of "heirs" a specific citation to North Carolina's intestate succession statutes. Second, it includes in § 41-48 two subsections, (b) and (c), not found in the Uniform Act that are designed to protect the interest of creditors and the Department of Revenue. These provisions are similar to other provisions dealing with nontestamentary transfers on death such as joint bank accounts. Third, it omits an illustration and supporting language from § 41-49 that would have defined a particular, commonly used legal term ("per stirpes") in a way different from the usual meaning in this State, thereby avoiding a trap for the unwary. Fourth, it includes in § 41-50 a subsection (c) stating that the Act does not repeal G.S. 41-2.2 to avoid any argument that that section was partially repealed by implication. Fifth, it includes in the definition of "security" in § 41-40(9) a specific reference to security entitlements as defined in the revised Article 8 of the Uniform Commercial Code, which was enacted by the General Assembly in 1997.

Section 2 of the bill makes a conforming change to G.S. 28A-15-10(a), dealing with rights of creditors, and Section 3 authorizes the printing of official and drafters' comments.

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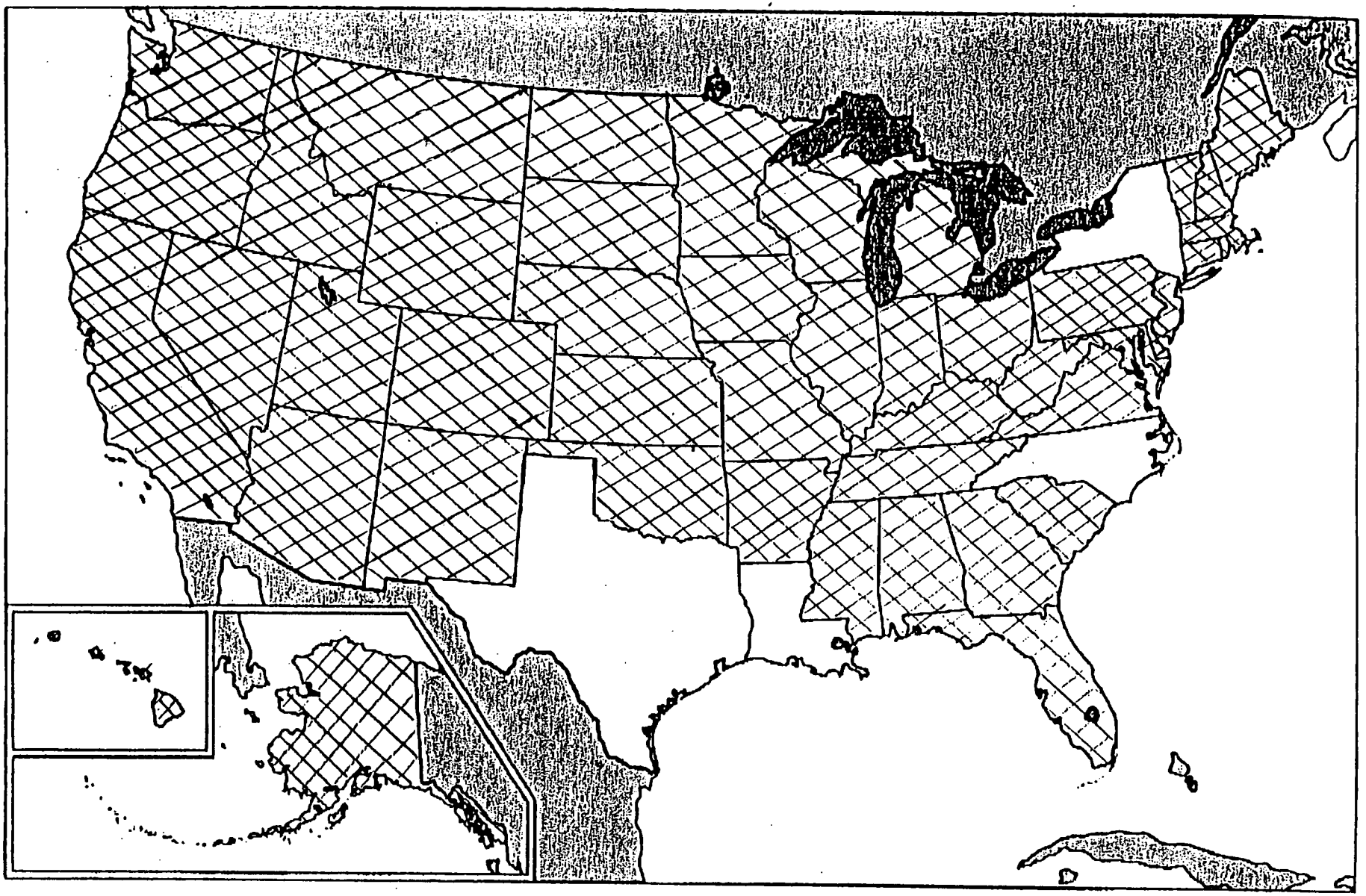
http://www.lib.utexas.edu/Libs/PCL/Map_collection/united_s...SA_blank.jpg



STATES THAT HAVE ENACTED TOD SECURITY REGISTRATION ACT SHOWN CROSS-HATCHED

STATE OF NORTH CAROLINA

_____ County

File No.

In The General Court Of Justice
Superior Court Division
Before The Clerk

IN THE MATTER OF THE ESTATE OF:

Name And Address Of Decedent

Social Security No. | *County Of Domicile At Time Of Death*

Date Of Death | *Date Of Will And Codicil(s) If Any*

Name And Mailing Address Of Applicant | *Telephone No.*

Legal Residence (County, State)

Name And Mailing Address Of Attorney

APPLICATION FOR PROBATE AND LETTERS

☐ TESTAMENTARY ☐ OF ADMINISTRATION CTA

G.S. 28A-6-1; 28A-12-4; 31-16; 105-22

Place Of Death (If Different From County Of Domicile)

Name And Mailing Address Of Co-Applicant | *Telephone No.*

Legal Residence (County, State)

Attorney Bar No.

Telephone No.

I, the undersigned, applying for probate and for letters in the above estate, being first duly sworn, say that:

1. The decedent was domiciled in this county at the time of the decedent's death, or left property or assets in this county, or was a nonresident motorist who died in North Carolina; no other proceeding for probate or for administration is pending in any jurisdiction.
2. The decedent left the paper-writing(s) purporting to be the decedent's Last Will and Testament ☐ and codicil(s), dated as shown above.
3. ☐ a. I am an executor, devisee or legatee named in the will, or a next-of-kin or creditor of the decedent.
   ☐ b. I am the person entitled to apply for letters or am applying after all persons having prior right to apply have renounced.
   ☐ c. I am applying subject to G.S. 28A-6-2(1) and move that all necessary citations be issued.
   ☐ d. I am the public administrator appointed by the Court.
4. I am not disqualified pursuant to G.S. 28A-4-2 to administer the estate and have not renounced my right to do so.
5. Following the execution of the will there were no children born to or adopted by the decedent, and the decedent did not thereafter marry or obtain a divorce. *(If the facts are otherwise, state them on an attachment.)*
6. After diligent inquiry, I have determined that the persons listed below are all the persons entitled to share in the decedent's estate. *(If there is a court-appointed guardian for any such person(s), list the guardian's name and address on an attachment.)*

NAME	AGE	RELATIONSHIP	MAILING ADDRESS

© 1998 Administrative Office of the Courts

(Preliminary Inventory On Reverse)
Original - File Copy - Applicant Copy - Revenue

PRELIMINARY INVENTORY

(Give values as of date of decedent's death. Continue on separate attachment if necessary.)

PART I. PROPERTY OF THE ESTATE

	Est. Market Value
1. Accounts in sole name of decedent *(List bank, etc., each account no. and balance.)*	$
2. Joint accounts without right of survivorship *(List bank, etc., each account no., balance and joint owners.)* — % Owned By Dec.	
% Owned By Dec.	
% Owned By Dec.	
% Owned By Dec.	
3. Stocks and bonds in sole name of decedent or jointly owned without right of survivorship — % Owned By Dec.	
4. Cash and undeposited checks on hand	
5. Household furnishings	
6. Farm products, livestock, equipment and tools	
7. Vehicles	
8. Interest in partnership or sole proprietor businesses	
9. Insurance, Retirement Plan, I.R.A., etc., payable to Estate	
10. Notes, judgments, and other debts due decedent	
11. Miscellaneous personal property	
12. Real estate willed to the Estate — $	
13. Estimated annual income of Estate	
(Base bond on this amount, if applicable.) **TOTAL PART I.**	$

PART II. PROPERTY WHICH CAN BE ADDED TO ESTATE IF NEEDED TO PAY CLAIMS

1. Joint accounts with right of survivorship *(List bank, etc., each account no., balance & joint owners.)*	$
2. Stocks and bonds jointly owned with right of survivorship	
3. Other personal property recoverable (G.S. 28A-15-10)	
4. Real estate owned by decedent and not listed elsewhere	
TOTAL PART II.	$

PART III. OTHER PROPERTY

1. Entireties Real Estate owned by decedent and spouse *(List 1/2 value)*	
2. Insurance, Retirement Plan, I.R.A., accounts, etc., payable to named beneficiaries	
3. There ☐ is ☐ is not a potential claim for wrongful death arising under G.S. 28A-18.2	
4. There ☐ are ☐ are not transfers over which decedent retained any interest as described in N.C. Inheritance Tax Laws, G.S. 105-2(3) through 105-2(6)	
5. There ☐ were ☐ were not gifts made 3 years or less before decedent's death	
TOTAL PART III.	$

Signature Of Applicant	*Signature Of Co-Applicant*
SWORN AND SUBSCRIBED TO BEFORE ME	**SWORN AND SUBSCRIBED TO BEFORE ME**
Date	*Date*
Signature Of Person Authorized To Administer Oaths	*Signature Of Person Authorized To Administer Oaths*
☐ *Deputy CSC* ☐ *Assistant CSC* ☐ *CSC* ☐ *Notary* — *Date Commission Expires*	☐ *Deputy CSC* ☐ *Assistant CSC* ☐ *CSC* ☐ *Notary* — *Date Commission Expires*
SEAL	**SEAL**

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new fiscal note

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 112 2nd Edition Securities Transfer on Death

SHORT TITLE: Securities Transfer on Death

SPONSOR(S): Rep. Barefoot, et al.

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
EXPENDITURES	Anticipate slight reduction in General Fund revenues collected.				

POSITIONS: none

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Judicial Branch

EFFECTIVE DATE: October. 1, 1999

BILL SUMMARY: TO ENACT THE UNIFORM TRANSFER ON DEATH (TOD) SECURITY REGISTRATION ACT. Changes the title of ch. 41 of the General Statutes to "Estates and Interests in Property" and enacts new art. 4, ch. 41, to provide for the transfer of securities on death of the owner. Provides for the registration of securities in beneficiary form, which means that in the registration the owner designates the person who will become the owner at his or her death. Registration in beneficiary form can only be done if the registration shows sole ownership or multiple ownership by two or more individuals with right of survivorship, such as joint tenants with right of survivorship, tenants by the entireties, or owners of community property held in survivorship form, but not as tenants in common. A security may be registered in beneficiary form if the form is authorized by this or a similar statute of the state of organization of the issuer or registering entity, the location of the registering entity's principal office, the office of its transfer agent or its office making the registration, or by this or a similar statute of the law of the state listed as the owner's address at the time of registration. A registering entity, which means a person who originates or transfers a security title, including brokers and transfer agents, is not required to offer or accept a request for security registration in beneficiary form. If it does accept such registration, it may place terms and conditions on the form of registration. On the death of the sole owner or the last to die of all multiple owners, ownership of securities registered in beneficiary form passes to the beneficiary or beneficiaries

who survive the owners. Transfer on death is effective by virtue of the contract between the owner and the registering entity and this statute and is not testamentary. The interest of the decedent, however, remains liable for his or her debts in the same manner as personal property included in the decedent's estate. The act applies to registration of securities in beneficiary form made before, on, or after the effective date of the act, which is Oct. 1, 1999, by decedents dying on or after the effective date.
Source: Institute of Government, February 22, 1999.

SECURITIES TRANSFER ON DEATH. Intro. 2/22/99. House committee substitute makes the following changes to 1st edition. Changes title to reflect that the bill was recommended by the General Statutes Commission. Revises new GS 41-48(c) to clarify that the Article does not repeal or modify any provision of law relating to estate or inheritance taxes. Deletes proposed language in GS 28A-15-10(a) in original bill relating to sources from which assets may be acquired.
Source: Institute of Government, March 9, 1999.

ASSUMPTIONS AND METHODOLOGY:

Department of Revenue

According to the department, the addition of a new article to Chapter 41 to allow a change in ownership of a security resulting from a "transfer on death" will not affect inheritance or estate taxes. The provisions of G. S. 105-2 (taxation of assets) and G. S. 105-24 (tax waiver requirements) are clear, and the new section G. S. 41-48 (c) preserves the requirements of the two provisions.

Administrative Office of the Courts (AOC)

Summary
This legislation would change the way some securities and security accounts are handled during the administration of estates. Specifically, it would allow the owner of a security or account to pass the security or account directly to the named beneficiary, without passing under the owner's will or under the laws of intestacy (applies when owner has no will). As a result, the value of the securities or accounts would not be included as part of the state for probate.

The principal court-related fiscal impact would be a reduction in revenues to the General Fund from the General Court of Justice Fees dealing with estates [G. S. 7A-307(a)(2)]. Currently, the clerk collects a flat $26 fee, other fees pursuant to G. S. 7A-307, and forty cents per $100 of the gross value of personal property in the estate (referred to as ad valorem fee), up to $3,000. The ad valorem fee on securities would no longer be collected by clerks if the securities were registered in accordance with this legislation.

Revised Estimate Based on Brief AOC Research
The Administrative Office of the Courts (AOC) does have limited information that indicates the fiscal impact may NOT be substantial. While the clerks do collect and account for all the estate fees, they do not separately account for the types of personal property to which the ad valorem fee applies. Although an inventory is kept for each estate, it is not known how much of the ad valorem fee was applied to each type of property listed. Furthermore, the AOC does not keep a

running total of the collections for each fee. Fiscal Year 1997-98 data shows a total of 54,768 estate cases were filed statewide and $10.9 million was collected in estate costs. However, it is not possible for the judicial department to accurately identify how much of the $10.9 million in total estates costs are derived from each fee under G. S. 7A-307.

Based on newly obtained, additional information from interviews with several clerks, it appears that few of the estate cases involve the ad valorem fee on securities. According to the AOC, approximately 17,000 estates, or about 30 percent, were probated with a will or required appointment of an administrator without a will in 1998 and therefore would be expected to have substantial assets which may include securities. Many of the estate cases that would pay the ad valorem fee instead qualify for exemption under the right of survivorship. There are indications from the clerks that property of all types has been set up as a survivorship more frequently in the past few years. Also, the ad valorem fee is capped at $3,000 for all types of personal property to which it applies. Therefore, the cap may be reached under current law before the fee is ever collected on any securities.

The AOC requested the Wake County clerk's office to research their most recent estate cases and provide their results within a week. While the results are inconclusive, they suggest that the collections on the ad valorem fee on securities may not be significant. Out of the 40 cases they had time to retrieve, 20 did not have securities, 15 had substantial securities, and 5 had some securities. Of the 15 cases with significant security values, most would not collect much, if any, of the ad valorem fee on securities because the $3,000 cap could be reached with the value of real property. The value of securities in the last 5 estates averaged about $20,000 which translates into $80 in ad valorem fees.

Even if the total amount of ad valorem fees collected on securities were known, it is unknown how many individuals who now would be paying the fee would take advantage of this bill. The Fiscal Research Division believes that based on the limited data available to the AOC, the amount collected in ad valorem fees on securities is minimal and would result in only a minor revenue loss to the General Fund. Neither the AOC, nor the Fiscal Research Division is able to calculate a precise amount or provide a reliable estimate.

TECHNICAL CONSIDERATIONS:
FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Charles Perusse and Tammy Lester

APPROVED BY: Tom Covington

DATE: Wednesday, June 30, 1999

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1134*

Short Title: UNC/Horace Williams Campus. (Public)

Sponsors: Representative Insko.

Referred to: Finance.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE HORACE WILLIAMS CAMPUS TRUST FUND, TO AUTHORIZE THE BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA TO ISSUE REVENUE BONDS FOR THE DEVELOPMENT OF THE HORACE WILLIAMS CAMPUS, TO EXEMPT THE HORACE WILLIAMS CAMPUS FROM THE UMSTEAD ACT, AND TO MAKE VARIOUS CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 116-36.5 reads as rewritten:

"**§ 116-36.5. Centennial Campus trust ~~fund.~~ fund; Horace Williams Campus trust fund.**

(a) All moneys received through development of the Centennial Campus of North Carolina State University at Raleigh, from whatever source, including the net proceeds from the lease or rental of Centennial Campus real property, shall be placed in a special, continuing, and nonreverting trust fund having the sole and exclusive use for further development of the Centennial Campus, including its operational development. This fund shall be treated in the manner of institutional trust funds as provided in G.S. 116-36.1. This fund shall be deemed an additional and alternative method of funding the Centennial Campus and not an exclusive one. For purposes of this section the term "Centennial Campus" is defined by G.S. 116-198.33(4). To the extent that any general, special, or local law is inconsistent with this section, it is declared inapplicable to this section.

(b) All moneys received through development of the Horace Williams Campus of the University of North Carolina at Chapel Hill, from whatever source, including the

net proceeds from the lease or rental of Horace Williams Campus real property, shall be placed in a special, continuing, and nonreverting trust fund having the sole and exclusive use for further development of the Horace Williams Campus, including its operational development. This fund shall be treated in the manner of institutional trust funds as provided in G.S. 116-36.1. This fund shall be deemed an additional and alternative method of funding the Horace Williams Campus and not an exclusive one. For purposes of this section the term 'Horace Williams Campus' is defined by G.S. 116-198.33(4a). To the extent that any general, special, or local law is inconsistent with this section, it is declared inapplicable to this section."

Section 2. The title of Article 21B of Chapter 116 of the General Statutes reads as rewritten:

"Centennial Campus and Horace Williams Campus Financing Act."

Section 3. G.S. 116-198.31 reads as rewritten:

"**§ 116-198.31. Purpose of Article.**

The purpose of this Article is to authorize the Board of Governors of The University of North Carolina to issue revenue bonds, payable from any leases, rentals, charges, fees, and other revenues but with no pledge of taxes or the faith and credit of the State or any agency or political subdivision thereof, to pay the cost, in whole or part, of buildings, structures, or other facilities for the Centennial Campus, located at North Carolina State University at ~~Raleigh.~~ Raleigh and for the Horace Williams Campus located at the University of North Carolina at Chapel Hill."

Section 4. G.S. 116-198.33 reads as rewritten:

"**§ 116-198.33. Definitions.**

As used in this Article, the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

(1) The word 'Board' shall mean the Board of Governors of The University of North Carolina.

(2) The word 'cost' as applied to any project, shall include the cost of acquisition or construction; the cost of acquisition of all property, both real and personal, or interests therein; the cost of demolishing, removing, or relocating any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be removed or relocated; the cost of all labor, materials, equipment and furnishings, financing charges, interest prior to and during construction and, if deemed advisable by the Board, for a period not exceeding one year after completion of such construction; provisions for working capital, reserves for debt service and for extensions, enlargements, additions, and improvements; cost of engineering, financial, and legal services, plans, specifications, studies, surveys, and estimates of cost and of revenues; administrative expenses; expenses necessary or incident to determining the feasibility or practicability of constructing the project; and such other expenses as may be necessary or incident to acquisition or construction with respect to

the project or to the placing of the project in operation. Any obligation or expense incurred by the Board prior to the issuance of bonds under the provisions of this Article in connection with any of the foregoing items of cost may be regarded as a part of such cost.

(3) The word 'Institution' shall mean North Carolina State University at ~~Raleigh.~~ Raleigh and the University of North Carolina at Chapel Hill.

(4) The term 'Centennial Campus' means all of the following properties:

a. The real property and appurtenant facilities bounded by Blue Ridge Road, Hillsborough Street, Wade Avenue, and Interstate 440 that are the sites of the College of Veterinary Medicine, the University Club, and the Agricultural Turf Grass Management Program.

b. The real property and appurtenant facilities that are the former Dix Hospital properties and other contiguous parcels of property that are adjacent to Centennial Boulevard.

c. All other real property and appurtenant facilities designated by the Board of Governors as part of the Centennial Campus. The properties designated by the Board of Governors do not have to be contiguous with the Centennial Campus to be designated as part of that Campus.

(4a) The term 'Horace Williams Campus' means all of the following properties:

a. The real property and appurtenant facilities left to the University of North Carolina at Chapel Hill by the Will of Henry Horace Williams.

b. All other real property and appurtenant facilities designated by the Board of Governors as part of the Horace Williams Campus. The properties designated by the Board of Governors do not have to be contiguous with the Horace Williams Campus to be designated as part of that Campus.

(5) The term 'existing facilities' shall mean buildings and facilities, then existing, any part of the revenues of which are pledged under the provisions of any resolution authorizing the issuance of revenue bonds hereunder to the payment of such bonds.

(6) The word 'project' shall mean and shall include any one or more buildings, structures, administration buildings, libraries, research or instructional facilities, housing maintenance, storage, or utility facilities, and any facilities related thereto or required or useful for conducting of research or the operation of the Centennial ~~Campus,~~ Campus or the Horace Williams Campus, including roads, water, sewer, power, gas, greenways, parking, or any other support

facilities essential or convenient for the orderly conduct of the Centennial ~~Campus.~~ Campus or the Horace Williams Campus respectively.

(7) The word 'revenues' shall mean all or any part of the rents, leases, charges, fees, and other income revenues derived from or in connection with any project or projects and existing facilities."

Section 5. G.S. 116-198.34 reads as rewritten:

"**§ 116-198.34. General powers of Board of Governors.**

The Board may exercise any one or more of the following powers:

(1) To determine the location and character of any project or projects, and to acquire, construct, and provide the same, and to maintain, repair, and operate, and to enter into contracts for the management, lease, use, or operation of all or any portion of any project or projects and any existing facilities.

(2) To issue revenue bonds as hereinafter provided to pay all or any part of the cost of any project or projects, and to fund or refund the same.

(3) To fix and revise from time to time and charge and collect rates, fees, rents, and charges for the use of, and for the services furnished by, all or any portion of any project or projects.

(4) To establish and enforce, and to agree through any resolution or trust agreement authorizing or securing bonds under this Article to make and enforce, rules and regulations for the use of and services rendered by any project or projects and any existing facilities, to provide for the maximum use of any project or projects and any existing facilities.

(5) To acquire, hold, lease, and dispose of real and personal property in the exercise of its powers and the performance of its duties hereunder and to lease all or any part of any project or projects and any existing facilities upon such terms and conditions as the Board determines, subject to the provisions of G.S. 143-341 and Chapter 146 of the General Statutes.

Notwithstanding G.S. 143-341 and Chapter 146 of the General Statutes, a disposition by easement, lease, or rental agreement of space in any building on the Centennial Campus or on the Horace Williams Campus made for a period of 10 years or less shall not require the approval of the Governor and the Council of State. All other acquisitions and dispositions made under this subdivision are subject to the provisions of G.S. 143-341 and Chapter 146 of the General Statutes.

(6) To employ consulting engineers, architects, attorneys, accountants, construction and financial experts, superintendents, managers, and such other employees and agents as may be necessary in its

judgment in connection with any project or projects and existing facilities, and to fix their compensation.

(7) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this Article.

(8) To receive and accept from any federal, State, or other public agency and any private agency, person or other entity donations, loans, grants, aid, or contributions of any money, property, labor, or other things of value for any project or projects, and to agree to apply and use the same in accordance with the terms and conditions under which the same are provided.

(8a) To designate the real property and appurtenant facilities to be included as part of the Centennial ~~Campus.~~ Campus or the Horace Williams Campus.

(9) To do all acts and things necessary or convenient to carry out the powers granted by this Article."

Section 6. G.S. 116-198.35 reads as rewritten:

"**§ 116-198.35. Issuance of bonds and bond anticipation notes.**

The Board is hereby authorized to issue, subject to the approval of the Director of the Budget, at one time or from time to time, revenue bonds of the Board for the purpose of paying all or any part of the cost of acquiring, constructing, or providing any project or projects on the Centennial ~~Campus.~~ Campus or on the Horace Williams Campus. The bonds of each issue shall be dated, shall mature at such time or times not exceeding 40 years from their date or dates, shall bear interest at such rate or rates as may be determined by the Board, and may be redeemable before maturity, at the option of the Board, at such price or prices and under such terms and conditions as may be fixed by the Board prior to the issuance of the bonds. The Board shall determine the form and manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Notwithstanding any of the other provisions of this Article or any recitals in any bonds issued under the provisions of this Article, all such bonds shall be deemed to be negotiable instruments under the laws of this State, subject only to the provisions for registration in any resolution authorizing the issuance of such bonds or any trust agreement securing the same. The bonds may be issued in coupon or registered form or both or as book-entry bonds, as the Board may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The Board may sell such bonds in such

manner, at public or private sale, and for such price, as it may determine to be for the best interests of the Board.

The proceeds of the bonds of each issue shall be used solely for the purpose for which such bonds shall have been authorized and shall be disbursed in such manner and under such restrictions, if any, as the Board may provide in the resolution authorizing the issuance of such bonds or in the trust agreement hereinafter mentioned securing the same. Unless otherwise provided in the authorizing resolution or in the trust agreement securing such bonds, if the proceeds of such bonds, by error of estimates or otherwise, shall be less than such cost, additional bonds may in like manner be issued to provide the amount of such deficit and shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose.

The resolution providing for the issuance of revenue bonds, and any trust agreement securing such bonds, may also contain such limitations upon the issuance of additional revenue bonds as the Board may deem proper, and such additional bonds shall be issued under such restrictions and limitations as may be prescribed by such resolution or trust agreement.

Prior to the preparation of definitive bonds, the Board may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The Board may also provide for the replacement of any bonds which shall become mutilated or be destroyed or lost.

Except as herein otherwise provided, bonds may be issued under this Article and other powers vested in the Board under this Article may be exercised by the Board without obtaining the consent of any department, division, commission, board, bureau, or agency of the State and without any other proceedings or the happening of any other conditions or things than those proceedings, conditions, or things which are specifically required by this Article.

The Board may enter into or negotiate a note with an acceptable bank or trust company in lieu of issuing bonds for the financing of projects covered under this section. The terms and conditions of any note of this nature shall be in accordance with the terms and conditions surrounding issuance of bonds.

The Board is hereby authorized to issue, subject to the approval of the Director of the Budget, at one time or from time to time, revenue bond anticipation notes of the Board in anticipation of the issuance of bonds authorized pursuant to the provisions of this Article. The principal of and the interest on such notes shall be payable solely from the proceeds of bonds or renewal notes, or, in the event bond or renewal note proceeds are not available, any available revenues of the project or projects for which such bonds shall have been authorized. The notes of each issue shall be dated, shall mature at such time or times not exceeding two years from their date or dates, shall bear interest at such rate or rates as may be determined by the Board, and may be redeemable before maturity, at the option of the Board, at such price or prices and under such terms and conditions as may be fixed by the Board prior to the issuance of the notes. The Board shall determine the form and the manner of execution of the

notes, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the notes and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any notes or coupons shall cease to be such officer before the delivery of such notes, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Notwithstanding any of the other provisions of this Article or any recitals in any notes issued under the provisions of this Article, all such notes shall be deemed to be negotiable instruments under the laws of this State, subject only to the provisions for registration in any resolution authorizing the issuance of such notes or any trust agreement securing the bonds in anticipation of which such notes are being issued. The notes may be issued in coupon or registered form or both or as book entry notes, as the Board may determine, and provision may be made for the registration of any coupon notes as to principal alone and also as to both principal and interest, and for the reconversion into coupon notes of any notes registered as to both principal and interest. The Board may sell such notes in such manner, at public or private sale, and for such price, as it may determine to be for the best interests of the Board.

The proceeds of the notes of each issue shall be used solely for the purpose for which the bonds in anticipation of which such notes are being issued shall have been authorized, and such note proceeds shall be disbursed in such manner and under such restrictions, if any, as the Board may provide in the resolution authorizing the issuance of such notes or bonds or in the trust agreement securing such bonds.

The resolution providing for the issuance of notes, and any trust agreement securing the bonds in anticipation of which such notes are being authorized, may also contain such limitations upon the issuance of additional notes as the Board may deem proper, and such additional notes shall be issued under such restrictions and limitations as may be prescribed by such resolution or trust agreement. The Board may also provide for the replacement of any notes which shall become mutilated or be destroyed or lost.

Except as herein otherwise provided, notes may be issued under this Article and other powers vested in the Board under this Article may be exercised by the Board without obtaining the consent of any department, division, commission, board, bureau, or agency of the State and without any other proceedings or the happening of any other conditions or things than those proceedings, conditions, or things which are specifically required by this Article.

Unless the context shall otherwise indicate, the word "bonds" wherever used in this Article, shall be deemed and construed to include the words 'bond anticipation notes'."

Section 7. G.S. 116-198.37 reads as rewritten:

"**§ 116-198.37. Fixing fees, rents, and charges; sinking fund.**

For the purpose of aiding in the acquisition, construction, or provision of any project and the maintenance, repair, and operation of any project or any existing facilities, the Board is authorized to fix, revise from time to time, charge, and collect

such fee or fees for such privileges and services and in such amount or amounts as the Board shall determine, and to fix, revise from time to time, charge, and collect other fees, rents, and charges for the use of and for the services furnished or to be furnished by any project or projects and any existing facilities, or any portion thereof, and to contract with any person, partnership, association, or corporation for the lease, use, occupancy, or operation of any project or projects and any existing facilities, or any part thereof, and to fix the terms, conditions, fees, rents, and charges for any such lease, use, occupancy, or operation. So long as bonds issued hereunder and payable therefrom are outstanding, such fees, rents, and charges shall be so fixed and adjusted, with relation to other revenues available therefor, as to provide funds pursuant to the requirements of the resolution or trust agreement authorizing or securing such bonds at least sufficient with such other revenues, if any, (i) to pay the cost of maintaining, repairing, and operating any project or projects and any existing facilities any part of the revenues of which are pledged to the payment of the bonds issued for such project or projects, (ii) to pay the principal of and the interest on such bonds as the same shall become due and payable, and (iii) to create and maintain reserves for such purposes. Any surplus funds remaining after application to the purposes mentioned in (i), (ii), and (iii), above, shall be held in trust and applied by the Board to the development of the Centennial ~~Campus.~~ Campus or the Horace Williams Campus as applicable. Such fees, rents, and charges shall not be subject to supervision or regulation by any other commission, board, bureau, or agency of the State. A sufficient amount of the revenues, except such part thereof as may be necessary to pay such cost of maintenance, repair, and operation and to provide such reserves therefor and for renewals, replacements, extensions, enlargements, and improvements as may be provided for in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same, shall be set aside at such regular intervals as may be provided in such resolution or such trust agreement in a sinking fund which is hereby pledged to and charged with the payment of the principal of and the interest on such bonds as the same shall become due and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made; the fees, rents, and charges and other revenues or other moneys so pledged and thereafter received by the Board shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act; and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the Board, irrespective of whether such parties have notice thereof. Neither the resolution nor any trust agreement by which a pledge is created need be filed or recorded except in the records of the Board. The use and disposition of moneys to the credit of such sinking fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds or of the trust agreement securing the same."

Section 8. G.S. 146-30(b1) reads as rewritten:

"(b1) Notwithstanding the other provisions of this section, no service charge into the State Land Fund shall be deducted from or levied against the proceeds of any

disposition by lease, rental, or easement of State lands that are designated as part of the Centennial Campus as defined by G.S. ~~116-198.33(4).~~ 116-198.33(4) or that are designated as part of the Horace Williams Campus as defined by G.S. 116-198.33(4a). All net proceeds of those dispositions are governed by G.S. 116-36.5."

Section 9. G.S. 66-58(b) reads as rewritten:

"(b) The provisions of subsection (a) of this section shall not apply to:

(1) Counties and municipalities.

(2) The Department of Health and Human Services or the Department of Agriculture and Consumer Services for the sale of serums, vaccines, and other like products.

(3) The Department of Administration, except that the agency shall not exceed the authority granted in the act creating the agency.

(4) The State hospitals for the mentally ill.

(5) The Department of Health and Human Services.

(6) The North Carolina School for the Blind at Raleigh.

(6a) The Office of Juvenile Justice.

(7) The North Carolina Schools for the Deaf.

(8) The Greater University of North Carolina with regard to its utilities and other services now operated by it nor to the sale of articles produced incident to the operation of instructional departments, articles incident to educational research, articles of merchandise incident to classroom work, meals, books, or to articles of merchandise not exceeding twenty-five cents (25¢) in value when sold to members of the educational staff or staff auxiliary to education or to duly enrolled students or occasionally to immediate members of the families of members of the educational staff or of duly enrolled students nor to the sale of meals or merchandise to persons attending meetings or conventions as invited guests nor to the operation by the University of North Carolina of an inn or hotel and dining and other facilities usually connected with a hotel or inn, nor to the hospital and Medical School of the University of North Carolina, nor to the Coliseum of North Carolina State University at Raleigh, and the other schools and colleges for higher education maintained or supported by the State, nor to the Centennial Campus of North Carolina State University at Raleigh, nor to the Horace Williams Campus of the University of North Carolina at Chapel Hill, nor to the comprehensive student health services or the comprehensive student infirmaries maintained by the constituent institutions of the University of North Carolina.

(9) The Department of Environment and Natural Resources, except that the Department shall not construct, maintain, operate or lease a hotel or tourist inn in any park over which it has jurisdiction. The North Carolina Wildlife Resources Commission may sell

wildlife memorabilia as a service to members of the public interested in wildlife conservation.

(10) Child-caring institutions or orphanages receiving State aid.

(11) Highlands School in Macon County.

(12) The North Carolina State Fair.

(13) Rural electric memberships corporations.

(13a) State Farm Operations Commission.

(13b) The Department of Agriculture and Consumer Services with regard to its lessees at farmers' markets operated by the Department.

(13c) The Western North Carolina Agricultural Center.

(13d) Agricultural centers or livestock facilities operated by the Department of Agriculture and Consumer Services.

(14) Nothing herein contained shall be construed to prohibit the engagement in any of the activities described in subsection (a) hereof by a firm, corporation or person who or which is a lessee of space only of the State of North Carolina or any of its departments or agencies; provided the leases shall be awarded by the Department of Administration to the highest bidder, as provided by law in the case of State contracts and which lease shall be for a term of not less than one year and not more than five years.

(15) The State Department of Correction is authorized to purchase and install automobile license tag plant equipment for the purpose of manufacturing license tags for the State and local governments and for such other purposes as the Department may direct.

The Commissioner of Motor Vehicles, or such other authority as may exercise the authority to purchase automobile license tags is hereby directed to purchase from, and to contract with, the State Department of Correction for the State automobile license tag requirements from year to year.

The price to be paid to the State Department of Correction for the tags shall be fixed and agreed upon by the Governor, the State Department of Correction, and the Motor Vehicle Commissioner, or such authority as may be authorized to purchase the supplies.

(16) Laundry services performed by the Department of Correction may be provided only for agencies and instrumentalities of the State which are supported by State funds and for county or municipally controlled and supported hospitals presently being served by the Department of Correction, or for which services have been contracted or applied for in writing, as of May 22, 1973. In addition to the prior sentence, laundry services performed by the Department of Correction may be provided for the Governor Morehead School and the North Carolina School for the Deaf.

The services shall be limited to wet-washing, drying and ironing of flatwear or flat goods such as towels, sheets and bedding, linens and those uniforms prescribed for wear by the institutions and further limited to only flat goods or apparel owned, distributed or controlled entirely by the institutions and shall not include processing by any dry-cleaning methods; provided, however, those garments and items presently being serviced by wet-washing, drying and ironing may in the future, at the election of the Department of Correction, be processed by a dry-cleaning method.

(17) The North Carolina Global TransPark Authority or a lessee of the Authority.

(18) The activities and products of private enterprise carried on or manufactured within a State prison facility pursuant to G.S. 148-70."

Section 10. This act becomes effective July 1, 1999.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: H.B. 1134 DRAFT

SHORT TITLE: UNC /Horace Williams Campus

SPONSOR(S): Rep. Insko

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES	* See Assumptions and Methodology *				
EXPENDITURES					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: University of North Carolina at Chapel Hill, UNC Board of Governors.

EFFECTIVE DATE: Becomes effective July 1, 1999.

BILL SUMMARY: The bill has five primary effects. First, the legislation establishes the Horace Williams Campus Trust Fund. This fund is a special continuing, and nonreverting trust fund. Income placed in the Fund must be used for the development and operation of the Horace Williams Campus. Proceeds from the lease or rental of Horace Williams Campus property must be placed in the Fund. Second, the bill also authorizes the U.N.C. Board of Governors to issue revenue bonds to pay for campus facilities on the Horace Williams Campus. These bonds are to be paid out of fees, leases, rentals, and other sources. Taxes or the state's credit can not be pleaded for the bonds. Third, the bill defines the Horace Williams Campus as the real property left to the University by Mr. Williams, and all other real and incidental property the Board of Governors designates as a part of the campus. The properties do not have to be contiguous. Forth, it prohibits the collection of a service charge by the State Land Fund for the rental, lease, or easement of portions of the Horace Williams Campus. Fifth, it exempts the Horace Williams Campus from the state restriction on engaging directly or indirectly in the sale of goods. Finally, the bill makes conforming changes to create the same provisions for the U.N.C. Horace Williams Campus as are currently in effect for the Centennial Campus at North Carolina State University.

ASSUMPTIONS AND METHODOLOGY: The bill creates a governing structure and operational restrictions for the Horace Williams Campus that are analogous to those of the Centennial Campus. As a result the bill has several potential area for fiscal impact.

Fund Creation
By creating a special Horace Williams Campus Fund the legislation moves potential revenue out of the normal University budgeting process. However, because the Fund is treated like an institutional trust fund (G.S. 116-198.33), it is subject to established review procedures. Moving this revenue stream off-budget will not impact University funding or the general fund. Monies deposited in the Fund will be drawn primarily from the leases and rental that are unlikely to occur without the legislation.

Revenue Bonds
The bill authorizes the Board of Governors to issue revenue bonds to pay for capital improvements to the Horace Williams Campus. Because neither tax money or state credit can be used to secure or pay off the bonds, there is no fiscal impact to the state.

Leases
The legislation authorizes the University officials to lease property to private developers with out the approval of the Council of State. This is the same provision used to develop the Centennial Campus and should have no revenue or general fund impact.

State Land Fund
Section 4 of the bill exempts the William Horace Campus from paying a service charge to the State Land Fund for each of its lease, rental, or easement transactions. There is no fiscal impact from this change, because the Campus has never paid any fees to the Fund.

Property Tax
The bill has the potential to remove additional land and structures from the property tax rolls in Orange County if the UNC Board of Governors uses the power granted in the bill to expand the Horace Williams Campus to noncontiguous land not currently owned by the University of North Carolina at Chapel Hill. However, under current law, the county could recoup its tax loss in several ways. First, if the Campus land is leased at below market value to a private firm, then the leased land can be taxed. Second, if a private firm leases land from the campus at market value and builds its own building, then Wake county may levy property tax only on the building and its furnishings and equipment. Third, if a private firm leases the land and building from the Campus, then only the furnishings and equipment will be subject to property tax.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Linda Struyk Millsaps

APPROVED BY:

DATE:

HOUSE BILL 1134:
UNC/ Horace Williams Campus

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Rep. Insko
Date:	June 21, 1999	**Summary by:**	Martha K. Walston
Version:	First Edition		Committee Counsel

SUMMARY: House Bill 1134 establishes the Horace Williams Campus. This campus will be associated with the University of North Carolina at Chapel Hill. It is similar to the Centennial Campus, which is associated with North Carolina State University. The bill would become effective July 1, 1999. House Bill 1134 was given a favorable report in House Finance on May 25, 1999. Senate Bill 826 is identical to this bill and was introduced by Senator Lee. Senate Bill 826 is in the Senate Committee on Education/Higher Education.

BILL ANALYSIS: The General Assembly created the Centennial Campus at NC State University in 1987. The Campus brings together business and industry academia. House Bill 1134 creates a similar campus at the University of North Carolina at Chapel Hill called the Horace Williams Campus. The Horace Williams Campus will consist of the property left to the University of North Carolina at Chapel Hill by the will of Henry Horace Williams. The Board of Governors of The University of North Carolina may designate other properties as part of the Campus also.

The Board of Governors may issue revenue bonds to pay all or part of the cost of any project on the Campus. The projects may include administration buildings, libraries, research or instructional facilities, roads, water, sewer, parking, and any other facilities related to the operation of the Campus. The bonds are payable from revenues derived from leases, rentals, charges, and fees. Neither the faith and credit of the State nor the taxing power of the State is pledged to the payment of the bonds. The Board is given the power to establish and collect fees, rents, and charges for the use of and for the services furnished by any project on the Campus. Rental agreements for space in buildings on the Campus for 10 years or less do not require the approval of the Governor and Council of State but are subject to approval by the Board of Governors.

The proceeds from all moneys received through the development of the Horace Williams Campus must be credited to a special, nonreverting trust fund. The money in the fund may be used only for the development of the Horace Williams Campus.

Much of the revenue generated from the Horace Williams Campus will come from the lease of office space to private industry. As a general rule, it is unlawful under the Umstead Act for the State to lease space in a building owned by the State for the purpose of operating a business. Section 9 of the bill exempts the Horace Williams Campus from the Umstead Act so that it may provide services to businesses that are ordinarily and customarily rendered by private enterprises.

Cindy Avrette, counsel to the House Finance Committee, substantially contributed to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 251

Short Title: Modify Historic Rehabilitation Credit. (Public)

Sponsors: Senators Horton; Albertson, Allran, Ballance, Carpenter, Carrington, Cochrane, East, Forrester, Garwood, Gulley, Hartsell, Hoyle, Kerr, Lucas, Moore, Soles, and Weinstein.

Referred to: Finance.

March 8, 1999

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE HISTORIC REHABILITATION TAX CREDIT TO BE ALLOCATED BY A PASS-THROUGH ENTITY TO ITS OWNERS.

The General Assembly of North Carolina enacts:

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

"ARTICLE 3D.

"Historic Rehabilitation Tax Credits."

Section 2. G.S. 105-130.42(a) is recodified as G.S. 105-129.35 in Article 3D of Chapter 105 of the General Statutes.

Section 3. G.S. 105-130.42(b) is recodified as G.S. 105-129.36 in Article 3D of Chapter 105 of the General Statutes.

Section 4. G.S. 105-130.42(c) is recodified as G.S. 105-129.37 in Article 3D of Chapter 105 of the General Statutes.

Section 5. Article 3D of Chapter 105 of the General Statutes, as enacted and amended by this act, reads as rewritten:

"ARTICLE 3D.

"Historic Rehabilitation Tax Credits.

"**§ 105-129.35. Credit for rehabilitating ~~Income-Producing Historic Structure.~~ income-producing historic structure.**

(a) Credit. -- A taxpayer who is allowed a federal income tax credit under section 47 of the Code for making ~~qualifying~~ qualified rehabilitation expenditures for a

certified historic structure located in this State is allowed a credit ~~against the tax imposed by this Part. The amount of the credit is~~ equal to twenty percent (20%) of the expenditures that qualify for the federal credit. Notwithstanding the provisions of G.S. 105-131.8 and G.S. 105-269.15, a pass-through entity that qualifies for the credit provided in this section may allocate the credit among any of its owners in its discretion. Owners to whom a credit is allocated are allowed the credit as if they had qualified for the credit directly. A pass-through entity and its owners shall include with their tax returns for every taxable year in which an allocated credit is claimed a copy of the allocation made by the pass-through entity.

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

(1) Certified historic structure. -- Defined in section 47 of the Code.

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

(3) Qualified rehabilitation expenditures. -- Defined in section 47 of the Code.

"§ 105-129.36. Credit for rehabilitating ~~Nonincome-Producing Historic Structure.~~ nonincome-producing historic structure.

(a) Credit. -- A taxpayer who is not allowed a federal income tax credit under section 47 of the Code and who makes rehabilitation expenses for a ~~certified~~ State-certified historic structure located in this State is allowed a credit ~~against the tax imposed by this Part. The amount of the credit is~~ equal to thirty percent (30%) of the rehabilitation expenses. To qualify for the credit, the taxpayer's rehabilitation expenses must exceed twenty-five thousand dollars ($25,000) within a 24-month period. To claim the credit allowed by this subsection, the taxpayer must attach to the return a copy of the certification obtained from the State Historic Preservation Officer verifying that the historic structure has been rehabilitated in accordance with this subsection.

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

~~(1) Certified historic structure. -- A structure that is individually listed in the National Register of Historic Places or is certified by the State Historic Preservation Officer as contributing to the historic significance of a National Register Historic District or a locally designated historic district certified by the United States Department of the Interior.~~

(2) Certified rehabilitation. -- Repairs or alterations consistent with the Secretary of the Interior's Standards for Rehabilitation and certified as such by the State Historic Preservation Officer prior to

the commencement of the work. ~~The expenditures must, within a 24-month period, exceed twenty-five thousand dollars ($25,000). The North Carolina Historical Commission, in consultation with the State Historic Preservation Officer, may adopt rules needed to administer the certification process.~~

(3) Rehabilitation expenses. -- Expenses incurred in the certified rehabilitation of a certified historic structure and added to the property's basis. The term does not include the cost of acquiring the property, the cost attributable to the enlargement of an existing building, the cost of sitework expenditures, or the cost of personal property.

(3a) State-certified historic structure. -- A structure that is individually listed in the National Register of Historic Places or is certified by the State Historic Preservation Officer as contributing to the historic significance of a National Register Historic District or a locally designated historic district certified by the United States Department of the Interior.

(4) State Historic Preservation Officer. -- The Director of the Division of Archives and History or the Director's designee who acts to administer the historic preservation programs within the State.

(c) Rules. -- The North Carolina Historical Commission, in consultation with the State Historic Preservation Officer, may adopt rules needed to administer the certification process required by this section.

"**§ 105-129.37. Tax credited; credit limitations.**

(a) Tax Credited. -- The credits provided in this Article are allowed against the income taxes levied in Article 4 of this Chapter.

(b) Credit Limitations. -- The entire credit may not be taken for the taxable year in which the property is placed in service but must be taken in five equal installments beginning with the taxable year in which the property is placed in service. Any unused portion of the credit may be carried forward for the succeeding five years. ~~The~~ A credit allowed under this ~~section~~ Article may not exceed the amount of ~~tax imposed by this Part~~ the tax against which it is claimed for the taxable year reduced by the sum of all credits allowed, except payments of tax made by or on behalf of the taxpayer."

Section 6. G.S. 105-151.23(a) is recodified as G.S. 105-129.35, G.S. 105-151.23(b) is recodified as G.S. 105-129.36, and G.S. 105-151.23(c) is recodified as G.S. 105-129.37. Article 3D of Chapter 105 of the General Statutes, as amended by this act, incorporates both G.S. 105-130.42 and G.S. 105-151.23.

Section 7. This act is effective for taxable years beginning on or after January 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 251
Proposed Committee Substitute S251-PCS1759-LA

Short Title: Modify Historic Rehabilitation Credit. (Public)

Sponsors:

Referred to:

March 8, 1999

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE HISTORIC REHABILITATION TAX CREDIT TO BE ALLOCATED BY A PASS-THROUGH ENTITY TO ITS OWNERS.

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Section 5. Article 3D of Chapter 105 of the General Statutes, as enacted and amended by this act, reads as rewritten:

"ARTICLE 3D.

"Historic Rehabilitation Tax Credits.

"**§ 105-129.35. Credit for rehabilitating ~~Income-Producing Historic Structure.~~ income-producing historic structure.**

(a) Credit. -- A taxpayer who is allowed a federal income tax credit under section 47 of the Code for making ~~qualifying~~ qualified rehabilitation expenditures for a certified historic structure located in this State is allowed a credit ~~against the tax~~

~~imposed by this Part. The amount of the credit is~~ equal to twenty percent (20%) of the expenditures that qualify for the federal credit.

(b) Allocation. -- Notwithstanding the provisions of G.S. 105-131.8 and G.S. 105-269.15, a pass-through entity that qualifies for the credit provided in this section may allocate the credit among any of its owners in its discretion as long as the amount of credit allocated to an owner does not exceed the owner's adjusted basis in the pass-through entity, as determined under the Code, at the end of the taxable year in which the certified historic structure is placed in service. Owners to whom a credit is allocated are allowed the credit as if they had qualified for the credit directly. A pass-through entity and its owners must include with their tax returns for every taxable year in which an allocated credit is claimed a statement of the allocation made by the pass-through entity and the allocation that would have been required under G.S. 105-131.8 or G.S. 105-269.15.

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

(1) Certified historic structure. -- Defined in section 47 of the Code.

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

(3) Qualified rehabilitation expenditures. -- Defined in section 47 of the Code.

"**§ 105-129.36. Credit for rehabilitating** ~~Nonincome-Producing Historic Structure.~~ **nonincome-producing historic structure.**

(a) Credit. -- A taxpayer who is not allowed a federal income tax credit under section 47 of the Code and who makes rehabilitation expenses for a ~~certified~~ State-certified historic structure located in this State is allowed a credit ~~against the tax imposed by this Part. The amount of the credit is~~ equal to thirty percent (30%) of the rehabilitation expenses. To qualify for the credit, the taxpayer's rehabilitation expenses must exceed twenty-five thousand dollars ($25,000) within a 24-month period. To claim the credit allowed by this subsection, the taxpayer must attach to the return a copy of the certification obtained from the State Historic Preservation Officer verifying that the historic structure has been rehabilitated in accordance with this subsection.

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

~~(1) Certified historic structure. -- A structure that is individually listed in the National Register of Historic Places or is certified by the State Historic Preservation Officer as contributing to the historic significance of a National Register Historic District or a locally~~

~~designated historic district certified by the United States Department of the Interior.~~

(2) Certified rehabilitation. -- Repairs or alterations consistent with the Secretary of the Interior's Standards for Rehabilitation and certified as such by the State Historic Preservation Officer prior to the commencement of the work. ~~The expenditures must, within a 24-month period, exceed twenty-five thousand dollars ($25,000). The North Carolina Historical Commission, in consultation with the State Historic Preservation Officer, may adopt rules needed to administer the certification process.~~

(3) Rehabilitation expenses. -- Expenses incurred in the certified rehabilitation of a certified historic structure and added to the property's basis. The term does not include the cost of acquiring the property, the cost attributable to the enlargement of an existing building, the cost of sitework expenditures, or the cost of personal property.

(3a) State-certified historic structure. -- A structure that is individually listed in the National Register of Historic Places or is certified by the State Historic Preservation Officer as contributing to the historic significance of a National Register Historic District or a locally designated historic district certified by the United States Department of the Interior.

(4) State Historic Preservation Officer. -- The Director of the Division of Archives and History or the Director's designee who acts to administer the historic preservation programs within the State.

(c) Rules. -- The North Carolina Historical Commission, in consultation with the State Historic Preservation Officer, may adopt rules needed to administer the certification process required by this section.

"**§ 105-129.37. Tax credited; credit limitations.**

(a) Tax Credited. -- The credits provided in this Article are allowed against the income taxes levied in Article 4 of this Chapter.

(b) Credit Limitations. -- The entire credit may not be taken for the taxable year in which the property is placed in service but must be taken in five equal installments beginning with the taxable year in which the property is placed in service. Any unused portion of the credit may be carried forward for the succeeding five years. ~~The~~ A credit allowed under this ~~section~~ Article may not exceed the amount of ~~tax imposed by this Part~~ the tax against which it is claimed for the taxable year reduced by the sum of all credits allowed, except payments of tax made by or on behalf of the taxpayer.

(c) Forfeiture for Disposition. -- A taxpayer who is required under section 50 of the Code to recapture all or part of the federal credit for rehabilitating an income-producing historic structure located in this State forfeits the corresponding part of the State credit allowed under G.S. 105-129.35 with respect to that historic structure. If

the credit was allocated among the owners of a pass-through entity, the forfeiture applies to the owners in the same proportion that the credit was allocated.

(d) Forfeiture for Change in Ownership. -- If an owner of a pass-through entity that has qualified for the credit allowed under G.S. 105-129.35 disposes of all or a portion of the owner's interest in the pass-through entity within five years from the date the rehabilitated historic structure is placed in service and the owner's interest in the pass-through entity is reduced to less than two-thirds of the owner's interest in the pass-through entity at the time the historic structure was placed in service, the owner forfeits a portion of the credit. The amount forfeited is determined by multiplying the amount of credit by the percentage reduction in ownership and then multiplying that product by the forfeiture percentage. The forfeiture percentage equals the recapture percentage found in the table in section 50(a)(1)(B) of the Code. The remaining allowable credit is allocated equally among the five years in which the credit is claimed.

(e) Exceptions to Forfeiture. -- Forfeiture as provided in subsection (d) of this section is not required if the change in ownership is the result of any of the following:

(1) The death of the owner.

(2) A merger, consolidation, or similar transaction requiring approval by the shareholders, partners, or members of the taxpayer under applicable State law, to the extent the taxpayer does not receive cash or tangible property in the merger, consolidation, or other similar transaction.

(f) Liability From Forfeiture. -- A taxpayer or an owner of a pass-through entity that forfeits a credit under this section is liable for all past taxes avoided as a result of the credit plus interest at the rate established under G.S. 105-241.1(i), computed from the date the taxes would have been due if the credit had not been allowed. The past taxes and interest are due 30 days after the date the credit is forfeited. A taxpayer or owner of a pass-through entity that fails to pay the taxes and interest by the due date is subject to the penalties provided in G.S. 105-236."

Section 6. G.S. 105-151.23(a) is recodified as G.S. 105-129.35; G.S. 105-151.23(b) is recodified as G.S. 105-129.36; and G.S. 105-151.23(c) is recodified as G.S. 105-129.37. Article 3D of Chapter 105 of the General Statutes, as amended by this act, incorporates both G.S. 105-130.42 and G.S. 105-151.23.

Section 7. This act is effective for taxable years beginning on or after January 1, 1999. G.S. 105-129.35(b), as amended by this act, is repealed effective January 1, 2002, for property placed in service on or after that date.

SENATE BILL 251:
Modify Historic Rehabilitation Credit

BILL ANALYSIS

Committee:	Senate Finance Committee	**Introduced by:**	Senator Horton
Date:	June 21, 1999	**Summary by:**	Martha H. Harris and Martha K. Walston, staff attorneys
Version:	Proposed Committee Substitute		

SUMMARY: ***The proposed committee substitute for Senate Bill 251 modifies the tax credit for rehabilitating income-producing historic property. It allows a pass-through entity, such as a Subchapter S corporation, to allocate the credit among any of the entity's owners, as long as the credit does not exceed the owner's adjusted basis in the pass-through entity. The original bill allocated the credit amount among any of the pass-through entity's owners, in the entity's discretion. The proposed committee substitute also adds provisions to recapture the credit if the taxpayer is required to recapture the credit under the Code or if a partner or owner disposes of its interest in the pass-through entity. Finally, the proposed committee substitute sunsets the allocation provision in three years. Under current law, the credits must be allocated in the same proportion as other income items allocated to the owners under the Code. The North Carolina credits are currently duplicated in two separate statutes in the individual and corporate parts of the income tax Article in Chapter 105. The bill recodifies the credits into a new Article of their own. The act becomes effective beginning with the 1999 tax year.***

CURRENT LAW: Under current law, taxpayers are allowed an income tax credit of 20% of the expenses of rehabilitating an income-producing historic structure and a credit of 30% of the expenses of rehabilitating an historic structure that is not income-producing. The credit for income-producing structures is lower because federal law also allows a 20% credit for those expenses, yielding a combined credit of 40%. The 20% credit is allowed only if the taxpayer qualifies for the federal credit and the 30% credit is allowed only if the taxpayer does not qualify for the federal credit. The credit may not be taken for the tax year the property is placed in service but must be taken in installments over five years after the historic structure is placed in service. Any unused portion of a credit may be carried forward for a five-year period.

Under current law, a pass-through entity may qualify for the rehabilitation credits and pass the credits on to its owners. A pass-through entity is an entity, such as a partnership, a limited liability company, or a Subchapter S corporation, that is treated as owned by individuals or other entities under federal tax law and whose income, losses, and credits are reported by the owners on their State income tax returns. Under G.S. 105-131.8 and G.S. 105-269.15, the pass-through entity is required to allocate a tax credit among its owners in the same proportion that other items, such as the federal rehabilitation credit, are allocated under the Code.

Under the Code, tax credits are allocated among S corporation shareholders in accordance with their pro rata share of the corporation, which is determined on the basis of stock ownership, and tax credits are allocated among partners in a partnership in accordance with the partnership agreement. The allocation made by the partnership agreement must have a substantial economic effect, which means that the allocation agreement must reflect the economic interest of the partners in the partnership and cannot be

based solely on tax consequences. Therefor, the allocation agreement of partners cannot give one partn 100% of the income, loss, or credits of the partnership.

BILL ANALYSIS:

Sections 1 through Section 4 of the bill creates a new article for the historic rehabilitation tax credits. The current statutes for these tax credits are recodified as part of the new article.

In putting together an investment group for an income-producing historic rehabilitation project, the project sponsors may find some investors that can benefit from only the federal credit because they have little or no North Carolina tax liability, and other investors than can benefit from both the federal and the North Carolina credit because they have both types of tax liability.

Section 5 of the bill allows a pass-through entity to allocate the credit for rehabilitating an income-producing historic structure among any of its owners, **as long as the amount of the allocated credit does not exceed the owner's adjusted basis in the entity, as determined under the Code. The adjusted basis is determined at the end of the taxable year in which the historic structure is placed in service.** Each year an allocated credit is claimed, the pass-through entity and its owners must include a statement with their tax return that shows both the allocation made and the allocation that would have been required under G.S. 105-131.8 and G.S. 105-269.15. G.S. 105-131.8 provides that the tax credit allowed a shareholder in a Subchapter S corporation is based on the percentage of stock held by the shareholder in the corporation. G.S. 105-269.15 provides that the tax credit allowed a partner is based on the partnership agreement, which must have substantial economic effect.

Section 5 of the bill also requires forfeiture of all or part of the credit for an income-producing historic structure when the following occurs:

- **Forfeiture for Disposition.** When a taxpayer is required by the Code to recapture part or all of the federal credit, then the taxpayer must forfeit the corresponding part of the State credit. Under the Code, the recapture does not apply if the property is disposed of because of the death of the taxpayer, a mere change in form of doing business, or a transfer between spouses or incident to a divorce
- **Forfeiture for Change in Ownership.** If an owner of a pass-through entity that qualified for the credit disposes of all or a portion of the owner's interest in the pass-through entity within 5 years from the date the structure was placed in service so that the owner's interest is reduced to less than 2/3 of its interest at the time the structure was placed in service, the owner must forfeit a portion of the credit. This recapture does not apply if the change in ownership is due to the death of the owner or to a merger or consolidation requiring approval of the members of the taxpayer pass-through entity to the extent the entity does not receive cash or property.

The Department of Revenue's example of the result if there is a forfeiture for change in ownership pursuant to G.S. 105-129.37(d) of bill.

Taxpayer Partnership A invests $1 million to rehabilitate an income-producing historic structure. The structure is placed in service on July 1, 1999. The partnership qualifies for a $200,000 credit. It allocates the credit to Owner John Doe, who is a five percent partner and has a basis in the partnership of $200,000. Mr. Doe claims a credit of $40,000 on the 1999 and 2000 tax returns. On May 25, 2001, Mr. Doe's ownership interest is reduced to two percent, a sixty percent decrease. The forfeiture amount is $96,000, calculated as follows:

Credit ($200,000) X percentage reduction in ownership (60%) X forfeiture percentage (80% because the reduction occurred after one year but before two years after property placed in service).

The remaining allowable credit is $104,000, and $20,800 may be claimed in each year. Therefore, Mr. Doe must reduce the credit claimed on the 1999 and 2000 returns and pay to the State tax of $19,200 for each of the two years (assuming he had enough tax in those years to have claimed the entire installment of the original amount of credit. The $19,200 amount is the forfeiture amount of $96,000 X the twenty percent credit.

If a taxpayer or owner of a pass-through entity forfeits the credit, then the taxpayer or owner is liable for all past taxes avoided plus interest. The past taxes and interest are due 30 days after the credit is forfeited.

Section 6 of the bill explains the recodification.

Section 7 of the bill provides that the act is effective for taxable years beginning on or after January 1, 1999. The allocation provision of the act sunsets January 1, 2002, but this sunset applies only to property placed in service on or after that date.

BACKGROUND: In 1993, the General Assembly enacted a 5% income tax credit for qualifying expenditures to rehabilitate a certified historic structure, if the expenses qualified for the federal 20% credit. In 1997, the General Assembly raised the North Carolina credit from 5% to 20%, added the 30% credit for expenditures that did not qualify for the federal credit because the structure was not income-producing, and required both credits to be taken in installments. The federal credit is limited to structures that are used in connection with a trade or business or held for the production of income, including both residential rental buildings and nonresidential buildings. Expenditures to rehabilitate a taxpayer's personal residence would qualify for the 30% North Carolina credit but not the federal credit, because the building is not income-producing.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: S.B. 251 (Proposed Senate Finance Committee Substitute)

SHORT TITLE: Modify Historic Rehab Credit

SPONSOR(S): Senator Horton

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
General Fund	*** See Assumptions and Methodology ***				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue, Department of Cultural Resources.

EFFECTIVE DATE: Effective for taxable years beginning on or after January 1, 1999 and expires effective January 1, 2002 for property placed in service on or after that date.

BILL SUMMARY:

The bill modifies the existing historic rehabilitation income tax credit to allow a pass through organization to allocate the credits among project owners. It requires that the amount of the credit be limited to the owner's adjusted basis in the pass-through entity. It also allows for the recapture of the credit if the taxpayer is required to recapture the credit under the Code or if the taxpayer disposes of his interest in the pass-through entity. It requires the pass through organization and the property owners to include an allocation statement with their annual tax returns. It also recodifies the existing historic rehabilitation credit language in a single Article, and makes conforming changes.

BACKGROUND INFORMATION:

Federal law provides a federal income tax credit equal to 20% of qualified rehabilitation expenditures for certified historic structures that are used in connection with a trade or business or held for the production of income. This credit is available for both residential rental buildings and nonresidential buildings. In order to qualify, the property itself must be either listed in the National Register, or located in a registered historic district and be certified as being of historic significance.

Since 1993, North Carolina investors eligible for the Federal Rehabilitation Investment Tax Credit have been allowed a state income tax credit equal to one-fourth of the federal amount

(5%). The 1997 General Assembly expanded the State income tax credit from 5% to 20% for rehabilitating an income-producing historic structure, effective for tax years beginning on or after January 1, 1998. (S.L. 1997-139) The credits may not be taken in one year, but must be spread out in installments over five years after the historic structure is placed in service. Any unused portion of a credit may be carried forward for a five-year period.

ASSUMPTIONS AND METHODOLOGY:
By allowing a pass through entity to reallocate the tax credits, the bill effectively authorizes rehabilitation property owners to transfer all of the North Carolina tax credits to North Carolina residents and businesses with tax liability. Currently, if foreign investors are involved in a qualifying rehabilitation project, their tax credits can not be redistributed. For example, if there are five equal investors, but only four of them are North Carolinians, only 80% of the available North Carolina tax credits are used.

Previous fiscal notes assumed taxpayers would use 100% of their allotted credit taken over a required five-year period. Once the bills enacting the rehab credit were passed (the original enacting legislation and SB 323 which expanded the credit in 1997), the resulting revenue losses were included in future year base budget projections. The fiscal note for SB 323 assumed the number of completed federal projects each year would range from 35 projects valued at $17,500,000 in 1998 up to 60 projects valued at $30 million in 2002. However, the program has proven more popular than was originally projected. (see note below)

Under the existing law, the actual experience is that 100% of the rehab credit will probably not be used due to out-of-state investors without North Carolina income tax liability or North Carolina investors without state income tax liability. According to the Department of Cultural Resources, two of the 69 projects reviewed in 1998 had out-of-state investors. Due to the confidentiality of tax information, it is unknown if these out-of-state investors can utilize all of the rehab credits. It is also impossible to determine how many projects had in-state investors with no state tax liability.

In 1998, the Executive Director of the Historic Preservation Foundation of North Carolina, Myrick Howard, saw the pass - through issue as a technical correction. It allows rehab project managers to fully utilize the credits as envisioned in the 1997 legislation and accompanying fiscal note. On the other hand, officials from the Department of Revenue believe the credit could encourage more out of state investment. However, there is no way to quantify what that additional investment might be.

NOTE: January 1999 data from the State Historic Preservation Office (SHPO) indicate that the historic rehabilitation credit has received far more interest than expected. As an example, SHPO and Fiscal Research estimated there would be 35 projects with a total value of $17.5 million in 1998. This estimate was based on other states' experiences. In reality, the SHPO received 89 applications for rehabilitation work valued at $106 million. If all the projects are completed and all credits are utilized, project owners will recoup $21.2 million in income tax credits over five years. This is six times the $3.5 million originally estimated.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic and Linda Struyk Millsaps

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 2

SENATE BILL 523
Rules and Operations of the Senate Committee Substitute Adopted 6/8/99

Short Title: Modify Greensboro Room Tax Use. (Local)

Sponsors:

Referred to:

March 25, 1999

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE PURPOSES FOR WHICH THE GREENSBORO ROOM OCCUPANCY TAX MAY BE USED.

The General Assembly of North Carolina enacts:

Section 1. Section 6 of Chapter 22 of the 1991 Session Laws, as amended by Chapter 380 of the 1995 Session Laws, reads as rewritten:

"Sec. 6. Disposition of Taxes Collected.

(a) Until retirement of the debt to finance renovation and expansion of the Greensboro War Memorial Coliseum arena, the proceeds of the occupancy tax shall be used as provided in this subsection.

(1) Promotion Funds. -- The city or the county shall remit twenty percent (20%) of the net proceeds of the tax to the Greensboro/Guilford County Tourism Development Authority. 'Net proceeds' means gross proceeds less the cost to the city or the county of administering and collecting the tax, not to exceed five percent (5%) of the gross proceeds of the tax. The authority shall use the funds remitted to it under this subsection only for activities and programs promoting and encouraging travel and tourism.

(2) Rent Subsidy Funds. -- The city may remit up to two hundred thousand dollars ($200,000) of the remaining net proceeds each fiscal year to the Greensboro/Guilford County Tourism Development Authority for a marketing fund. The marketing fund may be used only for coliseum rent subsidies to attract citywide

groups that commit to fill at least 5,000 room nights for the event. Any part of the marketing fund that has not been spent or committed at the end of each fiscal year for this purpose shall be credited to the City of Greensboro for use in accordance with subdivision (3) of this subsection.

(3) Complex Funds. -- The City of Greensboro shall receive the balance of the net proceeds and shall use these funds only (i) to finance the renovation and expansion of the Greensboro War Memorial Coliseum arena, (ii) to finance the renovation and expansion of the remainder of the Greensboro War Memorial Complex and acquisition of property in the vicinity of the Complex, and (iii) for maintenance of the Complex. In the event that the funds exceed the amount required for these purposes, the excess shall be retained in a special reserve fund and used (i) to make debt payments where additional funds are needed in any payment period or (ii) to call a portion of the debt.

(b) Upon retirement of the full debt to finance the renovation and expansion of the Greensboro War Memorial Coliseum arena, the proceeds of the occupancy tax shall be used as provided in this subsection.

(1) Promotion Funds. -- The city or the county shall remit twenty-five percent (25%) of the net proceeds of the tax to the Greensboro/Guilford County Tourism Development Authority. The authority shall use the funds remitted to it under this subsection only for activities and programs promoting and encouraging travel and tourism.

(2) Rent Subsidy Funds. -- The city may remit up to two hundred thousand dollars ($200,000) of the remaining net proceeds each fiscal year to the Greensboro/Guilford County Tourism Development Authority for a marketing fund. The marketing fund may be used only for coliseum rent subsidies to attract citywide groups that commit to fill at least 5,000 room nights for the event. Any part of the marketing fund that has not been spent or committed at the end of each fiscal year for this purpose shall be credited to the City of Greensboro for use in accordance with subdivision (3) of this subsection.

(3) Promotion and Facilities Funds. -- The city shall receive the balance of the net proceeds and shall use these funds only (i) for specific tourist-related events, programs, and activities, such as arts, recreational, or cultural events, or (ii) for promoting, improving, constructing, financing, or acquiring facilities or attractions that enhance the development of tourism. Before expending the proceeds for any of the purposes listed in this subsection, the city shall submit each project to the Greensboro/Guilford County Tourism Development Authority. The board of directors of that

authority shall make recommendations to the city with respect to the projects within 60 days after submission by the city."

Section 2. This act becomes effective July 1, 1999, and applies to taxes collected on or after that date.

SENATE BILL 523:
Modify Greensboro Room Tax Use

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Sen. Hagan
Date:	June 22, 1999	**Summary by:**	Martha K. Walston
Version:	Second Edition		Committee Counsel

SUMMARY: ***Senate Bill 523 modifies the purposes for which the Greensboro Room Occupancy tax may be used. The bill becomes effective July 1, 1999, and applies to taxes collected on or after that date.***

CURRENT LAW: Under current law, the City of Greensboro is authorized to levy a room occupancy and tourism tax of 3 %. Until retirement of the debt to finance renovation and expansion of the Greensboro War Memorial Coliseum arena, proceeds of the tax are to be used in the following manner:

- 20% of net proceeds to the Greensboro/Guilford County Tourism Development Authority to be used only for activities and programs promoting and encouraging travel and tourism.
- The balance to be used only (I) to finance the renovation and expansion of the Greensboro War Memorial arena, (ii) to finance the renovation and expansion of the remainder of the Greensboro War Memorial Complex and acquisition of property in the vicinity of the Complex, and (iii) for maintenance of the Complex.

BILL ANALYSIS: Senate Bill 523 modifies the disposition of the occupancy tax proceeds as follows:

- 20% of the net proceeds to the Greensboro/Guilford County Tourism Development Authority as under current law.
- Up to $200,000 of the remaining net proceeds each fiscal year to the Tourism Development Authority for a marketing fund. This fund may be used only for coliseum rent subsidies to attract citywide groups that commit to fill at least 5,000 room nights for the event.
- The balance of the net proceeds to be used in the same manner as the balance is used under current law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 547

Short Title: Telecommunications Relay Service/AB. (Public)

Sponsors: Senator Hoyle.

Referred to: Finance.

March 29, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE ESTABLISHMENT OF A TELECOMMUNICATIONS RELAY SERVICE TO ASSIST DEAF AND HEARING IMPAIRED PERSONS, INCLUDING THOSE WHO ALSO HAVE VISION IMPAIRMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 62-157 reads as rewritten:

"**§ 62-157. ~~Dual party relay system.~~ Telecommunications relay service.**

(a) Finding. -- The General Assembly finds and declares that it is in the public interest to provide access to public telecommunications services for hearing impaired or speech impaired ~~persons~~ persons, including those who also have vision impairment, and that a statewide ~~dual party telephone relay system~~ telecommunications relay service for telephone service should be established.

(a1) Definitions. -- For purposes of this section:

(1) "Exchange access facility" means the access from a particular telephone subscriber's premises to the telephone system of a local exchange telephone company, and includes local exchange company-provided access lines, private branch exchange trunks, and centrex network access registers, all as defined by tariffs of telephone companies as approved by the Commission.

(2) "Local service provider" means a local exchange company, competing local provider, or telephone membership corporation.

(b) Authority to Require Surcharge. -- The Commission shall require ~~local exchange companies and telephone membership corporations~~ local service providers

to impose a monthly surcharge on all residential and business local exchange access facilities to fund a statewide ~~dual party telephone relay system~~ telecommunications relay service by which hearing impaired or speech impaired ~~persons~~ persons, including those who also have vision impairment, may communicate with others by telephone. ~~For the purpose of this section, exchange access facility means the access from a particular telephone subscriber's premises to the telephone system of a local exchange telephone company. Exchange access facilities include local exchange company provided access lines, private branch exchange trunks, and centrex network access registers, all as defined by tariffs of telephone companies as approved by the Commission.~~ This surcharge, however, may not be imposed on participants in the Subscriber Line Charge Waiver Program or the Link-up Carolina Program established by the Commission. This surcharge, and long distance revenues collected under subsection (f) of this section, are not includable in gross receipts subject to the franchise tax levied under G.S. 105-120 or the sales tax levied under G.S. 105-164.4.

(c) ~~Initiating Petition.~~ Specification of Surcharge. -- ~~Not later than February 1, 1990, the~~ The Department of Health and Human Services shall initiate a ~~dual party relay system~~ telecommunications relay service by filing a petition with the Commission requesting the ~~system~~ service and detailing initial projected required funding. The Commission shall, after giving notice and an opportunity to be heard to other interested parties, set the initial monthly surcharge based upon the amount of funding necessary to implement and operate the ~~system,~~ service, including a reasonable margin for a reserve. The surcharge shall be identified on customer bills as a special surcharge for provision of a ~~dual party relay system.~~ telecommunications relay service for hearing impaired and speech impaired persons. The Commission may, upon petition of any interested party, and after giving notice and an opportunity to be heard to other interested parties, revise the surcharge from time to time if the funding requirements change. In no event shall the surcharge exceed twenty-five cents (25¢) per ~~month.~~ month for each exchange access facility.

(d) Funds to Be Deposited in Special Account. -- The local ~~exchange companies and telephone membership corporations~~ service providers shall collect the surcharge from their customers and deposit the moneys collected with the State Treasurer, who shall maintain the funds in an interest-bearing, nonreverting account. After consulting with the State Treasurer, the Commission shall direct how and when the local ~~exchange companies and telephone membership corporations~~ service providers shall deposit these moneys. ~~The funds deposited in this account may not be used to lease or purchase telecommunications devices for hearing impaired or speech impaired persons, except those devices used by the operator of the relay system established under this section.~~ Revenues from this fund shall be available only to the Department of Health and Human Services to administer the statewide ~~dual party telephone relay system,~~ telecommunications relay service program, including its establishment, operation, and promotion. The Commission may allow the Department of Health and Human Services to use up to four cents (4¢) per access line per month of the surcharge for the purpose of providing telecommunications devices for hearing impaired or speech impaired persons, including those who also

have vision impairment, through a distribution program. The Commission shall prepare such guidelines for the distribution program as it deems appropriate and in the public interest. Both the Commission and the Public Staff may audit all aspects of the telecommunications relay service program, including the distribution programs, as it does with any public utility subject to the provisions of this Chapter. Equipment paid for with surcharge revenues, as allowed by the Commission, may be distributed only by the Department of Health and Human Services.

(e) Administration of Service. -- The Department of Health and Human Services shall administer the statewide ~~dual-party telephone relay system,~~ telecommunications relay service program, including its establishment, operation, and promotion. The Department may contract out the provision of this service for four-year periods to one or more service providers, using the provisions of G.S. 143-129.

(f) Charge to Users. -- The users of the ~~relay system~~ telecommunications relay service shall be charged their approved long distance and local rates for telephone services (including the surcharge required by this section), but no additional charges may be imposed for the use of the relay ~~system.~~ service. The local ~~exchange companies and telephone membership corporations~~ service providers shall collect revenues from the users of the relay ~~system~~ service for long distance services provided through the relay ~~system.~~ service. These revenues shall be deposited in the special fund established in subsection (d) of this section in a manner determined by the Commission after consulting with the State Treasurer. Local ~~exchange companies and telephone membership corporations~~ service providers shall be compensated for collection, inquiry, and other administrative services provided by said companies, subject to the approval of the Commission.

(g) Reporting Requirement. -- The Commission shall, after consulting with the Department of Health and Human Services, develop a format and filing schedule for a comprehensive financial and operational report on the ~~dual-party relay system.~~ telecommunications relay service program. The Department of Health and Human Services shall thereafter prepare and file these reports as required by the Commission with the Commission and ~~Joint Legislative Utility Review Committee.~~ the Public Staff.

(h) Power to Regulate. -- The Commission shall have the same power to regulate the operation of the ~~dual-party relay system~~ telecommunications relay service program as it has to regulate any public utility subject to the provisions of this Chapter."

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

Senate Bill 547 - Telecommunications Relay Service
Sponsored by Senator David Hoyle

[This additional information was prepared by the Public Staff - North Carolina Utilities Commission.]

What is Telecommunications Equipment Distribution Program (TEDP)?

Telecommunications Equipment Distribution Program provides telecommunication devices for the Deaf (TTYs), flashing light phone ring signalers, volume amplifiers, loud ringers, TTYs with Large Visual Displays or any other equipment which fits the individual's telecommunication needs. A teletypewriter (TTY), also called a telephone device for the deaf (TDD), enables you to type a message, and your message appears on the other person's TTY. Some TTYs have "voice over" capability, so that a speech-impaired person hears the caller's voice. Some TTYs have speech synthesizers for calling persons with normal hearing.

Who would be eligible?

Any North Carolina resident who is Deaf, Hard of Hearing, Deaf-Blind, Speech-disabled and has phone service in his/her home. Hearing or speech impairment would be verified by a doctor or audiologist. Proof of income would be needed to meet the means test established by the Utilities Commission.

How would one get equipment through this program?

By contacting the Equipment Distribution Program which would be administered through the Telecommunications Relay Service, a Division of the Department of Health and Human Services.

How would the program be paid for and accounted for?

The Utilities Commission would use up to four cents of the existing TRS surcharge for this purpose. This compares to fifteen cents charged by the Florida and California, and fifteen cents is being recommended now in New York. Guidelines for the Program would be established by the Utilities Commission. The Utilities Commission and the Public Staff would have the same authority to monitor and audit the program as it has over any other public utility.

What are other states doing about equipment distribution programs?

Approximately 35 states have equipment distribution programs, and most pay for the program through a telephone surcharge. Most states apply the surcharge to regular phones and cellular phones. North Carolina has not applied the surcharge to cellular phones to date. North Carolina has one of the lowest surcharges in the country.

Why have an equipment distribution program?

To allow hearing/speech impaired or deaf persons access to the telecommunications system if they have had no access up until now because they could not afford the equipment. In addition, most states believe that such a program is necessary to meet the requirements of the Americans with Disabilities Act (ADA) and the Telecommunications Act of 1996.

Statistics

- 8.6% of the population has a hearing loss of some degree; 645,000 in North Carolina.*
- Only 20% of those people who need a hearing aid have one.**
- The prevalence of hearing impairment at all ages decreases as family income increases.*
- The prevalence of hearing impairment is greater at all ages among the population in rural areas.*
- Persons 65 years and older are eight times more likely to have hearing impairment than ages 18-34 (i.e., 3.4 percent of the population ages 188-34 have hearing impairment, compared to 29.1 percent of the population 65 and older.)*
- Of the estimated 20 million deaf and hard of hearing persons in the U.S., approximately 3 out of 4 persons had onset of hearing loss after age 18.*

* Center for Assessment and Demographic Studies, Gallaudet University, based on statistics from the National Center for Health Statistics of the U.S. Department of Health and Human Services.

** Hard of Hearing Advocates (HOHA) of Framingham, MA.

SENATE BILL 547:
Telecommunications Relay Service/AB

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Sen. Hoyle
Date:	June 21, 1999	**Summary by:**	Martha K. Walston
Version:	First Edition		Committee Counsel

SUMMARY: ***Senate Bill 547 amends G.S. 62-157 of the General Statutes to replace the reference to a "dual party relay system" with "telecommunications relay service". The bill clarifies that statewide telecommunications relay service for telephone service will be provided to hearing impaired or speech impaired persons and to such persons who are also visually impaired. The Bill authorizes the Utilities Commission to allow the Department of Health and Human Services to use a portion of the surcharge collected by local providers to provide telecommunications devices for persons with the above described impairments. The surcharge is currently imposed on all residential and business local exchange access facilities and is used to fund a statewide system for hearing impaired or speech impaired persons. Senate Bill 547 is an agency bill.***

CURRENT LAW: Under current law, G.S. 62-157 provides access to public telecommunications services to persons who are hearing impaired or speech impaired. This access system is funded through a monthly surcharge that is imposed on all residential and business local exchange access facilities. The surcharge is identified on a customer's bill and may not exceed 25 cents per month. The surcharges collected by local service providers are maintained in an interest-bearing, nonreverting account with the State Treasurer. Revenues from this fund are available only to the Department of Health and Human Service and used to administer the statewide access system.

The users of the access system are also charged the surcharge.

The surcharge is not included in the gross receipts subject to the State franchise or sales tax.

BILL ANALYSIS: Senate Bill 547 amends G.S. 62-157 by replacing references to the "dual party relay system" with references to "telecommunications relay service". The bill also clarifies that this service is provided to persons who or hearing impaired or speech impaired and to such persons who are also visually impaired. The bill also authorizes the Utilities Commission to allow DHHS to use up to four cents of each monthly surcharge imposed per access line for the purpose of providing telecommunications devices for persons with the above impairments. The bill directs the Utilities Commission to prepare guidelines for distributing the devices. Both the Commission and the Public Staff may audit the telecommunications relay service program, including the distribution of the devices. Only DHHS may distribute the devices that are paid for with surcharge revenues.

The Utilities Commission indicates that different equipment is needed for persons who are both hearing impaired and visually impaired, and that many people cannot afford the needed equipment. The distribution of the equipment will be based upon financial need.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: S.B. 547 Telecommunications Relay Service/AB

SHORT TITLE: Telecommunications Relay Service/AB

SPONSOR(S): Senator David Hoyle

FISCAL IMPACT

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

	Millions				
	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
Special Acct.	**$1.73**	**$1.73**	**$1.73**	**$1.73**	**$1.73**
EXPENDITURES					
Special Acct.	*** See Assumptions and Methodology ***				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: The Utilities Commission, the State Treasurer, and the Department of Health and Human Services.

EFFECTIVE DATE: When it becomes law.

BILL SUMMARY: The legislation modifies the law controlling public telecommunications services for the hearing impaired. Currently the Utilities Commission is authorized to charge a surcharge of up to $0.25 per month. The bill establishes a telecommunications relay service to assist deaf and hearing-impaired persons, including those who are also visually impaired. The bill authorizes the Utility Commission to allow the Department of Health and Human Services to use up to four cents ($0.04) of the surcharge amount to provide special equipment to the hearing impaired, as well as the visually and speech impaired, to assist with telephone communication. The Commission is authorized to develop guidelines for distribution of the equipment.

ASSUMPTIONS AND METHODOLOGY: According to the Public Staff of the Utilities Commission, the current surcharge amount is $0.07 per month. The latest revenue report indicates that the surcharge generated approximately $1,516,000 in six months ending December 31, 1998, or $3,032,000 per year. Given the $0.07 rate, these numbers suggest the surcharge raised approximately $433,000 per penny. If the Commission increases the surcharge by the full $0.04 allowed by the bill, the bill could raise approximately $1,732,000. The Public Staff estimates that this amount would never exceed $2,000,000.

At this point there is no accurate estimate of the equipment needs. The Public Staff reports that the equipment cost can range from a few hundred dollars to several thousands of dollars, depending on the needs of the user. At this point the exact needs of individual program recipients is unknown. Therefore, no expenditure estimate is possible.

While the Utilities Commission will set distribution guidelines and control how revenue is transferred from telephone companies to the Treasurer, the Department of Health and Human Services will administer the program itself.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Linda Struyk Millsaps

APPROVED BY: Tom Covington

DATE: Tuesday, June 22, 1999

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

S. B. No. 547 Amendment No. _____

(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) [redacted] Hoyle

Sen.)

moves to amend the bill on page 3, line 31

( ) WHICH CHANGES THE TITLE

by rewriting the line to read

"Staff. The Department shall also be required to report to the Revenue Laws Study Committee."

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 547
Proposed Committee Substitute S547-PCS1765-LA

Short Title: Telecommunications Relay Service/AB. (Public)

Sponsors:

Referred to:

March 29, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE ESTABLISHMENT OF A TELECOMMUNICATIONS RELAY SERVICE TO ASSIST DEAF AND HEARING IMPAIRED PERSONS, INCLUDING THOSE WHO ALSO HAVE VISION IMPAIRMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 62-157 reads as rewritten:

"**§ 62-157. ~~Dual party relay system.~~ Telecommunications relay service.**

(a) Finding. -- The General Assembly finds and declares that it is in the public interest to provide access to public telecommunications services for hearing impaired or speech impaired ~~persons~~ persons, including those who also have vision impairment, and that a statewide ~~dual party telephone relay system~~ telecommunications relay service for telephone service should be established.

(a1) Definitions. -- For purposes of this section:

(1) "Exchange access facility" means the access from a particular telephone subscriber's premises to the telephone system of a local exchange telephone company, and includes local exchange company-provided access lines, private branch exchange trunks, and centrex network access registers, all as defined by tariffs of telephone companies as approved by the Commission.

(2) "Local service provider" means a local exchange company, competing local provider, or telephone membership corporation.

(b) Authority to Require Surcharge. -- The Commission shall require ~~local exchange companies and telephone membership corporations~~ local service providers to impose a monthly surcharge on all residential and business local exchange access facilities to fund a statewide ~~dual party telephone relay system~~ telecommunications relay service by which hearing impaired or speech impaired ~~persons~~ persons, including those who also have vision impairment, may communicate with others by telephone. ~~For the purpose of this section, exchange access facility means the access from a particular telephone subscriber's premises to the telephone system of a local exchange telephone company. Exchange access facilities include local exchange company provided access lines, private branch exchange trunks, and centrex network access registers, all as defined by tariffs of telephone companies as approved by the Commission.~~ This surcharge, however, may not be imposed on participants in the Subscriber Line Charge Waiver Program or the Link-up Carolina Program established by the Commission. This surcharge, and long distance revenues collected under subsection (f) of this section, are not includable in gross receipts subject to the franchise tax levied under G.S. 105-120 or the sales tax levied under G.S. 105-164.4.

(c) ~~Initiating Petition.~~ Specification of Surcharge. -- ~~Not later than February 1, 1990, the~~ The Department of Health and Human Services shall initiate a ~~dual party relay system~~ telecommunications relay service by filing a petition with the Commission requesting the ~~system~~ service and detailing initial projected required funding. The Commission shall, after giving notice and an opportunity to be heard to other interested parties, set the initial monthly surcharge based upon the amount of funding necessary to implement and operate the ~~system,~~ service, including a reasonable margin for a reserve. The surcharge shall be identified on customer bills as a special surcharge for provision of a ~~dual party relay system.~~ telecommunications relay service for hearing impaired and speech impaired persons. The Commission may, upon petition of any interested party, and after giving notice and an opportunity to be heard to other interested parties, revise the surcharge from time to time if the funding requirements change. In no event shall the surcharge exceed twenty-five cents (25¢) per ~~month.~~ month for each exchange access facility.

(d) Funds to Be Deposited in Special Account. -- The local ~~exchange companies and telephone membership corporations~~ service providers shall collect the surcharge from their customers and deposit the moneys collected with the State Treasurer, who shall maintain the funds in an interest-bearing, nonreverting account. After consulting with the State Treasurer, the Commission shall direct how and when the local ~~exchange companies and telephone membership corporations~~ service providers shall deposit these moneys. ~~The funds deposited in this account may not be used to lease or purchase telecommunications devices for hearing impaired or speech impaired persons, except those devices used by the operator of the relay system established under this section.~~ Revenues from this fund shall be available only to the Department of Health and Human Services to administer the statewide ~~dual party telephone relay system,~~ telecommunications relay service program, including its establishment, operation, and promotion. The Commission may allow the Department of Health and Human Services to use up to four cents (4¢) per access

line per month of the surcharge for the purpose of providing telecommunications devices for hearing impaired or speech impaired persons, including those who also have vision impairment, through a distribution program. The Commission shall prepare such guidelines for the distribution program as it deems appropriate and in the public interest. Both the Commission and the Public Staff may audit all aspects of the telecommunications relay service program, including the distribution programs, as it does with any public utility subject to the provisions of this Chapter. Equipment paid for with surcharge revenues, as allowed by the Commission, may be distributed only by the Department of Health and Human Services.

(e) Administration of Service. -- The Department of Health and Human Services shall administer the statewide ~~dual party telephone relay system,~~ telecommunications relay service program, including its establishment, operation, and promotion. The Department may contract out the provision of this service for four-year periods to one or more service providers, using the provisions of G.S. 143-129.

(f) Charge to Users. -- The users of the ~~relay system~~ telecommunications relay service shall be charged their approved long distance and local rates for telephone services (including the surcharge required by this section), but no additional charges may be imposed for the use of the relay ~~system.~~ service. The local ~~exchange companies and telephone membership corporations~~ service providers shall collect revenues from the users of the relay ~~system~~ service for long distance services provided through the relay ~~system.~~ service. These revenues shall be deposited in the special fund established in subsection (d) of this section in a manner determined by the Commission after consulting with the State Treasurer. Local ~~exchange companies and telephone membership corporations~~ service providers shall be compensated for collection, inquiry, and other administrative services provided by said companies, subject to the approval of the Commission.

(g) Reporting Requirement. -- The Commission shall, after consulting with the Department of Health and Human Services, develop a format and filing schedule for a comprehensive financial and operational report on the ~~dual party relay system.~~ telecommunications relay service program. The Department of Health and Human Services shall thereafter prepare and file these reports as required by the Commission with the Commission and ~~Joint Legislative Utility Review Committee.~~ the Public Staff. The Department shall also be required to report to the Revenue Laws Study Committee.

(h) Power to Regulate. -- The Commission shall have the same power to regulate the operation of the ~~dual party relay system~~ telecommunications relay service program as it has to regulate any public utility subject to the provisions of this Chapter."

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

(Attachment #1)

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — June 23, 1999

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Bowdich	Zeb Alley P.A.
Jennie Dowd	NCAHP
Joyce Pieters	JPAssoc
[illegible]	Poyner & Spruill
Wesley Bunn	Poyner & Spruill
Carson Markham	EGHS
Steve Woodson	NCFB
Jimmie Tuttle	Public Staff - NCUC
Deb Pickell	Retired citizen
Katherine Miller	Harry Kaplan
Paul Lyon	OSBM

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — June 23, 1999

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sheila Pope	SOS
Bernard Allen	SOS
[illegible]	[illegible]
Ruth Sappie	NCDOT
Oppie Jordan	VP Economic Developer Edgecombe County
Robert Wells Corbett	NCNA East Carolina University
George McCoy	DSDHH - DHHS
Christina Segap	DSDHH - DHHS (interpreter)
Linda Nelson	DSDHH - DHHS
Charles Reid	DHHS - Public Health
Cam Cover	BPMHL

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — June 23, 1999

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dick Carlton	Securities Industry Assn.
Jonathan Howes	UNC-CH
Evelyn Hawthorne	UNC-CH
Floyd M. Lewis	General Statutes Commission
Ronald C. Link	UNC Law School
Fannie K.L. Williams	Duke LTC, STAL, SLC & AARP
David Winslow	Preservation NC
Sabra Faires	Dept. of Revenue
LENNIE COLLINS	NC DOR
Greg Ratfield	NC DOR
Patti Sawell	"
Mari Smith	Glenn Mellon

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — June 23, 1999

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Catherine Davis	ElectriCities
Jerry Cragg	Broughton Hospital
LE Hartsell	NC Bar Association
Jim Romanos	NCSOS
Roger Bone	Bone & Assoc -

(Attachment #2)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Wednesday, June 23, 1999

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

FAVORABLE

H.B.(CS #2)**419** Mount Airy Satellite Annexation
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1)**845** Greenville Utilities Commission
Sequential Referral: None
Recommended Referral: None

H.B.(CS #2)**1095** Clinical Pharmacist Practitioner
Sequential Referral: None
Recommended Referral: None

H.B. **1134** UNC/Horace Wiliams Campus
Sequential Referral: None
Recommended Referral: None

S.B.(CS #1)**523** Modify Greensboro Room Tax Use
Sequential Referral: None
Recommended Referral: None

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

S.B. **251** Modify Historic Rehabilitation Credit
Draft Number: PCS1759
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 6

Committee Clerk Comment:

(Attachment #3)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Thursday, June 24, 1999

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

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

S.B. **547** Telecommunications Relay Service/AB

Draft Number:	PCS1765
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment: Bill heard and acted on in Sen Finance Committee 6-23-99

HOUSE FINANCE COMMITTEE
Joint Meeting with Senate Finance

Tuesday, June 29, 1999 – Room 544 LOB
8:30 a.m.

CALL TO ORDER

BILLS TO BE HEARD:

HB 1481 – Amend Tax Laws / 2 – Rep. Miller
SB 912 – Bonds for Higher Education – Sen. Rand

ADJOURNMENT OF MEETING

HOUSE FINANCE COMMITTEE

Tuesday, June 29, 1999 – Room 544 LOB

CALL TO ORDER

BILLS TO BE HEARD:

HB 1481 – Amend Tax Laws / 2 – Rep. Miller
SB 912 – Bonds for Higher Education – Sen. Rand

Speakers:

Speaker of the House Jim Black
President Pro Tempore of the Senate Marc Basnight
Harlan Boyles, State Treasurer
President Molly Broad
Ben Ruffin, Chair of the UNC Board of Governors
Martin Lancaster, President of the Community College System
Eva Klein, Consultant to project
Chancellors
Community College Presidents
Martha Harris, Bill Drafting Division
David Crotts, Fiscal Research Division

ADJOURNMENT OF MEETING

MINUTES
HOUSE COMMITTEE ON FINANCE

Tuesday, June 29, 1999
8:30 a.m. meeting

The House Committee on Finance met Jointly with Senate Finance on Tuesday, June 29, 1999 in Room 643 of the Legislative Office Building at 8:30 a.m. The following members were present: Chairs Allen, Luebke, Miller; Vice Chairs Jarrell; Representatives Baddour, Braswell, Bridgeman, Brown, Buchanan, Capps, Church, Creech, Cunningham, Decker, Dedmon, Eddins, Goodwin, Hackney, Hill, McComas, McCombs, Pope, Rayfield, Tucker, Wilson, and Womble. Staff including Cindy Avrette, Richard Bostic, Martha Harris, Mary Shuping, and Linda Millsaps were in attendance. A Visitor Registration List is attached and made a part of these minutes.

Chair Miller called the meeting to order to consider the following bills:

Sen. Kerr was recognized to explain SB 912, A BILL TO BE ENTITLED AN ACT (1) TO PROVIDE FOR THE FINANCING OF CAPITAL FACILITIES FOR THE UNIVERSITY OF NORTH CAROLINA THROUGH THE ISSUANCE OF STATE OF NORTH CAROLINA UNIVERSITY IMPROVEMENT SECURITY INTEREST BONDS, (2) TO AUTHORIZE THE BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA TO ISSUE SPECIAL OBLIGATION BONDS FOR IMPROVEMENTS TO THE FACILITIES OF THE UNIVERSITY OF NORTH CAROLINA AND FOR THE UNIVERSITY OF NORTH CAROLINA HOSPITALS AT CHAPEL HILL, AND OTHER FACILITIES OF THE UNIVERSITY OF NORTH CAROLINA HEALTH CARE SYSTEM, AND (3) TO PROVIDE FOR THE FINANCING OF CAPITAL IMPROVEMENTS FOR COMMUNITY COLLEGES THROUGH THE ISSUANCE OF STATE OF NORTH CAROLINA COMMUNITY COLLEGE SECURITY INTEREST BONDS. Sen. Kerr moves for adoption of the Proposed Committee Substitute for discussion only. Sen. Rand is recognized for an explanation of the bill. Rep. Luebke moved to adopt the Proposed Committee Substitute for HB 1481 for discussion only. The Chair recognized President Molly Broad of the University of North Carolina Education System who stated her support for the bill and gave an explanation of her support. The Chair recognized Mr. Ben Ruffin, Chairman of the UNC Board of Governors who stated his support for the bill. The Chair recognized State Treasurer Harlan Boyles who supported the bill and explained the reasoning behind his department's financing of the bill. The Chair recognized the Honorable Jim Holshouser, former governor of N.C. who supported the bill. The Chair recognized the Honorable Bob Scott, former governor of N.C. who supported the bill. The Chair recognized Dr. William Friday of the UNC System who supported the bill. The Chair recognized Mr. John Saunders who supported the bill. The Chair recognized Mr. Phil Kirk, Executive Director of N.C.C.B.I. who supported the bill. The Chair recognized Mr. Martin Lancaster, President of the Community College System who supported the bill. Chair Miller ended the meeting and stated they would meet again at 1 p.m. today. The bills and Proposed Committee Substitutes for HB 1481 and SB 912, the Bill Summary, various fiscal notes from State Treasurer's office, Eva Klein's report and resume, and speakers' comments are included in these minutes.

The Chair adjourned at 9:50 (KA) a.m.

Respectfully submitted:

Representative George Miller
Chair

Kristen L. Crosson
Assistant to the Committee

SENATE AND HOUSE JOINT FINANCE COMMITTEE MEETING
TUESDAY, JUNE 29, 1999
8:30 AM AND 1:00 PM – ROOM 643

1:00 PM – SESSION

Senator John Kerr, CoChairman of the Senate Finance Committee, called the Meeting to order for the afternoon Session. He called on Ms. Eva Klein to come and complete her presentation from the Morning Session. Senator Soles moved for adoption of a proposed committee substitute for the purpose of discussion to SB 912 – Bonds for Higher Ed., motion passed. Senator Kerr turned the meeting over to Ms. Klein to explain the report that took 18 months to work on and complete. At this time, Ms. Klein gave a slide presentation of their findings on the 16 University Campuses.

After the slide presentation, Senator Kerr asked if there were people outside of the members of the committee that would like to speak on the bill. Mr. George Leef, Director of the Pope Center for Higher Education Policy spoke. Mr. Jim Blackburn of the N. C. County Commissions' Association spoke on behalf of the Bill. Mr. Charles Fuller of the N. C. Center for Sound Economy spoke on the Bill. He stated that he does not oppose the bonds but feels that the issue should be brought before the public for a vote. Mr. Jeff Neiman, President of the UNC System of Student Government Association and also the representative of the students that serves on the Board of Governors, spoke on behalf of the Bonds.

Senator Kerr opened the meeting to the members of the Committee with a rotation between Senate and House for questions. After a length debate of questions and answers, Senator Hoyle sent forth an amendment to SB 912 and moved that it be adopted. Martha Harris, Staff Attorney, explained the amendment and the motion passed. There was again a length debate on the bill as amended. Senator Soles moved that Bill as amended be given a "Favorable Report" and rolled into a committee substitute, motion passed. Copy of Bill, Committee Substitute Bill and supporting documents and comments are included in the Minutes.

Meeting adjourned.

David W. Hoyle, Co-Chair

John H. Kerr, III Co-Chair

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

Committee Report is Attachment #1

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 912

Short Title: UNC Financing. (Public)

Sponsors: Senator Rand.

Referred to: Rules and Operations of the Senate.

April 14, 1999

A BILL TO BE ENTITLED

AN ACT PERTAINING TO CAPITAL FINANCING FOR THE UNIVERSITY OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. This act pertains to capital financing for The University of North Carolina.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 912
Proposed Committee Substitute S912-PCSX6691-LC

Short Title: Bonds for Higher Education. (Public)

Sponsors:

Referred to:

April 14, 1999

A BILL TO BE ENTITLED

AN ACT (1) TO PROVIDE FOR THE FINANCING OF CAPITAL FACILITIES FOR THE UNIVERSITY OF NORTH CAROLINA THROUGH THE ISSUANCE OF STATE OF NORTH CAROLINA UNIVERSITY IMPROVEMENT SECURITY INTEREST BONDS, (2) TO AUTHORIZE THE BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA TO ISSUE SPECIAL OBLIGATION BONDS FOR IMPROVEMENTS TO THE FACILITIES OF THE UNIVERSITY OF NORTH CAROLINA AND FOR THE UNIVERSITY OF NORTH CAROLINA HOSPITALS AT CHAPEL HILL AND OTHER FACILITIES OF THE UNIVERSITY OF NORTH CAROLINA HEALTH CARE SYSTEM, AND (3) TO PROVIDE FOR THE FINANCING OF CAPITAL IMPROVEMENTS FOR COMMUNITY COLLEGES THROUGH THE ISSUANCE OF STATE OF NORTH CAROLINA COMMUNITY COLLEGE SECURITY INTEREST BONDS.

The General Assembly of North Carolina enacts:

Section 1. The General Statutes are amended by adding a new Chapter to read:

"Chapter 116D.

"Higher Education Bonds.

"ARTICLE 1.

"General Provisions.

"**§ 116D-1. Definitions.**

The following definitions apply in this Chapter:

(1) Board of Governors. -- The Board of Governors of the University.
(2) Capital facility. -- Any one or more of the following for the University or for a community college:
a. One or more buildings, utilities, structures, or other facilities or property developments, including streets and landscaping, and the acquisition of equipment and furnishings in connection therewith.
b. Additions, extensions, enlargements, renovations, and improvements to existing buildings, utilities, structures, or other facilities or property developments, including streets and landscaping.
c. Land or an interest in land.
d. Other infrastructure.

The term includes, without limitation, classroom buildings, laboratory buildings, research facilities, libraries, physical education facilities, continuing education centers, student cafeterias, and activity facilities, including sports facilities, student and faculty housing facilities, and administrative office facilities.

(3) Cost. -- Any of the following in financing the cost of capital facilities and special obligation bond projects, as authorized by this Chapter:
a. The cost of constructing, reconstructing, renovating, repairing, enlarging, acquiring, and improving capital facilities and special obligation bond projects, including the acquisition of land, rights-of-way, easements, franchises, equipment, furnishings, and other interests in real or personal property acquired or used in connection with a capital facility or special obligation bond project.
b. The cost of engineering, architectural, and other consulting services as may be required.
c. The cost of providing personnel to ensure effective project management.
d. Finance charges, reserves for debt service, and interest prior to and during construction.
e. Administrative expenses and charges incurred by the State in connection with the administration of a bond program created under this Chapter.
f. The cost of bond insurance, investment contracts, credit enhancement, and liquidity facilities, interest-rate swap agreements or other derivative products, financial and legal consultants, and related costs of bond and note issuance.
g. The cost of reimbursing the State for any payments made for any cost described in this subdivision.

h. Any other costs and expenses necessary or incidental to the purposes of this Chapter.

(4) Credit facility. -- An agreement entered into by the State Treasurer on behalf of the State with a bank, savings and loan association or other banking institution, an insurance company, reinsurance company, surety company or other insurance institution, a corporation, investment banking firm or other investment institution, or any financial institution or other similar provider of a credit facility, which provider may be located within or without the United States, and providing for prompt payment of all or any part of the principal or purchase price (whether at maturity, presentment or tender for purchase, redemption or acceleration), redemption premium, if any, and interest on any bonds or notes payable on demand or tender by the owner, in consideration of the State's agreeing to repay the provider of the credit facility in accordance with the terms and provisions of the agreement.

(5) Fiscal period. -- A fiscal biennium or a fiscal year of the fiscal biennium.

(6) Fiscal year. -- The fiscal year of the State beginning on July 1 of one calendar year and ending on June 30 of the next calendar year.

(7) Par formula. -- A provision or formula adopted by the State to provide for the adjustment, from time to time, of the interest rate or rates borne or provided for by any bonds or notes, including:

a. A provision providing for an adjustment so that the purchase price of bonds or notes in the open market would be as close to par as possible.

b. A provision providing for an adjustment based upon a percentage or percentages of a prime rate or base rate, which percentages may vary or be applied for different periods of time.

c. A provision that the State Treasurer determines is consistent with this Chapter and will not materially and adversely affect the financial position of the State and the marketing of bonds or notes at a reasonable interest cost to the State.

(8) Securities issued under this Chapter. -- Any of the following:

a. University improvement security interest bonds, refunding bonds, notes, and refunding notes issued under Article 2 of this Chapter.

b. Special obligation bonds, bond anticipation notes, and refunding bonds issued under Article 3 of this Chapter.

c. Community college security interest bonds, refunding bonds, notes, and refunding notes issued under Article 4 of this Chapter.

(9) State. -- The State of North Carolina.

(10) State Treasurer. -- The incumbent Treasurer, from time to time, of the State.

(11) University. -- The University of North Carolina and its constituent and affiliated institutions, including, without limitation, the University of North Carolina Center for Public Television, the University of North Carolina Health Care System, the North Carolina School of Science and Mathematics, and the North Carolina Arboretum.

"**§ 116D-2. General provisions.**

(a) Signatures. -- Should any officer whose signature or facsimile signature appears on securities issued under this Chapter cease to be that officer before the delivery of the securities, the signature or facsimile signature shall nevertheless have the same validity for all purposes as if the officer had remained in office until delivery of the securities. Securities issued under this Chapter may bear the facsimile signatures of persons, who at the actual time of the execution of the securities were the proper officers to sign any security although at the date of the security those persons may not have been officers.

(b) Tax Exemption. -- Securities issued under this Chapter shall at all times be free from taxation by the State or any political subdivision or any of their agencies, excepting estate, inheritance, or gift taxes, income taxes on the gain from the transfer of the securities, and franchise taxes. The interest on the securities is not subject to taxation as income.

(c) Investment Eligibility. -- Securities issued under this Chapter are securities in which all of the following may invest, including capital in their control or belonging to them: public officers, agencies, and public bodies of the State and its political subdivisions, insurance companies, trust companies, investment companies, banks, savings banks, savings and loan associations, credit unions, pension or retirement funds, other financial institutions engaged in business in the State, executors, administrators, trustees, and other fiduciaries. Securities issued under this Chapter are securities which may properly and legally be deposited with and received by any officer or agency of the State or a political subdivision of the State for any purpose for which the deposit of bonds or notes of the State or any political subdivision is now or may later be authorized by law.

(d) Inconsistent Laws. -- All general, special, or local laws that are inconsistent with this Chapter do not apply to this Chapter.

"**§ 116D-3. Reports.**

(a) Board of Governors. -- The Board of Governors shall report to the Joint Legislative Commission on Governmental Operations by September 15 of each year, and more frequently as the Commission requests, on the following:

(1) University Improvement Security Interest Bonds. -- The Board of Governors shall report on projects funded by university improvement security interest bonds under Article 2 of this Chapter, including the total project costs, the amount to be funded

from the bonds, the expenditures to date from the bonds and other sources, and the percentage of each project completed. Each annual report shall include estimated operating costs for each project begun in the preceding fiscal year, including proposed sources of funds and anticipated dates for occupancy. Operating costs shall be projected for a period of at least 20 years from the date of anticipated project completion.

(2) Special Obligation Bonds. -- The Board of Governors shall report on special obligation bonds issued under Article 3 of this Chapter, including the amount of debt, itemized for each institution of the University, by bond issue, and by project. The report shall include schedules of debt service requirements and actual payments, as well as evidence of compliance with additional financial covenants required by bond documents. The report shall identify the trends and current revenue streams of the sources of obligated resources pledged for each bond issue.

(b) Treasurer. -- Upon issuance of university improvement security interest bonds under Article 2 of this Chapter or community college security interest bonds under Article 4 of this Chapter, the Treasurer shall forward a schedule of required payments of principal and interest over the life of the bonds to the Director of the Budget, with copies to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division. The Treasurer shall report to the Joint Legislative Commission on Governmental Operations by September 15 of each year, and more frequently as the Commission requests, on the university improvement security interest bonds issued under Article 2 of this Chapter and community college security interest bonds issued under Article 4 of this Chapter, including the annual debt service requirements over the remainder of the life of the bonds.

(c) Community Colleges. -- The Community Colleges System Office shall report quarterly to the Joint Legislative Education Oversight Committee on the projects funded from community college security interest bonds. Each report shall include the total project costs, the amount to be funded from the bonds, the expenditures to date from the bonds and other sources, and the percentage of each project completed.

"ARTICLE 2.

"Security Interest Bonds for Financing Capital Facilities for The University of North Carolina.

"§ 116D-5. Short title.

This Article may be cited as the University Improvement Security Interest Bonds Finance Act.

"§ 116D-6. Findings and purpose.

The General Assembly finds that:

(1) Article IX of the North Carolina Constitution requires the General Assembly to maintain a public system of higher education comprising The University of North Carolina, that the benefits of

the University, as far as practicable, be extended to the people of North Carolina without expense.

(2) Recent studies have shown that billions of dollars will be necessary to repair and renovate the current facilities of the University, to expand the facilities to meet future enrollment demands, to modernize existing facilities of the University in order for the University to continue to provide excellent educational opportunities for the people of North Carolina, and to meet the challenges of changing technologies and globalization of economies.

(3) The University is one of the most valuable assets of the State, and the State cannot afford to permit the quality of the University to decline due to failure to maintain, expand, and modernize the facilities of the University. The failure to expend the required amounts to maintain, modernize, and expand the University will have a significant negative impact upon the continuing quality of the University. Such a negative impact is unacceptable to the citizens of the State.

(4) The University's capital facilities have been and will continue to be provided from University funds on hand, direct appropriations by the State, the proceeds of University self-liquidating debt obligations, and the proceeds of State general obligation bonds secured by a pledge of the faith and credit of the State. There is a need, however, for the use of alternative financing methods to facilitate funding capital facilities when circumstances and conditions warrant the use of financing methods other than those currently used.

(5) The use of State of North Carolina University Improvement Security Interest Bonds, secured by a lien on or security interest in University property acquired, constructed, or improved with the bond proceeds, with the payments of principal and interest appropriated by the General Assembly, will provide flexibility to the State in the financing of facilities for the University and will permit the State to take advantage of changing financial and economic environments.

"**§ 116D-7. Definitions.**

The following definitions apply in this Article:

(1) Bonds. -- Bonds authorized to be issued under this Article, including refunding bonds.

(2) Notes. -- Notes issued under this Article.

(3) University improvement security interest bonds. -- Bonds authorized to be issued under this Article, including refunding bonds.

"**§ 116D-8. Authorization of bonds and notes.**

The State Treasurer may, by and with the consent of the Council of State, issue and sell, at one time or from time to time, university improvement security interest bonds of the State to be designated 'State of North Carolina University Improvement Security Interest Bonds', with any additional designations as may be determined to indicate the issuance of bonds from time to time, or notes of the State. Except as otherwise provided by this Article, the aggregate amount of bonds and notes issued pursuant to this Article shall not exceed two billion seven hundred million dollars ($2,700,000,000). The bonds and notes shall be issued in the following years up to the following amounts:

Fiscal Year	Aggregate Amount
1999-2000	$240,000,000
2000-2001	480,000,000
2001-2002	700,000,000
2002-2003	640,000,000
2003-2004	640,000,000

If less than the aggregate amount of bonds or notes authorized to be issued in a fiscal year is issued in that fiscal year, the balance for that fiscal year may be issued in any subsequent fiscal year. Refunding bonds and notes issued pursuant to G.S. 116D-11(f) shall not be included in the limitation on the aggregate amount of bonds and notes that may be issued pursuant to this Article.

The proceeds of bonds or notes issued under this Article shall be applied to finance the cost of improvement, construction, and acquisition of capital facilities for the University or to refund any outstanding bonds or notes issued under this Article. The capital facilities to be improved, constructed, or acquired with the proceeds of bonds or notes shall be determined as provided in G.S. 116D-9.

"**§ 116D-9. Designation of capital facilities and preconditions to bond issuance.**

The capital facilities to be financed in whole or in part with the proceeds of university improvement security interest bonds shall be set forth in legislation enacted from time to time by the General Assembly. The proceeds of university improvement security interest bonds shall not be expended to pay the costs of any capital facilities other than those set forth in that legislation.

"**§ 116D-10. Security; other requirements.**

(a) Security. -- To secure payment of the principal of and interest on bonds or notes issued under this Article, the State may create a lien on or a security interest in one or more of the following:

(1) In all or any part of the capital facilities to be financed by the bonds or notes.

(2) In the case of construction of improvements on real property, in all or some portion of the land on which the improvements are to be located or in all or part of the improvements.

(3) In the case of renovations or improvements to or the installation of fixtures in existing facilities, in all or some portion of the existing facilities, or in all or part of the renovations or improvements.

Chapter 146 of the General Statutes does not apply to any transfer of the State's interest in property authorized by this Article, whether to a deed of trust trustee or other secured party as security for university improvement security interest bonds, or to a purchaser of property in connection with a foreclosure or similar conveyance of property to realize upon the security for university improvement security interest bonds following the State's default on its obligations under the bonds or notes or any trust agreement or other instrument securing payment of the bonds or notes. The security for an issue of bonds shall be set forth in general terms in the resolution of the Council of State authorizing the issuance of the bonds. The property that will be the subject of a lien, deed of trust, or security interest to secure the bonds need not bear any particular relationship to the principal amount of the bonds or notes. The State may grant multiple liens or security interests in a capital facility to the extent not otherwise limited by the terms of other issues of bonds or notes.

(b) Default. -- If university improvement security interest bonds are secured by a lien, deed of trust, or security interest in multiple items of property, the mortgage, deed of trust, or security agreement or other instrument creating the lien, deed of trust, or security interest shall provide that if the State defaults on its obligations with respect to university improvement security interest bonds, the Board of Governors, on behalf of the State, shall determine the order in which the property comprising the security shall be sold or otherwise conveyed to satisfy the obligations of the State. In carrying out the provisions of this subsection, the Board of Governors shall endeavor to select for sale or conveyance to satisfy the obligations of the State those items of property that, in the judgment of the Board of Governors, if sold, would result in the least amount of interruption to the operations of the University as a whole and its ability to carry out its mission. Any determination made by the Board of Governors in carrying out this endeavor shall be conclusive. Nothing in this subsection prohibits the sale or conveyance of up to all of the property securing university improvement security interest bonds to the extent necessary to satisfy the obligations of the State under the bonds.

(c) Governor's Budget. -- Documentation relating to any bonds or notes may include provisions requiring the Governor to submit in the Governor's budget proposal, or in any amendments or supplements to the budget proposal, appropriations necessary to make the payments required to pay the bonds or notes.

(d) Appropriations. -- Amounts payable by the State in respect of an issue of bonds or notes during any fiscal period shall be limited to funds appropriated for that purpose by the General Assembly in its discretion.

(e) State Liability. -- No deficiency judgment may be rendered against the State in any action for breach of any obligation contained in an issue of bonds or notes or any trust agreement or other instrument securing payment of the bonds or notes. The taxing power of the State is not and may not be pledged directly or indirectly to secure any moneys due under an issue of bonds or notes. In the event that the State fails to pay any payments required under or with respect to an issue of bonds or notes, whether on account of a failure by the General Assembly to appropriate sufficient funds for the payment or for some other reason, the net proceeds received

from the sale or other disposition of the capital facilities subject to the lien or security interest securing the bonds or notes shall be applied to satisfy the payment obligations in accordance with the deed of trust, security agreement, or other documentation relating to the lien or security interest, and the net proceeds are hereby appropriated for the purpose of making those payments. Any net proceeds in excess of the amount required to satisfy the obligations of the State under an issue of bonds or notes shall be paid to the State Treasurer for deposit to the General Fund.

(f) Nonsubstitution Clause. -- No documentation relating to an issue of bonds or notes may contain a nonsubstitution clause that restricts the right of the State to (i) continue to provide a service or conduct an activity or (ii) replace or provide a substitute for any capital facility financed or purchased by the bonds or notes.

(g) Terms Protecting Lender. -- The documentation relating to an issue of bonds or notes may contain provisions for protecting and enforcing the rights and remedies of the owners of the bonds or notes that are reasonable and proper and not in violation of law. It may include covenants setting forth the duties of the State in respect of the purposes to which the proceeds of the bonds or notes may be applied, the disposition and application of any appropriations of the State, and the duties of the State with respect to the capital facilities financed, including, without limitation, the payment of the costs of insurance and maintenance of the capital facilities, the terms under which the collateral securing the bonds may be released or substitute collateral may be delivered, the terms and conditions of the issuance of additional bonds or notes similarly secured, and the custody, safeguarding, investment, and application of all moneys.

(h) Statement on Face of Bonds. -- Bonds issued under this Article shall contain on their face a statement to the effect that neither the faith and credit nor the taxing power of the State or of any political subdivision or instrumentality of the State is pledged to the payment of the principal of or the interest on the bonds.

"**§ 116D-11. Issuance of bonds and notes.**

(a) Terms and Conditions. -- Bonds or notes may bear any dates, may be serial or term bonds or notes, or any combination of these, may mature in any amounts and at any times, not exceeding 25 years from their dates, may be payable at any places, either within or without the United States, in any coin or currency of the United States that at the time of payment is legal tender for payment of public and private debts, may bear interest at any rates, which may vary from time to time, and may be made redeemable before maturity, at the option of the State or otherwise as may be provided by the State, at any prices, including a price greater than the face amount of the bonds or notes, and under any terms and conditions, all as may be determined by the State Treasurer, by and with the consent of the Council of State.

(b) Signatures; Form and Denomination; Registration. -- Bonds or notes may be issued in certificated or uncertificated form. If issued in certificated form, bonds or notes shall be signed on behalf of the State by the Governor or shall bear the Governor's facsimile signature, shall be signed by the State Treasurer or shall bear the State Treasurer's facsimile signature, and shall bear the Great Seal of the State or a facsimile of the Seal impressed or imprinted on them. If bonds or notes bear the

facsimile signatures of the Governor and the State Treasurer, the bonds or notes shall also bear a manual signature which may be that of a bond registrar, trustee, paying agent, or designated assistant of the State Treasurer. The form and denomination of bonds or notes, including the provisions with respect to registration of the bonds or notes and any system for their registration, shall be as the State Treasurer may determine in conformity with this Article.

(c) Manner of Sale; Expenses. -- Subject to the approval by the Council of State as to the manner in which bonds or notes shall be offered for sale, whether at public or private sale, whether within or without the United States, and whether by publishing notices in certain newspapers and financial journals, mailing notices, inviting bids by correspondence, negotiating contracts of purchase or otherwise, the State Treasurer is authorized to sell bonds or notes at one time or from time to time at any rates of interest, which may vary from time to time, and at any prices, including a price less than the face amount of the bonds or notes, as the State Treasurer may determine. All expenses incurred in the preparation, sale, and issuance of bonds or notes shall be paid by the State Treasurer from the proceeds of bonds or notes or other available moneys.

(d) Application of Proceeds. -- The proceeds of any bonds or notes shall be used solely for the purposes for which the bonds or notes were issued and shall be disbursed in the manner and under the restrictions, if any, that the Council of State may provide in the resolution authorizing the issuance of, or in any trust agreement securing, the bonds or notes.

Any additional moneys which may be received by means of a grant or grants from the United States or any agency or department thereof or from any other source to aid in financing the cost of a capital facility may be disbursed, to the extent permitted by the terms of the grant or grants, without regard to any limitations imposed by this Article.

(e) Notes; Repayment. -- By and with the consent of the Council of State, the State Treasurer is authorized to borrow money and to execute and issue notes of the State for the same, but only in the following circumstances and under the following conditions:

(1) For anticipating the sale of bonds, the issuance of which the Council of State has approved, if the State Treasurer considers it advisable to postpone the issuance of the bonds.

(2) For the payment of interest on or any installment of principal of any bonds then outstanding, if there are not sufficient funds in the State treasury with which to pay the interest or installment or principal as they respectively become due.

(3) For the renewal of any loan evidenced by notes authorized in this Article.

(4) For the purposes authorized in this Article.

(5) For refunding bonds or notes as authorized in this Article.

Funds derived from the sale of bonds or notes may be used in the payment of any bond anticipation notes issued under this Article. Funds provided by the General

Assembly for the payment of interest on or principal of bonds shall be used in paying the interest on or principal of any notes and any renewals thereof, the proceeds of which have been used in paying interest on or principal of the bonds.

(f) Refunding Bonds and Notes. -- By and with the consent of the Council of State, the State Treasurer is authorized to issue and sell refunding bonds and notes for the purpose of refunding bonds or notes issued pursuant to this Article and to pay the cost of issuance of the refunding bonds or notes. The refunding bonds and notes may be combined with any other issues of State bonds and notes similarly secured. Refunding bonds or notes may be issued at any time prior to the final maturity of the debt or obligation to be refunded. The proceeds from the sale of any refunding bonds or notes shall be applied to the immediate payment and retirement of the bonds or notes being refunded or, if not required for the immediate payment of the bonds or notes being refunded, the proceeds shall be deposited in trust to provide for the payment and retirement of the bonds or notes being refunded and to pay any expenses incurred in connection with the refunding. Money in a trust fund may be invested in (i) direct obligations of the United States government, (ii) obligations the principal of and interest on which are guaranteed by the United States government, (iii) obligations of any agency or instrumentality of the United States government if the timely payment of principal and interest on the obligations is unconditionally guaranteed by the United States government, or (iv) certificates of deposit issued by a bank or trust company located in the State if the certificates are secured by a pledge of any of the obligations described in (i), (ii), or (iii) above having an aggregate market value, exclusive of accrued interest, equal at least to the principal amount of the certificates so secured. This section does not limit the duration of any deposit in trust for the retirement of bonds or notes being refunded but that have not matured and are not presently redeemable, or if presently redeemable, have not been called for redemption.

(g) Trust Agreement. -- In the discretion of the State Treasurer, any bonds and notes issued under the provisions of this Article may be secured by a trust agreement or similar instrument by and between the State and a corporate trustee or by a resolution of the Council of State providing for the appointment of a corporate trustee. The corporate trustee may be, in either case, any trust company or bank having the powers of a trust company within or without the State. The trust agreement or resolution may provide for security, and pledges and assignments with respect to the security, as permitted under this Article and may provide for the granting of a lien or security interest in the property as authorized in G.S. 116D-10. The trust agreement or resolution may contain provisions for the terms and conditions of the issuance of additional bonds and notes, and the custody, safeguarding, investment, and application of all moneys. All bonds and notes issued under this Article shall be equally and ratably secured as provided in the trust agreement or resolution, without priority by reasons of number, or dates of bonds or notes, execution, or delivery, in accordance with the provisions of this Article and of the trust agreement or resolution. The trust agreement or resolution may, however, provide that the bonds or notes shall, to the extent and in the manner prescribed in

the trust agreement or resolution, be subordinated and junior in standing, with respect to the payment of principal and interest and to the security thereof, to any other bonds or notes. It shall be lawful for any bank or trust company that may act as depositary of the proceeds of bonds or notes, revenues, or any other money under this Article to furnish any indemnifying bonds or to pledge any securities as may be required by the State Treasurer. Any trust agreement or resolution may set out the rights and remedies of the owners of any bonds or notes and of any trustee, and may restrict the individual rights of action by the owners. In addition to the foregoing, any trust agreement or resolution may contain other provisions that the State Treasurer considers reasonable and proper for the security of the owners of any bonds or notes. Expenses incurred in carrying out the provisions of any trust agreement or resolution may be treated as a part of the cost of any capital facility or as an administrative charge and may be paid from the proceeds of the bonds or notes or from any other available funds.

"**§ 116D-12. Variable rate demand bonds and notes.**

(a) In fixing the details of bonds and notes, the State Treasurer may provide that the bonds and notes may:

(1) Be made payable from time to time on demand or tender for purchase by the owner, if a credit facility supports the bonds or notes, unless the State Treasurer specifically determines that a credit facility is not required upon a finding and determination by the State Treasurer that the absence of a credit facility will not materially and adversely affect the financial position of the State and the marketing of the bonds or notes at a reasonable interest cost to the State.

(2) Be additionally supported by a credit facility.

(3) Be made subject to redemption or a mandatory tender for purchase prior to maturity.

(4) Bear interest at rates that may vary from any periods of time, as may be provided in the proceedings providing for the issuance of the bonds or notes, including, without limitation, any variations as may be permitted pursuant to a par formula.

(5) Be made the subject of a remarketing agreement whereby an attempt is made to remarket bonds or notes to new purchasers prior to their presentment for payment to the provider of the credit facility or to the State.

(b) If the aggregate principal amount payable by the State under a credit facility is in excess of the aggregate principal amount of bonds or notes secured by the credit facility, whether as a result of the inclusion in the credit facility of a provision for the payment of interest for a limited period of time or the payment of a redemption premium, or for any other reason, then the amount of authorized but unissued bonds or notes during the term of the credit facility shall not be less than the amount of the excess, unless the payment of the excess is otherwise provided for by agreement of the State executed by the State Treasurer.

"**§ 116D-13. Other agreements.**

The State Treasurer may authorize, execute, obtain, or otherwise provide for bond insurance, investment contracts, credit and liquidity facilities, interest rate swap agreements and other derivative products, and any other related instruments and matters the State Treasurer determines are desirable in connection with the issuance of bonds or notes. The State Treasurer is authorized to employ and designate any financial consultants, underwriters, and bond attorneys to be associated with any bond issue under this Article as the State Treasurer considers necessary.

"ARTICLE 3.

"Special Obligation Bonds for Improvements to the Facilities of The University of North Carolina.

"**§ 116D-21. Purpose.**

The purpose of this Article is to authorize the Board of Governors of The University of North Carolina to issue special obligation bonds, payable from obligated resources, but with no pledge of taxes or the faith and credit of the State or any agency or political subdivision of the State, to pay the cost, in whole or in part, of improvements to the facilities of the University.

"**§ 116D-22. Definitions.**

The following definitions apply in this Article:

(1) Existing facilities. -- Buildings and facilities then existing that generate income or receipts to the Board of Governors that are pledged, under the provisions of a resolution authorizing the issuance of the special obligation bonds under this Article, to the payment of the bonds.

(2) Institution. -- Each of the institutions enumerated in G.S. 116-2, and any affiliated institutions of the University, including, without limitation, the University of North Carolina Center for Public Television, the University of North Carolina Health Care System, the North Carolina School of Science and Mathematics, and the North Carolina Arboretum.

(3) Obligated resources. -- Any sources of income or receipts of the Board of Governors or the institution at which a special obligation bond project is or will be located that are designated by the Board as the security and source of payment for bonds issued under this Article to finance a special obligation bond project, including, without limitation, any of the following:

a. Rents, charges, or fees to be derived by the Board of Governors or the institution from any activities conducted at the institution.

b. Earnings on the investment of the endowment fund of the institution at which a special obligation project will be located, to the extent that the use of the earnings will not violate any lawful condition placed by the donor upon the

part of the endowment fund that generates the investment earnings.

c. Funds to be received under a contract or a grant agreement, including 'overhead costs reimbursement' under a grant agreement, entered into by the Board of Governors or the institution to the extent the use of the funds is not restricted by the terms of the contract or grant agreement or the use of the funds as provided in this Article does not violate the restriction.

Obligated resources do not include funds appropriated to the Board of Governors or the institution from the General Fund by the General Assembly from funds derived from general tax and other revenues of the State, and obligated resources do not include tuition payment by students.

(4) Special obligation bonds. -- Bonds issued under this Article to finance the cost of a special obligation project, which bonds are secured by and payable from obligated resources designated by the Board of Governors at the time the issuance of the bonds is authorized in accordance with this Article.

(5) Special obligation bond project. -- Any capital facilities located or to be located at an institution for the purpose of carrying out the mission of that institution and designated specifically by the Board of Governors as a 'special obligation bond project' for purposes of this Article. A special obligation bond project need not necessarily consist of buildings or facilities that are expected to generate 'self-liquidating revenues' to the Board of Governors or the institution from direct rentals, charges, or fees from the services provided by the building or facility, and may include facilities such as classroom buildings, administration buildings, research facilities, libraries, and equipment that do not produce direct, or indirect, income to the Board of Governors or the institution.

"§ 116D-23. Credit and taxing power of State not pledged; statement on face of bonds.

Special obligation bonds issued under this Article shall not constitute a debt or liability of the State or any political subdivision of the State or a pledge of the faith and credit of the State or of any political subdivision of the State. Special obligation bonds shall be secured solely by the obligated resources pledged to their payment. All of the special obligation bonds shall contain on their face a statement to the effect that neither the State nor the Board of Governors is obligated to pay the bonds or the interest on the bonds except from the obligated resources pledged for payment and that neither the faith and credit nor the taxing power of the State or of any political subdivision or instrumentality of the State is pledged to the payment of the principal of or the interest on the bonds. The issuance of special obligation bonds under this

Article does not directly or indirectly or contingently obligate the State or any political subdivision of the State to levy or to pledge any taxes for the bonds.

"**§ 116D-24. General powers of Board of Governors.**

The Board of Governors is authorized, subject to the requirements of this Article, to do all of the following:

(1) Determine the location and character of any special obligation bond project, to acquire, construct, and provide the project, and to maintain, repair, and operate and enter into contracts for the management, lease, use, or operation of all or any portion of any special obligation bond project and any existing facilities.

(2) Issue special obligation bonds to pay all or any part of the cost of a special obligation bond project, and to fund or refund any bonds previously issued by the Board of Governors to finance facilities designated as a special obligation bond project.

(3) Fix and revise from time to time and charge and collect fees, rates, rents, charges, and other income for the use of and for the services furnished by the institution that are designated as obligated resources in connection with a special obligation bond issue.

(4) Establish and enforce, and to agree through any resolution or trust agreement authorizing or securing bonds under this Article to make and enforce, rules for the use of and services rendered by the institution of the income or receipts to be obtained from the use or services designated as obligated resources in connection with a special obligation bond issue.

(5) Acquire, hold, lease, and dispose of real and personal property in the exercise of its powers and the performance of its duties and to lease all or any part of a special obligation bond project and any existing facilities for any periods of years, not exceeding 40 years, upon any terms and conditions as the Board of Governors determines, subject to the provisions of G.S. 143-341.

(6) Employ consulting engineers, attorneys, accountants, construction and financial experts, superintendents, managers, and any other employees and agents as may be necessary in its judgment in connection with a special obligation bond project and existing facilities, and to fix their compensation.

(7) Enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this Article.

(8) Receive and accept from any federal, State, or other public agency and any private agency, person, or other entity donations, loans, grants, aid, or contributions of any money, property, labor, or other things of value for a special obligation bond project or any other services provided by the institution that is designated as the obligated resource in connection with a special obligation bond

issue, and to agree to apply and use them in accordance with the terms and conditions under which they are provided.

(9) Do all acts and things necessary or convenient to carry out the powers granted by this Article.

"§ 116D-25. Consultation with the Joint Legislative Commission on Governmental Operations.

Whenever this Article requires the approval of the Director of the Budget of an action, the Director of the Budget may consult with the Joint Legislative Commission on Governmental Operations before giving approval.

"§ 116D-26. Issuance of special obligation bonds and bond anticipation notes.

(a) Authority. -- The Board of Governors may issue, subject to the approval of the Director of the Budget, at one time or from time to time, special obligation bonds of the Board of Governors for the purpose of paying all or any part of the cost of acquiring, constructing, or providing a special obligation project. Before issuing special obligation bonds, the Board of Governors shall first adopt a resolution (i) setting forth the designation by the Board of Governors that the buildings or facilities to be financed by the bond issue are the special obligation bond project being financed and (ii) designating the obligated resources that will secure and be the source of payment of the special obligation bonds to be issued. The Board of Governors shall not issue any special obligation bonds unless the Board of Governors finds that sufficient obligated resources are reasonably expected to be available (i) to pay the principal and interest on the special obligation bonds proposed to be issued, (ii) to create and maintain any reserves for the payment of the special obligation bonds, to the extent the Board of Governors is required to maintain reserves for this purpose by the terms of the trust agreement or resolution authorizing the issuance of the special obligation bonds, and (iii) to provide for the maintenance and operation of the facilities that are to generate the obligated resources to the extent the Board of Governors is required to maintain those facilities by the terms of the trust agreement or resolution authorizing the issuance of the special obligation bonds. Notwithstanding any other provision of this Article, the proceeds of special obligation bonds to be secured by obligated resources derived from the operation of or activities at one institution may not be applied to finance a special obligation project to be located at another institution.

(b) Approval Required. -- The Board of Governors shall not issue any special obligation bonds for a project at an institution unless the board of trustees of that institution has approved the issuance of bonds for that project. The Board of Governors shall not issue special obligation bonds under this Article until the effective date of legislation enacted by the General Assembly authorizing the undertaking of the special obligation bond project to be financed and fixing the maximum aggregate principal amount of special obligation bonds that shall be issued for that purpose. In submitting proposed special obligation bond projects to the General Assembly for approval, the Board of Governors shall submit information on the need for each project, project costs, estimates of increased operating costs upon completion, estimated debt service requirements, and the sources and amounts of

obligated resources to be pledged for the repayment of the bonds. If the obligated resources to repay the bonds or to operate the proposed project potentially involve increased costs to students or to the General Fund, these costs shall be identified in the Board of Governors' submission.

Except as provided in this Article, special obligation bond projects may be undertaken, special obligation bonds may be issued, and other powers vested in the Board of Governors under this Article may be exercised by the Board without obtaining the consent of any department, division, commission, board, bureau, or agency of the State and without any other proceedings or the happening of any other conditions or things other than those proceedings, conditions, or things which are specifically required by this Article.

(c) Term; Form. -- The special obligation bonds of each issue shall be dated, shall mature at any times not exceeding 25 years from their dates, shall bear interest at any rates as may be determined by the Board of Governors, and may be redeemable before maturity at the option of the Board, at any prices and under any terms and conditions as may be fixed by the Board prior to the issuance of the special obligation bonds. The Board of Governors shall determine the form and manner of execution of the special obligation bonds and shall fix the denominations of the special obligation bonds and the places of payment of principal and interest, which may be at any bank or trust company within or without the State. Notwithstanding any of the other provisions of this Article or any recitals in any special obligation bonds issued under the provisions of this Article, all special obligation bonds shall be negotiable instruments under the laws of this State, subject only to the provisions for registration in a resolution authorizing the issuance of the special obligation bonds or a trust agreement securing the bonds. The Board of Governors may sell the special obligation bonds in any manner, at public or private sale, and for any price, as it may determine to be for its best interests.

(d) Proceeds; Additional Bonds. -- The proceeds of the special obligation bonds of each issue shall be used solely for the purpose for which the bonds have been authorized and shall be disbursed in the manner and under such restrictions, if any, as the Board of Governors may provide in the resolution authorizing the issuance of the bonds or in the trust agreement securing them. Unless otherwise provided in the authorizing resolution or in the trust agreement securing the special obligation bonds, if the proceeds of the special obligation bonds, by error of estimates or otherwise, are less than the cost of the special obligation bond project, additional bonds may in like manner be issued to provide the amount of the deficit and shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose.

The resolution providing for the issuance of special obligation bonds, and any trust agreement securing them, may also contain limitations upon the issuance of additional special obligation bonds as the Board of Governors considers proper, and the additional special obligation bonds must be issued under the restrictions and limitations prescribed by the resolution or trust agreement.

(e) Temporary Bonds; Notes. -- Before preparing definitive bonds, the Board of Governors may, under like restrictions, issue interim receipts or temporary bonds exchangeable for definitive bonds when the bonds have been executed and are available for delivery. The Board may also provide for the replacement of any bonds which become mutilated, destroyed, or lost.

The Board of Governors may enter into or negotiate a note with an acceptable bank or trust company in lieu of issuing special obligation bonds for the financing of special obligation bond projects covered under this Article. The terms and conditions of any note of this nature shall be in accordance with the terms and conditions surrounding issuance of the special obligation bonds.

(f) Bond Anticipation Notes. -- The Board of Governors may issue, subject to the approval of the Director of the Budget, at one time or from time to time, bond anticipation notes of the Board of Governors in anticipation of the issuance of special obligation bonds authorized by this Article. The principal of and the interest on these notes shall be payable solely from the proceeds of special obligation bonds or renewal notes or, in the event bond or renewal note proceeds are not available, from the obligated resources designated for their payment. The notes of each issue shall be dated, shall mature at any times not exceeding two years from their dates, shall bear interest at any rates as may be determined by the Board of Governors, and may be redeemable before maturity, at the option of the Board of Governors, at any prices and under any terms and conditions as may be fixed by the Board of Governors prior to the issuance of the notes. The Board shall determine the form and the manner of execution of the notes and shall fix the denominations of the notes and the places of payment of principal and interest, which may be at any bank or trust company within or without the State. Notwithstanding any of the other provisions of this Article or any recitals in any notes issued under the provisions of this Article, all notes shall be negotiable instruments under the laws of this State, subject only to the provisions for registration in a resolution authorizing the issuance of the notes or any trust agreement securing the bonds in anticipation of which the notes are being issued. The Board of Governors may sell the notes in any manner, at public or private sale, and for any price, as it may determine to be for its best interests.

The proceeds of the notes of each issue shall be used solely for the purpose for which the special obligation bonds in anticipation of which the notes are being issued have been authorized, and the note proceeds shall be disbursed in any manner and under any restrictions as the Board of Governors may provide in the resolution authorizing the issuance of the notes or bonds or in the trust agreement securing the special obligation bonds.

The resolution providing for the issuance of notes, and any trust agreement securing the special obligation bonds in anticipation of which the notes are being authorized, may also contain limitations upon the issuance of additional notes as the Board of Governors considers proper, and such additional notes shall be issued under the restrictions and limitations prescribed by the resolution or trust agreement. The Board may also provide for the replacement of any notes which shall become mutilated, destroyed, or lost.

Except as provided in this Article, notes may be issued under this Article and other powers vested in the Board of Governors under this Article may be exercised by the Board without obtaining the consent of any department, division, commission, board, bureau, or agency of the State and without any other proceedings or the happening of any other conditions or things than those proceedings, conditions, or things which are specifically required by this Article.

Unless the context indicates otherwise, the word 'bonds', wherever used in this Article, include the words 'bond anticipation notes'.

"§ 116D-27. Trust agreement; money received deemed trust funds; insurance; remedies.

(a) Trust Agreement Securing Bonds. -- In the discretion of the Board of Governors and subject to the approval of the Director of the Budget, any special obligation bonds issued under this Article may be secured by a trust agreement by and between the Board of Governors and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the State. The trust agreement or the resolution providing for the issuance of special obligation bonds may pledge or assign the obligated resources designated as security for the special obligation bonds, but shall not convey or mortgage any property of the institution. The trust agreement or resolution providing for the issuance of special obligation bonds may contain provisions for protecting and enforcing the rights and remedies of the holders of the special obligation bonds that are reasonable and proper and not in violation of law, including covenants setting forth the duties of the Board of Governors in relation to the acquisition, construction, or provision of any of the charging and collecting of any rates, fees, or charges that have been designated as obligated resources, the maintenance, repair, operation, and insurance of any property of the institution, and the custody, safeguarding, and application of all moneys. It shall be lawful for any bank or trust company incorporated under the laws of the State which may act as depositary of the proceeds of special obligation bonds or funds securing special obligation bonds to furnish any indemnifying bonds or to pledge any securities as may be required by the Board of Governors. A trust agreement or resolution may set forth the rights and remedies of the holders of the special obligation bonds and the rights, remedies, and immunities of the trustee or trustees, if any, and may restrict the individual right of action by the holders. In addition to the foregoing, a trust agreement or resolution may contain other provisions the Board of Governors considers reasonable and proper for the security of the holders. All expenses incurred in carrying out the provisions of the trust agreement or resolution may be treated as a part of the cost of the special obligation bond projects for which the special obligation bonds are issued or as an expense of operation of the special obligation bond project.

(b) Trust Funds. -- All moneys received pursuant to the authority of this Article, whether as proceeds from the sale of bonds, or as obligated resources, are trust funds to be held and applied solely as provided in this Article. The Board of Governors may provide for the payment of all or part of the proceeds of the sale of the special obligation bonds and the obligated resources to any officer, board, or depositary that

it may designate for their custody, and may provide for their method of disbursement, with any safeguards and restrictions it may determine. Any officer with whom, or any bank or trust company with which, moneys are deposited shall act as trustee of the moneys and shall hold and apply them for the purposes of this Article, subject to any requirements provided in this Article and in the resolution or trust agreement, authorizing or securing the special obligation bonds.

(c) Insurance. -- Notwithstanding the provisions of any other law, the Board of Governors may carry insurance on any special obligation bond projects and any existing facilities in any amounts and covering any risks it considers advisable.

(d) Remedies. -- Any holder of special obligation bonds issued under this Article and the trustees under a trust agreement, except to the extent the rights given in this section may be restricted by the trust agreement or the resolution authorizing the issuance of the special obligation bonds, may, either at law or in equity, by suit, action, mandamus, or other proceedings, protect and enforce any and all rights under the laws of the State or granted under this Article or under the trust agreement or resolution, and may enforce and compel the performance of all duties required by this Article or by the trust agreement or resolution to be performed by the Board of Governors or by any of its officers, including the fixing, charging, and collecting of obligated resources.

"§ 116D-28. Fixing and collecting obligated resources.

(a) Board to Provide Sufficient Resources. -- For the purpose of aiding in the financing of a special obligation bond project and to provide security to the owners of the special obligation bonds issued to finance the special obligation bond project, the Board of Governors is authorized, to the extent the generation of the obligated resources is in the control of the Board, to fix, revise from time to time, charge, and collect the rents, charges, fees, or other revenues constituting the obligated resources. Fees and other revenue sources constituting obligated resources may be imposed or increased only with the approval of the Board of Governors. As long as any special obligation bonds issued under this Article and payable from those obligated resources are outstanding, the obligated resources, to the extent within the control of the Board of Governors, shall be so fixed and adjusted, with relation to other funds available, as to provide funds pursuant to the requirements of the resolution or trust agreement authorizing or securing the special obligation bonds and at least sufficient to pay the principal of and the interest on the special obligation bonds as they become due and payable, to assure the continued collection of the obligated resources, and to create and maintain reserves for these purposes. A sufficient amount of the obligated resources, except any part that may be necessary to pay the cost of maintenance, repair, and operation, and to provide reserves for these purposes and for renewals, replacements, extensions, enlargements, and improvements as may be provided for in the resolution authorizing the issuance of the special obligation bonds or in the trust agreement securing the same, shall be set aside at regular intervals as may be provided in the resolution or trust agreement authorizing the issuance of the special obligation bonds in a sinking fund which is hereby pledged to, and charged with, the payment of the principal of and the interest on the special obligation bonds as they

become due and the redemption price or the purchase price of special obligation bonds retired by call or purchase as provided in the resolution or trust agreement. This pledge shall be valid and binding from the time it is made, the obligated resources so pledged and thereafter received by the Board of Governors shall immediately be subject to the lien of the pledge without any physical delivery of the pledge or further act, and the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the Board of Governors, irrespective of whether the parties have notice of the pledge. Neither the resolution nor any trust agreement by which a pledge is created need be filed or recorded except in the records of the Board of Governors. The use and disposition of moneys to the credit of the sinking fund shall be subject to the provisions of the resolution authorizing the issuance of the special obligation bonds or of the trust agreement securing the bonds.

(b) State Pledge. -- The State pledges to, and agrees with, the holders of any special obligation bonds or notes issued by the Board of Governors pursuant to this Article that as long as any of the special obligation bonds or notes are outstanding and unpaid, the State will not limit or alter the rights vested in the Board of Governors at the time of issuance of the special obligation bonds or notes to set the terms and conditions of the special obligation bonds or notes and to fulfill the terms of any agreements made with the bondholders or noteholders. The State shall in no way impair the rights and remedies of the bondholders or noteholders until the special obligation bonds or notes and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders or noteholders are fully paid, met, and discharged.

"**§ 116D-29. Vesting powers in committee.**

The Board of Governors may authorize its budget and finance committee to sell any special obligation bonds which the Board has, with the approval of the Director of the Budget, authorized to be issued under this Article in any manner and under any limitations or conditions as the Board prescribes and to perform other functions under this Article the Board determines.

"**§ 116D-30. Refunding bonds.**

The Board of Governors may, subject to the approval of the Director of the Budget, issue from time to time refunding bonds for the purpose of refunding any bonds by the Board under this Article or under any Article of Chapter 116 of the General Statutes, including the payment of any redemption premium on them and any interest accrued or to accrue to the date of redemption of the bonds refunded. The Board of Governors is further authorized, subject to the approval of the Director of the Budget, to issue from time to time refunding bonds for the combined purpose of (i) refunding any bonds issued by the Board under this Article or under any Article of Chapter 116 of the General Statutes, including the payment of any redemption premium on them and any interest accrued or to accrue to the date of redemption of the bonds, and (ii) paying all or any part of the cost of acquiring or constructing any additional special obligation bond projects.

This Article, as applicable, governs the issuance of refunding bonds, their maturities and other details, the rights and remedies of their holders, and the rights, powers, privileges, duties, and obligations of the Board of Governors with respect to them.

"§ 116D-31. Additional and alternative method.

This Article provides an additional and alternative method for the doing of the things authorized and is supplemental and additional to powers conferred by other laws, including G.S. 116-175 to G.S. 116-185, inclusive and G.S. 116-197 and G.S. 116-198, and is not in derogation of or repealing any powers now existing under any other law, whether general, special, or local. The issuance of special obligation bonds or refunding bonds under this Article, however, need not comply with the requirements of any other law applicable to the issuance of bonds.

"ARTICLE 4.

"Community Colleges Facilities Security Interest Finance Act.

"§ 116D-40. Short title.

This Article may be cited as the Community College Facilities Security Interest Finance Act.

"§ 116D-41. Findings and purpose.

The General Assembly finds as follows:

(1) There is a continuing need for capital facilities for the State's community colleges, many of which will continue to be provided from current appropriations by counties, proceeds of various types of indebtedness incurred by counties for community college purposes, appropriations by the State, and the proceeds of State general obligation bonds secured by a pledge of the faith and credit of the State. There is a need, however, for the use of alternative financing methods such as authorized in this Article to facilitate the providing of capital facilities when circumstances and conditions warrant the providing of capital facilities through a financing method other than those previously used.

(2) The use of State of North Carolina Community College Security Interest Bonds, secured by a lien on or security interest in the community college property acquired, constructed, or improved with the bond proceeds, and the payment of principal and interest on which are subject to appropriation at the discretion of the General Assembly, will provide financing flexibility to counties and the State and permit the counties and the State to take advantage of changing financial and economic environments.

"§ 116D-42. Definitions.

The following definitions apply in this Article:

(1) Bonds. -- Bonds authorized to be issued under this Article, including refunding bonds.

(2) Community college. -- Defined in G.S. 115D-2.

(3) Community college security interest bonds. -- Bonds authorized to be issued under this Article, including refunding bonds.

(4) Community Colleges System Office. -- The North Carolina Community Colleges System Office, created by Article 1 of Chapter 115D of the General Statutes, or if the Community Colleges System Office is abolished or otherwise divested of its functions under this Article, the public body succeeding it in its principal functions, or upon which are conferred by law the rights, powers, and duties given by this Article to the Community Colleges System Office.

(5) Notes. -- Notes issued under this Article.

"**§ 116D-43. Authorization of bonds and notes.**

Upon the application of the Community Colleges System Office, the State Treasurer may, by and with the consent of the Council of State, issue and sell, at one time or from time to time, community college security interest bonds of the State to be designated 'State of North Carolina Community College Security Interest Bonds', with any additional designations as may be determined to indicate the issuance of bonds from time to time, or notes of the State. Except as otherwise provided by this Article, the aggregate amount of bonds and notes issued pursuant to this Article shall not exceed three hundred million dollars ($300,000,000). Refunding bonds and notes issued pursuant to G.S. 116D-46(f) shall not be included in the limitation on the aggregate amount of bonds and notes that may be issued pursuant to this Article.

The proceeds of bonds or notes issued under this Article shall be applied to finance the cost of grants to be made by the State to community colleges to finance the cost of capital facilities for the community college or to refund any outstanding bonds or notes issued under this Article. The capital facilities to be improved, constructed, or acquired with the proceeds of bonds or notes shall be determined as provided in G.S. 116D-44.

"**§ 116D-44. Designation of capital facilities and preconditions to bond issuance.**

The capital facilities to be financed in whole or in part with the proceeds of community college security interest bonds shall be described in legislation enacted from time to time by the General Assembly. The proceeds of community college security interest bonds shall not be expended to pay the costs of any capital facilities other than those described in that legislation.

"**§ 116D-45. Security; other requirements.**

(a) Security. -- To secure payment of the principal of and interest on bonds or notes issued under this Article, each community college that receives a grant pursuant to this Article, and each county to the extent it owns the capital facilities to be acquired or improved by a grant from the State pursuant to this Article, may create a lien on or a security interest in one or more of the following:

(1) In all or any part of the capital facilities to be financed by the bonds or notes.

(2) In the case of construction of improvements on real property, in all or some portion of the land on which the improvements are to be located or in all or part of the improvements.

(3) In the case of renovations or improvements to or the installation of fixtures in existing facilities, in all or some portion of the existing facilities or in all or part of the renovations or improvements.

The security for an issue of bonds shall be set forth in general terms in the resolution of the Council of State authorizing the issuance of the bonds. The property that will be the subject of a lien, deed of trust, or security interest to secure the bonds need not bear any particular relationship to the principal amount of the bonds or notes. A community college or county may grant multiple liens or security interests in a capital facility to the extent not otherwise limited by the terms of other issues of bonds or notes.

(b) Default. -- If community college security interest bonds are secured by a lien, deed of trust, or security interest in multiple items of property, the mortgage, deed of trust, or security agreement or other instrument creating the lien, deed of trust, or security interest shall provide that if the State defaults on its obligations with respect to community college security interest bonds, the Community Colleges System Office, on behalf of the State, shall determine the order in which the property comprising the security shall be sold or otherwise conveyed to satisfy the obligations of the State. In carrying out the provisions of this subsection, the Community Colleges System Office shall endeavor to select for sale or conveyance to satisfy the obligations of the State those items of property that, in the judgment of the Community Colleges System Office, if sold, would result in the least amount of interruption to the operations of the State's community college system as a whole and its ability to carry out its mission. Any determination made by the Community Colleges System Office in carrying out this endeavor shall be conclusive. Nothing in this subsection prohibits the sale or conveyance of up to all of the property securing community college security interest bonds to the extent necessary to satisfy the obligations of the State under the bonds.

(c) Governor's Budget. -- Documentation relating to any bonds or notes may include provisions requiring the Governor to submit in the Governor's budget proposal, or in any amendments or supplements to the budget proposal, appropriations necessary to make the payments required to pay the bonds or notes.

(d) Appropriations. -- Amounts payable by the State in respect of an issue of bonds or notes during any fiscal period shall be limited to funds appropriated for that purpose by the General Assembly in its discretion.

(e) State Liability. -- No deficiency judgment may be rendered against the State in any action for breach of any obligation contained in an issue of bonds or notes. The taxing power of the State is not and may not be pledged directly or indirectly to secure any moneys due under an issue of bonds or notes. In the event that the State fails to pay any payments required under or with respect to an issue of bonds or notes, whether on account of a failure by the General Assembly to appropriate sufficient funds for the payment or for some other reason, the net proceeds received

from the sale or other disposition of the capital facilities subject to the lien or security interest securing the bonds or notes shall be applied to satisfy the payment obligations in accordance with the deed of trust, security agreement, or other documentation relating to the lien or security interest, and the net proceeds are hereby appropriated for the purpose of making those payments. Any net proceeds in excess of the amount required to satisfy the obligations of the State under an issue of bonds or notes shall be paid to the State Treasurer for deposit to the General Fund.

(f) Nonsubstitution Clause. -- No documentation relating to an issue of bonds or notes may contain a nonsubstitution clause that restricts the right of the State, a community college, or a county to (i) continue to provide a service or conduct an activity or (ii) replace or provide a substitute for any capital facility financed or purchased by the bonds or notes.

(g) Terms Protecting Lender. -- The documentation relating to an issue of bonds or notes, or relating to the security for an issue of bonds or notes, may contain provisions for protecting and enforcing the rights and remedies of the owners of the bonds or notes that are reasonable and proper and not in violation of law. The documentation may include covenants setting forth the duties of the State or a community college in respect of the purposes to which the proceeds of the bonds or notes may be applied, the disposition and application of any appropriations of the State, and the duties of the State or a community college with respect to the capital facilities financed, including, without limitation, the payment of the costs of insurance and maintenance of the capital facilities, the terms under which the collateral securing the bonds may be released or substitute collateral may be delivered, the terms and conditions of the issuance of additional bonds or notes similarly secured, and the custody, safeguarding, investment, and application of all moneys.

(h) Statement on Face of Bonds. -- Bonds issued under this Article shall contain on their face a statement to the effect that neither the faith and credit nor the taxing power of the State or of any political subdivision or instrumentality of the State is pledged to the payment of the principal of or the interest on the bonds.

"**§ 116D-46. Issuance of bonds and notes.**

(a) Terms and Conditions. -- Bonds or notes may bear any dates, may be serial or term bonds or notes, or any combination of these, may mature in any amounts and at any times, not exceeding 25 years from their dates, may be payable at any places, either within or without the United States, in any coin or currency of the United States that at the time of payment is legal tender for payment of public and private debts, may bear interest at any rates, which may vary from time to time, and may be made redeemable before maturity, at the option of the State or otherwise as may be provided by the State, at any prices, including a price greater than the face amount of the bonds or notes, and under any terms and conditions, all as may be determined by the State Treasurer, by and with the consent of the Council of State.

(b) Signatures; Form and Denomination; Registration. -- Bonds or notes may be issued in certificated or uncertificated form. If issued in certificated form, bonds or notes shall be signed on behalf of the State by the Governor or shall bear the Governor's facsimile signature, shall be signed by the State Treasurer or shall bear

the State Treasurer's facsimile signature, and shall bear the Great Seal of the State or a facsimile of the Seal impressed or imprinted on them. If bonds or notes bear the facsimile signatures of the Governor and the State Treasurer, the bonds or notes shall also bear a manual signature which may be that of a bond registrar, trustee, paying agent, or designated assistant of the State Treasurer. The form and denomination of bonds or notes, including the provisions with respect to registration of the bonds or notes and any system for their registration, shall be as the State Treasurer may determine in conformity with this Article.

(c) Manner of Sale; Expenses. -- Subject to the approval by the Council of State as to the manner in which bonds or notes shall be offered for sale, whether at public or private sale, whether within or without the United States, and whether by publishing notices in certain newspapers and financial journals, mailing notices, inviting bids by correspondence, negotiating contracts of purchase or otherwise, the State Treasurer is authorized to sell bonds or notes at one time or from time to time at any rates of interest, which may vary from time to time, and at any prices, including a price less than the face amount of the bonds or notes, as the State Treasurer may determine. All expenses incurred in the preparation, sale, and issuance of bonds or notes shall be paid by the State Treasurer from the proceeds of bonds or notes or other available moneys.

(d) Application of Proceeds. -- The proceeds of any bonds or notes shall be used solely for the purposes for which the bonds or notes were issued and shall be disbursed in the manner and under the restrictions, if any, that the Council of State may provide in the resolution authorizing the issuance of, or in any trust agreement securing, the bonds or notes.

Any additional moneys which may be received by means of a grant or grants from the United States or any agency or department thereof or from any other source to aid in financing the cost of a capital facility may be disbursed, to the extent permitted by the terms of the grant or grants, without regard to any limitations imposed by this Article.

(e) Notes; Repayment. -- By and with the consent of the Council of State, the State Treasurer is authorized to borrow money and to execute and issue notes of the State for the same, but only in the following circumstances and under the following conditions:

(1) For anticipating the sale of bonds the issuance of which the Council of State has approved, if the State Treasurer considers it advisable to postpone the issuance of the bonds.

(2) For the payment of interest on or any installment of principal of any bonds then outstanding, if there are not sufficient funds in the State treasury with which to pay the interest or installment or principal as they respectively become due.

(3) For the renewal of any loan evidenced by notes authorized in this Article.

(4) For the purposes authorized in this Article.

(5) For refunding bonds or notes as authorized in this Article.

Funds derived from the sale of bonds or notes may be used in the payment of any bond anticipation notes issued under this Article. Funds provided by the General Assembly for the payment of interest on or principal of bonds shall be used in paying the interest on or principal of any notes and any renewals thereof, the proceeds of which have been used in paying interest on or principal of the bonds.

(f) Refunding Bonds and Notes. -- By and with the consent of the Council of State, the State Treasurer is authorized to issue and sell refunding bonds and notes for the purpose of refunding bonds or notes issued pursuant to this Article and to pay the cost of issuance of the refunding bonds or notes. The refunding bonds and notes may be combined with any other issues of State bonds and notes similarly secured. Refunding bonds or notes may be issued at any time prior to the final maturity of the debt or obligation to be refunded. The proceeds from the sale of any refunding bonds or notes shall be applied to the immediate payment and retirement of the bonds or notes being refunded or, if not required for the immediate payment of the bonds or notes being refunded, the proceeds shall be deposited in trust to provide for the payment and retirement of the bonds or notes being refunded and to pay any expenses incurred in connection with the refunding. Money in a trust fund may be invested in (i) direct obligations of the United States government, (ii) obligations the principal of and interest on which are guaranteed by the United States government, (iii) obligations of any agency or instrumentality of the United States government if the timely payment of principal and interest on the obligations is unconditionally guaranteed by the United States government, or (iv) certificates of deposit issued by a bank or trust company located in the State if the certificates are secured by a pledge of any of the obligations described in (i), (ii), or (iii) above having an aggregate market value, exclusive of accrued interest, equal at least to the principal amount of the certificates so secured. This section does not limit the duration of any deposit in trust for the retirement of bonds or notes being refunded but that have not matured and are not presently redeemable, or if presently redeemable, have not been called for redemption.

(g) Trust Agreement. -- In the discretion of the State Treasurer, any bonds and notes issued under the provisions of this Article may be secured by a trust agreement or similar instrument by and between the State and a corporate trustee or by a resolution of the Council of State providing for the appointment of a corporate trustee. The corporate trustee may be, in either case, any trust company or bank having the powers of a trust company within or without the State. The trust agreement or resolution may provide for security and pledges and assignments with respect to the security, as permitted under this Article, and may provide for the granting of a lien or security interest in the property as authorized in G.S. 116D-10. The trust agreement or resolution may contain provisions for the terms and conditions of the issuance of additional bonds and notes, and the custody, safeguarding, investment, and application of all moneys. All bonds and notes issued under this Article shall be equally and ratably secured as provided in the trust agreement or resolution, without priority by reasons of number, or dates of bonds or notes, execution, or delivery, in accordance with the provisions of this Article and of

the trust agreement or resolution. The trust agreement or resolution may, however, provide that the bonds or notes shall, to the extent and in the manner prescribed in the trust agreement or resolution, be subordinated and junior in standing, with respect to the payment of principal and interest and to the security thereof, to any other bonds or notes. It shall be lawful for any bank or trust company that may act as depositary of the proceeds of bonds or notes, revenues, or any other money under this Article to furnish any indemnifying bonds or to pledge any securities as may be required by the State Treasurer. Any trust agreement or resolution may set out the rights and remedies of the owners of any bonds or notes and of any trustee, and may restrict the individual rights of action by the owners. In addition to the foregoing, any trust agreement or resolution may contain other provisions that the State Treasurer considers reasonable and proper for the security of the owners of any bonds or notes. Expenses incurred in carrying out the provisions of any trust agreement or resolution may be treated as a part of the cost of any capital facility or as an administrative charge and may be paid from the proceeds of the bonds or notes or from any other available funds.

"**§ 116D-47. Variable rate demand bonds and notes.**

(a) In fixing the details of bonds and notes, the State Treasurer may provide that the bonds and notes may:

(1) Be made payable from time to time on demand or tender for purchase by the owner, if a credit facility supports the bonds or notes, unless the State Treasurer specifically determines that a credit facility is not required upon a finding and determination by the State Treasurer that the absence of a credit facility will not materially and adversely affect the financial position of the State and the marketing of the bonds or notes at a reasonable interest cost to the State.

(2) Be additionally supported by a credit facility.

(3) Be made subject to redemption or a mandatory tender for purchase prior to maturity.

(4) Bear interest at rates that may vary from any periods of time, as may be provided in the proceedings providing for the issuance of the bonds or notes, including, without limitation, any variations as may be permitted pursuant to a par formula.

(5) Be made the subject of a remarketing agreement whereby an attempt is made to remarket bonds or notes to new purchasers prior to their presentment for payment to the provider of the credit facility or to the State.

(b) If the aggregate principal amount payable by the State under a credit facility is in excess of the aggregate principal amount of bonds or notes secured by the credit facility, whether as a result of the inclusion in the credit facility of a provision for the payment of interest for a limited period of time or the payment of a redemption premium, or for any other reason, then the amount of authorized but unissued bonds or notes during the term of the credit facility shall not be less than the amount of the

excess, unless the payment of the excess is otherwise provided for by agreement of the State executed by the State Treasurer.

"**§ 116D-48. Other agreements.**

The State Treasurer may authorize, execute, obtain, or otherwise provide for bond insurance, investment contracts, credit and liquidity facilities, interest rate swap agreements and other derivative products, and any other related instruments and matters the State Treasurer determines are desirable in connection with the issuance of bonds or notes. The State Treasurer is authorized to employ and designate any financial consultants, underwriters, and bond attorneys to be associated with any bond issue under this Article as the State Treasurer considers necessary.

"**§ 116D-49. Procurement of capital facilities.**

Any laws, rules, or regulations of the State that relate to the acquisition and construction of capital facilities shall apply to the capital facilities financed pursuant to this Article."

Section 2. Proceeds of University Improvement Security Interest Bonds. -- (a) The proceeds of university improvement security interest bonds and notes, including any premium thereon, except the proceeds of university improvement security interest bonds the issuance of which has been anticipated by bond anticipation notes or the proceeds of refunding bonds or notes, shall be allocated and expended for paying the cost of university capital facilities, to the extent and as provided in Article 2 of Chapter 116D of the General Statutes, as enacted by this act and subject to change as provided in this act, as follows:

Constituent or Affiliated Institution or Board of Governors Capital Improvement	Projected Allocation
Appalachian State University	
Central Library Complex	$ 47,586,735
New Science Building	1,260,000
Rankin Science Building - Renovation and modernization	7,750,000
Belk Library Renovation - Planning	545,020
Living and Learning Center - Academic Facility	4,022,725
Visual Arts Center - Renovation and Addition	6,063,435
Smith Wright Hall - Renovation and modernization.	1,636,111
Founders Hall - Renovation and modernization.	1,044,082
Land Acquisition	4,977,675
Potable Water - Infrastructure improvements.	2,625,000
Technology Infrastructure Expansion	4,838,909
East Carolina University	
Science Laboratories and Technology Building	55,125,315
Expansion of the Rivers Building	11,997,300
Nursing, Allied Health and DEC Complex:	

Medical School	46,882,500
Flanagan Building - Renovations	13,421,276
Land Acquisition - Phase I	5,000,000
Classroom Improvements - Phase II	3,648,435
Belk Allied Health - Renovations and modernization	7,791,348
Library and Study Space Requirements - Phase I	12,600,000
Old Cafeteria - Renovations	4,442,103
Infrastructure	16,125,165
Rivers School of Nursing - North Wing Renovations	2,688,174
Materials Warehouse	3,045,315
Campus Computing Center - Renovation	1,785,000
Academic Space Requirements - Teaching Labs	5,250,000
Technology Infrastructure Expansion	807,575
Elizabeth City State University	
New Student Center	9,178,313
New Residence Hall	6,510,000
General Campus Development	1,811,250
Historic Structures Preservation - Phase I	1,050,000
Lester Hall - Renovation and modernization	2,912,177
Williams Hall - Renovation and modernization	3,236,156
Lane Hall - Renovation and modernization	2,360,568
Trigg Hall - Renovation and modernization	2,109,017
White Graduate/Cont. Educ. Bldg - Renovation and modernization	1,575,000
Johnson Hall - Renovation and modernization	3,156,308
Wamack Hall - Renovation and modernization	3,334,303
Bias Hall - Renovation and modernization.	1,858,222
Mitchell-Lewis - Renovation and modernization	2,123,675
Roebuck Stadium Field House	1,260,000
Campus Property Development - Phase I	650,000
Technology Infrastructure Expansion	3,149,387
Fayetteville State University	
New Residence Hall.	6,872,250
Charles A. Lyons Science - Renovation/ modernization and addition	16,800,000
Seabrook Auditorium - Renovation and modernization	6,825,000
Lauretta J. Taylor Gymnasium - Renovations, modernization, and addition	3,360,000
Lilly Gymnasium - Renovation	3,256,367
Cook Dining Hall - Renovation.	1,773,450
Howard School Museum	210,000

Fire Safety Improvements, Student Residence Halls 611,730
Roads, Parking, Landscaping Improvements - Phase I 3,675,000
Spaulding Infirmary and Roadway/Entrance 1,000,000
Technology Infrastructure Expansion 1,137,582

North Carolina Agricultural and Technical State University
General Classroom & Laboratory Building Complex #1 29,470,665
Land Acquisition 6,300,000
Chemistry Building 21,831,600
Harrison Auditorium - Renovation and modernization 3,193,196
Curtis Hall - Replacement 3,723,510
Scott Hall - Replacement 24,165,330
Gamble Complex 1,449,420
Hazardous Materials and Waste Storage Facility 1,575,000
Replace Barn - Agricultural Farm 919,185
Replace Poultry Complex Laying Houses - Agricultural Farm 913,500
Zoe Barbee Hall - Renovation and modernization 5,876,786
Barnes Hall - Renovation and modernization 6,097,128
Graham Hall - Renovation and modernization 5,899,838
Corbett Sports Center Addition 7,035,000
Replacement of Steamlines and Manholes 1,568,280
Electrical Distribution System - updgrade and expansion. 2,256,802
Central Cooling Plant - North and South chiller loops 6,405,000
Parking Enhancements, Phase I 4,725,735
Cherry Hall - Renovation and modernization 8,613,152
General Renovations and Modernizations 8,872,918
Technology Infrastructure Expansion 2,921,662

North Carolina Central University
New Science Complex and Demolition of Old Hillside High School 36,780,000
Chidley Hall - Renovation and modernization 6,621,943
General Campus Master Plan 250,000
Farrison-Newton Bldg. - Renovation and modernization 7,048,652
Graduate Apartments, George Street - Replacement 1,556,642
Rush Hall - Renovation and modernization 2,089,387
Baynes Hall - Replacement 15,091,127
Eagleson Hall - Renovation and modernization 6,869,505

Shepard Dormitory - Renovation and modernization 7,284,923
Latham Hall - Renovation and modernization 3,411,600
McLean Hall - Renovation and modernization 1,942,070
Pearson Cafeteria - Renovation and modernization 1,263,570
Fire Safety Improvements - Student Residence Halls 1,612,695
Landscape Campus Perimeter 840,000
Landscape Pedestrian Corridors 787,500
Directional Signage - Vehicular/pedestrian 735,000
Pedestrian Corridor on Campus Drive. 892,500
Pedestrian Mall at George Street. 472,500
Dormitory Security System 630,000
Parking Enhancements Phase 1 - Nelson St. Pkg. Deck 6,353,235
Electrical Power - New transformers 858,654
Life-Safety/OSHA Corrections 3,675,000
Land Acquisition 4,000,000
Relocate Campus Police Station 840,000
Replace Power Distribution Cables 1,115,940
Underground Piping Repairs 4,252,710
Technology Infrastructure Expansion 1,422,080

North Carolina School of the Arts
Basic Performance & Education Complex 19,130,685
Stevens Center - Renovation and modernization. 4,434,480
New Student Activities Building - Renovation 2,500,000
Roanoke Island Music & Theatrical Complex 10,500,000
Landscaping Improvements 1,050,000
Costume Shop - Renovations and relocations 420,000
Land Acquisition 2,650,000
Technology Infrastructure Expansion 1,862,312

North Carolina State University
I. BUILDINGS
A. Renovation, Modernization, & Replacements:
Classroom/Office Space
Renovation and modernization of buildings 91,312,249
Laboratory Space
Renovation and modernization of buildings 49,000,000
Student Support Space
Renovation, modernization, and fire
safety improvements 2,070,000
B. Building Capacity:
Construction of College of Engineering Complex -
Phase I and Phase II; Undergraduate Science
Teaching Lab - Phase I and Phase II; Jordan Hall

Addition; Gymnasium; Library Space; Student Services Space; and David-Clark Laboratory Renovation and addition 149,978,194

C. Other Building Needs:

Construction of Administrative Services Center - II; Extension Facilities; Field Research Laboratories and Outlying Research - Phase I; Research Laboratory Space, Phase I; Hazardous Materials Facility; Partners Building V; College of Veterinary Medicine Research Addition and renovations; Physical Sciences Research; Genomic Sciences Research; Services Buildings at Sullivan Site and Centennial Campus. 43,960,952

II. OTHER CAMPUS REQUIREMENTS

A. General Campus:

University Signage; Pedestrian Tunnel; Security CardAccess; and Public Safety Facility 15,579,475

B. Infrastructure:

Construction of Chilled Water Plant; Potable Water Building Backflow Preventers; College of Veterinary Medicine Indoor Air Quality Upgrade; North Campus Chiller Service; Brickyard Loop Chilled Water Extension and Cooling Tower; Infrastructure for Centennial Campus Partnership; Infrastructure for Veterinary Medicine Private/ Public Partnership; and Steam Distribution and Capacity Improvements 92,999,130

Technology Infrastructure Expansion 2,308,681

C. Land Acquisition. 2,100,000

University of North Carolina at Asheville

New Math/Science Building 22,203,195

Highsmith Center Renovation and Addition 9,473,100

New Physical Plant Building. 6,318,900

Carmichael Hall - Renovation and modernization 3,912,805

Zaiger Hall - Renovation and modernization 3,524,624

General Campus Improvements 3,728,550

Technology Infrastructure Expansion 751,235

University of North Carolina at Chapel Hill

I. BUILDINGS

A. Renovation, Modernization, & Replacements:

Classroom/Office Space

Renovation and modernization of buildings.....104,861,491
Laboratory Space
Renovation and modernization of buildings.....93,531,460
B. Building Capacity:
Construction of Multidisciplinary Environmental Studies Building; Addition to Carrington Hall - School of Nursing; Teaching Research Bldg - School of Public Health; and Interdisciplinary Physical Science Bldg 87,465,000
C. Other Building Needs:
Construction of Health Affairs Biomolecular Research Bldg, Phase I; Health Affairs Frank Porter Graham Child Development Center; Health Affairs Institute on Aging Bldg; Center for Global and International Education; Digital Multimedia Instructional Center; Medical School Office Bldg No. 1; Sports Medicine Facility; Ackland Art Museum Renovation and Expansion; Relocate Physical Plant Grounds Dept; Administration Office Bldg; Chapel Hill North; Campus Mail Center; and Physical Plant Maintenance Shops Addition.....48,000,000

II. OTHER CAMPUS REQUIREMENTS
A. General Campus:
Campus Signage System 2,100,000
B. Infrastructure:
Construction of Storm Drainage Replacement; Heating Line Installation; Cogeneration Facility Turbine Generator; Gilsulate Replacement; Steam Line Installation; East and South Chiller Plant Expansion; North and South Chiller Plant Replacements; Energy Management & Control System Upgrade; Campus Fiber Optics Network; Horace Williams Infrastructure - Phase I; Main Campus Infrastructure Expansion - Phase I; Chilled Water Air Conditioning Systems in Classroom Bldgs; and Coal Silo Replacement.....154,041,090
Technology Infrastructure Expansion 1,287,051
C. Land Acquisition:
Land Acquisition - South Campus Expansion.....8,000,000

University of North Carolina at Charlotte
Academic Facilities - Humanities.....10,046,925

Science and Technology Building	35,707,035
Classroom and Office Building	26,102,475
College of Education Building	24,654,476
College of Nursing and Health Professions	34,125,000
Graduate Engineering Complex	14,700,000
Research Facility - Phase I	16,800,000
University Conference Center	10,500,000
Central Heating Plant Improvement	2,625,000
Technology Infrastructure Expansion	3,345,507
University of North Carolina at Greensboro	
Science Instructional Building	38,412,150
Roadway Improvements	6,825,000
Land Acquisition	7,000,000
Brown - Renovation and modernization	6,493,859
Petty Science Building - Renovation and modernization	16,272,270
McIver Building - Renovation and modernization	21,636,510
Aycock Auditorium - Renovation and modernization	17,662,980
Stone - Renovation and modernization	8,930,354
Heating Plant - Renovation, modernization, and expansion	4,851,288
Forney Building - Renovation and modernization	3,565,364
McNutt Building - Renovation and modernization	2,723,956
Research Space Phase I	5,250,000
Electrical Power Distribution Upgrades	4,091,038
McIver Chiller Plant	8,373,750
Technology Infrastructure Expansion	7,859,789
University of North Carolina at Pembroke	
Regional Center for Economic, Professional, and Community Development	4,004,385
New Science Building	9,408,000
Chavis Center Expansion	3,221,400
Jones PE Building - Renovation and modernization	8,925,000
Business Administration Building - Renovation and modernization	2,140,762
ADA Renovations	525,000
Locklear - Renovation and modernization	2,464,319
Moore Hall - Renovation and modernization	2,464,661
D.F. Lowery Building - Renovation and modernization	2,680,528
Jacobs Hall - Renovation and modernization	4,155,525

West Hall - Renovation and modernization 4,961,580
Belk Hall - Renovation and modernization 3,055,985
Land Acquisition 1,500,000
Wellons Hall - Renovation and modernization 4,323,382
Technology Infrastructure Expansion 2,798,476

University of North Carolina at Wilmington
School of Education Building 17,576,370
Fine Arts Building/Concert Hall 26,250,000
General Classroom Building 12,646,935
Arnold K. King Hall - Renovation and modernization 2,697,442
Hoggard Hall - Renovation and modernization 3,550,430
Alderman Admin. - Renovation and modernization 2,940,843
Westside Hall - Renovation and modernization 2,687,347
Kenan Hall - Renovation and modernization 3,056,633
Hinton James Hall - Renovation and modernization 1,843,981
Deloach Hall - Renovation and modernization 5,193,585
Friday Hall - Renovation and modernization 7,693,351
S. G. Kenan Auditorium - Renovation and modernization. 3,095,303
Marine Sciences Research Center - Operations Facilities 3,559,912
Computing Center 1,512,000
Print Shop 672,000
Warehouse Expansion 1,890,000
Land Acquisition 2,100,000
Sprinkler Systems - Hoggard, Trask, & Nixon 823,620
Miscellaneous HVAC Projects 1,027,320
Miscellaneous Electrical Projects 676,305
Facility Improvements for Energy Efficiency 747,390
Primary Electrical Distribution System Upgrade 2,238,158
Storm Drainage Improvements 743,185
Technology Infrastructure Expansion 2,948,927

Western Carolina University
Fine and Performing Arts Center 25,805,745
Stillwell - Renovation and modernization 15,057,541
McKee Building 5,289,690
Bird Building - Renovation 1,836,450
Living - Learning Center - Conversion 1,887,113
Land Acquisition 3,618,000
Breese - Renovation and modernization 1,161,332
Vehicular Traffic Relocation 4,989,600

Indoor Recreation Facility 6,306,300
Hinds University Center - Addition 4,158,000
New Housing Facility. 13,308,750
Chiller Replacement and Retrofit 1,418,655
Replace steam and condensate lines 3,937,500
Upgrade Electrical Distribution System 883,995
Campus Pedestrian Corridors 1,386,000
Perimeter Parking Lots 1,039,500
Steam Plant Improvements - Phase III 644,595
Automated Energy Management System Enhancements 700,455
Technology Infrastructure Expansion 5,018,607

Winston-Salem State University
Computer Science Facility 5,748,330
New Physical and Life Sciences Building - Phase I 12,109,545
Anderson School Building - Renovation and modernization 6,917,905
Health Center Building and Old Nursing Building - Renovation and modernization 2,265,865
Carolina Hall - Renovation and modernization 4,270,688
Hauser Union - Renovation and modernization 3,895,461
Pegram Hall - Renovation and modernization 2,287,613
General Campus Improvements - Phase I. 3,104,640
Technology Infrastructure Expansion 1,676,127

University of North Carolina Center for Public Television
Conversion to Digital TV - Phase I 64,995,000
Mobile Satellite Uplink 895,545
UNC Public Radio - Building Addition 478,938
North Carolina School of Science and Mathematics
Renovation of Bryan Center 3,172,575
Renovation of Royall Outreach Center (Wyche House) 1,990,380
North Carolina Arboretum
Maintenance & Operations Facility 1,541,295
Entrance Gates and Gatehouses 785,610
Main Entrance Road Utility & Landscape Development 2,259,180
Demonstration Greenhouse 3,776,325
Bus Parking 969,255
North Carolina Botanical Gardens - Herbarium Research Building 7,061,355
J. C. Raulston Arboretum Education & Visitors Center 3,639,510
General Administration Building Renovation 2,887,500
Central Library Storage Facility and Central Records Storage - Planning 500,000

Matching Gift Incentive Program Projects 282,648,212

TOTAL $ 2,700,000,000

Section 2.(b) The Director of the Budget is empowered, when the Director of the Budget determines it is in the best interest of the State and the University to do so, and if the cost of a particular capital facility is less than the amount allocated for it, to use the excess funds to meet increased cost of other capital facilities itemized in this section and located at the same institution. The Director of the Budget shall report to the Joint Legislative Commission on Governmental Operations on changes made under this subsection. In addition, any capital facility and the amount of the allocation for it set forth above may be changed from time to time as the General Assembly may decide, except that the General Assembly may not delete or remove from funding any capital improvement that has been pledged as security for university improvement security interest bonds that have been issued if such a change would impair the security of the owners of the university improvement security interest bonds. The provisions of G.S. 116-11(9) with respect to appropriations to the Board of Governors of The University of North Carolina shall not apply to proceeds of university improvement security interest bonds and notes issued pursuant to Article 2 of Chapter 116D of the General Statutes, as enacted by this act.

Section 2.(c) Allocations to the costs of a capital improvement or undertaking in each case may include allocations to pay the costs set forth in this act in connection with the issuance of university improvement security interest bonds for that capital improvement or undertaking.

Section 2.(d) The proceeds of two hundred eighty-two million six hundred forty-eight thousand two hundred twelve dollars ($282,648,212) university improvement security interest bonds authorized by this act and allocated in subsection (a) of this section for matching gift incentive program projects shall be allocated and expended for particular projects as provided in this subsection. The Board of Governors of The University of North Carolina shall employ a private consultant to develop a list of capital facilities which are to be funded jointly from these bonds and private donations. The Board of Governors shall submit this list of recommended projects, including the proposed matching requirements by the University or its constituent or affiliated institutions, to the General Assembly by April 1, 2000. The matching requirements must be based on analyses of the fund-raising capabilities of each institution as determined by a private consultant in order to maximize private fund-raising for capital projects. The proceeds of these bonds or notes shall not be issued or allocated until the General Assembly authorizes the issuance of some or all of these bonds or notes and appropriates the proceeds for specific projects by separate legislative action at any subsequent session.

Section 2.(e) The validity of university improvement security interest bonds and notes issued under Article 2 of Chapter 116D of the General Statutes, as

enacted by this act, is not affected by any subsequent adjustment of allocations, or by any failure to comply with the reporting requirements provided in this act.

Section 3. Proceeds of Community College Security Interest Bonds. -- (a) The proceeds of community college security interest bonds and notes, including any premium thereon, except the proceeds of community college security interest bonds the issuance of which has been anticipated by bond anticipation notes or the proceeds of refunding bonds or notes, shall be allocated and expended for paying the cost of community college capital facilities, to the extent and as provided in Article 4 of Chapter 116D of the General Statutes, as enacted by this act and subject to change as provided in this act, to be located at the following community colleges:

COLLEGE	NEW CONSTRUCTION	REPAIR & RENOVATION	TOTAL ALLOCATION
Alamance CC	4,044,756	491,415	4,536,171
Anson CC	1,061,903	840,055	1,901,958
Asheville-Buncombe TCC	1,381,875	1,722,802	3,104,677
Beaufort County CC	1,061,903	1,128,185	2,190,088
Bladen CC	1,061,903	279,588	1,341,491
Blue Ridge CC	2,030,342	2,305,387	4,335,729
Brunswick CC	1,061,903	248,261	1,310,164
Caldwell CC & TI	3,353,211	377,326	3,730,537
Cape Fear CC	1,061,903	2,068,435	3,130,338
Carteret CC	1,061,903	1,882,001	2,943,904
Catawba Valley CC	1,242,780	2,743,429	3,986,209
Central Carolina CC	8,125,128	244,147	8,369,275
Central Piedmont CC	31,492,890	6,129,832	37,622,722
Cleveland CC	1,061,903	486,221	1,548,124
Coastal Carolina CC	15,659,820	348,511	16,008,331
College of the Albemarle	4,516,924	128,735	4,645,659
Craven CC	3,833,227	573,564	4,406,791
Davidson County CC	1,061,903	2,287,656	3,349,559

Durham TCC	6,071,653	842,633	6,914,286
Edgecombe CC	7,864,395	1,563,500	9,427,895
Fayetteville TCC	15,469,002	2,166,691	17,635,693
Forsyth TCC	1,061,903	1,039,816	2,101,719
Gaston College	1,061,903	270,458	1,332,361
Guilford TCC	2,311,980	3,083,432	5,395,412
Halifax CC	1,061,903	817,189	1,879,092
Haywood CC	1,061,903	2,195,573	3,257,476
Isothermal CC	1,061,903	949,267	2,011,170
James Sprunt CC	1,061,903	516,788	1,578,691
Johnston CC	1,061,903	921,977	1,983,880
Lenoir CC	2,308,020	1,048,459	3,356,479
Martin CC	1,340,460	142,636	1,483,096
Mayland CC	3,148,914	213,742	3,362,656
McDowell TCC	1,128,600	273,269	1,401,869
Mitchell CC	1,061,903	983,677	2,045,580
Montgomery CC	1,061,903	301,703	1,363,606
Nash CC	1,061,903	1,021,442	2,083,345
Pamlico CC	1,061,903	302,049	1,363,952
Piedmont CC	1,909,710	2,111,177	4,020,887
Pitt CC	13,844,565	2,091,308	15,935,873
Randolph CC	1,061,903	551,886	1,613,789
Richmond CC	3,110,085	984,167	4,094,252
Roanoke-Chowan CC	1,061,903	567,718	1,629,621
Robeson CC	5,485,095	2,192,511	7,677,606
Rockingham CC	1,061,903	1,278,538	2,340,441

Rowan-Cabarrus CC	4,813,887	2,925,850	7,739,737
Sampson CC	1,061,903	1,653,903	2,715,806
Sandhills CC	2,575,320	2,831,582	5,406,902
Southeastern CC	1,061,886	1,112,304	2,174,190
Southwestern CC	3,714,002	1,228,660	4,942,662
Stanly CC	3,675,885	1,506,808	5,182,693
Surry CC	4,607,701	225,489	4,833,190
Tri-County CC	1,822,425	712,338	2,534,763
Vance-Granville CC	11,072,160	805,858	11,878,018
Wake TCC	22,158,345	2,850,623	25,008,968
Wayne CC	3,422,100	202,099	3,624,199
Western Piedmont CC	1,220,959	1,292,053	2,513,012
Wilkes CC	2,776,724	776,451	3,553,175
Wilson TCC	1,218,855	921,379	2,140,234
TOTAL	$228,237,450	$71,762,550	$300,000,000

Section 3.(b) Except as provided in subsection (d) of this section, a community college may use the bond proceeds allocated in subsection (a) of this section only in accordance with the State Board of Community Colleges' consultant's report on the capital allocation and repairs and renovations funding formula. Funds allocated for repair and renovations must be used in accordance with exhibit 5-6 of the Funding Formula Study: Phase 3 Report, submitted May 15, 1998. Funds allocated for new construction must be used in accordance with exhibits 15 and 16 of the Funding Formula Study: Phase 4 Report, submitted February 4, 1999. New construction funds allocated by the report to a specific site may not be allocated to another site. Each community college shall submit to the State Board of Community Colleges a statement (i) proposing the capital facilities to be financed with the proceeds of community college security interest bonds allocated to that community college, (ii) certifying that the proposed site is included in the consultant's report referred to in this section, (iii) certifying that the community college is prepared to proceed with the construction, acquisition, or improvement of the proposed capital facilities, and (iv) demonstrating that the applicable matching requirements have been or will be met.

Upon receipt by the State Board of Community Colleges of the information set forth above, the Board shall add the proposed capital facilities to the next application of the Community Colleges System Office to the State Treasurer to issue bonds pursuant to G.S. 116D-43.

The board of trustees of an individual community college may use funds allocated for new construction either for new construction or for repair and renovations. The board of trustees of a community college may use funds allocated for repair and renovations only for repair and renovations, and not for new construction.

The projected allocations set forth above may be changed from time to time as the General Assembly may decide, except that the General Assembly may not delete or remove from funding any capital improvement that has been pledged as security for community college security interest bonds that have been issued if such a change would impair the security of the owners of the university improvement security interest bonds.

Section 3.(c) Community colleges are not required to match bond proceeds allocated in this section for repair and renovations. The match requirements of Chapter 115D of the General Statutes apply to bond proceeds allocated for new construction except as provided in this subsection. The consultant hired by the State Board of Community Colleges to determine funding formulas for the community college system developed an index to measure each county's ability to pay. The consultant found that some counties are unable to meet their local match requirement under Chapter 115D of the General Statutes because of inability to pay. Accordingly, community colleges are required to match bond proceeds allocated for new construction in subsection (a) or (d) of this section only as follows: Community colleges assigned a matching rate of less than forty percent (40%) in the "adjusted matching requirements" contained in exhibit 14 of the State Board of Community Colleges' consultant's Funding Formula Study: Phase 4 Report, submitted February 4, 1999, are not required to match, and community colleges assigned a matching rate of forty percent (40%) or more in the adjusted matching requirements are required to match only at the assigned rate.

Section 3.(d) Each community college that was not allocated funds for new construction in the State Board of Community Colleges' consultant's report on the capital allocation funding formula may receive the bond proceeds allocated to it for new construction in subsection (a) of this section only to the extent that it can document to the State Board of Community Colleges its actual need for funds for new construction, or its actual need for funds for repair and renovations in excess of the amount allocated to it for repair and renovations in subsection (a) of this section. If any community college is unable to document to the State Board of Community Colleges by January 1, 2001, these needs in the amount of its entire allocation for new construction under subsection (a) of this section, the State Board shall reallocate the excess of the allocation over the amount the college was able to document among the remaining community colleges to the extent they can document actual needs in

excess of their allocations in subsection (a) of this section for new construction, repair, and renovations, or both.

Section 3.(e) The validity of community college security interest bonds and notes issued under Article 4 of Chapter 116D of the General Statutes, as enacted by this act, is not affected by any subsequent adjustment of allocations or matching requirements provided in this act, or by any failure to comply with matching requirements or reporting requirements provided in this act.

Section 4. Interpretation of Act. (a) Additional Method. -- This act provides an additional and alternative method for the doing of the things authorized by this act and shall be regarded as supplemental and additional to powers conferred by other laws. Except where expressly provided, this act shall not be regarded as in derogation of any powers now existing. The authority granted in this act is in addition to other laws now or hereinafter enacted authorizing The University of North Carolina to issue self-liquidating debt or other debt secured by designated sources of funds.

Section 4.(b) Statutory References. -- References in this act to specific sections or Chapters of the General Statutes are intended to be references to those sections or Chapters as they may be amended from time to time by the General Assembly.

Section 4.(c) Liberal Construction. -- This act, being necessary for the health and welfare of the people of the State, shall be liberally construed to effect its purposes.

Section 4.(d) Severability. -- If any provision of this act or its application to any person or circumstance is held invalid, that invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

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

HOUSE BILL 1481/SENATE BILL 912: Bonds for Higher Education

BILL ANALYSIS

Committee:	House and Senate Finance	**Sponsor:**	Rep. Miller/Sen. Rand
Date:	June 29, 1999	**Analysis by:**	Martha H. Harris
Version:	Proposed Committee Substitute for First Edition		Staff Attorney

SUMMARY: This bill would create a new Chapter 116D of the General Statutes to establish the following mechanisms for debt financing of higher education facilities:

1. *It authorizes the State to issue security interest bonds to finance $2.7 billion of capital facilities for the University of North Carolina and $300 million of capital facilities for community colleges. The bonds would be secured by a security interest in the capital facilities being financed.*
2. *It authorizes the UNC Board of Governors to issue special obligation bonds to finance capital facilities for the University. The bonds would be secured by the University's receipts, other than tuition or appropriations from the General Fund.*

Security Interest Bonds. Article 2 of the new Chapter 116D created by this bill would authorize the State to issue university improvement security interest bonds secured by a lien on or security interest in University property acquired, constructed, or improved with the bond proceeds. Article 4 of the new Chapter 116D would authorize the State to issue community college security interest bonds secured by a lien on or security interest in community college property acquired, constructed, or improved with the bond proceeds. These security interest bonds would be repaid from the General Fund. The maximum maturity on the bonds would be 25 years.

The university improvement security interest bonds would be used for construction, improvement, and acquisition of capital facilities for constituent and affiliated institutions of The University of North Carolina, including the Center for Public Television, the UNC Health Care System, the School of Science and Mathematics, and the North Carolina Arboretum. Similarly, the community college security interest bonds would be used for grants to community colleges for construction, improvement, and acquisition of their capital facilities. The bill specifically defines capital facilities as buildings, utilities, structures, and other facilities and property developments, including streets, landscaping, equipment and furnishings in connection with a building project, and land acquisition. The facilities may include sports facilities, housing, and administrative offices as well as educational buildings.

The security interest bonds would be issuable by the Treasurer only to fund allocations established by the General Assembly; those allocations are set out in Sections 2 and 3 of this bill. The bill limits the amount of community college security interest bonds that may be issued to $300 million and limits the amount of university improvement security interest bonds that may be issued each year over five years as follows:

Fiscal Year	Aggregate Amount
1999-2000	$240,000,000
2000-2001	480,000,000
2001-2002	700,000,000
2002-2003	640,000,000

2003-2004 640,000,000

The proposed security interest bonds are not general obligation bonds and thus are not required to be approved by the voters. They are not secured by the full faith and credit or the taxing power of the State; a statement to this effect would appear on the face of the bonds. The State could choose not to appropriate funds to pay the bonds, but such a decision would have negative consequences for the State's credit rating.

The security interest bonds would be secured by a lien or security interest in all or any part of the capital facilities to be financed, including all or part of any land on which improvements are to be constructed. If the project is a renovation, the entire existing facility as well as the improvement could serve as security. In the case of community college bonds, although the bonds are issued by the State, the community college or county that owns the property would give the security interest. No deficiency judgment could be rendered against the State if the bonds were not paid. The property securing the bonds would be sold and the net proceeds would be applied to pay the bonds.

Section 2 of the bill sets out the specific projects for which university improvement security interest bonds would be issued. If the cost of a project changed, the Board of Governors could reallocate funds from one project to another, but only between projects at the same institution.

Section 2 also allocates nearly $300 million of the university improvement security interest bonds for matching gift incentive program projects. The bill directs the Board of Governors to employ a private consultant to develop a list of capital facilities to be funded jointly from the bonds and private donations. The list would include matching requirements based on each institution's fund-raising capabilities. The Board of Governors must submit the list to the General Assembly by April 1, 2000. The bonds for these projects can be issued only after the General Assembly enacts legislation allocating the proceeds for the specific projects.

Section 3 of the bill sets out the amount allocated to each community college for new construction and for repairs and renovations and requires that the allocations must be used in accordance with the State Board of Community Colleges' consultant's report, which establishes the funding formula for new construction needs and repair and renovation needs at each campus. A community college could not reallocate to another campus funds that the consultant's report allocates to a specific campus. Bond proceeds allocated for repair and renovations could be used only for repair and renovations, but bond proceeds allocated for new construction could be used either for new construction or for repair and renovations.

There are some community colleges that did not have an allocation for new construction in the consultant's report, but that do have an allocation of bond proceeds for new construction in the bill. The bill provides that these community colleges may receive their new construction allocation only to the extent they can document to the State Board of Community Colleges their actual needs for new construction, or their actual needs for repair and renovations in excess of the amount allocated in the bill for repairs of renovations. If any bond proceeds could not be used because of a community college's failure to document these needs, those amounts would be pooled and reallocated by the State Board to other community colleges that were able to document actual needs in excess of the amounts already allocated for those needs in the bill.

Under general law, community colleges are required to match State capital funds on a dollar-for-dollar basis. This bill provides three limited exceptions to this requirement for the bond proceeds. First, bond proceeds allocated for repair and renovations need not be matched. Second, community colleges which the consultant's report determined had a matching ability of 40% or less, based on ability to pay, need not

trends and revenue streams for obligated resources. The State Treasurer would be required to report annually, and upon each issuance of university improvement security interest bonds and community college security interest bonds, on debt service requirements for the bonds. Finally, the Community Colleges System Office would be required to report quarterly to the Joint Legislative Education Oversight Committee on projects funded from community college security interest bonds, including total project costs, the amount funded by bonds, expenditures to date, and progress to completion.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

H. B. No. _____ DATE _____

S. B. No. 912 PCS Amendment No. _____

(to be filled in by Principal Clerk)

Rep.)
) HOYLE
Sen.)

moves to amend the bill on page 41, line 7

by deleting "1,061,903" in column one and substituting "1,061,886". ~~and by adding the total~~

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

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

EVA KLEIN

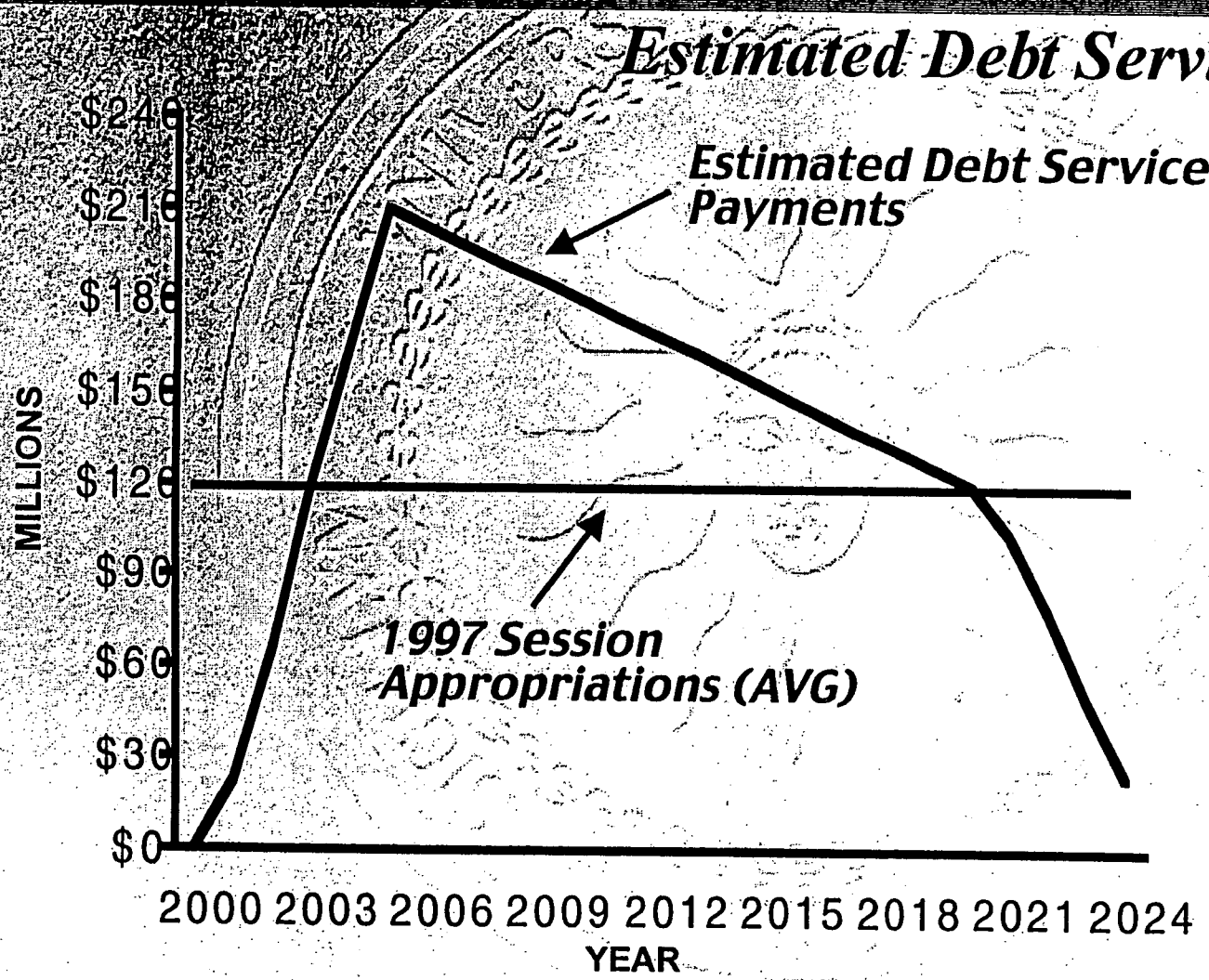
Eva Klein, president of Eva Klein & Associates, is known for her expertise in strategic management and financing for higher education and not-for-profit organizations, and for her international work in knowledge-based economic development. Her 27-year career includes high school teaching, university administration, public finance/investment banking, and management consulting. She has held senior positions at The American University (DC), KPMG Peat Marwick (NY), and Chemical Bank (NY).

Ms Klein served on the boards of directors of the Association of University Related Research Parks (AURRP) and the National Council for Urban Economic Development (CUED). Her publication topics include strategic planning, trusteeship, marketing, capital finance, research park/incubator development, commercialization of university research, real estate asset utilization, and the role of higher education institutions in economic development. She authored the chapter on *"Debt Financing and Management"* for NACUBO's *College and University Business Administration* (5th edition) and the chapter on *"Technology Parks and Incubators: A Nexus Between University Research and Industrial Research and Development,"* in *Innovative Models for University Research* (Haden & Brink, Elsevier 1992). Ms. Klein's invited speaking engagements have included keynote or major addresses in the US, Canada, France, Italy, Brazil, Russia, Hungary, the Czech Republic, Uzbekistan, Senegal, and the People's Republic of China.

Ms. Klein's earned degrees include an MBA (Management and Finance) from The Wharton School, University of Pennsylvania, an MA (French Literature) from New York University, with studies at The University of Paris/Sorbonne, an MS (Education) from the Graduate School of Education, University of Pennsylvania, and a BA (Liberal Arts/French) from Douglass College, Rutgers University. Ms. Klein is fluent in French and speaks some Hungarian, Russian, and Spanish.

The University of North Carolina

Estimated Debt Service Requirements



BOND SCHEDULE

FISCAL YEAR	*BOND AMOUNT*
2000	$200 Million
2001	$400 Million
2002	$500 Million
2003	$450 Million
2004	$450 Million
TOTAL=	$2 BILLION

This hypothetical debt service repayment schedule assumes a 6% interest rate and was prepared by the Office of the State Treasurer.

The University of North Carolina

	FY 99-2000		FY 2000-01	
1500 NC Arts Council				
63 **Travel** Reduce funds in line item 532714.	($5,000)	R	($5,000)	R
64 **Basic Grants Program** Funding provides a one-time increase in the continuation budget for grants to local arts organizations: Primary Arts Organizations $600,000 Rural Arts Leadership $400,000 Cultural Tourism $200,000	$1,200,000	NR		
65 **Grassroots Arts Program** Provides one-time increase in the continuation budget for grants awarded to local arts councils.	$800,000	NR		
66 **Shakespeare Festival Funds** Provide funds for the Educational Outreach Touring Program.	$260,000	R	$260,000	R
67 **The Lost Colony** Appropriate funds to the Roanoke Island Historical Association to support operations of the the Lost Colony outdoor drama production.	$260,000	R	$260,000	R
1500 Grants-in-Aid to Arts				
68 **NC Symphony Grant-Memorial Auditorium** Provide balance of State funding as grant-in-aid to NC Symphony Society for acoustical enhancements.	$1,500,000	NR		
1410 State Library				
69 **Travel** Reduce funds in line item 532714.	($2,000)	R	($2,000)	R
1500 Museum of History				
70 **Adjust Various Line Items** Reduce funds in the following line items: 531311 Temp Salaries $40,000 531511 Social security $3,060 532714Tran - Ground-In-State $5,917 533990 Other Supplies and Materials $22,326 534610 Art and Artifacts $22,000	($93,303)	R	($93,303)	R

The University of North Carolina
Tuition Rates for the 1999-2000 Academic Year

		Resident			Nonresident		
		1998-99	Increase	1999-2000	1998-99	Increase	1999-2000
Elizabeth City State University	*undergraduate*	768.00	**38.00**	806.00	7,186.00	**38.00**	7,224.00
	graduate	768.00	**52.00**	820.00	7,186.00	**52.00**	7,238.00
The University of North Carolina at Asheville	*undergraduate*	768.00	**38.00**	806.00	7,186.00	**238.00**	7,424.00
	graduate	768.00	**52.00**	820.00	7,186.00	**238.00**	7,424.00
Winston-Salem State University	*undergraduate*	768.00	**38.00**	806.00	7,186.00	**38.00**	7,224.00
	graduate	768.00	**52.00**	820.00	7,186.00	**52.00**	7,238.00
Appalachian State University	*undergraduate*	918.00	**44.00**	962.00	8,188.00	**44.00**	8,232.00
	graduate	918.00	**64.00**	982.00	8,188.00	**64.00**	8,252.00
East Carolina University (1), (6)	*undergraduate*	918.00	**74.00**	992.00	8,188.00	**370.00**	8,558.00
	graduate	918.00	**94.00**	1,012.00	8,188.00	**390.00**	8,578.00
Fayetteville State University	*undergraduate*	918.00	**44.00**	962.00	8,188.00	**44.00**	8,232.00
	graduate	918.00	**64.00**	982.00	8,188.00	**64.00**	8,252.00
North Carolina A & T State University	*undergraduate*	918.00	**44.00**	962.00	8,188.00	**44.00**	8,232.00
	graduate	918.00	**64.00**	982.00	8,188.00	**64.00**	8,252.00
North Carolina Central University (2)	*undergraduate*	918.00	**44.00**	962.00	8,188.00	**44.00**	8,232.00
	graduate	918.00	**64.00**	982.00	8,188.00	**64.00**	8,252.00
The University of North Carolina at Charlotte	*undergraduate*	918.00	**44.00**	962.00	8,188.00	**44.00**	8,232.00
	graduate	918.00	**64.00**	982.00	8,188.00	**64.00**	8,252.00
University of North Carolina at Pembroke	*undergraduate*	918.00	**44.00**	962.00	8,188.00	**44.00**	8,232.00
	graduate	918.00	**64.00**	982.00	8,188.00	**64.00**	8,252.00
The University of North Carolina at Wilmington	*undergraduate*	918.00	**44.00**	962.00	8,188.00	**44.00**	8,232.00
	graduate	918.00	**64.00**	982.00	8,188.00	**64.00**	8,252.00
Western Carolina University	*undergraduate*	918.00	**44.00**	962.00	8,188.00	**44.00**	8,232.00
	graduate	918.00	**64.00**	982.00	8,188.00	**64.00**	8,252.00
North Carolina State University (3)	*undergraduate*	1,456.00	**72.00**	1,528.00	10,622.00	**72.00**	10,694.00
	graduate	1,456.00	**122.00**	1,578.00	10,622.00	**122.00**	10,744.00
The University of North Carolina at Chapel Hill (4)	*undergraduate*	1,456.00	**72.00**	1,528.00	10,622.00	**72.00**	10,694.00
	graduate	1,456.00	**122.00**	1,578.00	10,622.00	**122.00**	10,744.00
The University of North Carolina at Greensboro	*undergraduate*	1,036.00	**50.00**	1,086.00	9,490.00	**50.00**	9,540.00
	graduate	1,036.00	**72.00**	1,108.00	9,490.00	**72.00**	9,562.00
North Carolina School of the Arts (5)	*undergraduate*	1,428.00	**69.00**	1,497.00	10,056.00	**69.00**	10,125.00
	graduate	1,428.00	**99.00**	1,527.00	10,056.00	**99.00**	10,155.00

(1) Does not include Medical School
(2) Does not include Law School
(3) Does not include Veterinary School
(4) Does not include Health Sciences Schools, Business School, and Law School
(5) Does not include High School
(6) A portion of the increase at ECU is related to the institution's transition to a Doctoral II institution.

June 28, 1999

President Friday:

In response to your request for information yesterday, please note the following:

1. Bonds for Higher Education – The packet includes the legislation (SB 912) and supporting information. The projects are listed in the bill and also in a supplemental schedule. The projects for North Carolina School of the Arts total $42.5 million as noted on the clipped page.

2. Aid to Private Colleges Programs – A schedule shows the Program budgets and the House and Senate Expansion budgets. As you know, the Conferees are at work to settle the differences.

3. 1999-2000 Tuition Rates – A schedule shows the tuition rate increases approved by the Board of Governors in March and the rates are incorporated into both the House and Senate budget bills. The Senate special provision related to possible increases of up to $250 in 2000-01 and up to $250 more in 2001-02 would be on top of these tuition rates for 1999-2000 shown in the schedule.

4. The Lost Colony Operating Funds – There is $260,000 in recurring funds included in the Senate's budget bill; I found no comparable item in the House's budget. Of course, this is a difference for the Conferees to settle. A copy of the supporting Senate Appropriation Committee report item is highlighted and attached.

Attachments

Fran Hogan

Aid to Private Colleges
1999-2000

	1999-2000	Proposed Expansion		Totals if Funded	
	Continuation Budget	House	Senate	House	Senate
Contractual Scholarship Program	$25,057,272	$2,088,106	$4,176,212	$27,145,378	$29,233,484
(per qualifying student)	$900	$75	$150	$975	$1,050
Legislative Tuition Grant Program	39,337,213	1,923,319	3,846,638	41,260,532	43,183,851
(per qualifying student)	1,600	75	150	1,675	1,750
Total Both Programs	64,394,485	4,011,425	8,022,850	68,405,910	72,417,335
(per qualifying student)	2,500	150	300	2,650	2,800

6/28/99

A Firm Foundation: A Plan for Building UNC's Future

May 18, 1999

Molly Corbett Broad - President

The University of North Carolina

UNC Capital Equity/Adequacy Study

"The Board of Governors of . . . shall study the relative equity and adequacy of the physical facilities of its constituent institutions. The study shall consider the condition of the facilities, whether or not facilities are comparable among the campuses given the different missions of the institutions, comparable adequacy of the physical facilities given the size and projected growth of the school, and such other factors deemed appropriate by the Board of Governors."

1997 Session, Senate Bill 352, Section 10.1(b)

The University of North Carolina

UNC Capital Equity/Adequacy Study

"The Board of Governors shall contract with a private consulting firm with expertise in higher education matters to assess the additional capital needs of the constituent institutions of The University of North Carolina. The needs assessment shall project the needs for capital funding for a 10-year period, and shall include a detailed plan for making funding allocations based on the priorities of needs.

The plan shall provide a detailed capital spending plan for the next 10 years to assist the General Assembly in making funding decisions relating to [UNC], as the State plans for major increases in enrollment in higher education and prepares its citizens to compete in a global economy."

1998 Session, Senate Bill 1366, Section 11.4(c)

UNC Capital Equity/Adequacy Study

Findings — Current Capacity

- UNC has enough capacity system wide to meet current enrollment levels; however
  - *Not all capacity is where it is needed*
  - *Six institutions have current capacity needs*
- 10 institutions have some underutilized space, but also have needs for specific types of space
- Laboratories and study space are in short supply
- Classrooms and offices are not in short supply

UNC Capital Equity/Adequacy Study

Findings — Condition and Quality

- Quality is a greater problem than capacity
- Cost to meet quality standards is approximately $3 billion
- Non-appropriated buildings are in better physical condition than appropriated ones
- Current resources do not address repair backlog
- Major renovations must become greater priority
- Of amount estimated for major renovations, $652 million would retrofit science laboratories

The University of North Carolina

UNC Capital Equity/Adequacy Study

Findings — Future Capacity

By 2008...

- Existing capacity will be absorbed
- Specific space needs will exist on all campuses
- Based on enrollment targets, greatest needs will exist at NCSU, UNC-CH, ECU and UNCC
- Greatest space needs will be laboratory, office, study, and student services
- Classroom space will remain sufficient

The University of North Carolina

UNC Capital Equity/Adequacy Study

Recommendations —Capital Equity

- Honor the past – but focus on the future
- Commit fully to the need for all 16 universities
- Set aggressive growth targets with overall quality and market appeal strategies
- Significantly enlarge the "pie" (available funding)

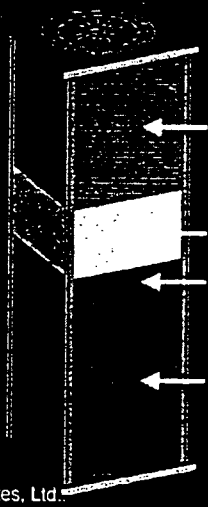
The University of North Carolina

Preliminary 10-Year Capital Needs

University of North Carolina

TOTAL NEEDS

$6.90 Billion



Other/Special = $2.30 Billion

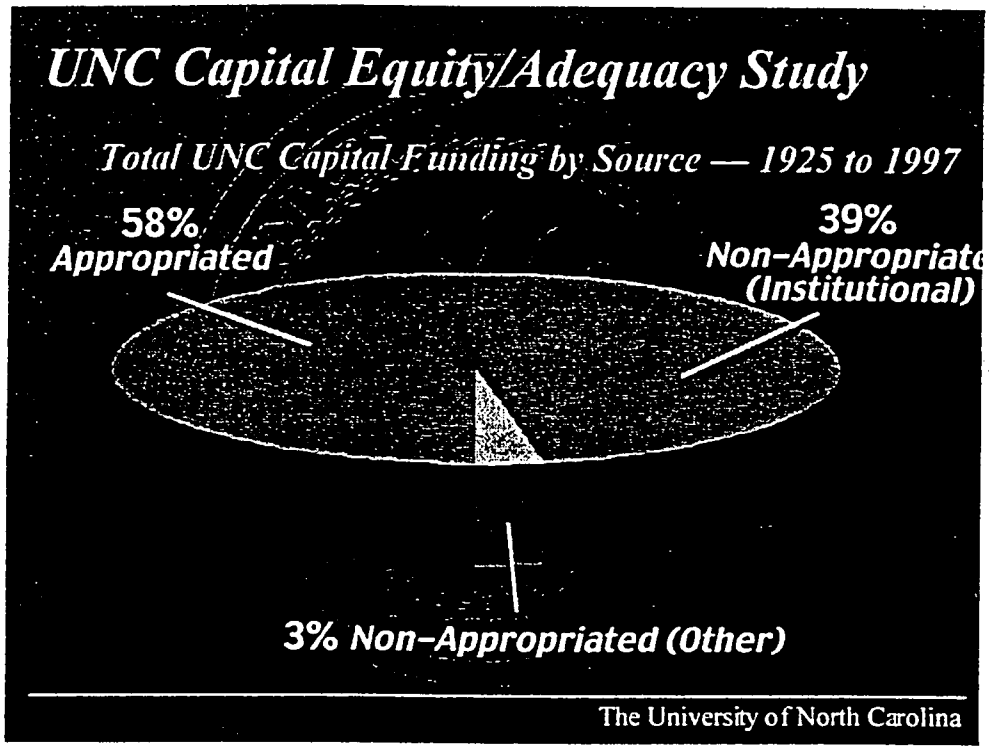
Future Capacity = $1.15 Billion

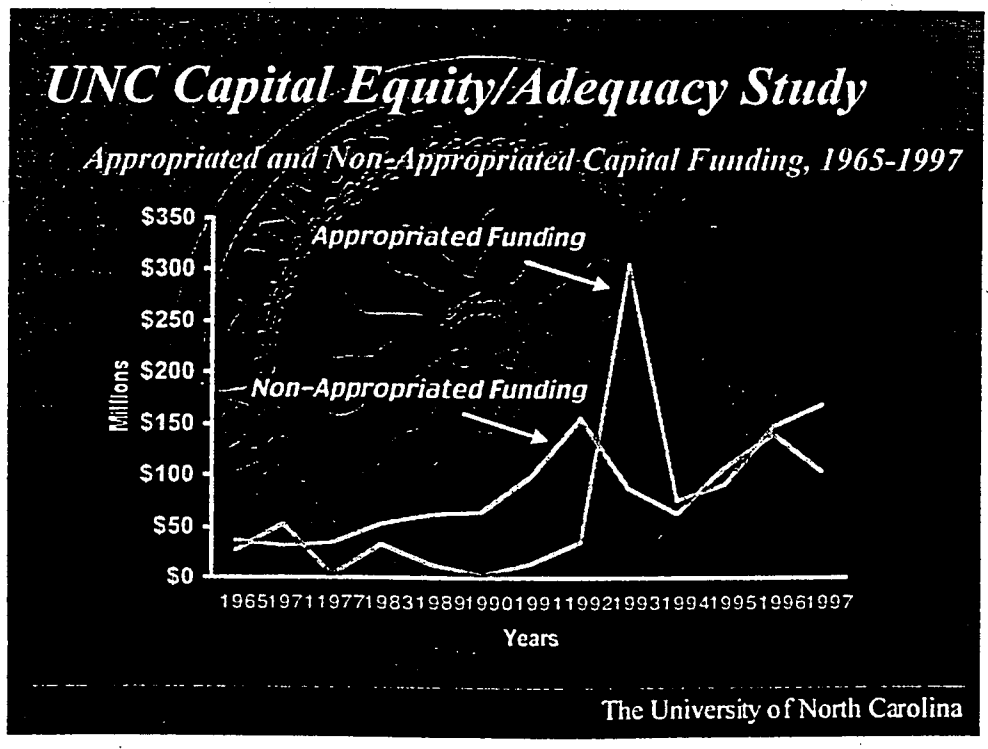
Current Capacity = $0.45 Billion

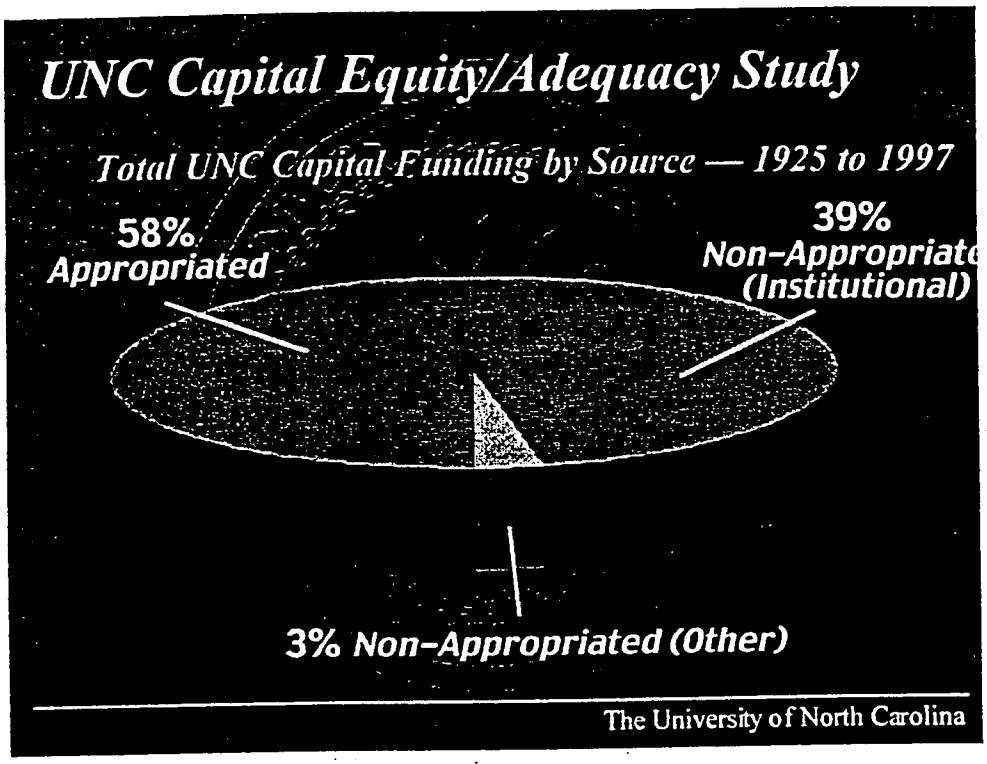
Rehabilitation = $3.00 Billion

Source: Eva Klein & Associates, Ltd.

The University of North Carolina


UNC Capital Equity/Adequacy Study
Total UNC Capital Funding by Source — 1925 to 1997
58%
Appropriated
39%
Non-Appropriate
(Institutional)
3% Non-Appropriated (Other)
The University of North Carolina


UNC Capital Equity/Adequacy Study
Appropriated and Non-Appropriated Capital Funding, 1965-1997
$350
$300
$250
$200
$150
$100
$50
$0
Millions
Appropriated Funding
Non-Appropriated Funding
1965 1971 1977 1983 1989 1990 1991 1992 1993 1994 1995 1996 1997
Years
The University of North Carolina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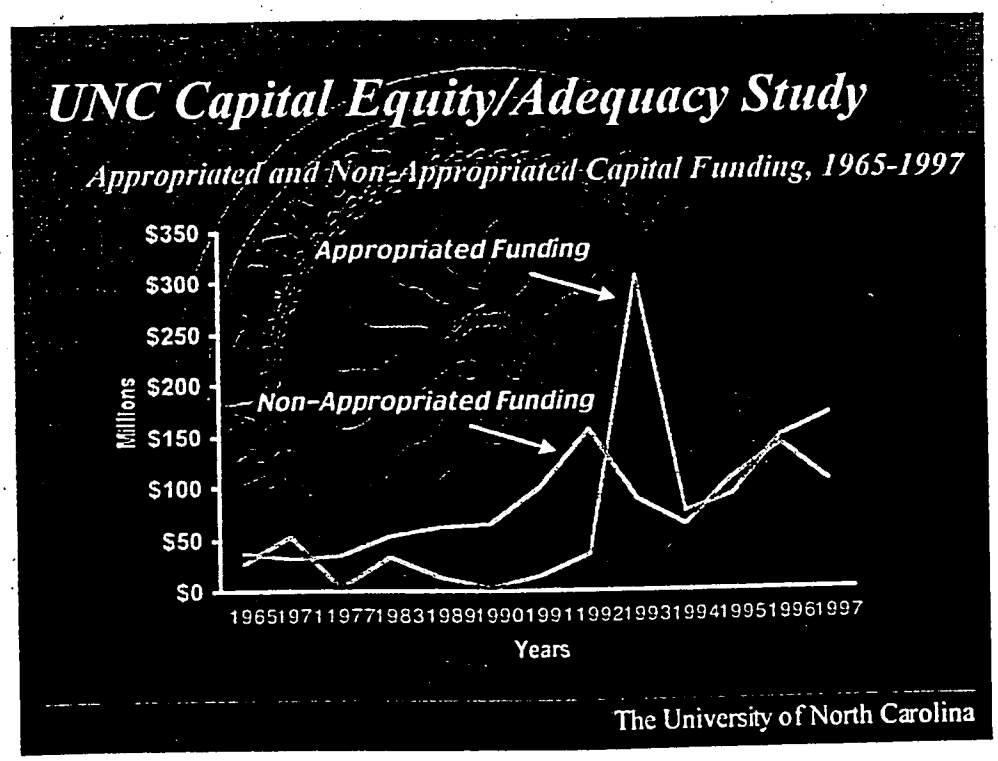
The University of North Carolina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$50
$0
Millions
Appropriated Funding
Non-Appropriated Funding
1965 1971 1977 1983 1989 1990 1991 1992 1993 1994 1995 1996 1997
Years
The University of North Carolina

UNC Capital Equity/Adequacy Study

Conclusions — Overview of Funding Issues

- Competitive posture will require continued investments in renewal and expansion
- Annual "pie" is too small for identified needs
- Pay-as-you-go overemphasizes new construction
- Pay-as-you-go is not explicit capital development policy
- Insufficient emphasis on private fundraising

The University of North Carolina

The University of North Carolina

Financing Alternatives — Proposed by State Treasurer

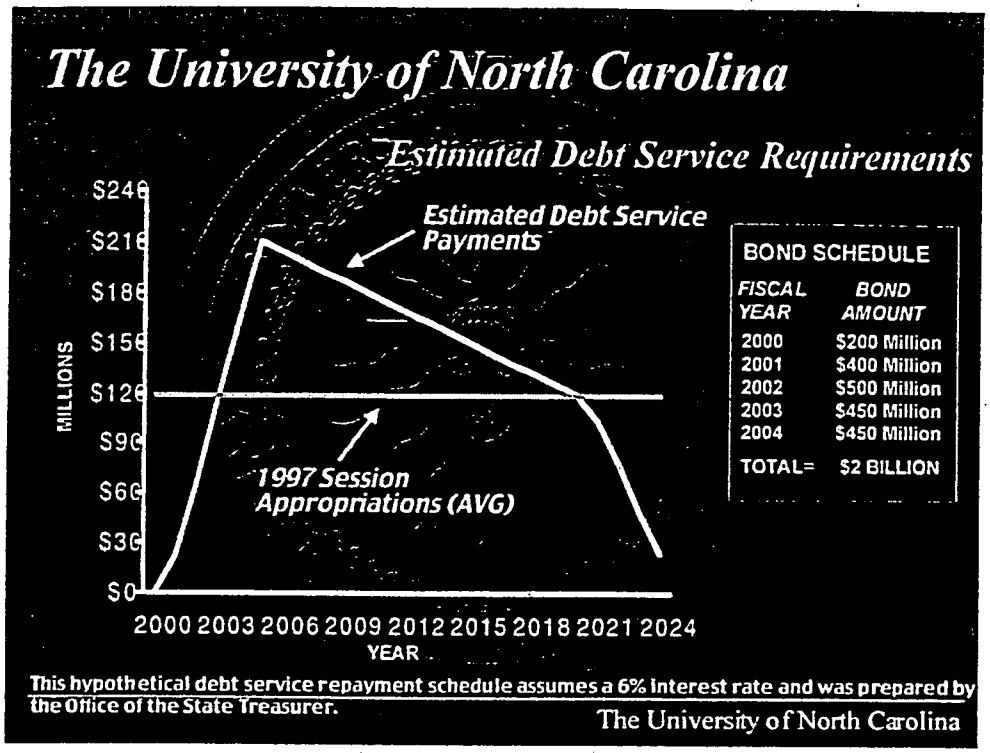
Limited Obligation Bonds

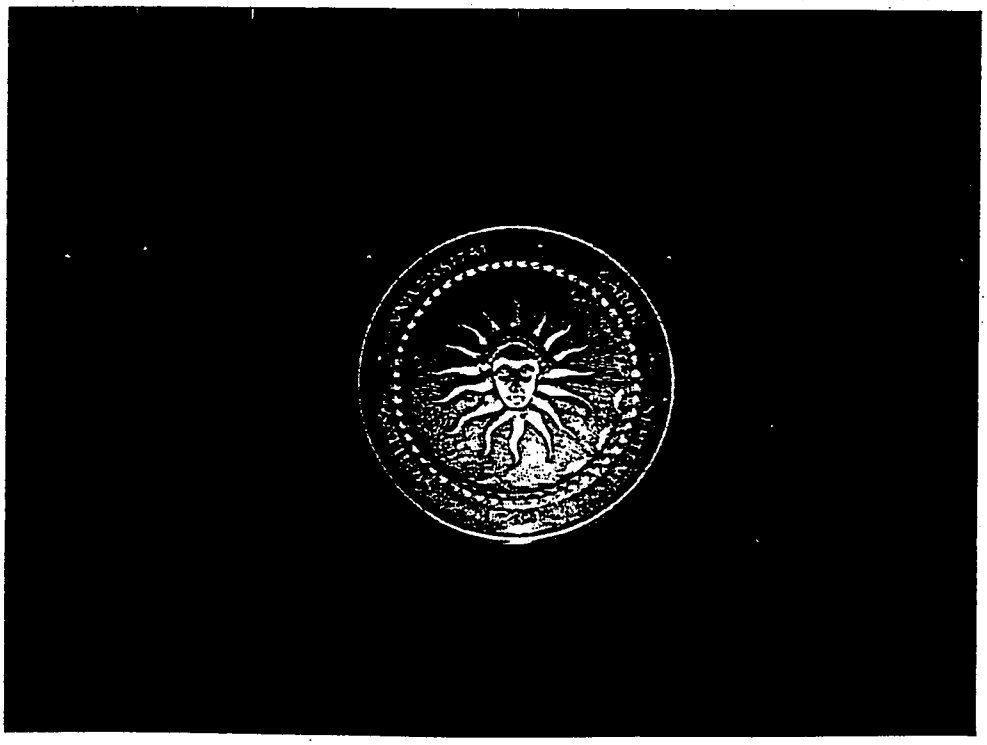
- Indebtedness on the "State's Balance Sheet"
- Secured by a lien or a security interest in University property
- Issuance of the bonds would indicate the intent of the General Assembly to provide funds for debt repayment

Special Obligation Bonds

- Indebtedness on the "University's Balance Sheet"
- The debt would be repaid from rents, fees, endowment earnings, overhead receipts or any other defined revenue stream except for funds derived from general tax revenues or tuition receipts

The University of North Carolina


The University of North Carolina
Estimated Debt Service Requirements
$24
$21
$18
$15
$12
$9
$6
$3
$0
MILLIONS
Estimated Debt Service Payments
1997 Session Appropriations (AVG)
2000 2003 2006 2009 2012 2015 2018 2021 2024
YEAR
BOND SCHEDULE
FISCAL YEAR
BOND AMOUNT
2000 $200 Million
2001 $400 Million
2002 $500 Million
2003 $450 Million
2004 $450 Million
TOTAL= $2 BILLION
This hypothetical debt service repayment schedule assumes a 6% interest rate and was prepared by the Office of the State Treasurer.
The University of North Carolina



A Firm Foundation: Proposed Capital Financing Legislation for the University of North Carolina

BACKGROUND:

In April 1999 the UNC Board of Governors approved *Building for the New Millennium*, the report emerging from a comprehensive study--called for in a 1997 special provision--of the relative equity and adequacy of capital facilities on the 16 University of North Carolina campuses. As required by a follow-up provision enacted in the 1998 short session, the report also included a ten-year capital spending plan for UNC.

Prepared by higher education consultant Eva Klein, the report documented woefully outmoded buildings, mounting deferred maintenance, and a looming shortage of critical science, technology, and study facilities. For every modern building in good condition, Klein found scores with bad wiring, leaks, outdated essential equipment, and inadequate infrastructure. The report identified capital needs totaling $6.9 billion.

The report proposed that UNC's capital needs be financed through increased funding from the General Assembly, coupled with new University-based funding, private-sector development, and increased private giving. In addition, Klein concluded that the state's traditional pay-as-you-go approach to capital funding would fall far short of the amount needed to repair, modernize, and expand UNC facilities and that alternative financing--principally bond financing--was needed to effectively implement the ten-year capital plan.

Under the direction of State Treasurer Harlan Boyles, bond counsel have prepared draft legislation for consideration by the General Assembly that would enable the state and UNC to use well-established methods of capital financing to address the University's staggering needs. Given anticipated enrollment growth and the lengthy lead time required to construct new state buildings and modernize old ones, it is critical that such legislation be passed during this legislative session.

THE PROBLEM:

Over two centuries, North Carolina taxpayers, the University, and its students have built one of the best public university systems in the world. UNC campuses belong to the people of North Carolina, and these important state assets have many buildings that are now outmoded, inadequate, and falling apart.

- UNC expects to enroll some 48,000 additional students over the next decade. Six campuses, including the four largest, have space shortages today. By 2008, ten campuses will be at or beyond their physical capacity.
- As documented in the Klein report, nearly 800 UNC buildings need significant repairs or modernization, with the greatest deficiencies found in science and technology labs. Building rehabilitation is by far the largest component of UNC's ten-year capital plan.
- Prior to 1993, the state did not provide a steady source of funds for the repair and renovation of state-owned buildings. Over the past five years, UNC's annual share of the Reserve for Repairs and Renovations has provided roughly 2.5% of estimated replacement costs toward the upkeep of campus buildings, but these critical funds fail to address decades of deferred maintenance and the need to modernize antiquated buildings.

--more--

- Over the years, the General Assembly has been generous to UNC *when capital funds were available*. Since 1989, the state has appropriated an average of $86.7 million per year for UNC projects. But because of the state's traditional pay-as-you-go approach, capital funding to UNC has fluctuated widely, ranging from $1.6 million in 1990 to $125 million in 1997. This practice also has favored new construction over renovations.
- The cost of new construction is escalating. While inflation is averaging less than 3% annually, the State Construction Office estimates a construction inflation factor of 5%. Deferred maintenance costs are rising at a similar rate.

THE SOLUTION:

Over the past 75 years, more than 40% of capital construction on UNC campuses has been funded with non-appropriated dollars. Given the authority, UNC is committed to do even more to tap all available resources (University bonds, private sector development, private giving) to supplement and leverage state funding.

In her report, Klein strongly recommended that the state and UNC explore alternatives to North Carolina's traditional method of pay-as-you-go financing for University construction. Other states have demonstrated that various revenue streams can be earmarked for capital financing without draining funds from other needs, lowering the state's bond rating, or raising taxes. These states have gained the ability to spend more than ten times their current revenues for repairs, modernization, and construction. Many states that once followed that pay-as-you-go philosophy have earmarked revenues to retire outstanding bond debt. In the current market, annual debt service in the amount of $125 million--UNC's 1997 appropriation--would support more than $1.5 billion in needed repairs, modernization, and new construction.

In coming weeks, we will ask legislators to consider legislation that would provide new mechanisms for financing UNC's capital needs:

Proposed University Capital Facilities Finance Act. This legislation would permit the state to issue "limited obligation" bonds to finance capital improvements for the University. These bonds would not obligate the tax authority of the state, but essentially would create a moral obligation to repay. The financed projects would be pledged as security for the debt. The indebtedness would be repaid from state appropriations over a specified period of years. Bond financing would--for the first time--provide a predictable revenue stream of sufficient size to meet UNC's long-term capital needs.

Proposed Special Obligation Bonds for Improvements to Facilities of the University of North Carolina. This legislation would authorize the UNC Board of Governors to issue bonds to be repaid from "obligated" resources, defined sources of income available to the campus carrying out a given capital project. Available income sources would include rents, charges or fees collected by the institution, investments earnings on endowment funds, and overhead receipts. The board would not issue bonds by pledging state appropriations or tuition receipts.

UNC Report on Capital Equity/Adequacy: Major Findings and Conclusions

FINDINGS: CONDITION AND QUALITY

- Quality is a greater problem than capacity
- Cost to meet quality standards is approximately $3 billion
- Non-appropriated buildings are in better physical condition that appropriated ones
- Current resources do not address repair backlog
- Major renovations must become greater priority
- Of amount estimates for major renovations, $653 million would retrofit science labs

FINDINGS: CURRENT CAPACITY

- UNC has enough capacity systemwide to meet current enrollment levels; however,
  - > Not all capacity is where it is needed
  - > Six campuses have current capacity needs
- Ten campuses have some underutilized space, but also have needs for specific types of space
- Laboratories and study space are in short supply
- Classrooms and offices are not in short supply

FINDINGS: PRELIMINARY TEN-YEAR CAPITAL NEEDS

• Rehabilitation	$3.00 billion	
• Current Capacity	$0.45 billion	
• Future Capacity	$1.15 billion	
• Other/Special	$2.30 billion	TOTAL NEEDS = $6.90 BILLION

FINDINGS: TOTAL UNC CAPITAL FUNDING BY SOURCE, 1925-1997

• Appropriated from state funds	58%
• Non-appropriated	42%

CONCLUSIONS: OVERVIEW OF FUNDING ISSUES

- Competitive posture will require continued investments in renewal and expansion
- Annual "pie" is too small for identified needs
- Pay-as-you-go overemphasizes new construction
- Pay-as you-go is not explicit capital development policy
- Insufficient emphasis on private fundraising

5/19/99

A FIRM FOUNDATION: A PLAN FOR BUILDING UNC'S FUTURE

FREQUENTLY ASKED QUESTIONS AND ANSWERS

Doesn't financing by debt obligate resources that will limit the flexibility of future sessions of the General Assembly?

The University is an ongoing obligation of the State, one that is now facing a huge backlog of deferred maintenance and unprecedented enrollment increases. If the General Assembly continues its pay-as-you-go approach, it will pass on to future legislatures a problem greater than the $6.9-billion capital challenge it faces today. UNC campuses are among the most important assets of the State, and they must be maintained. The "limited obligation" bonds proposed by Treasurer Boyles would make the State's financial response to the problem more predictable and manageable. As the Treasurer explains, the General Assembly would be transforming real but unfunded obligations into securitized, bonded ones.

Will this financing legislation constitute UNC's total capital request for the next five years?

The resources generated by the bonds would provide financing for the University's major construction and renovation needs over the next five years. However, the annual Repair and Renovation funds (R&R) provided pursuant to statute would be expected to continue. If UNC did not continue to receive R&R for routine maintenance and repair, we would not only compound UNC's existing deferred maintenance problems, but create new ones as well.

Is there accountability for how the bond funds will be used?

The final form of the legislation authorizing bond financing is not clear, but there certainly would be oversight by and accountability to the General Assembly. We expect that for new construction, the University would submit a capital plan to the General Assembly for approval each year; whereas for major modernization and renovation projects, the process might require approval by the Government Operations Committee (not unlike the process currently in place for our Repair and Renovations request).

How would the projects to be financed with bond funds be selected?

The Board of Governors has approved a five-year capital plan prepared under the direction of Eva Klein & Associates in collaboration with the 16 campuses. Priorities will be determined by the General Assembly, with the recommendations of the Board of Governors.

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What kinds of University revenues could be used for the "special obligation" bonds?

Currently, UNC campuses have authority to use student fees, user fees, and room and board charges to service debt for statutorily specified facilities. In addition to these historic sources for debt service, the proposed "special obligation" bond legislation would permit use of other campus-based revenues such as overhead receipts and interest earnings on endowment funds. Campuses would not be permitted to use tuition receipts or State appropriations to service debt on the "special obligation" bonds.

Do the "special obligation" or university bonds offer any advantages to the smaller campuses?

Yes. Even today, every UNC campus builds some facilities on a "self-liquidating" basis, and such projects would be financed in the future with "special obligation" bonds. The University's capital funding plan contemplates that as a whole, UNC will continue its historic pattern of providing approximately 40% of the funds for capital facilities. But the ability of campuses to support special obligation bonds varies. By necessity, the smaller campuses will depend more heavily on State-issued bonds. The ability of the larger campuses to take greater advantage of the special obligation bonds should reduce pressure on the State resources—to the benefit of smaller campuses.

Why should the State issue these new "limited obligation" bonds instead of "general obligation" bonds, which would be subject to a vote of the people?

Authorizing the use of "limited obligation" bonds is entirely consistent with the powers granted to the General Assembly in the Constitution. Local governments in North Carolina have successfully used financing mechanisms similar to "limited obligation" bonds for many years. The obligations created by these bonds are "limited" as opposed to "general" because the taxing power of the State is not pledged. Only in that latter case is a vote required by the State Constitution.

As a practical matter, the use of "limited obligation" bonds provides more flexibility to the General Assembly and the University with respect to future projects. In the case of general obligation bonds, all funds typically must be committed to specified projects before bonds are authorized. In the case of "limited obligation" bonds, the State could authorize the bonds and specify highest priority projects now, while retaining the flexibility to select, design, and schedule future projects as campus needs and enrollment levels change.

Finally, with the decline in interest rates in recent years, the differential in interest rates between general obligation bonds and limited obligation bonds or other kinds of special debt has narrowed substantially.

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Why should the State commit to UNC bonds when the public schools and community colleges have such dire needs, as well?

The University is committed to a strong educational system at all levels and is doing everything within its power to help strengthen the public schools and increase collaboration with the community colleges.
The General Assembly called for an independent study of the University's capital needs, which has produced one of the most comprehensive, documented assessments of higher education facilities in the nation. The real needs of the State's other education sectors do not negate the fact that UNC buildings are State obligations and that the pay-as-you-go approach has allowed these valuable State assets to deteriorate.

UNC is acknowledged as one of the best public university systems in the nation. How can it possibly have capital needs of this magnitude if the quality is so high?

UNC buildings have been constructed over two centuries, and as they age, facilities inevitably become outdated or require structural repairs. In decades past, it was sometimes possible to use stop-gap approaches to modify old laboratories or equipment to serve modern functions. But the accelerating pace of scientific and technological change has made such attempts increasingly futile. Nothing short of major retrofits or renovations can adapt antiquated laboratories to accommodate 21st century science, for example.

UNC faculty have continued to teach in such inadequate facilities largely because of the University's national stature and out of loyalty to specific campuses. They also have drawn hope from the State's demonstrated commitment to address the University's huge backlog of capital needs, as evidenced by a queue of partially funded buildings that would require in excess of $400 million to complete.

Finally, a significant portion of the funding needs relate directly to the capacity of our campuses to meet current and future demand. We must be ready to accommodate some 48,000 additional new students by 2008. Six of the 16 campuses are at or beyond their physical capacity now and cannot admit significant numbers of new students without capital investment. The other campuses also have needs relating to enrollment growth.

A FIRM FOUNDATION: A PLAN FOR BUILDING UNC'S FUTURE

SUGGESTED TALKING POINTS:

Message #1: **Over two centuries, North Carolina has built one of the finest public university systems in the world. UNC campuses belong to the people of North Carolina, and these important state assets have many buildings that are now outmoded, inadequate, and falling apart. Given UNC's critical role in ensuring the state's economic and social future, North Carolina must act now to meet UNC's staggering capital needs.**

- UNC is responding to the proactive initiative of the General Assembly, which in 1997 called for a comprehensive study of the relative equity and adequacy of capital facilities on UNC campuses. As required by an amendment to the provision enacted in the 1998 short session, the report by outside consultant Eva Klein also included a ten-year capital spending plan for UNC.

- As documented by Klein, nearly 800 UNC buildings need significant repairs or modernization, with the greatest deficiencies found in science and technology labs. For every modern building in good condition, Klein found scores with bad wiring, leaks, outdated essential equipment, and inadequate infrastructure. Building rehabilitation is by far the largest component of UNC's ten-year capital plan. [APPROPRIATE TO OFFER HIGHEST-PRIORITY EXAMPLES FOR CAMPUS AND/OR REGION.]

- Prior to 1993, the state did not provide a steady source of funds for the repair and renovation of state-owned buildings. Over the past five years, UNC's annual share of the Reserve for Repairs and Renovations has provided roughly 2.5% of estimated replacement costs toward the upkeep of campus buildings, but these critical funds fail to address decades of deferred maintenance and the need to modernize antiquated buildings.

- UNC expects to enroll some 48,000 additional students over the next decade. Six campuses, including the four largest, have space shortages today. By 2008, ten campuses will be at or beyond their physical capacity.

Message #2: **The cost of delay is escalating, and we cannot postpone the arrival of the nearly 50,000 additional students already in the educational pipeline.**

- UNC campuses need a substantial infusion of capital funding *now* because it generally takes several years to finance, design, and build new facilities. Major renovations also require significant lead time and logistical planning.

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- Time is money. While inflation is averaging less than 3% annually, the State Construction Office estimates a construction inflation factor of 5%. Deferred maintenance costs are rising at a similar rate, and our buildings are deteriorating faster because of UNC's immense backlog of overdue repairs.

- UNC is maximizing resources to minimize costs. To lessen the need for new space, UNC has adopted the most stringent space-utilization standards of any public university system in the nation. Our classrooms are to be used for more hours of the day and night on more days of the week. In planning for enrollment growth, the University plans to use existing capacity to the fullest extent possible and to promote economies of scale.

Message #3: **As graphically depicted in Klein's report, North Carolina's traditional pay-as-you-go approach to capital funding will fall far short of the amount needed to repair, modernize, and expand UNC facilities. Two pieces of proposed legislation drafted under the direction of State Treasurer Harlan Boyles would provide well-established financing alternatives that would enable UNC to implement its ten-year capital plan. Given anticipated enrollment growth and the lengthy lead time required to construct new state buildings and modernize old ones, it is critical than such legislation be passed during this legislative session.**

- Over the years, the General Assembly has been generous to UNC *when capital funds were available*. Since 1989, the state has appropriated roughly $87 million per year for UNC projects. But because of the state's traditional pay-as-you-go approach, capital funding has fluctuated widely, ranging from $1.6 million in 1990 to $125 million in 1997. This practice also has favored new construction over renovations.

- Over the past 75 years, more than 40% of capital construction on UNC campuses has been funded with non-appropriated dollars. Given the authority, UNC is committed to do even more to tap all available resources (University bonds, private sector development, private giving) to supplement and leverage state funding.

- Other states have demonstrated that revenue can be earmarked for capital financing without draining funds from other needs, lowering the state's bond rating, or raising taxes. These states have gained the ability to spend more than ten times their current revenues for repairs to retire outstanding bond debt. Many states that once followed that pay-as-you-go philosophy have earmarked revenues to retire outstanding bond debt.

- In the current market, annual debt service in the amount of $125 million—UNC's 1997 appropriation—would support more than $1.5 billion in needed repairs, modernization, and new construction.

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- Following the advice of Treasurer Boyles, the UNC Board of Governors has unanimously endorsed in concept proposed legislation that would provide new and expanded mechanisms for financing UNC's capital needs:

⇒*State Bonds*. This proposed legislation would permit the state to issue "limited obligation" bonds to finance capital improvements for the University. These bonds would not obligate the taxing authority of the state, but essentially would create a moral obligation to repay. The financed projects would be pledged as security for the debt. The indebtedness would be repaid from state appropriations over a specified period of years. Bond financing would—for the first time—provide a predictable revenue stream of sufficient size to meet UNC's long-term capital needs.

⇒ *University Bonds*. This proposed legislation would authorize the UNC Board of Governors to issue bonds to be repaid from "obligated" resources, defined sources of income available to the campus carrying out a given capital project. Available income sources would include rents, charges or fees collected by the institution, investments earning on endowment funds, and overhead receipts. The board would not issue bonds by pledging state appropriations or tuition receipts.

SUMMARY OF LEGISLATIVE PROPOSALS

University Capital Facilities Finance Act (State Bonds)

- The Act provides for the issuance of "limited obligation" bonds to finance capital facilities for the University. Limited obligation bonds do not require a vote of the people.
- In essence, the General Assembly would have a moral obligation to provide for the repayment of the bonds.
- The bonds would be secured by a lien on or a security interest in University property.
- The proceeds of the bonds would be applied to finance the cost of improvement, construction, and acquisition of capital facilities as determined by the Board of Governors.
- Amounts payable by the State are "limited to funds appropriated for such purpose by the General Assembly." During an interim period, bonds could be issued if the Director of the Budget filed a certificate with the State Treasurer stating that sufficient funds are available to make debt service payments.

Special Obligation Bonds for Improvements to the Facilities of the University of North Carolina (University Bonds)

- Authorizes the Board of Governors to issue bonds, payable from "obligated" resources, but with no pledge of taxes or the faith and credit of the State.
- Obligated resources shall mean any sources of income or receipts of the Board or the institution at which a special obligation bond project is located including, without limitation, rents, charges or fees to be derived by the Board or the institution from any activities conducted at the institution, earnings on the investment of the endowment fund of the institution, and overhead receipts. Obligated resources do not include appropriations by the General Assembly and do not include tuition payments by students.
- "The Board of Governors is authorized to determine the location and character of any special obligation bond project and to acquire, construct and provide the same to maintain, repair and operate and enter into contracts for the management, lease, use or operation of all or any portion of any special obligation bond project and any existing facilities."
- Under the draft legislation, bonds issued are approved by the Director of the Budget. The Director of the Budget may consult with the Joint Legislative Commission on Governmental Operations.

Figure 1: The Legislative *Special Provision* Mandating this *Study*

Section 11.4. Section 10.1 of S.L. 1997-443 reads as rewritten:
"Section 10.1. (a) The funds appropriated to the Board of Governors of The University of North Carolina for equity funds are to address relative inequities in State operating funding revealed through a study of the constituent institutions in the university system. The General Assembly notes that the study dealt with equity based upon current funding from State appropriations and tuition for operations and did not consider historical equity in funding for physical facilities or funding from non-State sources. Therefore, in making this appropriation, the General Assembly does not conclude that the total funding of any institution, including specifically the historically black universities, is adequate in light of all considerations.
(b) Based on findings of the Legislative Study Commission on the Status of Education at The University of North Carolina, the General Assembly is still concerned about perceived differences in the quality of capital facilities on the different campuses, which may impact the ability of some campuses to attract students and faculty. Since the Board of Governors has recently completed studies of equity of funding for operating costs among the constituent institutions and of the Board of Governors' capital improvements request process, it is timely that the question of equity of facilities be addressed.

The Board of Governors of The University of North Carolina shall study the relative equity and adequacy of the physical facilities of its constituent institutions. The study shall consider the condition of the facilities, whether or not facilities are comparable among the campuses given the different missions of the institutions, comparable adequacy of the physical facilities given the size and projected growth of the school, and such other factors deemed appropriate by the Board of Governors. The study shall include all facilities contributing to the accomplishment of the campuses' missions. First, the Board of Governors shall study those facilities considered central to the academic missions of the campuses that are generally supported from General Fund appropriations. Secondly, the Board of Governors shall study those facilities that contribute to the overall missions of the campuses, including residential, dining, research, and other facilities regardless of the sources of funding. The Board of Governors shall consider its policies on funding of self-liquidating projects and whether those policies contribute to any inequities among the campuses, including the overall costs to the students.
(c) The Board of Governors shall contract with a private consulting firm with expertise in higher education matters to assess the additional capital needs of the constituent institutions of The University of North Carolina. The needs assessment shall project the needs for capital funding for a 10-year period, and shall include a detailed plan for making funding allocations based on the priorities of needs.

The plan shall provide a detailed capital spending plan for the next 10 years to assist the General Assembly in making funding decisions relating to The University of North Carolina, as the State plans for major increases in enrollment in higher education and prepares its citizens to compete in a global economy. The plan shall include considerations of the costs and changes in capital needs caused by new technologies and alternative systems for delivery of higher education services.

The consultant shall visit each campus in The University of North Carolina system to understand the needs of each campus based on their assigned missions, physical needs, and plans.

The Board and its consultant shall provide interim progress reports to the General Assembly on a periodic basis. The Board of Governors shall report to the General Assembly by April 15, 1999, with the results of its study and plan.

Of the funds appropriated to the Board of Governors for fiscal year 1998-99, up to two hundred fifty thousand dollars ($250,000) may be reallocated for the purposes of this section, including funds that would normally revert to the General Fund at the end of the fiscal year.

This *Special Provision* represents an historic milestone in that, to the best of our knowledge, it is the first comprehensive, systematic review of UNC's capital needs ever conducted.

Molly Corbett Broad
Joint House-Senate Finance Committee Hearing
Room 544 Legislative Office Building
June 29, 1999
8:30 a.m.

RECOGNIZE COMMITTEE CO-CHAIRS PRESENT

[Representatives Luebke, Allen, and Miller; Senators Hoyle and Kerr]

- Good morning, and thank you for the opportunity to share with you the University of North Carolina's response to the capital financing plan proposed in Senate Bill 912 and House Bill 1481.
- I appear before you this morning with the sadness of one who lost a dear colleague during the night. As you may have heard on the news, Chancellor Michael Hooker passed away during the night. When I left Carmen Hooker at 5:00 this morning, her ~~last~~ parting words to me were words of encouraging support to come to this hearing armed with the support of Michael Hooker as well as the many strong supporter of this University here in this room this morning. N.B.: Lyn Scott, Hackney, President Friday.
- Among the 50 states, North Carolina stands alone in her strong and historic support of higher education. This state has in large part defined itself by the character of its great university -- yesterday, today and it is my hope, tomorrow. This state has invested generously in the University of North Carolina for more than two centuries now. And the return on that investment has been nothing short of remarkable. Today our 16-campus University is acknowledged not just as the *oldest*, but as one of the very *best* public university systems in this country and one of this

my friends + colleagues

state's greatest assets. This is a tribute, first and foremost, to the sustained commitment and leadership of the General Assembly. Yet the passage of time has taken a serious toll on the physical condition of our campuses.

- The General Assembly acknowledged the pressing capital needs of the University some two years ago, when you called for a comprehensive, independent study of the equity and adequacy of all University facilities, as well as for the development of a detailed capital plan to address identified shortcomings.

- Over the past 18 months, consultant Eva Klein has engaged the Board of Governors in one of the most thorough, well-documented assessments of capital facilities ever conducted by a university system. Like you, we were at first stunned by the magnitude and seriousness of the problems identified: a crushing backlog of deferred maintenance; the imperative to renovate and retrofit outmoded science facilities and other buildings for modern uses; and the need for new and updated facilities to manage projected enrollment growth of nearly 50,000 students.

- So as we approached the completion of the assignment given to the Unviersity by the General Assembly, we asked Eva to help us forge a rigorous capital plan that was in proper alignment with the University's enrollment planning and the academic missions of each campus. We believe the Phase I five-year plan ratified by the Board of Governors and transmitted to the legislature accomplishes this goal. To lessen the need for new space, UNC has adopted the most stringent space-utilization

standards of any public university system in the nation, and in planning for enrollment growth, we will use existing capacity to the fullest extent possible and promote economies of scale.

- Over the years, the General Assembly has been generous to *UNC when capital funds were available*. But as so starkly revealed by Eva's report, North Carolina's traditional pay-as-you-go approach to capital funding will fall far short of the amount needed to repair, modernize, and expand UNC facilities. We are grateful that Treasurer Boyles brought his vast experience and expertise to the problem and helped devise a sound, fiscally responsible solution. And we are equally grateful that this proposed financing strategy has been embraced by President Pro Tem Basnight, Speaker Black, Governor Hunt, and many others business and government leaders. The Chancellors of our campuses and their staffs have worked intensively to provide the detailed information about facility needs and building condition.

- The General Assembly's approval of the financing legislation advanced in Senate Bill 912 and House Bill 1481 would provide a rare opportunity for us to recapitalize—to rebuild—the University of North Carolina for a stronger future. Such investment now is absolutely essential if we are to prepare for unprecedented enrollment growth; to prepare our campuses to take advantage of technological change and to be more productive and competitive in research and technology transfer. Never before in the history of America has a university education been more important. ~~Ear~~ We are witnessing the transition to a *knowledge*-based economy in which

our *greatest* competitive advantage is our *people* and the skills, innovation, and know-how they bring to the table.

- For more than two centuries, the fortunes and future of UNC and the state of North Carolina have been inextricably linked. Our forefathers had the vision, the faith, and the courage to create the first public university in America. Today we ask for that same sort of vision. I ask you to make an investment in an institution that is a proven income-generator for our state. I urge you to invest in the University in the spirit of your forebears—in the certainly that this is an investment in our future.

John Saunders
6/29/99
8:30 am
House Finance

CONSTITUTIONAL AUTHORIZATION OF NON-VOTED PUBLIC DEBT IN NORTH CAROLINA

The Constitution of North Carolina authorizes the General Assembly to empower The University of North Carolina to borrow money and issue bonds for its repayment with or without a vote of the people of the State, as the General Assembly determines to be in the best interest of the State.

In 1967, the Supreme Court of North Carolina in the case of Vance County v. Royster, 271 N.C. 53, had occasion to interpret Article VII, Section 6 of the Constitution as it then read:

> "Sec. 6. No debt or loan except by a majority of voters. No county, city, town, or other municipal corporation shall contract any debt, pledge its faith or loan its credit, nor shall any tax be levied or collected by any of the officers of the same except for the necessary expenses thereof, unless approved by a majority of those who shall vote thereon in any election held for such purpose."

The specific issue before the Court was whether a contract entered into by Vance County to pay the federal government $1,250 a year for 25 years for the use of land for a public airport constituted a "debt" that required the approval of the voters of the county to be valid.

The Supreme Court concluded that the lease did constitute a "debt" that required voter approval under the Constitution--and that any enforceable contractual obligation except revenue bonds required a popular vote of approval. The result was a substantial restraint on what had generally been thought by local government lawyers to be the ability of local (and state) governments to borrow money without a vote of the people so long as the faith and credit of the borrowing unit were not pledged to its repayment.

The General Assembly of 1967 created the Local Goverment Study Commission to make a thorough study of the structure, organization, powers, and financing of local government in North Carolina. In its report, filed with the 1969 General Assembly, that Commission recommended, among other matters, that "[t]he General Assembly should have authority to determine what contracts other than contracts creating general obligation debt must be submitted to popular vote." [Report of the Local Government Study Commission, 1968, p. 7.] One stated intent of the Commission was to overrule the Vance County decision.

Pursuant to that recommendation and others, the Study Commission proposed a general revision of the constituitonal provisions with respect to public finance, especially Article

V, the finance article. That Commission's recommendation was endorsed by the North Carolina State Constitution Study Commission (1968). It was enacted with minor revisions by the 1969 General Assembly, ratified by the qualified voters of the State in 1970, and took effect by its own terms in 1973. [N. C. Sess. Laws 1969, ch. 1200.] (The delayed effective date was to allow time for the enactment of implementing legislation.) The provisions of the Constitution relevant to the proposed bond issue date from that amendment.

The pertinent provisions of the Constitution with respect to state and local government borrowing are closely similar in language and in legal effect. Thus most court interpretations of the provisions with respect to local government apply as well to state government borrowing.

Article V, Section 3, of the Constitution now reads in part:

> "The General Assembly shall have no power to contract debts <u>secured by a pledge of the faith and credit of the State</u>, unless approved by a majority of the qualified voters of the State who vote thereon, except for . . . [several narrowly defined purposes, such as suppressing riots, or] for any

other lawful purpose, to the extent of two-thirds of the amount by which the State's outstanding indebtedness shall have been reduced during the next preceding biennium." [Emphasis supplied.]

Article V, Section 4, contains a virtually identical provision with respect to the contracting of debt by local governments. That provision the Supreme Court was called upon to interpret in 1991 in Wayne County Citizens Association v. Wayne County Board of Commissioners, 328 N.C. 24. The county had entered into an installment purchase contract with a financial institution whereby the county contracted to make annual payments to the institution for a specified period in return for the erection of court, jail, and office buildings for the use of the county. The county by its contract expressly denied that it was making a pledge of its faith and credit to pay the lender; its security was limited to a security interest in the land on which the buildings stood. While it was anticipated that the annual payments would be made by the county from tax funds, the contract expressly provided that such payments would be discretionaryon the part of the county. And in the event of foreclosure by the creditor, a deficiency judgment against the county was contractually prohibited.

The Supreme Court found that the contact was not a violation of Article V, Section 4, despite the lack of a provision for a public vote on the issuance of debt, because there was no pledge of the faith and credit of the borrowing county--that is, no commitment of the taxing power of the county--to secure repayment. On that point, the Supreme Court wrote:

> "Plaintiffs argue that . . . [the authorizing statute] is unconstitutional because the statute allows the County to enter into an agreement pursuant to which the County may expend tax revenues in future years without a vote of the people. We find no merit in this argument. What is being pledged as security is the constitutionally significant factor. Unlike general obligation bonds, wherein the taxing power of the governmental unit is pledged, in installment purchase contracts, only the property improved is pledged. The possibility that appropriations which might include income from tax revenues will be used to repay the indebtedness under the contact is not a constitutionally significant factor." [Emphasis supplied.] 328 NC. at 31.

Thus it is clear that the Constitution of North Carolina, as interpreted by our State Supreme Court, empowers the General Assembly to authorize The University of North Carolina to issue the proposed university improvement security interest bonds without a pledge of the faith and credit of the State being given for their redemption, and as no pledge of the faith and credit of the State is to be given, no vote of the people of the State is required to authorize the bonds.

27 June 1999

John Sanders

OUR VIEW

Critical needs for the UNC System

Remember the muffler commercial that warned: "Pay me now or pay me later."

The UNC System's Board of Governors is facing such a situation, but in reality, the governors have no choice. They need $7 billion now to prop up the infrastructure of this state's most important resource, its university system.

That is the price tag placed on the capital needs of the 16-member university system. It's a lot of money for a state that is cutting taxes, but state Treasurer Harlan Boyles has a plan to raise it. What the plan needs is the signature of our General Assembly.

The UNC system has traditionally taken a pay-as-you-go approach to capital needs for its member institutions. That approach has been much more favorable to the more prestigious universities, such as the ones in Chapel Hill and Raleigh, than it has to minority universities, such as the one in Pembroke.

The University of North Carolina at Pembroke is hoping that the current legislative session delivers money for a regional center. A new science building is also on UNCP's most-needed list.

Boyles' plan would provide enough cash that both of UNCP's needs could be met, and would also help assure that none of our universities would have to settle for the shortest stick.

Boyles proposes that the General Assembly approve the sale of two new kinds of bonds. The state would repay one set of bonds with money that it has used annually to met the UNC System's capital needs. The universities themselves would pay off the second set of bonds with revenue that is generated through dormitory and parking receipts, athletic events, fees and other such sources.

The plan has the support of the governors. Boyles told them earlier this month: "To rely on the pay-as-you-go-system would mean we would be getting further and further behind. And in the eyes of a business person, that would not be good."

Boyles even went so far as to call the funding needs a "moral obligation" that the state must meet. Our lawmakers would be wise to listen to Boyles and move quickly to douse this threat to a state treasure.

VP Public Affairs
& Univ. Advancement
JUN 0 2 1999
Rec'd by

residence, improved walkways, a bicycle lane and land purchases. The plan also mentions five demolition projects and sets aside money for a pedestrian mall on Laurel Street with a bell tower to provide a distinctive image to the university."

Fort said, "We have a need for a modernization of the entrance to our campus so it presents a look as a university should."

But one of the largest single expenses is a central cooling plant. The price tag is $26.25 million.

The other big-ticket projects include $29.47 million for a classroom and laboratory complex, $21.8 million for Hines Hall's replacement, and $10.7 million for renovations to Carver Hall.

There's also $6.3 million to buy land. "That's something we've been seeking for years," Fort said.

Klein told the committee some chancellors seem worried that the second half of this 10-year plan won't happen. Neither Sullivan nor Fort is among those worried chancellors.

Sullivan said she is convinced that if UNC uses money wisely and shows what it can do for students, faculty and the university system, the General Assembly will provide the funding that the Klein report indicates the system needs.

If the state legislators weren't serious, Fort asked, "Why would they have instructed the system to commission such a study?"

Although the projects in this draft "cover substantially the things that seem to be the most pressing needs on each campus," Klein said, this represents the first half of a 10-year plan.

"I have to tell you," she said, "there will still be needs at the end of the day when this project is over."

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system, according to the version the committee saw Monday. N.C. State would get $300 million, the second-highest total.

[redacted]eport recommends that UNCG and A&T each receive $150 million, which is money Klein said Greensboro's campuses desperately need.

"That's mainly corrective work for a campus that is just about falling down," Klein said of UNCG. "The same is true of A&T."

"Greensboro has buildings going back 90 years with only a paint job," Klein said. "There is a huge, huge, inventory of aged and crumbling space on those campuses dating back to the 19th century."

UNCG would get money for three new buildings, the renovation and modernization of six others, and improvements in road, heating, water, electrical and sewer systems. The campus also would get $10 million to buy more land.

The draft calls for $36.4 million for a new science building, $5.25 million for new research space and $21.6 million for a replacement for the McIver [redacted]ilding.

"If we had our druthers," Sullivan said, "McIver would be our first priority. ... In order to do a new McIver we have to get the land."

McIver was originally on the list as a renovation project, but Sullivan said renovating the building would be more expensive than replacing it. The Board of Governors may consider a renovation project under those circumstances if the building has historical significance, Sullivan said, but "that's not a historic building. ... It's a building in very bad shape."

The new science building was in the works before Klein's study began. "They're designing it now," Sullivan said.

UNCG's Petty Science Building is on a list with A&T's Hines Hall and a science building at N.C. Central University that Klein is particularly adamant about replacing.

[redacted]morally can't teach science in those buildings [redacted]ny longer," she said.

A&T also would get money for two new buildings, 12 building renovations, a new chancellor's

Education

News and Record

UNC is refining its building plan

6-9-99

By TIM THORNTON, Staff Writer
News & Record

Greensboro's university chancellors are happy about UNC's tentative building plan.

"I'm very pleased," UNCG Chancellor Patricia Sullivan said. "I'm really pleased if we can get this."

N.C. A&T Chancellor Edward Fort said he is pleased because it acknowledges a consultant's findings that A&T and UNCG are among the neediest campuses in the UNC system and sets to do something about that.

At the General Assembly's request, the UNC Board of Governors has developed a 10-year plan for construction, renovation and modernization on UNC campuses. The board hired Eva Klein & Associates to evaluate UNC's buildings and infrastructure and to determine what needs to be done so they can accommodate the system's needs through 2008. After 18 months, the firm produced a plan with a $6.9 billion price tag.

On Monday, Klein presented the board's Committee on Budget and Finance with a more detailed 5-year plan, one that names specific projects on specific campuses. "It is important that you realize this is a draft," Klein told the committee.

Today, the university chancellors will get a chance to share their opinions of that draft with Klein, UNC President Molly Broad and UNC general administration staff.

The report officially will be presented to the full Board of Governors on Thursday.

UNC-Chapel Hill would get $400 million over five years, more than any other campus in the UNC

FOUR SEASONS
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Asheville Citizen-Times
May 27, 1999

EDITORIAL

N.C. university system needs funds to shore up facilities

UNC President Molly Broad's first couple of years in North Carolina have brought some pleasant surprises and some major challenges.

Broad was delighted by the "love affair" between North Carolinians and their university system, she said, but dismayed to find the degree to which the 16-campus system is micro-managed by state legislators and regulations.

Broad and the UNC Board of Governors were more than dismayed, they were "astonished" she said, when an independent consultant they hired at the direction of the General Assembly reported on the university system's capital fund needs.

"The university is unbelievably undercapitalized for our current mission," she said, "Much less for the challenges we face."

More than 800 buildings system-wide are in serious need of repair. Some are in such bad condition the consultant recommended they be torn down and replaced. The cost to do maintenance that has been too long deferred and to retrofit 1950s buildings for teaching 21st-century science and technology: $3 billion. The cost to meet the challenge of providing services for an increased enrollment of 50,000 students expected in the next 10 years: $3.9 billion. Total capital needs: $6.9 billion.

Two factors are primarily responsible for the sad state of many of the university system's buildings. First, the state has always funded its capital fund needs on a pay-as-you-go basis. Legislators have been generous to the university when funds were available, but funds weren't always available. Moreover, the way legislators have been lobbied for specific buildings for specific campuses has favored new construction over maintenance or renovation of old buildings. Second, before 1993, the state didn't provide a steady source of maintenance funds. The amount the university system has received since then has not been nearly enough to address the need for maintenance too long deferred and the need to modernize antiquated buildings.

Broad and her team have worked closely with state treasurer Harlan Boyles to come up with a plan for addressing UNC's desperate capital fund needs. They've put together two pieces of proposed legislation that would allow the system to begin solving the problem.

The first would permit the state to issue limited obligation bonds to finance capital needs. Tax dollars would not be legally obligated to pay for projects funded this way. The projects themselves would be pledged as security on the debt. But the state would, of course, have a moral obligation to pay for the projects from state appropriations over a specified number of years. One big advantage is that the bond money would create a predictable revenue stream.

The second piece of legislation would permit the UNC Board of Governors to issue bonds to be repaid from revenue it receives on rents, fees, investment earnings on endowment funds, etc. The university would not be allowed to issue bonds pledging to repay them with state appropriations or with tuition receipts.

About 60 percent of the total capital needs would be paid for with state bonds and about 40 percent with the university bonds. That's consistent with the fact that over the past 75 years, more than 40 percent of capital construction on UNC campuses has been funded with money from private giving or other money not appropriated by the General Assembly.

Broad insists that one of the primary goals those designing these proposals had in mind was to avoid the need for significant increases in in-state tuition.

Treasurer Boyle's office has prepared two pieces of draft legislation and they've been discussed with the leadership in the state House and Senate. They proposed legislation is currently under review by legislative staff. Broad's hope is that the legislation will be introduced and approved during the current session. Otherwise, the university will, in all likelihood, get very little capital funding during the current year. That would be a tragedy given the extent of the need and the crush of students on their way.

North Carolina has one of the oldest and best university systems in the country. It is one of the state's most valuable assets and one of its proudest treasures. It's an investment we must protect and enhance.

Citizen-Times Asheville, NC

JUN 5 1999

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Q&A: UNC President Molly Broad charts future

Editor's note: *University of North Carolina President Molly Broad recently met with the Asheville Citizen-Times Editorial Board. Following are her comments and her responses to questions from the board.*

Broad: One of the major priorities for the University of North Carolina over the coming years will be to serve an unprecedented increase in projected enrollment – something like 50,000 more students over the course of the next 10 years. Part of how we have been addressing preparation for that enrollment growth has included evaluating the condition of our physical facilities and determining what physical changes we will need to accommodate that growth.

We were encouraged in doing that by the Legislature that wrote a special provision that mandated that the university hire an independent outside consulting service and build a 10-year capital plan for all 16 campuses...

The staggering conclusion of that analysis is that the university is dramatically undercapitalized and the estimated cost of that recapitalization of the university is $6.9 billion over 10 years. Three billion of it – nearly half of the entire amount – is for rehabilitation and modernization of existing facilities. There are some 800 buildings across the 16 campuses that comprise the universi[redacted]at will require major repa[redacted]renovation. And that is w[redacted]ead the $3 billion worth of [redacted]nization costs ...

We have a proposal that 60 percent of this $6.9 billion over 10 years would be funded by the state and 40 percent by the university.

We have been operating the university in a pay-as-you-go way, a phrase that does not accurately depict what is meant, because what we have really been doing is, as a state, putting money into a capital budget from year to year on the basis of what is left over.

So the state has been providing money on whatever is left over after the operating budget has been funded and some years it has been very little; other years it has been seemingly quite generous. The last two years that has averaged $120 million. Over the last 10 years we have received $87 million on average per year in capital. But it has been wholly inadequate to the needs of what is now a huge university and one that is very important to the future of the state. And so the conclusion was that this method of financing capital was inadequate to the current and future needs of the state. And that we needed to find some way [redacted]fusing additional capital.

We w[redacted]very closely with the state treasurer who has been the architect for gaining the triple A bond rating – the only state in the country, I believe, that has this high bond rating – by engaging in fiscally prudent actions on the part of the state. So that was the first place that we turned to in seeking advice and help because although our needs are great, it seemed essential that we find a fiscally prudent strategy for addressing those needs. And so we've worked closely with (state Treasurer) Harlan Boyles in the design in the development of a legislative initiative that would authorize two kinds of bonds, one on the state's balance sheet and the other on the university's balance sheet to simply define the differences between the two kinds of instruments.

The state bonds would be issued in the name of the university with some kind of property lien, some building that would be pledged against the bonds for the bond-holders, but coupled with an expression of legislative intent to fund on an annual basis the debt service to repay those bonds.

But other revenues, whether it is from residents halls, parking fees, earnings on endowment, athletic fees, research grants and contracts, all of the other sources of revenue would be pledged by the university to support those bonds. If you look at what the rating agencies say about the state of North Carolina, Moody's or Standard and Poors [redacted]have given us this triple A [redacted]you would find quite intere[redacted]

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"I will not be at all surprised if we see a quite significant escalation in post baccalaureate education (in Western North Carolina) and everywhere around the state. Whether that post baccalaureate education will in all cases lead to what you and I see as a master's degree or Ph.D., I think is less clear."

ingly that the investment of this state in its universities is viewed as one of the major factors for the economic strength of North Carolina. And the investment of prior generations in creating such a strong university is viewed as an important part with a significant return on that investment.

So why would Harlan Boyles recommend as strongly as he is recommending and supporting these instruments? In part it is explained by what the rating agency says about the underlying economic strength of North Carolina. And in part it is that the university of North Carolina is an asset of the state. It is owned by the state, it is one of the most important assets of this state and failure to invest in and maintain these facilities, not only will escalate the cost over the long haul but diminish the effectiveness of the university – which after all is a major contributor to the growth and prosperity of the state.

And so the state treasurer is actively supporting this initiative. We are seeking authorization from the General Assembly, hopefully during this session of the legislature. Otherwise it appears we may not have any capital budget in this session of the General Assembly. We would like to get at implementation of the plan.

Question: Most of us are familiar with the bonds that are authorized via referenda. These would not be authorized that way. Talk about the importance of those bonds in the context of how you have framed them, without going to the people.

Broad: I think there are several important reasons for doing it the way Harlan has proposed. One of those is that this will be a plan that evolves from year to year on the basis of what enrollment growth we actually realize.... We have laid out a plan that would fully utilize each of the campuses and as you know some of our campuses are small. They don't achieve the economies of scale and our plan anticipates that those campuses would grow more rapidly than the large campuses.

Question: Including UNCA?

Broad: Except UNC Asheville, where the mission is being an undergraduate liberal arts program with small classes. UNCA and the School of the Arts would be the exception to the general notion. Now, if our assumptions aren't realized and some of those small campuses like North Carolina A&T, Elizabeth City State University, Western Carolina, etc., if they don't grow as we plan, we are going to adapt this plan accordingly from year to year. General obligation bonds, in that sense, are a very blunt instrument. You get to write one proposition that goes on the ballot. You typically have to spell out each and every project, and it just didn't seem as if was going to work for what is clearly a dynamic and changing set of circumstances. And we also felt it was important for the General Assembly to evaluate the effectiveness of implementation from construction management and cost accountability and planning ...

Question: Is there the risk that

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tuition might have to be raised somewhere down the road to help repay the university's portion of that? Meaning that while tuition itself couldn't necessarily be used, by raising tuition, you could free up money from some other source, endowments or some other source?

Broad: That is quite explicitly not the intention ...

Question: Who is going to set the priorities for which buildings should be funded and will this alleviate some of the politics?

Broad: The procedure will be as it has been. That is, each campus will build its capital plan and capital priorities. That plan will be reviewed by the Board of Governors. I would say we are so much better informed today than the university was, say 10 years ago, about what our needs are. I think our priorities are going to be clearer, cleaner, stronger. But it will go to the General Assembly. And the General Assembly then will approve a capital plan and capital expenditures for each new capital construction project. What is different is where the financing source will come from.

Question: Here in Asheville just a mile from where we sit right now, the dropout rate of African-American male students is almost 60 percent. Do you have a concern that unless something is done by the university system or by the public that underwrites secondary education in Asheville and throughout our state that the university system – particularly the top-rated schools, like UNC-Chapel Hill – could become a university for the elite, for those who are white, whose families and communities support them and help them get through school?

Broad: Such an outcome would be inconsistent with all the history and the ideals of this university from its very earliest conception – more than 200 years ago, and would be inconsistent with the pattern right up to today.

From the university's perspective, I believe the greater problem is the college-going rate. It isn't the character or the diversity or the openness of the university. It's that not enough North Carolinians try to come to the university. Our educational attainment is below the national average ... So one of the strategies that we're embarking upon is a program we call Pathways that would begin with youngsters in the seventh grade and with their parents to talk to them about career options, to lay out what they need to take in high school in order to be admissible to the university and to help their parents plan for the cost of the university education....

Question: Do you have any specific ways or suggestions for high schools to do a better job preparing students for college.

Broad: Well, we are giving some serious thought to utilizing new approaches that are described as portfolio evaluation as a part of admission to the university, and I think, by extension, requirements for high school graduation. One of the main thrusts of these portfolios is for students to demonstrate, not just in a test score but to actually demonstrate through their own work what they know and can do.

"I have begun to gather a group of people who are willing to help to frame an approach and a strategy to assist the university in getting freed up from the regulatory red tape."

Citizen Times

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Question: Western North Carolinians claim that they don't have opportunities for graduate education here. I wonder if you acknowledge that as a real need and if there are plans to enhance those offerings?

Broad: ...I will not be at all surprised if we see a quite significant escalation in post baccalaureate education here and everywhere around the state. Whether that post baccalaureate education will in all cases lead to what you and I see as a master's degree or Ph.D., I think is less clear. Some of these may be intensive post baccalaureate experiences that lead to a variety of kinds of certificates, but I believe that graduate level education will be and must be expanded...

Question: You have been here about a year and a half. What has been a surprise?

Broad: Most of the surprises have been very positive. This state has a deep and abiding belief in its university in a way you do not find most places in this country. It is a belief that is rooted to the history of this state in which the university was launched within days after becoming a state and has been sustained over the years. And the university has received support from this state when other parts of the state budget have suffered. It has been amazing truly remarkable sustained commitment to the values of a great university, and the belief on the part of citizens who may have never stepped foot on a university campus.... It is almost a love affair that this state has with its university.

Perhaps the biggest surprise on the negative side might even be the flip side of the coin. Mainly that the state regulates this university, instructs it, micromanages it. These words all have different charges but the essence of it is that the state is intimately involved in guiding the course of the university that in this day and time has resulted in a bureaucracy that makes it very difficult for a university to be nimble. And in a time of great change these campuses have to be nimble, they have to be able to change directions, to start something new, to move quickly and it is very hard to move quickly.

Question: What would it take to change that?

Broad: It's a great challenge to me. But I have begun to talk with wise people who don't have a selfinterest. It's very hard because I have such an abiding self-interest in achieving this. I'm trying to find other people who don't have an ax to grind, who don't have a self-interest.... I have begun to gather a group of people who are willing to help to frame an approach and a strategy to assist the university in getting freed up from the regulatory red tape.

Question: Can you give us one example?

Broad: The University of North Carolina at Chapel Hill engaged in a competitive process for who would provide these computers to their incoming students. And they got an incredible deal from IBM. Appalachian State University would like to piggyback onto the terms of that contract. Makes sense, huh?

I signed off on it, said what a great idea. But no dice. The State Office of Procurement wouldn't let us do it. Now I am sure I don't understand all of the laws that they face and for which they need to stand accountable, so I am not being critical. I have not walked in their shoes. But from where I sit, the public purpose has been served. There has been open competition – the lowest price was awarded the contract. A small campus who couldn't leverage that market on their own could be the beneficiary. The vendor was willing. The logic of it is hard for me from where I set to understand, why this doesn't make enormous good sense.

Question: Sometimes we ask visitors who are in positions of authority and responsibility to give themselves a letter grade. So what's the letter grade for your performance?

Broad: Well, we have just spoken about the area where I think my performance is inadequate to the important goal, namely to achieve streamlining of the organization and make it possible for those campuses to be nimble. In other areas of the university, I feel very good about where we're heading and our ability to achieve the goals that we have. So I guess I give myself a B.

Daily News

In-Depth Study Needed Along With Full Truth

It is shocking news to hear that at the University of North Carolina we have some 700 buildings of one type or another which need renovating. But beyond the number of buildings is the estimated cost of repairing those buildings. We read that it will require more than $7 billion to do the complete job as it should be done.

The news about the university property takes on added significance when we read that Harlan Boyles, North Carolina treasurer, has come up with a plan which will bring a good measure of relief. In fact, some UNC leaders are already offering support for the Boyles plan. Molly Broad, president of the Greater University, seems to be enthusiastic about the plan.

Mr. Boyles is well-known as a man who does not believe in spending money foolishly. He is a true conservative, and when he recognizes that North Carolina must do something now about this situation, it seems to be time for all of us to sit up and take notice.

Under the plan as presented and as we understand the state would issue $2 billion in bonds and the university would issue $1.5 billion in bonds. The idea of the university issuing bonds is a new concept for this state to consider. Insofar as we know or believe, state universities have not in past years issued bonds.

Each session of our legislature appropriates money for university use in building repair or renovation. According to Dr. Broad, the money appropriated will just about equal the payments on the bonds on the annual basis.

We look at the proposition and frankly we doubt that there is any newspaper editor in North Carolina who can give a learned opinion on what to do. However, many of us realize the urgent needs and when we look at the Boyles plan, we cannot say that it offers the best answer. But we can and do say that this plan ought to be given in-depth study. We did not realize that we had as many as 700 buildings in need of attention.

Now some of these buildings are dormitories; some are classrooms; some are for special use; all play a part in the overall scheme of educating our young people.

There is one question which people over the state will be asking. Suppose the university cannot pay the annual bill and interest on bonds issued by the university — who pays then? We must suppose that the state of North Carolina must come to the rescue. Still, there are many other questions which will be asked and many answers yet to be given.

This is a huge matter and one which cannot and must not be taken lightly. The university system has been told to prepare to admit some 40,000 more students over the next 20 years.

And while we are dealing the educational cards, never allow us to forget the community college system.

Dispatch
Lexington, NC

MAY 1999

Bonds a creative solution to university needs

As a principle, pay-as-you-go has a lot to recommend it. But it's not always practical.

If we all followed the principle, for instance, most of us wouldn't have houses or cars or other big-ticket items because we'd have to save up the full amount of the cost before we made our purchase.

That's the same way the North Carolina university system has built its buildings and done its repairs and renovations. University administrators ask the General Assembly each year for money to build or renovate certain buildings and the work isn't done until the funds are appropriated by legislators.

But, especially given the state's current growth mode, that isn't working anymore.

A consultant says the 16 university campuses will need about $7 billion (yes, billion) in construction to cope with 800 buildings in need of renovation and repair and to provide enough additional space to care for an anticipated enrollment growth of 48,000 students over the next decade.

There is no way pay-as-you-go can solve that crisis.

So the UNC Board of Governors is asking the General Assembly for legal authority to issue $3.5 billion in bonds. Of that, $2 billion would be repaid by the legislature over the next 20 years.

The other $1.5 billion would be university system bonds that would be repaid from student fees, dormitory rents, research grant overhead, endowment earnings and other non-tuition revenue the universities collect.

UNC President Molly Broad makes a strong case for the "limited obligation" and "special obligation" bonds. Many states and even local governments have used this approach to try to catch up with serious backlogs. So it is not something new — just new for the university system.

We feel particularly optimistic about the wisdom of adopting the bonding program because it is suggested by State Treasurer Harlan Boyles, a very conservative guardian of North Carolina's dollars.

Boyles said Friday, "We're here to help because it's a good investment and the needs are critical. You need an infusion of funds immediately so you can head off some of the deteriorating circumstances you now see."

Senate President Pro Tem Marc Basnight is an enthusiastic backer of Broad's proposal — an important ally in getting the necessary legislation passed.

One problem that could arise is that the General Assembly would stop appropriating building funds during the years it is paying debt service on the bonds. That would be a foolish mistake because it would be creating an additional backlog of expensive building repair and renovation that future legislators would be forced to deal with.

Serious problems require innovative and creative solutions. Legislators should honor the Boyles-Broad plan and give quick approval to bills permitting the $3.5 billion in bonds.

THE NEWS & OBSERVER
WEDNESDAY, JUNE 2, 1999

Some ideas we could do without

Pssst. Can I interest you in a crummy idea? How about six of them from the General Assembly, which has been meeting since January in Raleigh?

Now don't get me wrong. The legislature has been doing many worthwhile things during the session. But I don't count playing loan shark, sugar daddy, bookie and gate keeper among those worthwhile things. Here are six crummy ideas being debated in the legislature:

Rob Christensen

CRUMMY IDEA ONE: Let's call it the loan-sharking enabling act. The finance companies want the legislature to give them authority to jack up interest rates — in some instances as high as 36 percent. This is at a time when most interest rates are near historic lows.

This could cost the state's waitresses, janitors, maids and other working stiffs up to $40 million per year. Many of these finance companies are not mom-and-pop operations but are subsidiaries of such banking giants as First Union and Bank of America.

Two bills affecting different parts of the industry have already passed either the House or the Senate. What's next, a bill, enabling finance companies to hire somebody to break your knee caps if you don't pay on time?

CRUMMY IDEA TWO: More sweetheart deals for big business. The state has been involved in a bidding war with other states to provide taxpayer incentives to companies that create jobs.

I'm not a hard-liner here. I can see giving money for a Nucor or a Wisconsin Tissue to open big plants in poor rural counties. But since when is go-go Charlotte an impoverished area? The Senate last week passed a bill that would allow financial incentives for US Airways and for TIAA-CREF, a New York-based pension-fund manager, both of which are planning new facilities in Charlotte. The bill also extends the incentives program, called the Bill Lee Act, from 2002 until 2007 even though studies have yet to prove that incentives are worth all the money.

CRUMMY IDEA THREE: The lottery. Turns the state into a bookie, promotes gambling and is a notoriously unreliable source of money for the state. Other than that, it's a great idea. Bills are pending in the Senate and House.

CRUMMY IDEA FOUR: Incumbents lining their own pockets. The House has been considering a bill to provide longevity pay for lawmakers — ranging from an extra $669 after five years to an extra $2,008 after 20 years. Companies award longevity pay to valuable long-term employees to reward their loyalty and to help keep them from changing jobs. Tell me again, why we should reward legislators who stick around 20 years?

CRUMMY IDEA FIVE: The Dark Ages are back. The legislature last week made Bermuda Run, a gated golf course community near Winston-Salem, an incorporated town. This idea was very popular in the Middle Ages, when cities built walls around them to keep away raiding Normans or Vikings. I can see Bermuda Run having trouble with turf grass, but Visigoths?

CRUMMY IDEA SIX: The UNC Board of Governors wants authority to borrow $3.5 billion for university construction without submitting the bonds to the voters in the form of a referendum. I'm not saying repairs and new buildings aren't needed. But whatever happened to faith in the citizens who built one the country's great university systems? I bet the finance companies would be willing to loan UNC the money, if Molly Broad doesn't mind paying a 36 percent vigorish.

Rob Christensen can be reached at 829-4532 or at robc@nando.com

the chapel hill Herald

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UNC system seeks loans for renovations

Pay as you go method can't keep up with 791 buildings

By ERIC FERRERI
The Herald-Sun

DURHAM — Until recently, the UNC system's method of paying for renovations to its buildings was simple.

Need some repairs? No problem, as long as there's cash available. No cash? Then the project gets stuck on the back burner until money is freed.

That system, referred in financing circles as the "pay as you go" method, works relatively well for any single building renovation project. But when you have 791 buildings in need of large-scale improvements, there's no way to find enough cash.

The UNC system's Board of Governors took a dramatic step toward solving that problem Friday, endorsing a plan set forth by State Treasurer Harlan Boyles that would let the state borrow the money to get the work started immediately.

Under two proposed pieces of legislation, bonds would be sold to raise about half of the estimated $6.9 billion the system will need during the next decade to fix and improve decaying laboratories, inadequate classrooms and undersized offices at UNC's 16 universities across the state.

The legislation would provide $3.5 billion that would be spent during the next five years and would take roughly 15 to 20 years to pay back.

For too many years, the UNC system has relied on the shortsighted pay-as-you-go method of financing. Boyles told board members who met Friday at N.C. Central.

"Pay as you go is dependent on resources available at the time," he said. "If there's no money, there's no improvements. We've relied upon, too heavily, a pay as you go system that relied on cash at hand."

And university officials say they don't have time to wait.

Across the system, officials are preparing for an influx of students during the next decade that will surely stretch the boundaries of some campuses. About 48,000 additional students are expected to arrive on UNC campuses in the next 10 years.

This enrollment surge necessitates new residence halls and academic buildings, as well as renovations to existing facilities. Thus, the bonding proposal is all the more vital, Boyles said.

"We face a critically important challenge in accommodating the influx of enrollment we anticipate," said Molly Broad, president of the UNC system.

"If we fail to meet that need, our economy and quality of life in North Carolina will suffer. From our point of view, this [legislation] is an imperative. There are [about] 50,000 students coming our way, and we can't postpone

please see LANS/2

the chapel hill Herald

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LOANS

when they arrive at our door."

There are two pieces of legislation that will go to the General Assembly for approval. One is for the sale of limited obligation bonds, which will be sold by the state. As new buildings are built or existing buildings are renovated, those buildings will be used as collateral against the bonds used to pay for the work.

The second type would be special obligation bonds, issued by the university. They will be issued for specific, revenue-producing projects such as a residence hall that brings in student fees or a parking deck that collects parking fees. In those cases, the anticipated revenues will be pledged as collateral.

These funding models, while foreign to UNC, are common at other universities as well as on a smaller scale in many North Carolina cities and counties, officials say.

For many university officials, the money can't come fast enough. Many UNC campuses have found themselves handcuffed by a lack of money to do wide-scale improvements.

A recent higher education consultant's report on the state of disrepair of so many buildings made many officials take notice.

"The university is one of the most important assets of this state, yet we find that asset is in significantly diminished condition," Broad said.

"Buildings have deteriorated. Buildings that no longer serve the research function of a major university."

On the UNC Chapel Hill campus, officials have long advocated for an alternative to the pay-as-you-go method of financing, said James Ramsey, Carolina's vice chancellor for finance and administration.

"It's the way to go," he said of the bonding proposal. "We've been promoting debt financing for six to nine months because of the needs on our campus. We think it's critical."

Of the 791 buildings in need of repair, officials have found 19 that may be demolished because the cost of renovating them would be more than simply replacing them. But officials still must evaluate whether those buildings can be converted for other uses. And some of those buildings also may hold historical significance that would necessitate their preservation.

Many legislators were caught by surprise two months ago when officials first started talking dollar figures in relation to capital repairs. But by now, UNC officials say they're confident legislators have gotten past the sticker shock and understand the need for sweeping improvements.

"We're asking for things that are a dire necessity, to protect our investment," said Ben Ruffin, chairman of the Board of Governors. "They understand that."

Rob Lamme, a spokesman for N.C. Senate President Pro Tempore Marc Basnight, said Friday that Basnight is convinced the bond issuance is the best way to pay the overwhelming costs.

"The UNC system has been an engine for our state's economic development through this entire century, and he wants to make sure that remains true in the next one," Lamme said.

The Chapel Hill News

MAY 16 1999

UNC will seek power to issue bonds

DURHAM — The UNC Board of Governors agreed Friday to ask the legislature for new laws that would allow the state and the university to borrow billions of dollars for campus construction.

University leaders hope to secure at least $3.5 billion through bonds to move ahead quickly on an estimated $6.9 billion in overdue renovations and new buildings. They have said they need extensive improvements to be able to accommodate an extra 48,000 students in the next decade as the college-age population swells.

State Treasurer Harlan Boyles, who has advised UNC President Molly Broad on financing options, presented the plan to the board Friday at N.C. Central University.

"As the state's banker, I am here to say we want to be of help," Boyles told the governing board. "We're here to be of help because it's a good investment and the needs are critical. You need an infusion of funds immediately so you can head off some of the deteriorating circumstances you now see."

The board unanimously endorsed Boyles' suggestion for bonds — to be issued by the state and the university.

In the coming weeks, legislators will debate bills that would authorize two types of bonds, neither of which would require voter approval.

One bill would permit the state to issue "limited obligation" bonds, which would essentially create a moral obligation — but not a legal one — on the state to repay the debt. UNC leaders hope to secure $2 billion through this method — to be repaid over 20 years by annual appropriations from the legislature.

The other bill would allow the UNC board to issue "special obligation" bonds to be repaid from defined sources of income — dorm rents, student fees, endowment earnings and overhead receipts from research grants. Tuition could not be used. UNC leaders hope to raise $1.5 billion through this type of bond, which is very similar to revenue bonds already used routinely to build parking decks and residence halls.

UNC Board member Jim Phillips Jr. said he was optimistic about the plan's chances in the legislature. It already has received strong support from Senate President Pro Tem Marc Basnight.

The Charlotte Observer

MAY 13 1999

Officials ready with bond plan for UNC

UPDATING UNIVERSITY SYSTEM CAMPUSES

Boyles

UNC System President Molly Broad (right) and State Treasurer Harlan Boyles (left) will propose issuing **$3.5 billion** in bonds to accommodate **48,000** more students in the next decade.

Broad

By JENNIFER ROTHACKER
Staff Writer

UNC System President Molly Broad and State Treasurer Harlan Boyles will unveil a plan Friday that would use bonds to help pay for billions of dollars in renovation and construction needs at the system's 16 campuses.

A consultant has warned UNC system leaders it will take up to $6.9 billion to refurbish and expand campuses to accommodate an anticipated enrollment growth of 48,000 students in the next decade.

Broad and Boyles hope bonds can pay that bill. The bonds would not need voter approval, even though some of them would be repaid through tax dollars. The legislature would set the amount to be borrowed, although it's unlikely they would agree to the full $6.9 billion.

If the legislature signs onto the plan, it would mark a departure from the state's usual pay-as-you-go strategy for such building needs — a strategy that has delayed many campus projects since ready money tends to be scarce.

"We have 50,000 more students who will be heading our way in 10 years," Broad said Wednesday. "Since we can't postpone their arrival, we can't wait to update these facilities."

While Broad has already enlisted the support of legislative leaders, some legislators are wary when they hear the word "bond."

"It's easy to say, 'Let's go out and get bonds,'" said N.C. Sen. Bob Rucho, R-Mecklenburg. "Bonds are no panacea. . . . That's just not the answer to all the questions."

Rucho admits, though, that number crunchers have thrown some startling figures at the UNC system this year.

Eva Klein, a consultant hired by the state to assess the condition of all 16 universities, found $6.9 billion in needed improvements and new construction. She urged legislators to fund that bill by looking beyond their annual budget allot-

Please see **UNC** */ page* **2C**

The Charlotte Observer MAY 1999

Bonds to help prepare for wave of students

UNC *from 1C*

ments.

In a separate study, university leaders have predicted the system's 16 schools must absorb 48,000 more students in the next decade to handle the state's growth.

Finding the money to handle all of that is the big problem.

Traditionally, the state annually provides the system money for new building and renovation needs, but the amount is inconsistent. While it has averaged $86.7 million since 1989, it has ranged from $1.6 million in 1990 to $125 million in 1997.

"This (plan) will begin the public dialogue. It's a conversation that could go on for some time."

MOLLY BROAD
UNC SYSTEM PRESIDENT

Still, it's never been enough to do all the work that needs to be done, Broad said.

Now, with Klein's sobering billion-dollar figures, Broad and state treasurer Boyles are calling on the state to provide more money up front through bonds.

Under the plan she and Boyles have penned and will present to the Board of Governors Friday:

- The state would be asked to issue limited obligation bonds. To pay them off, the state would redirect the UNC system's annual capital budget to debt relief.

For example, rather than give the system $200 million next year to fix and build facilities, the legislature would use that money to pay off the bonds.

That way, Broad says, the system would get its capital funding up front in a lump sum without the legislature "breaking the bank."

- The Board of Governors would have authority to issue bonds for campuses needing the money. The campuses would then repay their debt through money collected from such things as dorm rents, food receipts and parking fees — but not tuition.

Broad hopes for legislative approval this session. If she gets it, the bonds could be issued within six months and the system could completely finance partially-funded projects, renovate the most desperate facilities and build new ones to accommodate growth at the system's burgeoning campuses, like UNC Charlotte.

The Charlotte Observer MAY 15 1999

UNC system board endorses bonds for its capital needs

The board that governs North Carolina's university system endorsed a plan Friday to seek billions of dollars in bonds to pay for extensive renovations and build new facilities at the 16 UNC campuses.

UNC System President Molly Broad and State Treasurer Harlan Boyles have drafted two pieces of legislation that would help pay for $6.9 billion in rehab and construction costs recently identified by a consultant.

One piece of legislation would permit the state to issue "limited obligation" bonds that would be repaid with capital funding the state usually gives the UNC system annually.

The second piece would give the Board of Governors power to issue "special obligation" bonds to campuses. The campuses would repay the bonds with money raised through such means as parking, student fees or dorm rents.

The proposal gives the UNC system the money to make critical repairs up front, rather than forcing it wait for the money piecemeal in its annual budget. The plan now goes to the General Assembly to seek sponsors.

Broad hopes to see legislative action this session.

Jennifer Rothacker

The Charlotte Observer MAY 16 1999

EDITORIALS

Moral obligations

Funding proposal for UNC's critical needs makes sense

Jaws dropped and eyes popped when an education consultant told the University of North Carolina board of governors that the 16-campus system had capital needs approaching $7 billion. How could the state keep up with repairs and renovations, let alone provide space for an expected 48,000 additional students, at a time when lawmakers were merrily cutting taxes and limiting choices?

Boyles

Here's how, says state Treasurer Harlan Boyles: Create two new kinds of bonds that will allow the university to jump-start its capital needs response with more than $3 billion in spending for renovations and new facilities, and pay the money back over 20 years. Mr. Boyles, one of the nation's tightest-fisted state financial officers, has developed bond proposals that he says other states have used to deal with similar problems. "It's a good investment and the needs are critical," he added.

His proposal would work this way: The legislature would create and the state would issue limited obligation bonds that would be repaid through annual legislative appropriations equal to about what the legislature has allocated to the university for capital spending over the past decade. The General Assembly would also create special obligation bonds to be issued by the UNC board of governors and repaid through revenue streams available on the campuses — dormitory and parking receipts, athletic proceeds, research overhead and other sources of cash.

This would represent a starkly different approach to funding capital needs on UNC campuses — but it also represents the most promising approach. New tax sources seem out of the question, and the legislature faces tough choices this year thanks to tax cuts and having to repay taxpayers for levies that have been ruled unconstitutional. The old pay-as-you-go method is inadequate at a time when there are so many construction needs and when so many new students will arrive on university campuses in the next decade.

"To rely on the pay-as-you-go-system would mean we would be getting further and further behind," Mr. Boyles told the board of governors Friday. "And in the eyes of any business person, that would not be good."

Mr. Boyles' proposal, developed in conjunction with university leaders, makes sense. Key legislators are beginning to recognize that, and are warming to the idea. Some lawmakers think it's such a good idea, in fact, that they are proposing the community colleges piggyback on the plan, too.

But that might limit the effectiveness of the bonds in several significant ways, hamstringing the state's ability to provide needed facilities on UNC campuses. The university system, after all, is the brightest gem and most important asset of the state, while community colleges are the crown jewels of the counties. They have significant needs as well, and deserve adequate funding in separate legislation.

UNC President Molly Broad and Treasurer Boyles deserve credit for developing the proposals and building public and legislative support for them. As Mr. Boyles puts it, the funding needs are not so much a legal obligation as "a moral obligation" of the state. The bond plan would turn these unfunded obligations into long-lasting state assets that would contribute to continued progress and economic prosperity. The General Assembly should listen — and approve the UNC bonds package.

Official: Proposed UNC construction bonds could benefit ECU

■ UNC President Molly Broad and state Treasurer Harlan Boyles will unveil a plan to fund up to $6.9 billion to refurbish and expand the system's 16 campuses.

Staff, wire reports

A plan to use bonds for billions in UNC system construction needs would greatly benefit ECU, one school official said.

University of North Carolina President Molly Broad and state Treasurer Harlan Boyles will unveil a plan today to fund up to $6.9 billion to refurbish and expand the system's 16 campuses to accommodate an anticipated enrollment growth of 48,000 students in the next decade.

The state's General Assembly, which has always appropriated capital funds on a year-to-year basis, will have to approve the plan.

"This would be a major impact to East Carolina if there would be a bond issue and it were to pass," said Richard Ringeisen, ECU vice chancellor for academic affairs.

A bond issue would be an improvement over the pay-as-you-go practice used by universities, including ECU, Ringeisen said.

"ECU could plan when we could construct our buildings as opposed to asking each year for funds from the legislature," he said.

He noted that the more than $30 million in renovations to Joyner Library were funded through state bonds.

A consultant has warned UNC leaders that it will take up to $6.9 billion to prepare for the expected enrollment boom.

"We have 50,000 more students who will be heading our way in 10 years," Ms. Broad said Wednesday. "Since we can't postpone their arrival, we can't wait to update these facilities."

That influx of students will be felt by ECU, triggering the need for more classrooms and laboratories, especially with Chancellor Richard Eakin's goal of increasing enrollment by about 9,000 students in the next 10 years.

Topping ECU's list of building priorities is a science and technology center. The school has asked the state legislature for $53 million to construct the facility.

However, Ringeisen said a bond issue probably will not materialize in time to pay for the center.

"We still hope to have the science and technology building funded (this legislative session), because the bond issue is a relatively long process," he said.

Site preparation is expected to begin this summer using $3 million

See BONDS, A12

provided by the state legislature.

If lawmakers are unable to find money for the project this year, bonds "would give us assurance it could be funded in the distant future," Ringeisen said.

"We must have it," he said of the new facility.

The bonds would not need voter approval, even though some of them would be repaid through tax dollars.

The Legislature would set the amount to be borrowed, but it's unlikely that lawmakers would agree to the full $6.9 billion. Boyles has been working with UNC administrators on a borrowing plan legislators can accept.

If the Legislature signs onto the plan, it would mark a departure from the state's usual pay-as-you-go strategy for such building needs — a strategy that has delayed many campus projects.

Traditionally, the state annually provides the UNC system money for new building and renovation needs, but the amount is inconsistent. While it has averaged $86.7 million since 1989, it has ranged from $1.6 million in 1990 to $125 million in 1997.

Still, it's never been enough to do all the work that needs to be done, Broad said.

Now, Ms. Broad and Boyles are calling on the state to provide more money up front through bonds.

Today, Boyles will brief the UNC Board of Governors on two bills. One would authorize limited obligation bonds, the other would allow special obligation bonds.

Boyles compared limited obligation bonds to a home mortgage. They would be secured by liens on university property and paid for through annual appropriations from the General Assembly.

If the General Assembly were to take $200 million and apply that money to debt payment instead of capital projects, UNC could sell $2 billion to $2.5 billion in bonds, roughly a third of what the system needs over the next decade, Boyles said. It would take 15 to 20 years to pay those bonds off, Boyles said. If the whole $6.9 billion were funded that way, the annual debt payment would be about $700 million.

Special obligation bonds would be paid with what Boyles called "unencumbered resources the campuses would generate," for example, various fees charged to students.

The financing proposals are likely to occupy a good deal of the Board of Governors' time this week, beginning with today's meeting of the Committee on Budget and Finance.

"This will begin the public dialogue," Ms. Broad said. "It's a conversation that could go on for some time.

Greenville Daily Reflector
5-14-99

FROM ECU NEWS BUREAU
05.17.1999 11:15
P. 2

The Herald·Sun

5-17-99

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Editorials

UNC CAPITAL NEEDS

System ditches pay-as-you-go

The UNC system Board of Governors has taken prudent steps to prepare the system's 16 universities for the next century. The board has approved a plan allowing universities to borrow money to pay for critical improvements and renovations.

State lawmakers would be wise to give this timely legislation full consideration when it comes before them. Allowing universities to borrow money by way of general obligation bonds is an idea whose time is past due. The system has traditionally relied on the outdated pay-as-you-go method to pay for its new buildings and renovations.

But the problem with pay-as-you go is that sorely needed capital improvements are often delayed because there is no money on hand to pay for them. And while pay-as-you-go is fiscally prudent in the short term, it could prove to be a long-term liability if buildings on the system's 16 campuses are allowed to further deteriorate. System officials say 791 buildings need repair and that 19 of them may have to be demolished because renovation would be too costly.

The funding plan recommended by State Treasurer Harlan Boyles on Friday calls for $6.9 billion in bonds to be issued over the next 10 years. The money would be used to make badly needed repairs to laboratories, classrooms and offices. Roughly half of that amount, $3.5 billion, would be spent over the next five years.

The plan will come in two parts for state lawmaker's consideration: One would authorize the sale of general obligation bonds by the state. The new buildings would be used as collateral against the bonds to pay for the work. The other would permit universities to issue special obligation bonds. These bonds would be tied to specific revenue-producing projects like residence halls. Fees collected would be pledged as collateral.

The General Assembly's approval of this proposal couldn't come soon enough for a university system expecting 48,000 additional students to flood its 16 campuses over the next 10 years. New dormitories, new academic buildings and major renovations to existing facilities will be in demand before the signatures dry on the documents authorizing the bonds.

"If we fail to meet that need, our economy and quality of life in North Carolina will suffer," says Molly Broad, president of the UNC system. "From our point of view, this is an imperative."

It certainly is.

THE NEWS & OBSERVER
THURSDAY, MAY 13, 1999

UNC wants construction bonds

Campuses suffering from decades of neglect

BY JANE STANCILL
STAFF WRITER

The University of North Carolina system, facing a $6.9 billion construction and renovation tab, wants permission from the legislature to borrow $3.5 billion and begin construction immediately.

According to a plan drawn up under the direction of state Treasurer Harlan Boyles, the university system wants new laws that would allow both the state and the university to issue bonds to pay for capital improvements on the public campuses. UNC leaders want the state to issue bonds for $2 billion and the campuses to issue bonds for $1.5 billion over the next five years. The debt would be paid over 20 years.

'Do we continue to sweep the circumstances under the rug or move forward ... ?'

State Treasurer Harlan Boyles

If UNC is successful, the money would transform its 16 campuses into modern universities with high-tech classrooms and sophisticated laboratories. The scheme would also be a major departure from the way the university system historically has paid for new buildings — by relying on inconsistent annual appropriations from the state.

That pay-as-you-go system simply hasn't worked, Boyles said Wednesday. Now the university has little choice but to borrow

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BONDS

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money to catch up on a huge backlog of facility repairs.

"The university has a serious problem," he said. "The dollar amounts are quite staggering. The question is: Do we continue to sweep the circumstances under the rug or move forward with a very positive strategy for dealing with the needs?"

According to a recent report by a higher education consultant, the state's campuses are in deplorable condition after decades of neglect. The state has dedicated regular money for repairs only since 1993, and about 800 buildings are due for significant renovation. Rapid improvements are needed if the campuses are to accommodate 48,000 extra students by 2008, UNC officials say.

Boyles will present the financing plan Friday to the UNC Board of Governors. Already, discussions are under way between top UNC officials and the legislative leadership.

Rep. Leo Daughtry of Smithfield was skeptical of the idea.

"It's not a new thing," said Daughtry, who recently stepped down as Republican caucus leader in the House to prepare for a campaign for governor. "It's a question of how much debt the state can handle." He said the legislature also needs to keep in mind the needs of the community college system.

If legislators approve the bond proposal, the UNC system could borrow billions of dollars almost immediately — kick-starting a construction boom but also saddling the state and the universities with long-term debt.

The state would pay off the debt annually for two decades — but the payments wouldn't be much more than what the state already spends on UNC construction, Boyles and UNC President Molly Broad said.

Instead of appropriating an annual capital budget for the universities, the legislature would have to commit the money to debt service payments each year until the debt was paid off. Last year, the General Assembly appropriated $125 million to the UNC system; if the state paid annual debt service at the same level, it could support more than $1.5 billion in construction, UNC officials say.

The campuses would pay off their loans using receipts from dormitory rent, student fees, endowment income and overhead receipts from a burgeoning research enterprise. According to the draft legislation, the universities would not be allowed to use tuition receipts or annual operating money from the state to pay debt.

Broad on Wednesday noted that most public universities sell bonds to pay for capital improvements.

"The advantage for us is that we would receive a significant infusion of capital at a time when we're preparing for unprecedented enrollment growth," she said.

The State University of New York received $2 billion recently from state-issued bonds, and the University of Connecticut has a $1.2 billion bond-financed building spree under way, she said.

Boyles said the state-issued bonds, called "limited obligation bonds," are the type used successfully by counties and cities for almost two decades. Those bonds, which do not require voter approval, have been used to finance schools, courthouses and recreational facilities.

The university-issued bonds, called "special obligation bonds," would require the campuses to identify defined revenue streams to borrow for specific projects.

If the scheme works, the university system would likely be given the green light to expand its use of bonds in the future, Boyles said.

The question is whether the General Assembly will be willing to push the debt onto future legislatures.

Broad said she was optimistic.

"I think they're beginning to feel a little more comfortable with the feasibility of this."

Jane Stancill can be reached at 829-4861 or janes@nando.com

THE NEWS&OBSERVER

MAY 14 1999

Expensive catch-up

The University of North Carolina system looks to bonds as an alternative to 'pay as you go' as a means of financing building improvements. The needs are plain, and the proposal deserves careful study.

It would be a radical change in a state that has always taken a conservative approach to finances. But the University of North Carolina system's leaders believe they face a crisis with worn-out and outdated buildings, at a time when enrollments are expected to soar. Rather than pay for renovation projects as money becomes available from the General Assembly, university leaders want the state, and the university, to issue bonds totalling $3.5 billion — in effect providing borrowed money that would be available for use over the next five years and be paid back over the next 20 years. The state would issue $2 billion worth of bonds, and the university $1.5 billion.

President Molly Broad of the UNC system accurately characterizes the difference as that between paying cash up front — meaning that a relatively modest amount of work could be done in a given year — and paying for buildings as one would pay for a house. That approach enables one to move in immediately and then repay a loan over time.

Broad makes a credible case that the money is, in fact, needed right now. She cites a consultant's finding that 800 buildings are due for renovation and that repairs have been significantly neglected. (The consultant's estimate for all the system's renovation and construction needs to cope with an anticipated enrollment boom within 10 years is nearly $7 billion.)

Broad's argument is supported by State Treasurer Harlan Boyles, the guardian of North Carolina's top-flight credit rating and a man not known to be reckless with a public buck. Boyles is to present the financing proposal to UNC's Board of Governor's today.

At a time when education dollars are stretched thinly over the university system, the community college system and the public schools, a means of financing UNC's needs other than the traditional one of "pay as you go" is attractive.

Obviously, the idea needs a painstaking look from the General Assembly, where legislators will doubtless have many questions. But it does deserve that look, and not a dismissal as too much of a departure from the familiar way of doing business. (And though it may be different for North Carolina, bond issues for universities' capital projects have been used by other states.)

The UNC system, with its 16 campuses, is indeed an economic and cultural jewel that it is in the state's profound interest to nurture and protect. The community college system is also an asset whose value is growing steadily. And the public schools have long been underfunded and under-appreciated. Reconciling the various needs of public education with the available funding, or despite a shortage of funds, is a puzzle that can be solved only with creative thinking. The university's proposition is one such creative and plausible idea, one of a number of alternatives that the legislature should, and must, explore.

THE NEWS & OBSERVER MAY 1 99

UNC bond issue sought

By Jane Stancill
STAFF WRITER

DURHAM — The UNC Board of Governors agreed Friday to ask the legislature for new laws that would allow the state and the university to borrow billions of dollars for campus construction.

University leaders hope to secure at least $3.5 billion through bonds to move ahead quickly on an estimated $6.9 billion in overdue renovations and new buildings. They have said they need extensive improvements to be able to accommodate an extra 48,000 students in the next decade as the college-age population swells.

State Treasurer Harlan Boyles, who has advised UNC President Molly Broad on financing options, presented the plan to the board Friday at N.C. Central University.

"As the state's banker, I am here to say we want to be of help," Boyles told the governing board. "We're here to be of help because it's a good investment and the needs are critical. You need an infusion of funds immediately so you can head off some of the deteriorating circumstances you now see."

The board unanimously endorsed Boyles' suggestion for bonds — to be issued by the state and the university.

In the coming weeks, legislators will debate bills that would authorize two types of bonds, neither of which would require voter approval.

One bill would permit the state to issue "limited obligation" bonds, which would essentially create a moral obligation — but not a legal one — on the state to repay the debt. UNC leaders hope to secure $2 billion through this method — to be repaid over 20 years by annual appropriations from the legislature.

The other bill would allow the UNC board to issue "special obligation" bonds to be repaid from defined sources of income — dorm rents, student fees, endowment earnings and overhead receipts from research grants. Tuition could not be used. UNC leaders hope to raise $1.5 billion through this type of bond, which is very similar to revenue bonds already used routinely to build parking decks and residence halls.

UNC Board member Jim Phillips Jr. said he was optimistic about the plan's chances in the legislature. It already has received strong support from Senate President Pro Tem Marc Basnight.

Many states already use both types of bonds, as have counties and municipalities in North Carolina, Phillips said. He predicts the legislature will accept the idea.

"The question becomes how much debt are you going to incur," he said. "I don't know where that number will end up — how much money they'll feel comfortable committing."

If the legislation passes and the bonds are issued, the General Assembly likely would not appropriate annual building funds for the university during years of heavy debt service payments. But Broad said she hoped the university would still be eligible for money from the state's annual repair and renovation budget — even during the debt payoff. "If not, in 10 years we will find ourselves having repaired the old problems and created a whole set of new ones," she said.

Last month, a higher education consultant told UNC leaders that some 800 aging buildings on the state's campuses need significant renovation — after decades of neglect. The state did not allocate regular renovation funds to universities until 1993. New building projects have always been funded by the state on a cash-in-hand basis.

"It's clear that pay-as-you-go wasn't working," said Marye Anne Fox, the N.C. State chancellor. "This is the most reasonable option. It requires a vote of faith, but I think the university has earned this faith."

Jane Stancill can be reached at 829-4861 or jstancill@nando.com

News & Record, Thursday, May 13, 1999

UNC board may renounce old pay-as-you-go tradition

The UNC Board of Governors is considering legislation that would authorize borrowing for buildings.

BY TIM THORNTON
Staff Writer

It may be the first nail in the coffin of North Carolina's pay-as-you-go tradition.

When the UNC Board of Governors meeting adjourns on Friday, the board will have discussed, considered and perhaps endorsed legislation that would allow the UNC system to finance at least part of its $6.9 billion building campaign by selling bonds.

"It's unrealistic to think that the General Assembly can do much with that without borrowing money," state Treasurer Harlan Boyles said. He has been working, along with UNC general administration staff, on a borrowing plan legislators can accept.

On Friday, Boyles will brief the board on two bills that have come from that work. One would authorize limited obligation bonds, the other would allow special obligation bonds.

Boyles compared limited obligation bonds to a home mortgage. They would be secured by liens on university property and paid for through annual appropriations from the General Assembly. If the General Assembly were to take the $200 million it has traditionally devoted to capital projects, Boyles said, and apply that money to debt payment instead, UNC could sell $2 billion to $2.5 billion in bonds, roughly a third of what the system needs over the next decade. It would take 15 to 20 years to pay

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UNC

Continued from page A1

those bonds off, Boyles said. If the whole $6.9 billion were funded that way, the annual debt payment would be about $700 million.

Special obligation bonds would be paid with what Boyles called "unencumbered resources the campuses would generate," for example, various fees charged to students.

Boyles said two other UNC financing bills have been considered. One would deal with student housing, the other with the university hospital system. "We haven't made much progress on the second two except for jaw-boning," Boyles said.

This drastic change in financing is being considered because of a report the Board of Governors sent to the General Assembly last month. The plan, "Building for the New Millennium," is the result of a yearlong study by Eva Klein and Associates Ltd., an education consultant from northern Virginia.

"The pay-as-you-go policy is not working," Klein told the board at its April meeting. "It's not working for Pembroke and it's not working for Chapel Hill. If you have a policy that's not working for your small institutions and not working for your large institutions, you should take a look at it."

UNC President Molly Broad has echoed Klein's assessment. Broad told a group of Triad civic, business and government leaders assembled at the Greensboro Hilton last month that pay-as-you-go "is not going to be adequate. It hasn't been adequate, or we wouldn't be in the position we find ourselves in now."

Boyles will take his versions of the financing bills to the meeting Friday and said he assumes members of the board will have their versions, too. The essence of the proposals will be the same, he said.

Boyles said Wednesday afternoon he thought UNC General Administration had the most current drafts. General Administration said the most up-to-date version was in the treasurer's office.

"It's very fluid," Boyles said.

The financing proposals are likely to occupy a good deal of the Board of Governors' time this week.

Discussions will begin today when the Committee on Budget and Finance addresses the issues raised in a letter from committee member Ray Farris. Farris's main concern is that the board stay deeply involved in decisions.

"This is not staff decision-making material," he said.

The Committee on Public Affairs will discuss the legislation needed to implement the Klein report's recommendations just before Boyles makes his presentation about that legislation to the full board Friday.

Committee chairman Jim Phillips, a Greensboro attorney, said, "I'm not exactly sure how they're going to play this whole thing" but "I'm excited and optimistic that we've got a chance to deal with this problem sooner rather than later."

Morning Star
ESTABLISHED 1867

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Published by
Wilmington Star-News Inc.
1003 South 17th Street
Wilmington, N.C. 28401
A NEW YORK TIMES COMPANY

OUR VIEWS

A sensible way to build UNC

If the University of North Carolina's 16 campuses are to have the buildings their students will need in coming years, there seems only one logical way to pay for them: borrow the money.

That would be a departure for the state, which traditionally has paid for university improvements in cash.

But thanks to reckless tax cuts and a couple of expensive legal setbacks, the state doesn't have that kind of cash these days. Even if it did, it probably wouldn't have enough to meet the needs of the university system.

It's growing at a rapid rate as new students pour in and older North Carolinians go back to school to improve their job skills, change careers and enrich their intellectual lives.

To make matters worse, a consultant has concluded that many existing buildings need to be renovated and modernized.

The bill for all this is put at a hair-raising $6.9 billion.

It should ease the anxieties of knowledgeable North Carolinians to learn that the borrowing plan to finance this project comes from Harlan Boyles, the super-cautious state treasurer.

With the approval of that respected authority on government spending, the university will ask the General Assembly for permission to quickly issue $3.5 billion in bonds. It says its yearly loan payments over 20 years would be close to what it now spends to put up buildings on a pay-as-you go basis.

The figures are huge, of course, but so are the figures you swallow when you get a mortgage to buy a home. That's what the university would be doing – getting a mortgage to build homes for its universities.

Unless the Honorables can come up with a better way to get that kind of money, they ought to agree to the university's request.

It makes sense.

WINSTON-SALEM JOURNAL MAY 1 1998

UNC plan would use bonds to help pay for campus construction

Proposal departs from system's usual pay-as-you-go approach to building needs

THE ASSOCIATED PRESS

CHAPEL HILL

The University of North Carolina board of governors is being asked to consider a proposal that would authorize borrowing for building needs and end the state's pay-as-you-go tradition.

UNC President Molly Broad and state Treasurer Harlan Boyles will introduce a plan today to use bonds to help pay for billions of dollars in construction needs at the system's 16 campuses.

A consultant has warned UNC leaders that it will take up to $6.9 billion to refurbish and expand campuses to accommodate a enrollment growth of 48,000 students in the next 10 years.

"We have 50,000 more students who will be heading our way in 10 years," Broad said Wednesday.

"Since we can't postpone their arrival, we can't wait to update these facilities."

The bonds would not need voter approval, even though some of them would be repaid through tax dollars.

The General Assembly would set the amount to be borrowed, but it is unlikely that legislators would agree to the full $6.9 billion.

Boyles has been working with UNC administrators on a borrowing plan that legislators might find acceptable.

If the legislature signs onto the plan, it would be a departure from the state's usual pay-as-you-go strategy for building needs — a strategy that has delayed many campus projects.

Traditionally, the state provides the UNC system money each year for new building and renovation needs, but the amount is inconsistent.

Although it has averaged $86.7 million since 1989, it has ranged from $1.6 million in 1990 to $125 million in 1997.

It has never been enough to do all the work that needs to be done, Broad said.

Broad and Boyles are calling on the state to provide more money up front through bonds.

Boyles will brief the board of governors today on two proposals.

One would authorize limited-obligation bonds, the other would allow special-obligation bonds.

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It would take 15 to 20 years to pay off those bonds.

If the whole $6.9 billion were financed that way, the annual debt payment would be about $700 million.

Special-obligation bonds would be paid with what Boyles called "unencumbered resources the campuses would generate," for example, various fees charged to students.

"This will begin the public dialogue," Broad said.

"It's a conversation that could go on for some time."

UNC told it must hasten repairs

■ State treasurer says system needs infusion of cash; board of governors approves a proposal for bond bills

By William L. Holmes
JOURNAL REPORTER

DURHAM

State Treasurer Harlan Boyles told leaders of the University of North Carolina system that they need to have the power to finance their building projects or they risk letting the system continue its slide into disrepair.

"We've relied too heavily on a pay-as-you-go system that relied on . . . cash on hand," Boyles told the UNC board of governors at its monthly meeting yesterday. "You need an infusion of cash immediately so you can head off some of the deterioration."

A consultant recently estimated that the system needs $6.9 billion for expansion and repairs to accommodate an expected growth of nearly 60,000 students during the next 10 years.

HARLAN BOYLES

Boyles and Molly Broad, the system's president, have prepared some legislation that would allow the university to use two kinds of bonds to pay for its building projects.

Limited obligation bonds would allow the university to use the building as collateral for the bonds, similar to a home mortgage.

Special obligation bonds would allow a university to pledge its future receipts of rent, fees or other money as payment for the project.

Some cities and counties in North Carolina have used similar bonds to pay for courthouses, social-services buildings and schools.

Several other states allow the issuance of bonds for construction.

But the UNC system has always paid for its buildings with cash appropriated by the General Assembly. The legislation would end that tradition.

The board of governors voted unanimously to support the bills, although they have not been introduced.

"These are drafts, and the likelihood is great that they will be changed before they are introduced and after they are introduced," said Jim Phillips, a Greensboro lawyer who is the chairman of the board's public-affairs committee.

The university could issue the bonds as soon as six months after the bills are approved by the General Assembly, Phillips said. The General Assembly would determine how much the system can borrow, and it is unlikely that legislators would approve $6.9 billion worth of bonds at once.

Buildings that have been partially supported by the

UNC BONDS

Continued From Page B1

General Assembly would receive the first money collected by the sale of the bonds.

The bonds would not be subject to public vote, although they would be paid with tax money.

Robert F. Warwick, another member of the board, questioned whether the state would want to commit to paying off debt yearly for building projects.

The General Assembly has given the university an average of $86.7 million for building projects since 1989, ranging from $1.6 million in 1990 to $125 million in 1997. The system could pay off $2 billion in bonds with annual payments of about $200 million for 15 or 20 years, Boyles said.

The system would continue to seek money for repairs and upkeep beyond what it commits for debt, Broad said.

Otherwise, the 16 public universities in the state may face the same backlog of problems in 10 years.

Ben Ruffin, the chairman of the board of governors, said he expects the General Assembly to approve the bills.

"It's not a situation that we invented," he said.

"We are asking them for things that are a dire necessity to protect the investment."

WINSTON-SALEM JOURNAL
A Media General Newspaper

416-420 North Marshall Street
Winston-Salem, N.C. 27101

FOUNDED APRIL 3, 1897

JON H. WITHERSPOON
Publisher

CARL M. CROTHERS
Managing Editor

JOHN D. GATES
Editorial Page Editor

V.C. "PAT" TAYLOR III
General Manager

Editorials

Tough Choices for UNC

Over the next decade, the University of North Carolina system's 16 campuses will be expected to accommodate 48,000 more students than are currently enrolled. Undoubtedly, that will require the expansion of university facilities, which will require money.

But the numbers being bounced around in Raleigh and Chapel Hill are high enough to cause some pretty intense sticker shock.

MOLLY BROAD

An outside consultant hired by the UNC system to assess the situation warns that it will take up to $6.9 billion to refurbish and expand campuses to accommodate the anticipated growth in enrollment — far more than the General Assembly could be expected to provide in the time frame the money will be needed.

Facing up to that reality, UNC President Molly Broad and State Treasurer Harlan Boyles broke with tradition Friday and unveiled a plan to the UNC Board of Governors to use bonds to help pay for the billions of dollars in construction.

Throughout the history of the UNC system, expansion has been paid for through appropriations, student fees and tuition.

This pay-as-you-go tradition has allowed the UNC system to be free of massive debt, but it has also caused delays in many campus projects.

The General Assembly annually provides the UNC system money for new building and renovation needs, but the amount has been inconsistent. While it has averaged $86.7 million since 1989, it has ranged from $1.6 million in 1990 to $125 million in 1997.

Still, that's never been enough money to do all the work that's needed, system administrators say, and buildings on some campuses, especially the smaller ones with historically minority enrollment, have slipped into disrepair.

Though it's doubtful that state legislators and the UNC board will approve borrowing the full $6.9 billion, it is clear that the system needs money, a lot of it, now.

If the General Assembly were to take $200 million and apply that money to debt payment instead of capital projects, UNC could sell $2 billion to $2.5 billion in bonds, roughly a third of what the system needs over the next decade, Boyles said Friday.

It would take 15 to 20 years to pay those bonds off.

If the whole $6.9 billion were provided that way, the annual debt payment would be about $700 million. Even though some of these massive bonds would be repaid through tax dollars, they would not require voter approval.

The citizens of North Carolina have always made our public universities, recognized as among the best in the nation, a priority, and generous appropriations of tax dollars have kept tuition relatively low.

But our state's growing population and the ever increasing percentage of students seeking a college education are about to force some tough choices. As unappealing as it will be to put the UNC system and the state in hock for billions, bonds may have to be part of that hard reality.

[redacted]UNCIL
OF UNIVERSITY OF NORTH CAROLINA
ALUMNI ASSOCIATION PRESIDENTS

Appalachian State University

East Carolina University

Elizabeth City State University

Fayetteville State University

North Carolina Agricultural and Technical State University

North Carolina Central University

North Carolina School of the Arts

[redacted] Carolina [redacted]niversity [redacted]aleigh

Pembroke State University

University of North Carolina at Asheville

University of North Carolina at Chapel Hill

University of North Carolina at Charlotte

University of North Carolina at Greensboro

University of North Carolina at Wilmington

Western Carolina University

[redacted]ton-Salem [redacted]niversity

An Equal Opportunity/ Affirmative Action Employer

Dear Legislative Friend of Education, June 24, 1999

The Council of UNC Alumni Association Presidents was formed ten years ago to support the UNC System in improving the margins of excellence for which the system has traditionally been known. We represent over **750,000 University Alumni**, the great majority of whom **live, work, and vote** in North Carolina.

We are writing and will be contacting you in your home district in support of the two bills on University Capital Facilities Finance and Special Obligation Bonds for Improvements to the Facilities of the University of North Carolina. You have already been contacted by many obvious supporters of the University including Administrators, Chancellors, and Trustees who have provided you with **compelling information** from the Eva Klein consultant's report on repair, modernization, and construction needs as well as State Treasurer Harlan Boyles' **innovative financial recommendations**. Given the surprising defeat of the Wake county education bonds and the possible delay in Charlotte, we believe it even more important that **you and the NC Legislature** act with **courage and dispatch** on the subject bills.

The Council represents an **independent and pervasive voice** seeking your support based solely on our **long term commitment to excellence** in the University specifically and Education in general. We are already on record as offering thousands of mentoring volunteers for GEAR UP North Carolina, a grant application for 7-8th grade student intervention as well as offering even larger volunteer support for Governor Hunt's "First in America by 2010" challenge. The Council has previously geared up for a state-wide promotion of University Bonds which the Legislature supported five years ago.

In summary, the Council supports education initiatives from Smart Start to post graduate studies. We believe **education** provides the primary fuel for the **economic and cultural engine** of North Carolina. We applaud the Governor's "First in America" initiative; the State Treasurer's financing alternatives initiative; and the Legislature's Community College financing initiative as well as originating the Klein study. We wish to further applaud you for **passing these two important capital financing bills**.

We are **asking for your help**. You can **ask us for our help** as well. Please contact us at (919) 557-1259 with any questions.

Sincerely,

Carol Lesley
President

Robert Kennel
Executive Director

THE UNIVERSITY OF NORTH CAROLINA

10-YEAR CAPITAL PLAN: 1999–2008

– PHASE I FIVE-YEAR PLAN –

Building for the New Millennium: The UNC Capital Plan 1999-2003

Presentation to the

North Carolina General Assembly

June 29, 1999

Your Unique Mandate to UNC

An Historic Comprehensive Study

Your Legislative Mandate

- **1997 Special Provision mandated study of:**
  - Historical capital equity -- HBUs
  - Capital adequacy -- growth and 21st century needs
  - ALL facilities contributing to mission
  - ALL facilities irrespective of funding source
  - Impact of self-liquidating policy on equity
  - Philanthropy
- **1998 Amended Special Provision added:**
  - 10-Year Capital Plan -- all known needs, prioritized

The Study

- **Phase I:**
  - Stakeholder interviews
  - Assessment of available historical funding data
  - Development of methods
- **Phase II:**
  - Campus visits
  - Technical/policy work papers
  - Facilities quality evaluation
  - Capacity needs analysis
  - Ongoing communications and reporting

Building for the New Millennium

The April 9 Report

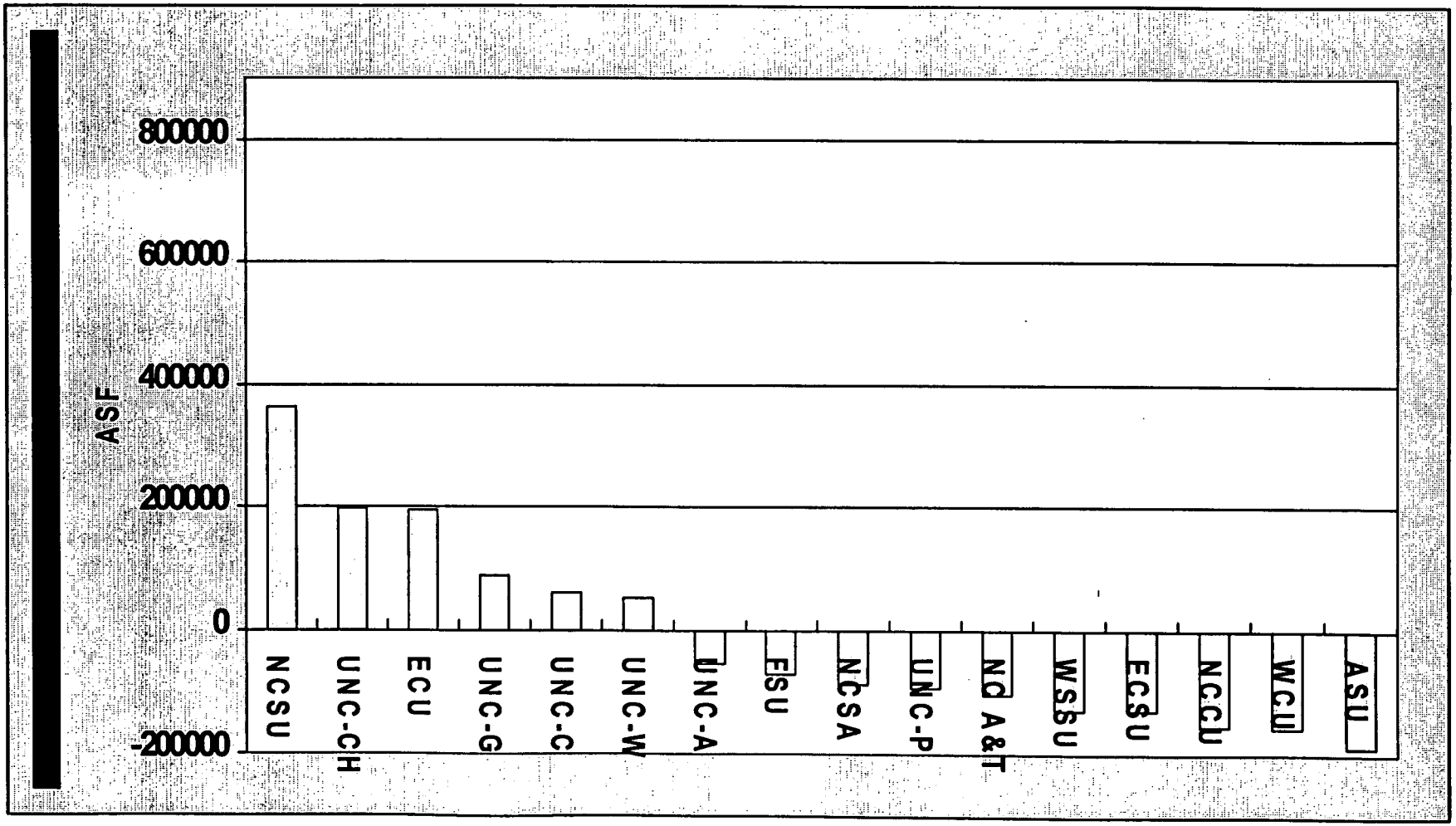
Findings: General Issues

- Science/technology facilities
- Student support and housing facilities
- Infrastructure and general campus appearance
- Impact of small scale on funding capacity of small institutions, including HBUs
- Capacity needs at fast-growth institutions
- Special problems of HBUs/UNC-Pembroke
- Major need for new residential beds--maybe 16,000

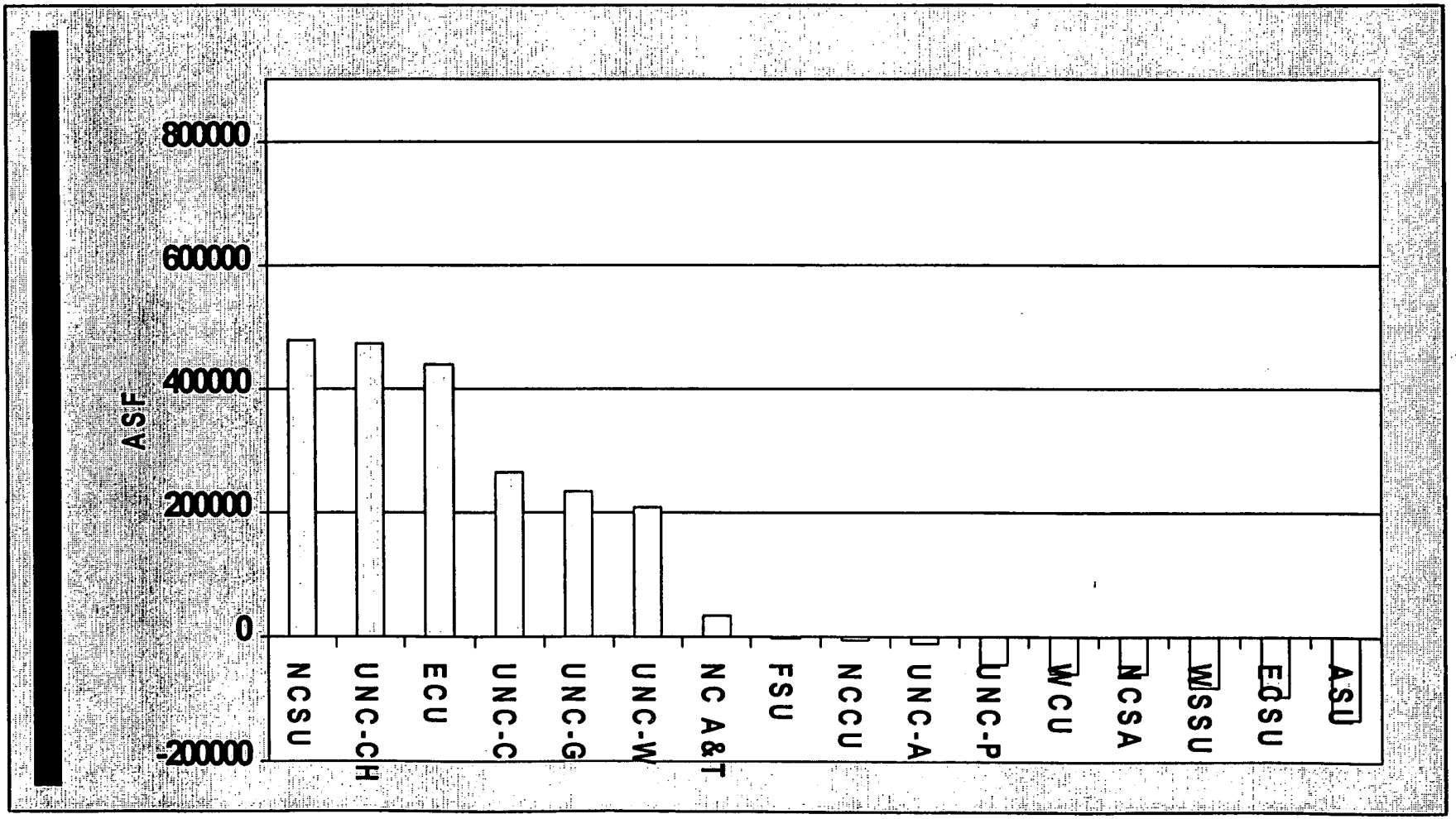
Findings: Capacity

- **Joint analysis with enrollment planning:**
  - Match capacity expansion to growth targets
- **Created and used:**
  - "Planning standards" for each space type
  - Productivity targets for use of existing space
- **Findings:**
  - Only 6 institutions have current capacity needs
  - By 2003, 7 will have capacity needs
  - By 2008, all institutions will have capacity needs or will have used all available capacity

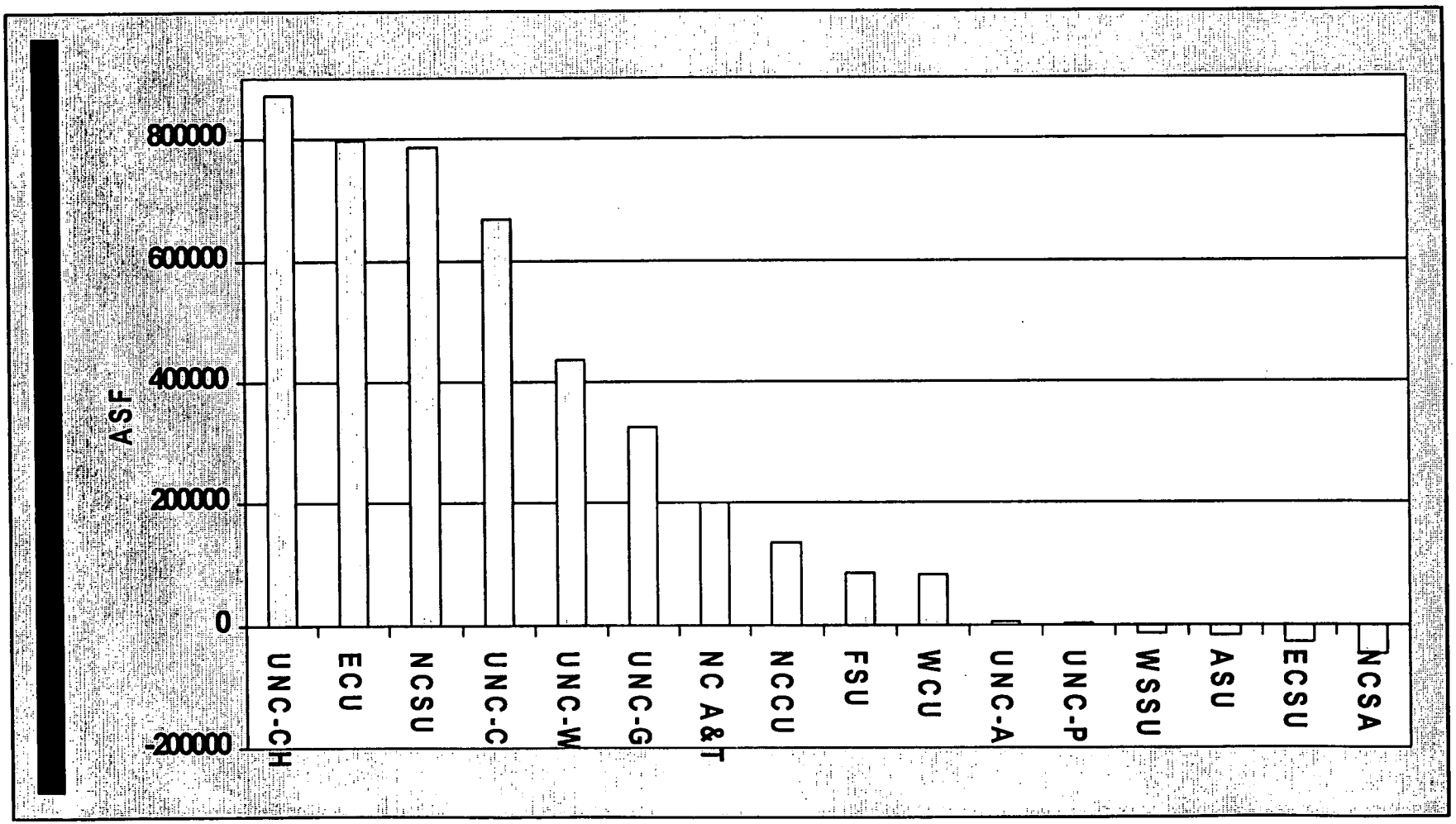
Current Capacity Needs: 1998



Future Capacity Needs: 2003



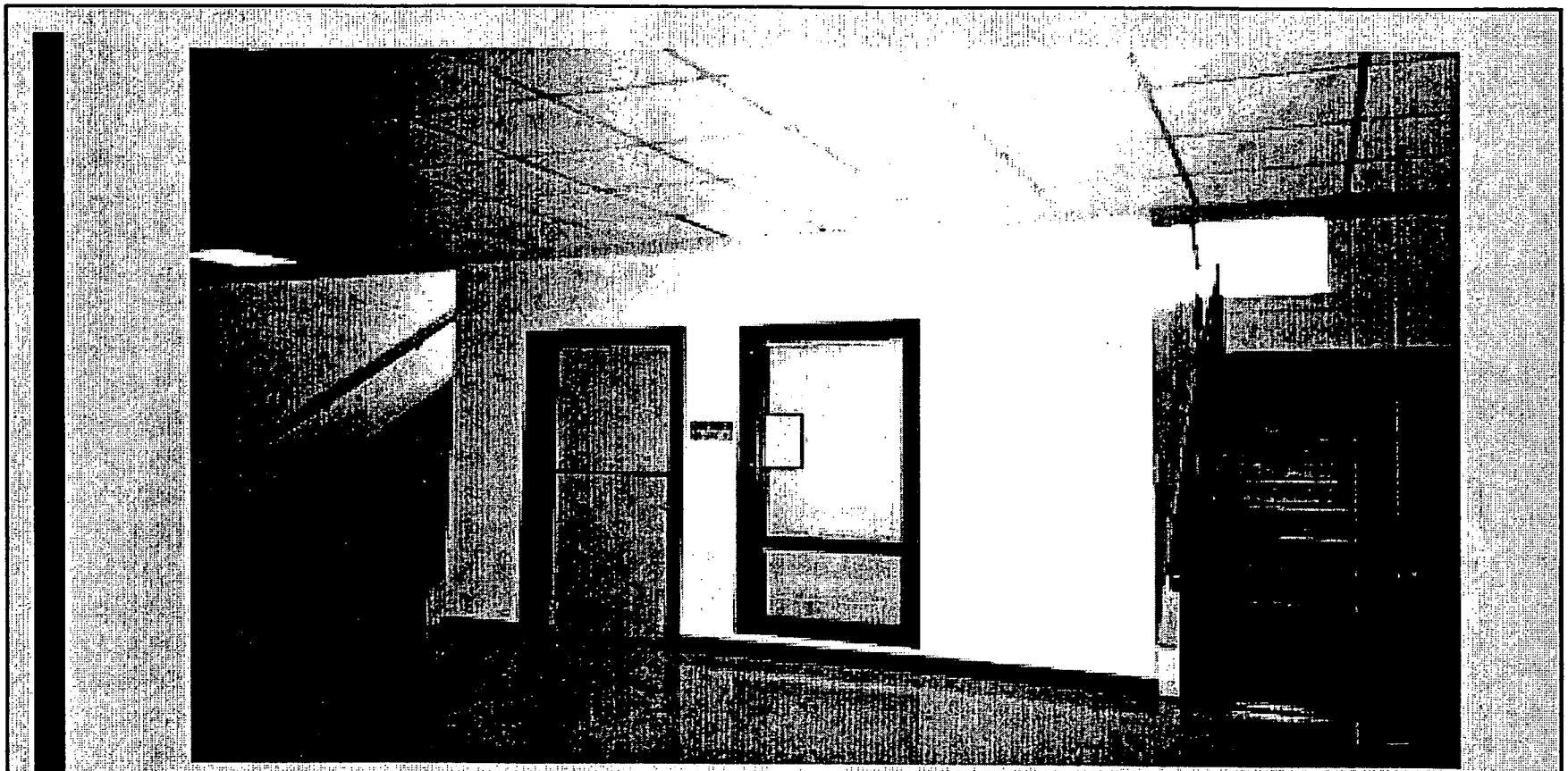
Future Capacity Needs: 2008



Capacity Needs: Some Examples

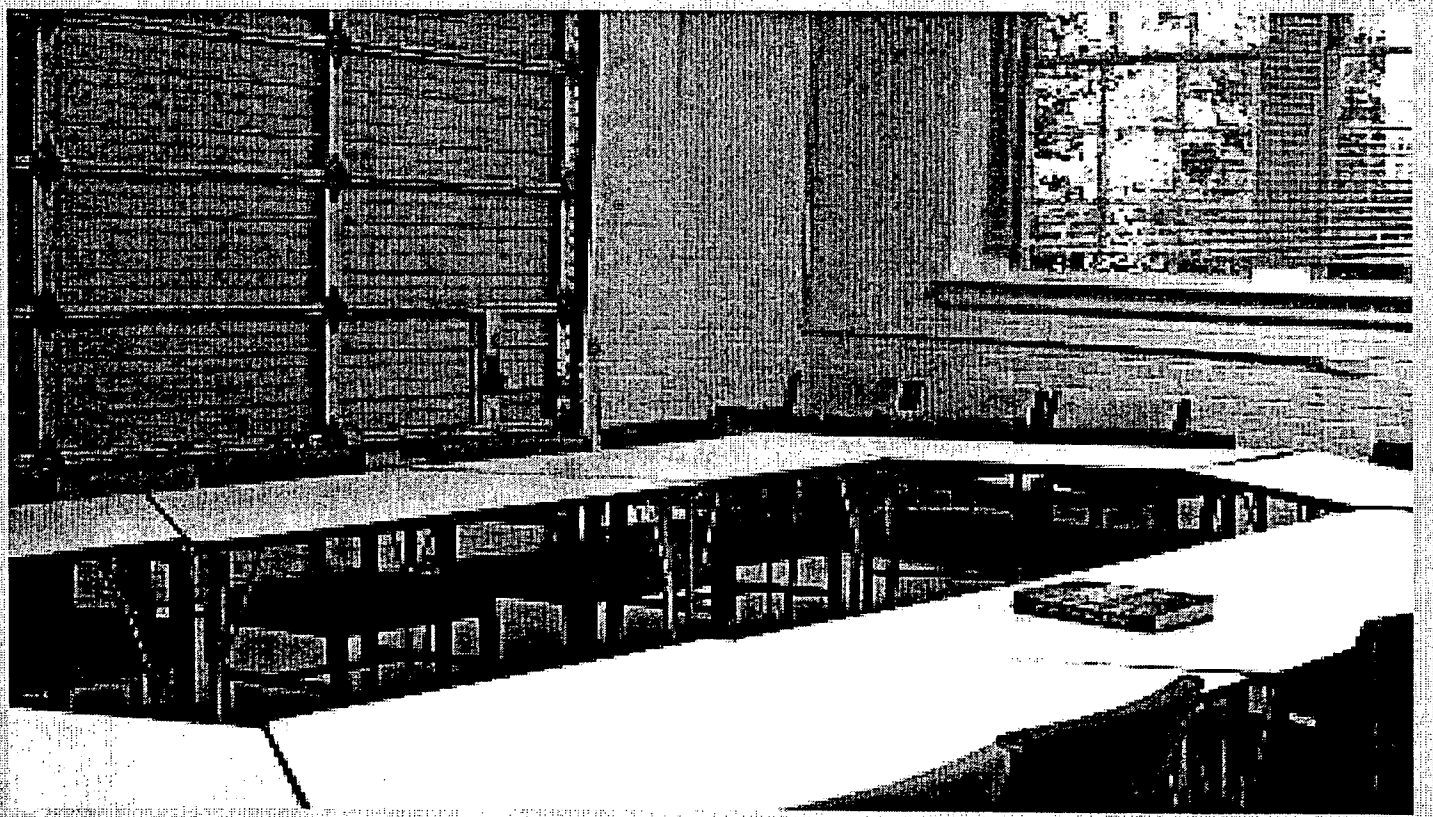
Tiny shared faculty office, NC State

Capacity Needs: Some Examples



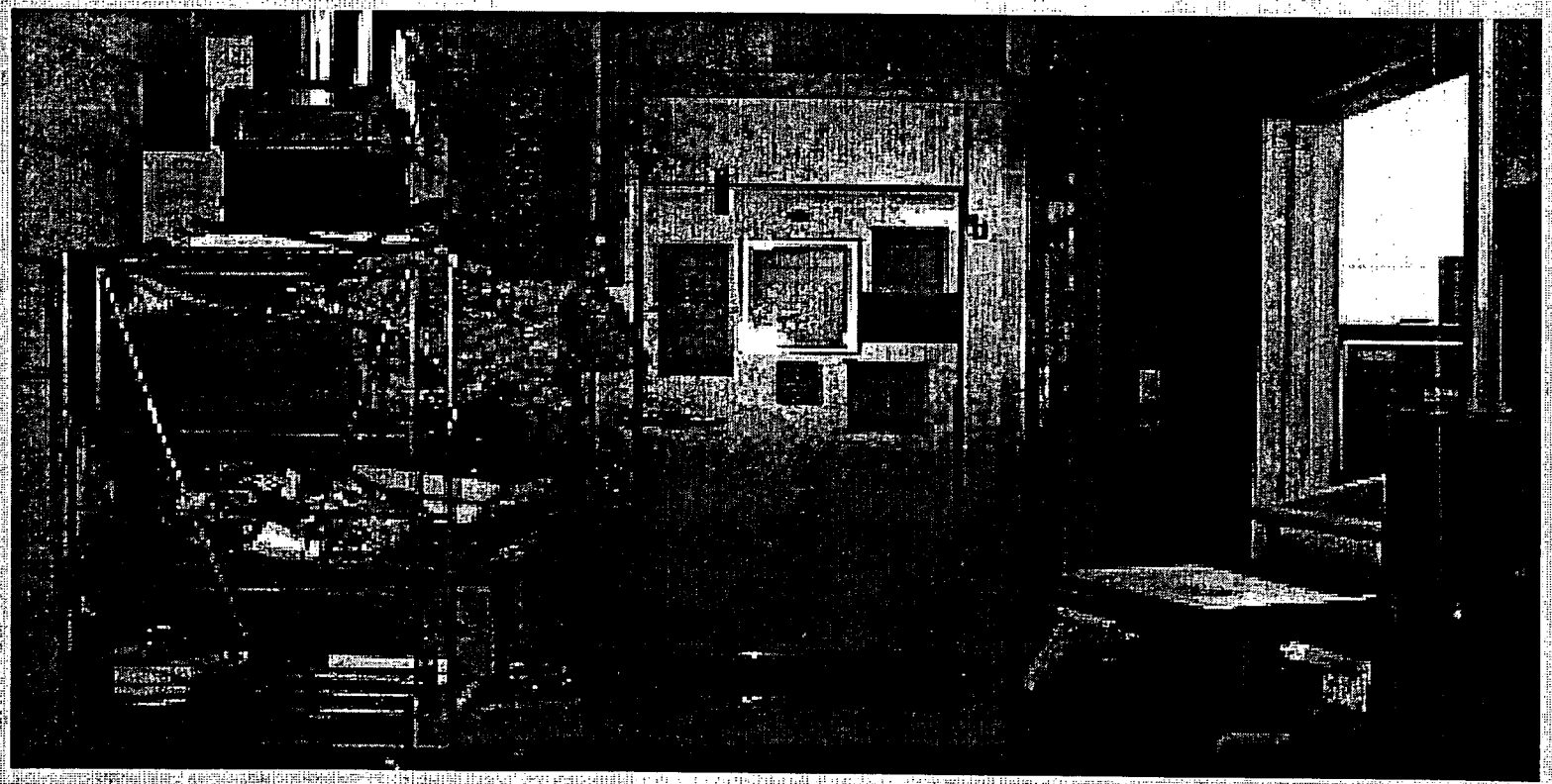
Offices under stairwell, Trask Coliseum, UNC-Wilmington

Capacity Needs: Some Examples



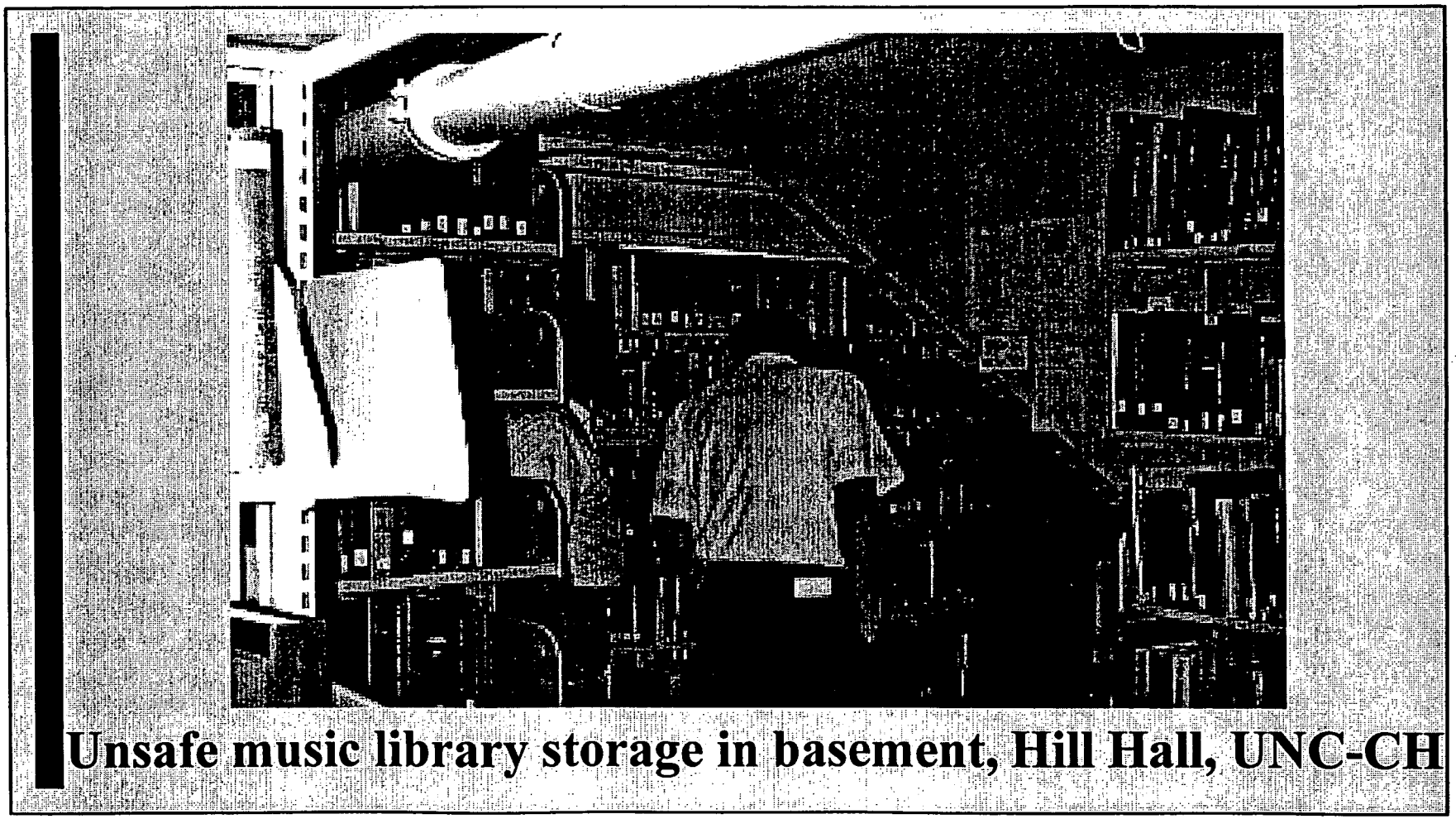
Loading dock classroom, Flanagan Building, ECU

Capacity Needs: Some Examples



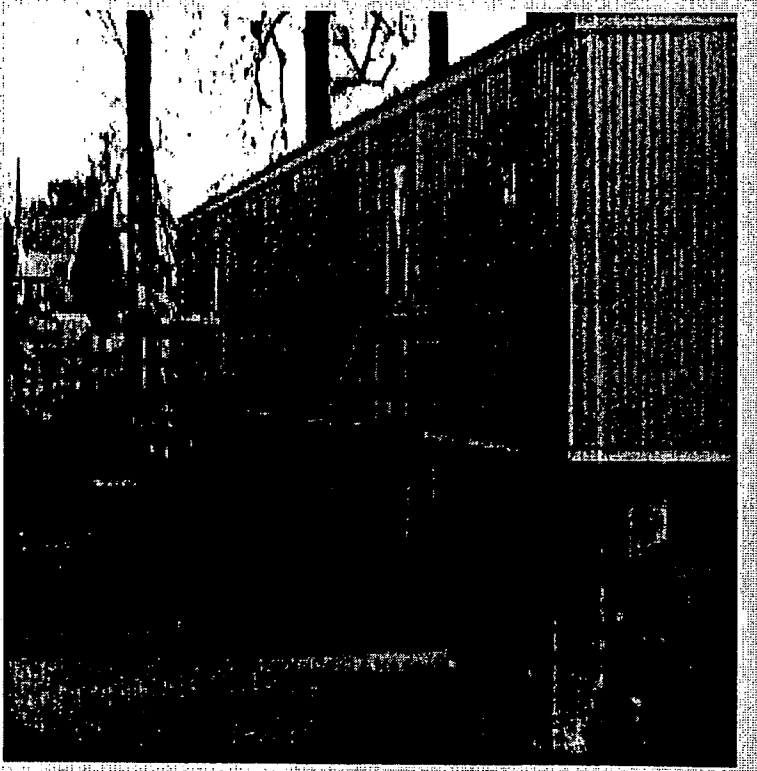
Hazardous use of hallway for biology instrument storage, Wilson Hall, UNC-CH

Capacity Needs: Some Examples



Unsafe music library storage in basement, Hill Hall, UNC-CH

Capacity Needs: Some Examples

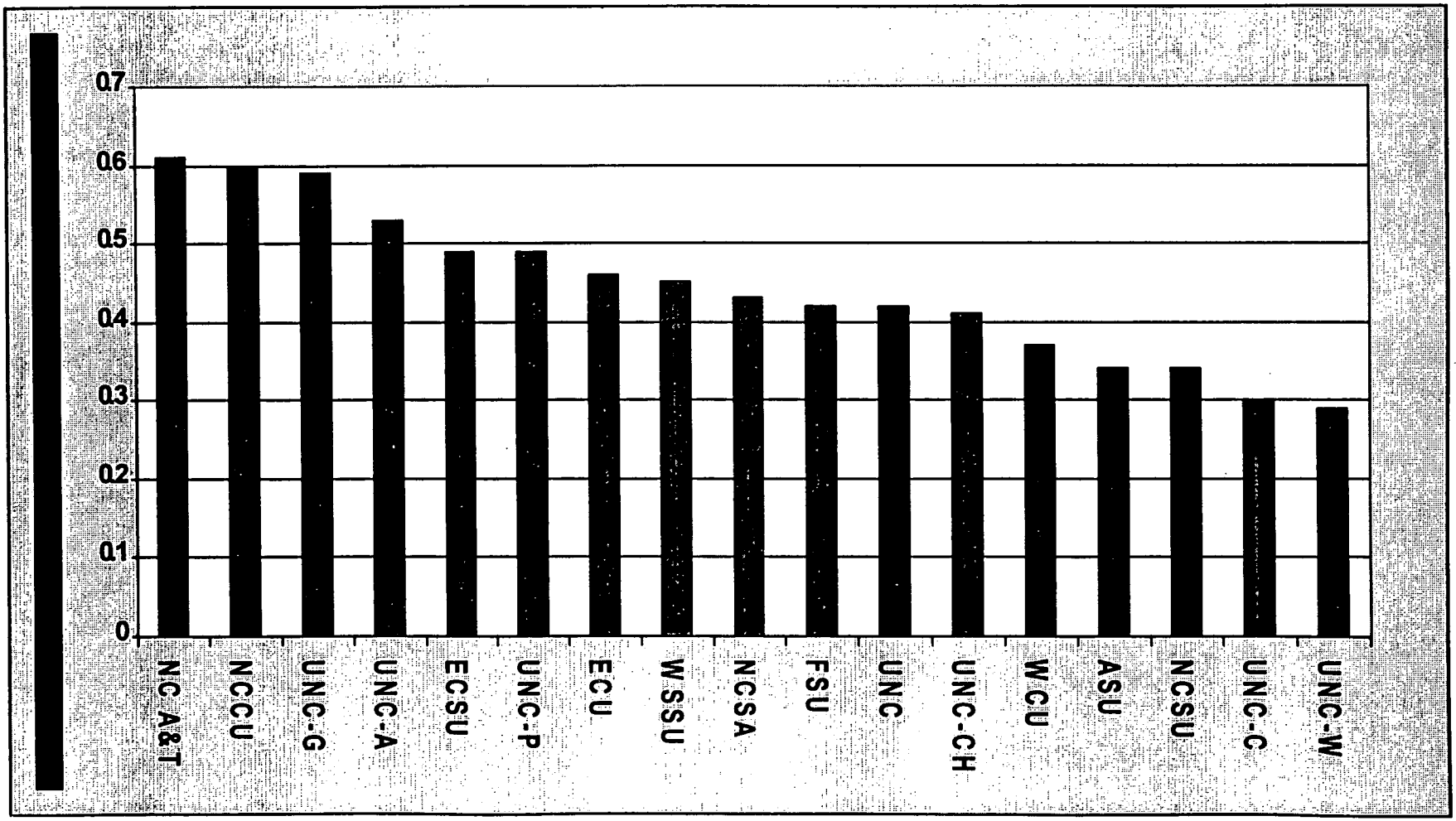


Use of temporary trailers for capacity, Allied Health, ECU and Bookstore, NC School of the Arts

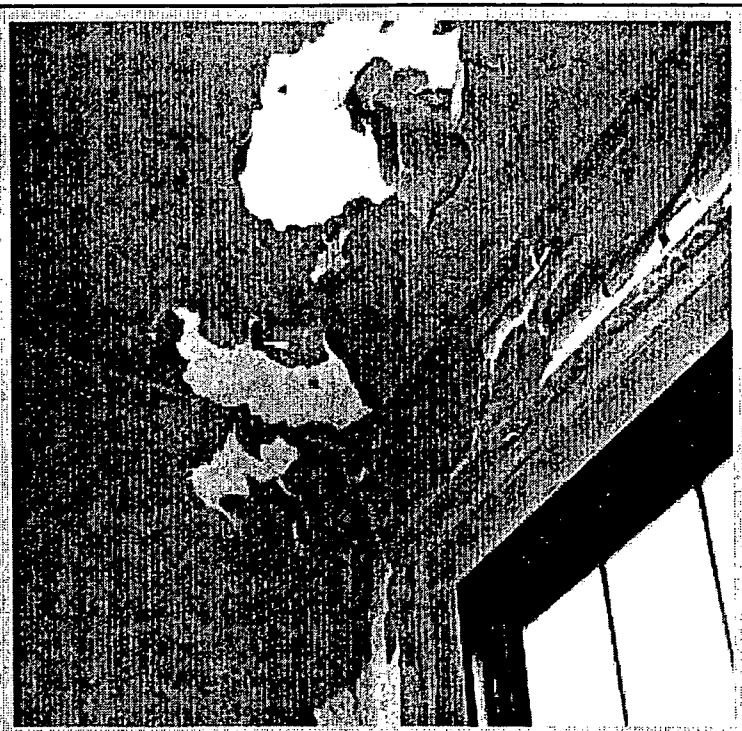
Findings: Quality

- Created "Baseline Space Quality Criteria"
- Created sophisticated WEB-based evaluation process, with VFA's engineers
- Evaluated condition and quality of:
  - 791 buildings
  - Infrastructure
  - General campus characteristics
- Established Facility Condition and Quality Index (FCQI)

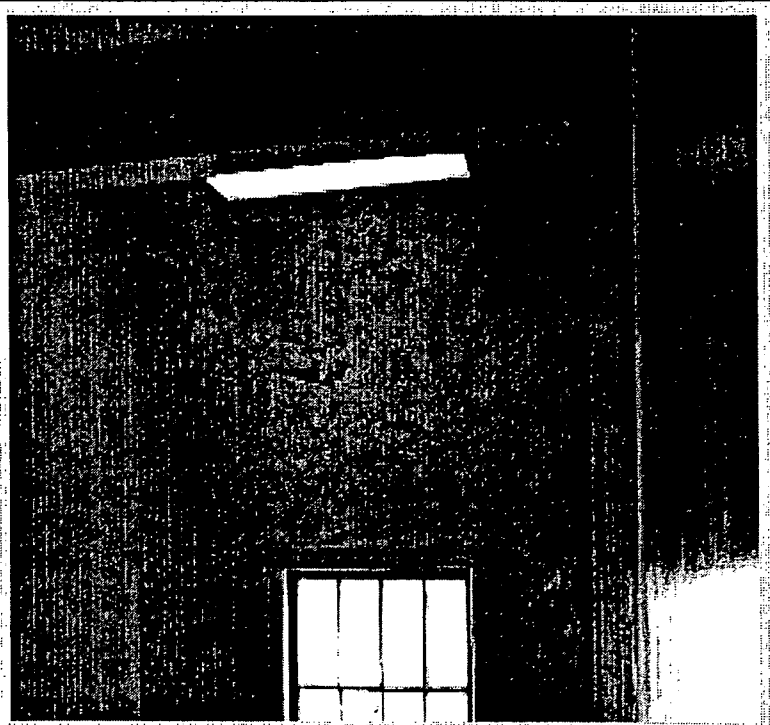
Facility Condition & Quality Index



Quality Needs: Some Examples

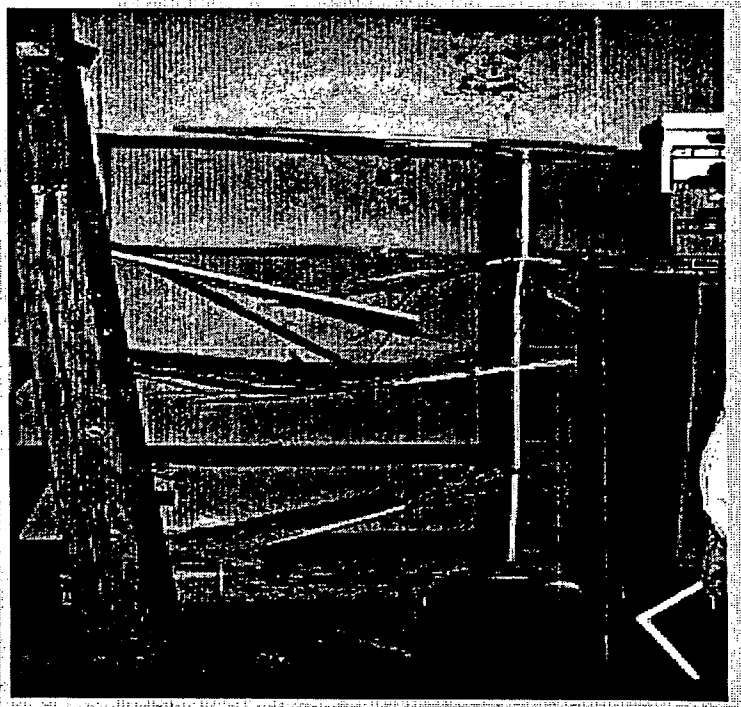


Lack of roof & exterior walls integrity requires constant repairs, Infirmary, NC Central



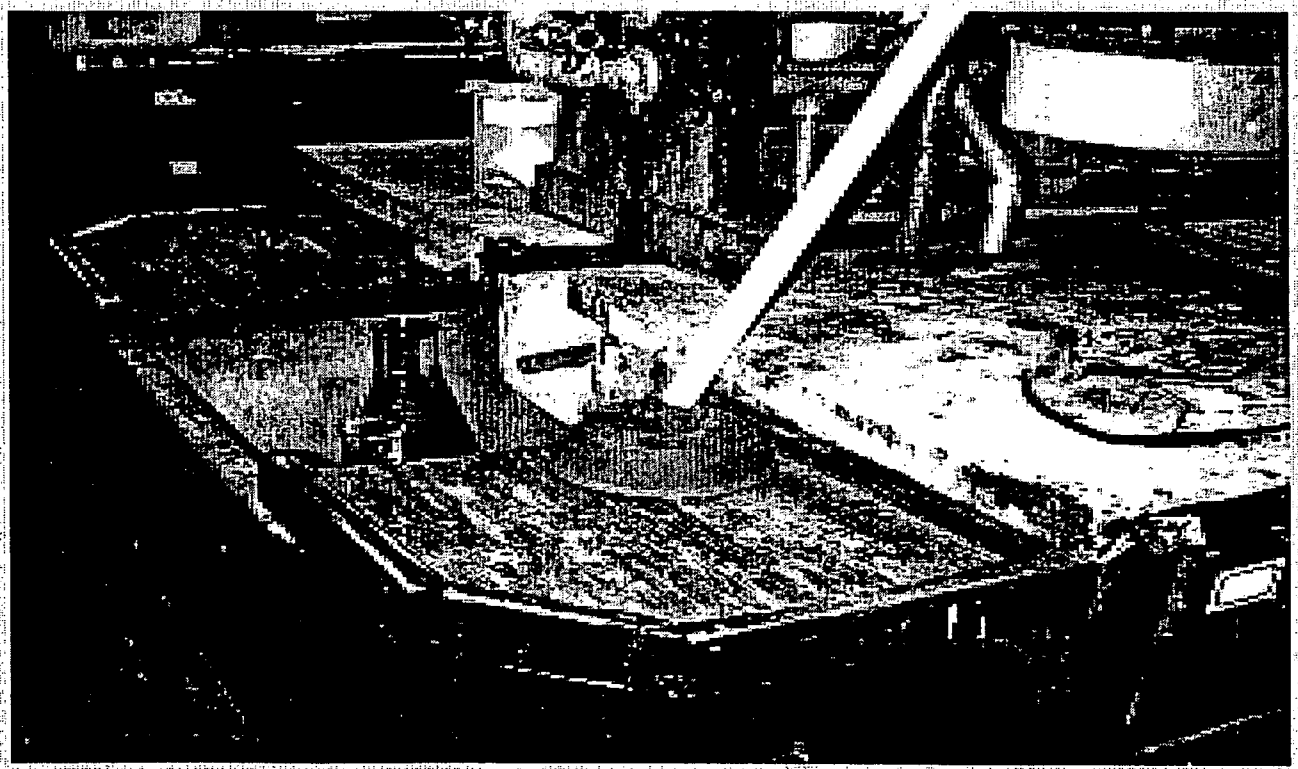
Repeated damage from roof, window, & plumbing failures, Petty Science, UNC-Greensboro

Quality Needs: Some Examples



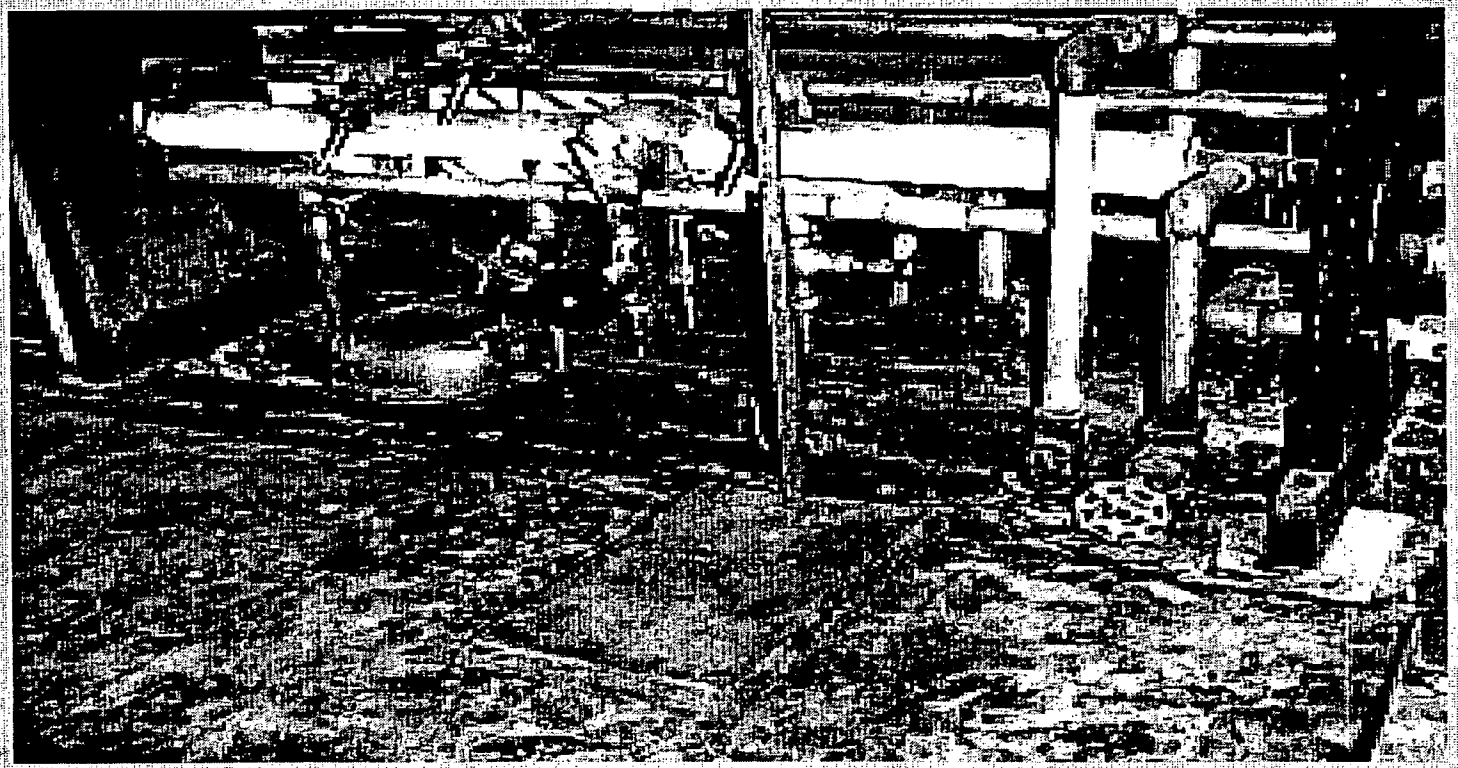
Steam intrusion damage in laboratory, Robinson Hall and termite damage to storage in Taylor Hall, NC Central

Quality Needs: Some Examples



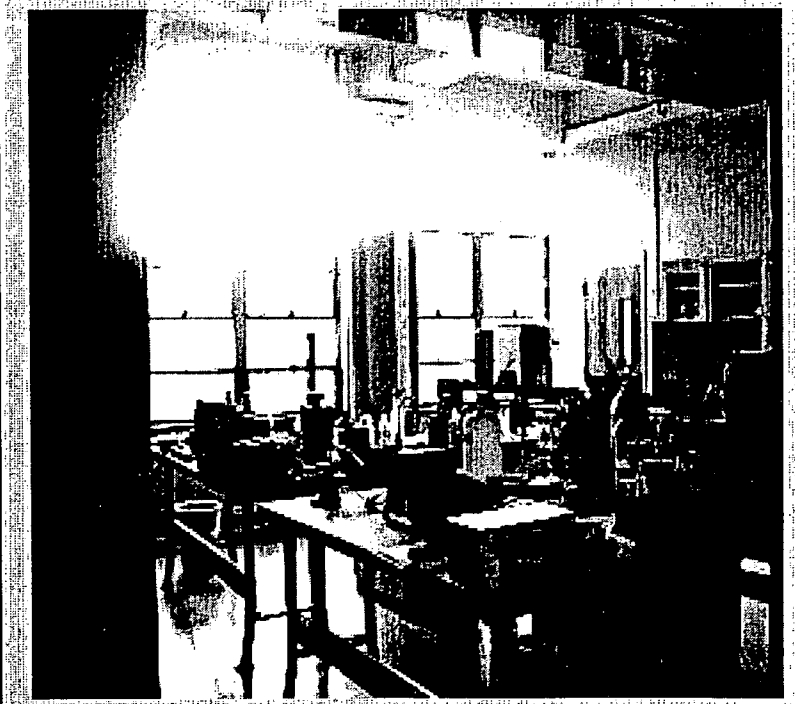
Worn,corroded lab benches beyond their useful life, Petty Science, UNC-Greensboro

Quality Needs: Some Examples



Worn-out, obsolete gas lines & surfaces, chemistry lab, ECU

Quality Needs: Some Examples

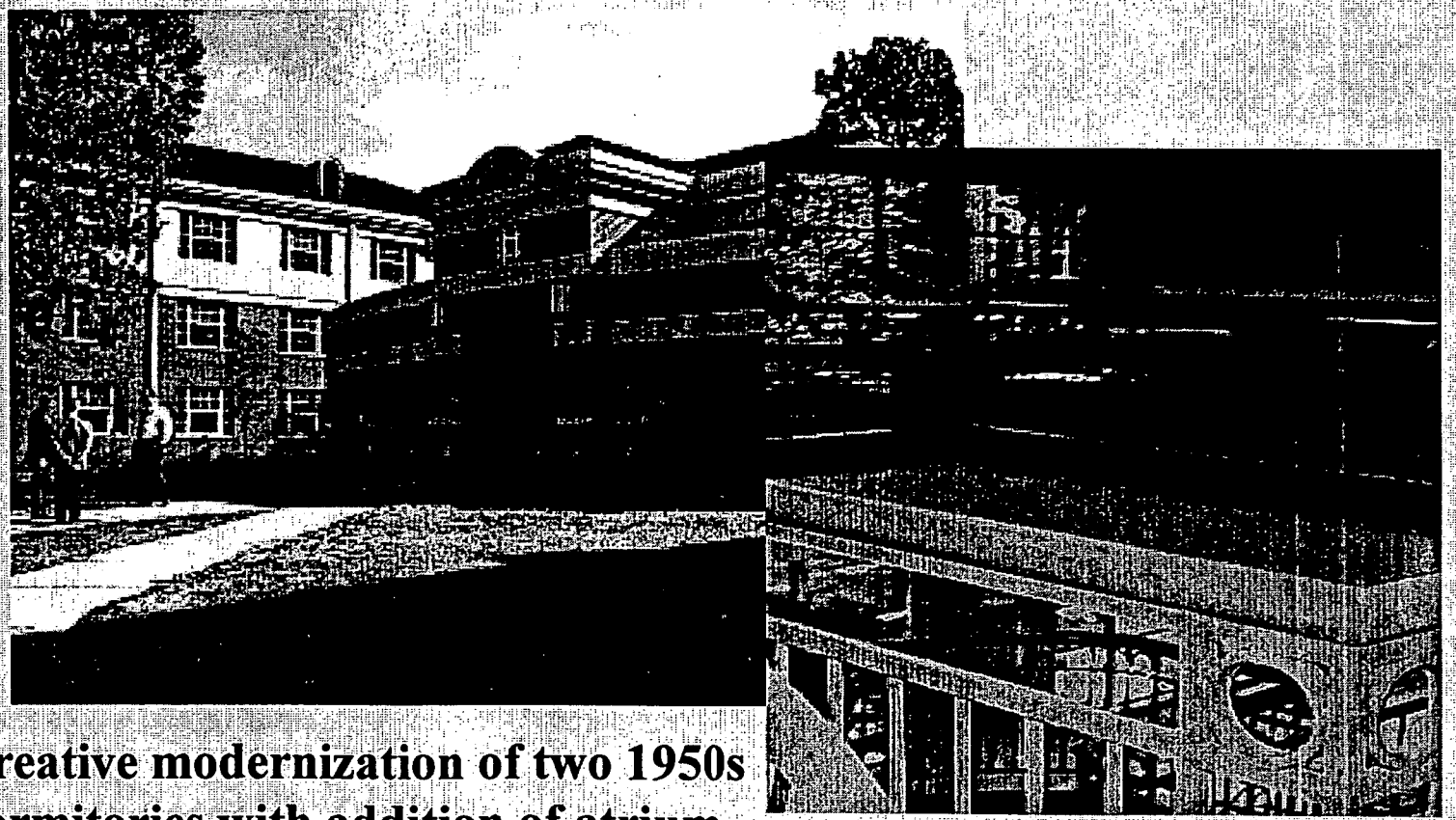


Antiquated & worn-out chemistry laboratories, Hines Hall, NC A&T State

Quality Needs: Some Examples

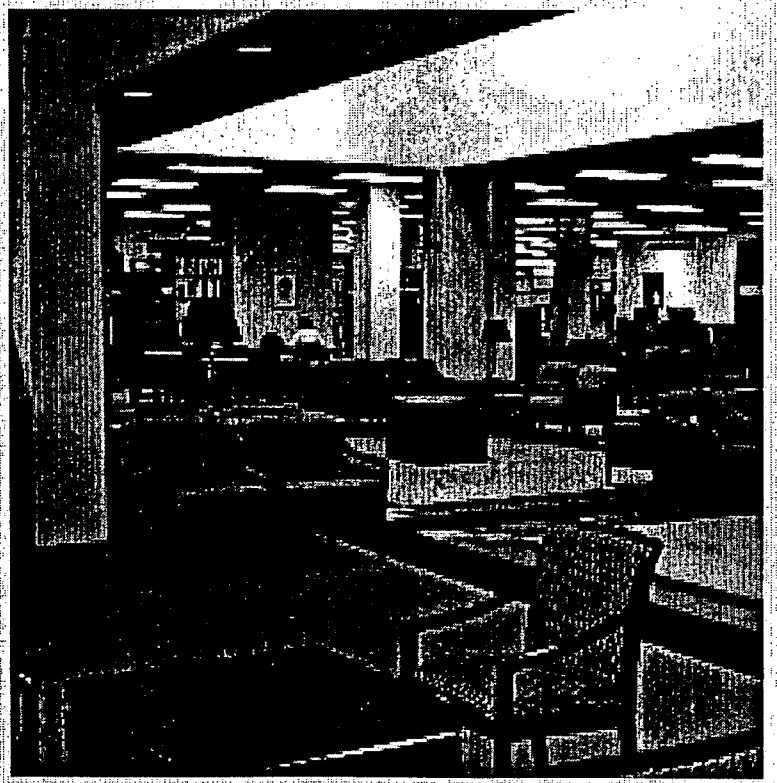
Research Lab, Rosenau Hall, UNC-Chapel Hill

Creative Renovations: Examples



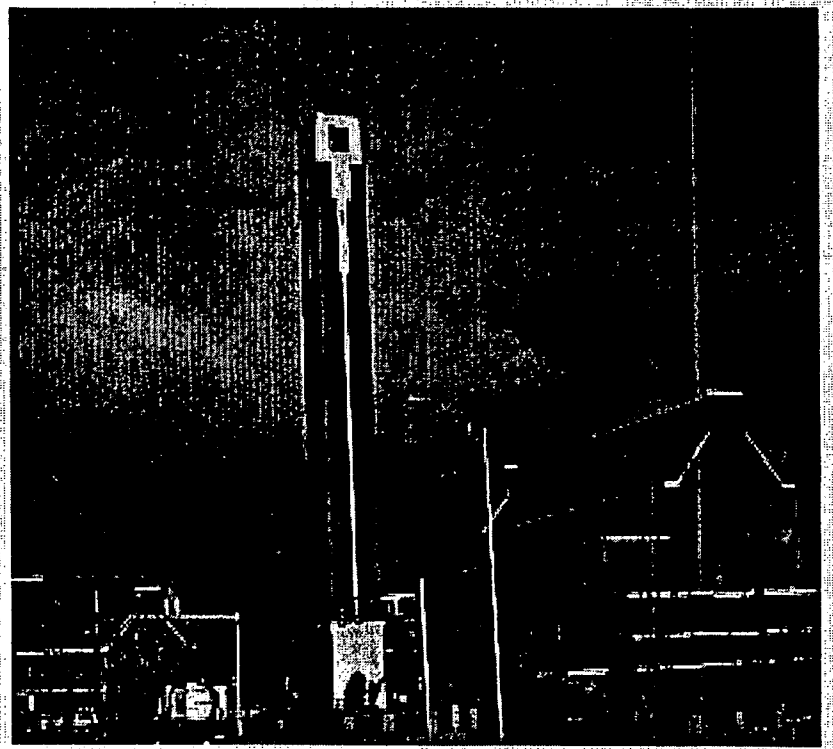
Creative modernization of two 1950s dormitories with addition of atrium common space, UNC-Greensboro

Creative Renovations: Examples



Library renovation including Café Ramsey, to meet light food service needs in that part of campus, UNC-Asheville

Creative Renovations: Examples

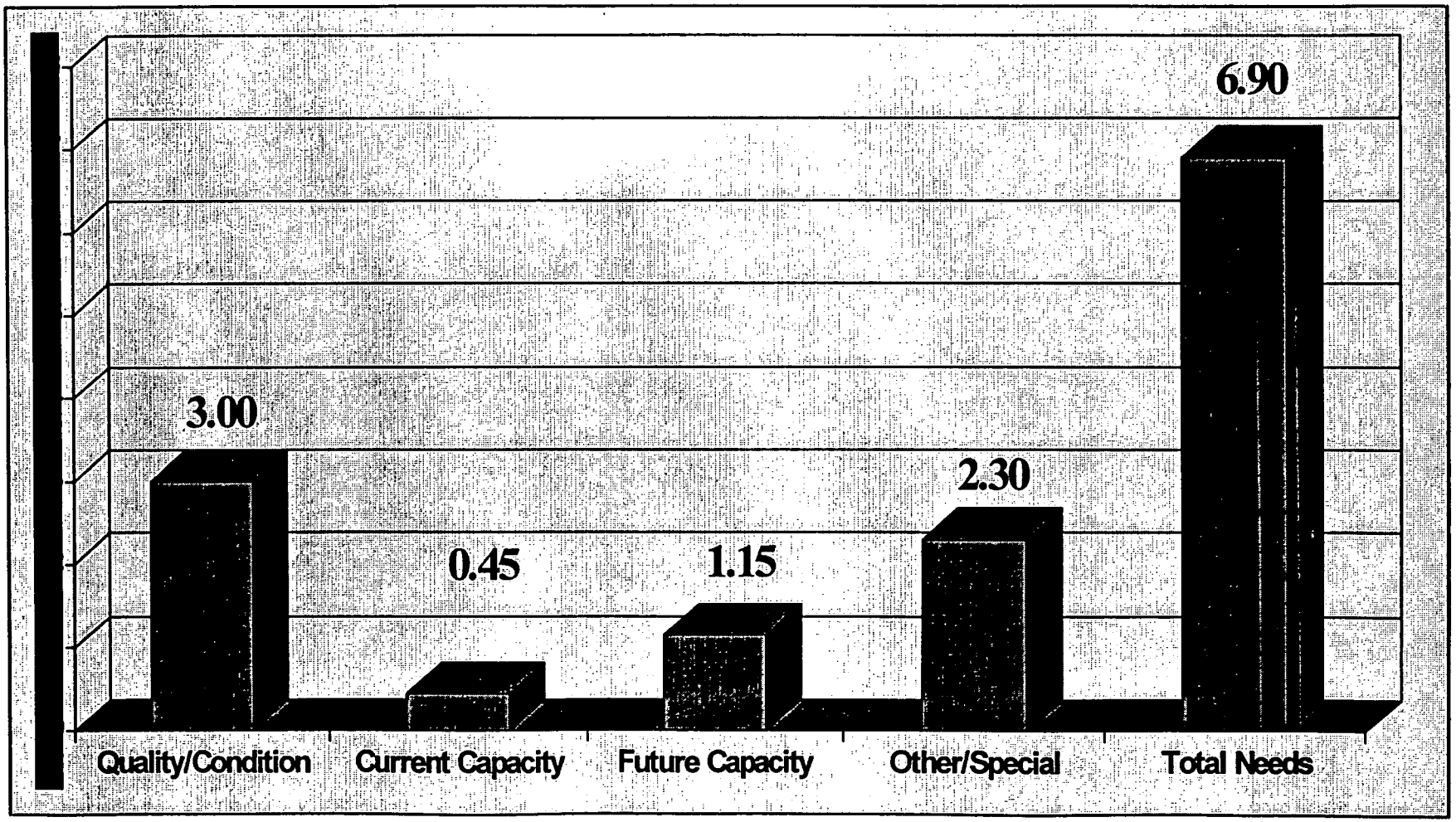


Elevator addition at Chappell-Wilson Hall, to meet ADA needs and creation of bell tower to mask ugly steam chimney, ASU

Creative Renovations: Examples

Recycled city street curbs for benches at UNC-G & effective use of "landscaped" open offices, James Hall, UNC-W

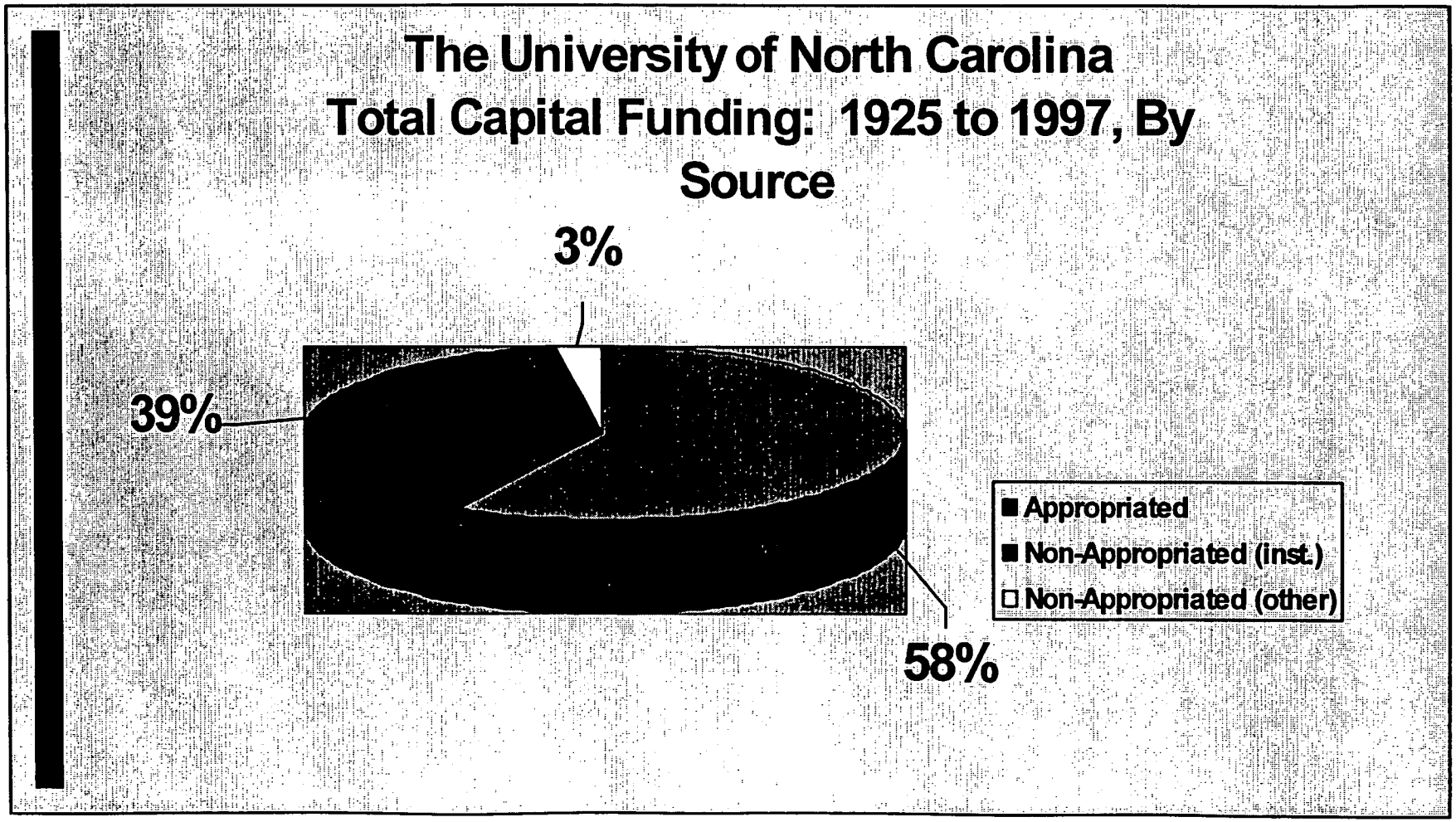
Preliminary 10-Year Capital Needs



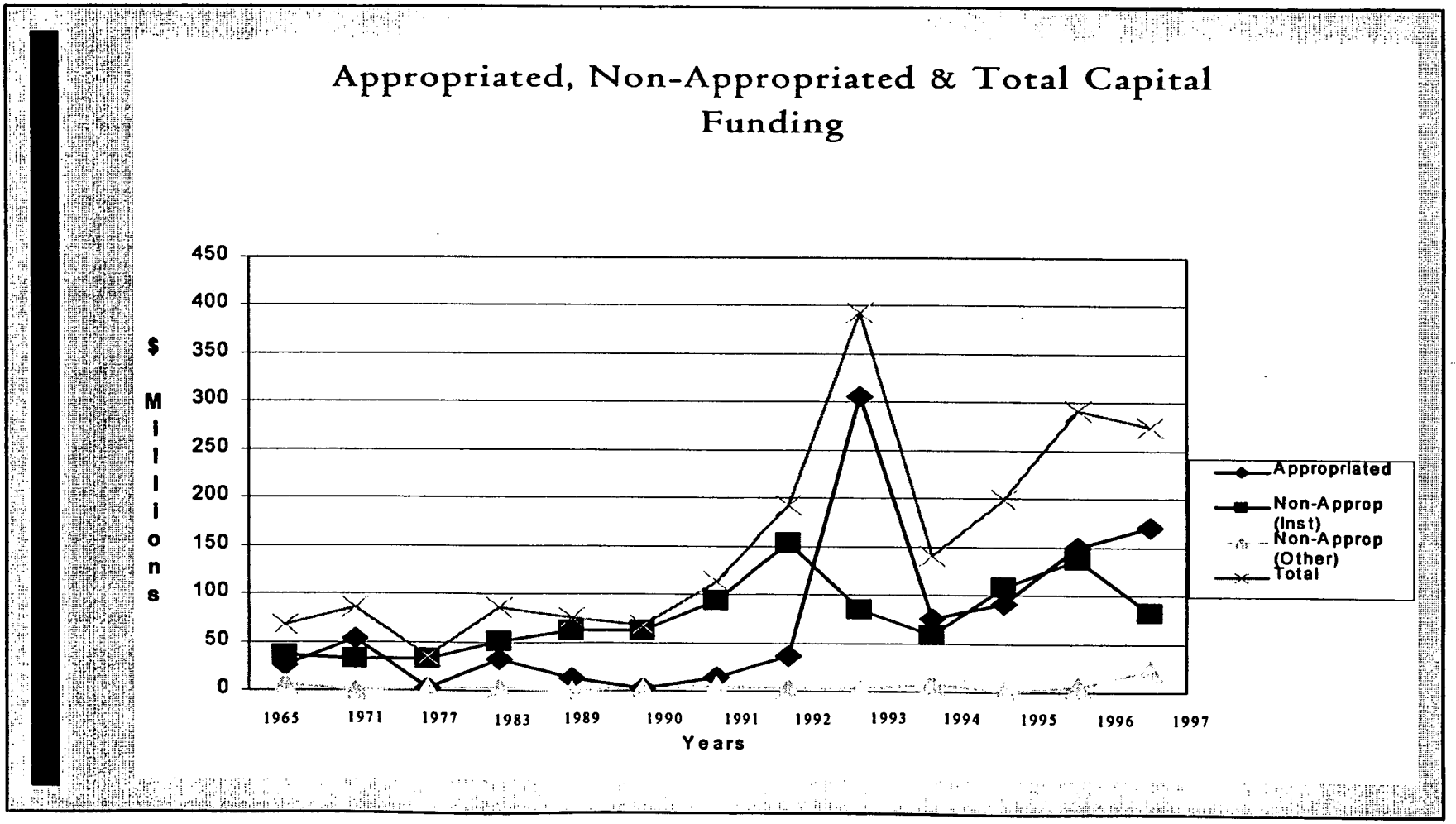
Financing Considerations

A Matrix of Funding Sources

Historical UNC Funding Sources



Increasing Reliance on Non-State Funds



Some Financing Considerations

- **Matrix of financing sources as new policy:**
  - **Replace traditional self-liquidating policy**
  - **Planned mix of state, self-liquidating, research overhead/other receipts, private equity, philanthropy**
- **Increased emphasis on fundraising, with incentive matching funds program**
- **Private non-profit "UNC Development Corporation" to build housing, parking, utilities, etc.**

The 5-Year Phase I Plan

Highest Priority Needs

A Complex Analysis

- **Used all Study outcomes and themes:**
  - Capacity needs
  - Quality needs
  - Science/technology initiative
  - Growth/diversity initiative for HBUs/small institutions
  - Balance of new and renovations; some demolitions
  - Balance of buildings, infrastructure, & campus features, plus needed land acquisitions

A Complex Analysis

- Condition and quality needs predominant at some institutions
- Current capacity needs predominant at others
- Almost all have specific special needs

The Result: A Tailored Capital Program for Each Institution

Selecting Priority Projects

- **For 14 Institutions:**
  - Selected specific projects suitable for state funding, based on all considerations
  - Specifically recommended some dormitories & student facilities on case-by-case basis
- **For 2 research universities:**
  - Did not select projects
  - Assumed "matrix of financing" and made allocations for state money that would be matched by self-liquidating/other funding

Proposed Allocation of $2.4 BB

■ UNC-CH	$498MM
■ NC State	449MM
■ ECU	191MM
■ UNC-C	179MM
■ UNC-G	160MM
■ NC A&T State	154MM
■ NCCU	119MM
■ UNC-W	108MM

Proposed Allocation of $2.4 BB

■ WCU	98MM
■ ASU	82MM
■ UNC-P	57MM
■ UNC-A	50MM
■ ECSU	46MM
■ FSU	44MM
■ NCSA	43MM
■ WSSU	42MM
■ Math/Sci, TV, etc.	102MM

Breakdowns in Categories

New Buildings	$ 521 MM
Replacement (New) Buildings	326
Renovations/Modernizations	758
Renovations/New Additions	276
Infrastructure	379
Technology Infrastructure	44
General Campus Characteristics	64
Land Acquisition	48
Total--All Needs/Uses	$2.4 Billion

Breakdowns - Special Initiatives

■ Capacity	$ 703 MM
■ Science & Technology	556 MM
■ HBU/Small Institutions Growth/Diversity	173 MM

Building for the New Millennium

Your Comments and Questions?

Molly Corbett Broad
Joint House-Senate Finance Committee Hearing
Room 544 Legislative Office Building
June 29, 1999
8:30 a.m.

RECOGNIZE COMMITTEE CO-CHAIRS PRESENT

[Representatives Luebke, Allen, and Miller; Senators Hoyle and Kerr]

- Good morning, and thank you for the opportunity to share with you the University of North Carolina's response to the capital financing plan proposed in Senate Bill 912 and House Bill 1481.
- I appear before you this morning with the sadness of one who lost a dear colleague during the night. As you may have heard on the news, Chancellor Michael Hooker passed away during the night. When I left Carmen Hooker at 5:00 this morning, her ~~last~~ parting words to me were words of encouraging support to come to this hearing armed with the support of Michael Hooker as well as the many strong supporter of this University here in this room this morning. N.B: Dr Scott, Hackney, President Friday.

- Among the 50 states, North Carolina stands alone in her strong and historic support of higher education. This state has in large part defined itself by the character of its great university -- yesterday, today and it is my hope, tomorrow. This state has invested generously in the University of North Carolina for more than two centuries now. And the return on that investment has been nothing short of remarkable. Today our 16-campus University is acknowledged not just as the *oldest*, but as one of the very *best* public university systems in this country and one of this

state's greatest assets. This is a tribute, first and foremost, to the sustained commitment and leadership of the General Assembly. Yet the passage of time has taken a serious toll on the physical condition of our campuses.

- The General Assembly acknowledged the pressing capital needs of the University some two years ago, when you called for a comprehensive, independent study of the equity and adequacy of all University facilities, as well as for the development of a detailed capital plan to address identified shortcomings.

- Over the past 18 months, consultant Eva Klein has engaged the Board of Governors in one of the most thorough, well-documented assessments of capital facilities ever conducted by a university system. Like you, we were at first stunned by the magnitude and seriousness of the problems identified: a crushing backlog of deferred maintenance; the imperative to renovate and retrofit outmoded science facilities and other buildings for modern uses; and the need for new and updated facilities to manage projected enrollment growth of nearly 50,000 students.

- So as we approached the completion of the assignment given to the Unviersity by the General Assembly, we asked Eva to help us forge a rigorous capital plan that was in proper alignment with the University's enrollment planning and the academic missions of each campus. We believe the Phase I five-year plan ratified by the Board of Governors and transmitted to the legislature accomplishes this goal. To lessen the need for new space, UNC has adopted the most stringent space-utilization

standards of any public university system in the nation, and in planning for enrollment growth, we will use existing capacity to the fullest extent possible and promote economies of scale.

- Over the years, the General Assembly has been generous to *UNC when capital funds were available*. But as so starkly revealed by Eva's report, North Carolina's traditional pay-as-you-go approach to capital funding will fall far short of the amount needed to repair, modernize, and expand UNC facilities. We are grateful that Treasurer Boyles brought his vast experience and expertise to the problem and helped devise a sound, fiscally responsible solution. And we are equally grateful that this proposed financing strategy has been embraced by President Pro Tem Basnight, Speaker Black, Governor Hunt, and many others business and government leaders. The Chancellors of our campuses and their staffs have worked intensively to provide the detailed information about facility needs and building condition.

- The General Assembly's approval of the financing legislation advanced in Senate Bill 912 and House Bill 1481 would provide a rare opportunity for us to recapitalize—to rebuild—the University of North Carolina for a stronger future. Such investment now is absolutely essential if we are to prepare for unprecedented enrollment growth; to prepare our campuses to take advantage of technological change and to be more productive and competitive in research and technology transfer. Never before in the history of America has a university education been more important. ~~For~~ We are witnessing the transition to a *knowledge*-based economy in which

our *greatest* competitive advantage is our *people* and the skills, innovation, and know-how they bring to the table.

- For more than two centuries, the fortunes and future of UNC and the state of North Carolina have been inextricably linked. Our forefathers had the vision, the faith, and the courage to create the first public university in America. Today we ask for that same sort of vision. I ask you to make an investment in an institution that is a proven income-generator for our state. I urge you to invest in the University in the spirit of your forebears—in the certainly that this is an investment in our future.

John Saunders
6/29/99
8:30 a
House Finance

CONSTITUTIONAL AUTHORIZATION OF NON-VOTED PUBLIC DEBT IN NORTH CAROLINA

The Constitution of North Carolina authorizes the General Assembly to empower The University of North Carolina to borrow money and issue bonds for its repayment with or without a vote of the people of the State, as the General Assembly determines to be in the best interest of the State.

In 1967, the Supreme Court of North Carolina in the case of Vance County v. Royster, 271 N.C. 53, had occasion to interpret Article VII, Section 6 of the Constitution as it then read:

> "Sec. 6. No debt or loan except by a majority of voters. No county, city, town, or other municipal corporation shall contract any debt, pledge its faith or loan its credit, nor shall any tax be levied or collected by any of the officers of the same except for the necessary expenses thereof, unless approved by a majority of those who shall vote thereon in any election held for such purpose."

The specific issue before the Court was whether a contract entered into by Vance County to pay the federal government $1,250 a year for 25 years for the use of land for a public airport constituted a "debt" that required the approval of the voters of the county to be valid.

The Supreme Court concluded that the lease did constitute a "debt" that required voter approval under the Constitution--and that any enforceable contractual obligation except revenue bonds required a popular vote of approval. The result was a substantial restraint on what had generally been thought by local government lawyers to be the ability of local (and state) governments to borrow money without a vote of the people so long as the faith and credit of the borrowing unit were not pledged to its repayment.

The General Assembly of 1967 created the Local Goverment Study Commission to make a thorough study of the structure, organization, powers, and financing of local government in North Carolina. In its report, filed with the 1969 General Assembly, that Commission recommended, among other matters, that "[t]he General Assembly should have authority to determine what contracts other than contracts creating general obligation debt must be submitted to popular vote." [Report of the Local Government Study Commission, 1968, p. 7.] One stated intent of the Commission was to overrule the Vance County decision.

Pursuant to that recommendation and others, the Study Commission proposed a general revision of the constituitonal provisions with respect to public finance, especially Article

V, the finance article. That Commission's recommendation was endorsed by the North Carolina State Constitution Study Commission (1968). It was enacted with minor revisions by the 1969 General Assembly, ratified by the qualified voters of the State in 1970, and took effect by its own terms in 1973. [N. C. Sess. Laws 1969, ch. 1200.] (The delayed effective date was to allow time for the enactment of implementing legislation.) The provisions of the Constitution relevant to the proposed bond issue date from that amendment.

The pertinent provisions of the Constitution with respect to state and local government borrowing are closely similar in language and in legal effect. Thus most court interpretations of the provisions with respect to local government apply as well to state government borrowing.

Article V, Section 3, of the Constitution now reads in part:

> "The General Assembly shall have no power to contract debts <u>secured by a pledge of the faith and credit of the State</u>, unless approved by a majority of the qualified voters of the State who vote thereon, except for . . . [several narrowly defined purposes, such as suppressing riots, or] for any

other lawful purpose, to the extent of two-thirds of the amount by which the State's outstanding indebtedness shall have been reduced during the next preceding biennium." [Emphasis supplied.]

Article V, Section 4, contains a virtually identical provision with respect to the contracting of debt by local governments. That provision the Supreme Court was called upon to interpret in 1991 in Wayne County Citizens Association v. Wayne County Board of Commissioners, 328 N.C. 24. The county had entered into an installment purchase contract with a financial institution whereby the county contracted to make annual payments to the institution for a specified period in return for the erection of court, jail, and office buildings for the use of the county. The county by its contract expressly denied that it was making a pledge of its faith and credit to pay the lender; its security was limited to a security interest in the land on which the buildings stood. While it was anticipated that the annual payments would be made by the county from tax funds, the contract expressly provided that such payments would be discretionary on the part of the county. And in the event of foreclosure by the creditor, a deficiency judgment against the county was contractually prohibited.

The Supreme Court found that the contact was not a violation of Article V, Section 4, despite the lack of a provision for a public vote on the issuance of debt, because there was no pledge of the faith and credit of the borrowing county--that is, no commitment of the taxing power of the county--to secure repayment. On that point, the Supreme Court wrote:

> "Plaintiffs argue that . . . [the authorizing statute] is unconstitutional because the statute allows the County to enter into an agreement pursuant to which the County may expend tax revenues in future years without a vote of the people. We find no merit in this argument. What is being pledged as security is the constitutionally significant factor. Unlike general obligation bonds, wherein the taxing power of the governmental unit is pledged, in installment purchase contracts, only the property improved is pledged. The possibility that appropriations which might include income from tax revenues will be used to repay the indebtedness under the contact is not a constitutionally significant factor." [Emphasis supplied.] 328 NC. at 31.

Thus it is clear that the Constitution of North Carolina, as interpreted by our State Supreme Court, empowers the General Assembly to authorize The University of North Carolina to issue the proposed university improvement security interest bonds without a pledge of the faith and credit of the State being given for their redemption, and as no pledge of the faith and credit of the State is to be given, no vote of the people of the State is required to authorize the bonds.

27 June 1999

John Sanders

TESTIMONY OF CHARLES F. FULLER

DIRECTOR, NORTH CAROLINA CITIZENS FOR A SOUND ECONOMY

before the

HOUSE and SENATE FINANCE COMMITTEES

of the

NORTH CAROLINA GENERAL ASSEMBLY

June 29, 1999

Good morning. Mr. Chairman and members of both the House and Senate Finance Committees, I come to you today on behalf of North Carolina Citizens for a Sound Economy. North Carolina CSE is an affiliate of Citizens for a Sound Economy, a 250,000-member non-profit organization advocating free market solutions to public policy problems. The 6,000-strong North Carolina Chapter established an office this year to bring a common sense message of limited government, lower taxes, and reduced regulation to the people of North Carolina.

Historically, the citizens of North Carolina have had the opportunity to vote on bond proposals for the university system. However, the General Assembly is considering a five billion dollar bond issue that bypasses the public's traditional role in approving the state's education bond issues. North Carolina CSE is concerned that such a move would put the state's consumers at risk for higher taxes. It was reported today in the *News & Observer* that bypassing the people's right to vote on the University Bond Issue will cost taxpayers 39 million dollars.

Let me detail for you **10 reasons** why you should let the people vote:

Reason number one why you should let the people vote!

- Approving billions of dollars in spending for the University system, without a vote of the people, does not address the underlying problems. Much of the consultant's report detailing the university system's needs is an indictment of poor management of our physical buildings and facilities. Before approving new bonds and placing the state billions of dollars more in debt, inefficient management practices in the university system should be eliminated. Let the people vote.

Reason number two why you should let the people vote!

- Although the new bonds are said to be targeted toward urgent spending needs, a number of the planned expenditures are far from urgent, including a six million dollar indoor tennis and volleyball center, a ten million dollar music and theater complex, and one million dollars in landscaping at the School of Arts. All totaled, the plan includes more than one hundred million dollars for sports and arts projects. Let the people vote.

Reason number three why you should let the people vote!

- Any one of you here today, if you saved the State of North Carolina 39 million dollars, you would rightfully be hailed a hero. So why would the leadership of the General Assembly bypass the voters, put them in debt billions of dollars, risk higher taxes down the road, and make the taxpayers pay 39 million dollars for the privilege? I say again, let the people vote and save the taxpayers 39 million dollars!

Reason number four why you should let the people vote!

- The voters have chosen wisely in the past. North Carolina's consumers have allowed for the creation of a university system that has a national reputation. We are all proud of our university system. If the case can be made regarding needs, voters will respond. Let the people vote.

Reason number five why you should let the people vote!

- Placing the state an additional five billion dollars in debt could raise taxes. According to our state treasurer it will. In fact, Treasurer Harlan Boyles had this to say last year, "Unless the state's spending philosophy changes, which of late includes mountains of borrowed money, the next governor of North Carolina will face the largest tax increases or the largest budget reductions ever experienced in our history." Voters should be allowed to vote, especially when their taxes may go up to pay the bill. This is another good reason to let the people vote!

Reason number six why you should let the people vote!

- The budget just approved by both houses does not include repayment of the illegal intangibles tax collected by the state between 1991 and 1994. Why should the state be allowed to borrow more money when taxpayers that are owed a refund from an illegal tax have not been repaid? This just does not make sense. Let the people vote!

Reason number seven why you should let the people vote!

- Debt obligates future generations and taxpayers to pay the bills. Citizens should be encouraged to vote, especially when it is obligating their children and grandchildren to pay the bill. Let the people vote!

Reason number eight why you should let the people vote!

- The proposal to increase university spending requires a more thorough evaluation. A private consultant spent two years surveying close to 800 buildings in the university system in order to determine the needs of the system. Now the General Assembly is rushing through a massive spending plan without proper time for lawmakers or the public to review the proposal. Maybe that is why the Greensboro News & Record reported last week that Representative George Miller said their decisions are made in the back room. Two years to review and only two days to decide on spending almost five billion dollars? Let the people vote!

Reason number nine why you should let the people vote!

- As I understand, the University system will not ask for any additional building funds for 10 years if this bond package is approved. Does anyone in this room really believe that will be the case? Another good reason why we should place these issues on the ballot and let the people vote!

Reason number ten why you should let the people vote!

- It's the right thing to do! Let the people vote and save them 39 million dollars!

There indeed may be some real building needs in the University system, but it was built by the people, paid for by the people, and the people deserve a right to vote because they are the ones that will be making payments on this debt for many years to come.

Let the people vote!

Mr. Chairman, thank you for your time and I request a copy of my remarks be placed in the minutes to this meeting.

NORTH CAROLINA DEPARTMENT OF STATE TREASURER
STATE AND LOCAL GOVERNMENT FINANCE DIVISION
SUMMARY OF LOCAL GOVERNMENT FINANCING AGREEMENTS
APPROVED FROM JULY 1990-JUNE 1999

	1990/1991	1991/1992	1992/1993	1993/1994	1994/1995	1995/1996	1996/1997	1997/1998	1998/1999	TOTAL
SCHOOLS	$ 5,500,000	$ 9,700,000	$ 54,334,873	$ 23,012,500	$ 99,455,550	$ 144,238,811	$ 88,889,732	$ 10,380,000	$ 109,500,000	$ 545,011,466
PUBLIC BUILDINGS	34,287,945	24,939,086	49,508,496	55,961,217	142,077,205	49,542,083	52,121,400	81,789,849	45,660,028	535,887,309
LAW ENF.,JAIL,COURTHOUSE	90,301,321	44,670,000	26,145,311	87,761,991	25,075,640	28,822,665	79,515,000	41,732,910	20,976,314	445,001,152
ARENAS,CONVENTION,COL.	196,500,000	29,000,000	14,740,719	800,000	61,500,000	42,629,800			18,925,000	364,095,519
REFUNDING				164,000,000	3,750,000			144,277,117	42,957,000	354,984,117
WATER	3,754,838	14,837,077	25,367,062	24,658,975	28,029,317	15,818,284	16,163,215	29,793,934	56,977,421	215,400,123
SANITARY SEWER	250,000	2,107,505	7,201,577	6,784,700	27,564,575	15,385,700	40,139,128	38,791,022	24,125,916	162,350,123
HOSPITAL	6,496,000	8,544,690	15,680,132	32,672,465	15,000,000	21,540,000	18,914,626	250,000	5,602,000	124,699,913
PARKING	20,250,000	28,000,000		8,100,000	28,275,000	2,592,709	6,117,500	6,800,000	2,200,000	102,335,209
RECREATION	1,302,001	3,175,000	524,278	3,964,000	14,180,688	5,881,118	6,382,947	17,091,006	26,516,874	79,017,912
EQUIPMENT	6,229,481	148,486	4,603,769	2,938,915	12,202,000	6,450,000	4,100,800	10,519,629	15,316,933	62,510,013
PENSION LIABILITY			25,000,000		22,500,000					47,500,000
FIRE STATION					4,144,000		8,587,256	11,894,140	9,997,649	34,623,045
INDUSTRIAL DEVELOPMENT	1,927,131			1,600,000		4,098,000	3,400,000	13,810,000	6,519,900	31,355,031
LAND ACQUISITION	105,000	421,960	1,017,469	650,000		1,464,800	5,811,200	6,239,913	14,422,293	30,132,635
LIBRARY		700,000	438,362		1,579,300		9,304,978	5,110,862	6,000,000	23,133,502
STREETS/SIDEWALKS	800,000		1,548,626	3,605,000		3,772,000		1,333,800	11,927,000	22,986,426
ELECTRIC				1,200,000			13,309,000	2,842,520	5,591,850	22,943,370
AIRPORT	1,900,000	1,520,000	270,000					4,950,000	5,747,500	14,387,500
COMMUNITY COLLEGE		5,500,000	806,000				6,604,197			12,910,197
SOLID WASTE	2,295,000	450,000	925,000	1,528,375			1,500,000	1,185,000	4,655,000	12,538,375
ENERGY SAVINGS CONTRACTS						3,692,188	1,995,099	1,376,514	3,806,152	10,869,953
OTHER		3,000,000	2,085,646	1,606,770	7,754,840	6,729,644	6,069,052	2,213,129	500,000	29,959,081
TOTAL	$371,898,717	$176,713,804	$230,197,320	$420,844,908	$493,088,115	$352,657,802	$368,925,130	$432,381,345	$437,924,830	$3,284,631,971

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NORTH CAROLINA DEPARTMENT OF STATE TREASRUER
STATE AND LOCAL GOVERNMENT FINANCE DIVISION
SUMMARY OF NORTH CAROLINA EDUCATIONAL FACILITIES FINANCE AGENCY
BONDS ISSUED FROM INCEPTION TO JUNE 30, 1999

Institution	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	Totals
Wake Forest University		$ 30,000,000		$ 72,000,000				$ 13,000,000		$ 35,000,000	$ 45,085,000			$ 195,085,000
Duke University	$ 18,900,000	25,377,120			$ 76,695,000	$ 35,240,000				24,275,000				180,487,120
Elon College		11,999,859				24,490,000					17,815,000	$ 14,010,000		68,314,859
Davidson College		20,000,000			3,000,000	25,140,000		2,900,000						51,040,000
Guilford College				9,000,000			$ 11,900,000				21,540,000			42,440,000
Gardner-Webb University											11,725,000		$ 6,700,000	18,425,000
Saint Augustine's College												12,910,000		12,910,000
Shaw University								12,300,000						12,300,000
Warren Wilson College												12,200,000		12,200,000
Johnson C. Smith University													11,325,000	11,325,000
Brevard College											10,800,000			10,800,000
Greensboro College											10,000,000			10,000,000
Methodist College									$ 10,000,000					10,000,000
Wingate University											10,000,000			10,000,000
High Point University			$ 2,490,000								7,110,000			9,600,000
Catawba College													9,500,000	9,500,000
North Carolina Wesleyan College													8,700,000	8,700,000
Cannon School, Inc. *													6,500,000	6,500,000
Belmont Abbey College				1,000,000								4,225,000		5,225,000
St. Augustine College							5,000,000							5,000,000
Lenoir-Rhyne College													4,750,000	4,750,000
Montreat College													4,400,000	4,400,000
Pfeiffer University										3,800,000				3,800,000
Mars Hill College						2,500,000								2,500,000
Salem College							2,500,000							2,500,000
Duke School for Children*													2,175,000	2,175,000
Totals	$ 18,900,000	$ 87,376,979	$ 2,490,000	$ 82,000,000	$ 79,695,000	$ 87,370,000	$ 19,400,000	$ 28,200,000	$ 10,000,000	$ 63,075,000	$ 134,075,000	$ 43,345,000	$ 54,050,000	$ 709,976,979

*Elementary/Secondary School

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N.C. Department of State Treasurer
State and Local Government Finance Division
Analysis of Debt and Debt Service
for **GENERAL FUND GENERAL OBLIGATION BONDS**

Fiscal Year	New Issuances Clean Water & Gas	New Issuances Schools	Principal Payment	Annual Debt Service (Principal & Interest)	Ending Outstanding Balance
1998/1999	$ -	$ -	$ 107,277,302.30	$ 199,288,092.50	$ 2,212,108,040.15
1999/2000	200,000,000	450,000,000	125,259,115.30	238,474,190.00	2,736,848,924.85
2000/2001	300,000,000		163,714,771.60	312,751,455.00	2,873,134,153.25
2001/2002	250,000,000		175,739,167.30	332,868,515.00	2,947,394,985.95
2002/2003	250,000,000		187,722,158.00	350,709,510.00	3,009,672,827.95
2003/2004			187,568,448.80	348,419,540.00	2,822,104,379.15
2004/2005			187,927,952.60	339,129,720.00	2,634,176,426.55
2005/2006			187,740,431.80	329,306,820.00	2,446,435,994.75
2006/2007			187,560,722.90	319,478,210.00	2,258,875,271.85
2007/2008			187,580,014.55	309,846,855.00	2,071,295,257.30
2008/2009			187,395,257.30	299,971,695.00	1,883,900,000.00
2009/2010			187,550,000.00	288,937,975.00	1,696,350,000.00
2010/2011			187,525,000.00	279,114,575.00	1,508,825,000.00
2011/2012			187,500,000.00	269,292,250.00	1,321,325,000.00
2012/2013			187,480,000.00	259,448,000.00	1,133,845,000.00
2013/2014			187,465,000.00	249,609,750.00	946,380,000.00
2014/2015			187,450,000.00	239,772,250.00	758,930,000.00
2015/2016			187,430,000.00	229,930,500.00	571,500,000.00
2016/2017			166,500,000.00	199,286,500.00	405,000,000.00
2017/2018			164,500,000.00	188,475,000.00	240,500,000.00
2018/2019			160,500,000.00	174,810,000.00	80,000,000.00
2019/2020			46,000,000.00	50,800,000.00	34,000,000.00
2020/2021			34,000,000.00	36,040,000.00	-
Total	$ 1,000,000,000	$ 450,000,000	$ 3,769,385,342.45	$ 5,845,761,402.50	

Assumptions:

Clean Water & Gas Bonds:
Sold August 1st annually from 1999 through 2002
Average Interest Rate = 5.50% for bonds sold in 1999
Average Interest Rate = 6.00% for bonds sold 2000 - 2002
Term of each bond issue = 20 years
Principal payable annually on August 1st beginning 8/1/00
Interest payable semi-annually on February 1and August 1, beginning 2/1/00

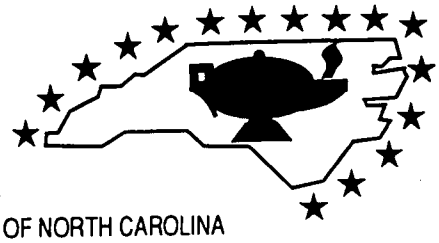
School Bonds:
Sold March 1, 2000
Average Interest Rate = 6.00%

Term = 20 years
Principal payable annually on March 1st beginning 3/1/01
Interest payable semi-annually on March 1 and September 1, beginning 9/1/00

N.C. Department of State Treasurer
State and Local Government Finance Division
Analysis of Debt and Debt Service
for **HIGHER EDUCATION LIMITED OBLIGATION BONDS**

Fiscal Year	Proposed Issuances		Principal Payment	Annual Debt Service (Principal & Interest)	Ending Outstanding Balance
	University System	Community Colleges			
1999/2000	$ 240,000,000	$ 100,000,000	$ -	$ -	$ 340,000,000
2000/2001	480,000,000	100,000,000	17,000,000	37,400,000.00	903,000,000
2001/2002	700,000,000	100,000,000	46,000,000	100,180,000.00	1,657,000,000
2002/2003	640,000,000		86,000,000	185,420,000.00	2,211,000,000
2003/2004	640,000,000		118,000,000	250,660,000.00	2,733,000,000
2004/2005			150,000,000	313,980,000.00	2,583,000,000
2005/2006			150,000,000	304,980,000.00	2,433,000,000
2006/2007			150,000,000	295,980,000.00	2,283,000,000
2007/2008			150,000,000	286,980,000.00	2,133,000,000
2008/2009			150,000,000	277,980,000.00	1,983,000,000
2009/2010			150,000,000	268,980,000.00	1,833,000,000
2010/2011			150,000,000	259,980,000.00	1,683,000,000
2011/2012			150,000,000	250,980,000.00	1,533,000,000
2012/2013			150,000,000	241,980,000.00	1,383,000,000
2013/2014			150,000,000	232,980,000.00	1,233,000,000
2014/2015			150,000,000	223,980,000.00	1,083,000,000
2015/2016			150,000,000	214,980,000.00	933,000,000
2016/2017			150,000,000	205,980,000.00	783,000,000
2017/2018			150,000,000	196,980,000.00	633,000,000
2018/2019			150,000,000	187,980,000.00	483,000,000
2019/2020			150,000,000	178,980,000.00	333,000,000
2020/2021			133,000,000	152,980,000.00	200,000,000
2021/2022			104,000,000	116,000,000.00	96,000,000
2022/2023			64,000,000	69,760,000.00	32,000,000
2023/2024			32,000,000	33,920,000.00	-
Total	$ 2,700,000,000	$ 300,000,000	$ 3,000,000,000	$ 4,890,000,000	

Assumptions:
Financing sold February 1st annually from 2000 through 2004
Average interest rate = 6.00% Term of each financing = 20 years
Principal payable annually on February 1, beginning 2/1/01
Interest payable semi-annually on February 1 and August 1, beginning 8/1/00



COUNCIL
OF UNIVERSITY OF NORTH CAROLINA
ALUMNI ASSOCIATION PRESIDENTS

Appalachian State University

East Carolina University

Elizabeth City State University

Fayetteville State University

North Carolina Agricultural and Technical State University

North Carolina Central University

North Carolina School of the Arts

North Carolina State University at Raleigh

Pembroke State University

University of North Carolina at Asheville

University of North Carolina at Chapel Hill

University of North Carolina at Charlotte

University of North Carolina at Greensboro

University of North Carolina at Wilmington

Western Carolina University

Winston-Salem State University

An Equal Opportunity/ Affirmative Action Employer

Dear Legislative Friend of Education, June 24, 1999

The Council of UNC Alumni Association Presidents was formed ten years ago to support the UNC System in improving the margins of excellence for which the system has traditionally been known. We represent over **750,000 University Alumni**, the great majority of whom **live, work, and vote** in North Carolina.

We are writing and will be contacting you in your home district in support of the two bills on University Capital Facilities Finance and Special Obligation Bonds for Improvements to the Facilities of the University of North Carolina. You have already been contacted by many obvious supporters of the University including Administrators, Chancellors, and Trustees who have provided you with **compelling information** from the Eva Klein consultant's report on repair, modernization, and construction needs as well as State Treasurer Harlan Boyles' **innovative financial recommendations**. Given the surprising defeat of the Wake county education bonds and the possible delay in Charlotte, we believe it even more important that **you and the NC Legislature** act with **courage and dispatch** on the subject bills.

The Council represents an **independent and pervasive voice** seeking your support based solely on our **long term commitment to excellence** in the University specifically and Education in general. We are already on record as offering thousands of mentoring volunteers for GEAR UP North Carolina, a grant application for 7-8th grade student intervention as well as offering even larger volunteer support for Governor Hunt's "First in America by 2010" challenge. The Council has previously geared up for a state-wide promotion of University Bonds which the Legislature supported five years ago.

In summary, the Council supports education initiatives from Smart Start to post graduate studies. We believe **education** provides the primary fuel for the **economic and cultural engine** of North Carolina. We applaud the Governor's "First in America" initiative; the State Treasurer's financing alternatives initiative; and the Legislature's Community College financing initiative as well as originating the Klein study. We wish to further applaud you for **passing these two important capital financing bills**.

We are **asking for your help**. You can **ask us for our help** as well. Please contact us at (919) 557-1259 with any questions.

Sincerely,

Carol Lesley
President

Robert Kennel
Executive Director

State of North Carolina
Department of the Treasurer

ARLAN E. BOYLES
STATE TREASURER

325 NORTH SALISBURY STREET
RALEIGH, NORTH CAROLINA 27603-1385

June 28, 1999

Limited Obligation Bonds for UNC Improvements

- Limited obligation bonds are not secured by a pledge by the State of its taxing power to secure their payment and, as authorized by the voters in an amendment to the Constitution in 1970, the use of limited obligation bonds is within the discretionary powers granted to the General Assembly by the people of North Carolina.

- General obligation bonds are secured by a pledge by the State of its taxing power to secure their payment and, when such pledge is made, voter approval is usually required. However, the General Assembly has authorized and the State has issued $147 million of non-voted 2/3 bonds since 1987, while additional bonds totaling some $4.5 billion have been submitted to and approved by the voters since 1993

- Since a pledge of the taxing power usually requires a bond referendum, it is often necessary to determine and identify the projects to be funded very early in the process. The ability to change those projects is limited. Limited obligation bonds offer greater flexibility in determining and planning what projects will be funded.

- The proposed plan of finance calls for financing the required improvements immediately, then using projected "pay as you go" funding and applying those monies to debt service rather than capital funding.

Impact Of The Proposed University Bonds Upon The State's Credit Rating

At the beginning of this century, Governor Charles Aycock saw in North Carolina's children a bright new future for our State, if only we would educate them and give them the tools to improve their standing in the bold new century that awaited them.

Today, we stand on the brink of a new century and face a similar challenge. Those who assess our credit worthiness factor into their ratings how we meet our present and future obligations. They will be more impressed, I believe, to know that we recognize the importance of continuing to support and build one of the best higher education systems in the nation than if they saw we had fallen short of that challenge.

There's no question that we can afford to borrow these funds for the University. We cannot afford to do otherwise. It's simply a question of priorities. The use of borrowed funds, with an obligation to repay the debt incurred over a period of years, serves to reinforce the notion that the physical properties of our University system would be placed among the highest claim on the future resources of our State's general fund. And, no longer would these needs be considered as an "after-thought" to all other governmental requests.

Does the State have the capacity to borrow $3 billion without jeopardizing its credit worthiness?

Certainly, the State of North Carolina has the capacity to borrow this amount without adversely affecting its credit worthiness. The decision to borrow has more to do with the purposes for which the proceeds will be spent than any other factor. In this instance maintenance and preservation of the University's ability to serve its people in the excellent tradition of the past two hundred years are paramount.

Why advocate the use of Limited Obligation Bonds as opposed to General Obligation Bonds?

The Constitution recognizes that under our representative form of government, broad authority is given to the elected members of the General Assembly. While the Constitution of North Carolina clearly prohibits the issuance of General Obligation Bonds without a specific vote of approval by the people, no such prohibition exists for Limited Obligation Bonds. It should be noted that Limited Obligation Bonds do not pledge the State's taxing power as do the issuance of General Obligation Bonds and that is a very important difference, both for taxpayers and for bond holders. The lending public has come to accept indebtedness when secured by the assets of the borrowers.

Will Limited Obligation Bonds require a higher rate of interest than General Obligation Bonds?

Yes. We have been advised by the rating agencies that these Limited Obligation Bonds likely will be rated one notch below the State's Triple A credit rating at AA+. Using this analysis, the additional cost will be approximately 1/8 of one percent greater than for Triple A rated bonds.

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(Attachment #1)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Tuesday, June 29, 1999

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

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

S.B. **912** Bonds for Higher Education

Draft Number:	PCSX6691
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment:

AGENDA

WEDNESDAY, JUNE 30, 1999

SENATE FINANCE COMMITTEE

20 MINUTES AFTER SESSION – ROOM 544

I CALL TO ORDER

II INTRODUCTION OF PAGES

III BILLS TO BE CONSIDERED

SB 864 – Lab Testing Facility Sales Tax – Sen. Gulley

SB 1000 – Motor Oil ADF/Used Oil Program – Sen. Odom

SB 1076 – Reform Local Tax on Rental Cars – Sen. Cooper

HB 120 – Tax Lien Advertisement and Collection – ~~Sen.~~ Rep. Owens

HB 278 - TANF Separation Noncharged/AB – Rep. Redwine

HB 280 – Motor Vehicle Tech. Amendments/AB – Rep. Cole

HB 738 – Greenville Satellite Annexations – Rep. Rogers

HB 764 – Raise Mooresville Room Tax – Rep. Setzer

HB 855 – Kings Mountain ETJ – Rep. Horn

HB 1069 – Social Worker Licensure – Rep. Alexander

HB 1090 – I.A.F.F. Registration Plate – Rep. Moore

HB 1237 – Landscape Architects Exam Fee – Rep. McMahan

SENATE FINANCE COMMITTEE

WEDNESDAY, JUNE 30, 1999

AFTER SESSION – ROOM 1027

The Senate Finance Committee met on Wednesday, June 30, 1999, after session in Room 1027 with Senator Hoyle presiding. There were 23 committee members present for the meeting.

SB 1000 – Motor Oil ADF/Used Oil Program.

Senator Odom was recognized to explain his Bill. He informed the committee that a Committee Sub was being prepared and would be available later. Wayne Turner, Greensboro, and representing Carolina Recycling, spoke in favor of this Bill. Also, Gary F. Harris, Executive Vice-President of North Carolina Petroleum Marketers, and Fran Preston, representing the North Carolina Retail Merchants Association, were recognized and commented on this Bill. After a lengthy discussion, Senator Hoyle announced that this Bill would not be voted on today. Copy of Bill, Committee Sub (not adopted) Explanation, other information and Fiscal Note included in the minutes.

HB 855 – Kings Mountain ETJ.

Senator Dalton explained this Bill for Representative Horn. On motion by Senator Gulley, the Bill was given a Favorable Report and the motion carried. Copy of original Bill and Explanation included in the minutes.

HB 764 – Raise Mooresville Room Tax.

Senator Phillips explained this Bill for Representative Setzer. On motion by Senator Dannelly, the Bill was given a Favorable Report. Copy of Bill and Explanation included in the minutes.

HB 738 – Greenville Satellite Annexations.

Representative Rogers was unable to be present at this meeting and Bill was explained by staff. On motion by Senator Allran, a Committee Sub was adopted by the committee. Senator Gulley moved for a Favorable Report for the Committee Sub and the motion carried. Copy of original Bill, Committee Sub, and Explanation included in the minutes.

SB 1076 – Reform Local Tax on Rental Cars.

Senator Cooper was recognized to explain his Bill. He moved to adopt a Committee Substitute and motion carried. Senator Cooper explained the Committee Sub and answered questions from the committee members. Ed Regan, representing the North Carolina Association of County Commissioners spoke in support of this Bill. There was a technical amendment offered and adopted by the committee changing County to City and on motion by Senator Kerr, the committee gave the Committee Sub, as amended, a Favorable Report. Copy of original Bill, Committee Sub, Explanation and Fiscal Note included in the minutes. No copy of Amendment available.

HB 120 – Tax Lien Advertisement and Collection.

Senator Wellons was recognized and moved to adopt a Committee Substitute for this Bill. Senator Wellons explained the new Committee Sub which came out of a subcommittee that had been appointed to work on this Bill. John Bussian, representing the N. C. Press Association, spoke in favor of this Bill. Senator Gulley moved for a Favorable Report for the Committee Sub and the motion carried. Original Bill, Committee Sub, Explanation and Fiscal Note included in the minutes.

HB 1090 – I.A.F.F. Registration Plate.

Senator Rand explained this Bill and Senator Kerr moved for a Favorable Report. Motion carried. Copy of Bill, Explanation and Fiscal Note included in the minutes.

SB 864 – Lab Testing Facility Sales Tax.

Senator Gulley was recognized to explain his Bill and moved for the adoption of a Committee Substitute. Motion carried. Brad Smith, Executive Vice-President of Public Affairs for LabCor was recognized and spoke in support of this Bill. After a general discussion, the meeting was adjourned and no vote was taken on SB 864.

David W. Hoyle, Co-Chair
Senate Finance Committee

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

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

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

HB 278, HB 280, HB1069 and HB 1237 were not heard at this meeting.

North Carolina General Assembly
Senate Chamber
State Legislative Building
Raleigh 27601-2808

SENATOR JOHN H. KERR, III
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COMMITTEES:

FINANCE - CHAIRMAN
WAYS AND MEANS - VICE CHAIRMAN
CHILDREN AND HUMAN RESOURCES
COMMERCE
JUDICIARY
SENATE SELECT COMMITTEE ON THE FUTURE OF THE COURTS

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1000

Short Title: Motor Oil ADF/Used Oil Program. (Public)

Sponsors: Senator Odom.

Referred to: Finance.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO IMPOSE AN ADVANCE DISPOSAL FEE UPON MOTOR OIL AT THE POINT OF FIRST SALE AND TO ESTABLISH THE USED OIL COLLECTION PROGRAM TO ENCOURAGE THE PROPER MANAGEMENT OF USED OIL GENERATED BY PRIVATE CITIZENS WHO CHANGE THEIR OWN OIL.

The General Assembly of North Carolina enacts:

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

"ARTICLE 2E.

"Motor Oil Advance Disposal Fee.

"§ 105-113.120. Definitions.

The following definitions apply to this Article:

(1) Distributor. -- A person who does any of the following:

a. Manufactures or produces motor oil.

b. Acquires motor oil for sale to a wholesale dealer or a retail dealer.

c. Imports motor oil into this State for use by that person.

(2) Motor oil. -- Any oil or similar lubricant classified for use in an internal combustion engine, crankcase, transmission, gearbox, or differential.

(3) Retail dealer. -- A person who sells motor oil to the ultimate consumer of the motor oil.

(4) Sale. -- A transfer, a trade, an exchange, or a barter, in any manner or by any means, with or without consideration.
(5) Secretary. -- The Secretary of Revenue.
(6) Wholesale dealer. -- A person who sells motor oil to another for resale.

"**§ 105-113.121. Advanced disposal fee imposed.**

An advance disposal fee is imposed on motor oil at the rate of two cents (2¢) per quart.

"**§ 105-113.122. Motor oil license required.**

(a) Distributors and Wholesale Dealers. -- Distributors and wholesale dealers shall obtain a continuing motor oil license for each place of business for which an advance disposal fee of twenty-five dollars ($25.00) shall be paid. For the purpose of this subsection, 'place of business' means any place where a distributor manufactures or produces motor oil or any place where a distributor or a wholesale dealer receives or stores non-fee-paid motor oil.

(b) Retail Dealers. -- Retail dealers shall obtain for each place of business a continuing motor oil license for which an advance disposal fee of five dollars ($5.00) shall be paid. For the purpose of this subsection, 'place of business' means any place where a retail dealer receives non-fee-paid motor oil or manufactures or produces motor oil.

"**§ 105-113.123. Liability for advance disposal fee; payment.**

(a) Primary Liability. -- The distributor, wholesale dealer, or retail dealer who first distributes, sells, or otherwise handles motor oil in this State is liable for the advance disposal fee imposed by this Article. A distributor, wholesale dealer, or retail dealer who brings into this State motor oil made outside the State is the first person to handle the motor oil in this State. A distributor, wholesale dealer, or retail dealer who is the original consignee of motor oil that is made outside the State and is shipped into the State is the first person to handle the motor oil in this State.

(b) Secondary Liability. -- A retail dealer who acquires non-fee-paid motor oil from a distributor or a wholesale dealer is liable for any advance disposal fee due on the motor oil.

(c) Reporting Periods. -- Except for fees on a designated sale under G.S. 105-113.126, the fees levied by this Article are payable when a report is required to be filed. A report is due on a monthly or a quarterly basis. A monthly report covers sales and other activities occurring in a calendar month and is due within 15 days after the end of the month covered by the report. A quarterly report covers sales and other activities occurring in a calendar quarter and is due within 15 days after the end of the quarter covered by the report. A report shall be filed on a form provided by the Secretary and shall contain the information required by the Secretary.

A person who is consistently liable for less than fifty dollars ($50.00) of advance disposal fees a month may, with the approval of the Secretary, file a report on a quarterly basis. All others who are liable for the advance disposal fee imposed by this Article must file a report on a monthly basis. The amount of advance disposal

fee payable by a person for a reporting period is the amount payable by all places of business owned or operated by that person.

"**§ 105-113.124. Advance disposal fee discount.**

A distributor, a wholesale dealer, or a retail dealer who is liable for the advance disposal fees on motor oil and who files a timely report under G.S. 105-113.123 may deduct from the amount due with the report a discount of two percent (2%).

"**§ 105-113.125. Exemptions.**

The advance disposal fee imposed by G.S. 105-113.121 on motor oil does not apply to the following:

(1) Motor oil sold outside the State.

(2) Motor oil required to operate industrial machinery and sold for that purpose.

"**§ 105-113.126. Designation of exempt sale.**

(a) A distributor or a wholesale dealer who sells motor oil to a person who has notified the distributor or wholesale dealer in writing that the person intends to resell the motor oil in a transaction that is exempt from an advance disposal fee under G.S. 105-113.125 may, when filing a report under G.S. 105-113.123, designate the quantity of motor oil sold to the person for resale. A distributor or a wholesale dealer shall report a designated sale on a form provided by the Secretary.

(b) A distributor or a wholesale dealer is not required to pay an advance disposal fee on a designated sale when filing a report. The distributor or the wholesale dealer shall pay the advance disposal fees due on all other sales in accordance with this section. A distributor, a wholesale dealer, or a customer of a distributor shall not delay payment of the advance disposal fees due on motor oil by failing to pay advance disposal fees on a sale that is not a designated sale or by overstating the quantity of motor oil that will be resold in a transaction exempt under G.S. 105-113.125.

(c) A person who does not sell motor oil in a transaction that is exempt under G.S. 105-113.125 is liable for the advance disposal fees and any penalties and interest due on the designated sale when the distributor or wholesale dealer has failed to pay the advance disposal fees due on the sale of the motor oil to that person in reliance on that person's written notification of intent to resell the motor oil. If the Secretary determines that motor oil reported as a designated sale is not sold as reported, the Secretary shall assess the person who notified the distributor or the wholesale dealer of an intention to resell the motor oil in an exempt transaction for the advance disposal fees due on the sale and any applicable penalties and interest. A distributor or a wholesale dealer who does not pay advance disposal fees on motor oil in reliance on a person's written notification of intent to resell the motor oil in an exempt transaction is not liable for any advance disposal fees assessed on the motor oil.

"**§ 105-113.127. Use of advance disposal fee proceeds.**

The Secretary shall credit five percent (5%) of the advance disposal fees collected under this Article to the Solid Waste Management Trust Fund. The Secretary shall credit the remaining ninety-five percent (95%) of the advance disposal fees collected

under this Article to the Used Oil Collection Fund to be used in accordance with the provisions of Part 2E of Article 9 of Chapter 130A of the General Statutes."

Section 2. Article 9 of Chapter 130A of the General Statutes is amended by adding a new Part to read:

"Part 2E. Used Oil Collection Program.

"§ 130A-309.90. Findings; intent.

(a) The General Assembly finds that used oil is a valuable resource that can be used as an environmentally acceptable source of energy or as a rerefined product. Despite its potential value, a significant amount of used motor oil is improperly disposed of, resulting in a significant environmental problem and a waste of a valuable energy resource.

(b) The General Assembly finds that, although there is an existing system for the collection and recycling of used oil generated by business and industry, private citizens who change their own motor oil have only limited access to that system and often dispose of their used oil on land or in landfills, sewers, drainage systems, septic tanks, surface or ground waters, and elsewhere.

(c) It is the intent of the General Assembly to reduce the amount of improperly disposed used oil by providing incentives to encourage the establishment of more certified used oil collection centers and to expand curbside collection programs to receive used oil from Do-It-Yourselfers.

"§ 130A-309.91. Definitions.

As used in this Part, unless the context requires otherwise:

(1) 'Do-It-Yourselfer (DIYer)' means an individual who removes used oil from any internal combustion engine that is owned or operated by that individual.

(2) 'Motor oil' has the same meaning as in G.S. 105-113.120.

(3) 'Reclaim' means to use methods, other than those used in rerefining, to purify used oil primarily to remove insoluble contaminants, making the oil suitable for further use. The methods used may include settling, heating, dehydration, filtration, or centrifuging.

(4) 'Recycle oil' means to prepare, in a safe, legal, and environmentally sound manner, used oil for reuse as a petroleum product by reclaiming, reprocesssing, energy recovery, rerefining, or another means.

(5) 'Rerefine' means to process used oil to produce high-quality base stocks for lubricants or other petroleum products. Rerefine may include distillation, hydrotreating, or treatments employing acid, caustic, solvent, clay, or other chemicals, or other physical treatments other than those used in reclaiming.

(6) 'Retail dealer' has the same meaning as in G.S. 105-113.120.

(7) 'Used oil' means any oil which has been refined from crude oil or synthetic oil and, as a result of use, storage, or handling, has become unsuitable for its original purpose due to the presence of

impurities or loss of original properties, but which may be suitable for further use and is economically recyclable. As used in this Article, used oil does not include an oil filter that has been drained of free-flowing used oil or an oil-contaminated material.

(8) 'Used oil collection center' means a facility, including a fixed location, tank, truck, or container, that serves as a centralized collection center that accepts used motor oil from DIYers.

"**§ 130A-309.92. Used Oil Collection Fund.**

(a) The Used Oil Collection Fund is created as a nonreverting fund within the Department. The Used Oil Collection Fund consists of:

(1) The proceeds of the motor oil advance disposal fees imposed under Article 2E of Chapter 105 of the General Statutes.

(2) Any contributions and grants from public or private sources.

(b) The Used Oil Collection Fund may be used for:

(1) Grants to public or private entities to establish certified used oil collection centers.

(2) Grants to units of local government or private collectors that offer or include, as part of municipal solid waste collection services, curbside collection of used oil from households, including grants for the reasonable costs of household containers, truck retrofitting, tanks, and similar costs associated with the curbside collection of used oil.

(3) Grants for advertising, training, and other programs to promote the collection and recycling of used oil from the public.

(4) Grants for public education programs concerning the proper handling and recycling of used oil.

(5) Incentives pursuant to G.S. 130A-309.99 to encourage individuals who change their own oil to return the oil to used oil collection centers.

(6) Grants to indemnify a used oil collection center for the costs arising out of used oil collected from the public that is unsuitable for reuse or recycling, results from spills or contamination, or results from the additional liability associated with the operation of the used oil collection center.

(7) The costs that the Department directly incurs in developing and administering the Used Oil Collection Program under this Part, not to exceed seven percent (7%) of the Fund.

"**§ 130A-309.93. Used Oil Collection Program; duties of the Department.**

(a) The Department shall develop and administer a used oil collection program to encourage the proper disposal of used oil generated by DIYers and shall adopt rules to implement this program. The Used Oil Collection Program shall include provisions regarding:

(1) All grants that may be paid from the Used Oil Collection Fund under G.S. 130A-309.92.

(2) Technical assistance to persons who develop the used oil collection center programs or the curbside collection of used oil as part of municipal solid waste collection.

(3) Management standards and certification requirements for used oil collection centers, transporters of used oil, and used oil recyclers consistent with the provisions of this Part and applicable federal laws and regulations.

(b) The Department shall develop criteria for selecting the recipients of the grants that may be paid from the Used Oil Collection Fund under G.S. 130A-309.92 and shall select the recipients of these grants.

(c) The Department shall establish and maintain a toll-free telephone number for the purpose of disseminating information regarding:

(1) The locations and phone numbers of used oil collection centers within the State.

(2) The availability, dates, and requirements for curbside collection where available.

(3) Locations that accept commercial used oil.

(d) The Department may adopt rules to implement this Part.

"**§ 130A-309.94. Report requirement.**

No later than 1 March of each year, the Department shall submit a report to the Environmental Review Commission on the Used Oil Collection Program. The report shall include:

(1) The total motor oil advance disposal fee proceeds collected pursuant to Article 2E of Chapter 105 of the General Statutes during the preceding calendar year, the total motor oil advance disposal fee proceeds credited to the Used Oil Collection Fund during the preceding calendar year, and the total motor oil advance disposal fee proceeds credited to the Solid Waste Management Trust Fund during the preceding calendar year.

(2) The total amount expended from the Used Oil Collection Fund during the preceding calendar year.

(3) Information identifying each grant recipient, the amount of each grant received, and the proposed use of the grant moneys.

(4) The number of gallons of used oil collected under the Used Oil Collection Program.

(5) The cost of developing and administering the Used Oil Collection Program.

(6) A calculation of the per gallon cost of the Used Oil Collection Program, including the administrative cost of the program.

"**§ 130A-309.95. Advisory committee.**

The Secretary shall appoint an advisory committee for the Used Oil Collection Program. The advisory committee shall consist of seven members who shall serve at the pleasure of the Secretary. In making appointments to the advisory committee, the Secretary shall select persons who represent the various interests affected by the Used

Oil Collection Program. The advisory committee shall recommend criteria for selecting recipients of the grants that may be paid from the Used Oil Collection Fund under G.S. 130A-309.92 and shall recommend recipients of these grants. Members of the advisory committee shall receive necessary travel and subsistence expenses while on official business of the committee in accordance with G.S. 138-5 and G.S. 138-6.

"§ 130A-309.96. Used oil collection centers.

(a) A used oil collection center must be certified by the Department. To be certified, a center must:

(1) Participate in the State toll-free telephone used oil information network system.

(2) Meet the minimum requirements for hours of operation and other standards established by the Department.

(3) Demonstrate that the center complies with all State rules concerning tank structure and integrity, maintenance, supervision, employee training, and housekeeping.

(b) Used oil collection centers shall transfer used oil only to certified transporters and shall maintain records of all volumes of material collected, including the identity of the hauler and the name and location of the recycling facility to which the oil is being transported.

"§ 130A-309.97. Oil releases from collection centers.

Upon detecting a release of used oil to the environment at a used oil collection center, the owner, operator, or lessor of the used collection center shall notify the Department of the release and shall:

(1) Stop the release.

(2) Contain the released used oil.

(3) Clean up and properly manage the released used oil.

(4) Repair and replace any leaking used oil storage containers or tanks prior to returning them to service.

"§ 130A-309.98. Limitation of liability.

(a) A person or the State shall not recover from the owner, operator, or lessor of a certified used oil collection center any costs of response actions resulting from a release of used oil collected at the center or subsequently handled or disposed of by others if all of the following apply:

(1) The owner, operator, or lessor of the used oil collection center does not mix the used oil with any hazardous substance.

(2) The owner, operator, or lessor of the used oil collection center does not accept used oil that the owner, operator, or lessor knows contains hazardous substances.

(3) The used oil collection center is in compliance with management standards issued by the Department.

(4) The used oil is removed from the premises by a transporter certified pursuant to G.S. 130A-309.101.

(b) For purposes of this section, the owner, operator, or lessor of a used oil collection center may presume that a quantity of less than five gallons of used oil

accepted at any one time from any member of the public is not mixed with a hazardous substance, provided that the owner or operator acts in good faith.

(c) This section applies only to activities directly related to the collection of used oil by a used oil collection center. This section does not apply to intentional misconduct or grossly negligent acts related to the operations of a used oil collection center.

"**§§ 130A-309.99 through 130A-309.102: Reserved.**

"**§ 130A-309.103. Used oil filters.**

Prior to disposal, used oil filters shall be prepared for disposal in one of the following ways:

(1) Punctured and hot-drained for a minimum of 12 hours.

(2) Punctured and cold-drained for a minimum of 24 hours.

(3) Drained and crushed.

(4) Otherwise prepared for disposal consistent with rules adopted by the Commission.

"**§ 130A-309.104. Retail sales of motor oil.**

Any retail dealer that is not a used oil collection center shall post and maintain at or near the point of motor oil display or sale a durable and legible sign (minimum size of eight and one-half by 11 inches) informing the public of the importance of proper collection and disposal of used oil and the State toll-free number for information regarding used oil collection centers.

"**§§ 130A-309.105 through 130A-309.107: Reserved.**"

Section 3. G.S. 130A-290(b), 130A-309.16, 130A-309.20, 130A-309.22, and 130A-309.23 are repealed.

Section 4. G.S. 130A-309.15 is recodified as G.S. 130A-309.105, which is reserved under Section 2 of this act.

Section 5. G.S. 130A-309.17 is recodified as G.S. 130A-309.100, which is reserved under Section 2 of this act.

Section 6. G.S. 130A-309.17, recodified as G.S. 130A-309.100 in Section 5 of this act, reads as rewritten:

"**§ 130A-309.100. Registration of persons transporting, collecting, or recycling used oil; fees; reports and records.**

(a) The following persons shall register annually with the Department pursuant to rules of the Department on forms prescribed by it:

(1) Any person who transports over public highways more than 500 gallons of used oil per ~~week.~~ week or more than 55 gallons at any time.

(2) Any person who maintains a collection facility ~~that receives more than 6,000 gallons of used oil annually. For purposes of registration, the amount received does not include used oil delivered to collection centers by individuals that change their own personal motor oil.~~ that accepts more than 6,000 gallons of used oil annually from generators other than DIYers.

(3) Any facility that recycles ~~more than 10,000 gallons of used oil annually.~~ used oil.

(b) An electric utility which generates during its operation used oil that is then reclaimed, recycled, or rerefined by the electric utility for use in its operations is not required to register or report pursuant to this section.

(c) An on-site burner which only burns a specification used oil generated by the burner is not required to register or report pursuant to this section, provided that the burning is done in compliance with any air permits issued by the Department.

(d) The Department may prescribe a fee for the registration required by this section in an amount which is sufficient to cover the cost of processing applications but which does not exceed twenty-five dollars ($25.00).

(e) The Department shall require each registered person to submit, no later than 1 July of each year, a report which specifies the type and quantity of used oil transported, collected, and recycled during the preceding calendar year.

(f) Each registered person who transports or recycles used oil shall maintain records which identify:

(1) The source of the materials transported or recycled;

(2) The quantity of materials received;

(3) The date of receipt; and

(4) The destination or end use of the materials.

(g) The Department shall perform technical studies to sample used oil at facilities of representative used oil transporters and at representative recycling facilities to determine the incidence of contamination of used oil with hazardous, toxic, or other harmful substances.

(h) Any person who fails to register with the Department as required by this section shall be guilty of a misdemeanor and upon conviction shall be punished as provided by G.S. 130A-25(a) and G.S. 14-3.

(i) The proceeds from the registration fees imposed by this section shall be deposited into the Solid Waste Management Trust Fund."

Section 7. G.S. 130A-309.23 is recodified as G.S. 130A-309.101, which is reserved under Section 2 of this act.

Section 8. G.S. 130A-309.23, recodified as G.S. 130A-309.101 in Section 7 of this act, reads as rewritten:

"**§ 130A-309.101. Certification of used oil transporters.**

(a) Any person who transports over public highways after 1 January 1992, more than 500 gallons of used oil in any week must be a certified transporter or must be employed by a person who is a certified transporter.

(b) The Department of Transportation shall develop a certification program for transporters of used oil, and shall issue, deny, or revoke certifications authorizing the holder to transport used oil. Certification requirements shall ~~help assure~~ require that a used oil transporter is familiar with appropriate rules and used oil management procedures.

(c) The Department of Transportation shall adopt rules governing certification, which shall include requirements for the following:

(1) Registration and annual reporting pursuant to G.S. ~~130A-309.17.~~ 130A-309.100.

(2) Evidence of familiarity with applicable State laws and rules governing used oil ~~transportation.~~ transportation and proper used oil management.

(3) Proof of liability insurance or other means of financial responsibility for any liability which may be incurred in the transport of used oil.

(4) Marking, by the certified transporter of used oil, of all vehicles which transport used oil or all containers of used oil when it is not feasible to mark the vehicle. The mark must clearly identify the certified used oil transporter and clearly indicate that the vehicle is used to transport used oil. The marking must be visible to others travelling on the highway.

(5) Equipment in the transportation vehicle being in good mechanical condition and suitable for the transportation of used oil.

(6) Documentation, maintained by the transporter, that indicates to whom the used oil is delivered.

(d) Where used oil is sold directly by the transporter to an end user, the documentation required under subsection (c) of this section shall include test results showing that the used oil meets all applicable standards established by Department rules."

Section 9. G.S. 130A-309.18, 130A-309.19, 130A-309.21, and 130A-309.24 are recodified as G.S. 130A-309.107, 130A-309.106, 130A-309.99, and 130A-309.102 respectively, which sections are reserved under Section 2 of this act.

Section 10. This act becomes effective January 1, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 1000
Proposed Committee Substitute S1000-CSLD-4
WARNING: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Motor Oil ADF/Used Oil Program. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO IMPOSE AN ADVANCE DISPOSAL FEE UPON MOTOR OIL AT THE POINT OF FIRST SALE, TO ESTABLISH THE USED OIL COLLECTION PROGRAM TO ENCOURAGE THE PROPER MANAGEMENT OF USED OIL GENERATED BY PRIVATE CITIZENS WHO CHANGE THEIR OWN OIL, TO BAN THE DISPOSAL OF USED OIL FILTERS AS OF JANUARY 1, 2004, AND TO PROVIDE A SUNSET FOR THE ADVANCE DISPOSAL FEE UPON MOTOR OIL.

The General Assembly of North Carolina enacts:

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

"ARTICLE 2E.

"Motor Oil Advance Disposal Fee.

"§ 105-113.120. Definitions.

The following definitions apply to this Article:

(1) Distributor. -- A person who does any of the following:

a. Manufactures or produces motor oil.

b. Acquires motor oil for sale to a wholesale dealer or a retail dealer.

c. Imports motor oil into this State for use by that person.

(2) Motor oil. -- Any oil or similar lubricant classified for use in an internal combustion engine, crankcase, transmission, gearbox, or differential. Motor oil does not include greases and does not include recycled motor oil that is blended to create motor fuel.

(3) Retail dealer. -- A person who sells motor oil to the ultimate consumer of the motor oil.

(4) Sale. -- A transfer, a trade, an exchange, or a barter, in any manner or by any means, with or without consideration.

(5) Secretary. -- The Secretary of Revenue.

(6) Wholesale dealer. -- A person who sells motor oil to another for resale.

"§ 105-113.121. Advanced disposal fee imposed.

An advance disposal fee is imposed on motor oil at the rate of two cents (2¢) per quart.

"§ 105-113.122. Motor oil license required.

(a) Distributors and Wholesale Dealers. -- Distributors and wholesale dealers shall obtain a continuing motor oil license for each place of business for which an advance disposal fee of twenty-five dollars ($25.00) shall be paid. For the purpose of this subsection, 'place of business' means any place where a distributor manufactures or produces motor oil or any place where a distributor or a wholesale dealer receives or stores non-fee-paid motor oil.

(b) Retail Dealers. -- Retail dealers shall obtain for each place of business a continuing motor oil license for which an advance disposal fee of five dollars ($5.00) shall be paid. For the purpose of this subsection, 'place of business' means any place where a retail dealer receives non-fee-paid motor oil or manufactures or produces motor oil.

"§ 105-113.123. Liability for advance disposal fee; payment.

(a) Primary Liability. -- The distributor, wholesale dealer, or retail dealer who first distributes, sells, or otherwise handles motor oil in this State is liable for the advance disposal fee imposed by this Article. A distributor, wholesale dealer, or retail dealer who brings into this State motor oil made outside the State is the first person to handle the motor oil in this State. A distributor, wholesale dealer, or retail dealer who is the original consignee of motor oil that is made outside the State and is shipped into the State is the first person to handle the motor oil in this State.

(b) Secondary Liability. -- A retail dealer who acquires non-fee-paid motor oil from a distributor or a wholesale dealer is liable for any advance disposal fee due on the motor oil.

(c) Returns. -- Except for fees on a designated sale under G.S. 105-113.126, the fees levied by this Article are payable when a return is required to be filed. A return is due on a quarterly basis. The quarterly return shall cover sales and other activities occurring in a calendar quarter and is due within 15 days after the end of the quarter covered by the return. A return shall be filed on a form provided by the Secretary and shall contain the information required by the Secretary. The amount of the advance disposal fee payable by a person for a quarter is the amount payable by all places of business owned or operated by that person.

"§ 105-113.124. Advance disposal fee discount.

A distributor, a wholesale dealer, or a retail dealer who is liable for the advance disposal fees on motor oil and who files a timely return under G.S. 105-113.123 may deduct from the amount due with the return a discount of two percent (2%).

"§ 105-113.125. Exemptions.

The advance disposal fee imposed by G.S. 105-113.121 on motor oil does not apply to the following:

(1) Motor oil sold outside the State.

(2) Motor oil required to operate industrial machinery and sold for that purpose.

"§ 105-113.126. Designation of exempt sale.

(a) A distributor or a wholesale dealer who sells motor oil to a person who has notified the distributor or wholesale dealer in writing that the person intends to resell the motor oil in a transaction that is exempt from an advance disposal fee under G.S. 105-113.125 may, when filing a return under G.S. 105-113.123, designate the quantity of motor oil sold to the person for resale. A distributor or a wholesale dealer shall report a designated sale on a form provided by the Secretary.

(b) A distributor or a wholesale dealer is not required to pay an advance disposal fee on a designated sale when filing a return. The distributor or the wholesale dealer shall pay the advance disposal fees due on all other sales in accordance with this section. A distributor, a wholesale dealer, or a customer of a distributor shall not delay payment of the advance disposal fees due on motor oil by failing to pay advance disposal fees on a sale that is not a designated sale or by overstating the quantity of motor oil that will be resold in a transaction exempt under G.S. 105-113.125.

(c) A person who does not sell motor oil in a transaction that is exempt under G.S. 105-113.125 is liable for the advance disposal fees and any penalties and interest due on the designated sale when the distributor or wholesale dealer has failed to pay the advance disposal fees due on the sale of the motor oil to that person in reliance on that person's written notification of intent to resell the motor oil. If the Secretary determines that motor oil reported as a designated sale is not sold as reported, the Secretary shall assess the person who notified the distributor or the wholesale dealer of an intention to resell the motor oil in an exempt transaction for the advance disposal fees due on the sale and any applicable penalties and interest. A distributor or a wholesale dealer who does not pay advance disposal fees on motor oil in reliance on a person's written notification of intent to resell the motor oil in an exempt transaction is not liable for any advance disposal fees assessed on the motor oil.

"**§ 105-113.127. Use of advance disposal fee proceeds.**

At the end of each quarter of the fiscal year, the Secretary shall credit five percent (5%) of the advance disposal fees collected under this Article to the Solid Waste Management Trust Fund and shall credit the remaining ninety-five percent (95%) of the advance disposal fees collected under this Article to the Used Oil Collection Fund to be used in accordance with the provisions of Part 2E of Article 9 of Chapter 130A of the General Statutes."

Section 2. Article 9 of Chapter 130A of the General Statutes is amended by adding a new Part to read:

"Part 2E. Used Oil Collection Program.

"**§ 130A-309.90. Findings; intent.**

(a) The General Assembly finds that used oil is a valuable resource that can be used as an environmentally acceptable source of energy or as a rerefined product. Despite its potential value, a significant amount of used motor oil is improperly disposed of, resulting in a significant environmental problem and a waste of a valuable energy resource.

(b) The General Assembly finds that, although there is an existing system for the collection and recycling of used oil generated by business and industry, private citizens who change their own motor oil have only limited access to that system and often dispose of their used oil on land or in landfills, sewers, drainage systems, septic tanks, surface or ground waters, and elsewhere.

(c) It is the intent of the General Assembly to reduce the amount of improperly disposed used oil by providing incentives to encourage the establishment of more used oil collection centers and to expand curbside collection programs to receive used oil from Do-It-Yourselfers.

"**§ 130A-309.91. Definitions.**

As used in this Part, unless the context requires otherwise:

(1) 'Do-It-Yourselfer (DIYer)' has the same meaning as household 'do-it-yourselfer' used oil generator in 40 Code of Federal Regulations § 279.1 (July 1, 1998 Edition).

(2) 'Motor oil' has the same meaning as in G.S. 105-113.120.

(3) 'Reclaim' means to use methods, other than those used in rerefining, to purify used oil primarily to remove insoluble contaminants, making the oil suitable for further use. The methods used may include settling, heating, dehydration, filtration, or centrifuging.

(4) 'Recycle oil' means to prepare, in a safe, legal, and environmentally sound manner, used oil for reuse as a petroleum product by reclaiming, reprocesssing, energy recovery, rerefining, or another means.

(5) 'Rerefine' means to process used oil to produce high-quality base stocks for lubricants or other petroleum products. Rerefine may include distillation, hydrotreating, or treatments employing acid, caustic, solvent, clay, or other chemicals, or other physical treatments other than those used in reclaiming.

(6) 'Retail dealer' has the same meaning as in G.S. 105-113.120.

(7) 'Used oil' has the same meaning as in 40 Code of Federal Regulations § 279.1 (July 1, 1998 Edition).

(8) 'Used oil collection center' has the same meaning as in 40 Code of Federal Regulations § 279.1 (July 1, 1998 Edition).

"**§ 130A-309.92. Used Oil Collection Fund.**

(a) The Used Oil Collection Fund is created as a nonreverting fund within the Department. The Used Oil Collection Fund consists of:

(1) The proceeds of the motor oil advance disposal fees imposed under Article 2E of Chapter 105 of the General Statutes.
(2) Any contributions and grants from public or private sources.

(b) The Used Oil Collection Fund may be used for:
(1) Grants to public or private entities to establish used oil collection centers.
(2) Grants to units of local government or private collectors that offer or include, as part of municipal solid waste collection services, curbside collection of used oil from households, including grants for the reasonable costs of household containers, truck retrofitting, tanks, and similar costs associated with the curbside collection of used oil.
(3) Grants for advertising, training, and other programs to promote the collection and recycling of used oil from the public.
(4) Grants for public education programs concerning the proper handling and recycling of used oil.
(5) Incentives pursuant to G.S. 130A-309.97 to encourage individuals who change their own oil to return the oil to used oil collection centers.
(6) Grants to indemnify a used oil collection center for the costs arising out of used oil collected from the public that is unsuitable for reuse or recycling, results from spills or contamination, or results from the additional liability associated with the operation of the used oil collection center.
(7) Grants to encourage the purchase of rerefined oil by local and State agencies.
(8) Grants to local and State agencies to encourage the source reduction of used oil.
(9) Grants to encourage the recycling of used oil filters and oil bottles.
(10) The costs that the Department directly incurs in developing and administering the Used Oil Collection Program under this Part, not to exceed seven percent (7%) of the Fund.

"§ 130A-309.93. Used Oil Collection Program; duties of the Department.

(a) The Department shall develop and administer a used oil collection program to encourage the proper disposal of used oil generated by DIYers and may adopt rules to implement this program. The Used Oil Collection Program shall include provisions regarding:

(1) All grants that may be paid from the Used Oil Collection Fund under G.S. 130A-309.92.

(2) Technical assistance to persons who develop the used oil collection center programs or the curbside collection of used oil as part of municipal solid waste collection.

(b) The Department shall develop criteria for selecting the recipients of the grants that may be paid from the Used Oil Collection Fund under G.S. 130A-309.92 and shall select the recipients of these grants.

(c) The Department may adopt rules to implement this Part.

"**§ 130A-309.94. Report requirement.**

No later than 1 March of each year, the Department shall submit a report to the Environmental Review Commission on the Used Oil Collection Program. The report shall include:

(1) The total motor oil advance disposal fee proceeds collected pursuant to Article 2E of Chapter 105 of the General Statutes during the preceding calendar year, the total motor oil advance disposal fee proceeds credited to the Used Oil Collection Fund during the preceding calendar year, and the total motor oil advance disposal fee proceeds credited to the Solid Waste Management Trust Fund during the preceding calendar year.

(2) The total amount expended from the Used Oil Collection Fund during the preceding calendar year.

(3) Information identifying each grant recipient, the amount of each grant received, and the proposed use of the grant moneys.

(4) The number of gallons of used oil collected under the Used Oil Collection Program.

(5) The cost of developing and administering the Used Oil Collection Program.

(6) A calculation of the per gallon cost of the Used Oil Collection Program, including the administrative cost of the program.

"**§ 130A-309.95. Used oil collection centers.**

Used oil collection centers shall transfer used oil only to certified transporters and shall maintain records of all

volumes of material collected, including the identity of the hauler and the name and location of the recycling facility to which the oil is being transported.

"§ 130A-309.96. Limitation of liability.

(a) A person or the State shall not recover from the owner, operator, or lessor of a used oil collection center any costs of response actions resulting from a release of used oil collected at the center or subsequently handled or disposed of by others if all of the following apply:

(1) The owner, operator, or lessor of the used oil collection center does not mix the used oil with any hazardous substance.

(2) The owner, operator, or lessor of the used oil collection center does not accept used oil that the owner, operator, or lessor knows contains hazardous substances.

(3) The used oil collection center is in compliance with management standards issued by the Department.

(4) The used oil is removed from the premises by a transporter certified pursuant to G.S. 130A-309.99.

(b) For purposes of this section, the owner, operator, or lessor of a used oil collection center may presume that a quantity of less than five gallons of used oil accepted at any one time from any member of the public is not mixed with a hazardous substance, provided that the owner or operator acts in good faith.

(c) This section applies only to activities directly related to the collection of used oil by a used oil collection center. This section does not apply to intentional misconduct or grossly negligent acts related to the operations of a used oil collection center.

"§§ 130A-309.97 through 130A-309.100: Reserved.

"§ 130A-309.101. Used oil filters.

Prior to land disposal, used oil filters shall be prepared for disposal in one of the following ways:

(1) Punctured and hot-drained for a minimum of 12 hours.

(2) Punctured and cold-drained for a minimum of 24 hours.

(3) Drained and crushed.

(4) Otherwise prepared for disposal consistent with rules adopted by the Commission.

"§ 130A-309.102. Retail sales of motor oil.

Any retail dealer that is not a used oil collection center shall post and maintain at or near the point of motor oil display or sale a durable and legible sign (minimum size of eight and one-half by 11 inches) informing the public of the importance of proper collection and disposal of used oil and the State toll-free number for the Department's customer service center for information regarding used oil collection centers.

"**§§ 130A-309.103 through 130A-309.105:** Reserved."

Section 3. G.S. 130A-290(b), 130A-309.16, 130A-309.20, 130A-309.22, and 130A-309.23 are repealed.

Section 4. G.S. 130A-309.15 is recodified as G.S. 130A-309.103, which is reserved under Section 2 of this act.

Section 5. G.S. 130A-309.17 is recodified as G.S. 130A-309.98, which is reserved under Section 2 of this act.

Section 6. G.S. 130A-309.17, recodified as G.S. 130A-309.98 in Section 5 of this act, reads as rewritten:

"**§ 130A-309.98. Registration of persons transporting, collecting, or recycling used oil; fees; reports and records.**

(a) The following persons shall register annually with the Department pursuant to rules of the Department on forms prescribed by it:

(1) Any person who transports over public highways more than 500 gallons of used oil per ~~week.~~ week or more than 55 gallons at any time.

(2) Any person who maintains a collection facility ~~that receives more than 6,000 gallons of used oil annually. For purposes of registration, the amount received does not include used oil delivered to collection centers by individuals that change their own personal motor oil.~~ that accepts more than 6,000 gallons of used oil annually from generators other than DIYers.

(3) Any facility that recycles ~~more than 10,000 gallons of used oil annually.~~ used oil.

(b) An electric utility which generates during its operation used oil that is then reclaimed, recycled, or rerefined by the electric utility for use in its operations is not required to register or report pursuant to this section.

(c) An on-site burner which only burns a specification used oil generated by the burner is not required to register or report pursuant to this section, provided that the burning is done in compliance with any air permits issued by the Department.

(d) The Department may prescribe a fee for the registration required by this section in an amount which is sufficient to

cover the cost of processing applications but which does not exceed twenty-five dollars ($25.00).

(e) The Department shall require each registered person to submit, no later than 1 July of each year, a report which specifies the type and quantity of used oil transported, collected, and recycled during the preceding calendar year.

(f) Each registered person who transports or recycles used oil shall maintain records which identify:

(1) The source of the materials transported or recycled;

(2) The quantity of materials received;

(3) The date of receipt; and

(4) The destination or end use of the materials.

(g) The Department shall perform technical studies to sample used oil at facilities of representative used oil transporters and at representative recycling facilities to determine the incidence of contamination of used oil with hazardous, toxic, or other harmful substances.

(h) Any person who fails to register with the Department as required by this section shall be guilty of a misdemeanor and upon conviction shall be punished as provided by G.S. 130A-25(a) and G.S. 14-3.

(i) The proceeds from the registration fees imposed by this section shall be deposited into the Solid Waste Management Trust Fund."

Section 7. G.S. 130A-309.23 is recodified as G.S. 130A-309.99, which is reserved under Section 2 of this act.

Section 8. G.S. 130A-309.23, recodified as G.S. 130A-309.99 in Section 7 of this act, reads as rewritten:

"**§ 130A-309.99. Certification of used oil transporters.**

(a) Any person who transports over public highways after 1 January 1992, more than 500 gallons of used oil in any week must be a certified transporter or must be employed by a person who is a certified transporter.

(b) The Department of Transportation shall develop a certification program for transporters of used oil, and shall issue, deny, or revoke certifications authorizing the holder to transport used oil. Certification requirements shall ~~help assure~~ require that a used oil transporter is familiar with appropriate rules and used oil management procedures.

(c) The Department of Transportation shall adopt rules governing certification, which shall include requirements for the following:

(1) Registration and annual reporting pursuant to G.S. ~~130A-309.17.~~ 130A-309.98.
(2) Evidence of familiarity with applicable State laws and rules governing used oil ~~transportation.~~ transportation and proper used oil management.
(3) Proof of liability insurance or other means of financial responsibility for any liability which may be incurred in the transport of used oil.
(4) Marking, by the certified transporter of used oil, of all vehicles which transport used oil or all containers of used oil when it is not feasible to mark the vehicle. The mark must clearly identify the certified used oil transporter and clearly indicate that the vehicle is used to transport used oil. The marking must be visible to others travelling on the highway.
(5) Equipment in the transportation vehicle being in good mechanical condition and suitable for the transportation of used oil.
(6) Documentation, maintained by the transporter, that indicates to whom the used oil is delivered."

Section 9. G.S. 130A-309.18, 130A-309.19, 130A-309.21, and 130A-309.24 are recodified as G.S. 130A-309.105, 130A-309.104, 130A-309.97, and 130A-309.100 respectively, which sections are reserved under Section 2 of this act.

Section 10. G.S. 130A-309.92(a)(1) and G.S. 130A-309.94(i), as enacted in Section 2 of this act, are repealed.

Section 11. G.S. 130A-309.101, as enacted in Section 2 of this act, is repealed.

Section 12. G.S. 130A-309.10(f) reads as rewritten:

"(f) No person shall knowingly dispose of the following solid wastes in landfills:
(1) Repealed by Session Laws 1991, c. 375, s. 1.
(2) Used oil.
(3) Yard trash, except in landfills approved for the disposal of yard trash under rules adopted by the Commission. Yard trash that is source separated from solid waste may be accepted at a solid waste disposal area where the area provides and maintains separate yard trash composting facilities.
(4) White goods.
(5) Antifreeze (ethylene glycol).
(6) Aluminum cans.

(7) Whole scrap tires, as provided in G.S. 130A-309.58(b). The prohibition against landfilling whole tires applies to all whole pneumatic rubber coverings, but does not apply to whole solid rubber coverings.
(8) Lead-acid batteries, as provided in G.S. 130A-309.70.
(9) Used oil filters."

Section 13. G.S. 130A-309.10(f1) reads as rewritten:

"(f1) No person shall knowingly dispose of the following solid wastes by incineration in an incinerator for which a permit is required under this Article:
(1) Antifreeze (ethylene glycol) used solely in motor vehicles.
(2) Aluminum cans.
(3) Repealed by Session Laws 1995 (Regular Session, 1996), c. 594, s. 17.
(4) White goods.
(5) Lead-acid batteries, as provided in G.S. 130A-309.70.
(6) Used oil filters."

Section 14. Section 10 of this act becomes effective December 31, 2005. Sections 11 through 13 of this act become effective January 1, 2004. The remaining sections of this act become effective January 1, 2000. Section 1 of this act expires December 31, 2005.

The repeal of the tax imposed by Section 1 of this act does not affect the rights or liabilities of the State, a taxpayer, or another person that arose during the time the tax was in effect.

SENATE BILL 1000:
Motor Oil ADF/Used Oil Program

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Sen. Odom
Date:	June 28, 1999	**Summary by:**	Martha K. Walston
Version:	1st Edition		Committee Counsel

SUMMARY: ***Senate Bill 1000 adds a new Article 2E, Motor Oil Advance Disposal Fee, to the Chapter on Taxation and creates a Used Oil Collection Program in the Solid Waste Management Article of Chapter 130A.. The advance disposal fee is imposed on motor oil at the rate of 2 cents per quart. The fee goes into the Used Oil Collection Program to be administered by DENR.***

BILL ANALYSIS: Section 1 of the Bill adds a new article to Chapter 105 on Taxation. This Article, entitled "Motor Oil Advance Disposal Fee", sets out the following new statutes:

G.S. 105-113.120 defines the terms, "distributor", "motor oil", "retail dealer", "sale", "secretary", and "wholesale dealer". It is unclear whether the definition of "motor oil" includes grease or recycled oil.

G.S. 105-113.121 imposes an "advance disposal fee on motor oil at the rate of 2 cents per gallon. This fee appears to be an excise tax, similar to other taxes that raise funds for environmental clean-up.

G.S. 105-113.122 requires distributors and wholesale dealers, who are liable for advance disposal fee, to obtain a $25 continuing motor oil license for each place of business. Retail dealers, who are liable for advance disposal fees, are required to obtain a $5 continuing motor oil license for each place of business.

G.S. 105-113.123 provides that a distributor, wholesale dealer, or retail dealer who first distributes, sells, or handles motor oil in the State is primarily liable for the advance disposal fee. A retail dealer who acquires non-fee-paid motor oil from a distributor or wholesale dealer is secondarily liable for any advance disposal fee.

Payment of fees – The fees are payable when a report is required to be filed. A quarterly report may be filed, if the person is consistently liable for less than $50 of advance disposal fees a month and if the Secretary of Revenue approves. All other persons liable for advance disposal fees must file a monthly report.

G.S. 105-113.124 allows a distributor, wholesale dealer, or retail dealer, who is liable for the advance disposal fees and who files a timely report, to deduct 2% from the amount due. It is not clear that the tax must be remitted along with a timely filed report before the discount is allowed.

G.S. 105-113.125 provides that the advance disposal fee does not apply to motor oil sold outside the State, or to motor oil required to operate industrial machinery and sold for that purpose. It is not clear what is included in the term "industrial machinery".

G.S. 105-113.126 authorizes a distributor or wholesale dealer, who sells motor oil to a person who has notified him or her in writing that the person intends to resell the motor oil in an exempt transaction, to designate in his or her report the quantity of motor oil sold to the person. The distributor or wholesale dealer is not required to pay the fee on the designated sale when filing the report.

G.S. 105-113.127 directs the Secretary of Revenue to credit 5% of the advance disposal fees to the Solid Waste Management Trust Fund. The remaining 95% is credited to the new Used Oil Collection Fund. The frequency of the disbursement to the Fund is not indicated in the bill.

Section 2 of the bill adds a new Part 2E (Used Oil Collection Program) to the Solid Waste Management Article in Chapter 130A of the General Statutes.

G.S. 130A-309.90 sets out the findings and intent of the new Used Oil Collection Program

G.S. 130A-309.91 sets out definitions applicable to the Program.

G.S. 130A-309.92 creates the Used Oil Collection Fund as a nonreverting fund within the Department of Environment and Natural Resources (DENR). The Fund consists of proceeds of the motor oil advance disposal fees and any public or private contributions and grants. The statute also sets out the allowed uses of the Fund.

G.S. 130A-309.93 requires DENR to develop and administer a used oil collection program to encourage the proper disposal of used oil generated by individuals who remove used oil from engines owned or operated by that individual. DENR is to develop criteria for selecting recipients and select the recipients of the grants payable under the Fund. DENR is to establish a toll-free number to disseminate information regarding locations and phone numbers of used oil collection centers, curbside collection, and locations that accept commercial used oil.

G.S. 130A-309.94 requires DENR to submit a report to the Environmental Review Commission on the Used Oil Program by March 1 of each year.

G.S. 130A-309.95 requires the Secretary of DENR to appoint an advisory committee for the Used Oil Collection Program. The seven members will serve at the pleasure of the Secretary. The committee is to recommend criteria for selecting recipients of the grants and also recommend recipients.

G.S. 130A-309.96 requires that used oil collection centers be certified by DENR.

G.S. 130A-309.97 describes what the owner, operator, or lessor of a used oil center must do when there is release of used oil to the environment at the center.

G.S. 130A-309.98 limits liability of an owner, operator, or lessor of a certified used oil collection center.

G.S. 130A-309.103 sets out the procedure for disposal of used oil filters.

G.S. 130A-309.104 requires a retail owner who is not a used oil collection center to post a sign informing the public of the importance of proper collection and disposal of used oil and the State toll-free number for information of used oil centers.

Sections 3 repeals sections dealing with public used oil collection centers, grants to local governments for collection and disposal of used oil, and certification of used oil transporters.

Sections 4 and 5 recodify existing sections into the new Part 2E set out in Section 2 of the bill.

Section 6 requires the following persons to register annually with DENR:

- Any person who transports over public highways more than 500 gallons of used oil per week or more than 55 gallons at any time. (Now required if transporting more than 500 gallons per week.)
- Any person who maintains a collection facility that accepts more than 6,000 gallons of used oil annually from generators other than Do-It-Yourselfers. (Is a clarification of the existing law)

- Any facility that recycles used oil (Now any facility that recycles more than 10,000 gallons of used oil annually.)

Section 7 is a recodification.

Section 8 Under current law the Department of Transportation is required to develop a certification program for transporters of used oil and to issue, deny, or revoke certifications authorizing the holder to transport used oil. The Department is also required to adopt rules governing certification. The bill adds that these rules must require that equipment in the vehicle be in good mechanical condition and suitable for transportation of used oil, and that the transporter maintain documentation that indicates to whom the used oil is delivered.

The act is effective January 1, 2000.

SENATE BILL 1000:
Motor Oil ADF/Used Oil Program

BILL ANALYSIS

Committee: Senate Finance
Date: June 28, 1999
Version: 1st Edition

Introduced by: Sen. Odom
Summary by: Martha K. Walston
Committee Counsel

SUMMARY: ***Senate Bill 1000 adds a new Article 2E, Motor Oil Advance Disposal Fee, to the Chapter on Taxation and creates a Used Oil Collection Program in the Solid Waste Management Article of Chapter 130A.. The advance disposal fee is imposed on motor oil at the rate of 2 cents per quart. The fee goes into the Used Oil Collection Program to be administered by DENR.***

BILL ANALYSIS: Section 1 of the Bill adds a new article to Chapter 105 on Taxation. This Article, entitled "Motor Oil Advance Disposal Fee", sets out the following new statutes:

G.S. 105-113.120 defines the terms, "distributor", "motor oil", "retail dealer", "sale", "secretary", and "wholesale dealer". It is unclear whether the definition of "motor oil" includes grease or recycled oil.

G.S. 105-113.121 imposes an "advance disposal fee on motor oil at the rate of 2 cents per gallon. This fee appears to be an excise tax, similar to other taxes that raise funds for environmental clean-up.

G.S. 105-113.122 requires distributors and wholesale dealers, who are liable for advance disposal fee, to obtain a $25 continuing motor oil license for each place of business. Retail dealers, who are liable for advance disposal fees, are required to obtain a $5 continuing motor oil license for each place of business.

G.S. 105-113.123 provides that a distributor, wholesale dealer, or retail dealer who first distributes, sells, or handles motor oil in the State is primarily liable for the advance disposal fee. A retail dealer who acquires non-fee-paid motor oil from a distributor or wholesale dealer is secondarily liable for any advance disposal fee.

Payment of fees – The fees are payable when a report is required to be filed. A quarterly report may be filed, if the person is consistently liable for less than $50 of advance disposal fees a month and if the Secretary of Revenue approves. All other persons liable for advance disposal fees must file a monthly report.

G.S. 105-113.124 allows a distributor, wholesale dealer, or retail dealer, who is liable for the advance disposal fees and who files a timely report, to deduct 2% from the amount due. It is not clear that the tax must be remitted along with a timely filed report before the discount is allowed.

G.S. 105-113.125 provides that the advance disposal fee does not apply to motor oil sold outside the State, or to motor oil required to operate industrial machinery and sold for that purpose. It is not clear what is included in the term "industrial machinery".

G.S. 105-113.126 authorizes a distributor or wholesale dealer, who sells motor oil to a person who has notified him or her in writing that the person intends to resell the motor oil in an exempt transaction, to designate in his or her report the quantity of motor oil sold to the person. The distributor or wholesale dealer is not required to pay the fee on the designated sale when filing the report.

G.S. 105-113.127 directs the Secretary of Revenue to credit 5% of the advance disposal fees to the Solid Waste Management Trust Fund. The remaining 95% is credited to the new Used Oil Collection Fund. The frequency of the disbursement to the Fund is not indicated in the bill.

Section 2 of the bill adds a new Part 2E (Used Oil Collection Program) to the Solid Waste Management Article in Chapter 130A of the General Statutes.

G.S. 130A-309.90 sets out the findings and intent of the new Used Oil Collection Program

G.S. 130A-309.91 sets out definitions applicable to the Program.

G.S. 130A-309.92 creates the Used Oil Collection Fund as a nonreverting fund within the Department of Environment and Natural Resources (DENR). The Fund consists of proceeds of the motor oil advance disposal fees and any public or private contributions and grants. The statute also sets out the allowed uses of the Fund.

G.S. 130A-309.93 requires DENR to develop and administer a used oil collection program to encourage the proper disposal of used oil generated by individuals who remove used oil from engines owned or operated by that individual. DENR is to develop criteria for selecting recipients and select the recipients of the grants payable under the Fund. DENR is to establish a toll-free number to disseminate information regarding locations and phone numbers of used oil collection centers, curbside collection, and locations that accept commercial used oil.

G.S. 130A-309.94 requires DENR to submit a report to the Environmental Review Commission on the Used Oil Program by March 1 of each year.

G.S. 130A-309.95 requires the Secretary of DENR to appoint an advisory committee for the Used Oil Collection Program. The seven members will serve at the pleasure of the Secretary. The committee is to recommend criteria for selecting recipients of the grants and also recommend recipients.

G.S. 130A-309.96 requires that used oil collection centers be certified by DENR.

G.S. 130A-309.97 describes what the owner, operator, or lessor of a used oil center must do when there is release of used oil to the environment at the center.

G.S. 130A-309.98 limits liability of an owner, operator, or lessor of a certified used oil collection center.

G.S. 130A-309.103 sets out the procedure for disposal of used oil filters.

G.S. 130A-309.104 requires a retail owner who is not a used oil collection center to post a sign informing the public of the importance of proper collection and disposal of used oil and the State toll-free number for information of used oil centers.

Sections 3 repeals sections dealing with public used oil collection centers, grants to local governments for collection and disposal of used oil, and certification of used oil transporters.

Sections 4 and 5 recodify existing sections into the new Part 2E set out in Section 2 of the bill.

Section 6 requires the following persons to register annually with DENR:

- Any person who transports over public highways more than 500 gallons of used oil per week or more than 55 gallons at any time. (Now required if transporting more than 500 gallons per week.)
- Any person who maintains a collection facility that accepts more than 6,000 gallons of used oil annually from generators other than Do-It-Yourselfers. (Is a clarification of the existing law)

- Any facility that recycles used oil (Now any facility that recycles more than 10,000 gallons of used oil annually.)

Section 7 is a recodification.

Section 8 Under current law the Department of Transportation is required to develop a certification program for transporters of used oil and to issue, deny, or revoke certifications authorizing the holder to transport used oil. The Department is also required to adopt rules governing certification. The bill adds that these rules must require that equipment in the vehicle be in good mechanical condition and suitable for transportation of used oil, and that the transporter maintain documentation that indicates to whom the used oil is delivered.

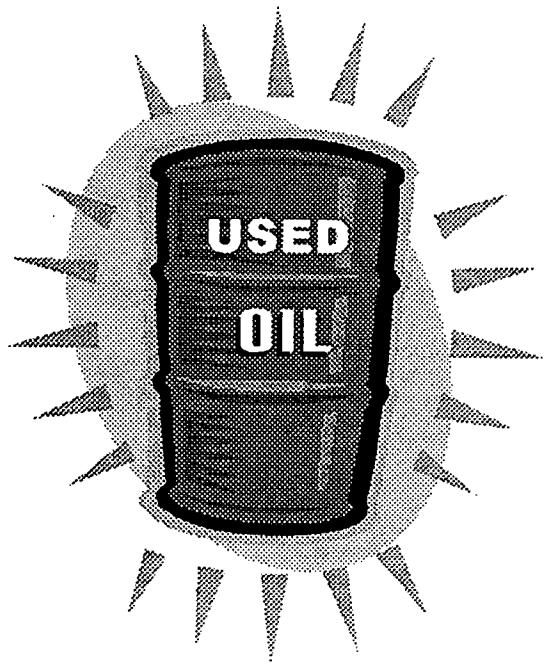
The act is effective January 1, 2000.

Oil-Related: Used Oil

COMMODITY PROFILE

North Carolina Department of Environment and Natural Resources
DIVISION OF POLLUTION PREVENTION AND ENVIRONMENTAL ASSISTANCE

MARKETS ASSESSMENT 1998



OVERVIEW

According to the American Petroleum Institute (API), each motor vehicle in North Carolina is responsible for the sale of an average of four gallons of lubricating oil per year.[1] With nearly six million industrial, commercial, and passenger vehicles registered with the state Division of Motor Vehicles, more than 21 million gallons of oil were sold in North Carolina in 1997. Despite the 1990 ban on oil disposal in North Carolina landfills, only 68 percent of all used oil generated in 1997 was recovered. After accounting for unrecoverable oil due to leakage or engine consumption, more than four million gallons of used oil are either being disposed improperly throughout the state or are unaccounted for in the 1997 data.

Opportunities to recover this "lost" oil exist. According to oil recycling companies in the Southeast, the two markets for used oil — re-processing into fuel and re-refining into lubricant — show strong growth potential during the next five years. More significantly, experts indicate that the current supply of re-processed fuel from used oil already lags behind demand, thus creating an immediate opportunity to improve used oil recovery and marketing.

In addition, contamination from improperly disposed oil presents a threat to the state's environment and natural resources. In its research on the potential impacts of used oil, the United States Environmental Protection Agency (EPA) has identified several environmental risks posed by improper disposal methods. For example, the EPA estimates that one gallon of used oil can pollute more than one million gallons of drinking water. Small amounts of used oil that accumulate on water bodies also can prevent oxygen and sunlight from entering the water, thus reducing the plant and animal life in lakes, ponds, and rivers. Additionally, used oil dumped in drains often accumulates in very small concentrations in water treatment plants and inhibits sewage treatment processes.[2]

Figure 1: Total Lubricating Oil Sold for Motor Vehicle Use in North Carolina 1993, 1997, and 2002

	1993 gallons	1997 gallons	2002 gallons
Total for Motor Vehicle Uses	**19,898,461**	**21,637,629**	**22,995,755**
A. Other Motor Vehicle Consumers	9,949,230	10,818,815	13,797,453
B. Do-It-Yourself Sources	9,949,231	10,818,814	9,198,302

Source: Based on data from the American Petroleum Institute, *National Used Oil Collection Study*, May 1996.

This report analyzes the relationship between the supply and demand for used oil in North Carolina. The analysis focuses primarily on identifying the sources of used oil with the greatest potential for increased recovery and with the most accessible markets for re-refining and re-processing.

The definition of used oil is taken from the California Public Resources Code and includes any oil that was used in an internal combustion engine crankcase, transmission, gearbox, or differential in an automobile, bus, truck, vessel, plane, train, heavy equipment, or other machinery powered by an internal combustion engine."[3]

SUPPLY

Generation

Data were lacking on used oil generation and consumption in North Carolina. For this reason, generation is calculated in three steps. The first step involves estimating the amount of oil sold in North Carolina during 1997. Second, the consumption of oil is allocated to different types of oil consumer groups. Finally, the amount of oil allocated to each consumer category is then reduced by a factor that accounts for non-recoverable oil because of burning, leaking, and other influences.

Step One: Oil Sales

To estimate the amount of used oil sold, the number of vehicles registered by the Division of Motor Vehicles for 1997 was multiplied by the average gallons of oil used annually per vehicle from the API study.[4] To estimate gallons sold in North Carolina, 5.8 million vehicles was multiplied by 3.677 gallons per vehicle per year to yield an estimate of more than 21 million gallons of oil sold for use in motor vehicles in 1997 (Figure 1).[5]

Step Two: Consumer Groups

The two main categories of oil consumption from motor vehicle sources are do-it-yourself (DIY) oil changers and all other motor vehicle (OMV) consumers. DIY generators consist primarily of people who change their own oil at residences and; thus, are responsible for disposing their used oil. OMV generators constitute a broad class of consumers including people who bring their automobiles to quick oil change facilities, dealerships, or service stations. In addition, the OMV category includes used oil generated from commercial and government fleets, rental car operations, and other establishments that generate used oil.

As indicated previously in API studies, DIY oil changers constitute approximately 50 percent of the motor vehicles and used motor oil generated in North Carolina. This assumption is based on a national average and may underestimate the percentage of DIY oil changers in North Carolina. The state exhibits three characteristics that make a higher portion of DIY changers likely: 1) a more rurally based population, 2) a warm climate, and 3) a younger population (older Americans are less likely to change their own oil).[6] However, because of the increasing urban population and continued expansion of quick oil change outlets, the percentage of DIY oil changers is expected to decrease two to five percent per year in the short term future.[7] The estimations for 2002 in this report reflect a two-percent annual decrease in the percent of DIY consumers.[8]

Calculations for the total used motor oil sold in North Carolina in 1997 are based on the average per vehicle oil sales estimates from API's *National Used Oil Collection Study* in 1996. As demonstrated in Figure 1, the used oil sales from motor vehicle sources increased from 19 million gallons in 1993 to more than 21 million gallons in 1997. This increase is attributable to an increase in population of the North Carolina and an increase in vehicles per capita since 1993.

Step Three: Recoverable Used Oil

As illustrated in Figure 2, an oil recovery factor is incorporated to account for unrecoverable oil. This factor is applied to the total gallons sold to account for leaking, burning, unused oil left in bottles, and residue left in filters. As a result, only 60 percent of oil sales to DIY oil changers is available for recovery. It is estimated that 65 percent of oil sales to OMV are available for recovery due to newer vehicles in commercial fleets and stronger standards for filter drainage.[9] Accounting for unrecoverable oil from both DIY and OMV sources, more than 13 million gallons of used oil were generated in North Carolina in 1997.

Figure 2: Generation of Used Oil from Motor Vehicles *(Accounting for Unrecoverable Oil)*

	1993 gallons	1997 gallons	2002 gallons
Total Oil Sold for Motor Vehicle Uses	**19,898,461**	**21,637,629**	**22,995,755**
1. Sales to Other Motor Vehicle Consumers	9,949,230	10,818,815	13,797,453
Recoverable Used Oil from OMV (65%)	6,467,000	7,032,230	8,968,344
2. Sales to Do-It-Yourself Sources	9,949,231	10,818,814	9,198,302
Recoverable Used Oil from DIY (60%)	5,969,539	6,491,288	5,518,981

Figure 3: Total Used Oil Recovered from All Motor Vehicles in North Carolina 1997 and 2002

	1997 gallons	2002 gallons
Generated and Recoverable Motor Vehicle Used Oil	13,523,518	14,487,325
Government Recovery (local and state)	824,362	915,742
Private Sector Recovery	8,213,758	9,803,533
Total Recovery	9,038,120	10,719,275
Percent Recovered	*67%*	*74% (assumed)*
Unaccounted for Used Oil	4,485,398	*3,768,050*

Figure 4: Other Motor Vehicle (OMV) Used Oil Recovered in 1997 and 2002

	1997 gallons	2002 gallons
Recoverable OMV Used Oil Generated	7,032,230	8,968,344
State Fleet Government Recovery	248,503	316,921
Private Sector Recovery	6,633,831	8,460,258
Total Recovery	6,882,334	8,777,179
Percent Recovered	*98%*	*98% (assumed)*
Unaccounted for OMV Used Oil	149,896	*191,165*

Recovery

Available data indicate that 67.8 percent of recoverable motor vehicle used oil was collected in North Carolina in 1997 (Figure 3). A majority of the nine million gallons of used oil recovered from motor vehicles was collected from private sector sources. In fact, used oil from commercial fleets, quick oil change outlets, and auto parts stores accounted for more than seven million gallons of used oil recovery in 1997. Local governments accounted for an additional 575,859 gallons. Approximately four million gallons of used oil remain unaccounted for and were possibly disposed of illegally.

To discover the potential sources of unrecovered used oil, it is necessary to analyze the recovery to OMV and DIY oil streams separately. As noted in Figure 3, the future of the used oil recovery level should increase as the industry continues to shift from DIY changers to quick-change outlets.

Other-Motor-Vehicle Sector

Based on information gathered from North Carolina's four largest private sector recovery sources, the used oil recovery from OMV sources occurs almost exclusively through private sector channels. For example, while the state government recovered almost 250,000 gallons of used oil from government fleets in 1997, private sector channels recovered more than 6.6 million gallons. In combination, the recovery rate for used oil from all OMV sources reached 98 percent of generation in 1997 (Figure 4).

Do-It-Yourself Sector

Despite the same amount of used oil generated as the OMV sector, the DIY sector achieved a 35-percent recovery rate in 1997. Local government collection of used oil, which is

almost exclusively DIY oil recovered at landfill collection sites, increased from 500,000 gallons in 1996 to more than 575,000 gallons recovered in 1997. While local government recovery at landfill sites was more than 575,000 gallons, private sector recovery also accounted for roughly 1.58 million gallons of used oil from DIY sources. While some private sector recovery of DIY oil may not be included in this report, the data reveal that the DIY sector was responsible for more than four million gallons of unaccounted for used oil in 1997 (Figure 5). Because of increased accessibility of quick oil change outlets, industry experts estimate that the DIY share of the consumer market will decline by two to five percent per year in the near future.[10] By 2002, the quantity of oil generated by DIY oil changers will decrease to five million gallons as their market share decreases from 50 to 40 percent.

In addition to conventional used oil calculations, approximately 3.5 to eight ounces of used oil is contained in oil filters, depending on drainage practices. Assuming that the best possible drainage practices are employed, more than 270,000 gallons of used oil was disposed in North Carolina landfills along with approximately 10 million used oil filters in 1997.[11] Moreover, an average of 0.8 ounces of oil is trapped in every discarded one-quart bottle of oil used for motor vehicle lubrication purposes. In other words, an additional 270,000 gallons of oil was disposed in North Carolina landfills because of the residual oil left in oil bottles from DIY oil changes.[12]

Source Reduction

Fewer oil changes means less waste oil released into the environment. Because of improvements in the design of motors during the past 10 years, most of the major automobile manufacturing companies have decreased the recommended frequency of oil changes. For example, Ford Motor Company has increased the minimum mileage between oil changes from 3,000 miles to a minimum of 5,000 miles. Similarly, Toyota now suggests that owners change their motor oil every 7,500 miles, except under severe driving conditions.[13] If vehicle owners followed the lowest of the new standards for less frequent oil changes (Ford's 5,000 miles), there could be a significant reduction in the generation of used oil in the state of North Carolina. More specifically, an increase in the minimum distances between oil changes of 2,000 miles (to 3,000 - 5,000) could result in as much as a 30-percent reduction in the generation of used oil, or roughly four million gallons in 1997.

Increasing Recovery

Many states have initiated used oil recycling programs based on the API Model Bill. This model bill establishes the guidelines for a state-used oil fund supported by a fee on oil sales (usually two cents per quart). The fund normally is used to provide grant funding for cities and towns that wish to establish and publicize used oil drop-off centers or curbside collection programs. In addition, many states use the funds to support a toll-free telephone information center and state sponsored promotions. South Carolina uses some of its state funds to provide a multi-media advertising campaign, which includes print materials, a school curriculum, and television and radio advertisements with NASCAR celebrities. Many of the state's educational programs are focused on raising the awareness of DIY oil changers.

To better focus the South Carolina recycling campaign, the Institute of Public Affairs at the University of South Carolina conducted a survey of DIY oil changers in 1993. The survey revealed that approximately 49 percent of the market consisted of DIY oil changers. The research also indicated that individuals with the greatest tendency to illegally dispose used oil were generally between 18 and 45 years old, had a lower educational level than the state average, and had family incomes below the state average. These findings helped in the siting of collection centers and influenced the content of the educational campaigns.

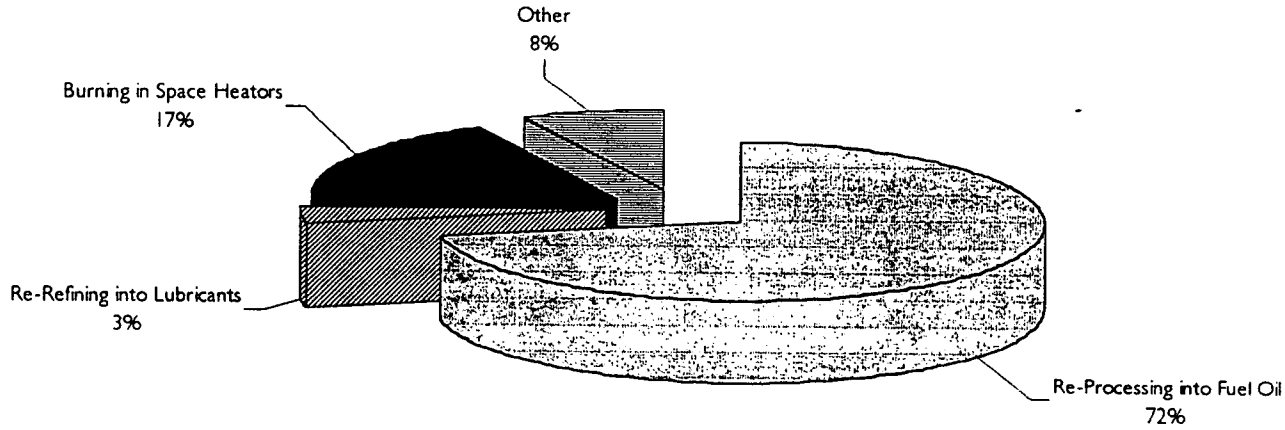
North Carolina has established the need for used oil recycling programs in state statute. In General Statute Act 309.16, the state proposed to support a public education program regarding used oil collection and recycling through the provision of financial and technical resources. In General Statute Acts 309.21 and 22, the state also committed to provide funding and expertise necessary to initiate an incentive program for individuals who change their own oil. In addition, the Statute proposed supporting a grants program to encourage new local government curbside collection initiatives and the establishment of additional private used oil collection centers. Funding was never appropriated for these programs, therefore they were never implemented.

Another way to increase oil recovery is to target "hidden" sources. For example, an average of 0.8 ounces of oil is trapped in every one-quart bottle of oil sold. In other words, in 1997, approximately 270,000 gallons of oil was disposed in North Carolina landfills because of residual oil left in bottles after oil changes. Similarly, assuming that best possible drainage practices were employed in 1997, more than 270,000 gallons of used oil were still disposed along with 10 million used filters in 1997. By addressing these hidden sources, North Carolina could dramatically decrease the amount of used oil disposed in landfills.

Figure 5: DIY Used Oil Recovered in 1997 and 2002

	1997 gallons	2002 gallons
Recoverable DIY Used Oil Generated	6,491,288	5,518,981
Local Government Recovery	575,859	598,821
Private Sector Recovery	1,579,927	1,343,275
Total Recovery	2,155,786	1,942,096
Percent Recovered	*33%*	*35% (assumed)*
Unaccounted for DIY Used Oil	4,335,502	*3,576,885*

Figure 6: National Distribution of Demand for Used Oil Products



* Based on survey conducted by API, May 1996.

DEMAND

This section focuses primarily on the demand for used oil from North Carolina's two largest end users: re-processing fuel and re-refining lubricants. API defines re-processing as cleaning used oil so it can be reused as a fuel to produce electricity. Re-refining, on the other hand, requires additional treatment so that spent oil can be used again as petroleum based oil. Re-processed used oil is not of sufficient quality to be used for lubrication purposes.[14] According to the *National Used Oil Collection Study* conducted by API, roughly 72 percent of the used oil generated nationally is re-processed into fuel (see Figure 6). API also reports that space heaters consume roughly 17 percent of used oil, particularly in northern states with severe winters. In addition, API estimated that 3.5 percent of used oil was re-refined into lubricating oil.[15]

Fuel Oil Markets

A majority of used oil in North Carolina is used to produce fuel oil for industry. In most oil recycling and fuel production operations, used oil is re-processed by removing contaminants and adding virgin oil to produce oil suitable for burning in industrial boilers.

Noble Oil Services maintains an oil recovery and processing facility in Sanford, North Carolina. Currently, the plant produces more than 100,000 gallons of fuel per day. In 1997, Noble Oil accounted for more than six million gallons of used oil recovery in North Carolina. More importantly, Noble Oil perceives that the demand for fuel from used oil has the potential to match a large increase in supply of recovered used oil. Noble Oil Services anticipates that it could increase its consumption of used oil 100 to 200 percent if used oil recovery were to increase in the future.[16] Holston Group Inc. also produces fuel from used oil in North Carolina and expects similar growth in end-use market demand.

Lubricant Markets

Safety Kleen is the largest re-refined lubricant producer in the nation. Safety Kleen collects used oil from North Carolina and other parts of the United States and re-refines it into

lubricant at its processing facility in Chicago, Illinois. The amount of used oil processed at the Chicago plant has increased from 75 million gallons in 1994 to more than 100 million gallons in 1997. Roughly 90 percent of the re-refined oil is resold as recycled lubricating oil for industrial, railroad, government, and passenger motor oil purposes. The remaining 10 percent enters the fuel market. While the national sales of all lubricating oils have remained fairly constant for the past three years, Safety Kleen estimates that the re-refined motor oil market has enormous growth potential. The company estimates sales could double during the next five years because of continued growth in the industrial and railroad markets, the emergence of closed loop oil management systems for government sector contracts, and increasing "buy recycled" customer awareness programs in the DIY market. While Safety Kleen's recycled motor oil has traditionally sold to industrial and railroad consumers, its recent contracts with federal, state, and local governments have increased the acceptance of re-refined oil as a viable market with growth potential. Currently, Safety Kleen estimates that re-refined lubricant oil constitutes three percent of the total lubricant market sales.[17]

SUPPLY / DEMAND RELATIONSHIP

The demand for recycled used oil products is heavily influenced by the price and demand trends in the virgin crude oil market. For instance, fluctuations in the price of crude oil directly impact the price competitiveness and demand for used oil products. The price of crude oil fluctuates according to international political and economic events and oil producers' strategic decisions regarding supply. During the past three years, the market for used oil has become increasingly competitive because of virgin crude oil glut in the world market. When virgin oil prices peaked in 1996, producers responded by increasing crude oil supplies to realize greater profits. The market soon experienced a glut of oil, thus driving crude oil prices back down. As the price of crude oil has continued to decrease since 1997, the market for used oil has become increasingly competitive.[18]

Some key differences are evident between the markets for recycled fuel oil and re-refined lubricant oil. In the fuel oil market, for example, re-processing used oil requires less energy than refining virgin crude oil. As a result, used fuel oil has traditionally provided competitive prices relative to crude-based fuel oil products. Therefore, despite the decrease in price of crude oil in the world market, recycled fuel oil has maintained a relatively stable demand structure. In contrast, the process of producing re-refined lubricating oil does not provide significant cost savings relative to crude oil products. Consequently, for more than the past two years, the demand for re-refined lubricating oil has become increasingly competitive. In response to this increased competitiveness, Safety Kleen has shifted its emphasis from strictly base stock lubricant production to higher quality lubricant products, which require more processing and are less vulnerable to the price cutting trends in the crude oil market.[19]

Based on market analyses from processors of re-refined lubricant oil and especially from recycled fuel oil producers in North Carolina, there appears to be a strong potential for an increase in the short-term demand for used oil. More specifically, processors of fuel oil in North Carolina indicate the demand for fuel oil already exceeds current supply levels.[20] Similarly, as Safety Kleen continues to realize growth in the industrial, rail, and government sectors, the demand for re-refined lubricant oil should also increase in the near future. Based on this information, it appears that the current and future demand for used oil provide the potential to absorb significant increases in the supply of used oil from both the DIY and OMV sectors.

Based on current data, the total recovered used oil from motor vehicle sources was more than nine million gallons in 1997. Given the significant amount of used oil that is not collected from DIY sources, this recovery rate can be characterized as below the potential supply capacity. In fact, with more than four million gallons of uncollected used oil from DIY sources, there appears to be significant potential for an increase in supply. In summary, it appears that the potential demand for fuel oil is more than adequate to absorb a significant proportion of the more than four million gallons of unrecovered used oil from DIY sources.

CONCLUSION

Based on the current indications of strong demand for used oil as a fuel product, North Carolina has an opportunity to recover much of its remaining used oil. In particular, the state should focus on increasing the recovery of used oil from the DIY generation sources. In addition, by increasing public awareness of higher oil change intervals, the amount of used oil generated could decrease significantly. Moreover, with projections of continued population growth in North Carolina during the next few decades, the issue of proper oil management and treatment will become increasingly important for preserving the integrity of North Carolina's natural resources.

RECOMMENDATIONS

The following recommendations are based on the study of generation, recovery, and markets for used oil presented in this section.

- North Carolina should research its locations, characteristics, and disposal behavior patterns of DIY oil changers.
- The state should support an education campaign to raise the awareness of proper oil disposal methods and to increase the proliferation and visibility of public and private drop-off collection sites.
- State and local governments also should seek opportunities to link used oil bottle collection efforts with used oil and oil filter recycling programs.
- State and local governments also should educate citizens on the possibility of decreasing the frequency of oil changes through higher oil change intervals. This campaign should target both DIY changers and other vehicle owners equally.
- To measure the effectiveness of oil recycling efforts, a data collection system should be established to monitor the quantity of oil sold and the amount of used oil recovered.
- To recover a portion of the DIY oil stored at rural households and farms, local governments should sponsor rural oil collection events. While the actual quantity of used oil generated from rural sources is currently unknown, several rural collection events have resulted in significant collection quantities. For example, more than 1,500 gallons of used oil was collected on a rural collection day outside Greensboro in the early 1990s.
- To demonstrate leadership and bolster the demand for re-refined used oil, the state should use only re-refined used oil in its motor vehicle fleets. Local governments should be encouraged to follow this example.
- Finally, because of tremendous need for public education efforts to improve the recovery rate of used oil from DIY sources, the state should seek to fulfill the responsibilities established in the North Carolina General Statutes 130A-309.16 and 309.21-22.

[1] American Petroleum Institute. *National Used Oil Collection Study.* May 1996. p. 36.
[2] U.S. Environmental Protection Agency. *Environmental Regulations and Technology: Managing Used Motor Oil.* December 1994. p. 4.
[3] According to the California Public Resources Code, Section 48618, lubricating oil includes any oil that is intended for use in machinery powered by an internal combustion engine. Lubricating oil includes oil intended for use in an internal combustion engine crankcase, transmission, gearbox, or differential in an automobile, bus, truck, vessel, plane, train, heavy equipment, or other machinery powered by an internal combustion engine. Lubricating oil does not include oil intended for use in a two-cycle engine where the oil is consumed entirely during usage. From *National Used Oil Collection Study.* May 1996. p. 160.
[4] The vehicles registered category included automobiles, trucks, buses, state vehicles, tractor trucks, and recreation vehicles from the total list of vehicles registered in 1997 provided by the Division of Motor Vehicles.
[5] According to research by the API, the average motor vehicle in North Carolina purchases 3.677 gallons of oil per year. (API. *National Used Oil Collection Study.* 1996. p. 36).
[6] American Petroleum Institute. *National Used Oil Collection Study.* p. 35. May 1996.
[7] Communications with the Automobile Oil Change Association. October 1998.
[8] Communications with Automotive Oil Change Association. October 1998.
[9] These estimates for recoverable oil for DIY and OMV sources are based on information from the California Environmental Protection Agency Integrated Waste Management Board. Communications with Bob Boughton. August 1998. In the *National Used Oil Collection Study,* the API estimated recoverable used oil from DIY sources at 70 percent.
[10] Communication with the Automotive Oil Change Association. October 1998.
[11] Communication with Bob Boughton and the California Environmental Protection Agency Integrated Waste Management Board, Communications. August 1998.
[12] Communication with Kathy Carmichael. KC and Associates. October 1998.
[13] Toyota recommends that most cars and trucks follow normal oil change procedures of 7,500 miles. However, some vehicles, which fall under severe driving condition criteria, should have their oil changed more frequently (3,750 miles). The following criteria determine severe driving conditions; 1) towing a trailer, using a camper, or car top trailer, 2) operating on dusty, rough, muddy, or salt spread roads, 3) repeated short trips less than less than five miles and outside temperatures remain below freezing, 4) extensive idling and/or low speed driving for a long distance such as police, taxi, or door-to-door use.
[14] American Petroleum Institute. *National Used Oil Collection Study.* p.40, May 1996
[15] American Petroleum Institute. *National Used Oil Collection Study.* p.40-42.May 1996
[16] Communications with Jim Jolliff. Noble Oil Service. October 1998
[17] Communication with David Peel. Safety-Kleen. November 1998.
[18] Communication with Noble Oil Services and Safety Kleen. November 1998.
[19] Communication with David Peel. Safety-Kleen. November 1998.
[20] Communication with Noble Oil Services and Holston Group Inc. September and October 1998.

Other commodity profiles available

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Oil-Related: Used Oil Filters

COMMODITY PROFILE

North Carolina Department of Environment and Natural Resources
DIVISION OF POLLUTION PREVENTION AND ENVIRONMENTAL ASSISTANCE

MARKETS ASSESSMENT 1998

OVERVIEW

According to the Filter Manufacturers Council (FMC), each motor vehicle in North Carolina generates an average of two used oil filters per year.[1] With nearly six million industrial, commercial, and passenger vehicles registered with the state Division of Motor Vehicles in 1997, more than 11.7 million light duty oil filters were generated in North Carolina. Moreover, because restrictions for disposing filters in landfills are lacking, only 20 percent of used oil filters were recovered in North Carolina in 1997.

Currently, North Carolina law exempts all non-terne plated oil filters from hazardous waste regulations if the filter has been hot drained through one of the following methods: 1) punctured through its dome or anti-drain back, 2) crushed, 3) dismantled, or 4) drained via any other equivalent hot-draining method that removes the used oil.[2, 3] Before draining, a used oil filter can contain as much as 16 ounces of used oil. After hot draining, a filter can still contain between 3.5 and eight ounces of used oil.[4]

Contamination from residual oil in oil filters presents a threat to the state's environment and natural resources. In its research on the potential impacts of used oil, the United States Environmental Protection Agency (EPA) has identified several environmental risks posed by improper disposal methods. Specifically, the EPA estimates that one gallon of used oil can pollute more than one million gallons of drinking water. Small amounts of used oil that accumulate on water bodies also can prevent oxygen and sunlight from entering the water, thus reducing plant and animal life in lakes, ponds, and rivers. Additionally, used oil dumped in drains often accumulates in small concentrations in water treatment plants and creates a severe detriment to sewage treatment processes.[5]

This report focuses on the recycling opportunities represented by the 3,800 tons of steel and at least 250,000 gallons of used oil contained in the more than nine million filters that currently may be disposed in North Carolina.[6] This report assesses the relationship between the supply

Figure 1: Total Oil Filters Sold for Motor Vehicle Uses in North Carolina 1994, 1997 and 2002

	1994	1997	2002
Oil Filters from all Motor Vehicles	10,768,684	11,709,890	13,415,672
A. Other Motor Vehicle Consumers	5,384,342	5,854,945	8,049,403
B. Do-It-Yourself Sources	5,384,342	5,854,945	5,366,269

Source: Based on data from the Filter Manufacturers Council, 1996

and demand for used oil filters in North Carolina. Toward this end, the report focuses primarily on analyzing the market areas with the largest amount of uncollected filters and with the greatest potential for recovery and recycling. According to feedback from recycling companies in the Southeast region, there are sufficient markets for all three components of used oil filters: the steel shell, the paper filter media, and the residual used oil.

SUPPLY

Generation

Data were lacking on used oil filter generation and consumption in North Carolina. For this reason, generation is calculated in two steps. The first step involves estimating the amount of oil filters sold in North Carolina in 1997. Second, the consumption of filters is allocated to the two main types of oil filter consumer groups.

Step One: Oil Sales

To estimate the amount of used oil filters generated in North Carolina, this analysis references data from a study conducted by FMC in 1996.[7] To estimate the number of filters sold in 1997, the average number of oil filters sold per vehicle was multiplied by the number of vehicles registered in North Carolina that year. With an average of 1.99 filters sold per vehicle and 5.8 million registered vehicles, approximately 11.7 million light duty filters were sold in North Carolina in 1997 (see Figure 1).

Step Two: Consumer Groups

The two main consumer categories of oil filters from motor vehicle sources are do-it-yourself (DIY) oil changers and all other motor vehicle (OMV) consumers. DIY generators consist primarily of people who change their own oil at residences and are then responsible for disposing of the used oil and filters. OMV generators constitute a broad class of consumers, including people who bring their automobiles to quick oil change facilities, dealerships, or service stations. In addition, the OMV category includes used oil generated from commercial and government fleets, rental car operations, and other establishments that generate used oil.

Based on previous research, the American Petroleum Institute (API) estimates that DIY oil changers constitute approximately 50 percent of the motor vehicles and used oil filters generated in North Carolina. This assumption is based on a national average and may underestimate the percentage of DIY oil changers in North Carolina. The state exhibits three characteristics that make a higher portion of DIY changers likely: 1) a more rurally based population, 2) a warm climate, and 3) a younger population (older Americans are less likely to change their own oil).[8] Given the warm climate and the relatively balanced rural and urban population, it is estimated that DIY sources are responsible for roughly 50 percent of used oil filters in North Carolina (Figure 1). However, because of an increasing urban population base and the rapid expansion of quick oil change outlets, the percentage of DIY oil changers is expected to decrease two to five percent per year in the short term future.[9] Estimates in this analysis reflect a two-percent average annual decrease in DIY consumers from 1997 to 2002. Because of the decreasing percentage of DIY consumers by 2002 more than eight million filters will be generated by OMV sources.

Recovery

Based on a survey of recycling businesses in 1998, 20 percent of used oil filters from all motor vehicle sources were recovered in North Carolina in 1997 (Figure 2). A majority of the 2.3 million used oil filters recovered from motor vehicles were collected from commercial fleets, quick oil change outlets, and auto parts stores. As a result, approximately nine million filters remain unaccounted for and may be discarded in landfills throughout the state.

To discover the potential sources of unrecovered used oil filters, it is necessary to analyze the recovery of OMV and DIY oil streams separately.

Other-Motor-Vehicle Sector

Based on information gathered from a survey conducted by the North Carolina Division of Pollution Prevention and Environmental Assistance (DPPEA) in 1997, the recovery of used oil filters from the OMV sources (quick oil chang-

Figure 2. Recovery of Used Oil Filters from Light Duty Motor Vehicles in North Carolina, 1997 and 2002

	1997	2002
Total Oil Filters Generated (Sold)	11,709,890	13,415,672
Total Filters Recovered	2,334,031	3,109,788
Recovery Rate	20%	23%
Unaccounted for Used Oil Filters	9,375,859	*10,305,884*
Residual Used Oil from Unaccounted Oil Filters	256,372 gallons	*281,801 gallons*

Figure 3: OMV Used Oil Filters Recovered in 1997 and 2002

	1997	2002
OMV Used Oil Filters Generated	5,854,945	8,049,403
Total OMV Recovery	2,118,531	2,912,274
Percent Recovered	*36%*	*36% (assumed)*
Unaccounted for OMV Used Oil Filters	3,736,414	*5,137,129*
Residual Oil in Unaccounted for OMV Used Filters	102,168 gallons	*140,468 gallons*

Figure 4: DIY Used Oil Filters Recovered in 1997 and 2002

	1997	2002
DIY Used Oil Filters Generated	5,854,945	5,366,269
Total DIY Recovery	215,500	197,514
Percent Recovered	*4.00%*	*4.00% (assumed)*
Unaccounted for DIY Used Oil	5,639,445	*5,168,755*
Residual Oil in Unaccounted for DIY Used Filters	154,204 gallons	*141,333 gallons*

ers, private fleets, rental cars, and state government vehicles) occurs almost exclusively through private sector channels. For example, while only six local governments collected oil filters in 1997, private businesses collected more than two million filters. The recovery rate for used oil filters from all OMV sources reached 36 percent of generation in 1997 (Figure 3). Assuming a constant recovery rate for the next five years, more than five million oil filters from quick oil change outlets, private fleets, rental cars, and government sources will be discarded into landfills in 2002. Moreover, because of the 3.5 ounces of residual oil contained in each of the 3.7 million used oil filters from OMVs, more than 102,000 gallons of used oil were disposed in landfills in 1997.[10]

Do-It-Yourself (DIY) Sector

With only 215,000 filters recovered from DIY generators in 1997, the recovery rate for this sector is approximately four percent. Local government collection efforts were limited to six localities in 1997. While there may be some small sources of private sector recovery of DIY oil filters not included in this report, existing data reveal the DIY sector is responsible for more than five million unaccounted filters in 1997 (Figure 4).

Even when DIY generators employ the state mandated best drainage practices, as much as 3.5 ounces of oil remain in each of the five million used filters that are unaccounted for from these sources. Cumulatively, the five million filters could have resulted in 154,000 gallons of used oil being discharged into North Carolina's landfills in 1997.[11] Combining DIY and OMV sources results in about 256,000 total gallons of residual oil contained in filters.

Source Reduction

Fewer oil changes means less waste oil released into the environment. Because of improvements in the design of motors during the past 10 years, most major automobile manufacturing companies have decreased the recommended frequency of oil changes. (See the *Used Oil Commodity Profile* for more information.) An increase in the minimum distances between oil changes of just 2,000 miles could result in as much as a 30 percent reduction in the generation of used oil filters.

By-pass filters are another important source reduction option. Preliminary studies indicate the average oil life used in combination with a by-pass filter is 130,000 miles.[12] The state could demonstrate leadership in this area by installing by-pass filters in all state government vehicles. Local governments also could be encouraged to install by-pass filters on fleets.

Increasing Filter Recovery

Many states have initiated used oil recycling programs based on the API Model Bill. This model bill establishes guidelines for a state-used oil fund supported by a fee on oil sales (usually two cents per quart). The fund normally is used to provide grant funding for cities and towns wishing to establish or publicize new oil and filter drop-off centers or curbside collection programs. In addition, many states use the funds to support a toll-free telephone information center and state-sponsored promotions. South Carolina uses some of its state funds for a multi-media advertising campaign, which includes print material, a school curriculum, and television and radio advertisements with NASCAR celebrities. Many of the state's educational programs are focused on raising the awareness of DIY oil changers.

North Carolina has established the need for used oil and filter recycling programs in state statutes. In General Statute Act 309.16, the state proposed to support a public education program regarding used oil collection and recycling through the provision of financial and technical resources. In General Statute Acts 309.21 and 22, the state also committed to providing the funding and expertise necessary to initiate an incentive program for individuals who change their own oil. In addition, the Statute proposed supporting a grants program to encourage new local government curbside collection initiatives and the establishment of additional private used oil collection centers. Funding was never appropriated for these programs, therefore they were never implemented.

Increasing Oil Recovery

Data suggest that, because of residual oil contained in used oil filters, the state cannot consider the landfill ban for used oil complete until used oil filters are also banned from disposal. Recent studies have revealed that the amount of used oil contained in oil filters varies from 3.5 to eight ounces depending on drainage practices. Assuming the best possible drainage practices were employed in 1997, more than 256,000 gallons of used oil were still disposed along with the 10 million filters. This significant amount of used oil entering landfills clearly violates the intention of the law banning used oil disposal. Banning the disposal of filters would reduce the potential environmental hazards and bolster the developing filter recycling infrastructure.

While a more detailed cost/benefit analysis is necessary for further consideration of an oil filter ban, initial calculations reveal that collection and recycling of the nine million currently disposed filters would cost generators approximately $2.2 million in additional hauling charges.[13] This cost would be offset partially by the average retail purchase expenditure of $6.50 from each individual who returns filters to an auto parts retail outlet.[14] For example, if 25 percent of the 5,639,445 unaccounted for filters from DIY oil changes were collected at auto parts retail outlets, nearly $9.2 million dollars in additional sales would occur. In addition, the growth of North Carolina's steel recycling economy (in revenue and employees) would also offset the increased hauling costs of mandatory filter recycling.

While the state bears responsibility to protect the natural resources of the larger environment, local governments also can take initiative to respond to potential threats to their watersheds and groundwater, drinking, and recreational water supplies by banning the disposal of used oil filters in their local landfills.

DEMAND

Because of the relatively recent emergence of the oil filter recycling industry, limited quantitative information exists on the demand for filters from North Carolina. The following demand analysis is based on communications with firms that collect, transport, or process used oil filters from North Carolina.

Used oil filters contain three recyclable elements: used oil, a paper filter media, and a steel shell. The steel shell is the most marketable element. The two primary end users for used oil filters are steel mills and scrap metal recovery operations. While North Carolina has very strong markets for used oil and recycled steel, currently, there is only one major end user of paper filters in the state.

Steel

Filtech Filtration Products, located in Monroe, North Carolina, is the oldest and largest processor of used oil filters in

the region. In 1997, Filtech processed approximately three million filters, mostly from North Carolina sources. Because of their high volume shredding technology, the plant currently has the capacity to process approximately 10 million used oil filters, or the equivalent of all of North Carolina's unaccounted for filters. Moreover, Filtech processes, separates, and markets all three components of used oil filters: the scrap steel, used oil, and paper filter media.

In addition to selling recycled steel to one of three large steel mills in the region, Filtech also sells approximately 100,000 gallons of used oil to Noble Oil Services for reprocessing and resale. Three regional mills currently consuming the largest percentage of recycled steel from oil filter processors are Charlotte Pipe and Foundry (North Carolina), Nucor (South Carolina), and SMI (South Carolina). Because of extremely large volumes of steel raw material purchases, recycled oil filter steel make up less than one percent of the input for any of the mills. While the high quality of steel in oil filters is attractive to steel production, mills do not accept recycled steel contaminated by the paper filter media. Although small amounts of residual oil can be consumed in furnaces, paper media is prone to floating when incinerated and has the potential to create a fire hazard. Massive quantities of recycled steel demanded by regional steel mills provide sufficient future demand to absorb significant increases in the recovery rate of used oil filters.[15]

Used Oil

As mentioned in the report on used oil, there is tremendous demand for used oil from North Carolina. Specifically, the majority of used oil in the state is used to produce fuel oil for industry. In most oil recycling operations, used oil is processed by removing contaminants and adding some virgin oil to produce oil suitable for burning in industrial boilers. For information on specific end users, refer to the *Used Oil Commodity Profile*.

Paper Filter Media

Currently, Giant Resource Recovery is the largest end user of the paper media in used oil filters. The company uses the paper media as a fuel in its cement kilns. While Giant Resource Recovery currently consumes most of the paper media recovered in the state, other fuel-to-energy end users could be identified if recovery levels increase in the future.

SUPPLY / DEMAND RELATIONSHIP

The demand for recycled filter products is influenced by the price and demand for competing products derived from virgin materials. In the case of used oil filters, markets for virgin steel and crude oil heavily influence the demand for steel scrap and used oil.

Based on information from transporters, processors, and end users of used oil filters, the demand for recycled steel from used filters currently exceeds the supply in the region. More specifically, steel mills have such large demand structures that a 50-percent increase in oil filter recovery would provide a nominal amount of recycled steel relative to their total raw material needs. As a result of high quality steel in oil filters, it appears the demand for recycled steel in the region is more than sufficient to absorb potential increases in used oil filter supplies.

Similarly, processors of used oil in North Carolina acknowledge the demand for fuel oil is already well above the current supply.[16] In addition, the demand for re-refined motor oil is expected to double within five years. While the supply of paper media currently is being absorbed by one primary end user, industry experts expect additional fuel-to-energy uses to emerge as the supply of paper filter media increases.[17] Therefore, through a combination of the three end uses, it appears that current and future demand for recycled steel, used oil, and paper fuel provide the potential to absorb significant increases in the supply of used oil filters from both the DIY and OMV sectors.

Given the significant amount of filters not collected from DIY and OMV sources, the current supply of used oil filters can be characterized as well below the potential demand. In fact, with more than nine million uncollected filters from motor vehicle sources, there appears to be significant potential to increase in supply.

CONCLUSION

More than 256,000 gallons of residual oil from oil filters may have entered North Carolina landfills in 1997. With projections of continued population growth in North Carolina during the next few decades, the issues of proper oil and filter management will become increasingly critical to preserving the integrity of the state's environment and natural resources.

First and foremost, efforts should be made to increase public awareness of higher oil change intervals, which would greatly reduce the amount of used oil and filters generated. Additionally, given the projection of a steady decrease in future DIY oil changers, increased attention should focus on the quick-change or installation sector of the OMV sector where most used oil and filters will be concentrated.

According to feedback from recycling companies in the southeast region, there are sufficient markets for all three components of used oil filters: the steel shell, paper filter media, and residual used oil. Given the potential environmental threat, the expanding collection infrastructure and the growing demand for recycled steel and used oil, there appears to be sufficient rationale for a statewide ban on disposal of used oil filters in landfills.

RECOMMENDATIONS

The following recommendations are based on the study of generation, recovery, and markets for used oil filters presented in this section.

- The state should promote the use of by-pass filters as a means of maintaining cleaner oil in engines and decreasing the frequency of oil changes. Local governments should be encouraged to provide similar leadership.
- The state should ban disposal of used oil filters. Because of residual oil contained in these filters, the state should not consider the ban on used oil from landfills complete until used oil filters are also banned from disposal.
- In addition to state consideration of a ban on the disposal of filters, local governments should consider implementing local bans on used oil filters.
- The state should support an education campaign to raise awareness of proper filter management methods and to increase the proliferation and visibility of public and private drop-off collection sites.
- State and local governments should seek opportunities to link used oil bottle collection efforts with used oil and oil filter recycling programs.

[1] Filter Manufacturers Council Environmental News. "Estimated Light Duty Oil Filter Sales by State." 1996. p. 4.
[2] NC DPPEA, "Management of Used Oil Filters," 1996. Terne filters are used primarily in buses and large, off road trucks. The plating on terne filers contains lead and is therefore deemed a hazardous material. All non-terne filters are not regulated as hazardous wastes in North Carolina.
[3] Hot draining is defined as a gravity induced process at near-engine-operating temperature and above 60 degrees Fahrenheit
[4] Communications with Brent Hazelett, Filter Manufacturers Council and Bob Boughton, California Environmental Protection Agency Integrated Waste Management Board, September 1998.
[5] U.S. EPA, *Environmental Regulations and Technology, Managing Used Motor Oil*, December 1994, p. 4.
[6] Current estimates reveal that oil filters contain approximately 0.8187 pounds of steel per filter and at least 3.5 ounces of used oil (Filter Manufacturers Council and California Integrated Waste Management Board).
[7] Filter Manufacturers Council Environmental News, "Estimated Light Duty Oil Filter Sales by State," 1996 p. 4.
[8] American Petroleum Institute, *National Used Oil Collection Study*, p. 35, May 1996.
[9] Communications with the Automobile Oil Change Association, October 1998.
[10] After puncturing and hot draining, used oil filters contain roughly 3.5 ounces of used oil. If only hot drained (and not punctured), then used oil filters may contain up to eight ounces of used oil. Based on communications with the Filter Manufacturers Council and Bob Boughton of the California Environmental Protection Agency Integrated Waste Management Board, Communications, August 1998.
[11] Residual used oil figures based on communications with Bob Boughton and the California Environmental Protection Agency Integrated Waste Management Board, Communications, August 1998.
[12] NC DPPEA Fact Sheet, "Eliminating Vehicle Oil Changes and/or Oil Filters Disposal," August 1996.
[13] Assumes 250 uncrushed filters per 55 gallon drum and an average collection fee of $60 per drum.
[14] Estimate from a study by the Filter Manufacturer's Council.
[15] Communications with David Autry, Filtech Filtration Products, October 1998.
[16] Communications with Noble Oil Services and Holston Group Inc., September and October 1998.
[17] Communication with Filtech Filtration Products, October 1998.

Other commodity profiles available

from the Division of Pollution Prevention and Environmental Assistance are:

Construction and Demolition Debris ▪ Electronics ▪ Glass ▪ Metals [*Aluminum Cans and Scrap, Steel Cans and Scrap*] ▪ Oil-Related [*Used Oil, Used Oil Filters*] ▪ Organics [*Food Residuals, Yard Wastes*] ▪ Paper [*Old Corrugated Cardboard, Old Newspaper, Old Magazines, Office Paper, Mixed Paper*] ▪ Plastics [PET (#1), HDPE (#2), PVC (#3), L/LDPE (#4), PP (#5), PS (#6)] ▪ Textiles [*Carpet, Post-Consumer Textiles*] ▪ Tires ▪ White Goods ▪ Wood [*Wooden Pallets, Wood Residues*]

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NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 1000 (First Edition)

SHORT TITLE: Motor Oil ADF/Used Oil Program

SPONSOR(S): Senator Fountain Odom

FISCAL IMPACT

Yes (x) **No ( )** **No Estimate Available ( )**

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
Used Oil Collection Fund	$740,000	$1,477,000	$1,492,000	$1,507,000	$1,522,000
Solid Waste Management Trust Fund	$39,000	$78,000	$79,000	$79,000	$80,000
EXPENDITURES					
Used Oil Collection Fund					
- DENR Admin. (7%)	$51,800	$103,390	$104,440	$105,490	$106,540
- Grants	$688,200	$1,373,610	$1,387,560	$1,401,510	$1,415,460
General Fund					
- DOR (not funded)	$180,000	$180,000	$180,000	$180,000	$180,000
- DENR (not funded)	$75,281	$114,272	$114,272	$114,272	$114,272
POSITIONS:					
DENR *	5	5	5	5	5
DOR		not yet determined			

* The 7% administrative allotment from the Used Oil Collection Fund is insufficient to fund the five positions requested by DENR to administer the Used Oil Program.

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue (DOR)
Department of Environment and Natural Resources (DENR)
Department of Transportation (DOT)

EFFECTIVE DATE: This act becomes effective January 1, 2000

BILL SUMMARY:

This bill imposes a two cents per quart advance disposal fee on each quart of oil sold in North Carolina. The oil distributor or wholesale dealer collects this fee and remits it to the Department of Revenue, minus a 2% merchant discount, either monthly or quarterly depending on the volume of tax. A motor oil license is required of distributors ($25) and for retailers that buy non-tax paid motor oil ($5). Revenue from the fee and license is deposited into the Used Oil Collection Fund (95%) and the Solid Waste Management Trust Fund (5%). The Department of Environment and Natural Resources will administer the Used Oil Collection Fund and a new Used Oil Collection Program. The Used Oil Collection Fund will be used to make grants for 1) establishing certified used oil collection centers, 2) promoting the collection and recycling of used oil, 3) establishing curbside collection of oil, 4) educating the public about oil recycling, and 5) encouraging "do-it-yourselfers" to return oil to used oil collection centers.

ASSUMPTIONS AND METHODOLOGY:

REVENUE

The major source of revenue for the new Used Oil Collection Fund is a 2 cents per quart of oil advance disposal fee. There are no statistics on motor oil sales in North Carolina, so an estimate must be derived from vehicle registrations and average motor oil usage per vehicle. On February 15, 1999, the Division of Motor Vehicles reported 5,919,523 vehicles registered in North Carolina. The vehicles registered include autos, trucks, motorcycles, buses, tractor trucks and recreational vehicles, but excludes trailers. Cars and light trucks make up 97.5% of the registered vehicles. The number of vehicles will grow at the same rate as population or 1% a year. The Used Oil Program Coordinator for the American Petroleum Institute estimates that the average vehicle in the US will use 3.3 gallons of oil each year based on oil changes every 3,000 miles and 12,000 miles traveled each year. Based on these assumptions, North Carolina's 5.9 million vehicles are expected to use 19.5 million gallons or 78.1 million quarts of motor oil in 1999.

The chart below shows the calculation of the revenue from the two cents per quart fee. Annual vehicle registrations have been converted into fiscal year estimates by simply taking half of one calendar year plus half of the next calendar year. With a January 1, 2000 start-up date, FY 1999-00 will realize only half of the revenue shown below.

	NC Vehicles	Annual Gallons per vehicle	Total NC Gallons	Convert to Quarts	2 cents per quart
FY 99-00	5,949,121	3.3	19,632,098	78,528,392	$1,570,568
FY 00-01	6,008,612	3.3	19,828,419	79,313,676	$1,586,274
FY 01-02	6,068,698	3.3	20,026,703	80,106,813	$1,602,136
FY 02-03	6,129,385	3.3	20,226,970	80,907,881	$1,618,158
FY 03-04	6,190,679	3.3	20,429,240	81,716,960	$1,634,339

Before the revenues from the advance disposal fee are reported to the Department of Revenue, the wholesale dealer, distributor, or retail dealer will deduct 2% of the proceeds for administrative expenses. The Department of Revenue will deposit 95% of the remaining funds into the new Used Oil Collection Fund and 5% into the Solid Waste Management Trust Fund.

	Estimated Revenue	2% Merchant Discount	Net deposit	Used Oil Fund 95%	Solid Waste Fund 5%
FY 99-00	$785,284	$15,706	$769,578	$731,099	$38,479
FY 00-01	$1,586,274	$31,725	$1,554,548	$1,476,821	$77,727
FY 01-02	$1,602,136	$32,043	$1,570,094	$1,491,589	$78,505
FY 02-03	$1,618,158	$32,363	$1,585,794	$1,506,505	$79,290
FY 03-04	$1,634,339	$32,687	$1,601,652	$1,521,570	$80,083

Another component of the advance disposal fee is a continuing motor oil license that is charged to wholesale distributors ($25) and retailers ($5). This note assumes it is one-time fee per business location. There are thousands of gas stations, drug stores, convenience marts, and other retailers that sell motor oil. For example, there are 7,629 gas stations in 1999 monitored by the Department of Agriculture and Consumer Services. However, this advance disposal fee will likely be collected at the wholesale level. The North Carolina Petroleum Marketers Association estimates there are 350 wholesale distributors of motor oil in North Carolina. This number is consistent with Department of Revenue data for privilege licenses sold to wholesale distributors of motor oil prior to the license repeal in 1997. From 1993 to 1995, the number of privilege licenses for wholesale oil distributors averaged 361. The revenue from 350 wholesale motor oil licenses will be $8,750 in FY 1999-00 and will be deposited into the two funds mentioned above.

EXPENDITURES

The Department of Environment and Natural Resources (DENR) will receive 7% of the Used Oil Collection Fund for administrative expenses or approximately $105,000 a year. However, this amount is insufficient to cover the expenses projected by the Department to develop and administer the Used Oil Collection Program. The Program includes grant-making, technical assistance, and toll-free telephone information. The Department's fiscal estimate for SB 1000 is shown below.

Cost Items	FY 1999-00*	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
1 FTE Used Oil Grant Program Administrator – Environmental Specialist III, Grade 72					
Salary and Benefits	$20,291	$40,582	$40,582	$40,582	$40,582
Equipment, Furniture, and Supplies	$3,800	$300	$300	$300	$2,800
Telephone (includes toll free line)	$500	$1,000	$1,000	$1,000	$1,000
Printing and Postage	$1,500	$3,000	$3,000	$3,000	$3,000
Travel	$2,500	$5,000	$5,000	$5,000	$5,000
Rent (leased space)	$3,000	$6,000	$6,000	$6,000	$6,000
4 FTE Used Oil Program regulatory specialists – Environmental Technician, Grade 65					
Salary and Benefits	$61,290	$122,580	$122,580	$122,580	$122,580
Equipment, Furniture, and Supplies	$15,200	$1,200	$1,200	$1,200	$11,200
Telephone	$1,000	$2,000	$2,000	$2,000	$2,000
Printing and Postage	$1,000	$2,000	$2,000	$2,000	$2,000
Travel	$5,000	$10,000	$10,000	$10,000	$10,000
Rent (leased space)	$12,000	$24,000	$24,000	$24,000	$24,000
TOTAL	**$127,081**	**$217,662**	**$217,662**	**$217,662**	**$230,162**

* 1999-00 reflects a half year because act takes effect January 1, 2000.

The Department of Revenue will have expenses related to the collection of the advance disposal fee, but there is no compensation for the Department in the bill. The Department has enumerated the following administrative tasks it will undertake to comply with SB 1000:

- Add a new tax type to computer program and change accounting systems
- Develop, print and mail notices and booklets to taxpayers
- Process tax forms submitted by taxpayers
- Answer phone calls about new fee
- Mail delinquent notices
- Audit and hold hearings on new fee

The Department is reimbursed for its expenses in collecting the white goods disposal tax and the scrap tire disposal tax. In FY 1997-98, the Department received $164,154 to administer the white goods tax and $193,485 to administer the scrap tire disposal tax. The Department provided no details of its projected costs to collect the advance disposal fee, but estimated that it would be in the range of the scrap tires and white goods taxes. This note will assume the average of those two collection expenses or $180,000 per year. For FY 1999-00, the mid year starting date will reduce some operating expenses, but the full $180,000 is used due to the up-front costs of programming, printing, and postage.

TECHNICAL CONSIDERATIONS:

A bill analysis of SB 1000 by the Department of Revenue on May 6, 1999 noted the following technical errors:

- The bill appears to have been drafted such that if recycled motor oil is blended to create motor fuel, the the oil is then subject to **both** the advance disposal fee and the motor fuel excise tax -- is this the intent?
- The advance disposal fee should be referred to as an *excise tax* so general tax collection and administrative provisions in the North Carolina General Statutes will apply.
- Motor oil is not defined clearly. If greases are considered motor oil, then the advance disposal fee must also be levied by weight.
- The Department of Revenue prefers that the reference to monthly and quarterly reports in the bill be renamed *returns.* For example, a taxpayer remitting sales tax proceeds files a sales tax return according to GS 105-164.16. Another example is GS 105-163.6 that requires employers to file returns to pay withheld income taxes.
- The Department is uncertain what should be included in the term "industrial machinery".
- Does the bill sponsor understand that blending recycled motor oil to create motor fuel makes the oil subject to the advance disposal fee and the motor fuel excise tax?
- The bill does not specify how often the proceeds are to be distributed.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic

APPROVED BY: Tom Covington

Summary PROPOSED COMMITTEE SUBSTITUTE
SB 1000
6/30/99

PCS SB 1000. MOTOR OIL ADF/USED OIL PROGRAM. *TO IMPOSE AN ADVANCE DISPOSAL FEE UPON MOTOR OIL AT THE POINT OF FIRST SALE AND TO ESTABLISH THE USED OIL COLLECTION PROGRAM TO ENCOURAGE THE PROPER MANAGEMENT OF USED OIL GENERATED BY PRIVATE CITIZENS WHO CHANGE THEIR OWN OIL, TO BAN THE DISPOSAL OF USED OIL FILTERS AS OF JANUARY 1,2004, AND TO PROVIDE A SUNSET FOR THE ADVANCE DISPOSAL FEE UPON MOTOR OIL.*

Requires distributors and wholesale or retail dealers who first handle motor oil coming into the State to pay an advance disposal fee of two cents per quart and to file quarterly returns with the Secretary of Revenue on motor oil sales and fee collections. Motor oil is defined to not include greases and recycled motor oil that is blended to create motor fuel. The fee does not apply to motor oil sold outside the State or required to operate industrial machinery and sold for that purpose. On a quarterly basis, the Secretary of Revenue shall credit five percent of the fees generated to the Solid Waste Management Trust Fund and shall credit the remaining 95% to a new, nonreverting Used Oil Collection Fund. The Used Oil Collection Fund, administered by the Department of Environment and Natural Resources, will be used primarily for grants to assist and market used oil collection centers and other used oil collection and recycling programs. Collection centers serve as collection points for do-it-yourself oil changers and receive limited liability for releases and mischaracterization of used oil provided conditions in the bill are met. Requires certain pre-disposal handling of used oil filters. Retailers of motor oil must inform the public of the importance of proper motor oil collection and disposal and of the DENR toll-fee customer service center number for information concerning used oil collection centers. Expands registration of persons transporting, collecting or recycling used oil to include anyone transporting more than 55 gallons of used oil over public highways at any one time. Expands DOT certification requirements for used oil transporters. Effective Jan. 1, 2000. Advance disposal fee sunsets December 31, 2005. Effective January 1, 2004, the landfill disposal and the disposal by incineration of used oil filters are banned and the procedure for preparing a used oil filter for disposal in a landfill is repealed.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 855

Short Title: Kings Mountain ETJ. (Local)

Sponsors: Representative Horn.

Referred to: Local Government II.

April 1, 1999

A BILL TO BE ENTITLED

AN ACT ALLOWING THE TOWN OF KINGS MOUNTAIN WITH THE APPROVAL OF THE CLEVELAND AND GASTON COUNTY BOARDS OF COMMISSIONERS TO EXERCISE EXTRATERRITORIAL JURISDICTION OVER AN AREA EXTENDING TWO MILES FROM THE TOWN'S CORPORATE LIMITS.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding G.S. 160A-360(a), the Town of Kings Mountain may, with the approval of the Cleveland and Gaston County Boards of Commissioners, exercise the powers granted in Article 19 of Chapter 160A of the General Statutes within a defined area and within Cleveland County and Gaston County extending not more than two miles beyond the Town's corporate limits. The exercise of powers under this act shall be subject to the provisions of G.S. 160A-360.

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

HOUSE BILL 855:
Kings Mountain ETJ

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Rep. Horn
Date:	June 29, 1999	**Summary by:**	Martha K. Walston
Version:	1st Edition		Committee Counsel

SUMMARY: ***House Bill 855 is a local bill that expands the extraterritorial jurisdiction authority of the Town of Kings Mountain. The bill was given a favorable report in House Local Government II.***

CURRENT LAW: Article 19 of Chapter 160A of the General Statutes allows a city to enact zoning restrictions within its corporate limits. In addition, any city may exercise these same powers within a defined area extending not more than one mile beyond its limits. This is commonly known as the city's extraterritorial jurisdiction (ETJ). If the board of county commissioners approves, a city with a population greater than 10,000 but less than 25,000 may expand its ETJ to two miles beyond its corporate limits, and a city with a population of 25,000 or more may expand its ETJ to three miles beyond its corporate limits.

Article 19 of Chapter 160A also requires that when a city extends its jurisdiction to include an area currently regulated by the county, then the county's regulations remain in effect until the city has adopted regulations or 60 days after annexation, whichever is sooner.

BILL ANALYSIS: House Bill 855 authorizes the Town of Kings Mountain , with the approval of the Cleveland and Gaston County Boards of Commissioners, to exercise its zoning powers within a defined area and within Cleveland and Gaston County for a distance of not more than 2 miles beyond the Town's corporate limits.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 764
Committee Substitute Favorable 5/25/99

Short Title: Raise Mooresville Room Tax. (Local)

Sponsors:

Referred to:

March 31, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE TOWN OF MOORESVILLE TO LEVY AN ADDITIONAL ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of Chapter 296 of the 1991 Session Laws, as amended by Section 4 of Chapter 577 of the 1991 Session Laws, reads as rewritten:

"Section 1. Occupancy tax. (a) Authorization and scope. The Mooresville Town Board of Commissioners may ~~by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

(a1) Authorization of additional tax. In addition to the tax authorized by subsection (a) of this section, the Mooresville Town Board of Commissioners may levy an additional room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of accommodations taxable under subsection (a). The total rate of tax levied under subsections (a) and (a1) of this section, when combined with the rate of room occupancy tax levied by Iredell County, may not exceed six percent (6%). The levy, collection, administration, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this

section. The Town of Mooresville may not levy a tax under this subsection unless it also levies the tax authorized under subsection (a) of this section.

(b) Administration. A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section.

~~Collection. Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the town. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The town shall design, print, and furnish to all appropriate businesses and persons in the town the necessary forms for filing returns and instructions to ensure the full collection of the tax.~~

~~(c) Administration. The town shall administer a tax levied under this section. A tax levied under this section is due and payable to the town finance officer in monthly installments on or before the fifteenth day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the fifteenth day of each month, prepare and render a return on a form prescribed by the town. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~A return filed with the town finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall pay a penalty of ten dollars ($10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid. The board of commissioners may, for good cause shown, compromise or forgive the additional tax penalties imposed by this subsection.~~

~~Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars ($1,000), imprisonment not to exceed six months, or both.~~

(e) Disposition of tax proceeds. The Town of Mooresville ~~shall set aside in a special account fifty percent (50%) of the net proceeds of the occupancy tax and shall spend these funds to promote travel and tourism. The Town of Mooresville shall remit the remaining proceeds of the tax to its general fund and may use these funds for any lawful purpose. As used in this subsection, "net proceeds" means gross proceeds less the cost to the town of administering and collecting the tax, as~~

~~determined by the finance officer.~~ shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Mooresville Travel and Tourism Authority. The Authority shall use at least seventy-five percent (75%) of the net proceeds of the occupancy tax to promote travel and tourism in Mooresville and shall use the remainder for tourism-related expenditures.

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

(1) Net proceeds. -- Gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the first five hundred thousand dollars ($500,000) of gross proceeds collected each year and one percent (1%) of the remaining gross receipts collected each year.

(2) Promote travel and tourism. -- To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. -- Expenditures that, in the judgment of the Authority, are designed to increase the use of lodging facilities, meeting facilities, or convention facilities in a town or to attract tourists or business travelers to the town. The term includes tourism-related capital expenditures.

~~Effective date of levy. A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the month after the date the resolution is adopted.~~

~~(g) Repeal. A tax levied under this section may be repealed by a resolution adopted by the Mooresville Town Board of Commissioners. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.~~"

Section 2. Section 2 of Chapter 296 of the 1991 Session Laws reads as rewritten:

"Sec. 2. Travel and Tourism Authority. (a) Appointment and membership. After the Town of Mooresville adopts a resolution levying an occupancy tax under this act, it shall also adopt a resolution creating a Travel and Tourism Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The membership of the Authority shall consist of: two members representing the Mooresville-South Iredell Chamber of Commerce; two members representing the motel or travel and tourism industry; and one member of the Mooresville Town Board. The resolution shall provide for terms of office, and for the filling of

vacancies on the Authority. The Mooresville Town Board shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority. Members shall serve at the pleasure of the Mooresville Town Board.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for the Town of Mooresville shall be the ex officio finance officer of the Authority.

(b) Duties. The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in Section 1 of this act. The Authority shall promote travel, tourism, and conventions in the Greater Mooresville area; sponsor tourism related events and activities; and finance tourism related capital projects in the Greater Mooresville ~~area with the fifty percent (50%) of the net proceeds set aside by the Town of Mooresville, all disbursements from which shall be subject to approval by the Mooresville Town Board.~~ area.

(c) Reports. The Authority shall report at the close of the fiscal year to the Mooresville Town Board, or more often if required by said Board, on its receipts and expenditures for the preceding year in such detail as the Board may require."

Section 3. Section 3 of S.L. 1997-410, as amended by Section 2 of S.L. 1997-447 and Section 4 of S.L. 1998-112, reads as rewritten:

"Section 3. Municipal Administrative Provisions. G.S. 160A-215, as enacted by S.L. 1997-361 and S.L. 1997-364, applies to the Cities of Goldsboro, Lumberton, Mount Airy, Shelby, and Statesville, to the ~~Town of St. Pauls~~ Towns of Mooresville and St. Pauls, and to the municipalities in Brunswick County."

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

HOUSE BILL 764:
Raise Mooresville Room Tax

BILL ANALYSIS

Committee: Senate Finance
Date: June 28, 1999
Version: 2nd Edition

Introduced by: Rep. Setzer
Summary by: Martha K. Walston
Committee Staff

SUMMARY: ***House Bill 764 would permit the Mooresville Town Board of Commissioners to levy an additional room occupancy tax of up to 2%. House Bill 764 would also conform the current room occupancy tax session law for Mooresville to the uniform occupancy tax provisions. The current version of the bill was given a favorable report in House Finance on May 25, 1999.***

CURRENT LAW: Under current law, Mooresville may levy a room occupancy tax of up to 2%. Fifty percent (50%) of this tax is set aside for the promotion of travel and tourism. The remaining 50% is placed in the town's general fund and may be used for any lawful purpose. There is also a Travel and Tourism Authority which promotes travel, tourism, and conventions in the Greater Mooresville area; sponsors tourism-related events and activities; and finances tourism related capital projects with the travel and tourism portion of the tax.

BILL ANALYSIS: House Bill 764 would allow the Town of Mooresville to levy an additional occupancy tax of up to 2%. However, the tax must be levied in addition to the tax authorized in current law, and the total occupancy tax rate for Mooresville, when combined with the Iredell County occupancy tax, cannot exceed 6%. (Iredell County is authorized to levy an occupancy tax of up to 3%.)

House Bill 764 conforms the current session law governing Mooresville occupancy taxes with the uniform occupancy tax provisions. Therefore, the levy, administration, collection, and repeal of the occupancy taxes must be done in accordance with G.S. 160A-215. These provisions are substantially the same as the ones in the current session law. Also, the penalties for the refusal to file or pay an occupancy tax are those set out in G.S. 105-236 for the failure to pay or file a return for State sales and use tax. Finally, the conforming changes provide that the Town must submit the net proceeds of the tax to the Mooresville Travel and Tourism Authority. The Authority must use 75% of the revenues to promote travel and tourism and the remainder for tourism-related expenditures. The bill defines the terms "net proceeds", "promote travel and tourism", and "tourism-related expenditures".

BACKGROUND: Since 1983, the General Assembly has authorized many units of local government to levy a room occupancy tax. In several instances, the General Assembly has authorized both a county and a city within that county to impose an occupancy tax. The rate of tax, the use of the tax proceeds, the administration of the tax, and the body with the authority to determine how the tax proceeds will be spent vary considerably. Over the past several years, there has been a greater effort to make the occupancy taxes uniform. In 1997, the General Assembly enacted uniform municipal and county administrative provisions for occupancy tax legislation – G.S. 153A-155 and G.S. 160A-215. These provisions provide uniformity in the areas of levy, administration, collection, repeal, and penalties.

The North Carolina Travel and Tourism Coalition has a policy statement for legislation authorizing local occupancy taxes. These principals include:

- **Rate.** – The county tax rate cannot exceed 6% and the city tax rate, when combined with the county rate, cannot exceed 6%.
- **Use.** – Two-thirds of the proceeds must be used to promote travel and tourism and the remainder must be used for tourism-related purposes.
- **Definitions.** – The terms "net revenues" "promote travel and tourism", and "tourism-related expenditures" are defined terms.
- **Administration.** – The net revenues must be administered by a local tourism promotion agency that has the authority to determine how the tax proceeds will be used, is created by a local ordinance, and at least ¾ of the members must be currently active in the promotion of travel and tourism in the taxing district and 1/3 of the members must be affiliated with organizations that collect the tax.
- **Costs of Collection.** – The taxing authority may retain from the revenues it actual costs of collection, not to exceed 3% of the first $500,000 collected each year plus 1% of the remainder collected each year.

Cindy Avrette and Mary Shuping contributed substantially to this summary.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 738

Short Title: Greenville Satellite Annexations. (Local)

Sponsors: Representative Rogers.

Referred to: Local Government I.

March 30, 1999

A BILL TO BE ENTITLED

AN ACT CONCERNING ANNEXATION OF NONCONTIGUOUS AREAS BY THE CITY OF GREENVILLE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-58.1(b)(2) shall not apply to the City of Greenville as to any property if the City has entered into an annexation agreement pursuant to Part 6 of Article 4A of Chapter 160A of the General Statutes with the city to which a point on the proposed satellite corporate limits is closer and that agreement states that the other city will not annex the property.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 738
Proposed Senate Committee Substitute H738-PCSA159-LB

Short Title: Greenville/Catawba Annexations. (Local)

Sponsors:

Referred to:

March 30, 1999

A BILL TO BE ENTITLED

AN ACT CONCERNING ANNEXATION OF NONCONTIGUOUS AREAS BY THE CITY OF GREENVILLE, AND AUTHORIZING THE TOWN OF CATAWBA TO ANNEX PROPERTY ENCLOSED BY THE CORPORATE BOUNDARIES OF THE TOWN.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-58.1(b)(2) shall not apply to the City of Greenville as to any property if the City has entered into an annexation agreement pursuant to Part 6 of Article 4A of Chapter 160A of the General Statutes with the city to which a point on the proposed satellite corporate limits is closer and that agreement states that the other city will not annex the property.

Section 2.(a) Notwithstanding the provisions of G.S. 160A-36, the Town of Catawba may adopt ordinances annexing property that, on January 1, 1999, was completely enclosed by the corporate limits of the Town, if the Town does the following:

(1) Fixes a date for a public hearing on the annexation and publishes notice of the public hearing at least 10 days before the date of the hearing.

(2) Makes a finding based upon circumstances and evidence satisfactory to the Town Council that the annexation is necessary for the orderly growth and development of the Town.

Section 2.(b) The procedure for recording any annexation under this section shall be as provided in G.S. 160A-39.

Section 2.(c) Any annexation ordinance adopted by the Town Council under this section shall be adopted before December 31, 1999.

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

HOUSE BILL 738:
Greenville Satellite Annexations

BILL ANALYSIS

Committee: Senate Finance
Date: June 29, 1999
Version: 1st Edition

Introduced by: Rep. Rogers
Summary by: Martha K. Walston
Committee Counsel

SUMMARY: ***House Bill 738 authorizes the Town of Greenville to make certain voluntary annexations that it would not otherwise be able to make. The bill was given a favorable report in the House Committee on Local Government I and House Finance.***

CURRENT LAW: G.S. 160A-58.1 governs the voluntary annexation of noncontiguous property. Property owners may petition a city for voluntary annexation of noncontiguous property if the property meets all of the following standards:

1. The nearest point on the proposed satellite corporate limits must be not more than 3 miles from the primary corporate limits of the annexing city.
2. No point on the proposed satellite corporate limits may be closer to the primary corporate limits of another city than to the primary corporate limits of the annexing city.
3. The area must be so situated that the annexing city will be able to provide the same services within the proposed satellite corporate limits that it provides within its primary corporate limits.
4. If the area proposed for annexation is a subdivision, all of the subdivision must be included.
5. The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, may not exceed ten percent (10%) of the area within the primary corporate limits of the annexing city.

BILL ANALYSIS: House Bill 738 modifies standard 2 above by allowing Greenville to voluntarily annex a noncontiguous area that is closer to another city than to Greenville, if the other city has entered into an agreement with Greenville that states the other city will not annex the property.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1076

Short Title: Reform Local Tax on Rental Cars. (Public)

Sponsors: Senator Cooper.

Referred to: Finance.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE PROPERTY TAX ON CERTAIN VEHICLES LEASED OR RENTED UNDER A SHORT-TERM LEASE OR RENTAL AND TO REPLACE THE TAX REVENUE WITH A LOCAL OPTION PRIVILEGE LICENSE TAX ON GROSS RECEIPTS DERIVED FROM CERTAIN SHORT-TERM CAR RENTALS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-275 is amended by adding a new subdivision to read:

"(41) A u-drive-it passenger vehicle that is leased or rented under a 30-day lease or rental by a retailer. For the purposes of this subdivision, the terms "retailer", "30-day lease or rental", and "u-drive-it passenger vehicle" have the same meanings as in G.S. 153A-152.2 and G.S. 160A-211.2."

Section 2. Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-152.2. Privilege license tax on rental car business.**

A county may levy an annual privilege license tax on the gross receipts of a retailer engaged in the business of leasing or renting u-drive-it passenger vehicles. The tax rate may not exceed two percent (2%) of the retailer's gross receipts from 30-day leases or rentals of u-drive-it passenger vehicles. The following definitions apply in this section:

(1) Retailer. -- Defined in G.S. 105-164.3.

(2) Thirty-day lease or rental. -- A lease or rental made under a written agreement to lease or rent a u-drive-it passenger vehicle to the same person for a period of no more than 30 consecutive days.

(3) U-drive-it passenger vehicle. -- A passenger vehicle that is registered under G.S. 20-87(2) and has a passenger capacity of no more than 15 passengers."

Section 3. Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-211.2. Privilege license tax on rental car business.**

A city may levy an annual privilege license tax on the gross receipts of a retailer engaged in the business of leasing or renting u-drive-it passenger vehicles. The tax rate may not exceed two percent (2%) of the retailer's gross receipts from 30-day leases or rentals of u-drive-it passenger vehicles. The following definitions apply in this section:

(1) Retailer. -- Defined in G.S. 105-164.3.

(2) Thirty-day lease or rental. -- A lease or rental made under a written agreement to lease or rent a u-drive-it passenger vehicle to the same person for a period of no more than 30 consecutive days.

(3) U-drive-it passenger vehicle. -- A passenger vehicle that is registered under G.S. 20-87(2) and has a passenger capacity of no more than 15 passengers."

Section 4. Section 1 of this act becomes effective for taxes imposed for taxable years beginning on or after July 1, 2000. The remainder of this act becomes effective July 1, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 1076
Proposed Committee Substitute S1076-PCS3850-RB

Short Title: Reform Local Tax on Rental Cars. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE PROPERTY TAX ON CERTAIN VEHICLES LEASED OR RENTED UNDER RETAIL SHORT-TERM LEASES OR RENTALS AND TO REPLACE THE TAX REVENUE WITH A LOCAL TAX ON GROSS RECEIPTS DERIVED FROM RETAIL SHORT-TERM LEASES OR RENTALS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-275 is amended by adding a new subdivision to read:

"(41) A vehicle that is offered at retail for short-term lease or rental, if such vehicle is owned or leased by an entity which is engaged in the business of leasing or renting vehicles to the general public for short-term lease or rental. For the purposes of this subdivision, the term 'short-term lease or rental' shall have the same meaning as in G.S. 105-187.1. A gross receipts tax as set forth by G.S. 153A-152.2 and G.S. 160A-211.2 is substituted for and replaces the ad valorem tax previously levied on these vehicles."

Section 2. Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-152.2. Gross receipts tax on short-term leases or rentals.**

(a) As a substitute for and in replacement of the ad valorem tax, which is excluded by G.S. 105-275(41), a county may levy a gross receipts tax on the gross receipts from the short-term lease or rental of vehicles at retail to the general public.

The tax rate shall not exceed one percent (1%) of the gross receipts from such short-term leases or rentals.

(b) If a county enacts the substitute and replacement gross receipts tax pursuant to this section, any entity required to collect the tax shall include a provision in each retail short-term lease or rental agreement noting that an additional one percent (1%) of the total lease or rental price, excluding sales tax, is being charged as a tax on gross receipts. For purposes of this section, the transaction giving rise to the tax shall be deemed to have occurred at the location of the entity from which the customer takes delivery of the vehicle. The tax shall be collected at the time of lease or rental and placed in a segregated account until remitted to the county.

(c) The collection and use of taxes under this section are not subject to sales tax and are not included in the gross receipts of the entity. The proceeds collected under this section belong to the county and are not subject to creditor liens against the entity.

(d) A tax levied under this section shall be collected by the county but otherwise administered in the same manner as the optional gross receipts tax levied by G.S. 105-187.5.

(e) The following definitions apply in this section:

(1) Vehicle. -- A motor vehicle

a. Of the private passenger type, including a passenger van, minivan, or sport utility vehicle; or

b. Of the cargo type, including cargo van, pickup truck, or truck with a gross vehicle weight of 26,000 pounds or less used in the transportation of property other than commercial freight and that does not require the operator to possess a commercial drivers license; or

c. A trailer or semitrailer with a gross vehicle weight of 6,000 pounds or less.

(2) Short-term lease or rental. -- Defined in G.S. 105-187.1(4)."

Section 3. Chapter 160A of the General Statutes is amended by adding a new section to read:

"**§ 160A-211.2. Gross receipts tax on short-term leases or rentals.**

(a) As a substitute for and in replacement of the ad valorem tax, which is excluded by G.S. 105-275(41), a city may levy a gross receipts tax on the gross receipts from the short-term lease or rental of vehicles at retail to the general public. The tax rate shall not exceed one percent (1%) of the gross receipts from such short-term leases or rentals. This tax on gross receipts is in addition to the privilege taxes authorized by G.S. 160A-211.

(b) If a city enacts the substitute and replacement gross receipts tax pursuant to this section, any entity required to collect the tax shall include a provision in each retail short-term lease or rental agreement noting that an additional one percent (1%) of the total lease or rental price, excluding sales tax, is being charged as a tax on gross receipts. For purposes of this section, the transaction giving rise to the tax shall be deemed to have occurred at the location of the entity from which the customer

takes delivery of the vehicle. The tax shall be collected at the time of lease or rental and placed in a segregated account until remitted to the city.

(c) The collection and use of taxes under this section are not subject to sales tax and are not included in the gross receipts of the entity. The proceeds collected under this section belong to the city and are not subject to creditor liens against the entity.

(d) A tax levied under this section shall be collected by the city but otherwise administered in the same manner as the optional gross receipts tax levied by G.S. 105-187.5.

(e) The following definitions apply in this section:

(1) Vehicle. -- A motor vehicle

a. Of the private passenger type, including a passenger van, minivan, or sport utility vehicle; or

b. Of the cargo type, including cargo van, pickup truck, or truck with a gross vehicle weight of 26,000 pounds or less used in the transportation of property other than commercial freight and that does not require the operator to possess a commercial drivers license; or

c. A trailer or semitrailer with a gross vehicle weight of 6,000 pounds or less.

(2) Short-term lease or rental. -- Defined in G.S. 105-187.1."

Section 4. Section 1 of this act becomes effective for taxes imposed for taxable years beginning on or after July 1, 2000. The remainder of this act becomes effective July 1, 2000.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 1076 Proposed Senate Finance Committee Substitute 2 DRAFT NOTE

SHORT TITLE: Reform Rental Car Tax

SPONSOR(S): Senator Cooper

FISCAL IMPACT

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

($ Millions)

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
General Fund		**No General Fund Impact**			
Local Governments					
Property Tax		**See Assumptions and Methodology**			
Premiums Tax					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Local Governments and the Department of Revenue, Sales Tax Division.

EFFECTIVE DATE: Section 3 becomes effective for taxable yeas beginning on or after July 1, 2000. The remainder of the bill is effective on July 1, 2000.

BILL SUMMARY: The bill exempts from property tax vehicles that are termed short-term leased vehicles. These vehicles are leased for 365 days or less. This includes rental cars, sports utility vehicles, cargo vans, trucks, trailers and small semi-trailers. The bill also requires that counties and cities impose a one- percent (1-%) privilege license tax on the vehicle rental business.

ASSUMPTIONS AND METHODOLOGY: The bill has the potential to impact both property and privilege license taxes.

Property Tax: The bill addresses two types of rental vehicles, passenger and non-passenger. Currently there is no state or local system that tracks the number of vehicles leased for 365 days or less. However, the Department of Motor Vehicles can estimate the number of rental cars that are leased for 30 days or less. These cars are given a special tag and are tracked by both the counties and the state. The Division of Motor Vehicles can estimate the number of these vehicles in North Carolina. The DMV estimates that there are approximately 40,000 u-drive-it passenger vehicles in the state. A u-drive-it passenger vehicle is defined as a passenger vehicle

that is leased or rented under a 30-day (or less) contract by the retailer. In short, they are rental cars.

Industry analysts suggest that approximately 70% - 80% of all rental cars are located near major airports. A Fiscal Research survey of the seven counties near large airports (Wake, Mecklenburg, Forsyth, Nash, Guilford, New Hanover, and Buncombe) revealed that 31,397 rental vehicles are listed in these counties. Assuming there are 40,000 U-Drive-It vehicles, this represents 78.5% of the total North Carolina market.

These seven counties report a total u-drive-it tax value of $424,077,070. The property taxes associate with these vehicles is $4.187 million. This creates an average vehicle value of $13,507. Assuming the average value applies to the cars in other counties (the remaining 21.5%), the total value of the outstanding vehicles is $ 116,200,116. Assuming the average vehicle tax from the reporting counties ($133.36) applies to the remain counties, the property tax losses associated with the bill are as follows:

County	Number of Rental Cars	Percent of All U-Drive-It	Property Tax Loss	Value
Mecklenburg	10,000	25.0%	1,700,000	130,000,000
Wake	13,700	34.3%	1,515,997	177,309,611
Forsyth	1,018	2.5%	159,351	12,846,860
Nash	1,850	4.6%	157,386	23,846,390
Guilford	2,500	6.3%	400,000	51,000,000
New Hanover	1,129	2.8%	109,553	16,474,209
Buncombe	1,200	3.0%	144,900	12,600,000
Others	8,603	21.5%	1,147,319	116,200,116
TOTAL	40,000	100.0%	5,334,506	540,277,186

The Division of Motor Vehicles can not determine the number of non-passenger, short-term rental vehicles in the state. Most counties in the state are not able to determine from their records how many of these vehicles are in the county. Some indicated that at least a portion of the trucks may be included in the above passenger vehicle estimate. Neither group can report how many vehicles are leased for between 31 and 365 days.

Because of the lack of firm data, the $5.3 figure is used as a **minimum** local government loss. The actually loss could be much greater.

Privilege License Tax: The bill also requires that counties and cities levy a one-percent privilege license tax on short-term rental vehicles. However, no accurate fiscal information is available from the rental car or truck industry on their gross receipts for 365 day or less rentals. An earlier Fiscal Research survey of the eight major car rental companies indicated a 1-% gross receipts tax on 30-day automobile rentals would generate $5.0 million in local revenue. However because this represents only a subset of the vehicles impacted by the bill this is a minimum potential impact.

While the note provides a minimum revenue change numbers, Fiscal Research feels that these numbers represent such a small portion of the actual impact of the bill that these estimates could not be considered an accurate and reliable estimate. Therefore, no official fiscal estimate is possible on the bill.

Note: While the statewide numbers suggest a potential net gain for counties that levy the 1% privilege license tax, at least one county assessor has indicated to Fiscal Research that they believe their county will lose money under the proposal. The North Carolina Association of Assessing Officials indicates those counties with a property tax rate of more than approximately $0.60 could loose revenue even if the 1-% gross receipts tax was levied. They do note these numbers are the result of limited data. Also, one major truck rental company has provided data to Fiscal Research. This data indicates that this particular company would pay more under the bill. However, because this is only one company, the data can not be considered an adequate sample at this time.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Linda Struyk Millsaps

APPROVED BY:

DATE:

SENATE BILL 1076:
Reform Local Tax on Rental Cars

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Sen. Cooper
Date:	June 29, 1999	**Summary by:**	Martha K. Walston
Version:	Proposed Committee Substitute		Committee Counsel

SUMMARY: *Senate Bill 1076 repeals the property tax on a vehicle that is offered for short-term lease or rental by an entity engaged in the leasing or renting of vehicles to the general public for short-term lease or rental. This tax revenue is replaced with a local option privilege license tax on gross receipts of short-term rentals or leases.*

BILL ANALYSIS: Under current law property taxes are levied or leased on rented vehicles.

Section 1 of the bill exempts from property tax a vehicle that is offered at retail for short-term lease or rental, if the vehicle is owned or leased by an entity engaged in the business of leasing vehicles to the general public for short-term lease or rental. "Short-term lease or rental" means a lease or rental for less than 365 continuous days. The repeal of this property tax is effective for taxes imposed for taxable years beginning on or after July 1, 2000.

Sections 2 and 3 of the bill authorize a county or city to levy a privilege license tax at a rate not to exceed 1% on the gross receipts from the short-term lease or rental of vehicles at retail to the general public. This tax is in lieu of the property tax.

The privilege license tax may be imposed on the following vehicles leased or rented for less than 365 continuous days:

A motor vehicle

a. Of the private passenger type, including a passenger van, minivan, or sport utility vehicle; or

b. Of the cargo type including cargo van, pickup truck, or truck with a gross vehicle weight of 25,000 pounds or less used in the transportation of property other than commercial freight and that does not require the operator to possess a commercial drivers license; or

c. A trailer or semitrailer with a gross vehicle weight of 6,000 pounds or less.

If a county or city enacts the privilege license tax, then any entity that is subject to the tax must include a provision in their lease or rental agreement that an additional 1% tax of the total lease price, excluding sales tax, is being charged by the county or city and collected as a privilege tax on gross receipts.

The collection and use of this tax are not subject to sales tax nor included in the gross receipts of the entity. The tax is collected by the city or county at the time of lease or rental and placed in a segregated account until remitted to the city or county.

Section 2 and 3 of the bill become effective July 1, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 120
Committee Substitute Favorable 4/22/99

Short Title: Tax Lien Advertisement and Collection. (Public)

Sponsors:

Referred to:

February 22, 1999

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE PROCEDURES FOR NOTIFYING OWNERS AND ADVERTISING TAX LIENS ON REAL PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-369 reads as rewritten:

"**§ 105-369. Advertisement of tax liens on real property for failure to pay taxes.**

(a) Report of unpaid Taxes that are Liens on Real Property. -- ~~On the first Monday in February in each year, each county tax collector and on the second Monday in February in each year, each municipal tax collector shall~~ In February of each year, the tax collector must report to the governing body the total amount of unpaid taxes for the current fiscal year that are liens on real ~~property, and the governing body shall thereupon~~ property. A county tax collector's report is due the first Monday in February, and a municipal tax collector's report is due the second Monday in February. Upon receipt of the report, the governing body may order the tax collector to advertise ~~such~~ the tax liens. For purposes of this section, district taxes collected by county tax collectors shall be regarded as county taxes and district taxes collected by municipal tax collectors shall be regarded as municipal taxes.

(b) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1013.

(b1) Notice to Owner. -- If the governing body orders the tax collector to advertise the tax liens, the tax collector must send a notice to the listing owner and to the record owner of each affected parcel of property, as determined as of December 31 of the fiscal year for which the taxes are due. The notice must be sent to each owner's last known address by first-class mail at least 30 days before the date the

advertisement is to be published. The notice must state the principal amount of unpaid taxes that are a lien on the parcel to be advertised and inform the owner that the names of the listing owner and the record owner will appear in a newspaper advertisement of delinquent taxes if the taxes are not paid before the publication date.

(c) Time and Contents of Advertisement. -- If the governing body orders the tax collector to advertise the tax liens, this subsection governs the advertisement. A tax collector's failure to comply with this subsection does not affect the validity of the taxes or tax liens. The county tax collector shall advertise county tax liens by posting a notice of the liens at the county courthouse and by publishing each lien at least one time in one or more newspapers having general circulation in the taxing unit. The municipal tax collector shall advertise municipal tax liens by posting a notice of the liens at the city or town hall and by publishing each lien at least one time in one or more newspapers having general circulation in the taxing unit. Advertisements of tax liens shall be made during the period March 1 through June 30. The costs of newspaper advertising shall be paid by the taxing unit. ~~(If~~ If the taxes of two or more taxing units are collected by the same tax collector, the tax liens of each unit shall be advertised separately unless, under the provisions of a special act or contractual agreement between the taxing units, joint advertisement is ~~permitted.)~~ permitted.

The posted notice and newspaper advertisement shall set forth the following information:

(1) ~~The~~ In the case of property that the listing owner has not transferred after January 1 preceding the fiscal year for which the tax liens are advertised, the name of each person to whom is listed real property on which the taxing unit has a lien for unpaid ~~taxes,~~ taxes, in alphabetical order,

(1a) In the case of property that the listing owner has transferred after January 1 preceding the fiscal year for which the tax liens are advertised, the name of the record owner as of December 31 of each parcel on which the taxing unit has a lien for unpaid taxes, in alphabetical order, followed by a notation that the property was transferred to the record owner and a notation of the name of the listing owner,

(1b) ~~together with a~~ After the information required by subdivision (1) or (1a) of this subsection for each parcel, a brief description of each parcel of land to which ~~such~~ a lien has attached and a statement of the principal amount of the taxes constituting a lien against the parcel.

(2) A statement that the amounts advertised will be increased by interest and costs and that the omission of interest and costs from the amounts advertised will not constitute waiver of the taxing unit's claim for those items.

(3) In the event the list of tax liens has been divided for purposes of advertisement in more than one newspaper, a statement of the

names of all newspapers in which advertisements will appear and the dates on which they will be published.

(4) A statement that the taxing unit may foreclose the tax liens and sell the real property subject to the liens in satisfaction of its claim for taxes.

~~Failure to comply with this subsection does not affect the validity of the taxes or tax liens.~~

(d) Costs. -- Each parcel of real property advertised pursuant to this section shall be assessed an advertising fee to cover the actual cost of the advertisement. Actual advertising costs per parcel shall be determined by the tax collector on any reasonable basis. Advertising costs assessed pursuant to this ~~subdivision (d) shall be deemed to be~~ subsection are taxes.

(e) Payments during Advertising Period. -- At any time during the advertisement period, any parcel may be withdrawn from the list by payment of the taxes plus interest that has accrued to the time of payment and a proportionate part of the advertising fee to be determined by the tax collector. Thereafter, the tax collector shall delete that parcel from any subsequent advertisement, but ~~if he fails to do so he shall not be liable for his~~ the tax collector is not liable for failure to make the deletion.

(f) Listing and Advertising in Wrong Name. -- No tax lien ~~shall be~~ is void because the real property to which the lien attached was listed or advertised in the name of a person other than the person in whose name the property should have been listed for taxation or because the record owner's name was omitted from the advertisement, if the property was in other respects correctly described on the abstract or in the advertisement.

(g) Wrongful Advertisement. -- Any tax collector or deputy tax collector who ~~shall willfully advertise~~ willfully advertises any tax lien knowing that the property is not subject to taxation or that the taxes advertised have been paid ~~shall be~~ is guilty of a Class 3 misdemeanor, and shall be required to pay the injured party all damages sustained in consequence."

Section 2. Article 26 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-370. Notice of delinquent taxes.**

If the governing body of a taxing unit decides not to advertise tax liens for a fiscal year, the tax collector must, at least 30 days before initiating any lien foreclosure action under G.S. 105-374, send a notice to the listing owner and the record owner of the affected parcel of property, as determined as of December 31 of the fiscal year for which the taxes are due. The notice must be sent to each owner's last known address by first-class mail. The notice must state the principal amount of unpaid taxes that are a lien on the property and inform the owner that the lien may be foreclosed to enforce collection of those taxes. Failure to mail the notice required by this section to the correct listing owner or record owner does not affect the validity of the tax lien or of any foreclosure action."

Section 3. G.S. 105-375(b) reads as rewritten:

"(b) Docketing Certificate of Taxes as Judgment. -- In lieu of following the procedure set forth in G.S. 105-374, the governing body of any taxing unit may direct the tax collector to ~~file, no earlier than six months following the advertisement of tax liens, with the clerk of superior court~~ file with the clerk of superior court, no earlier than 30 days after the tax liens were advertised or May 6 following the delinquency date, whichever occurs first, a certificate showing the following: the name of the taxpayer listing real property on which the taxes are a lien, together with the amount of taxes, penalties, interest, and costs that are a lien thereon; the year or years for which the taxes are due; and a description of the property sufficient to permit its identification by parol testimony. The fees for docketing and indexing the certificate shall be payable to the clerk of superior court at the time the taxes are collected or the property is sold."

Section 4. G.S. 105-375(e) reads as rewritten:

"(e) Special Assessments. -- Street, sidewalk, and other special assessments may be included in any judgment for taxes taken under this ~~section, or such~~ section, or the special assessments may be included in a separate judgment docketed under this ~~section, which is hereby declared to be made available~~ section. The tax collector may use such a judgment as a method of foreclosing the lien of special assessments. When used to foreclose the lien of special assessments, the procedure may be instituted at any time after the assessment or installment falls due and remains unpaid; the ~~six months'~~ waiting period required by subsection ~~(b), above, shall~~ (b) of this section does not apply to the foreclosure of special assessments."

Section 5. This act becomes effective January 1, 2001.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 120
Committee Substitute Favorable 4/22/99
Proposed Senate Committee Substitute H120-PCS1308-LA

Short Title: Tax Lien Advertisement and Collection. (Public)

Sponsors:

Referred to:

February 22, 1999

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE PROCEDURES FOR NOTIFYING OWNERS AND ADVERTISING TAX LIENS ON REAL PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-369 reads as rewritten:

"**§ 105-369. Advertisement of tax liens on real property for failure to pay taxes.**

(a) Report of unpaid Taxes that are Liens on Real Property. -- ~~On the first Monday in February in each year, each county tax collector and on the second Monday in February in each year, each municipal tax collector shall~~ In February of each year, the tax collector must report to the governing body the total amount of unpaid taxes for the current fiscal year that are liens on real ~~property, and the governing body shall thereupon~~ property. A county tax collector's report is due the first Monday in February, and a municipal tax collector's report is due the second Monday in February. Upon receipt of the report, the governing body must order the tax collector to advertise ~~such~~ the tax liens. For purposes of this section, district taxes collected by county tax collectors shall be regarded as county taxes and district taxes collected by municipal tax collectors shall be regarded as municipal taxes.

(b) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1013.

(b1) Notice to Owner. -- After the governing body orders the tax collector to advertise the tax liens, the tax collector must send a notice to the listing owner and to the record owner of each affected parcel of property, as determined as of December 31 of the fiscal year for which the taxes are due. The notice must be sent to each

owner's last known address by first-class mail at least 30 days before the date the advertisement is to be published. The notice must state the principal amount of unpaid taxes that are a lien on the parcel to be advertised and inform the listing owner that his or her name will appear in a newspaper advertisement of delinquent taxes if the taxes are not paid before the publication date. Failure to mail the notice required by this section to the correct listing owner or record owner does not affect the validity of the tax lien or of any foreclosure action.

(c) Time and Contents of Advertisement. -- A tax collector's failure to comply with this subsection does not affect the validity of the taxes or tax liens. The county tax collector shall advertise county tax liens by posting a notice of the liens at the county courthouse and by publishing each lien at least one time in one or more newspapers having general circulation in the taxing unit. The municipal tax collector shall advertise municipal tax liens by posting a notice of the liens at the city or town hall and by publishing each lien at least one time in one or more newspapers having general circulation in the taxing unit. Advertisements of tax liens shall be made during the period March 1 through June 30. The costs of newspaper advertising shall be paid by the taxing unit. ~~(If~~ If the taxes of two or more taxing units are collected by the same tax collector, the tax liens of each unit shall be advertised separately unless, under the provisions of a special act or contractual agreement between the taxing units, joint advertisement is ~~permitted.)~~ permitted.

The posted notice and newspaper advertisement shall set forth the following information:

(1) The name of each person to whom is listed real property on which the taxing unit has a lien for unpaid taxes, ~~together with~~ in alphabetical order, followed by a brief description of each parcel of land to which ~~such~~ a lien has attached and a statement of the principal amount of the taxes constituting a lien against the parcel.

(2) A statement that the amounts advertised will be increased by interest and costs and that the omission of interest and costs from the amounts advertised will not constitute waiver of the taxing unit's claim for those items.

(3) In the event the list of tax liens has been divided for purposes of advertisement in more than one newspaper, a statement of the names of all newspapers in which advertisements will appear and the dates on which they will be published.

(4) A statement that the taxing unit may foreclose the tax liens and sell the real property subject to the liens in satisfaction of its claim for taxes.

~~Failure to comply with this subsection does not affect the validity of the taxes or tax liens.~~

(d) Costs. -- Each parcel of real property advertised pursuant to this section shall be assessed an advertising fee to cover the actual cost of the advertisement. Actual advertising costs per parcel shall be determined by the tax collector on any

reasonable basis. Advertising costs assessed pursuant to this ~~subdivision (d) shall be deemed to be~~ subsection are taxes.

(e) Payments during Advertising Period. -- At any time during the advertisement period, any parcel may be withdrawn from the list by payment of the taxes plus interest that has accrued to the time of payment and a proportionate part of the advertising fee to be determined by the tax collector. Thereafter, the tax collector shall delete that parcel from any subsequent advertisement, but ~~if he fails to do so he shall not be liable for his~~ the tax collector is not liable for failure to make the deletion.

(f) Listing and Advertising in Wrong Name. -- No tax lien ~~shall be~~ is void because the real property to which the lien attached was listed or advertised in the name of a person other than the person in whose name the property should have been listed for taxation if the property was in other respects correctly described on the abstract or in the advertisement.

(g) Wrongful Advertisement. -- Any tax collector or deputy tax collector who ~~shall willfully advertise~~ willfully advertises any tax lien knowing that the property is not subject to taxation or that the taxes advertised have been paid ~~shall be~~ is guilty of a Class 3 misdemeanor, and shall be required to pay the injured party all damages sustained in consequence."

Section 2. G.S. 105-375(b) reads as rewritten:

"(b) Docketing Certificate of Taxes as Judgment. -- In lieu of following the procedure set forth in G.S. 105-374, the governing body of any taxing unit may direct the tax collector to ~~file, no earlier than six months following the advertisement of tax liens, with the clerk of superior court~~ file with the clerk of superior court, no earlier than 30 days after the tax liens were advertised, a certificate showing the following: the name of the taxpayer listing real property on which the taxes are a lien, together with the amount of taxes, penalties, interest, and costs that are a lien thereon; the year or years for which the taxes are due; and a description of the property sufficient to permit its identification by parol testimony. The fees for docketing and indexing the certificate shall be payable to the clerk of superior court at the time the taxes are collected or the property is sold."

Section 3. G.S. 105-375(e) reads as rewritten:

"(e) Special Assessments. -- Street, sidewalk, and other special assessments may be included in any judgment for taxes taken under this ~~section, or such~~ section, or the special assessments may be included in a separate judgment docketed under this ~~section, which is hereby declared to be made available~~ section. The tax collector may use such a judgment as a method of foreclosing the lien of special assessments. When used to foreclose the lien of special assessments, the procedure may be instituted at any time after the assessment or installment falls due and remains unpaid; the ~~six months'~~ waiting period required by subsection ~~(b), above, shall~~ (b) of this section does not apply to the foreclosure of special assessments."

Section 4. This act becomes effective January 1, 2001.

HOUSE BILL 120:
Tax Lien Advertisement and Collection

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Rep. Owens
Date:	June 30, 1999	**Summary by:**	Martha K. Walston
Version:	Proposed Committee Substitute		Committee Counsel

SUMMARY: ***The proposed committee substitute for House Bill 120 differs from the 2nd Edition of House Bill 120 in that it requires both advertisement and notification before beginning tax foreclosure proceedings. The earlier version gave counties the option to advertise tax delinquencies before beginning tax foreclosure proceedings. The PCS also differs from the earlier version in that it only requires that the listing owner's name be published in a newspaper. Both the listing owner and the record owner will receive notification by first class mail. Both the earlier version and the PCS enable the tax collector to collect the taxes in the fiscal year in which they are due, by allowing the county to begin an in rem foreclosure proceeding as early as 30 days after the tax liens were advertised.***

CURRENT LAW: Property must be listed for property tax in January of each year. The listing owner is the taxpayer who owned the property as of January 1. The taxes become due in September and become delinquent on January 6 of the following year. Although most counties send tax listing notices and tax bills to the taxpayer, they are not required by law to do so. Property owners are charged with notice that they must list their property for taxes and pay the taxes; otherwise, enforcement measures will be taken against the property. The legal effect of this law is to prevent a taxpayer from using lack of notice as an excuse for not paying property taxes or as a defense to a collection remedy against the property. If property taxes remain unpaid, the tax collector is required by statute to advertise the tax liens in a local newspaper under the name of the listing owner. If the taxes remain unpaid for six months following the advertisement, the tax collector may begin a foreclosure proceeding against the property. The earliest tax liens can be advertised is March; therefor, September is the earliest an in rem foreclosure proceeding may be initiated. Since a local government's fiscal year begins July 1, the collection of property taxes through an in rem foreclosure proceeding cannot begin until the succeeding fiscal year after the taxes are due.

BILL ANALYSIS: The bill requires the tax collector to send a notice to both the listing owner and the record owner as of December 31 if the record owner is different than the listing owner. The notice must be sent by first-class mail at least 30 days before the advertisement is published. The required advertisement shall list only the listing owner's name. (The earlier version required that the optional advertisement list both the listing owner and the record owner.) The bill allows the tax collector to initiate an in rem foreclosure proceeding as early as 30 days after the tax liens were advertised. This provision enables collectors to collect the taxes in the fiscal year in which they are due.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 120 (Senate Finance Committee Substitute)

SHORT TITLE: Tax Lien Advertisement and Collection

SPONSOR(S): Rep. Owens

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
EXPENDITURES					
Local Governments		**($30,000)**			

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: County Governments.

EFFECTIVE DATE: This act becomes effective January 1, 2001.

BILL SUMMARY: The bill intends to improve the procedures for advertising tax liens on real property and for notifying delinquent taxpayers.

ASSUMPTIONS AND METHODOLOGY: This bill may have a small one-time impact on the costs of county operations, primarily in the area of computer programming and data entry. Virtually all counties will have to change their computer software to enable the advertisement of both the January 1 and the December 31 owner of real property (if different). A majority of counties will need to make minor software changes to allow notices to be mailed to both the January 1 and December 31 property owner (if different).

When working on a similar bill in 1998, Fiscal Research Division staff interviewed a sample of county tax collectors, a professor in the Institute of Government, and the chairman of the North Carolina Association of Assessing Officers. It was found that approximately 75 counties lack a fully automated way to send deed transfer information between the Register of Deeds Office and the Tax Assessor's Office, in a timely manner. The Registers of Deeds provide copies of deeds to the Tax Assessors in the form of paper, microfilm, microfiche, or CD. The tax professionals contacted in 1998 estimated that only 25 counties might incur one-time costs for computer

programming in the first year of implementing HB 120. These 25 counties might expend an average of $800 each ($20,000) for computer vendors to program county databases for this data transfer.

Data entry was another cost identified by tax professionals interviewed in 1998. It was estimated that 25 county Tax Assessors might spend approximately $400 each ($10,000) for temporary clerks to do data entry on deed transfer files in order to update the county tax files. Small counties with few land transactions do not experience a backlog in deed transfer filings. It was suggested in 1998 that temporary clerks would be needed each year due to this bill, but this fiscal note assumes that keeping deed and tax files current should be standard operating procedure for the tax listing process and is not a new requirement on county governments.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic

APPROVED BY:

DATE:

L I N C

HISTORY OF HOUSE BILL H 120
TAX LIEN ADVERTISEMENT AND COLLECTI
by: OWENS

Date: 8/23/99
Time: 1:25 p.m.

Leg. day: H-103/S-101

Introduced 2-22-99 by: OWENS
Chapters: 105

Date		Action
2-22-99	H	REF TO COM ON FINANCE
4-22-99	HA	REPTD FAV COM SUBSTITUTE
4-22-99	H	CAL PURSUANT RULE 36(B)
4-23-99	H	PLACED ON CAL FOR 04-26
4-26-99	H	PASSED 2ND READING
4-27-99	H	PASSED 3RD READING
4-28-99	S	REC FROM HOUSE
4-28-99	S	REF TO COM ON FINANCE
7- 7-99	S	REPTD FAV COM SUBSTITUTE
7- 7-99	SA	COM SUBSTITUTE ADOPTED
7- 8-99	SA	AMEND ADOPTED #1
7- 8-99	S	PASSED 2ND READING
7-12-99	S	WITHDRAWN FROM CAL

Date		Action
7-12-99	S	PLACED ON CAL FOR 07-13
7-13-99	SA	AMEND ADOPTED #2
7-13-99	S	PASSED 3RD READING
7-13-99	H	REC TO CONCUR S COM SUB
7-13-99	H	PLACED ON CAL FOR 07-14
7-13-99	H	COM SUB RULED MATERIAL
7-14-99	H	CONCURRED ON 2ND READING
7-15-99	H	CONCURRED ON 3RD READING
7-19-99	H	RATIFIED
7-20-99	H	PRES. TO GOV. 07-20
7-21-99	H	SIGNED BY GOV. 08-10
7-21-99	R	CH. SL 99-0439

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 1090
Committee Substitute Favorable 5/25/99

Short Title: I.A.F.F. Registration Plate. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE AN INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS SPECIAL REGISTRATION PLATE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-79.4(b) reads as rewritten:

"(b) Types. -- The Division shall issue the following types of special registration plates:

. . .

(19a) International Association of Fire Fighters. -- Issuable to a member of the International Association of Fire Fighters. The plate shall bear the logo of the International Association of Fire Fighters. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate."

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

HOUSE BILL 1090:
I.A.F.F. Registration Plate

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Rep. Moore
Date:	June 28, 1999	**Summary by:**	Martha K. Walston
Version:	2nd Edition		Committee Counsel

SUMMARY: ***House Bill 1090 authorizes the Division of Motor Vehicles to issue a special registration plate to members of the International Association of Fire Fighters. The Division must receive at least 300 applications for this plate before it can issue the plate. The cost of the plate is the regular registration fee plus an additional $10. The bill is effective when it becomes law. The original version provided that the special registration plate was issuable to the registered owner of a motor vehicle. The current version was given a favorable report in House Finance and clarifies that only members of the Association of International Fire Fighters are entitled to the special registration plate.***

CURRENT LAW: Upon request, the Division of Motor Vehicles may issue special registration plates. There are currently more than 54 special registration plates. The cost of a special registration plate is the regular registration fee plus an additional fee of at least $10. The first $10 of every additional fee amount is credited to the Special Registration Plate Account. The remainder of the additional fee, if any, is transferred quarterly to the appropriate organization named in the statute. After deducting the costs of the plates from the Special Registration Plate Account, the money in the Account is distributed as follows:

AMOUNT	PURPOSE
$525,000 distributed annually	Operating assistance for certain Visitor Centers
33% distributed quarterly	Department of Commerce for advertising the promotion of travel and industrial development in the State
50% distributed quarterly	Department of Transportation for beautification of highways
17% distributed quarterly	Department of Health and Human Services to promote travel accessibility for disabled persons.

This uniform system of fees has been in place since 1991 when a study commission recommended that the special registration plate system be simplified through a uniform fee schedule. The only exceptions to the general rule are for plates issued to a recipient of the Congressional Medal of Honor, a 100% disabled veterans, an ex-prisoner of war, an active member of the National Guard, and a recipient of the Purple Heart award.

BILL ANALYSIS: House Bill 1090 authorizes the Division of Motor Vehicles to develop a special license plate bearing the logo of the International Association of Fire Fighters. The Division may issue the plate to a member of the International Association of Fire Fighters. It must receive at least 300 applications for the special plate before it can issue the plate. The cost of the plate is the regular registration fee plus an additional $10.

The International Association of Fire Fighters is a tax exempt, non-profit organization composed of professional fire fighters. The Association has 27 affiliates and approximately 2,000 members in North Carolina. It has more than 2,500 affiliates and approximately 230,000 members in the United States and Canada.

Cindy Avrette, committee counsel to House Finance, contributed substantially to this summary.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1090 (House Finance Committee Substitute)

SHORT TITLE: I.A.F.F. Registration Plate

SPONSOR(S): Representative Moore

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
Highway Fund Special Registration Plate Account	**$3,000**	**$3,000**	**$3,000**	**$3,000**	**$3,000**
EXPENDITURES					
Highway Fund Special Registration Plate Account	**$856**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Transportation - Division of Motor Vehicles

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

BILL SUMMARY: The bill authorizes the Division of Motor Vehicles (DMV) to issue an International Association of Fire Fighters special registration plate. DMV must receive 300 applications before issuing the plate.

ASSUMPTIONS AND METHODOLOGY: In addition to the normal $20 vehicle registration fee for private passenger vehicles, each applicant for an International Association of Fire Fighters (IAFF) special registration plate will pay $10. This $10 is deposited into the Special Registration Plate Account. Although the IAFF claims 2,000 members in North Carolina, this fiscal note assumes only the minimum 300 applicants needed to qualify for the plate. At $10 a plate, this will generate $3,000 a year for the Special Registration Plate Account. There is no increase in the Highway Fund since the $20 vehicle registration fee is paid for regular and special plates.

According to the DMV and the Department of Corrections, there is a one-time cost of $100 to design a new plate. There is also a production cost of $2.52 per plate based on one color design. The cost per plate will increase if more color is added or the design is complex. The total production cost for 300 plates is $856.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic

APPROVED BY: Tom Covington

DATE: Tuesday, May 25, 1999

DRAFT
FOR REVIEW ONLY

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 864 -- OPTION SIX
Proposed Committee Substitute S864-CSLC-6/22
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Lab Testing Facility Sales Tax. (Public)

Sponsors:

Referred to:

April 13, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE TAX INCENTIVES FOR CERTAIN MEDICAL LABORATORY TESTING COMPANIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-164.3 is amended by adding the following new definition in the correct alphabetical order:

"**§ 105-164.3. Definitions.**

The following definitions apply in this Article, except when the context clearly indicates a different meaning:

. . .

(8b) Medical laboratory testing company. -- A laboratory that is primarily engaged in providing medical analytic or diagnostic services, including bodily fluid analysis, generally to the medical profession or to employers, or to patients on referral from a medical professional or employer, and is certified as a highly or moderately complex laboratory by the United States Health Care Financing Administration."

Section 2. G.S. 105-164.4(a)(1c) is amended by adding a new subdivision to read:

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

. . .

g. Sales to a medical laboratory testing company of the following items that are not capitalized by the company and are used or consumed by it directly in its medical laboratory testing business: medical products, medical accessories, reagents, chemicals, test kits, consumable lab supplies, and other similar tangible personal property not including machinery and equipment."

Section 5. This act becomes effective August 1, 1999, and applies to sales made on or after that date.

FISCAL ANALYSIS MEMORANDUM

DATE: June 23, 1999

TO: Senator Gulley

FROM: Linda Struyk Millsaps
Fiscal Research Division

RE: SB 864 – Lab Testing Facility Sales Tax
Option 6 – 1% State Tax, No Local Tax

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
General Fund	(2.0)	(2.3)	(2.4)	(2.5)	(2.7)
Local Government	(1.3)	(1.5)	(1.6)	(1.7)	(1.8)

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue, Sales Tax Division, and Local Governments.

EFFECTIVE DATE: Section 2 of this act is effective when it becomes law. The remainder of this act becomes effective **August 1,1999**, and applies to sales made on or after that date.

BILL SUMMARY: The bill lowers the sales tax to 1% on many of the chemicals, test kits, and supplies used in laboratory testing. To qualify for the exemption the business must be certified by the federal Health Care Finance Administration (HCFA) as a moderate or highly complex laboratory. The lab must also be "primarily engaged in providing medical, analytic or diagnostic services, including bodily fluid analysis, generally to the medical profession or to employers, or to patients on referral from a medical professional or employer". The bill defines this type of business as a medical laboratory testing company. **The revenue from the 1% tax is retained by the state. The entire 2% local sales tax on laboratory testing supplies.**

BACKGROUND: The legislation lowers to 1% the sales tax charged on the following items that are used or consumed in the clinical laboratory testing business: medical products, medical accessories, reagents, chemicals, test kits, consumable lab supplies, and other similar tangible personal property not including machinery and equipment.

The special tax treatment only applies to companies that met both of two sets of qualifications. First, they must be certified by HCFA as a moderately or highly complex laboratory. Second, laboratory services, as defined in the bill, must be their primary business. Both the bill drafting attorney and industry representatives believe this definition includes only those companies that are laboratory service companies.

According to HCFA, there are 1,506 laboratories in North Carolina that are certified as moderately or highly complex. Most of these laboratories are in hospitals or a doctor's office. Because the primary business of these facilities (hospitals and doctors offices) is not laboratory testing, they would not qualify for the special tax treatment in the bill. Based on a list of all 1506 HCFA certified laboratories, Fiscal Research identified 80 facilities that may be stand alone laboratory testing businesses. These laboratories appear to be operated by approximately 44 companies. Fiscal Research, in conjunction with KPMG Accounting in Greensboro, surveyed these facilities to determine if they met the qualifications listed in the bill. Companies that qualified were asked to supply information about their medical supply and equipment expenditures. Of those surveyed, 15 responded or 34%. Two of these respondents indicated that they did not meet the qualifying criteria in the bill.

One of the responding companies the Laboratory Corporation of America or LabCorp, provided extensive information about their expenditures, purchases, and the company as a whole. According to the organization's filings with the Security and Exchange Commission, LabCorp is the largest independent clinical laboratory company in the United States, based on 1998 net revenue. The company is headquartered in Burlington, NC, and offers more than 2,000 different clinical laboratory tests. LabCorp current maintains 25 regional testing facilities. The company reports 1998 net sales of $1.6126 billion, with a gross profit of $563.4 million, and net earnings of $68.8 million. Because of the level of detail provided by LabCorp, and their dominant market share, much of the analysis is based on their information.

ASSUMPTIONS AND METHODOLOGY: Because of the unique structure of laboratory data, the estimates in this note are divided into three parts that reflect the three data segments available. Section 1 reflects the data provided by LabCorp, while Section 2 includes the estimates associated with the 12 other companies that responded to the survey and qualified for the exemption. Section 3 provides total loss estimates, including assumed losses associated with companies who did not respond to the survey. The data included in the note reflects only information provided by laboratory companies directly. No data from the Department of Revenue is used in this analysis.

Section 1: LabCorp Information:

According to documents provided by LabCorp, the organization's North Carolina laboratories spent $50.67 million and $46.89 million on reagents and other chemicals in 1997 and 1998. This estimate assumes that 90% of all laboratory supply expenses were associated with reagents and other chemicals. LabCorp officials believe a 5% growth rate in this type of expenditure is appropriate. When questioned about using a 5% growth rate in light of the increased output anticipated by the bill, company representatives stated that "this additional work is not expected

to greatly increase lab supply costs." They cite more favorable contracts with vendors, reducing waste, increased efficiency (by the company manufacturing its own reagents), and the low per unit cost associated with many of the more routine tests which will be handled by the North Carolina facilities.

Assuming the 5% growth rate is appropriate, reagent and chemical purchases by the North Carolina portions of LabCorp will be:

	1999	2000	2001	2002	2003	2004
Reagents & Other Chemicals	42,733,800	44,870,490	47,114,015	49,469,715	51,943,201	54,540,361

Under current law a 6% sales tax applies to these purchases. The tax liability associated with these estimates, once adjusted for the fiscal year basis are:

	1999-00	2000-01	2001-02	2002-03	2003-04
Reagents & Other Chemicals	43,802,145	45,992,252	48,291,865	50,706,458	53,241,781
Sales Tax (6%)	2,628,129	2,759,535	2,897,512	3,042,387	3,194,507

The bill repeals the 2% local tax. It also reduces the state tax from 4% to 1%. The fiscal loss associated with these changes and LabCorp's purchases is as follows:

	1999-00	2000-01	2001-02	2002-03	2003-04
State Loss	(1,314,065)	(1,379,768)	(1,448,756)	(1,521,194)	(1,597,254)
Local Loss	(876,043)	(919,845)	(965,837)	(1,014,129)	(1,064,836)

Section 2: Other Laboratory Companies:

The 12 non-LabCorp companies that responded to the survey reported annual laboratory supply purchases of $20,348,831. Assuming the 6% sales tax currently applies, the total revenue associated with these purchases is $1,220,930. Under the bill, the 2% local tax is repealed and the 4% state tax is reduced to 3%. Assuming supply purchases grow by 5%, the potential revenue impact is as follows:

	1999-00	2000-01	2001-02	2002-03	2003-04
State Loss	$610,465	$640,988	$673,038	$706,690	$742,024
Local Loss	$406,977	$427,326	$448,692	$471,126	$494,683

Section 3: Total Losses

As mentioned previously, survey respondents are assumed to account for 87.5% of the qualifying market. Assuming the survey results apply to the remaining 12.5%, the fiscal loss associated with this portion of the bill is as follows:

	1999-00	2000-01	2001-02	2002-03	2003-04
State Loss					
LabCorp	(1,314,065)	(1,379,768)	(1,448,756)	(1,521,194)	(1,597,254)
Survey Respondents	($610,465)	($640,988)	($673,038)	($706,690)	($742,024)
Others	(274,933)	(288,679)	(303,113)	(318,269)	(334,183)
TOTAL STATE LOSS	**(2,199,462)**	**(2,309,435)**	**(2,424,907)**	**(2,546,152)**	**(2,673,460)**
Local Loss					
LabCorp	(876,043)	(919,845)	(965,837)	(1,014,129)	(1,064,836)
Survey Respondents	(406,977)	(427,326)	(448,692)	(471,126)	(494,683)
Others	(183,289)	(192,453)	(202,076)	(212,179)	(222,788)
TOTAL LOCAL LOSS	**(1,466,308)**	**(1,539,623)**	**(1,616,605)**	**(1,697,435)**	**(1,782,307)**

The fiscal loss shown in the chart on page one reflects the adjustment needed for the August 1, 1999 effective date.

Note: Because doctor offices would not qualify for the special tax treatment they are not included in the fiscal estimate. However, some physicians may create a separate subsidiary business to take advantage of the tax treatment afforded laboratory-testing companies. Therefore, the actual cost associated with the bill may increase in future years. In addition, some hospitals may also decide to create separate structures for their laboratory business. Because non-profit hospitals already receive a sales tax refund, the only loss associated with the transformation of the hospital laboratories would be the interest the state receives on the sales tax money before it is refunded to the hospitals. Thus, any potential loss in this area would be insignificant.

TECHNICAL CONSIDERATIONS: The bill currently has an August 1, 1999 effective date. Because of the notification and paperwork changes required Fiscal Research would suggest that the effective date be delayed at least three months.

SENATE BILL 864:
Lab Testing Facility Sales Tax

BILL ANALYSIS

Committee:	Senate Finance	**Sponsor:**	Senator Gulley
Date:	June 29, 1999	**Analysis by:**	Martha H. Harris
Version:	PCS for First Edition		Staff Attorney

SUMMARY: ***Reduces sales tax rate from 6% to 1% for sales of medical supplies and non-capital laboratory equipment to complex medical laboratory testing companies, effective July 1, 2000.***

Businesses whose services and products are exempt from sales tax are required to pay sales tax on their purchases of supplies and equipment used in the business. The general sales tax rate is 4% State and 2% local (2.5% in Mecklenburg County). This bill would provide a 1% State sales tax and a 0% local sales tax rate for certain supplies and equipment used by complex medical laboratory testing companies, even though the services provided by those companies are also exempt from sales tax. The sales tax reduction proposed in the bill would benefit laboratories primarily engaged in providing medical analytic or diagnostic services generally to the medical profession or to employers, or to patients upon referral from a medical professional or employer. To qualify for the sale tax reduction, the laboratory must be certified as a highly or moderately complex laboratory by the United States Health Care Financing Administration. The sales tax reduction would cover the following items used or consumed by the laboratory in its medical testing business (but not including property capitalized by the laboratory or machinery and equipment): medical products, medical accessories, reagents, chemicals, test kits, consumable lab supplies, and other similar tangible personal property.

VISITOR REGISTRATION SHEET

SENATE FINANCE — WEDNESDAY, JUNE 30, 1999

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
JOHN BUSSIAN	NC Press Assn.
Jim Phillips	Brooks et al
[illegible]	E&C
[illegible]	E&C
[illegible]	PFPNC
David Knight	NC Wildlife Fed
David R Anders	PFPNC
J. Collin Adams	Parker, Poe, Adams + Bernstein -
BRUCE THOMPSON	PARKER POE ADAMS & BERNSTEIN

VISITOR REGISTRATION SHEET

SENATE FINANCE — WEDNESDAY, JUNE 30, 1999

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Bowdish	Zeb Alley P.A.
Tommy Hamilton	Lobbyist
Jennifer Barnhill	NASW
Dan Jones	DENR
J L Blair	DENR
Ed Regan	N.C.A.C.C.
K. Rogers	ENR
Jim Case	NCRMA
Boyd Cauble	City of Charlotte
Eddie Caldwell	H.M. CC&C PA
Reg Hatem	IGONC

VISITOR REGISTRATION SHEET

SENATE FINANCE — WEDNESDAY, JUNE 30, 1999

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jeb Alley	LabCorp
Brad Smith	LAB CORP
Marsha Tice	Lab Corp
Jane Clark Moorman	N.C. Certification Board for Social Work
Myra Miles	NASW-NC
Eugene Gibbs	DMV
Michael E. Bryant	DMV/DL
Jane Howard	DMV / Veh. Reg.
Brodon B. Zaiger	DMV / Enforcement
George [illegible]	DMV Enforcement
Jack L. Edwards	DMV Enforcement

VISITOR REGISTRATION SHEET

SENATE FINANCE — WEDNESDAY, JUNE 30, 1999

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Craig Barry	Carolina Recycling Assn.
Wayne Turner	City of Greensboro
Mary Carnibi	Mecklenburg County
[signature]	MCSSA
Dolly Volini	AutoNation, Inc. 110 SE 6th St. 20th Fl. Ft. Lauderdale FL 33301
Doug Cassiter	McClees Consulting
FRAN PRESSMAN	NCRMA
~~ANDY~~ ANDY ELLIOTT	NCRMA
Randy Lisk	APAC
Gary Harris	NCPMA.
Doug Howey	"

REVISED COMMITTEE REPORT

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Thursday, July 01, 1999

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

FAVORABLE

H.B.(CS #1)**764** Raise Mooresville Room Tax.
Sequential Referral: None
Recommended Referral: None

H.B. **855** Kings Mountain ETJ.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1)**1069** Social Worker Licensure.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1)**1090** I.A.F.F. Registration Plate.
Sequential Referral: None
Recommended Referral: None

H.B. **1237** Landscape Architects Exam Fee.
Sequential Referral: None
Recommended Referral: None

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

S.B. **1076** Reform Local Tax on Rental Cars.
Draft Number: PCS3850
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

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

H.B.(CS #1)**278** TANF Separation Noncharged/AB.

Draft Number:	PCS1302
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

H.B. **738** Greenville Satellite Annexations.

Draft Number:	PCSA159
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 8

Committee Clerk Comment:

AGENDA

THURSDAY, JULY 1, 1999

SENATE FINANCE COMMITTEE

8:30 A.M. – ROOM 1027

I CALL TO ORDER

II INTRODUCTION OF PAGES

III BILLS TO BE CONSIDERED

SB 864 – Lab Testing Facility Sales Tax – Sen. Gulley

HB 74 – Phase II Funds/Immunity/Tax Exempt – Rep. Baker

HB 278 - TANF Separation Noncharged/AB – Rep. Redwine

HB 280 – Motor Vehicle Tech. Amendments/AB – Rep. Cole

HB 1069 – Social Worker Licensure – Rep. Alexander

HB 1237 – Landscape Architects Exam Fee – Rep. McMahan

SENATE FINANCE COMMITTEE

THURSDAY, JULY 1, 1999

8:30 A.M. - ROOM 1027

The Senate Finance Committee met on Thursday, July 1,1999, at 8:30 A.M. in Room 1027 with Senator Kerr presiding. Pages were Jennifer Martin, Harris Shovelin and Shannon Munson, all sponsored by Senator Hoyle. There were 18 committee members present for the meeting.

HB 1237 – Landscape Architects Exam Fee.

Representative McMahan was recognized to explain his Bill. After his explanation of the Bill, on motion by Senator Cochrane, the Bill was given a Favorable Report. Copy of Bill, Explanation and Fiscal Note included in the minutes.

HB 278 – TANF Separation Noncharged/AB.

Senator Hoyle moved that a Committee Substitute be adopted for this Bill and the motion carried. Tom Whitaker, Employment Security Commission, was recognized and explained this Bill. Senator Moore moved for a Favorable Report for the Committee Sub and the motion carried. Copy of Committee Substitute, Explanation and Fiscal Note included in the minutes.

HB 280 – Motor Vehicle Technical Amendments.

Representative Cole explained his Bill and Senator Gulley sent forth an Amendment. The Amendment was adopted on his motion. (Copy of 1st Amendment not available.) After further discussion, Senator Gulley sent forth another Amendment. Amendment adopted by the committee on his motion. (Copy of 2nd Amendment not available.) Carol Howard, Department of Motor Vehicles, was recognized and commented on this Bill. Ruth Sappie, Department of Transportation, was recognized for comments on the Bill. A subcommittee will be appointed to study this Bill and the Bill will be brought back before the committee at a later meeting. Copy of Bill and Fiscal Note included in the minutes.

HB 74 – Phase II Funds/Immunity/Tax Exempt.

Representative Baker was recognized to explain his Bill. Upon motion by Senator Hoyle, a Committee Substitute was adopted by the committee. Senator Garrou explained the Committee Substitute and answered questions from the committee members. Senator Rand sent forth an Amendment which was adopted on his motion. After more

discussion, Senator Soles sent forth an Amendment which was adopted by the committee on his motion. Representative Baker was recognized and thanked Senator Rand and Senator Soles for their Amendments, which make the Bill even better. Senator Dannelly moved for a Favorable Report for the Committee Sub, as amended, and the motion carried. Copy of original Bill, Committee Sub, Two Amendments, New Committee Sub, and Explanation included in the minutes.

HB 1069 – Social Worker Licensue.

Senator Kerr explained this Bill and Senator Lee moved for a Favorable Report. Motion carried. Copy of Bill and Explanation included in the minutes.

Meeting adjourned.

David W. Hoyle, Co-Chair
Senate Finance Committee

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

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

Visitors' Sign Up Sheet is Attachment # 1
Committee Reports are Attachment # 2

SB 864 not heard at this meeting.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1237

Short Title: Landscape Architects Exam Fee. (Public)

Sponsors: Representative McMahan.

Referred to: Finance.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT AUTHORIZING THE NORTH CAROLINA BOARD OF LANDSCAPE ARCHITECTS TO CHARGE APPLICANTS FOR LICENSURE THE ACTUAL COST OF EXAMINATION SERVICES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 89A-6 reads as rewritten:

"**§ 89A-6. Fees.**

Fees are to be determined by the Board, but shall not exceed the amounts specified herein, however; fees must reflect actual expenses of the Board.

Application	$100.00
~~Examination~~	~~450.00~~
License by reciprocity or comity	250.00
Annual license renewal	100.00
Late renewal penalty	50.00
Reissue of certificate	25.00
Corporate certificate	250.00

In all instances where the Board uses the services of a testing service for preparation, administration, or grading of examinations, the Board may charge the applicant the actual cost of the examination services, in addition to its other fees. Fees shall be paid to the Board at the times specified by the Board."

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

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1237 (First Edition)

SHORT TITLE: Landscape Architects Exam Fee

SPONSOR(S): Representative McMahan

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
Bd. Operating Fund					
National Exam	$4,400	$4,400	$4,400	$4,400	$4,400
Admin. Expense		Not Yet Determined By Board			

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

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

BILL SUMMARY: The bill authorizes the North Carolina Board of Landscape Architects to charge applicants for licensure the actual cost of examination services.

ASSUMPTIONS AND METHODOLOGY:
The Board of Landscape Architects purchases a national exam from the Council of Landscape Architectural Registration Boards for $560 per exam. The current statute only allows the Board to charge exam applicants $450 for the test. The Board is attempting to recover the $110 additional cost of the exam. The Board may also recoup the cost of administering the exam, but this decision has not yet been decided.

The exam has six sections. Applicants may take the entire exam or may take sections of the exam. Approximately 20 applicants take the entire exam each year and 40 applicants take an average of three exam sections. The price of the exam is prorated based on the number of exam sections taken. The 20 applicants paying $560 for the total exam will produce an additional $2200 in revenue for the Board. The 40 applicants taking 3 sections of the exam and paying $280 will also produce $2200 in additional revenue for the Board.

PREPARED BY: Richard Bostic

APPROVED BY: Tom Covington

DATE: Monday, April 26, 1999

HOUSE BILL 1237:
Landscape Architects Exam Fee

BILL ANALYSIS

Committee: Senate Finance
Date: June 28, 1999
Version: 1st Edition

Introduced by: Rep. McMahan
Summary by: Martha K. Walston
Committee Counsel

SUMMARY: ***House Bill 1237 removes the $450 maximum limit on the examination fee the North Carolina Board of Landscape Architects may impose and replaces it with language that will allow the Board to recover its actual examination costs. The bill is effective when it becomes law. House Bill 1237 was given a favorable report in House Finance on April 27, 1999.***

CURRENT LAW: In North Carolina, a person may not engage in landscape architecture unless the person is licensed to be a landscape architect by the North Carolina Board of Landscape Architects. Landscape architecture is the preparation of plans and specifications for, and the supervision of, projects involving the arranging of land and the elements used on it for drainage, soil conservation, grading and planting plans, and erosion control. To be licensed as a landscape architect by the Board, a person must meet all of the following conditions:

- Be at least 18 years old.
- Be of good moral character.
- Be a graduate of a Landscape Architect's Accreditation Board accredited collegiate curriculum in landscape architecture and have at least four years experience in landscape architecture. **OR** Have a minimum of 10 years of education and experience in landscape architecture.
- Pass a Board examination.

The license must be renewed annually. The current application fee is $100. The current examination fee is $450. The current renewal fee is $100.

BILL ANALYSIS: The bill removes the $450 maximum limit on the examination fee and replaces it with language that will allow the Board to recover its actual examination costs. The Board uses a testing service for the preparation, administration, and grading of its examinations. The current cost of this service is $560 per exam. This cost does not include the Board's administrative costs.

ndy Avrette contributed substantially to this summary

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 278
Committee Substitute Favorable 4/26/99

Short Title: TANF Separation Noncharged/AB. (Public)

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

AN ACT AMENDING THE EMPLOYMENT SECURITY LAWS TO PROVIDE THAT THE ONE HUNDRED-DAY NONCHARGE PERIOD EXTENDS TO CERTAIN RECIPIENTS OF TEMPORARY ASSISTANCE FOR NEEDY FAMILIES SEPARATED FOR A BONA FIDE INABILITY TO WORK.

The General Assembly of North Carolina enacts:

Section 1. G.S. 96-9(c)(2)b. reads as rewritten:

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

such probationary employment; (v) separations made disqualifying under G.S. 96-14(2b) and (6a); ~~or~~ (vi) separation due to leaving for disability or health ~~condition~~ condition; or (vii) separation of claimant solely for a bona fide inability to do the work for which the claimant was hired, but only where the claimant in the last calendar quarter preceding the quarter in which the claimant was paid wages by the employer was a recipient of Temporary Assistance for Needy Families (TANF) assistance by an agency of the State and the claimant's period of employment was 100 days or less, shall not be charged to the account of the employer by whom the claimant was employed at the time of such separation; provided, however, said employer promptly furnishes the Commission with such notices regarding any separation of the individual from work as are or may be required by the regulations of the Commission.

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

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

No benefit charges shall be made to the account of any employer where benefits are paid as a result of a decision by an Adjudicator, Appeals Referee or the Commission if such decision to pay benefits is ultimately reversed; nor shall any such benefits paid be deemed to constitute an overpayment under G.S. 96-18(g)(2), the provisions thereof notwithstanding. Provided, an overpayment of benefits paid shall be established in order to provide for the waiting period required by G.S. 96-13(c)."

Section 2. This act becomes effective July 1, 1999, and applies to unemployment insurance claims filed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 278
Committee Substitute Favorable 4/26/99
Proposed Senate Committee Substitute H278-PCS1302-LA

Short Title: Work First Separation Noncharged/AB. (Public)

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

AN ACT AMENDING THE EMPLOYMENT SECURITY LAWS TO PROVIDE THAT THE ONE HUNDRED-DAY NONCHARGE PERIOD EXTENDS TO CERTAIN RECIPIENTS OF THE STATE'S WORK FIRST PROGRAM SEPARATED FOR A BONA FIDE INABILITY TO WORK.

The General Assembly of North Carolina enacts:

Section 1. G.S. 96-9(c)(2)b. reads as rewritten:

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

prescribe and only to the extent of the wages paid during such probationary employment; (v) separations made disqualifying under G.S. 96-14(2b) and (6a); ~~or~~ (vi) separation due to leaving for disability or health ~~condition~~ condition; or (vii) separation of claimant solely for a bona fide inability to do the work for which the claimant was hired, but only where the claimant in the last calendar quarter preceding the quarter in which the claimant was paid wages by the employer was a recipient of Work First Program assistance by an agency of the State and the claimant's period of employment was 100 days or less, shall not be charged to the account of the employer by whom the claimant was employed at the time of such separation; provided, however, said employer promptly furnishes the Commission with such notices regarding any separation of the individual from work as are or may be required by the regulations of the Commission.

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

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

No benefit charges shall be made to the account of any employer where benefits are paid as a result of a decision by an Adjudicator, Appeals Referee or the Commission if such decision to pay benefits is ultimately reversed; nor shall any such benefits paid be deemed to constitute an overpayment under G.S. 96-18(g)(2), the provisions thereof notwithstanding. Provided, an overpayment of benefits paid shall be established in order to provide for the waiting period required by G.S. 96-13(c)."

Section 2. This act becomes effective August 1, 1999, and applies to unemployment insurance claims filed on or after that date.

HOUSE BILL 278:
Work First Separation Noncharged/AB

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Representative Redwine
Date:	June 29, 1999	**Summary by:**	Martha K. Walston
Version:	Proposed Committee Substitute		Committee Counsel

SUMMARY: ***House Bill 278 provides that an employer's account will not be charged for unemployment benefits paid to a claimant when the claimant was discharged for a bona fide inability to do the work for which he or she was hired if (1) the claimant was a recipient of Work First Program Assistance by an agency of the State and (2) the claimant's period of employment was 100 days or less. An earlier version of the bill was given a favorable report in House Ways & Means.***

The proposed committee substitute replaces the reference to recipients of Temporary Assistance for Needy Families (TANF) with a reference to recipients of the State's Work First Program. This change was made because the State law refers to the Work First Program rather than TANF. The proposed committee substitute also moves the effective date from July 1 to August 1.

CURRENT LAW: An employer's account will not be charged for unemployment benefit payments paid to a claimant when the claimant was discharged for a bona fide inability to do the work and the claimant was hired pursuant to a job order placed with a local office of the Commission for referral to probationary employment. For this exemption to apply, the probationary period must be no longer than 100 days.

BILL ANALYSIS: House Bill 278 would extend this 100 day non-charge to Work First Program recipients who are separated from employment for a bona fide inability to do the work whether or not the claimant was referred by the Employment Security Commission. For this exemption to apply, the claimant must have received Work First Program assistance in the last calendar quarter preceding the quarter in which the claimant was paid wages by the employer.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 278 (Senate Finance Committee Substitute)

SHORT TITLE: Work First Separation Noncharged/AB

SPONSOR(S): Representative David Redwine

FISCAL IMPACT

Yes ( ) **No (x)** **No Estimate Available ( )**

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					

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

EFFECTIVE DATE: The bill is effective August 1, 1999 and applies to unemployment insurance claims filed on or after that date.

BILL SUMMARY:
The bill amends the Employment Security laws to provide that participants in North Carolina's Work First Program that are separated from work for a bona fide reason within the first 100 days of employment, will not be charged to an employer's experience rating.

BACKGROUND:
The North Carolina Department of Health and Human Services reports that 3,000 Work First participants have found jobs through the Employment Security Commission. These participants were involved in the First Step Employment Assistance Program where they were screened for job readiness and referred to Community Colleges for additional training.

ASSUMPTIONS AND METHODOLOGY:
The Employment Security Commission (ESC) states that this bill will have no fiscal impact on the Unemployment Insurance Trust Fund. In an analysis of Work First participants from February 1998 to the present, ESC found the Trust Fund impact to be statistically insignificant. Approximately 90% of the job separations for this group occur within the first 30 days of employment. Employees that surpass the 100 day threshold usually remain in their jobs.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic & Karen Hammonds-Blanks
APPROVED BY:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 5

HOUSE BILL 280
Committee Substitute Favorable 4/12/99
Committee Substitute #2 Favorable 4/20/99
Fourth Edition Engrossed 4/23/99
Senate Judiciary I Committee Substitute Adopted 6/15/99

Short Title: Motor Vehicle Tech. Amendments/AB. (Public)

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL, CLARIFYING, AND OTHER CHANGES TO THE MOTOR VEHICLE LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-4.01 is amended by adding a new subdivision to read:

"(4b) Crash. -- Any event that results in injury or property damage attributable directly to the motion of a motor vehicle or its load. The terms collision, accident, and crash and their cognates are synonymous."

Section 2. G.S. 20-4.01(12a) reads as rewritten:

"(12a) Gross Vehicle Weight Rating (GVWR). -- The value specified by the manufacturer as the maximum loaded weight of a vehicle. The GVWR of a combination vehicle is the GVWR of the power unit plus the GVWR of the towed unit or units. When a vehicle is determined by an enforcement officer to be structurally altered from the manufacturer's original design, the license weight or the total weight of the vehicle or combination of vehicles may be deemed as the GVWR for the purpose of enforcing this Chapter."

Section 3. G.S. 20-4.01(33b) reads as rewritten:

"(33b) Reportable ~~Accident.~~ Crash. -- ~~An accident or collision~~ A crash involving a motor vehicle that results in ~~either~~ one or more of the following:

a. Death or injury of a human being.

b. Total property damage of one thousand dollars ($1,000) or more, or property damage of any amount to a vehicle seized pursuant to G.S. 20-28.3."

Section 4. G.S. 20-9(g)(1) reads as rewritten:

"(1) The Division may issue a license to any person who is afflicted with or suffering from a physical or mental disability set out in subsection (e) of this section who is otherwise qualified to obtain a license, provided such person submits to the Division a certificate in the form prescribed in subdivision (2). Until a license issued under this subdivision expires or is revoked, the license continues in force as long as the licensee presents to the Division ~~one year from the date of issuance of such license and at yearly intervals thereafter a certificate in the form prescribed in subdivision (2), provided the Commissioner may require the submission of such certificate at six-month intervals where in his opinion public safety demands.~~ a certificate in the form prescribed in subdivision (2) of this subsection at the intervals determined by the Division to be in the best interests of public safety."

Section 5. G.S. 20-11(k) reads as rewritten:

"(k) Supervising Driver. -- A supervising driver ~~must~~ shall be a parent or guardian of the permit holder or license holder or a responsible person approved by the parent or guardian or the Division. A supervising driver ~~must~~ shall be a licensed driver who has been licensed for at least five years. ~~A~~ At least one supervising driver ~~must~~ shall sign the application for a permit or license. ~~Each permit or license issued pursuant to this section shall be limited to a maximum of two supervising drivers.~~"

Section 6. G.S. 20-16(d) reads as rewritten:

"(d) Upon suspending the license of any person as authorized in this section, the Division shall immediately notify the licensee in writing and upon his request shall afford him an opportunity for a hearing, not to exceed 60 days after receipt of the request, unless a preliminary hearing was held before his license was ~~suspended, as early as practical within not to exceed 30 days after receipt of such request. The hearing shall be conducted in the district court district as defined in G.S. 7A-133 wherein the licensee resides. Hearings shall be rotated among all the counties within that district if the district contains more than one county unless the Division and the licensee agree that such hearing may be held in some other district, and such notice shall contain the provisions of this section printed thereon.~~ suspended. Upon such hearing the duly authorized agents of the Division may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the licensee. Upon such hearing the Division shall either rescind its order of suspension, or good cause appearing therefor,

may extend the suspension of such license. Provided further upon such hearing, preliminary or otherwise, involving subsections (a)(1) through (a)(10a) of this section, the Division may for good cause appearing in its discretion substitute a period of probation not to exceed one year for the suspension or for any unexpired period of suspension. Probation shall mean any written agreement between the suspended driver and a duly authorized representative of the Division and such period of probation shall not exceed one year, and any violation of the probation agreement during the probation period shall result in a suspension for the unexpired remainder of the suspension period. The authorized agents of the Division shall have the same powers in connection with a preliminary hearing prior to suspension as this subsection provided in connection with hearings held after suspension. These agents shall also have the authority to take possession of a surrendered license on behalf of the Division if the suspension is upheld and the licensee requests that the suspension begin immediately."

Section 7. G.S. 20-19(d) reads as rewritten:

"(d) When a person's license is revoked under ~~subdivision (2) of G.S. 20-17~~ G.S. 20-17(a)(2) and the person has another offense involving impaired driving for which he has been convicted, which offense occurred within three years immediately preceding the date of the offense for which his license is being revoked, the period of revocation is four years, and this period may be reduced only as provided in this section. The Division may conditionally restore the person's license after it has been revoked for at least two years under this subsection if he provides the Division with satisfactory proof that:

(1) He has not in the period of revocation been convicted in North Carolina or any other state or federal jurisdiction of a motor vehicle offense, an alcoholic beverage control law offense, a drug law offense, or any other criminal offense involving the possession or consumption of alcohol or drugs; and

(2) He is not currently an excessive user of alcohol or drugs.

If the Division restores the person's license, it may place reasonable conditions or restrictions on the person for the duration of the original revocation period."

Section 8. G.S. 20-19(e) reads as rewritten:

"(e) When a person's license is revoked under ~~subdivision (2) of G.S. 20-17~~ G.S. 20-17(a)(2) and the person has two or more previous offenses involving impaired driving for which he has been convicted, and the most recent offense occurred within the five years immediately preceding the date of the offense for which his license is being revoked, the revocation is permanent. The Division may, however, conditionally restore the person's license after it has been revoked for at least three years under this subsection if he provides the Division with satisfactory proof that:

(1) In the three years immediately preceding the person's application for a restored license, he has not been convicted in North Carolina or in any other state or federal court of a motor vehicle offense, an alcohol beverage control law offense, a drug law offense, or any

criminal offense involving the consumption of alcohol or drugs; and

(2) He is not currently an excessive user of alcohol or drugs.

If the Division restores the person's license, it may place reasonable conditions or restrictions on the person for any period up to three years from the date of restoration."

Section 9. G.S. 20-63(g) reads as rewritten:

"(g) Alteration, Disguise, or Concealment of Numbers. -- Any operator of a motor vehicle who shall willfully mutilate, bend, twist, cover or cause to be covered or partially covered by any bumper, light, spare tire, tire rack, strap, or other device, or who shall paint, enamel, emboss, stamp, print, perforate, or alter or add to or cut off any part or portion of a registration plate or the figures or letters thereon, or who shall place or deposit or cause to be placed or deposited any oil, grease, or other substance upon such registration plates for the purpose of making dust adhere thereto, or who shall deface, disfigure, change, or attempt to change any letter or figure thereon, or who shall display a number plate in other than a horizontal upright position, shall be guilty of a Class 2 misdemeanor. Any operator of a motor vehicle who shall otherwise cover any number or registration renewal sticker on a registration plate with any material that makes the number or registration renewal sticker illegible commits an infraction and shall be fined under G.S. 14-3.1."

Section 10. G.S. 20-63 is amended by adding a new subsection that reads:

"(i) Electronic Applications and Collections. -- The Division is authorized to accept electronic applications for the issuance of registration plates, registration certificates, and certificates of title, and to electronically collect fees and penalties."

Section 11. G.S. 20-78(b) reads as rewritten:

"(b) The Division shall maintain a record of certificates of title ~~issued, maintaining at all times the records of the last two owners.~~ issued by the Division for a period of 20 years. After 20 years, the Division shall maintain a record of the last two owners.

The Commissioner is hereby authorized and empowered to provide for the photographic or photostatic recording of certificate of title records in such manner as he may deem expedient. The photographic or photostatic copies herein authorized shall be sufficient as evidence in tracing of titles of the motor vehicles designated therein, and shall also be admitted in evidence in all actions and proceedings to the same extent that the originals would have been admitted."

Section 12. G.S. 20-79.4(b)(27) reads as rewritten:

"(27) Military Retiree. -- Issuable to an individual who has retired from the armed forces of the United States. The plate shall bear the word "Retired" and the name and insignia of the branch of service from which the individual retired. ~~The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.~~"

Section 13. G.S. 20-87(2) reads as rewritten:

"(2) U-Drive-It Passenger Vehicles. -- U-drive-it passenger vehicles shall pay the following tax:

Motorcycles:	1-passenger capacity	$18.00
	2-passenger capacity	22.00
	3-passenger capacity	26.00

~~Automobiles: Forty-one dollars ($41.00) per year for each vehicle of fifteen-passenger capacity or less, and vehicles of over fifteen-passenger capacity shall be classified as buses and shall pay one dollar and forty cents ($1.40) per hundred pounds empty weight of each vehicle.~~

Automobiles:	15 or fewer passengers	$41.00
Buses:	16 or more passengers	$ 1.40 per hundred pounds of empty weight
Trucks under 7,000 pounds that do not haul products for hire:	4,000 pounds	$41.50
	5,000 pounds	$51.00
	6,000 pounds	$61.00."

Section 14. G.S. 20-96 reads as rewritten:

"**§ 20-96. ~~Collection of delinquent penalties and taxes.~~ Detaining property-hauling vehicles until penalties and taxes are collected.**

~~A law enforcement officer who discovers that a vehicle used for the transportation of property is being operated on the highways and that the owner of the vehicle is more than 30 days overdue in paying any of the following may detain the vehicle:~~

~~(1) A penalty previously assessed under this Chapter against the owner for a violation attributable to the failure of a vehicle to comply with this Chapter.~~

~~(2) A tax or penalty previously assessed against the owner under Article 36B of Chapter 105 of the General Statutes.~~

~~The officer may detain the vehicle until the delinquent penalties and taxes are paid.~~

(a) Authority to Detain Vehicles. -- A law enforcement officer may seize and detain the following property-hauling vehicles operating on the highways of the State:

(1) A property-hauling vehicle with an overload in violation of G.S. 20-88(k) and G.S. 20-118.

(2) A property-hauling vehicle that does not have a proper registration plate as required under G.S. 20-118.3.

(3) A property-hauling vehicle that is owned by a person liable for any overload penalties or assessments due and unpaid for more than 30 days.

(4) A property-hauling vehicle that is owned by a person liable for any taxes or penalties under Article 36B of Chapter 105 of the General Statutes.

The officer may detain the vehicle until the delinquent penalties and taxes are paid and, in the case of a vehicle that does not have the proper registration plate, until the proper registration plate is secured.

(b) Storage; Liability. -- When necessary, an officer who detains a vehicle under this section may have the vehicle stored. The owner of a vehicle that is detained or stored under this section is responsible for the care of any property being hauled by the vehicle and for any storage charges. The State ~~is~~ shall not be liable for damage to the vehicle or loss of the property being hauled."

Section 15. G.S. 20-166.1(h) reads as rewritten:

"(h) Forms. -- The Division ~~must~~ shall provide forms or procedures for submitting crash data to persons required to make reports under this section and the reports ~~must~~ shall be made ~~on the forms provided.~~ in a format approved by the Commissioner. ~~The forms must ask for the~~ The following information shall be included about a reportable ~~accident.~~ crash:

(1) The cause of the ~~accident.~~ crash.

(2) The conditions existing at the time of the ~~accident.~~ crash.

(3) The persons and vehicles involved.

(4) Whether the vehicle has been seized and is subject to forfeiture under G.S. 20-28.2."

Section 16. G.S. 20-309(e) reads as rewritten:

"(e) Upon termination by cancellation or otherwise of an insurance policy provided in subsection (b) of this section, the insurer shall notify the Division of ~~such termination;~~ the termination within 20 business days; provided, no cancellation notice is required if the same insurer issues a ~~new~~ replacement insurance policy complying with this Article at the same time the insurer cancels or otherwise terminates the old policy, no lapse in coverage results, and the insurer sends the certificate of insurance form for the new policy to the Division. The insurer shall notify the Division of any new policy for insurance within 20 working days of its issuance unless the new coverage is a replacement insurance policy for a policy terminated by the same insurer. Any insurance company with twenty-five million dollars ($25,000,000) or more in annual vehicle insurance premium volume must submit the notices required under this section by electronic means. All other insurance companies may submit the notices required under this section by either paper or electronic means. The beginning date and termination date of insurance coverage provided to the Division by the insurer pursuant to this paragraph shall constitute a designated trade secret under G.S. 132-1.2.

The Division, upon receiving notice of ~~cancellation or termination of an owner's financial responsibility as required by this Article,~~ a lapse in insurance coverage, shall

notify ~~such~~ the owner of ~~such cancellation or termination,~~ the lapse in coverage, and ~~such~~ the owner shall, to retain the registration plate for the vehicle registered or required to be registered, within 10 days from date of notice given by the Division either:

(1) Certify to the Division that he had financial responsibility effective on or prior to the date of such termination; or

(2) In the case of a lapse in financial responsibility, pay a fifty dollar ($50.00) civil penalty; and certify to the Division that he now has financial responsibility effective on the date of certification, that he did not operate the vehicle in question during the period of no financial responsibility with the knowledge that there was no financial responsibility, and that the vehicle in question was not involved in a motor vehicle ~~accident~~ crash during the period of no financial responsibility.

Failure of the owner to certify that he has financial responsibility as herein required shall be prima facie evidence that no financial responsibility exists with regard to the vehicle concerned and unless the owner's registration plate has on or prior to the date of termination of insurance been surrendered to the Division by surrender to an agent or representative of the Division designated by the Commissioner, or depositing the same in the United States mail, addressed to the Division of Motor Vehicles, Raleigh, North Carolina, the Division shall revoke the vehicle's registration for 30 days.

In no case shall any vehicle, the registration of which has been revoked for failure to have financial responsibility, be reregistered in the name of the registered owner, spouse, or any child of the spouse, or any child of such owner within less than 30 days after the date of receipt of the registration plate by the Division of Motor Vehicles, except that a spouse living separate and apart from the registered owner may register such vehicle immediately in such spouse's name. Additionally, as a condition precedent to the reregistration of the vehicle by the registered owner, spouse, or any child of the spouse, or any child of such owner, except a spouse living separate and apart from the registered owner, the payment of a restoration fee of fifty dollars ($50.00) and the appropriate fee for a new registration plate is required. Any person, firm or corporation failing to give notice of termination shall be subject to a civil penalty of two hundred dollars ($200.00) to be assessed by the Commissioner of Insurance upon a finding by the Commissioner of Insurance that good cause is not shown for such failure to give notice of termination to the Division."

Section 17. G.S. 20-376 reads as rewritten:

"**§ 20-376. Definitions.**

The following definitions apply in this Article:

(1) Federal safety and hazardous materials regulations. -- The federal motor carrier safety regulations contained in 49 C.F.R. Parts ~~170 through 190,~~ 171 through 180, 382, and 390 through 398.

(2) Foreign commerce. -- Commerce between any of the following:

a. A place in the United States and a place in a foreign country.
b. Places in the United States through any foreign country.

(3) Interstate commerce. -- As defined in 49 C.F.R. Part 390.5. ~~Commerce between any of the following:~~
~~a. A place in a state and a place in another state.~~
~~b. Places in the same state through another state.~~

(4) Intrastate commerce. -- As defined in 49 C.F.R. Part 390.5. ~~Commerce that is between points and over a route wholly within this State and is not part of a prior or subsequent movement to or from points outside of this State in interstate or foreign commerce.~~"

Section 18. G.S. 20-381(b) reads as rewritten:

"(b) The definitions set out in 49 Code of Federal Regulations § 171.8 apply to this subsection. ~~Citations to the Code of Federal Regulations (CFR) in this subsection refer to the 1 October 1997 Edition of the CFR.~~ The transportation of an agricultural product, other than a Class 2 material, over local roads between fields of the same farm by a farmer operating as an intrastate private motor carrier is exempt from the requirements of Parts 171 through 180 of 49 CFR as provided in 49 CFR § 173.5(a). The transportation of an agricultural product to or from a farm within 150 miles of the farm by a farmer operating as an intrastate private motor carrier is exempt from the requirements of Subparts G and H of Part 172 of 49 CFR as provided in 49 CFR § 173.5(b)."

Section 19. G.S. 20-118(c)(5) reads as rewritten:

"(5) The light-traffic road limitations provided for pursuant to subdivision (b)(4) of this section do not apply to a vehicle while that vehicle is transporting only the following from its point of origin on a light-traffic road to the nearest highway that is not a light-traffic road:

a. Processed or unprocessed seafood transported from boats or any other point of origin to a processing plant or a point of further distribution.
b. Meats or agricultural crop products transported from a farm to first market.
c. Forest products originating and transported from a farm or from woodlands to first market without interruption or delay for further packaging or processing after initiating transport.
d. Livestock or poultry transported from their point of origin to first market.
e. Livestock by-products or poultry by-products transported from their point of origin to a rendering plant.
f. Recyclable material transported from its point of origin to a scrap-processing facility for processing. As used in this

subpart, the terms ~~"recyclable"~~ "recyclable material" and "processing" have the same meaning as in G.S. 130A-290(a).

g. Garbage collected by the vehicle from residences or garbage dumpsters if the vehicle is fully enclosed and is designed specifically for collecting, compacting, and hauling garbage from residences or from garbage dumpsters. As used in this subpart, the term "garbage" does not include hazardous waste as defined in G.S. 130A-290(a), spent nuclear fuel regulated under G.S. 20-167.1, low-level radioactive waste as defined in G.S. 104E-5, or radioactive material as defined in G.S. 104E-5.

h. Treated sludge collected from a wastewater treatment facility.

i. Apples when transported from the orchard to the first processing or packing point.

j. Trees grown as Christmas trees from the field, farm, stand, or grove to first processing point."

Section 20. The Division of Motor Vehicles shall develop a plan to improve the system of collecting and maintaining proof of financial responsibility for newly licensed drivers classified as inexperienced operators. The Division shall submit its report to the Joint Legislative Transportation Oversight Committee by December 1, 1999.

Section 21. G.S. 20-183.8(b) reads as rewritten:

"(b) Defenses to Infractions. -- Any of the following is a defense to a violation under subsection (a) of this section:

(1) The vehicle was continuously out of State for at least the 30 days preceding the date the inspection sticker expired and a current inspection sticker was obtained within 10 days after the vehicle came back to the State.

(2) The vehicle displays a dealer license plate or a transporter plate, the dealer repossessed the vehicle or otherwise acquired the vehicle within the last 10 days, and the vehicle is being driven from its place of acquisition to the dealer's place of business or to an inspection station.

(3) Repealed by Session Laws 1997-29, s. 5.

(4) The charged infraction is described in subdivision (a)(1) of this section, the vehicle is subject to a ~~safety-only inspection,~~ safety inspection or an emissions inspection and the vehicle owner establishes in court that the vehicle was inspected after the citation was issued and within 30 days of the expiration date of the inspection sticker that was on the vehicle when the citation was issued."

Section 22. Section 5 of this act becomes effective July 1, 1999. Section 16 of this act becomes effective October 1, 2000. The remainder of this act becomes effective October 1, 1999.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 280 (House Finance Committee Substitute)

SHORT TITLE: Motor Vehicle Technical Amendments/AB

SPONSOR(S): Representative Cole

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
Highway Fund					
U-Drive-it trucks	$27,937	$37,995	$38,754	$39,529	$40,319
Internet registration		see ASSUMPTIONS AND METHODOLOGY			
EXPENDITURES					
Highway Fund					
Insurance notices		($78,300)	($104,400)	($104,400)	($104,400)
Internet registration		see ASSUMPTIONS AND METHODOLOGY			

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Transportation – Division of Motor Vehicles

EFFECTIVE DATE: Section 5 (graduated drivers license change) becomes effective July 1, 1999. Section 17 (notification of terminated insurance policies) becomes effective October 1, 2000. The remainder of the act becomes effective October 1, 1999.

BILL SUMMARY: The bill makes numerous changes to the motor vehicle laws found in Chapter 20 of the North Carolina General Statutes.

ASSUMPTIONS AND METHODOLOGY:

REVENUES

Section 14 of the bill has a direct fiscal impact on the Highway Fund. Small daily rental trucks are now issued a "for-hire" plate that is renewed annually. This "for-hire" status requires the vehicle owner to carry a high insurance liability policy. The proposal is to classify small daily rental trucks as U-drive-it passenger vehicles, a category that now includes cars and buses. These

daily rentals will require lower insurance liability policies, but will pay higher fees for the privilege.

The Division of Motor Vehicles (DMV) estimates that 2,500 small trucks are licensed each year as daily rentals. The chart below shows the estimated number of trucks by weight class. The chart also shows the current and proposed fees. The first year revenue gain is reduced by one fourth due to an October 1, 1999 starting date. DMV estimates that the number of trucks licensed in future years will grow by 2% annually.

Truck Weight	# of Trucks	Current Fees	Current Revenue	Proposed Fees	Proposed Revenue	Net Gain
4,000 lbs	1000	$21.50	$21,500	$41.50	$41,500	$20,000
5,000 lbs	1000	$40.75	$40,750	$51.00	$51,000	$10,250
6,000 lbs	500	$47.00	$23,500	$61.00	$30,500	$7,000
	2,500		$85,750		$123,000	$37,250

Section 10 has the potential to both lose revenues and to decrease expenditures. The section allows DMV "to accept electronic applications for the issuance of registration plates, registration certificates, and certificates of title, and to electronically collect fees and penalties". Currently registration renewal can be done by mail or by a visit to a contract tag agent. Renewal by mail requires the payment of a $1 processing fee in addition to the registration renewal fee. There were 1.2 million mail-in renewals last year and thus $1.2 million in administrative fees paid to the Highway Fund. If vehicle owners that now renew by mail are allowed to renew over the internet, then DMV will lose a portion of this revenue. To be revenue neutral, the bill must be amended to allow DMV to charge a $1 processing fee to use this electronic service. However, electronic renewal is a moot point since DMV does not have the authority to accept credit cards for payment and it is uncertain when this approval will be granted.

EXPENDITURES

As mentioned above, Section 10 also has the potential to reduce expenditures. A 1995 study by the NCDOT Productivity Management unit reported that registration renewals performed by DMV were less expensive than those completed by contract tag agents. In 1995, DMV paid $1.73 for renewals by contract agents and spent $1.44 for in-house processing. Most of the cost for contract agents was the $1.20 transaction fee (now $1.35). If a vehicle owner that now uses a tag agent chooses to renew electronically, then DMV saves 29 cents per transaction. With the increase in internet commerce, it is likely that consumers will choose on-line payment versus a trip to a tag agent for simple transactions. The problem is that registration renewals are the easiest and most profitable transactions for branch agents. The smaller volume contract agents unable to absorb the lost revenue may have to close. Again, the General Assembly has to give DMV the authority to use credit cards for payment. In turn, the General Assembly must decide the role of contract tag agents under electronic commerce.

Section 17 requires insurance companies to notify DMV when they terminate policies and issue new ones within 10 days. This section will reduce the number of vehicle owners contacted by DMV who have not experienced a lapse in coverage, but have only "shopped around" for lower premiums. DMV estimates that 400,000 unnecessary letters will be eliminated due to this change

in policy. At a pre-sort postage rate of 26.1 cents per letter, this will create annual savings of $104,400. The section is effective beginning October 1, 2000, thus first year savings in FY 2000-01 are for nine months. No postal rate increases are included in this note.

Section 11 requires DMV to maintain records for 20 years instead of the life of the vehicle. This could save DMV computer storage space, but no savings have been estimated for this item.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic

APPROVED BY: Tom Covington

DATE: Tuesday, April 20, 1999

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

3

HOUSE BILL 74
Committee Substitute Favorable 6/22/99
Committee Substitute #2 Favorable 6/24/99

Short Title: Phase II Funds/Immunity/Tax-Exempt. (Public)

Sponsors:

Referred to:

February 15, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE APPOINTMENT BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE PRESIDENT PRO TEMPORE OF THE SENATE OF MEMBERS OF THE BOARD OF DIRECTORS OF THE CERTIFICATION ENTITY FOR THE PHASE II SETTLEMENT FUNDS, TO PROVIDE THE MEMBERS OF THE BOARD OF DIRECTORS LIMITED IMMUNITY FROM CIVIL LIABILITY, AND TO PROVIDE AN EXEMPTION FROM STATE INCOME TAX FOR INTEREST, INVESTMENT EARNINGS, AND GAINS OF CERTAIN TRUST FUNDS.

The General Assembly of North Carolina enacts:

Section 1.(a) The General Assembly finds that:

(1) Philip Morris, Inc., Brown and Williamson Tobacco Corporation, Lorillard Tobacco Company, and R.J. Reynolds Tobacco Company (hereinafter, the "tobacco companies") have proposed to create a National Tobacco Grower Settlement Trust under which the tobacco companies will pay, during a 12-year period, a base amount of approximately five billion one hundred fifty million dollars ($5,150,000,000) into a trust to provide payments to tobacco growers and allotment holders in 14 grower states, including North Carolina, for the purposes of ameliorating potential adverse economic consequences of likely changes in the tobacco market on grower states.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 74
Committee Substitute Favorable 6/22/99
Committee Substitute #2 Favorable 6/24/99
PROPOSED SENATE COMMITTEE SUBSTITUTE
H74-CSRB-6/30

Short Title: Phase II Funds/Immunity/Tax-Exempt. (Public)

Sponsors:

Referred to:

February 15, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE APPOINTMENT BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE PRESIDENT PRO TEMPORE OF THE SENATE OF MEMBERS OF THE BOARD OF DIRECTORS OF THE CERTIFICATION ENTITY FOR THE PHASE II SETTLEMENT FUNDS, TO PROVIDE THE MEMBERS OF THE BOARD OF DIRECTORS LIMITED IMMUNITY FROM CIVIL LIABILITY, TO PROVIDE AN EXEMPTION FROM STATE INCOME TAX FOR INTEREST, INVESTMENT EARNINGS, AND GAINS OF CERTAIN TRUST FUNDS, TO PROVIDE A CORPORATE INCOME TAX CREDIT FOR MANUFACTURERS PRODUCING CIGARETTES FOR EXPORTATION TO A FOREIGN COUNTRY, AND TO PROHIBIT THE SALE OF CERTAIN PACKAGES OF CIGARETTES.

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(2) The tobacco companies desire that the money paid into the trust be divided among tobacco producers and allotment holders in accordance with a plan designed and approved by a certification entity in each state.

(3) The tobacco companies desire that in larger grower states, including North Carolina, the certification entity be a nonprofit corporation governed by a board of directors consisting of the following public officials and persons appointed by public officials: the Governor, who shall serve as chair of the board of directors; the Commissioner of Agriculture, who shall serve as vice-chair; the Attorney General, who shall serve as secretary; a State Senator appointed by the President Pro Tempore of the Senate; a State Representative appointed by the Speaker of the House of Representatives; two members of the North Carolina congressional delegation selected by the delegation; and four to seven citizens appointed by the Governor.

(4) It is in the public interest that these officials and citizens serve on the board of directors and determine the distribution of these private trust funds to tobacco producers and allotment holders in North Carolina.

Section 1.(b) The Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate are authorized to appoint members of the board of directors of the certification entity as provided in Section 1.(a)(3), and the public officials referred to in Section 1.(a)(3) are authorized to serve on that board.

Section 1.(c) No member of the certification entity for the National Tobacco Grower Trust Fund is subject to civil liability for any act or omission arising out of the performance of the member's duties as a member or officer of the

certification entity. This section does not apply to liability arising from willful or wanton misconduct, intentional wrongdoing, or the operation of a motor vehicle.

Section 2. G.S. 105-130.5(b) is amended by adding a new subdivision to read:

"(b) The following deductions from federal taxable income shall be made in determining State net income:

. . .

(18) Interest, investment earnings, and gains of a trust, the settlors of which are two or more manufacturers that signed a settlement agreement with this State to settle existing and potential claims of the State against the manufacturers for damages attributable to a product of the manufacturers, if the trust meets all of the following conditions:

a. The purpose of the trust is to address adverse economic consequences resulting from a decline in demand of the manufactured product potentially expected to occur because of market restrictions and other provisions in the settlement agreement.

b. A court of this State approves and retains jurisdiction over the trust.

c. Certain portions of the distributions from the trust are made in accordance with certifications that meet the criteria in the agreement creating the trust and are provided by a nonprofit entity, the governing board of which includes State officials."

Section 3. G.S. 105-134.6(b) is amended by adding a new subdivision to read:

"(b) Deductions. -- The following deductions from taxable income shall be made in calculating North Carolina taxable income, to the extent each item is included in taxable income:

. . .

(15) Interest, investment earnings, and gains of a trust, the settlors of which are two or more manufacturers that signed a settlement agreement with this State to settle existing and potential claims of the State against the manufacturers for damages attributable to a product of the manufacturers, if the trust meets all of the following conditions:

a. The purpose of the trust is to address adverse economic consequences resulting from a decline in demand of the manufactured product potentially expected to occur because of market restrictions and other provisions in the settlement agreement.

b. A court of this State approves and retains jurisdiction over the trust.

c. Certain portions of the distributions from the trust are made in accordance with certifications that meet the criteria in the agreement creating the trust and are provided by a nonprofit entity, the governing board of which includes State officials."

Section 4. Part 1 of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read as follows:

"§ 105-130.45. Credit for manufacturing cigarettes for exportation.

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

(1) Base year exportation volume. -- The number of cigarettes manufactured and exported by a corporation during the calendar year 1998.

(2) Exportation. -- The shipment of cigarettes manufactured in the United States to a foreign country sufficient to relieve the cigarettes in the shipment of the federal excise tax on cigarettes.

(b) Credit. -- A corporation engaged in the business of manufacturing cigarettes for exportation to a foreign country is allowed a credit against the taxes levied by this Part. The amount of credit allowed under this section is determined by comparing the exportation volume of the corporation in the year for which the credit is claimed with the corporation's base year exportation volume, rounded to the nearest whole percentage. The amount of credit allowed is as follows:

Current Year's Exportation Volume Compared to its Base Year's Exportation Volume	Amount of Credit per Thousand Cigarettes Exported
120% or more	40¢
119% - 100%	35¢
99% - 80%	30¢
79% - 60%	25¢
59% - 50%	20¢

Less than 50%	None

(c) Cap. -- The credit allowed under this section may not exceed the lesser of six million dollars ($6,000,000) or fifty percent (50%) of the amount of tax imposed by this Part for the taxable year reduced by the sum of all other credits allowable, except tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of the credit allowed in any tax year, including carry forwards claimed by the taxpayer under this section for previous tax years. Any unused portion of a credit allowed in this section may be carried forward for the next succeeding five years.

(d) Documentation of Credit. -- A corporation that claims the credit under this section must include the following with its tax return:

(1) A statement of the base year exportation volume.

(2) A statement of the exportation volume on which the credit is based.

(3) A list of the corporation's export volumes shown on its monthly reports to the Bureau of Alcohol, Tobacco, and Firearms of the United States Treasury for the months in the tax year for which the credit is claimed."

Section 5. Article 52 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-400.18. Sale of certain packages of cigarettes prohibited.**

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

(1) Cigarette. -- Defined in G.S. 105-113.4.

(2) Package. -- Defined in G.S. 105-113.4.

(b) Offenses. -- A person who sells or holds for sale a package of cigarettes that meets one or more of the following descriptions commits a Class 1 misdemeanor and engages in an unfair trade practice prohibited by G.S. 75-1.1:

(1) The package differs in any respect with the requirements of the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. § 1331, for the placement of labels, warnings, or any other information upon a package of cigarettes that is to be sold within the United States.

(2) The package is labeled 'For Export Only,' 'U.S. Tax Exempt,' 'For Use Outside U.S.,' or has similar wording indicating that the manufacturer did not intend that the product be sold in the United States.

(3) The package was altered by adding or deleting the wording, labels, or warnings described in subdivision (1) or (2) of this subsection.

(4) The package was imported into the United States after January 1, 2000, in violation of 26 U.S.C. § 5754.

(5) The package violates federal trademark or copyright laws.

(c) Contraband. -- A package of cigarettes described in subsection (b) of this section is contraband and may be seized by a law enforcement officer. The procedure for seizure and disposition of this contraband is the same as the procedure under G.S. 105-113.31 and G.S. 105-113.32 for non-tax-paid cigarettes."

Section 6. Part 1 of Article 2A of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-113.4B. Reasons why the Secretary can cancel a license.**

(a) Reasons. -- The Secretary may cancel a license issued under this Article upon the written request of the license holder. The Secretary may summarily cancel the license of a license holder when the Secretary finds that the license holder is incurring liability for the tax imposed under this Article after failing to pay a tax when due under this Article. In addition, the Secretary may cancel the license of a license holder that commits one or more of the following acts after holding a hearing on whether the license should be cancelled:

(1) A violation of this Article.

(2) A violation of G.S. 14-400.18.

(b) Procedure. -- The Secretary must send a person whose license is summarily cancelled a notice of the cancellation and must give the person an opportunity to have a hearing on the cancellation within 10 days after the cancellation. The Secretary must give a person whose license may be cancelled after a hearing at least 10 days' written notice of the date, time, and place of the hearing. A notice of a summary license cancellation and a notice of hearing must be sent by registered mail to the last known address of the license holder."

Section 7. G.S. 105-113.16 is repealed.

Section 8. G.S. 105-164.29(d) reads as rewritten:

"(d) Revocation. -- Whenever a license holder fails to comply with this ~~Article,~~ Article or violates G.S. 14-400.18, the Secretary, upon hearing, after giving the license holder 10 days' notice in writing, specifying the time and place of hearing and requiring the license holder to show cause why the license should not be revoked, may revoke or suspend the license. The notice may

be served personally or by registered mail directed to the last known address of the license holder. All provisions with respect to review and appeals of the Secretary's decisions as provided by G.S. 105-241.2, 105-241.3, and 105-241.4 apply to this section.

Any wholesale merchant or retailer who engages in business as a seller in this State without a license or after the license has been suspended or revoked, and each officer of any corporation that so engages in business shall be guilty of a Class 3 misdemeanor and only subject to a fine of up to five hundred dollars ($500.00) for each offense."

Section 9. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Section 10. Sections 2, 3, and 4 of this act are effective for taxable years beginning on or after January 1, 1999. Sections 5 through 8 of this act become effective December 1, 1999, and apply to offenses committed on or after that date. The remainder of this act is effective when it becomes law. Section 4 of this act is repealed effective for cigarettes exported on or after January 1, 2005.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 74
Committee Substitute Favorable 6/22/99
Committee Substitute #2 Favorable 6/24/99
Proposed Senate Committee Substitute H74-PCS1310-RB

Short Title: Phase II Funds/Immunity/Tax-Exempt. (Public)

Sponsors:

Referred to:

February 15, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE APPOINTMENT BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE PRESIDENT PRO TEMPORE OF THE SENATE OF MEMBERS OF THE BOARD OF DIRECTORS OF THE CERTIFICATION ENTITY FOR THE PHASE II SETTLEMENT FUNDS, TO PROVIDE THE MEMBERS OF THE BOARD OF DIRECTORS LIMITED IMMUNITY FROM CIVIL LIABILITY, TO PROVIDE AN EXEMPTION FROM STATE INCOME TAX FOR INTEREST, INVESTMENT EARNINGS, AND GAINS OF CERTAIN TRUST FUNDS, TO PROVIDE A CORPORATE INCOME TAX CREDIT FOR MANUFACTURERS PRODUCING CIGARETTES FOR EXPORTATION TO A FOREIGN COUNTRY, AND TO PROHIBIT THE SALE OF CERTAIN PACKAGES OF CIGARETTES.

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(1) Philip Morris, Inc., Brown and Williamson Tobacco Corporation, Lorillard Tobacco Company, and R.J. Reynolds Tobacco Company (hereinafter, the "tobacco companies") have proposed to create a National Tobacco Grower Settlement Trust under which the tobacco companies will pay, during a 12-year period, a base amount of approximately five billion one hundred fifty million dollars ($5,150,000,000) into a trust to provide payments to tobacco

growers and allotment holders in 14 grower states, including North Carolina, for the purposes of ameliorating potential adverse economic consequences of likely changes in the tobacco market on grower states.

(2) The tobacco companies desire that the money paid into the trust be divided among tobacco producers and allotment holders in accordance with a plan designed and approved by a certification entity in each state.

(3) The tobacco companies desire that in larger grower states, including North Carolina, the certification entity be a nonprofit corporation governed by a board of directors consisting of the following public officials and persons appointed by public officials: the Governor, who shall serve as chair of the board of directors; the Commissioner of Agriculture, who shall serve as vice-chair; the Attorney General, who shall serve as secretary; a State Senator appointed by the President Pro Tempore of the Senate; a State Representative appointed by the Speaker of the House of Representatives; two members of the North Carolina congressional delegation selected by the delegation; and four to seven citizens appointed by the Governor.

(4) It is in the public interest that these officials and citizens serve on the board of directors and determine the distribution of these private trust funds to tobacco producers and allotment holders in North Carolina.

Section 1.(b) The Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate are authorized to appoint members of the board of directors of the certification entity as provided in Section 1.(a)(3), and the public officials referred to in Section 1.(a)(3) are authorized to serve on that board.

Section 1.(c) No member of the certification entity for the National Tobacco Grower Trust Fund is subject to civil liability for any act or omission arising out of the performance of the member's duties as a member or officer of the certification entity. This section does not apply to liability arising from willful or wanton misconduct, intentional wrongdoing, or the operation of a motor vehicle.

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product of the manufacturers, if the trust meets all of the following conditions:

a. The purpose of the trust is to address adverse economic consequences resulting from a decline in demand of the manufactured product potentially expected to occur because of market restrictions and other provisions in the settlement agreement.

b. A court of this State approves and retains jurisdiction over the trust.

c. Certain portions of the distributions from the trust are made in accordance with certifications that meet the criteria in the agreement creating the trust and are provided by a nonprofit entity, the governing board of which includes State officials."

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(b) Credit. -- A corporation engaged in the business of manufacturing cigarettes for exportation to a foreign country is allowed a credit against the taxes levied by this Part. The amount of credit allowed under this section is determined by comparing the exportation volume of the corporation in the year for which the credit is claimed with the corporation's base year exportation volume, rounded to the nearest whole percentage. The amount of credit allowed is as follows:

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(c) Cap. -- The credit allowed under this section may not exceed the lesser of six million dollars ($6,000,000) or fifty percent (50%) of the amount of tax imposed by this Part for the taxable year reduced by the sum of all other credits allowable, except tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of the credit allowed in any tax year, including carryforwards claimed by the taxpayer under this section for previous tax years. Any unused portion of a credit allowed in this section may be carried forward for the next succeeding five years.

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(1) A statement of the base year exportation volume.

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

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(b) Offenses. -- A person who sells or holds for sale (other than for export to a foreign country) a package of cigarettes that meets one or more of the following descriptions commits a Class A1 misdemeanor and engages in an unfair trade practice prohibited by G.S. 75-1.1:

(1) The package differs in any respect with the requirements of the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. § 1331, for the placement of labels, warnings, or any other information upon a package of cigarettes that is to be sold within the United States.

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Any wholesale merchant or retailer who engages in business as a seller in this State without a license or after the license has been suspended or revoked, and each officer of any corporation that so engages in business shall be guilty of a Class 3 misdemeanor and only subject to a fine of up to five hundred dollars ($500.00) for each offense."

Section 9. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Section 10. Sections 2, 3, and 4 of this act are effective for taxable years beginning on or after January 1, 1999. Sections 5 through 8 of this act become effective December 1, 1999, and apply to offenses committed on or after that date. The remainder of this act is effective when it becomes law. Section 4 of this act is repealed effective for cigarettes exported on or after January 1, 2005.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 74 DATE _____

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

COMMITTEE SUBSTITUTE H74-CSRB-6/30

Rep.) Rand

Sen.)

moves to amend the bill on page 5, line 32

( ) WHICH CHANGES THE TITLE

by deleting the words "Class 1 misdemeanor" and substituting the words "Class A1 misdemeanor".

SIGNED Jay Rand

ADOPTED ✓ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. _____ DATE _____

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

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

moves to amend the bill on page 5, line 30

( ) WHICH CHANGES THE TITLE

by deleting "A person who sells or holds for sale"; and substituting "A person who sells or holds for sale (other than for export to a foreign country)"

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

HOUSE BILL 74:
Phase II Funds/Immunity/Tax-Exempt

BILL ANALYSIS

Committee:	House Finance	**Introduced by:**	Rep. Baker
Date:	July 1, 1999	**Summary by:**	Cindy Avrette
Version:	PCS for 3rd Edition H74-CSRB-6/30		Committee Counsel

SUMMARY: The Senate Committee Substitute for House Bill 74 does the following:

- ***It authorizes the Speaker of the House of Representatives and the President Pro Tempore of the Senate to appoint members to the board of directors of the nonprofit corporation that will serve as the certification entity for the National Tobacco Grower Trust Fund under the Phase II agreement between the states and the tobacco manufacturers. (contained in HB 74, 3rd edition)***
- ***It provides immunity to the board of directors for any act or omission arising out of the performance of the member's duties as a member of the entity. (contained in HB 74, 3rd edition)***
- ***It provides a corporate and trust income tax exemption for the interest, investment earnings, and gains of a trust that is established to compensate those who suffer economic loss as a result of a settlement agreement between North Carolina and one or more manufacturers to settle claims of the states against the manufacturers for damages arising from a product of the manufacturers. (contained in HB 74, 3rd edition)***
- ***It creates a corporate income tax credit for manufacturers who produce cigarettes for exportation to a foreign country. The credit amount varies depending upon the amount of cigarettes exported in the tax year compared to the amount exported in 1998. The credit will sunset for taxable years beginning on or after January 1, 2005. (Senate addition to HB 74, 3rd edition)***
- ***It makes it unlawful to sell in North Carolina cigarettes that were originally manufactured for export. (Senate addition to HB 74, 3rd edition)***

BACKGROUND: Several states and tobacco manufacturers are parties to a Master Settlement Agreement dated November 23, 1998, that settled existing and potential claims of the states against the manufacturers for damages arising from the tobacco products of the manufacturers. The settlement agreement contains provisions, such as market restrictions, that are expected to result in a decline in demand for the tobacco products. As part of the consideration for settling the claims, the MSA obligates the parties to the agreement to address these economic concerns of the tobacco growers and tobacco quota holders.

To meet this requirement, the parties have agreed to establish a trust called the National Tobacco Grower Settlement Trust. The manufacturers have agreed to pay up to $5.15 billion over the next 12 years into the trust. Proceeds from the trust will be allocated directly to tobacco growers and tobacco allotment holders based on a state plan developed by a nonprofit corporation composed of government leaders and

public members. The funds will not be paid to the state for disbursement. The Superior Court of Wake County must approve the trust and the payments made under it. A banking entity will serve as the trustee.

The trust is designed to be a qualified settlement fund under the Internal Revenue Code. As such, it is taxable as a corporate taxpayer at the rate of a trust. The primary benefit of being a qualified settlement fund is that the manufacturers who contribute the principal to the fund may claim a tax deduction on the contributions when they are paid into the fund. If it is determined that the trust does not meet the requirements of a qualified settlement fund, its taxation does not change because contributions to a trust are not included in its gross income. However, the manufacturers would not be able to claim a deduction on their contributions until the money is distributed to the growers and quota holders.

For federal and state tax purposes, the contributions to the trust are tax exempt. To calculate North Carolina taxable income for both corporations and trusts, one begins with federal taxable income. Since the contributions are not included in income for federal tax purposes, they are not included in income for State tax purposes. However, the interest, investment earnings, and gains, of both a qualified settlement fund and a trust are taxable for federal and State purposes. Some states exempt qualified settlement funds from state income tax. To maximize the amount of funds distributed to those who suffer economic loss because of the Master Settlement Agreement, it is desirable to locate the settlement fund in a state that does not tax it. Because of the State's role in producing the economic loss, and the desire to have the settlement fund be located in North Carolina, this bill exempts the interest, investment earnings, and gains of the settlement fund from State income tax.

BIL ANALYSIS:

SECTION 1: APPOINTMENT OF MEMBERS TO CERTIFICATION ENTITY/IMMUNITY OF BOARD MEMEBERS

Section 1 authorizes the Speaker of the House of Representatives, the Senate President Pro Tempore, and the Governor to make appointments to the Phase II certification board. It also provides limited immunity from liability for the officials serving on the Phase II certification board while performing their duties on behalf of the board. This is the board that will determine how the Phase II funds are to be distributed to North Carolina tobacco farmers and allotment holders. Immunity is not provided for intentional wrongdoing, willful or wanton misconduct, or motor vehicle accidents. (The board will be a private board, not a State agency, and its members would not be covered by the liability insurance coverage the State obtains for its officers and employees).

SECTIONS 2 AND 3: EXEMPT INTEREST, INVESTMENT EARNINGS, AND GAINS OF THE TOBACCO GROWERS SETTLEMENT TRUST

Section 2 of the bill provides a corporate tax deduction from federal taxable income on the interest, investment earnings, and gains earned on funds in a qualified settlement fund that meets the following conditions:

1. The settlors of the fund are two or more manufacturers that signed a settlement agreement with North Carolina to settle existing and potential claims of the State against the manufacturers for damages attributable to a product of the manufacturers.

2. The purpose of the fund is to address potential adverse economic consequences resulting from a decline in demand of the manufactured product expected to occur because of market restrictions and other provisions in the settlement agreement.
3. A court of North Carolina approves and retains jurisdiction over the fund.
4. Certain portions of the distributions from the fund are made in accordance with certifications that meet the criteria in the settlement agreement and are provided by a nonprofit entity, the governing board of which includes State officials.

Section 3 of the bill provides a similar tax deduction for trusts. The provision is put in both the corporate and trust tax laws in case it is determined that the trust does not meet the requirements of a qualified settlement fund.

SECTION 4: INCOME TAX CREDIT FOR MANUFACTURING CIGARETTES FOR EXPORTATION

Section 4 of this bill would allow a corporate income tax credit for tobacco manufacturers who export cigarettes to foreign countries, effective beginning with the 1999 taxable year, and sunset effective January 1, 2005. The credit is a dollar amount per cigarette exported for those manufacturers who export at least 50% as many cigarettes in the taxable year as they did in calendar year 1998. The dollar amount ranges from 40¢ to 20¢ per 1,000 cigarettes exported. The credit is capped at $6,000,000 per year or 50% of the manufacturer's corporate tax liability for any given year.

SECTIONS 5 – 8 : UNLAWFUL TO SELL IN NORTH CAROLINA CIGARETTES MANUFACTURED FOR EXPORT

Section 5 of the bill prohibits the sale in North Carolina of the following cigarettes:

- Those whose package differs from the labeling requirements of federal law, is labeled "For Export Only", or violates federal trademark or copyright law.
- Those whose import into the United States is prohibited by federal law.

A violation of this law is a Class 1 misdemeanor and an unfair trade practice. A package of cigarettes that violates this law is considered contraband and may be seized by a law enforcement officer. Sections 6 and 8 authorize the Secretary of Revenue to cancel the license or the certificate of registration, whichever is applicable, of a person who violates this law. Section 7 repeals a statute included in Section 6.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 1069
Committee Substitute Favorable 6/1/99

Short Title: Social Worker Licensure. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT RECLASSIFYING CERTIFIED CLINICAL SOCIAL WORKERS AS LICENSED CLINICAL SOCIAL WORKERS AND REVISING THE FEES AND QUALIFICATIONS FOR CERTIFICATION AND LICENSURE OF SOCIAL WORKERS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 90B of the General Statutes reads as rewritten:

"Chapter 90B.

"Social Worker Certification and Licensure Act.

"**§ 90B-1. Short title.**

This Chapter shall be known as the "Social Worker Certification and Licensure Act."

"**§ 90B-2. Purpose.**

Since the profession of social work significantly affects the lives of the people of this State, it is the purpose of this Chapter to protect the public by setting standards for qualification, ~~training~~ training, and experience for those who seek to represent themselves to the public as certified social workers or licensed clinical social workers and by promoting high standards of professional performance for those engaged in the practice of social work.

"**§ 90B-3. Definitions.**

The following definitions apply in this Chapter:

(1) Board. -- The North Carolina ~~Certification Board for Social Work.~~ Social Work Certification and Licensure Board.

(2) ~~Certified~~ Licensed Clinical Social Worker. -- A person who is competent to function independently, who holds himself or herself out to the public as a social worker, and who offers or provides clinical social work services or supervises others engaging in clinical social work practice.

(3) Certified Master Social Worker. -- A person who is certified under this Chapter to practice social work as a master social worker and is engaged in the practice of social work.

(4) Certified Social Work Manager. -- A person who is certified under this Chapter to practice social work as a social work manager and is engaged in the practice of social work.

(5) Certified Social Worker. -- A person who is certified under this Chapter to practice social work as a social worker and is engaged in the practice of social work.

(6) Clinical Social Work Practice. -- The professional application of social work theory and methods to the ~~psychosocial~~ biopsychosocial diagnosis, treatment, or prevention, of emotional and mental disorders. Practice ~~includes~~ includes, by whatever means of communications, the treatment of individuals, couples, families, and groups, including the use of psychotherapy and referrals to and collaboration with other health professionals when appropriate. Clinical social work practice shall not include the provision of supportive daily living services to persons with severe and persistent mental illness as defined in G.S. 122C-3(33a).

(7) ~~Public~~ Practice of Social Work. -- To perform or offer to perform ~~services~~ services, by whatever means of communications, for other people that involve the application of social work values, principles, and techniques in areas such as social work services, consultation and administration, and social work planning and research.

(8) Social Worker. -- A person engaging in the ~~public~~ practice of social work who is not certified or licensed under this Chapter as a Certified Social Worker, Certified Master Social Worker, ~~Certified~~ Licensed Clinical Social Worker, or Certified Social Work Manager.

"**§ 90B-4. Prohibitions.**

(a) Except as otherwise provided in this Chapter, it is unlawful for any person who is not certified as a social worker, master social worker, or social work manager under this Chapter to represent himself or herself to be certified under this Chapter or hold himself or herself out to the public by any title or description denoting that he or she is certified under this Chapter.

(b) After January 1, 1992, except as otherwise provided in this Chapter, it is unlawful to engage in or offer to engage in the practice of clinical social work without first being ~~certified~~ licensed under this Chapter as a clinical social worker.

(c) Nothing herein shall prohibit school social workers who are certified by the State Board of Education from practicing school social work under the title "Certified School Social Worker." Except as provided for ~~certified~~ licensed clinical social workers, nothing herein shall be construed as prohibiting social workers who are not certified by the Board from practicing social work. Except as provided herein for ~~certified~~ licensed clinical social workers, no agency, institution, board, commission, bureau, department, division, council, member of the Council of State, or officer of the legislative, executive or judicial branches of State government or counties, cities, towns, villages, other municipal corporations, political subdivisions of the State, public authorities, private corporations created by act of the General Assembly or any firm or corporation receiving State funds shall require the obtaining or holding of any certificate issued under this Chapter or the taking of an examination held pursuant to this Chapter as a requirement for obtaining or continuing in employment.

(d) Nothing herein shall authorize the practice of medicine as defined in Article 1 of this Chapter or the practice of psychology as defined in Article 18A of this Chapter.

"**§ 90B-5. North Carolina ~~Certification Board for Social Work;~~ Social Work Certification and Licensure Board; appointments; terms; composition.**

(a) For the purpose of carrying out the provisions of this Chapter, there is hereby created the North Carolina ~~Certification Board for~~ Social Work Certification and Licensure Board which shall consist of seven members appointed by the Governor as follows:

(1) At least two members of the Board shall be Certified Social Workers or Certified Master Social Workers, three members shall be ~~Certified~~ Licensed Clinical Social Workers, and two members shall be appointed from the public at large. Composition of the Board as to the race and sex of its members shall reflect the composition of the population of the State of North Carolina.

(2) At all times the Board shall include at least one member primarily engaged in social work education, at least one member primarily engaged in social work in the public sector, and at least one member primarily engaged in social work in the private sector.

(3) All members of the Board shall be residents of the State of North Carolina, and with the exception of the public members, shall be certified or licensed by the Board under the provisions of this Chapter. Professional members of the Board must be actively engaged in the practice of social work or in the education and training of students in social work, and have been for at least three years prior to their appointment to the Board. Such activity during the two years preceding the appointment shall have occurred primarily in this State.

(b) The Governor may only remove a member of the Board for neglect of duty, malfeasance, or conviction of a felony or other crime of moral turpitude.

(c) The term of office of each member of the Board shall be three years. No member shall serve more than two consecutive three-year terms. Each term of service on the Board shall expire on the 30th day of June of the year in which the term expires. As the term of a member expires, the Governor shall make the appointment for a full term, or, if a vacancy occurs for any other reason, for the remainder of the unexpired term.

(d) Members of the Board shall receive compensation for their services and reimbursement for expenses incurred in the performance of duties required by this Chapter, at the rates prescribed in G.S. 93B-5.

(e) The Board may employ, subject to the provisions of Chapter 126 of the General Statutes, the necessary personnel for the performance of its functions, and fix their compensation within the limits of funds available to the Board.

"**§ 90B-6. Functions and duties of the ~~Certification~~ Board.**

(a) The Board shall administer and enforce the provisions of this Chapter.

(b) The Board shall elect from its membership, a chairperson, a vice-chairperson, and secretary-treasurer, and adopt rules to govern its proceedings. A majority of the membership shall constitute a quorum for all Board meetings.

(c) The Board shall examine and pass on the qualifications of all applicants for certificates and licenses under this Chapter, and shall issue a certificate or license to each successful applicant therefor.

(d) The Board may adopt a seal which may be affixed to all certificates and licenses issued by the Board.

(e) The Board may authorize expenditures deemed necessary to carry out the provisions of this Chapter from the fees which it collects, but in no event shall expenditures exceed the revenues of the Board during any fiscal year. No State appropriations shall be subject to the administration of the Board.

~~(f) The Board shall establish and receive fees not to exceed fifty dollars ($50.00) for initial or renewal application. Fees for the national written examination shall be the cost of the examination to the Board plus an additional fee not to exceed fifty dollars ($50.00). The fee for late renewal shall not exceed fifteen dollars ($15.00). The Board shall maintain accounts of all receipts and make expenditures from Board receipts for any purpose which is reasonable and necessary for the proper performance of its duties under this Chapter.~~

(g) The Board shall have the power to establish or approve study or training courses and to establish reasonable standards for ~~certification and certificate renewal,~~ certification, licensure, and renewal of certification and licensure, including ~~but not limited to~~ the power to adopt or use examination materials and accreditation standards of the Council on Social Work Education or other recognized accrediting agency and the power to establish reasonable standards for continuing social work education; provided that for certificate and license renewal no examination shall be required; provided further, that the Board shall not have the power to withhold approval of study or training courses offered by a college or university having a social work program approved by the Council on Social Work Education.

(h) Subject to the provisions of Chapter 150B of the General Statutes, the Board shall have the power to ~~adopt, amend, or rescind~~ adopt rules ~~and regulations~~ to carry out the purposes of this Chapter, including but not limited to the power to adopt ethical and disciplinary standards.

(i) The Board may order that any records concerning the practice of social work and relevant to a complaint received by the Board or an inquiry or investigation conducted by or on behalf of the Board shall be produced by the custodian of the records to the Board or for inspection and copying by representatives of or counsel to the Board.

"**§ 90B-6.1. Board general provisions.**

The Board shall be subject to the administrative provisions of Chapter 93B of the General Statutes.

"**§ 90B-6.2. Fees.**

(a) The Board shall establish fees not exceeding the following amounts:

(1)	All initial applications	$200.00
(2)	Examination	Cost plus an amount not to exceed $40.00
(3)	Repeated examination or any additional examination	Cost plus an amount not to exceed $40.00
(4)	Renewal applications	200.00
(5)	Late fees for renewal	50.00
(6)	Reinstatement	200.00
(7)	Duplicate license	25.00
(8)	Temporary certificate or license	25.00.

(b) Notwithstanding subdivision (a)(4) of this section, the Board may establish a graduated fee schedule for renewals that is based upon the applicant's level of certification or licensure. The Board may establish fees for the actual cost of duplication services, materials, and returned bank items. All fees derived from services provided by the Board under the provisions of this Chapter shall be nonrefundable. The Board shall maintain accounts of all receipts to the Board.

"**§ 90B-7. Titles and qualifications for ~~certificates.~~ certificates and licenses.**

(a) Each person desiring to obtain a certificate or license from the Board shall make application to the Board upon such forms and in such manner as the Board shall prescribe, together with the required application fee established by the Board.

(b) The Board shall issue a certificate as "Certified Social Worker" to an applicant ~~who.~~ who meets the following qualifications:

(1) Has a ~~bachelor's~~ bachelors degree in a social work program from a college or university having a social work program accredited or admitted to candidacy for accreditation by the Council on Social Work Education for undergraduate ~~curricula or has a bachelor's degree in a subject area related to human services and has~~

~~completed a minimum of 18 semester hours of social work training in a social work program accredited or admitted to candidacy for accreditation by the Council on Social Work Education; and~~ curricula.

(2) Has passed the Board examination for the certification of persons in this classification.

(c) The Board shall issue a certificate as "Certified Master Social Worker" to an applicant ~~who:~~ who meets the following qualifications:

(1) Has a ~~master's~~ masters or ~~doctor's~~ doctoral degree in a social work program from a college or university having a social work program approved by the Council on Social Work ~~Education; and~~ Education.

(2) Has passed the Board examination for the certification of persons in this classification.

(d) The Board shall issue a ~~certificate~~ license as a ~~"Certified~~ "Licensed Clinical Social Worker" to an applicant ~~who:~~ who meets the following qualifications:

(1) Holds or qualifies for a current certificate as a Certified Master Social ~~Worker; and~~ Worker.

(2) Shows to the satisfaction of the Board that he or she has had two years of clinical social work experience with appropriate supervision in the field of specialization in which the applicant will ~~practice; and~~ practice.

(3) Has passed the Board examination for the ~~certification~~ licensure of persons in this classification.

(e) The Board shall issue a certificate as a "Certified Social Work Manager" to an applicant ~~who:~~ who meets the following qualifications:

(1) Holds or qualifies for a current certificate as a Certified Social ~~Worker; and~~ Worker.

(2) Shows to the satisfaction of the Board that he or she has had two years of experience in an administrative setting with appropriate supervision and ~~training; and~~ training.

(3) Has passed the Board examination for the certification of persons in this classification.

(f) The Board may issue a provisional ~~certificate~~ license in clinical social work to a person who has a ~~master's~~ masters or ~~doctor's~~ doctoral degree in a social work program from a college or university having a social work program approved by the Council on Social Work Education and desires to be ~~certified~~ licensed as a clinical social worker. The provisional ~~certificate~~ license may not be issued for a period exceeding two years and the person issued the provisional ~~certificate~~ license must practice under the supervision of a ~~certified~~ licensed clinical social worker or a Board-approved alternate.

"**§ 90B-8. Persons from other jurisdictions.**

(a) The Board may grant a certificate or license without examination or by special examination to any person who, at the time of application, is certified, registered or

licensed as a social worker by a similar board of another country, state, or territory whose certification, registration or licensing standards are substantially equivalent to those required by this Chapter. The applicant shall have passed an examination in the country, state, or territory in which he or she is certified, registered, or licensed that is equivalent to the examination required for the level of certification or licensure sought in this State.

(b) The Board may issue a temporary license to a nonresident clinical social worker who is either certified, registered, or licensed in another jurisdiction whose standards, in the opinion of the Board, at the time of the person's certification, registration, or licensure were substantially equivalent to or higher than the requirements of this Chapter. Nothing in this Chapter shall be construed as prohibiting a nonresident clinical social worker certified, registered, or licensed in another state from rendering professional clinical social work services in this State for a period of not more than five days in any calendar year. All persons granted a temporary clinical social worker license shall comply with the supervision requirements established by the Board.

"**§ 90B-9. Renewal of ~~certificates.~~ certificates and licenses.**

(a) All certificates and licenses shall be effective upon date of issuance by the Board, and shall ~~expire~~ be renewed on or before the second June 30 thereafter.

(b) All certificates and licenses issued hereunder shall be renewed at the times and in the manner provided by this section. At least 45 days prior to expiration of each ~~certificate,~~ certificate or license, the Board shall mail a notice and application for ~~certificate~~ renewal to the ~~person certified for the current certification period.~~ certificate holder or licensee. Prior to the expiration date, the ~~applicant must return the notice~~ application shall be returned properly completed, together with a renewal fee established by the Board pursuant to G.S. 90B-6.2(a)(5) and evidence of completion of the continuing education requirements established by the Board ~~under~~ pursuant to G.S. 90B-6(g), upon receipt of which the Board shall ~~issue to the person to be certified the renewed certificate for the period stated on the certificate.~~ renew the certificate or license. If a certificate or license is not renewed on or before the expiration date, an additional fee shall be charged for late renewal as provided in G.S. 90B-6.2(a)(6).

(c) ~~Any person certified who allows his certificate to lapse for failure to apply for renewal within 45 days after notice shall have his or her certificate automatically suspended, and be subject to a late renewal fee as established pursuant to G.S. 90B-6(f), and if he or she fails to apply for renewal of a certificate within one year after date of such suspension, the certificate shall lapse and may be reissued only upon application as for an original certificate.~~ A certificate or license issued under this Chapter shall be automatically suspended for failure to renew for a period of more than 60 days after the renewal date. The Board may reinstate a certificate or license suspended under this subsection upon payment of a reinstatement fee as provided in G.S. 90B-6.2(a)(7) and may require that the applicant file a new application, furnish new supervisory reports or references or otherwise update his or her credentials, or submit to examination for reinstatement. The Board shall have

exclusive jurisdiction to investigate alleged violations of this Chapter by any person whose certificate or license has been suspended under this subsection and, upon proof of any violation of this Chapter, the Board may take disciplinary action as provided in G.S. 90B-11.

(d) Any person certified or licensed and desiring to retire temporarily from the practice of social work shall send written notice thereof to the Board. Upon receipt of such notice, his or her name shall be placed upon the nonpracticing list and he or she shall not be subject to payment ~~or~~ of renewal ~~fees.~~ fees while temporarily retired. In order to ~~renew certification, application for renewal shall be made in ordinary course with a renewal fee for the current period.~~ reinstate certification or licensure, the person shall apply to the Board by making a request for reinstatement and paying the appropriate fee as provided in G.S. 90B-6.2.

"**§ 90B-10. Exemption from certain requirements.**

(a) Applicants who were engaged in the practice of social work before January 1, 1984, shall be exempt from the academic qualifications required by this act for Certified Social Workers and Certified Social Work Managers and shall be certified upon passing the Board examination and meeting the experience requirements, if any, for certification of persons in that classification.

(b) The following may engage in clinical social work practice without meeting the requirements of G.S. 90B-7(d):

(1) A person who has engaged in clinical social work practice for one year prior to the effective date of this act and who properly applies for and pays the required fees for a certificate as a certified clinical social worker prior to January 1, 1993. Notwithstanding the foregoing provision of this subdivision, any applicant who applied for certification pursuant to this subdivision between December 1, 1993, and January 15, 1994, and who is otherwise eligible for certification under this subdivision but for the January 1, 1993, deadline shall be certified.

(2) A student completing a clinical requirement for graduation while pursuing a course of study in social work in an institution accredited by or in candidacy status with the Council on Social Work Education.

(3) An employee engaged in clinical social work practice exclusively for one of the following employers:

a. **(Effective until January 1, 1999)** The State, a political subdivision of the State, or a local government.

b. A hospital or health care facility licensed pursuant to Article 2 of Chapter 122C of the General Statutes or Articles 5 and 6 of Chapter 131E of the General Statutes.

"**§ 90B-11. Disciplinary procedures.**

(a) The Board may, in accordance with the provisions of Chapter 150B of the General Statutes, ~~refuse to grant or to renew, may suspend, or may revoke the certificate of any person certified under this Chapter on the following grounds:~~ deny,

suspend, or revoke an application, certificate, or license on any of the following grounds:

(1) Conviction of a misdemeanor or the entering of a plea of guilty or nolo contendere to a misdemeanor under this ~~Chapter; or~~ Chapter.

(2) Conviction of a felony or the entering of a plea of guilty or nolo contendere to a felony under the laws of the United States or of any state of the United ~~States; or~~ States.

(3) Gross unprofessional conduct, dishonest practice or incompetence in the practice of social ~~work; or~~ work.

(4) Procuring or attempting to procure a certificate or license by fraud, deceit, or ~~misrepresentation; or~~ misrepresentation.

(5) Any fraudulent or dishonest conduct in social ~~work; or~~ work.

(6) Inability of the person to perform the functions for which he or she is ~~certified,~~ certified or licensed, or substantial impairment of abilities by reason of physical or mental ~~disability; or~~ disability.

(7) Violations of any of the provisions of this Chapter or of rules of the Board.

(b) Upon proof that an applicant, certificate holder, or licensee under this Chapter has engaged in any of the prohibited actions specified in subsection (a) of this section, the Board may, in lieu of denial, suspension, or revocation, take one or more of the following actions:

(1) Issue a reprimand or censure.

(2) Order probation with conditions deemed appropriate by the Board.

(3) Require examination, remediation, or rehabilitation, including care, counseling, or treatment by a professional designated or approved by the Board, the cost of which shall be borne by the applicant, certificate holder, or licensee.

(4) Require supervision for the services provided by the applicant, certificate holder, or licensee by a certified or licensed social worker designated and approved by the Board, the cost of which shall be borne by the applicant, certificate holder, or licensee.

(5) Limit or circumscribe the practice of social work provided by the applicant, certificate holder, or licensee with respect to the extent, nature, or location of the services provided.

(c) The Board may impose conditions of probation or restrictions upon continued practice at the conclusion of a period of suspension or as a requirement for the restoration of a revoked or suspended certificate or license. Instead of or in connection with any disciplinary proceeding or investigation, the Board may enter into a consent order with an applicant, certificate holder, or licensee relative to a discipline, supervision, probation, remediation, rehabilitation, or practice limitation.

(d) In considering whether an applicant, certificate holder, or licensee is mentally or physically capable of practicing social work with reasonable skill and safety, the Board may require an applicant, certificate holder, or licensee to submit to a mental

examination by a licensed clinical social worker or other licensed mental health professional designated by the Board and to a physical examination by a physician or other licensed health professional designated by the Board. The examination may be ordered by the Board before or after charges are presented against the applicant, certificate holder, or licensee and the results of the examination shall be reported directly to the Board and shall be admissible in evidence in a hearing before the Board.

(e) The Board shall provide the opportunity for a hearing under Article 3A of Chapter 150B of the General Statutes to: (i) any person whose certification or licensure was denied or granted subject to restrictions, probation, disciplinary action, remediation, or other conditions or limitations; and (ii) any certificate holder or licensee before revoking or suspending his or her certificate or license or restricting his or her practice or imposing any other disciplinary action or remediation. If the applicant, certificate holder, or licensee waives the opportunity for a hearing, the Board's denial, revocation, suspension, or other action shall be final. No applicant, certificate holder, or licensee shall be entitled to a hearing for failure to pass a qualifying examination.

(f) In any proceeding before the Board, complaint or notice of charges against any applicant, certificate holder, or licensee, and any decision rendered by the Board, the Board may withhold from public disclosure the identity of any client who has not consented to the public disclosure of social work services provided to him or her by the applicant, certificate holder, or licensee. If necessary for the protection and rights of a client and the full presentation of relevant evidence, the Board may close a hearing to the public and receive evidence involving or concerning the delivery of social work services.

(g) Records, papers, and other documents containing information collected and compiled by or on behalf of the Board as a result of an investigation, inquiry, or interview conducted in connection with certification, licensure, or a disciplinary matter shall not be considered public records within the meaning of Chapter 132 of the General Statutes. Any notice or statement of charges, notice of hearing, or decision rendered in connection with a hearing, shall be a public record. Information that identifies a client who has not consented to the public disclosure of services rendered to him or her by a person certified or licensed under this Chapter shall be deleted from the public record. All other records, papers, and documents containing information collected and compiled by or on behalf of the Board shall be public records, but any information that identifies a client who has not consented to the public disclosure of services rendered to him or her shall be deleted.

"**§ 90B-12. Violation a misdemeanor.**

Any person violating any provision of this Chapter is guilty of a Class 2 misdemeanor.

"**§ 90B-13. Injunction.**

As an additional remedy, the Board may proceed in a superior court to enjoin and restrain any person from violating the prohibitions of this Chapter. The Board shall not be required to post bond in connection with such proceeding.

"**§ 90B-14. Third-party reimbursements.**

Nothing in this Chapter shall be construed to authorize or require direct third-party reimbursement to persons certified under this Chapter."

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

HOUSE BILL 1069:
Social Worker Licensure

BILL ANALYSIS

Committee: Senate Finance
Date: June 30, 1999
Version: 2nd edition

Introduced by: Representative Alexander
Summary by: Mary Shuping
Research Assistant

SUMMARY: House Bill 1069 makes the following changes to the Social Worker Certification Act: (1) changes the name of the Board from the "North Carolina Certification Board for Social Work" to the "North Carolina Social Work Certification and Licensure Board"; (2) reclassifies certified clinical social workers to licensed clinical social workers; (3) increases the maximum fee amounts charged by the Board; (4) provides for certification of a social worker from another jurisdiction if the applicant has passed an equivalent exam in that jurisdiction; (5) authorizes the Board to issue a temporary license to a nonresident clinical social worker if the jurisdiction's standards were equivalent or higher than North Carolina's standards; (6) automatically suspends a certificate or license if not renewed for a period of more than 60 days after the renewal date; (7) provides for alternative disciplinary procedures; (8) authorizes the Board to order mental or physical exams to determine whether or not an individual is mentally or physically competent to practice social work without the Board having to petition the court for the exam(s); and, (9) clarifies whether records in a disciplinary proceeding are public documents.

Most of the changes to the law concerning disciplinary proceedings, hearings, and records are based on the Psychology Practice Act.

CURRENT LAW & BILL ANALYSIS:

House Bill 1069 makes the following changes to the fee structure for certified and licensed social workers:

FEE CHANGES

TYPE OF FEE	CURRENT MAXIMUM FEE	PROPOSED MAXIMUM FEE
Initial Application	$50.00	$200.00
Renewal Application	$50.00	$200.00
Note: The Board may establish a graduated fee schedule based upon the applicant's level of certification or licensure.		
Written Exam	Actual cost + $50.00	Actual Cost + $40.00
Late Renewal	$15.00	$50.00
Repeated Exams or any add'l exams	N/A	Actual Cost + $40.00
Reinstatement	N/A	$200.00
Duplicate License	N/A	$25.00
Temporary certificate or license	N/A	$25.00

ANALYSIS OF HB 1069

Definitions. HB 1069 clarifies that the practice of clinical social work and social work includes treatment by whatever means of communication, and clarifies that the practice of social work includes performing services by whatever means of communication.

Production of Records Concerning the Practice of Social Work. The bill adds a new subsection (i) to allow the Board to order the production of records concerning the practice of social work that are relevant to a complaint, inquiry, or investigation.

Fees. This section lists all fees that may be charged by the Board, as outlined above. This section of the bill also:

- Authorizes the Board to establish a graduated fee schedule for renewals that is based upon the applicant's level of certification or licensure. Fees may not exceed the maximum set by statute.
- Authorizes the Board to establish fees for the actual cost of duplication services, materials, and returned bank items.
- Provides that all fees derived from services provided by the Board are nonrefundable and requires the Board to maintain accounts of all receipts.

Qualifications for Certified Social Workers. Current law provides that an applicant is qualified to be a Certified Social Worker if the applicant:

- Has a bachelor's degree in a social work program that is accredited or admitted to candidacy for accreditation by the Council on Social Work Education for undergraduate curricula; ***OR***
- Has a bachelor's degree in a subject area related to human services and has completed a minimum of 18 semester hours of social work training in an accredited social work program.

House Bill 1069 allows only those applicants who have a bachelor's degree in social work from an accredited college or university to become a Certified Social Worker.

Reciprocity. Current law permits the Board to grant a certificate to an applicant who is certified, registered, or licensed as a social worker in another country, state, or territory if the standards under which the person was certified, registered, or licensed are substantially the same as required by NC law.

House Bill 1069 adds the requirement that the applicant must have passed an exam in the country, state, or territory where the applicant is certified, registered, or licensed that is equivalent to the exam required for the level or certification or licensure in NC.

Temporary Licenses. This section of the bill authorizes the Board to issue a temporary license to a nonresident clinical social worker who is certified, registered, or licensed in another jurisdiction provided that the standards for certification, registration, or licensure were substantially the same as or higher than those in NC. However, a nonresident clinical social worker who is certified, registered, or licensed in another state will not be prohibited from rendering professional services in NC for a period of not more than 5 days in a calendar year. Finally, this section ensures that individuals granted a temporary license must comply with the supervision requirements of the Board.

Renewal/Suspension of Certificate or License for Failure to Renew. Current law provides that all certificates and licenses expire on the second June 30 after issuance. This section of the bill automatically suspends a certificate or license for failure to renew for a period of more than 60 days after the renewal date. The Board may reinstate the certificate or license upon payment of the reinstatement fee and may require the applicant to provide further information.

Inactive Status. This section clarifies that an individual who is certified or licensed who temporarily retires from the practice of social work is not required to pay renewal fees while temporarily retired. In order to reinstate a certificate or license, the individual must make a request for reinstatement and pay the reinstatement fee.

Disciplinary Procedures. This section authorizes the Board to deny, suspend, or revoke a certificate or license if an individual enters a plea of guilty or no contest to a misdemeanor or felony. (Currently, the individual must be convicted of the misdemeanor or felony.)

Alternatives to Denying, Suspending, or Revoking a Certificate or License. This section authorizes the Board to take one or more of the following actions if an individual has committed a prohibited act in G.S. 90B-11(a):

1. Issue a reprimand or censure.
2. Order probation with conditions deemed appropriate by the Board.
3. Require examination, remediation, or rehabilitation, including care, counseling, or treatment by a professional with the cost borne by the individual.
4. Require supervision by a certified or licensed social worker with the cost borne by the individual.
5. Limit the practice of social work provided by the individual with respect to the extent, nature, or location of the services provided.

These alternative disciplinary procedures are substantially the same as those in the Psychology Practice Act.

Probation/Restrictions After Suspension. This section authorizes the Board to impose conditions of probation or restrictions on practice after a period of suspension or as a requirement for the restoration of a revoked or suspended certificate or license. It also allows the Board to enter into a consent order with an individual instead of or in connection with a disciplinary proceeding or investigation. The consent order may be relative to a discipline supervision, probation, remediation, rehabilitation, or practice limitation. These provisions are substantially the same as those in the Psychology Practice Act.

Competence to Practice Social Work. This section authorizes the Board to require an applicant, certificate holder, or licensee to submit to a mental or physical examination when the Board is considering whether the individual is mentally or physically capable of practicing social work with reasonable skill or safety. This section does not require the Board to petition the court to order the individual to undergo the examination(s). These provisions are substantially the same as those in the Medical Practice Act.

Opportunity for Hearing. This section requires the Board to provide the opportunity for a hearing to an individual whose certificate or license has been subjected to disciplinary action, or prior to any disciplinary action. It also provides that if an individual waives the opportunity for a hearing, the Board's disciplinary action is final. Finally, there is no entitlement to a hearing for failure to pass an exam. This section is substantially the same as the Psychology Practice Act.

Records. This section allows the Board to withhold the identity of any client who has not consented to public disclosure in Board proceedings against an applicant, certificate holder, or licensee. The Board would also be authorized to close hearings to the public if necessary to protect the rights of a client. Furthermore, documents containing information complied by on or behalf of the Board as a result of an investigation, inquiry, or interview conducted in connection with certification, licensure, or a disciplinary matter are not considered public records. However, notices, statements of charges, notices of hearing, decisions rendered in connection with a hearing, and all other information compiled by or on behalf of the Board, except for information identifying a client who has not consented to public disclosure, are public records. These requirements are substantially the same as those in the Psychology Practice Act.

EFFECTIVE DATE: The act becomes effective July 1, 1999.

Martha Walston, Committee Counsel, Senate Finance Committee, contributed to this summary.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: H.B. 1069 Committee Substitute Social Work Licensure

SHORT TITLE: Social Work Licensure

SPONSOR(S): Rep. Martha Alexander

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
General Fund			* No General Fund Impact *		
Social Work Board	**$120,175**	**84,097**	**384,715**	**204,209**	**414,828**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Certification Board for Social Workers.

EFFECTIVE DATE: July 1, 1999.

BILL SUMMARY: The legislation makes several changes to the fee schedule and clarifies disciplinary procedures for social workers. It reclassifies certified clinical social workers as licensed clinical social workers. It also modifies the existing social work licensure fee schedule, and introduces new fees.

ASSUMPTIONS AND METHODOLOGY: The North Carolina certification program for social workers, and the associated fees, was established in 1982. The fees have not changed since that time. In 1993 certification became mandatory for clinical social workers. Previously certification was voluntary. According to Board members, this change dramatically increased the workload of the Board. In 1996-97 the Board provided 570 clinical social work renewal certifications (CCSW). In the following fiscal year the Board offered 1630 clinical social work renewal certifications. These certifications, as well as all other certifications offered by the board, must be renewed every two years. The board charges the maximum fee of $50.00. Previous renewal revenue for clinical social workers is as follows:

Year	Clinical Social Worker Cert.	Revenue
1996-97	576	28,800
1997-98	1639	81,950

Based on the last four fiscal years, the Board believes 10% is a reasonable growth rate for the number of clinical social workers over the next five fiscal years. The legislation authorizes the

Board to increase the fee to a maximum of $200.00 for this group. However, they anticipate moving gradually to that level. They expect to charge approximately $100.00 for clinical renewals in FY 1999-00, and $125.00 in FY 00-01. No Board decision has been made about fees in the out years. Assuming the board charges $100.00 in FY 1999-00, $125.00 in FY 2000-01, and the maximum of $200 in future years, the expected revenue from clinical renewals is as follows:

Year	Clinical Social Worker Cert.	Revenue @ $50	New Revenue Levels	Change
1999-00	1803	90,145	180,290	90,145
2000-01	697	34,848	87,120	52,272
2001-02	1983	99,160	396,638	297,479
2002-03	767	38,333	153,331	114,998
2003-04	2182	109,075	436,302	327,226

(Note: These estimates, and the historical figures, assume both the clinical and provisional clinical social work certifications are raised to the levels indicated above).

The Board also certifies several other related types of social work professionals like social work managers and clinical workers with Masters' degrees. The bill also authorizes an increase in these fees. These certifications must also be renewed every two years. The board currently charges approximately $50.00 for each of these certifications. The Board anticipates increasing these fees to between $55 and $100 in FY 1999-00, and between $60 and $125 in FY 2000-01. In 1996-97 there were 177 individuals in these categories combined. In 1997-98 that number increased to 310. The board anticipates there will be 245 individuals in these categories in FY 1999-00, and 243 in FY 2000-01. The number of each type of certificate, the anticipated fee, and the associated revenue increase, is as follows:

	FY 1999-00				FY 2000-01			
	Certif.	New Fee	Revenue	**Increase**	Certif.	New Fee	Revenue	**Increase**
Social Work Managers	28	100	$ 2,800	**1,400**	23	125	$ 2,875	**1,725**
Master Social Work	83	65	$ 5,395	**1,245**	79	75	$ 5,925	**1,975**
Social Worker	134	55	$ 7,370	**670**	141	60	$ 8,460	**1,410**
TOTAL	245	220	15565	**3,315**	243	260	17260	5,110

Fiscal Research assumes these numbers will increase by 10% in the out years. (Because of the cyclical nature of certification the increase is staggered). The five-year revenue estimate for this portion of the bill is as follows:

	Revenue Increase
FY 1999-00	3,315
FY 2000-01	5,110
FY 2001-02	3,647
FY 2002-03	5,621
FY 2003-04	4,011

The bill also authorizes a fee increase for initial applications. Currently the board charges $50.00. Under the legislation the board can increase the fee to as much as $200.00. The Board believes they will charge $100 for the first two years. Last year the board drew approximately

$28,125 from initial application fees. If the fee were increased to $100, the Board would see an additional $28,125 in annual revenue. If the board charges the maximum in the out years they would see an increase of approximately $85,000 annually.

The legislation also lowers the administrative fee associated with the national written exam. Under current law the board charges $50.00 plus the actual cost of the test instrument. The bill lowers that amount to $40.00, plus test cost. The Board believes this reduction more accurately reflects the actual administrative expense. In 1997-98, 241 individuals paid an examination fee. No significant change is expected in the number of tests given. Therefore, the board will loose approximately $2,410 as a result of this provision.

The bill establishes a $25.00 fee for temporary and duplicate licenses and certificates, and a $200.00 fee for reinstatement. The Board expects the revenue from these changes to be insignificant, but feels such provisions are necessary to clarify the law. This fiscal note assumes $1,000 in revenue from these provisions.

According to Board members, the revenue from increased fees will be used to establish an office with a professionally trained director and support staff. They note that full time staff is needed to provide professional training and support for social workers and appropriate record keeping. They believe the renewal fees in the bill are in line with those charged by similar professional boards in North Carolina.

The total net change in revenue as a result of the bill is as follows:

	1999-00	2000-01	2001-02*	2002-03*	2003-04*
CCSW Renewals	90,145	52,272	297,479	114,998	327,226
Other Renewals	3,315	5,110	3,647	5,621	4,011
Initial Applications	28,125	28,125	85,000	85,000	85,000
Exams	(2,410)	(2,410)	(2,410)	(2,410)	(2,410)
Other Provisions	1,000	1,000	1,000	1,000	1,000
TOTAL	**120,175**	**84,097**	**384,715**	**204,209**	**414,828**

* Because the Board has yet to determine the fee levels for FY 2001-02 and later years, the note assumes they charge the maximum allowed in the out years.

NOTE: While certification is required for all clinical social workers, this requirement was temporarily waived for government employees. The waiver expired on January 1, 1999. As a result, some of the renewal costs may be transferred to county governments that pay for their employees' certification. However, Board representatives believe this number will be small. Neither the Board nor Fiscal Research is aware of any state payment for employee certification. If the state does not pay for its employees' certification renewals, there is no general fund impact.

FISCAL RESEARCH DIVISION 733-4910

PREPARED BY: Linda Struyk Millsaps

APPROVED BY: Tom Covington

DATE: Thursday, May 27, 1999

VISITOR REGISTRATION SHEET

SENATE FINANCE — THURSDAY, JULY 1, 1999

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Gene Ainsworth	RJ Reynolds
Andy Sanders	WCSR
Charles Collins	DOR
John Dail	"
Patti Seawell	"
Keith Jones	N.A.
Garrett Pierce	ZDA, PA

VISITOR REGISTRATION SHEET

SENATE FINANCE THURSDAY, JULY 1, 1999

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS

VISITOR REGISTRATION SHEET

SENATE FINANCE — THURSDAY, JULY 1, 1999

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sabra Faires	Dept of Revenue
Ruth Sappie	NCDOT
Marjorie Howe	NC Soc for Clinical Soc. Work
Jane Black Moorman	N.C. Certification Board for Social Work
Myma Miller	NASW-NC
[illegible]	DMV
Mildred Bryant	DMV
Carol Howard	DMV
Barbara Cherry	ESC
Tom Whitaker	ESC
Becky Stuart	PPAB

VISITOR REGISTRATION SHEET

SENATE FINANCE — THURSDAY, JULY 1, 1999

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
BRUCE THOMPSON	PARKER, POE, ADAMS & BERNSTEIN
Jack Gwaltney	PPAB
George Tracy	DMV Enforcement
Gordon Zeigler	DMV Enforcement
VL McBride	NCSA
Roz Sawitt	NCCCC
Pat Helms	NCBIC
Anne Dixon	NCJCDC
Jamie Legg	ESC
Sandy Sands	
J Bundy	Bundy and Assoc.

REVISED COMMITTEE REPORT

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Thursday, July 01, 1999

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

FAVORABLE

H.B.(CS #1)764 Raise Mooresville Room Tax.
Sequential Referral: None
Recommended Referral: None

H.B. **855** Kings Mountain ETJ.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1)**1069** ✓ Social Worker Licensure.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1)**1090** I.A.F.F. Registration Plate.
Sequential Referral: None
Recommended Referral: None

H.B. **1237** ✓ Landscape Architects Exam Fee.
Sequential Referral: None
Recommended Referral: None

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

S.B. **1076** Reform Local Tax on Rental Cars.
Draft Number: PCS3850
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

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

H.B.(CS #1)**278** ✓ TANF Separation Noncharged/AB.

Draft Number:	PCS1302
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

H.B. **738** Greenville Satellite Annexations.

Draft Number:	PCSA159
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 8

Committee Clerk Comment:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Monday, July 05, 1999

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2)74 Phase II Funds/Immunity/Tax Exempt.

Draft Number:	PCS1310
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment: HB 74

AGENDA

SENATE FINANCE MEETING

TUESDAY, JULY 6, 1999

ROOM 544 LOB – 1:30 AM

MEETING CALLED TO ORDER – SENATOR HOYLE

INTRODUCTION OF PAGES

BILLS TO BE HEARD:

SB 968-Waiver of Competitive Bidding Modified-Sen. Larry Shaw
SB 876-Clarify Natural Gas Funds-Sen Kerr

HB 293 – Proprietary Sch./Civil Penalties/AB. – Rep. Bridgeman
HB 937-Regional Transportation Authority Amendment-Rep. Gray
HB 1472-Simplify Renewable Energy Credits-Rep. Hackney
HB 1473-Renewable Energy Manufacturing-Rep. Hackney

MEETING ADJOURNED

SENATE FINANCE COMMITTEE

TUESDAY, JULY 6, 1999

1:30 AM – ROOM 544

The Senate Finance Committee met on Tuesday, July 6, 1999 at 1:30 PM in Room 544 with Senator Hoyle presiding. There were 25 committee members present. George Jernigan from State Road, North Carolina, sponsored by Senator Foxx and Kim Stacy from Gastonia, North Carolina, sponsored by Senator Hoyle were introduced as the pages for the meeting.

HB 1472 – Simplify Renewable Energy Credits

Representative Hackney was recognized to explain this bill and at the conclusion of his explanation and questions from members of the committee, Senator Wellons moved for a "Favorable Report", motion passed. Mr. Richard Harkrader, Chairman of the N. C. Solar Energy Association, spoke on the Bill. Copy of Bill and Supporting documents included in the minutes.

HB 1473 – Renewable Energy Manufacturing

Representative Hackney was recognized to explain this bill and at the conclusion of the explanation, Senator Cochrane sent forth an amendment to the bill and moved that amendment be adopted, motion passed Dave Crotts of Fiscal Staff explained the amendment. Amendment was adopted. Senator Phillips moved to give the bill a "Favorable Report as amended and be rolled into a committee substitute", motion passed. Copy of Bill and supporting documents are included in the minutes. **NOTE: Bill not reported out of committee at the direction of the Co-chairs.**

HB 293 – Proprietary Sch./Civil Penalties/AB

Representative Bridgeman was recognized to explain this bill. Ms. Clay Hines with the N. C. Community College System spoke on the Bill. At the conclusion of the discussion on the bill, Senator Foxx moved to give the Bill a "Favorable Report", motion passed.

HB 937 – Regional Transportation Authority Amendment

Senator Hagan was recognized to explain this bill for Representative Gray. At the conclusion of her explanation, Senator Kerr sent forth an amendment to the Bill and after a discussion on the amendment, moved for adoption, motion passed. Mayor Becky Smothers of High Point, North Carolina spoke on the Bill. Senator Gulley moved to give the Bill a "Favorable Report as amended and be rolled into a Committee Substitute", motion passed. Copy of Bill and supporting documents are included in the minutes.,

SB 876 – Clarify Natural Gas Funds

Senator Kerr was recognized to explain the Bill and he moved for the adoption of a proposed committee substitute for the purpose of explanation, motion passed. At the conclusion of his explanation of committee substitute, Senator Soles moved for a "Favorable Report", motion passed

Meeting adjourned.

David W. Hoyle, Co-Chair

John H. Kerr, III Co-Chair

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

Visitors' Sign Up Sheet is Attachment #1
Committee Report dated 7-6-99 is Attachment #2
Committee Report dated 7-7-99 is Attachment #3

NOTE: SB 968 – Waiver of Competitive Bidding Modified was not heard at the request of the sponsor, Senator Larry Shaw.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 1472
Committee Substitute Favorable 6/9/99

Short Title: Simplify Renewable Energy Credits. (Public)

Sponsors:

Referred to:

May 13, 1999

A BILL TO BE ENTITLED

AN ACT TO SIMPLIFY AND MODERNIZE TAX CREDITS FOR INVESTING IN RENEWABLE ENERGY SOURCES.

The General Assembly of North Carolina enacts:

Section 1. The following sections of Chapter 105 of the General Statutes are repealed:

§ 105-130.23.	Credit against corporate income tax for solar energy equipment in residential buildings.
§ 105-151.2.	Credit for solar energy equipment.
§ 105-130.26.	Credit for conversion of industrial boiler to wood fuel.
§ 105-151.5.	Credit for conversion of industrial boiler to wood fuel.
§ 105-130.27A.	Credit for construction of a peat facility.
§ 105-130.29.	Credit for construction of an olivine brick facility.
§ 105-130.30.	Credit for construction of a methane gas facility.
§ 105-151.10.	Credit for construction of a methane gas facility.
§ 105-130.31.	Credit for installation of a wind energy device.
§ 105-151.9.	Credit for installation of a wind energy device.
§ 105-130.32.	Credit for installation of solar energy equipment for the production of heat or electricity in certain processes.
§ 105-151.8.	Credit for installation of solar energy equipment for the production of heat or electricity in certain processes.
§ 105-130.33.	Credit against corporate income tax for installation of a hydroelectric generator.

§ 105-151.7. Credit for installation of a hydroelectric generator.

Section 2. Article 3B of Chapter 105 of the General Statutes reads as rewritten:

"ARTICLE 3B.

"Business ~~Tax Credit.~~ and Energy Tax Credits.

"§ 105-129.15. Definitions.

The following definitions apply in this Article:

(1) Business property. -- Tangible personal property that is used by the taxpayer in connection with a business or for the production of income and is capitalized by the taxpayer for tax purposes under the Code. The term does not include, however, a luxury passenger automobile taxable under section 4001 of the Code or a watercraft used principally for entertainment and pleasure outings for which no admission is charged.

(2) Cost. -- In the case of property owned by the taxpayer, cost is determined pursuant to regulations adopted under section 1012 of the Code, subject to the limitation on cost provided in section 179 of the Code. In the case of property the taxpayer leases from another, cost is value as determined pursuant to G.S. 105-130.4(j)(2).

~~(3) Purchase. -- Defined in section 179 of the Code.~~

(3) Hydroelectric generator. -- A machine that produces electricity by water power or by the friction of water or steam.

(4) Purchase. -- Defined in section 179 of the Code.

(5) Renewable biomass resources. -- Organic matter produced by terrestrial and aquatic plants and animals, such as standing vegetation, aquatic crops, forestry and agricultural residues, landfill wastes, and animal wastes.

(6) Renewable energy property. -- Any of the following machinery and equipment or real property:

a. Biomass equipment that uses renewable biomass resources for biofuel production of ethanol, methanol, and biodiesel; anaerobic biogas production of methane utilizing agricultural and animal waste or garbage; or commercial thermal or electrical generation from renewable energy crops or wood waste materials. The term also includes related devices for converting, conditioning, and storing the liquid fuels, gas, and electricity produced with biomass equipment.

b. Hydroelectric generators located at existing dams or in free-flowing waterways, and related devices for water supply and control, and converting, conditioning, and storing the electricity generated.

c. Solar energy equipment that uses solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, daylighting, generating electricity, distillation, desalination, detoxification, or the production of industrial or commercial process heat. The term also includes related devices necessary for collecting, storing, exchanging, conditioning, or converting solar energy to other useful forms of energy.

d. Wind equipment required to capture and convert wind energy into electricity or mechanical power, and related devices for converting, conditioning, and storing the electricity produced.

"§ 105-129.16. Credit for investing in business property.

(a) Credit. -- If a taxpayer that has purchased or leased business property places it in service in this State during the taxable year, the taxpayer is allowed a credit equal to four and one-half percent (4.5%) of the cost of the property. The maximum credit allowed a taxpayer for property placed in service during a taxable year is four thousand five hundred dollars ($4,500). The entire credit may not be taken for the taxable year in which the property is placed in service but must be taken in five equal installments beginning with the taxable year in which the property is placed in service.

(b) Expiration. -- If, in one of the five years in which the installment of a credit accrues, the business property with respect to which the credit was claimed is disposed of, taken out of service, or moved out of State, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.17.

(c) No Double Credit. -- A taxpayer that claims the credit allowed under Article 3A of this Chapter with respect to business property may not take the credit allowed in this section with respect to the same property. A taxpayer may not take the credit allowed in this section for business property the taxpayer leases from another unless the taxpayer obtains the lessor's written certification that the lessor will not capitalize the property for tax purposes under the Code and the lessor will not claim the credit allowed in this section with respect to the property.

"§ 105-129.16A. Credit for investing in renewable energy property.

(a) Credit. -- If a taxpayer that has constructed, purchased, or leased renewable energy property places it in service in this State during the taxable year, the taxpayer is allowed a credit equal to thirty-five percent (35%) of the cost of the property. In the case of renewable energy property that serves a single-family dwelling, the credit must be taken for the taxable year in which the property is placed in service. For all other renewable energy property, the entire credit may not be taken for the taxable year in which the property is placed in service but must be taken in five equal installments beginning with the taxable year in which the property is placed in service.

(b) Expiration. -- If, in one of the years in which the installment of a credit accrues, the renewable energy property with respect to which the credit was claimed is disposed of, taken out of service, or moved out of State, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.17. No credit is allowed under this section to the extent the cost of the renewable energy property was provided by public funds.

(c) Ceilings. -- The credit allowed by this section may not exceed the applicable ceilings provided in this subsection.

(1) Nonresidential Property. -- A ceiling of two hundred fifty thousand dollars ($250,000) per installation applies to renewable energy property placed in service for any purpose other than residential.

(2) Residential Property. -- The following ceilings apply to renewable energy property placed in service for residential purposes:

a. One thousand four hundred dollars ($1,400) per dwelling unit for solar energy equipment for domestic water heating.

b. Three thousand five hundred dollars ($3,500) per dwelling unit for solar energy equipment for active space heating, combined active space and domestic hot water systems, and passive space heating.

c. Ten thousand five hundred dollars ($10,500) per installation for any other renewable energy property for residential purposes.

(d) No Double Credit. -- A taxpayer that claims any other credit allowed under this Chapter with respect to renewable energy property may not take the credit allowed in this section with respect to the same property. A taxpayer may not take the credit allowed in this section for renewable energy property the taxpayer leases from another unless the taxpayer obtains the lessor's written certification that the lessor will not claim a credit under this Chapter with respect to the property.

"**§ 105-129.17. Tax election; cap.**

(a) Tax Election. -- The ~~credit~~ credits allowed in this Article ~~is~~ are allowed against the franchise tax levied in Article 3 of this Chapter or the income taxes levied in Article 4 of this Chapter. The taxpayer must elect the tax against which the credit will be claimed when filing the return on which the first installment of ~~the~~ a credit is claimed. This election is binding. Any carryforwards of the credit must be claimed against the same tax.

(b) Cap. -- ~~The~~ A credit allowed in this Article may not exceed fifty percent (50%) of the tax against which it is claimed for the taxable year, reduced by the sum of all other credits allowed against that tax, except tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of credit, including carryforwards, claimed by the taxpayer under this Article against each tax for the taxable year. Any unused portion of the credit may be carried forward for the succeeding five years.

"**§ 105-129.18. Substantiation.**

To claim ~~the~~ a credit allowed by this Article, the taxpayer must provide any information required by the Secretary of Revenue. Every taxpayer claiming a credit under this Article must maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving eligibility for ~~the~~ a credit and the amount of the credit rests upon the taxpayer, and no credit may be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection.

"**§ 105-129.19. Reports.**

The Department of Revenue shall report to the Legislative Research Commission and to the Fiscal Research Division of the General Assembly by May 1 of each year the following information for the 12-month period ending the preceding April 1:

(1) The number of taxpayers that claimed the ~~credit~~ credits allowed in this Article.

(2) The cost of business property and renewable energy property with respect to which credits were claimed.

(3) The total cost to the General Fund of the credits claimed."

Section 3. This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under a statute repealed by this act before the effective date of its repeal, nor does it affect the right to any refund or credit of a tax that accrued under the repealed statute before the effective date of its repeal.

Section 4. This act is effective for taxable years beginning on or after January 1, 2000.

HOUSE BILL 1472:
Simplify Renewable Energy Credits

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Rep. Hackney
Date:	July 2, 1999	**Summary by:**	Martha K. Walston
Version:	2nd Edition		Committee Counsel

SUMMARY: ***House Bill 1472 repeals 8 corporate and individual income energy tax credits and replaces them with a tax credit for investing in renewable energy property. The credit is equal to 35% of the cost of the property. In the case of renewable energy property that serves a single-family dwelling, the credit must be taken for the taxable year in which the property is placed in service. For all other renewable energy property, the credit must be taken in five equal installments, beginning with the taxable year in which the property is placed in service. The credit has different caps, depending on the type of property. The bill becomes effective for taxable years beginning on or after January 1, 2000. The current version of the bill was given a favorable report in House Finance and deletes the whereas language in the original bill.***

CURRENT LAW: The General Assembly enacted several individual and corporate income tax credits in the 1980s to encourage the use of energy saving devices:

- Solar energy equipment.
- Conversion of industrial boilers to wood fuel.
- Peat facility.
- Olivine brick facility.
- Methane gas facility.
- Wind energy device.
- Solar energy equipment for the production of heat or electricity.
- Hydroelectric generator.

Of these credits, there is no evidence that the ones for peat, wind energy, olivine bricks, and methane have ever been used. The amount of the credit, the credit ceiling, and the credit carry-forward differ for each credit. (See the attached chart)

BILL ANALYSIS: House Bill 1472 repeals the 8 energy tax credits listed above and replaces them with an energy tax credit that may be claimed against the franchise tax or the individual or corporate income tax. The bill provides a tax credit for investing in renewable energy property that the taxpayer places in service in this State during the taxable year. Renewable energy property is defined as any of the following machinery and equipment or real property:

- Biomass equipment that uses renewable biomass resources for biofuel production of ethanol, methanol, and biodiesel. Renewable biomass resources are organic matter produced by terrestrial and aquatic plants and animals, such as standing vegetation, forestry and agricultural residues, landfill wastes, and animal wastes.
- Hydroelectric generators.
- Solar energy equipment.
- Wind equipment.

The amount of the credit is 35% of the cost of the property placed in service. In the case of renewable energy property that serves a single-family dwelling, the credit must be taken for the taxable year in which the property is placed in service. For all other renewable energy property, the credit must be taken in five equal installments, beginning with the taxable year in which the property is placed in service. The credit may not exceed the following amounts:

Type of Property	Ceiling Amount
Nonresidential Property	$250,000 per installation
Residential Property – Solar energy equipment for domestic water heating	$1,400 per dwelling unit
Residential Property – Solar energy equipment for active space heating, combined active space and domestic hot water systems, and passive space heating	$3,500 per dwelling unit
Residential Property – All other renewable energy property for residential purposes	$10,000 per installation

The credit is patterned after the business tax credit. Like the business tax credit, the energy tax credit created in this bill has the following limitations and conditions:

- The energy tax credit may not exceed 50% of the tax against which it is claimed for the taxable year. Any unused portion of the credit may be carried forward for the succeeding five years.
- A taxpayer that claims any other credit allowed with respect to renewable energy property may not take this energy tax credit with respect to the same property.
- A taxpayer may not take this energy tax credit if the taxpayer leases the property from another unless the taxpayer obtains the lessor's written certification that the lessor will not claim a credit with respect to this property.
- The Department of Revenue must report each year on the number of taxpayers claiming the credits, the cost of the property for which the credits were claimed, and the total cost to the General Fund of the credits claimed.
- The Article allowing the business tax credit and, consequently the energy tax credit, is repealed effective January 1, 2002.

Cindy Avrette, counsel to the House Finance Committee, contributed substantially to this summary.

Renewable Energy Credits Replaced in House Bill 1472

Citation	Short Title	Percent	Ceiling	Notes
§ 105-130.23.	Credit against corporate income tax for solar energy equipment in residential buildings.	40%	$1,500 per unit	Five-year carryforward
§ 105-151.2.	Credit for solar energy equipment.	40%	$1,500 per unit	Five-year carryforward
§ 105-130.26.	Credit for conversion of industrial boiler to wood fuel.	15%	None	Five-year carryforward
§ 105-151.5.	Credit for conversion of industrial boiler to wood fuel.	15%	None	Five-year carryforward
§ 105-130.27A.	Credit for construction of a peat facility.	20%	None	Five-year carryforward
§ 105-130.29.	Credit for construction of an olivine brick facility.	20%	None	Five-year carryforward; not replaced in bill
§ 105-130.30.	Credit for construction of a methane gas facility.	10%	$2,500 per installation	No carryforward
§ 105-151.10.	Credit for construction of a methane gas facility.	10%	$2,500 per installation	No carryforward
§ 105-130.31.	Credit for installation of a wind energy device.	10%	$1,000 per installation	No carryforward
§ 105-151.9.	Credit for installation of a wind energy device.	10%	$1,000 per installation	No carryforward
§ 105-130.32.	Credit for installation of solar energy equipment for the production of heat or electricity in certain processes.	35%	$25,000 per installation	No carryforward
§ 105-151.8.	Credit for installation of solar energy equipment for the production of heat or electricity in certain processes.	35%	$25,000 per installation	No carryforward
§ 105-130.33.	Credit against corporate income tax for	10%	$5,000 per	No carryforward

Citation	Short Title	Percent	Ceiling	Notes
	installation of a hydroelectric generator.		installation	
§ 105-151.7.	Credit for installation of a hydroelectric generator.	10%	$5,000 per installation	No carryforward

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1472 (First Edition)

SHORT TITLE: Simplify Renewable Energy Credits

SPONSOR(S): Representatives Hackney, Luebke, and McComas

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
General Fund	see **ASSUMPTIONS AND METHODOLOGY**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue

EFFECTIVE DATE: This act is effective for taxable years beginning on or after January 1, 2000.

BILL SUMMARY:
The bill repeals a number of energy related corporate and individual income tax credits and creates a new income tax credit for investing in renewable energy property. The credit is equal to 35% of the cost of the property and must be taken over 5 years in equal installments (one year if residential). The credit has a maximum of $250,000 for nonresidential and $10,500 for residential. The credit cannot be taken if any other renewable energy credit is taken on the project.

BACKGROUND:

The following credits are repealed by this act:

Tax Credit for	Eligible Expenditures	Amount %/ Maximum	Type*	Notes
Solar Heating, Cooling, and Hot Water Systems, or Electricity 105-130.23 105-151.2	Material and installation Costs.	40%	I	Covers active and passive solar systems.
		$1,500	C	Full credit is given to any non-structural items used primarily to collect, store, transfer, or control solar energy. Five year carry forward.

*Type refers to (C) – Corporate income tax credit or (I) – Individual income tax credit

Tax Credit for	Eligible Expenditures	Amount %/ Maximum	Type*	Notes
Peat Processing Facility 105-130.27A	Installation and equipment costs to construct peat processing facility.	20% none	C	Peat, partially carbonized vegetable matter, is found in many eastern NC coastal counties. Five year carry forward.
Olivine Thermal Storage Brick Facility 105-130.29	Installation and equipment Costs of construction of a manufacturing plant to produce olivine thermal storage brick	20% none	C	Olivine is a mineral found in North Carolina. Ceramics and bricks made from olivine hold heat unusually well. Five year carry forward.
Methane Gas Facility 105-130.30 105-151.10	Installation and equipment costs of construction of a facility to produce methane gas from renewable Biomass resources.	10% $2,500	C,I	Methane gas can be produced from animal waste and burned as a fuel to produce heat. No carry forward.
Hydroelectric Generator 150-130.33 150-151.7	Installation and equipment costs of a hydroelectric generator of at least 3 KW capacity.	10% $5,000	C,I	Credit covers dams built at existing dams or free-flowing streams. Eligible installation costs include spillway and other site construction necessary to accommodate the hydroelectric generator. No carry forward.
Wind Energy Device 150-130.31 150-151.9	Installation and equipment costs of a wind powered device for the production of electricity.	10% $1,000	C,I	Must own or control the site at the time the devise is installed to claim the credit. No carry forward.
Solar Industrial Process Heat 105-130.32 105-151.8	Installation and equipment costs for solar systems used in a manufacturing process.	35% $25,000	C,I	A manufacturing process is one that produces a product. Service industries such as laundromats, hotels, and restaurants are likely candidates for this credit.
Wood Boilers 105-130.26 105-151.5	Installation and equipment costs of conversion of oil or gas fired industrial boilers to wood use.	15% none	C,I	Credit does not cover the installation of new boiler systems. Only conversions are eligible. Five year carry forward.

*Type refers to (C) – Corporate income tax credit or (I) – Individual income tax credit

ASSUMPTIONS AND METHODOLOGY:

The elimination of the credits for peat, wind energy, olivine bricks, and methane will have no fiscal impact on the General Fund. Based on Department of Revenue data from the 1980's and on interviews with the Energy Division in the Department of Commerce, the tax credits for peat, wind energy, olivine bricks, and methane have never been used. The Department of Revenue reported zero use of these credits from 1981 to 1987. (Unfortunately, the Department of Revenue has not tracked these energy credits since 1987.) The U.S. Department of Energy (DOE) reported in 1995 that no electricity was purchased by North Carolina utilities from nonutility facilities using geothermal, wind, solar, or non-wood biomass sources. DOE did report electricity purchases from conventional hydroelectric, wood/wood waste, and municipal waste facilities.

The fiscal impact for the new renewable energy tax credit cannot be estimated. The energy credits that have been most commonly used in North Carolina are for solar energy and for conversion of industrial boilers to wood fuel. Hydroelectric power is prevalent in the state, but it is not known whether these companies have taken the existing state tax credit for hydroelectric generators. The North Carolina Solar Energy Association estimates that 50 to 100 residential solar tax credits are taken each year, but the Department of Revenue has no data to confirm this estimate. Solar advocates believe the number of solar credits will increase due to the Million Solar Roofs Initiative that DOE began in 1997 to install a million solar energy systems on one million U.S. buildings by the year 2010. However, it is uncertain how effective this initiative will be since it did not come with federal tax credits that previously accompanied energy legislation in the late 1970's and early 1980's. North Carolina taxpayers used $224,004 in tax credits solar hot water heating in FY 1982-83 when a federal tax credit was available. After the federal tax credit ended in 1985, no taxpayer applied for a state residential solar credit in FY 1987-88. At a minimum, if the current trend of 50 to 100 residential solar projects each year continues, the cost of the program could increase approximately $100,000 to $200,000 because the maximum credit amount per dwelling increases from $1500 to $3500 under this bill.

It is also uncertain whether industrial and nonresidential users will take advantage of the new energy tax credit given that the price per kilowatt hour of electricity produced by alternative energy sources far exceeds the price of electricity produced by conventional sources. In a July 1998 report to the Legislative Study Commission on the Future of Electric Service in North Carolina, the Research Triangle Institute reported the average price per kilowatt hour in North Carolina for commercial customers was 6.45 cents and for industrial customers was 4.79 cents. On the other hand, DOE reported in "Renewable Energy 1998:Issues and Trends" that in 1995 U.S. electric utilities paid the following prices for electricity generated by alternative sources:

Solar	15.80 cents per kilowatt hour
Biomass other than wood	12.31 cents per kilowatt hour
Geothermal	11.77 cents per kilowatt hour
Wind	11.64 cents per kilowatt hour
Wood/ Wood Waste	9.67 cents per kilowatt hour

In addition to price considerations, some companies may have less corporate income tax liability against which to take a tax credit. The North Carolina corporate income tax rate has been reduced from 7.75% to 6.9 % in the last four years. In addition, many companies have reduced their tax liability by taking advantage of income tax credits provided by the William S. Lee Quality Jobs and Business Expansion Act.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic

APPROVED BY: Tom Covington

DATE: Monday, June 07, 1999

NORTH CAROLINA SOLAR ENERGY ASSOCIATION

contact : Richard Harkrader, Chair 919-489-1656

June 23, 1999

Information Sheet on

H 1472 - An act to Simplify and Modernize Tax Credits for Investing in Renewable Energy Sources

Renewable energy support is popular in NC and in the NC Legislature.

The October 1998 NC Poll done by the UNC School of Journalism shows overwhelming support and willingness to pay for clean, renewable energy. H 1472 passed the North Carolina House 110 - 0 and is now before the Senate for consideration.

Why is H 1472 necessary?

H 1472 replaces 14 existing, outdated renewable energy tax credit laws and reduces them to an easily understood and administered revision of existing Statute 105-129, the Business Tax Credit. The 14 original laws, enacted in the 1980's and early 1990's, no longer reflect either current costs or existing technologies (such as newer technologies for high temperature solar which is being developed in North Carolina or photovoltaic - PV- electricity). H 1472 will eliminate existing discrimination by using the same percentage credit for all technologies while providing appropriate credit limits according to each technology's cost.

Why are renewable tax credits necessary?

The renewable energy technologies - biomass, small hydro, solar and wind - are North Carolina's only indigenous energy resources. Developing these renewable energy resources creates benefits of a cleaner, healthier environment and will create high quality jobs and businesses in North Carolina. Renewable energy has low or no fuel cost, very low or no emissions and often high up front investment costs. For the purchaser, there is a trade off of high initial cost for low or no future fuel cost and clean energy. To get private investments to capture the benefits of these technologies, North Carolina needs to help reduce the initial cost. Competing sources of energy, particularly nuclear and fossil fuels, enjoy numerous government subsidies from extensive R&D funding, accelerated depreciation, depletion allowances and the passing on of pollution costs to individuals and the general public.

How much will it cost?

The cost of the existing renewable energy tax credits has not been tracked by the Department of Revenue. The North Carolina Solar Energy Association believes that only credits for the installation of residential solar hot water and the construction of passive solar buildings have been used in recent years. The commercial and industrial credit has rarely, if ever, been used to our knowledge. Combining fairness to the North Carolina Treasury and increasing renewable energy use, H 1472 proposes to lower some existing credits (residential solar) and raise others (biomass, hydro and wind) and give some new technologies, such as photovoltaic electricity (PV) and animal waste digesters, an incentive. New limits are included such as a 5 year installment and a 50% tax reduction limit on the commercial / industrial credit. (See estimate of the Finance Committee Staff.)

Who will benefit from revised renewable energy tax credits?

1) The public and the environment from clean energy production and increased energy efficiency. Smog, and acid rain causing emissions are mostly eliminated by renewables.

2) Tax payers will get an incentive for installing clean, renewable energy equipment.

3) Non profit organizations would gain incentives not currently available to them.

4) North Carolina electrical and plumbing contractors are entering a new line of business, the installation and maintenance of renewable energy equipment. New high tech industries will be created or recruited to North Carolina to satisfy the demand for equipment .

5) Because of the North Carolina Solar Center and the North Carolina Solar Energy Association, North Carolina is already one of handful of states leading in solar energy. This legislation will extend our leadership position to include all renewable energy technologies.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 1473
Committee Substitute Favorable 6/15/99

Short Title: Renewable Energy Mfr Credit. (Public)

Sponsors:

Referred to:

May 13, 1999

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE INCOME TAX CREDIT FOR MANUFACTURERS OF CERTAIN RENEWABLE ENERGY EQUIPMENT AND TO SUNSET THE CREDIT FOR COSTS INCURRED DURING TAXABLE YEARS BEGINNING ON OR AFTER JANUARY 1, 2002.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-130.28 reads as rewritten:

"**§ 105-130.28. Credit against corporate income tax for construction of a ~~photovoltaic~~ renewable energy equipment facility.**

(a) ~~Any~~ Credit. -- A corporation that constructs in North Carolina a facility for the ~~production of photovoltaic~~ manufacture of renewable energy equipment is allowed a credit against the tax imposed by this Part equal to twenty-five percent (25%) of the installation and equipment costs of construction paid during the taxable year. The entire credit may not be taken for the taxable year in which the costs are paid but must be taken in five equal installments beginning with the taxable year in which the costs are paid.

No credit is allowed, however, to the extent that any of the costs of the equipment were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the facility at the time of construction. ~~The credit allowed by this section may not exceed the amount of the tax imposed by this Part for the taxable year reduced by the sum of all credits allowable, except payments of tax made by or on behalf of the taxpayer.~~

(b) ~~As used in this section, "photovoltaic equipment" means those products designed, manufactured, and produced to convert sunlight directly into electricity.~~ Definitions. -- The following definitions apply in this section:

(1) Biomass equipment. -- Products designed to use renewable biomass resources for biofuel production of ethanol, methanol, and biodiesel; anaerobic biogas production of methane utilizing agricultural and animal waste or garbage; or commercial thermal or electrical generation from renewable energy crops or wood waste materials. The term also includes related devices for converting, conditioning, and storing the liquid fuels, gas, and electricity produced with biomass equipment.

(2) Renewable biomass resources. -- Organic matter produced by terrestrial and aquatic plants and animals, such as standing vegetation, aquatic crops, forestry and agricultural residues, landfill wastes, and animal wastes.

(3) Renewable energy equipment. -- Biomass equipment, solar electric or thermal equipment, and wind energy equipment.

(4) Solar electric or thermal equipment. -- Products designed to convert sunlight into electricity or heat.

(5) Wind energy equipment. -- Products designed to capture and convert wind energy into electricity or mechanical power.

(c) Carryforward. -- The credit allowed by this section may not exceed the amount of the tax imposed by this Part for the taxable year reduced by the sum of all credits allowable, except payments of tax made by or on behalf of the taxpayer. Any unused portion of the credit may be carried forward for the succeeding 10 years. ~~The amount of credit allowed under this section may be carried over for the next succeeding five years.~~

(d) No Double Credit. -- A taxpayer that claims any other credit allowed under this Chapter with respect to construction of a facility for the manufacture of renewable energy equipment may not take the credit allowed in this section with respect to the same facility."

Section 2. G.S. 105-130.28, as amended by this act, is repealed effective for costs incurred during taxable years beginning on or after January 1, 2002.

Section 3. This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under the statute repealed by this act before the effective date of its repeal, nor does it affect the right to any refund or credit of a tax that accrued under the repealed statute before the effective date of its repeal.

Section 4. This act is effective for taxable years beginning on or after January 1, 2000.

HOUSE BILL 1473:
Renewable Energy Manufacturers Credit

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Rep. Hackney
Date:	July 2, 1999	**Summary by:**	Martha K. Walston Committee Counsel
Version:	2nd Edition		

SUMMARY: ***House Bill 1473 expands the current corporate tax credit for a corporation that constructs a facility for the production of photovoltaic equipment to include the construction of other types of renewable energy equipment. The bill provides that the credit must be taken in five equal installments and extends the carry forward from 5 years to 10 years. The current version of the bill, which was given a favorable report in House Finance, removes the whereas clauses in the original bill and sunsets the credit for costs incurred during taxable years beginning on or after January 1, 2002. The bill becomes effective for taxable years beginning on or after January 1, 2000.***

CURRENT LAW: A corporation that constructs a facility for the production of photovoltaic equipment is allowed a credit equal to 25% of the installation and equipment costs of construction paid during the taxable year. The amount of the credit may not exceed the amount of tax owed; any unused credit may be carried forward for five years. Photovoltaic equipment means products designed, manufactured, and produced to convert sunlight directly into electricity. The credit is not allowed to the extent that federal, State, or local grants provide any of the costs of the equipment. To secure the credit, the taxpayer must own or control the facility at the time of construction.

BILL ANALYSIS: House Bill 1473 would allow a corporation that constructed a facility in North Carolina for the manufacture of renewable energy equipment to receive a corporate income tax credit equal to 25% of the installation and equipment costs of construction paid during the taxable year. Renewable energy equipment is defined by the bill as biomass equipment, solar electric or thermal equipment, and wind energy equipment. This broad definition encompasses the current definition of photovoltaic equipment. The credit allowed under this bill differs from the current credit in the following ways:

- The credit could not be taken for the taxable year in which the costs are paid, but would be taken in five equal installments beginning with the taxable year in which the costs are paid.
- Any unused portion of the credit may be carried forward for 10 years instead of 5 years.
- A taxpayer that claims any other credit with respect to the construction of a facility to manufacture renewable energy equipment may not take this credit with respect to the same facility.

Cindy Avrette, committee counsel to House Finance, contributed substantially to this summary.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1473 (First Edition)

SHORT TITLE: Renewable Energy Manufacturer Credit

SPONSOR(S): Representatives Hackney and Luebke

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
GENERAL FUND	See **ASSUMPTIONS AND METHODOLOGY**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue

EFFECTIVE DATE: This act is effective for taxable years beginning on or after January 1, 2000.

BILL SUMMARY:
HB 1473 replaces the corporate tax credit for constructing a photovoltaic (PV) equipment facility with a corporate tax credit for constructing a renewable energy equipment facility. The tax credit is taken in five equal installments over five years. Unused tax credits have a 10 year carryforward. No taxpayer may receive more than one tax credit for this type of facility.

ASSUMPTIONS AND METHODOLOGY:
The current corporate income tax credit for constructing photovoltaic manufacturing facilities has not been used since it was created in 1981. The Department of Revenue reported no usage of the credit from 1981 to 1987. After 1987, no separate accounting was done for each energy credit. Officials with the North Carolina Solar Center and the North Carolina Solar Energy Association do not recall this credit ever being used. These solar energy advocates believe the existing law's 5-year carry forward period is too short for new companies to show a profit and benefit from the tax incentive. The credit in HB 1473 lengthens the carry forward period from 5 to 10 years and expands credit eligibility to include biomass and wind energy equipment.

This fiscal note cannot predict the number of firms that will apply for this revised corporate tax credit nor the amount of credit to be requested. However, if only one firm applies for the credit, there will be a General Fund revenue loss due to the absence of applicants for the current tax credit program. The Chief of the Renewable Energy Branch of the U.S. Department of Energy (DOE) believes North Carolina is a good candidate for a small photovoltaic (PV) company using specialized technology and for a biomass equipment company working with the wood products

industry. An example of a small PV company is Atlantis Energy, which built a $1.5 million plant in Cape Charles Virginia in 1995 to produce custom designed PV modules. A biomass equipment plant might be attracted to the North Carolina wood products industry that produced 1,730 million kilowatt hours of energy from wood and wood waste in 1995. (DOE/Energy Information Administration)

The Chief of the DOE Renewable Energy Branch believes that manufacturers of photovoltaic (PV) and biomass equipment will expand production capacity over the next five years. The Million Solar Roofs Initiative that DOE began in 1997 aims to install a million solar energy systems on one million U.S. buildings by the year 2010. Since 64% of the shipments from the nation's 24 manufacturers of PV cells and modules (DOE 1995 estimate) are exported, an increase in domestic demand should prompt an expansion of PV plant capacity.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic

APPROVED BY: Tom Covington

DATE: Monday, June 07, 1999

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1473

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

H1473-ALA-002 Page 1 of __

Date_____,1999

Comm. Sub. [YES]
Amends Title [YES]
Second Edition

Senator Cochrane

moves to amend the bill on page 1, line 5, by rewriting the line to read:
"ON OR AFTER JANUARY 1, 2002, AND TO FURTHER ADJUST THE SHARE CERTAIN CITIES RECEIVE FROM THE STATE GROSS RECEIPTS TAX.";

and on page 2, by inserting the following between lines 33 and 34:
"Section 3. G.S. 105-116.1 reads as rewritten:
'**§ 105-116.1. Distribution of gross receipts taxes to cities.**
(a) Definitions. -- The following definitions apply in this section:
(1) Freeze deduction. -- The amount by which the percentage distribution amount of a city was required to be reduced in fiscal year 1995-96 in determining the amount to distribute to the city.
(2) Percentage distribution amount. -- Three and nine hundredths percent (3.09%) of the gross receipts derived by an electric power company and a telephone company from sales within a city that are taxable under G.S. 105-116 or G.S. 105-120.
(b) Distribution. -- The Secretary must distribute to the cities part of the taxes collected under this Article on electric power companies and telephone companies. Each city's share for a calendar quarter is the percentage distribution amount for that city for that quarter minus one-fourth of the city's hold-back

amount and one-fourth of the city's proportionate share of the annual cost to the Department of administering the distribution. The Secretary must make the distribution within 75 days after the end of each calendar quarter.

(c) Limited Hold-Harmless Adjustment. -- The hold-back amount for a city that, in the 1995-96 fiscal year, received from gross receipts taxes less than ninety-five percent (95%) of the amount it received in the 1990-91 fiscal year but at least sixty percent (60%) of the amount it received in the 1990-91 fiscal year is the amount determined by the following calculation:

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

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

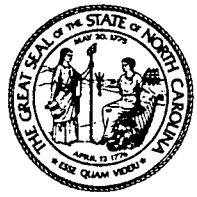
(3) If the adjusted 1995-96 amount is less than or equal to the city's 1990-91 distribution, the hold-back amount for the city is zero.

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

(c1) Additional Limited Hold-Harmless Adjustment. -- The hold-back amount for a city that, in the 1995-96 fiscal year, received from gross receipts taxes less than sixty percent (60%) of the amount it received in the 1990-91 fiscal year is the amount determined by the following calculation:

(1) Adjust the city's 1998-99 distribution by adding the city's freeze deduction to the amount distributed to the city for that year.

(2) Compare the adjusted 1998-99 amount with the city's 1990-91 distribution.



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1473

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

H1473-ALA-002

(3) If the adjusted 1998-99 amount is less than or equal to the city's 1990-91 distribution, the hold-back amount for the city is zero.

(4) If the adjusted 1998-99 amount is more than the city's 1990-91 distribution, the hold-back amount for the city is the city's freeze deduction minus the difference between the city's 1990-91 distribution and the city's 1998-99 distribution.

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

(1) Determine the amount by which the freeze deduction is reduced for all cities whose hold-back amount is determined under ~~subsection (c)~~ subsections (c) and (c1) of this section. This amount is the total hold-harmless adjustment.

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

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

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1473

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

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Section 4. If a city's hold-back amount calculated under G.S. 105-116.1(c1), as enacted by this act, is less than the amount deducted from the city's 1995-96 franchise tax distribution, the Secretary must distribute four times the amount of the difference, less any distributions made to the city under Section 5 of S.L. 1997-118, to the city by October 15, 1999. This distribution is made to adjust retroactively the city's 1995-96, 1996-97, 1997-98, and 1998-99 franchise tax distributions. The amount needed to make the distribution required by this section shall be drawn from the amount of gross receipts taxes distributed to the cities that do not receive a distribution under this section in proportion to the amount received.";

and on page 2, line 34 by renumbering Section 4 as Section 5;

and on page 2, line 38 and 39, by rewriting the lines to read:

"Section 6. Sections 1 and 2 of this act are effective for taxable years beginning on or after January 1, 2000. The remainder of this act is effective when it becomes law."

SIGNED Billy Cochrane
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1473
Committee Substitute Favorable 6/15/99
Proposed Committee Substitute H1473-PCS8154-LA

Short Title: Renewable Energy Mfr Credit. (Public)

Sponsors:

Referred to:

May 13, 1999

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE INCOME TAX CREDIT FOR MANUFACTURERS OF CERTAIN RENEWABLE ENERGY EQUIPMENT AND TO SUNSET THE CREDIT FOR COSTS INCURRED DURING TAXABLE YEARS BEGINNING ON OR AFTER JANUARY 1, 2002, AND TO FURTHER ADJUST THE SHARE CERTAIN CITIES RECEIVE FROM THE STATE GROSS RECEIPTS TAX.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-130.28 reads as rewritten:

"**§ 105-130.28. Credit against corporate income tax for construction of a ~~photovoltaic~~ renewable energy equipment facility.**

(a) ~~Any~~ Credit. -- A corporation that constructs in North Carolina a facility for the ~~production of photovoltaic~~ manufacture of renewable energy equipment is allowed a credit against the tax imposed by this Part equal to twenty-five percent (25%) of the installation and equipment costs of construction paid during the taxable year. The entire credit may not be taken for the taxable year in which the costs are paid but must be taken in five equal installments beginning with the taxable year in which the costs are paid.

No credit is allowed, however, to the extent that any of the costs of the equipment were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the facility at the time of construction. ~~The credit allowed by this section may not exceed the amount of the tax imposed by this~~

~~Part for the taxable year reduced by the sum of all credits allowable, except payments of tax made by or on behalf of the taxpayer.~~

(b) ~~As used in this section, "photovoltaic equipment" means those products designed, manufactured, and produced to convert sunlight directly into electricity.~~ Definitions. -- The following definitions apply in this section:

(1) Biomass equipment. -- Products designed to use renewable biomass resources for biofuel production of ethanol, methanol, and biodiesel; anaerobic biogas production of methane utilizing agricultural and animal waste or garbage; or commercial thermal or electrical generation from renewable energy crops or wood waste materials. The term also includes related devices for converting, conditioning, and storing the liquid fuels, gas, and electricity produced with biomass equipment.

(2) Renewable biomass resources. -- Organic matter produced by terrestrial and aquatic plants and animals, such as standing vegetation, aquatic crops, forestry and agricultural residues, landfill wastes, and animal wastes.

(3) Renewable energy equipment. -- Biomass equipment, solar electric or thermal equipment, and wind energy equipment.

(4) Solar electric or thermal equipment. -- Products designed to convert sunlight into electricity or heat.

(5) Wind energy equipment. -- Products designed to capture and convert wind energy into electricity or mechanical power.

(c) Carryforward. -- The credit allowed by this section may not exceed the amount of the tax imposed by this Part for the taxable year reduced by the sum of all credits allowable, except payments of tax made by or on behalf of the taxpayer. Any unused portion of the credit may be carried forward for the succeeding 10 years. ~~The amount of credit allowed under this section may be carried over for the next succeeding five years.~~

(d) No Double Credit. -- A taxpayer that claims any other credit allowed under this Chapter with respect to construction of a facility for the manufacture of renewable energy equipment may not take the credit allowed in this section with respect to the same facility."

Section 2. G.S. 105-130.28, as amended by this act, is repealed effective for costs incurred during taxable years beginning on or after January 1, 2002.

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

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

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

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

(2) Percentage distribution amount. -- Three and nine hundredths percent (3.09%) of the gross receipts derived by an electric power

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

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

(c) Limited Hold-Harmless Adjustment. -- The hold-back amount for a city that, in the 1995-96 fiscal year, received from gross receipts taxes less than ninety-five percent (95%) of the amount it received in the 1990-91 fiscal year but at least sixty percent (60%) of the amount it received in the 1990-91 fiscal year is the amount determined by the following calculation:

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

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

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

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

(c1) Additional Limited Hold-Harmless Adjustment. -- The hold-back amount for a city that, in the 1995-96 fiscal year, received from gross receipts taxes less than sixty percent (60%) of the amount it received in the 1990-91 fiscal year is the amount determined by the following calculation:

(1) Adjust the city's 1998-99 distribution by adding the city's freeze deduction to the amount distributed to the city for that year.

(2) Compare the adjusted 1998-99 amount with the city's 1990-91 distribution.

(3) If the adjusted 1998-99 amount is less than or equal to the city's 1990-91 distribution, the hold-back amount for the city is zero.

(4) If the adjusted 1998-99 amount is more than the city's 1990-91 distribution, the hold-back amount for the city is the city's freeze deduction minus the difference between the city's 1990-91 distribution and the city's 1998-99 distribution.

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

(1) Determine the amount by which the freeze deduction is reduced for all cities whose hold-back amount is determined under

~~subsection (c)~~ subsections (c) and (c1) of this section. This amount is the total hold-harmless adjustment.

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

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

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

Section 4. If a city's hold-back amount calculated under G.S. 105-116.1(c1), as enacted by this act, is less than the amount deducted from the city's 1995-96 franchise tax distribution, the Secretary must distribute four times the amount of the difference, less any distributions made to the city under Section 5 of S.L. 1997-118, to the city by October 15, 1999. This distribution is made to adjust retroactively the city's 1995-96, 1996-97, 1997-98, and 1998-99 franchise tax distributions. The amount needed to make the distribution required by this section shall be drawn from the amount of gross receipts taxes distributed to the cities that do not receive a distribution under this section in proportion to the amount received.

Section 5. This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under the statute repealed by this act before the effective date of its repeal, nor does it affect the right to any refund or credit of a tax that accrued under the repealed statute before the effective date of its repeal.

Section 6. Sections 1 and 2 of this act are effective for taxable years beginning on or after January 1, 2000. The remainder of this act is effective when it becomes law.

NORTH CAROLINA SOLAR ENERGY ASSOCIATION

contact : Richard Harkrader, Chair 919-489-1656

[redacted]ne 23, 1999

Information Sheet on

H 1473 an act to Modify the Income Tax Credit for Manufacturers of Certain Renewable Energy Equipment

Renewable energy support is popular in NC and in the NC Legislature.

The October 1998 NC Poll done by the UNC School of Journalism shows overwhelming support and willingness to pay for clean, renewable energy. H 147 passed the North Carolina House 108 - 0 and is now before the Senate for consideration.

Why is H 1473 necessary?

This bill revises G.S. 105-130.28, a tax credit for manufacturers of photovoltaic (PV) equipment. (PV equipment produces electricity directly from sunlight. This technology is growing 40% per year, exports 70% of its production and is a $1 billion business per year world wide.) The current credit has NOT been used and the revision corrects the problems found in the existing legislation by recruiters. In trying to recruit a PV manufacturing facility the NC Solar Center at NC State and the Industrial Extension Service found that the 5 year carry forward limitation was too short a time period for companies they were recruiting to benefit from the incentive. The revision extends the carry forward provision to 10 years and eliminates the discrimination against other renewable technologies by extending the credit to manufacturers of other renewable energy equipment such as : biomass equipment which generates methane gas and/or electricity from hog, poultry waste or land fill gas; and solar thermal equipment which captures high temperature heat for manufacturing processes, generating electricity or heating and cooling large buildings or campuses.

Why is a renewable energy manufacturer's tax credits necessary?

H 1473 is an incentive for manufacturers to locate their facilities in NC. The industries involved are new high tech firms that invent, design, build and sell renewable energy equipment. They are creative enterprises producing new products which involves the high risk of doing something new but, also, potentially high rewards of a new, fast growing market place for clean energy. These incentives will encourage North Carolina based investments in R&D, industrial plants and jobs and enable our industrial recruiters to compete with other states and foreign countries for these facilities. Two years ago we lost a PV manufacturing plant to Virginia because they had a better incentive, however these companies want to locate close to the demand for their product and with this new legislation NC will look very attractive.

How much will it cost?

We do not know of any use of the existing credit. It is difficult to estimate how many times the new credit will be used. (Please see estimate of the Finance Committee Staff)

Who will benefit from the revised credit?

1) Businesses will get an incentive for being pioneers and manufacturing renewable energy equipment.

2) New jobs and companies will be created and recruited to North Carolina to satisfy the demand created by the credit energy equipment credit (H 1472) and DOE's Million Solar Roofs Initiative. Currently, two PV companies and at least one biomass (animal waste) equipment manufacturer are possible prospects for locating in NC.

3) North Carolina's reputation as a national leader in business creation and innovator will be enhanced. Because of the North Carolina Solar Center and the North Carolina Solar Energy Association, North Carolina is already one of handful of states leading in solar energy (The others are California, Florida and New Mexico) . This legislation will expand our leadership position to include all renewable energy technologies.

Why extend the sunset provision in the House passed bill from 2 to 5 years?

While NCSEA agrees it is prudent to include a sunset provision in all tax credit bills, the bill must first serve the purpose of an incentive to promote the creation of new, renewable energy companies and for them to come to North Carolina. A 2 year sunset does not allow enough time for the incentive to have the desired effect because of the long time span it takes for companies to be recruited and for this type of project to be planned and built. In addition, the current legislation which Bill 1473 is replacing has no sunset provision and has already proved to be difficult to use. To help in our goal of becoming a national leader in renewable energy we need a minimum 5 year sunset provision.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 3

HOUSE BILL 293
Committee Substitute Favorable 4/14/99
Senate Education/Higher Education Committee Substitute Adopted 6/3/99

Short Title: Proprietary Sch./Civil Penalties/AB. (Public)

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE STATE BOARD OF COMMUNITY COLLEGES TO ASSESS MONETARY PENALTIES AGAINST PROPRIETARY SCHOOLS THAT OPERATE WITHOUT A LICENSE OR OPERATE OUTSIDE THE SCOPE OF THEIR LICENSE.

The General Assembly of North Carolina enacts:

Section 1. Article 8 of Chapter 115D of the General Statutes is amended by adding a new section to read:

"**§ 115D-93.1. Operation without a license or outside scope of license; penalty.**

Upon its determination that a person is in violation of this Article, the State Board shall immediately notify the person and may assess a civil penalty not to exceed one thousand dollars ($1,000) against that person. In determining the amount of this penalty, the State Board shall consider the degree and extent of harm or potential harm caused by the violation. In addition, beginning on the thirtieth day following the date the Board makes this determination and sends the required notification, the person is liable for a civil penalty of one hundred dollars ($100.00) for each day the person continues to be in violation of this Article. A person is in violation of this Article if the person owns or operates a proprietary school (i) that is operating in the State without a license as required under this Article or (ii) that is offering a program of instruction, course, or subject that is not specifically indicated in the school's application for a license under this Article. Civil penalties assessed under this section

may be in addition to any other penalties or sanctions the State Board may impose for violation of this Article. This section is subject to Articles 3 and 4 of Chapter 150B of the General Statutes. The clear proceeds of civil penalties assessed under this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

Section 2. G.S. 115D-87 is amended by adding a new subdivision to read:

"(3a) 'Proprietary school' means a correspondence school, a proprietary business school, a proprietary trade school, or a proprietary technical school as defined in this section."

Section 3. This act becomes effective October 1, 1999, and applies to offenses occurring on or after that date.

HOUSE BILL 293:
Proprietary Sch./Civil Penalties/AB

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Representative Bridgeman
Date:	July 5, 1999	**Summary by:**	Martha K. Walston
Version:	Third Edition		Committee Counsel

SUMMARY: ***House Bill 293 would authorize the State Board of Community Colleges to assess a civil penalty up to $1,000 against any person the Board determines is in violation of the law requiring proprietary schools to be licensed. The bill also would require the Board to notify the person immediately of its violation. It would assess a penalty of $100.00 per day against any person who continues to be in violation of this law beginning on the thirtieth day following the Board's notification.***

A person would be in violation of the licensing law if it owns or operates a correspondence school, proprietary business school, proprietary trade school, or proprietary technical school (i) without a license, or (ii) that is offering a program of instruction, course, or subject that is not specifically authorized in its license.

The bill changes the penalty (the original bill would have authorized the Board to assess a penalty not to exceed $5,000) and adds language to direct the Board to consider the degree and extent of harm or potential harm when it is determining the amount of the initial penalty.

The State Board of Community Colleges requested the original bill.

The current version of the bill was given a favorable report in Senate Education/Higher Education. The bill has also been through the House Committee on Education and the House Finance Committee.

CURRENT LAW: The State Board of Community Colleges is charged with licensing all proprietary business schools, proprietary trade schools, proprietary technical schools, and correspondence schools. These are private institutions operated for a profit and do not include established universities, colleges, or private schools operating under Chapter 115C of the General Statutes. The State Board must formulate the criteria and the standards for approving proprietary schools based upon the course or courses of study that will be offered. The law specifically prohibits a person from operating a proprietary school until the State Board grants a license for its operation. Licenses are restricted to the programs, courses, and subjects included in each proprietary school's application and may be expanded to additional programs of instruction if the Board approves a supplementary application, which must be submitted by the license holder.

The State Board may suspend, revoke, or refuse to issue or renew a license under specified circumstances. These circumstances include failure to comply with applicable laws and rules, providing false or misleading information on the license application, committing fraud in advertising, failing to maintain the school premises in a safe condition, employing teachers who have not been approved by the State Board, and failing to obtain and maintain a guaranty bond or its equivalent. Furthermore, it is a Class 3 misdemeanor to open and conduct a propriety school without first obtaining a license and the required bond. A Class 3 misdemeanor, assuming no prior convictions, is punishable with a maximum fine of $200, 1-10 days community punishment, or both.

BILL ANALYSIS: House Bill 293 would create a new section, G.S. 115D-93.1, authorizing the State Board to make a determination that a person is in violation of the licensing law. If it makes the determination, the Board must immediately notify that person and may assess a civil penalty not to exceed $1,000 against that person. In determining the amount of this initial penalty, the bill would require the State Board to consider the degree and extent of harm or potential harm caused by the violation. In addition, any person who continues to be in violation of the law would be liable for a penalty of $100.00 per day, beginning on the thirtieth day after the Board sends its notice.

These civil penalties would be in addition to the other penalties and sanctions described above. Both the contested case provisions and the judicial review provisions of the Administrative Procedures Act would apply to the State Board's actions. Pursuant to Article IX, Section 7 of the Constitution, and Article 31A of Chapter 115C, the clear proceeds of any penalty would be remitted to the Civil Penalty and Forfeiture Fund. These funds are then transferred to the School Technology Trust fund and allocated to local school administrative units on the basis of average daily membership.

Section 2 of the bill would amend the definition section of the Article governing proprietary schools. This amendment, which is technical, would create a new definition, "proprietary school", which would include the existing definitions of correspondence school, proprietary business school, proprietary trade school, and proprietary technical school.

EFFECTIVE DATE: The bill would take effect October 1, 1999, and would apply to offenses occurring on or after that date.

Kory Goldsmith and Robin Johnson, Committee Counse to Education, substantially contributed to this summary.

H293-SMRH-003.1

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 3

HOUSE BILL 937
Committee Substitute Favorable 4/28/99
Senate Transportation Committee Substitute Adopted 6/29/99

Short Title: Regional Transportation Authority Amd. (Public)

Sponsors:

Referred to:

April 6, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE REGIONAL TRANSPORTATION AUTHORITY ACT CONCERNING JURISDICTION OF THE ENTIRE AREA OF THE COUNTY IN CERTAIN CIRCUMSTANCES AND MEMBERSHIP OF THE AUTHORITY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-634(a) reads as rewritten:

"(a) The territorial jurisdiction and service area of the Authority shall be as determined by the Board of Trustees consistent with its purpose, but shall initially consist of those areas included within the Metropolitan Planning Organization boundaries. With the consent by resolution of the affected board of county commissioners, the jurisdiction and area may be expanded to include contiguous areas, but the total jurisdiction and service area shall not exceed part or all of 12 counties. The jurisdiction and area include the entire area of the county if the Board of Trustees has been expanded to include the chairman or other member of the board of commissioners of that county pursuant to G.S. 160A-635(4)."

Section 2. G.S. 160A-635(a) reads as rewritten:

"(a) The governing body of an authority is the Board of Trustees. The Board of Trustees shall consist of:

(1) The mayor of the four cities within the service area that have the largest population, or a member of the city council designated by the city council to serve in the absence of the mayor.

(2) Two members of the Board of Transportation appointed by the Secretary of Transportation, to serve as ex officio nonvoting members.

(3) The chair of each Metropolitan Planning Organization in the territorial jurisdiction.

(4) The chair of the board of commissioners of any county within the territorial jurisdiction or a member of the board of commissioners designated by the board to serve in the absence of the chair, but only if the Board of Trustees by resolution has expanded the Board of Trustees to include the chair of the board of commissioners of that county and the board of commissioners of that county has consented by resolution.

(5) The chair of the principal airport authority or airport commission of each of the two most populous counties within the territorial jurisdiction, as determined by the most recent decennial federal census. The chair of the airport authority or airport commission may appoint a designee. The designee is not required to be a member of the airport authority or airport commission."

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

HOUSE BILL 937:
Regional Transportation Authority Amend

BILL ANALYSIS

Committee:	Senate Finance	**Sponsor:**	Rep. Gray
Date:	July 5, 1999	**Analysis by:**	Martha H. Harris
Version:	Finance CS for Third Edition		Staff Attorney

SUMMARY: ***This bill would make the following three changes affecting Regional Transportation Authorities. The third change is added by the proposed Finance committee substitute. The original bill and the proposed committee substitute are roll call under the Constitution. The bill was not roll called in the House, so it must be roll called upon concurrence or adoption of a conference report by the House.***

1. ***It expands the jurisdiction of a regional transportation authority (Piedmont Authority for Regional Transportation) to include the entire area of any county that has a member of its board of commissioners serving on the authority's board of trustees.***
2. ***It expands the board of trustees of a regional transportation authority (Piedmont Authority for Regional Transportation) to include the chair of the airport authorities of the two most populous counties within the authority's jurisdiction.***
3. ***It provides that a regional transit authority (either the Triangle Transit Authority or the Piedmont Authority for Regional Transportation) may create special tax districts consisting of one or more entire counties within the authority's jurisdiction and may levy their taxes within the special districts to the extent the taxes have not already been levied throughout the entire jurisdiction of the authority.***

Background. In 1997, the General Assembly enacted S.L. 1997-417, which authorized a regional transit authority to levy a gross receipts tax of up to 5% on retailers within the region engaged in the business of renting passenger motor vehicles and motorcycles. The tax applies only to short-term rentals, i.e., rentals for a period of less than one year. The tax is collected by the authority but is otherwise administered in the same way as the optional highway use tax on gross receipts from vehicle rentals. This optional highway use tax is 8% on short-term rentals, so the combined tax within the jurisdiction of the authority would be 13% if the authority levies the full 5%. Each authority may use the proceeds of the tax for its public transportation purposes. Before levying or increasing the tax, the authority must obtain approval from each county in the region.

A regional transit authority is a regional public transportation authority created under Article 26 of Chapter 160A of the General Statutes or a regional transportation authority created under Article 27 of Chapter 160A of the General Statutes. The authority created under Article 26 is the Triangle Transit Authority for Wake, Durham, and Orange Counties. The Authority created under Article 27 is the Piedmont Authority for Regional Transportation, which serves Forsyth, Guilford, Randolph, Davidson, and Alamance Counties.

The 1997 law also authorized the Piedmont Authority for Regional Transportation and any multi-county public transportation authorities organized under current law to levy a $5 vehicle registration tax identical to the tax already authorized for, and levied by, the existing Triangle Transit Authority. A public transportation authority is an entity created by one or more local government entities under Article 25 of Chapter 160A of the General Statutes to provide public transportation. There are three multi-county public transportation authorities. The Choanoke Public Transportation Authority consists of Bertie, Halifax, Hertford, and Northampton Counties. The Kerr Area Transportation Authority consists of Franklin, Granville,

Person, Vance, and Warren Counties. The Inter-County Public Transportation Authority consists of Camden, Chowan, Currituck, Pasquotank, and Perquimans Counties.

An authority must obtain the approval of each county within its jurisdiction before it can levy the $5 vehicle registration tax. The Division of Motor Vehicles will collect the tax in counties that are entirely located within the authority's jurisdiction. If the authority's jurisdiction includes just a part of one or more counties, the authority will collect the registration tax in those parts of counties. The authority may contract with local governments to collect this tax.

Jurisdiction of Piedmont Authority for Regional Transportation. Under current law, the jurisdiction of a regional transportation authority created under Article 27 of Chapter 160A of the General Statutes includes all or part of five contiguous counties whose boards of commissioners have representatives on the board of trustees, and may include parts of other contiguous counties with the consent of the affected counties. The authority's board of trustees may choose to add a member of the affected county's board of commissioners to the board of trustees. Section 1 of this bill provides that if a member of an affected county's board of commissioners has been added to the authority's board of trustees, the authority's jurisdiction includes the entire area of the county. By expanding the jurisdiction of an authority, this change expands the authority's taxing power. Thus, the change must be read on three separate days in each house, under the Constitution. The bill did not receive the required separate readings when it passed the House of Representatives, so the separate readings in the House must occur when the bill returns from the Senate.

Membership of Piedmont Authority for Regional Transportation. Section 2 of the bill expands the membership of a regional transportation authority created under Article 27 of Chapter 160A of the General Statutes to include the chair of the principal airport authority or airport commission of each of the two most populous counties within the authority's jurisdiction. In the case of the Piedmont Authority for Regional Transportation, this would mean the chair of the Forsyth County Airport Commission and the chair of the Piedmont Triad Airport Authority.

Special Tax Districts. Under current law, a regional transit authority (either the Triangle Transit Authority or the Piedmont Authority for Regional Transportation) may levy within its jurisdiction the vehicle rental tax of up to 5% and the vehicle registration tax of up to $5, as described above. Sections 3 and 4 of this bill would provide that if the authority has not levied either tax up to the maximum rate, it may create a special tax district within its jurisdiction consisting of the entire area of one or more counties. The authority may levy within the special tax district the balance of either or both taxes, up to their maximum rates. The proceeds of a tax levied within a special tax district may be used only for public transportation purposes for the benefit of the special district. The levy and administration of a tax within a special district is the same as for a tax within the entire jurisdiction of the authority. Thus, it may not be levied unless there is a public hearing and each county in the special district has approved the tax.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: H.B. 937 Proposed Senate Finance Committee Substitute DRAFT

SHORT TITLE: Regional Transit Authority

SPONSOR(S):

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
General Fund	* No General Fund Impact *				
Piedmont Reg. Trans.	* See Assumptions and Methodology *				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: The Piedmont Regional Transportation Authority.

EFFECTIVE DATE: When it becomes law.

BILL SUMMARY: The bill makes several technical changes to the Regional Transportation Authority Act. First, it expands the area that may be included in the territorial jurisdiction and service area of the Piedmont Authority for Regional Transportation. Next, it adds to the Piedmont Authority board representatives of the two airport authorities or commissions serving the largest communities in the area. Third, it provides that a regional transit authority, including the Triangle Transit Authority or the Piedmont Authority for Regional Transportation, can create a special tax district. This district can include one or more entire counties within the authority's jurisdiction, and may levy taxes. These taxes must be used for public transportation.

ASSUMPTIONS AND METHODOLOGY: Only the special tax district portion of the bill has a potential fiscal impact. Under current law a regional transit authority, such as Triangle Transit or the Piedmont Authority, may levy within its jurisdiction a vehicle rental tax of up to 5% and a vehicle registration tax of up to $5.00 to fund public transportation. This provision only applies if the authority has not yet levied either tax up to the maximum rate. If the authority has not yet levied the maximum rate, then the authority can create a special tax district within the authority jurisdiction, and collect the tax in that more limited area. The Triangle Transit Authority already levies the $5.00 and 5% taxes, so the bill will only impact have a fiscal impact on the Piedmont Authority.

Because the bill is permissive, Fiscal Research can not determine which if any of the five counties that participate in the Piedmont Authority will participate. Therefore, no accurate fiscal

estimate is possible. The five counties that are included, at least in part, in the Piedmont Authority are Guilford, Forsyth, Davidson, Randolph, and Alamance.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Linda Struyk Millsaps

APPROVED BY:

DATE: July 6, 1999

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 937

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

H937-ALC-1 Page 1 of __

Date_____,1999

Comm. Sub. [YES]
Amends Title []
Proposed Committee Substitute PCSX1311

moves to amend the bill on page 1, line 17, by deleting the phrase "160A-635(4)" and substituting "160A-635(a)(4)";

and on page 3, line 8, and page 4, line 8, by adding the following at the end of each line:
"The regional transportation authority may not levy or increase a tax within the special district unless the board of commissioners of each county in the special district has adopted a resolution approving the levy or increase."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

2nd pcs

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 937
Committee Substitute Favorable 4/28/99
Senate Transportation Committee Substitute Adopted 6/29/99
Proposed Senate Committee Substitute H937-PCSX4278-LC

Short Title: Regional Transportation Authority Amd. (Public)

Sponsors:

Referred to:

April 6, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE REGIONAL TRANSPORTATION AUTHORITY ACT CONCERNING JURISDICTION OF THE ENTIRE AREA OF THE COUNTY IN CERTAIN CIRCUMSTANCES AND MEMBERSHIP OF THE AUTHORITY, AND TO AUTHORIZE THE AUTHORITY TO CREATE SPECIAL TAX DISTRICTS WITHIN ITS JURISDICTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-634(a) reads as rewritten:

"(a) The territorial jurisdiction and service area of the Authority shall be as determined by the Board of Trustees consistent with its purpose, but shall initially consist of those areas included within the Metropolitan Planning Organization boundaries. With the consent by resolution of the affected board of county commissioners, the jurisdiction and area may be expanded to include contiguous areas, but the total jurisdiction and service area shall not exceed part or all of 12 counties. The jurisdiction and area include the entire area of the county if the Board of Trustees has been expanded to include the chair or other member of the board of commissioners of that county pursuant to G.S. 160A-635(a)(4)."

Section 2. G.S. 160A-635(a) reads as rewritten:

"(a) The governing body of an authority is the Board of Trustees. The Board of Trustees shall consist of:

(1) The mayor of the four cities within the service area that have the largest population, or a member of the city council designated by the city council to serve in the absence of the mayor.
(2) Two members of the Board of Transportation appointed by the Secretary of Transportation, to serve as ex officio nonvoting members.
(3) The chair of each Metropolitan Planning Organization in the territorial jurisdiction.
(4) The chair of the board of commissioners of any county within the territorial jurisdiction or a member of the board of commissioners designated by the board to serve in the absence of the chair, but only if the Board of Trustees by resolution has expanded the Board of Trustees to include the chair of the board of commissioners of that county and the board of commissioners of that county has consented by resolution.
(5) The chair of the principal airport authority or airport commission of each of the two most populous counties within the territorial jurisdiction, as determined by the most recent decennial federal census. The chair of the airport authority or airport commission may appoint a designee. The designee is not required to be a member of the airport authority or airport commission."

Section 3. G.S. 105-551 reads as rewritten:

"**§ 105-551. Tax on gross receipts authorized.**

(a) Tax. -- The board of trustees of an Authority may levy a privilege tax on a retailer who is engaged in the business of leasing or renting U-drive-it passenger vehicles or motorcycles based on the gross receipts derived by the retailer from the short-term lease or rental of these vehicles. The tax rate must be a percentage and may not exceed five percent (5%). A tax levied under this section applies to short-term leases or rentals made by a retailer whose place of business or inventory is located within the territorial jurisdiction of the Authority. This tax is in addition to all other taxes.

(b) Restrictions. -- The board of trustees of an Authority may not levy a tax under this section or increase the tax rate of a tax levied under this section until all of the following requirements have been met:

(1) The board of trustees has held a public hearing on the tax or the increase in the tax rate after giving at least 10 days' notice of the hearing.
(2) If the Authority has a special tax board, the special tax board has adopted a resolution approving the levy of the tax or the increase in the tax rate.
(3) The board of commissioners of each county included in the territorial jurisdiction of the Authority has adopted a resolution approving the levy of the tax or the increase in the tax rate.

(c) Special Tax District. -- If a regional transportation authority created under Article 27 of Chapter 160A of the General Statutes has not levied the tax under this section or has levied the tax at a rate of less than five percent (5%), it may create a special district that consists of the entire area of one or more counties within its territorial jurisdiction and may levy on behalf of the special district the tax authorized in this section. The rate of tax levied within the special district may not, when combined with the rate levied within the entire territorial jurisdiction of the authority, exceed five percent (5%). The regional transportation authority may not levy or increase a tax within the special district unless the board of commissioners of each county in the special district has adopted a resolution approving the levy or increase.

A special district created pursuant to this subsection is a body corporate and politic and has the power to carry out the purposes of this subsection. The board of trustees of the regional transportation authority created under Article 27 of Chapter 160A of the General Statutes shall serve, ex officio, as the governing body of a special district it creates pursuant to this subsection. The proceeds of a tax levied under this subsection may be used only for the benefit of the special district and only for the purposes provided in G.S. 105-554. Except as provided in this subsection, a tax levied under this subsection is governed by the provisions of this Article."

Section 4. G.S. 105-561 reads as rewritten:

"**§ 105-561. Authority registration tax authorized.**

(a) Tax Authorized. -- The board of trustees of an Authority may, by resolution, levy an annual license tax in accordance with this Article upon any motor vehicle with a tax situs within its territorial jurisdiction. The purpose of the tax levied under this Article is to raise revenue for capital and operating expenses of an Authority in providing public transportation systems. The rate of tax levied under this Article must be a full dollar amount, but may not exceed five dollars ($5.00) a year.

(b) Restrictions. -- The board of trustees of an Authority may not levy a tax under this Article or increase the tax rate until all of the following requirements have been met:

(1) The board of trustees has held a public hearing on the tax or the increase in the tax rate after giving at least 10 days' notice of the hearing.

(2) If the Authority has a special tax board, the special tax board has adopted a resolution approving the levy of the tax or the increase in the tax rate.

(3) Except where the levy or increase in tax is necessary for debt service on bonds or notes that each of the boards of county commissioners had previously approved under G.S. 159-51, the board of commissioners of each county included in the territorial jurisdiction of the Authority has adopted a resolution approving the levy of the tax or the increase in the tax rate.

(c) Resolutions. -- The board of trustees and the board of county commissioners, upon adoption of a resolution pursuant to this section, shall cause a certified copy of

the resolution to be delivered immediately to the Authority and to the Division of Motor Vehicles.

(d) Special Tax District. -- If a regional transportation authority created under Article 27 of Chapter 160A of the General Statutes has not levied the tax under this section or has levied the tax at a rate of less than five dollars ($5.00) it may create a special district that consists of the entire area of one or more counties within its territorial jurisdiction and may levy on behalf of the special district the tax authorized in this section. The rate of tax levied within the special district may not, when combined with the rate levied within the entire territorial jurisdiction of the authority, exceed five dollars ($5.00). The regional transportation authority may not levy or increase a tax within the special district unless the board of commissioners of each county in the special district has adopted a resolution approving the levy or increase.

A special district created pursuant to this subsection is a body corporate and politic and has the power to carry out the purposes of this subsection. The board of trustees of the regional transportation authority created under Article 27 of Chapter 160A of the General Statutes shall serve, ex officio, as the governing body of a special district it creates pursuant to this subsection. The proceeds of a tax levied under this subsection may be used only for the benefit of the special district and only for the purposes provided in G.S. 105-564. Except as provided in this subsection, a tax levied under this subsection is governed by the provisions of this Article."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 876

Short Title: Clarify Natural Gas Funds. (Public)

Sponsors: Senator Kerr.

Referred to: Finance.

April 13, 1999

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE LAW REGARDING THE USE OF NATURAL GAS EXPANSION FUNDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 62-159(a) reads as rewritten:

"(a) In order to facilitate the construction of facilities in and the extension of natural gas service to unserved areas, the Commission may provide funding through appropriations from the General Assembly or the proceeds of general obligation bonds as provided in this section to either (i) an existing natural gas local distribution ~~company or (ii) a person or a gas district~~ company; (ii) a person awarded a new franchise; or (iii) a gas district for the construction of natural gas facilities that it otherwise would not be economically feasible for the company, person, or gas district to construct."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 876
Proposed Committee Substitute S876-PCS1776-LA

Short Title: Clarify Natural Gas Funds. (Public)

Sponsors:

Referred to:

April 13, 1999

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE LAW REGARDING THE USE OF NATURAL GAS EXPANSION FUNDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 62-159(a) reads as rewritten:

"**§ 62-159. Additional funding for natural gas expansion.**

(a) In order to facilitate the construction of facilities in and the extension of natural gas service to unserved areas, the Commission may provide funding through appropriations from the General Assembly or the proceeds of general obligation bonds as provided in this section to either (i) an existing natural gas local distribution ~~company or (ii) a person or a gas district awarded a new franchise~~ company; (ii) a person awarded a new franchise; or (iii) a gas district for the construction of natural gas facilities that it otherwise would not be economically feasible for the company, person, or gas district to construct."

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

SENATE BILL 876:
Clarify Natural Gas Funds

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Sen. John Kerr
Date:	July 2, 1999	**Summary by:**	Martha K. Walston
Version:	Proposed Committee Substitute		Committee Counsel

SUMMARY: ***Senate Bill 876 is a technical bill that makes a clarifying change to G.S. 62-159 (Additional funding for natural gas expansion). The act is effective when it becomes law. The proposed committee substitute only corrects a redlining error in the original version.***

BILL ANALYSIS: In 1998, the General Assembly enacted the Clean Water and Natural Gas Critical Needs Bond Act of 1998. This Act authorized the issuance of general obligation bonds in the amount of $1 billion. The issuance of these bonds, $800 million for water and sewer bonds and $200 million for natural gas bonds, was approved by a majority of the voters in the November, 1998 election. The $200 million of natural gas bonds are to be used for the purpose of providing grants, loans, or other financing to natural gas local distribution companies, a person awarded a new natural gas franchise, or a gas district in unserved areas of the State. The money is to be used for the construction of natural gas facilities that it otherwise would not be economically feasible for the company, person, or gas district to construct.

Senate Bill 876 makes a technical correction to G.S. 62-159, which was part of the 1998 Act. The current statute erroneously implies that gas districts have natural gas franchises, which they do not. The bill clarifies that only persons are awarded natural gas franchises. "Person" is defined in the Public Utilities Chapter to mean "a corporation, individual, copartnership, company, association, or any combination of individuals or organizations doing business as a unit, and includes any trustee, receiver, assignee, or personal representative thereof."

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 2

SENATE BILL 968
Commerce Committee Substitute Adopted 6/23/99

Short Title: Waiver of Competitive Bidding Modified. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REGARDING THE WAIVER OF COMPETITIVE BIDDING AND TO REQUIRE BID PROTESTS INVOLVING CONTRACTS OVER A CERTAIN AMOUNT TO BE HANDLED BY THE DEPARTMENT OF ADMINISTRATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-53(a)(1) reads as rewritten:

"(1) Prescribing the routine and procedures to be followed in canvassing bids and awarding contracts, and for reviewing decisions made pursuant thereto, and the decision of the reviewing body shall be the final administrative review. The Division of Purchase and Contract shall review and decide a protest on a contract valued at twenty-five thousand dollars ($25,000) or more. The Secretary shall adopt rules or criteria governing the review of and decision on a protest on a contract of less than twenty-five thousand dollars ($25,000) by the agency that awarded the contract."

Section 2. G.S. 143-53(a)(5) reads as rewritten:

"(5) Prescribing conditions under which purchases and contracts for the purchase, rental or lease of equipment, materials, supplies or services may be entered into by means other than competitive bidding. Notwithstanding the provisions of subsections (a) and (b) of this section, any waiver of competition for the purchase, rental,

or lease of equipment, materials, supplies, or services is subject to prior review by the Secretary, if the expenditure exceeds ten thousand dollars ($10,000). The Division may levy a fee, not to exceed one dollar ($1.00), for review of each waiver application."

Section 3. G.S. 143-57 reads as rewritten:

"**§ 143-57. Purchases of articles in certain emergencies.**

In case of any emergency or pressing need arising from unforeseen causes including but not limited to delay by contractors, delay in transportation, breakdown in machinery, or unanticipated volume of work, the Secretary of Administration shall have power to obtain or authorize obtaining in the open market any necessary supplies, materials, equipment, printing or services for immediate delivery to any department, institution or agency of the State government. A report on the circumstances of such emergency or need and the transactions thereunder shall be made a matter of record promptly thereafter. If the expenditure exceeds ten thousand dollars ($10,000), the report shall also be made promptly thereafter to the Division of Purchase and Contract."

Section 3.1. This act does not apply to an agency, board, department, institution, or commission that is exempt from Article 3 of Chapter 143 of the General Statutes or from the provisions of that Article that require certain contracts to be awarded by the Department of Administration.

Section 4. This act becomes effective July 1, 1999. Section 1 applies to bid protests filed on or after that date. Sections 2 and 3 of this act apply to contracts awarded on or after that date.

SENATE BILL 968:
Waiver of Competitive Bidding Modified

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Sen. Larry Shaw
Date:	July 2, 1999	**Summary by:**	Martha K. Waslton
Version:	2nd Edition		Committee Counsel

SUMMARY: Senate Bill 968 amends the law regarding the waiver of competitive bidding and requires bid protests involving contracts over a certain amount to be handled by the Department of Administration. The current version of the bill was given a favorable report in Senate Commerce on June 23, 1999. The bill is before the Senate Finance Committee because it allows the Secretary of Administration to levy a fee, not to exceed $1.00 for reviewing each waiver application.

BILL ANALYSIS:

Section 1 of the bill provides that bid protests on State procurement contracts of $25,000 or more will be handled by the Division of Purchase and Contract. Currently, those protests are being handled by the agency that awarded the contract. Bid protests on contracts awarded by agencies under $25,000 would continue to be handled by the respective agencies, subject to rules adopted by the Secretary of Administration.

Section 2 provides that if an agency wants to waive competitive sealed bidding on a purchase that costs more than $10,000, the waiver is subject to prior review by the Secretary of Administration. A $1.00 fee is imposed for review of the waiver.

Section 3 provides that if the Secretary of Administration obtains goods or services pursuant to the emergency purchasing statute (G.S. 143-57), any such purchases over $10,000 must be reported to the Joint Legislative Commission on Governmental Operations promptly thereafter. The current law already requires the Secretary to note in the public record the justification for an emergency purchase.

Section 3.1 provides that agencies that are not subject to Article 3 of Chapter 143 (the laws governing the State's purchasing program) or whose contracts are not subject to that Article are exempt from this act.

The act becomes effective July 1, 1999.

Linwood Jones, committee counsel to Senate Commerce, contributed substantially to this summary.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 968 (Second Edition)

SHORT TITLE: Waivers of Competitive Bidding Modified

SPONSOR(S): Senator Larry Shaw

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
EXPENDITURES					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Administration - Division of Purchase and Contract

EFFECTIVE DATE: The act becomes effective July 1, 1999.

BILL SUMMARY:
The bill amends the law regarding the waivers of competitive bidding for expenditures over $10,000 and requires bid protests involving contracts over $25,000 to be handled by the Department of Administration.

ASSUMPTIONS AND METHODOLOGY:
Although the Division of Purchase and Contract anticipates reviewing 1000 additional requests for bid waivers, the current staff can absorb this workload. By September 1999, all agencies will be online with the Division's Interactive Purchasing System (IPS). These agencies will be able to electronically send requisitions and bid waiver requests to the Division of Purchase and Contract. Division staff can review the request on the computer screen and then approve or deny a bid waiver by electronic mail. There will be no additional revenue because the Division does not plan to impose the $1 fee authorized in the bill.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic

APPROVED BY:

DATE:

(Attachment #1)

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

Name of Committee

7/6/'99

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Martha Glass	DOT
Sharon Foard	Energy Div.
John Boundreau	Jeb Alley P.A.
Terry Hancock	EGHS
Smarkham	EGHS
Henry Jones	Attorney - Raleigh
Margaret Williams	DCC
Andy Romanet	N.C.L.M.
Mark Bacon	Capital Group

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 7/6/'99

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
BRUCE THOMPSON	PPAB
Esthersine Davis	ElectriCities
Richard Harkrade	NORTH CAROLINA SOLAR ENERGY ASSOC
Larry Shirley	NC Solar Energy Assoc.
Chris Larsen	NC Solar Energy Assoc.
Paul Wilms	NCMBA
Jerry Roberts	C.U.C.A.
Joyce Brown	NC SOLAR ENERGY ASSOCIATION
Bob McGuffey	NC SOLAR ENERGY ASSOC
Carolyn Dweiden	NCCCS
Clay Hines	NCCCS

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

Name of Committee

7/6/'99

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Rachel Larson	600 Salisbury St Ral

(Attachment #2)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Tuesday, July 06, 1999

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

FAVORABLE

H.B.(SCS #1)**293** Proprietary Sch./Civil Penalties/AB
Sequential Referral: Judiciary I
Recommended Referral: None

H.B.(CS #1)**1472** Simplify Renewable Energy Credits
Sequential Referral: None
Recommended Referral: None

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

S.B. **876** Clarify Natural Gas Funds
Draft Number: PCS1776
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 3

Committee Clerk Comment:

(Attachment #3)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

REVISED REPORT

Wednesday, July 07, 1999

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

**UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL**

H.B.(CS #1)**1473**	Renewable Energy Mfr Credit	
	Draft Number	:PCS8154
	Sequential	Referral:None
	Recommended	Referral:None
	Long Title Amended:	Yes

**UNFAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 2**

H.B.(SCS #1)**937**	Regional Transportation Authority Amd	
	Draft Number:	PCSX4278
	Sequential Referral:	None
	Recommended Referral:	None
	Long Title Amended:	Yes

TOTAL REPORTED: 2

Committee Clerk Comment: These bills heard and acted on in Sen Finance on 7-6-99

AGENDA

WEDNESDAY, JULY 7, 1999

SENATE FINANCE COMMITTEE

8:30 PM - Room 643

I CALL TO ORDER

II INTRODUCTION OF PAGES

III BILLS TO BE CONSIDERED

SB 897 – Safety Professionals – Sen. Dalton

HB 315 – Motor Vehicles Tax Value – Rep. Wilson

HB 812 – Remove Sunset/Craven Proceeds Use – Rep. Thomas

HB 1433 – Use Tax Payment/Other Changes – Rep. Miller

HB 1476 – Update IRC Reference – Rep. Miller

SENATE FINANCE COMMITTEE

WEDNESDAY, JULY 7, 1999

8:30 A.M. - ROOM 643

The Senate Finance Committee met on Wednesday, July 7, 1999, at 8:30 A.M. in Room 643 with Senator John Kerr presiding. There were 23 committee members present for the meeting.

HB 812 – Remove Sunset/Craven Proceeds Use.

Representative Thomas was recognized to explain his Bill. Senator Lee moved for a Favorable Report and the motion carried. Copy of Bill and Explanation included in the minutes.

HB 315 – Motor Vehicles Tax Value.

Representative Connie Wilson was recognized to explain her Bill. Senator Purcell moved to adopt a Committee Substitute and the motion carried. The new Committee Sub was explained and Jim Blackburn, representing the North Carolina Association of County Commissioners, spoke in favor of this Bill. Senator Dannelly moved for a Favorable Report and the motion carried. Copy of Original Bill, Committee Substitute, Explanation and Fiscal Note included in the minutes.

HB 1476 – Update IRC Reference.

Representative Miller was recognized to explain his Bill. On motion by Senator Hoyle, a Committee Substitute was adopted. Representative Miller and Martha Walston, staff attorney, explained the Committee Sub and answered questions. Senator Cochrane moved for a Favorable Report and the motion carried. Copy of Original Bill, Committee Sub, Explanation and Fiscal Note included in the minutes.

HB 1433 – Use Tax Payment/Other Changes.

Representative Miller was recognized and explained his Bill. Sabra Faires, NC Department of Revenue, spoke in support of this Bill. Senator Hoyle moved for a Favorable Report and the motion carried. Copy of Bill, Explanation and Fiscal Note included in the minutes.

Meeting adjourned.

David W. Hoyle, Co-Chair
Senate Finance Committee

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

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

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

SB 897 was not heard at this committee meeting.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 812
Committee Substitute Favorable 4/20/99

Short Title: Remove Sunset/Craven Proceeds Use. (Local)

Sponsors:

Referred to:

April 1, 1999

A BILL TO BE ENTITLED

AN ACT TO REMOVE THE SUNSET ON A REQUIREMENT THAT PART OF CERTAIN CRAVEN COUNTY PROCEEDS BE USED FOR A CONVENTION CENTER AND A TOURIST CENTER.

The General Assembly of North Carolina enacts:

Section 1. Chapter 980 of the 1983 Session Laws, as amended by Chapter 710 of the 1985 Session Laws and Chapter 721 of the 1995 Session Laws, reenacted by Chapter 20 of the 1996 Second Extra Session, reads as rewritten:

"AN ACT TO ALLOW CRAVEN COUNTY TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

"Section 1. Levy of Tax. -- (a) The Board of Commissioners of Craven County may ~~by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy and tourism development ~~tax.~~

~~(b) Collection of the tax, and liability therefor, shall begin and continue only on and after the first day of a calendar month set by the board of county commissioners in the resolution levying the tax, which in no case may be earlier than the first day of the second succeeding calendar month after the date of adoption of the resolution.~~

~~"Sec. 2. Rate of Tax. The room occupancy and tourism development~~ tax ~~that may be levied under Section 1 of this act shall be~~ at the rate of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by any hotel, motel, inn, tourist camp, or other similar enterprise within the county now subject to the three percent (3%) sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any local sales tax.

"Sec. 2.1. Additional Occupancy Tax. -- In addition to the tax authorized by Section 1 of this act, the Craven County Board of Commissioners may levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any accommodations taxable under Section 1 of this act. The levy, collection, administration, and repeal of the tax authorized by this section shall be in accordance with the provisions of this act. Craven County may not levy a tax under this section unless it also levies the tax under Section 1 of this act.

"Sec. 3. -- Exemptions. The tax authorized by this act does not apply to gross receipts derived by the following entities from accommodations furnished by them:

(1) religious organizations;
(2) a business that offers to rent fewer than five units;
(3) educational organizations; and
(4) summer camps.

"Sec. 4. Administration of Tax. -- A tax levied under this act shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section. Any repeal of the tax authorized in Section 2.1 of this act may not become effective before June 30, 2018.

~~(a) Returns. -- Any tax levied under this act is due and payable to the county in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by Craven County. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. An operator of a business who collects the occupancy tax levied under this act may deduct from the amount remitted to the county a discount equal to the discount the State allows the operator for State sales and use tax.~~

~~The county shall design, print, and furnish to all affected businesses in Craven County the necessary forms for filing returns and instructions to ensure the collection of the tax. A return filed with the county tax collector under this act is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.~~

~~(b) Penalties. -- A person, firm, corporation, or association who fails or refuses to file the return or pay the tax required by this act is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The Craven County Board of Commissioners has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.~~

~~"Sec. 5. Collection of Tax. -- Every operator of a business subject to the tax levied by this act shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for the furnishing of any taxable accommodations. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of Craven County. The tax levied pursuant to this act shall be~~

~~added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business.~~

"Sec. 6. Disposition of Taxes Collected. -- (a) 'Net Proceeds' Defined. -- As used in this act, the term 'net proceeds' means gross proceeds less the cost to the county of administering and collecting the tax, not to exceed three percent (3%) of the gross proceeds of the tax.

(a1) Tax Levied Under Section 1. -- Craven County shall remit the net proceeds of the occupancy tax levied under Section 1 of this act to the Craven County Tourism Development Authority. The County Tourism Development Authority shall allocate the occupancy tax revenue remitted to it for the following purposes:

(1) Direct advertising costs for visitor promotions, conventions, or tourism, including outdoor advertising, print media, broadcast media, and brochures;

(2) Marketing and promotions expenses, including test market programs, consultant fees, entertainment, housing expenses, travel expenses, and registration fees;

(3) Operating expenses for the Visitor Information Center, including postage, telephone, supplies, dues, subscriptions, equipment, rent, and overhead allocation;

(4) Salaries, benefits, and expenses for Visitor Information Center personnel; and

(5) Other expenses that aid and encourage visitor promotions, conventions, or tourism.

~~Effective until June 30, 2013, thirty-five~~ Thirty-five percent (35%) of the net proceeds in excess of one hundred thousand dollars ($100,000) remitted to the Authority pursuant to this subsection in a fiscal year shall be allocated to the Room Tax Trust Fund created pursuant to subsection (c) of this section.

(b) Authority May Contract. -- The County Tourism Development Authority may contract with appropriate organizations or agencies to assist it in carrying out the purposes provided in this section.

(c) Tax Levied Under Section 2.1. -- Craven County shall credit the net proceeds of the tax levied under Section 2.1 of this act to a separate Room Tax Trust Fund. Monies in the Room Tax Trust Fund may be used only to construct, maintain, operate, or market a convention or meeting facility in New Bern and a tourist center in Havelock. Any monies distributed to the City of New Bern or the City of Havelock from the Room Tax Trust Fund shall be maintained in and disbursed from a separate trust fund within the respective city's organizational chart of accounts.

"Sec. 7. Appointment, Duties of Tourism Development Authority. -- (a) When the board of county commissioners adopts a resolution levying a room occupancy tax pursuant to this act, it shall also adopt a resolution creating a County Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act and shall be composed of the following members:

(1) One county commissioner appointed by the Board of Commissioners of Craven County;
(2) After the first full year of collections under this act, one person appointed by the governing board of each municipality from which, during the previous 12-month period, at least ten percent (10%) of the gross proceeds of the occupancy tax were collected;
(3) One person representing motel operators, appointed by the board of commissioners;
(4) One person with demonstrated interest in and support of tourism development, appointed by the New Bern-Craven Chamber of Commerce;
(4a) One person with demonstrated interest in and support of tourism development, appointed by the Havelock Chamber of Commerce;
(5) One person representing Tryon Palace Complex, appointed by the Tryon Palace Commission;
(6) Two at-large members with a demonstrated interest in conventions and tourism development, appointed by the other members of the Authority;
(7) The finance officer of Craven County, who shall serve as a nonvoting, ex officio member; and
(8) The Executive Director of the Authority, who shall serve as a nonvoting, ex officio member.

(b) All members of the Authority shall serve without compensation. Vacancies in the Authority shall be filled by the appointing authority of the member creating the vacancy. Members appointed to fill vacancies shall serve for the remainder of the unexpired term for which they are appointed to fill. Members shall serve three-year terms, except the initial members who shall serve the following terms:
(1) Members appointed pursuant to subdivisions (a)(1) and (a)(2) shall serve a one-year term;
(2) Members appointed pursuant to subdivisions (a)(3) and (a)(4) shall serve a two-year term; and
(3) Members appointed pursuant to subdivisions (a)(5) and (a)(6) shall serve a three-year term.

(c) A member appointed under subdivision (a)(2) shall serve his full term, regardless whether, during a 12-month period of his term, the percentage of the gross proceeds of the occupancy tax that are collected from the municipality he represents is less than ten percent (10%).

(d) Members may serve no more than two consecutive three-year terms. The members shall elect a ~~chairman,~~ chair, who shall serve for a term established in the bylaws of the Authority. The Authority shall meet at the call of the ~~chairman~~ chair and shall adopt rules of procedure to govern its meetings. The finance officer for Craven County shall be the ex officio finance officer of the Authority.

(e) The Tourism Development Authority shall report at the close of the fiscal year to the board of county commissioners on its receipts and expenditures for the preceding year in such detail as the board may require.

~~"Sec. 8. Repeal of Levy. (a) The board of county commissioners may by resolution repeal the levy of the room occupancy tax authorized in Section 1 of this act, but the repeal of taxes levied under Section 1 of this act shall not become effective until the end of the fiscal year in which the resolution was adopted.~~

~~(a1) The board of county commissioners may by resolution repeal the levy of the room occupancy tax authorized in Section 2.1 of this act, but the repeal of taxes levied under Section 2.1 of this act shall not become effective until the later of June 30, 2018, or the end of the fiscal year in which the resolution was adopted.~~

~~(b) No liability for any tax levied under this act that attached prior to the date on which a levy is repealed is discharged as a result of the repeal, and no right to a refund of a tax that accrued prior to the effective date on which a levy is repealed may be denied as a result of the repeal.~~

"Sec. 9. This act is effective upon ratification."

Section 2. County Administrative Provisions. Section 3(b) of S.L. 1997-102, as amended by Section 2 of S.L. 1997-255, Section 2 of S.L. 1997-342, Section 3 of S.L. 1997-364, Section 6 of S.L. 1997-410, and Section 2 of S.L. 1998-14, reads as rewritten:

"(b) This section applies only to Avery, Brunswick, Craven, Davie, Madison, Nash, Person, Randolph, and Scotland Counties."

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

HOUSE BILL 812:
Remove Sunset/Craven Proceeds Use

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Rep. Thomas
Date:	July 6, 1999	**Summary by:**	Martha K. Walston
Version:	2nd Edition		Committee Counsel

SUMMARY: ***House Bill 812 modifies the use of the Craven County room occupancy and tourism development tax. The current version of the bill was given a favorable report in House Local Government I and House Finance.***

CURRENT LAW: Craven County is authorized to levy a room occupancy tax at the rate of 3% . The County is also authorized to levy an additional room occupancy tax of 3% The 3% occupancy tax is remitted to the Craven County Tourism Development Authority.

Until June 30, 2013, thirty-five percent of the net proceeds in excess of $100,000 remitted to the Authority in a fiscal year are to be allocated to the Room Tax Trust Fund.. The monies in this Fund may be used only to construct, maintain, operate, or market a convention or meeting facility in New Bern and a tourist center in Havelock The 3% additional occupancy tax proceeds also go to the Room Tax Trust Fund.

BILL ANALYSIS: House Bill 812 provides that the uniform penalties will apply. The uniform occupancy tax penalties in G.S. 153A-155 are the same as the penalties for failure to pay or file a return for State sales and use taxes. The uniform penalty for failure to file a return is 5% of the amount of tax due, not to exceed 25% or $5, whichever is greater. The uniform penalty for failure to pay the tax due is 10% of the tax due or $5, whichever is greater.

House Bill 812 also conforms the current session law governing Craven County occupancy taxes to the uniform occupancy tax provisions. Therefore, the levy, administration, collection, and repeal of the occupancy taxes must be done in accordance with G.S. 160A-215. These provisions are substantially the the same as the ones in the current session law.

House Bill 812 removes the sunset on the distribution of 35% of the 3% occupancy tax proceeds in excess of $100,000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 315
Committee Substitute Favorable 6/15/99

Short Title: Motor Vehicle Tax Value. (Public)

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A MOTOR VEHICLE'S PROPERTY TAX VALUE IS DETERMINED AS OF JANUARY 1 PRECEDING THE DUE DATE OF THE TAX.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-330.2 reads as rewritten:

"**§ 105-330.2. Appraisal, ownership, and situs.**

(a) Date Determined. -- The value of a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1) (registered vehicles) shall be determined as of January 1 of the year the taxes are due. If ~~follows:~~

~~(1) For a vehicle registered under the staggered system, the value shall be determined annually as of January 1 preceding the date a new registration is applied for or the current registration expires.~~

~~(2) For a vehicle newly registered under the annual system, the value shall be determined as of January 1 of the year the new registration is obtained. For a vehicle whose registration is renewed under the annual system, the value shall be determined as of January 1 following the date the registration expires.~~

~~If~~ the value of a new motor vehicle cannot be determined as of ~~the date specified above,~~ that date, the value of that vehicle shall be determined for that year as of the date that model vehicle is first offered for sale at retail in this State.

The ownership, situs, and taxability of a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1) (registered vehicles) shall be determined annually as of the day

on which a new registration is applied for or the day on which the current vehicle registration is renewed, regardless of whether the registration is renewed after it has expired.

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

(b) Value; Appeal. -- A classified motor vehicle shall be appraised by the assessor at its true value in money as prescribed by G.S. 105-283. The owner of a classified motor vehicle may appeal the appraised value of the vehicle in the manner provided by G.S. 105-312(d) for appeals in the case of discovered property and may appeal the situs or taxability of the vehicle in the manner provided by G.S. 105-381. The owner of a classified motor vehicle must file an appeal of appraised value with the assessor within 30 days after the date of the tax notice prepared pursuant to G.S. 105-330.5. Notwithstanding G.S. 105-312(d), an owner who appeals the appraised value of a classified motor vehicle shall pay the tax on the vehicle when due, subject to a full or partial refund if the appeal is decided in the owner's favor.

(c) Administration. -- The Department of Revenue, acting through the Property Tax Division, and the Department of Transportation, acting through the Division of Motor Vehicles, shall enter into a memorandum of understanding concerning the vehicle identification information, name and address of the owner, and other information that will be required on the motor vehicle registration forms to implement the tax listing and collection provisions of this Article."

Section 2. This act is effective for taxes imposed for taxable years beginning on or after July 1, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 315
Committee Substitute Favorable 6/15/99
Proposed Senate Committee Substitute H315-PCS8153-LA

Short Title: Motor Vehicle Tax Value/E & R Board. (Public)

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A MOTOR VEHICLE'S PROPERTY TAX VALUE IS DETERMINED AS OF JANUARY 1 PRECEDING THE DUE DATE OF THE TAX AND TO AUTHORIZE THE STOKES BOARD OF EQUALIZATION AND REVIEW TO MEET AFTER ITS FORMAL ADJOURNMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-330.2 reads as rewritten:

"**§ 105-330.2. Appraisal, ownership, and situs.**

(a) Date Determined. -- The value of a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1) (registered vehicles) shall be determined as of January 1 of the year the taxes are due. If ~~follows:~~

~~(1) For a vehicle registered under the staggered system, the value shall be determined annually as of January 1 preceding the date a new registration is applied for or the current registration expires.~~

~~(2) For a vehicle newly registered under the annual system, the value shall be determined as of January 1 of the year the new registration is obtained. For a vehicle whose registration is renewed under the annual system, the value shall be determined as of January 1 following the date the registration expires.~~

~~If~~ the value of a new motor vehicle cannot be determined as of ~~the date specified above,~~ that date, the value of that vehicle shall be determined for that year as of the date that model vehicle is first offered for sale at retail in this State.

The ownership, situs, and taxability of a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1) (registered vehicles) shall be determined annually as of the day on which a new registration is applied for or the day on which the current vehicle registration is renewed, regardless of whether the registration is renewed after it has expired.

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

(b) Value; Appeal. -- A classified motor vehicle shall be appraised by the assessor at its true value in money as prescribed by G.S. 105-283. The owner of a classified motor vehicle may appeal the appraised value of the vehicle in the manner provided by G.S. 105-312(d) for appeals in the case of discovered property and may appeal the situs or taxability of the vehicle in the manner provided by G.S. 105-381. The owner of a classified motor vehicle must file an appeal of appraised value with the assessor within 30 days after the date of the tax notice prepared pursuant to G.S. 105-330.5. Notwithstanding G.S. 105-312(d), an owner who appeals the appraised value of a classified motor vehicle shall pay the tax on the vehicle when due, subject to a full or partial refund if the appeal is decided in the owner's favor.

(c) Administration. -- The Department of Revenue, acting through the Property Tax Division, and the Department of Transportation, acting through the Division of Motor Vehicles, shall enter into a memorandum of understanding concerning the vehicle identification information, name and address of the owner, and other information that will be required on the motor vehicle registration forms to implement the tax listing and collection provisions of this Article."

Section 2. G.S. 105-322(e) reads as rewritten:

"(e) Time of Meeting. -- Each year the board of equalization and review shall hold its first meeting not earlier than the first Monday in April and not later than the first Monday in May. In years in which a county does not conduct a real property revaluation, the board shall complete its duties on or before the third Monday following its first meeting unless, in its opinion, a longer period of time is necessary or expedient to a proper execution of its responsibilities. In no event shall the board sit later than July 1 except to hear and determine requests made under the provisions of subdivision (g)(2), below, when such requests are made within the time prescribed by law. In the year in which a county conducts a real property revaluation, the board shall complete its duties on or before December 1, except that it may sit after that date to hear and determine requests made under the provisions of subdivision (g)(2), below, when such requests are made within the time prescribed by law. From the time of its first meeting until its adjournment, the board shall meet at such times as it

deems reasonably necessary to perform its statutory duties and to receive requests and hear the appeals of taxpayers under the provisions of subdivision (g)(2), below. Following its adjournment upon completion of its duties under subdivisions (g)(1) and (2) of this section, the board shall continue to meet to carry out the following duties:

(1) To hear and decide all appeals relating to discovered property under G.S. 105-312(d) and (k).

(2) To hear and decide all appeals relating to the appraisal, situs, and taxability of classified motor vehicles under G.S. 105-330.2(b).

(3) To hear and decide all appeals relating to audits conducted under G.S. 105-296(j) and (l) of property classified at present-use value and property exempted or excluded from taxation."

Section 3. Section 2 of this act applies only to Stokes County.

Section 4. Section 1 of this act is effective for taxes imposed for taxable years beginning on or after July 1, 2000. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 315
Committee Substitute Favorable 6/15/99
Proposed Senate Committee Substitute H315-PCS8153-LA

Short Title: Motor Vehicle Tax Value/E & R Board. (Public)

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A MOTOR VEHICLE'S PROPERTY TAX VALUE IS DETERMINED AS OF JANUARY 1 PRECEDING THE DUE DATE OF THE TAX AND TO AUTHORIZE THE STOKES BOARD OF EQUALIZATION AND REVIEW TO MEET AFTER ITS FORMAL ADJOURNMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-330.2 reads as rewritten:

"**§ 105-330.2. Appraisal, ownership, and situs.**

(a) Date Determined. -- The value of a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1) (registered vehicles) shall be determined as of January 1 of the year the taxes are due. If ~~follows:~~

~~(1) For a vehicle registered under the staggered system, the value shall be determined annually as of January 1 preceding the date a new registration is applied for or the current registration expires.~~

~~(2) For a vehicle newly registered under the annual system, the value shall be determined as of January 1 of the year the new registration is obtained. For a vehicle whose registration is renewed under the annual system, the value shall be determined as of January 1 following the date the registration expires.~~

~~If~~ the value of a new motor vehicle cannot be determined as of ~~the date specified above,~~ that date, the value of that vehicle shall be determined for that year as of the date that model vehicle is first offered for sale at retail in this State.

The ownership, situs, and taxability of a classified motor vehicle listed pursuant to G.S. 105-330.3(a)(1) (registered vehicles) shall be determined annually as of the day on which a new registration is applied for or the day on which the current vehicle registration is renewed, regardless of whether the registration is renewed after it has expired.

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

(b) Value; Appeal. -- A classified motor vehicle shall be appraised by the assessor at its true value in money as prescribed by G.S. 105-283. The owner of a classified motor vehicle may appeal the appraised value of the vehicle in the manner provided by G.S. 105-312(d) for appeals in the case of discovered property and may appeal the situs or taxability of the vehicle in the manner provided by G.S. 105-381. The owner of a classified motor vehicle must file an appeal of appraised value with the assessor within 30 days after the date of the tax notice prepared pursuant to G.S. 105-330.5. Notwithstanding G.S. 105-312(d), an owner who appeals the appraised value of a classified motor vehicle shall pay the tax on the vehicle when due, subject to a full or partial refund if the appeal is decided in the owner's favor.

(c) Administration. -- The Department of Revenue, acting through the Property Tax Division, and the Department of Transportation, acting through the Division of Motor Vehicles, shall enter into a memorandum of understanding concerning the vehicle identification information, name and address of the owner, and other information that will be required on the motor vehicle registration forms to implement the tax listing and collection provisions of this Article."

Section 2. G.S. 105-322(e) reads as rewritten:

"(e) Time of Meeting. -- Each year the board of equalization and review shall hold its first meeting not earlier than the first Monday in April and not later than the first Monday in May. In years in which a county does not conduct a real property revaluation, the board shall complete its duties on or before the third Monday following its first meeting unless, in its opinion, a longer period of time is necessary or expedient to a proper execution of its responsibilities. In no event shall the board sit later than July 1 except to hear and determine requests made under the provisions of subdivision (g)(2), below, when such requests are made within the time prescribed by law. In the year in which a county conducts a real property revaluation, the board shall complete its duties on or before December 1, except that it may sit after that date to hear and determine requests made under the provisions of subdivision (g)(2), below, when such requests are made within the time prescribed by law. From the time of its first meeting until its adjournment, the board shall meet at such times as it

deems reasonably necessary to perform its statutory duties and to receive requests and hear the appeals of taxpayers under the provisions of subdivision (g)(2), below. Following its adjournment upon completion of its duties under subdivisions (g)(1) and (2) of this section, the board shall continue to meet to carry out the following duties:

(1) To hear and decide all appeals relating to discovered property under G.S. 105-312(d) and (k).

(2) To hear and decide all appeals relating to the appraisal, situs, and taxability of classified motor vehicles under G.S. 105-330.2(b).

(3) To hear and decide all appeals relating to audits conducted under G.S. 105-296(j) and (l) of property classified at present-use value and property exempted or excluded from taxation."

Section 3. Section 2 of this act applies only to Stokes County.

Section 4. Section 1 of this act is effective for taxes imposed for taxable years beginning on or after July 1, 2000. The remainder of this act is effective when it becomes law.

HOUSE BILL 315:
Motor Vehicle Tax Value/E & R Board

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Rep. Connie Wilson
Date:	July 6, 1999	**Summary by:**	Martha K. Walston
Version:	Proposed Committee Substitute H315-PCS8153-LA		Committee Counsel

SUMMARY: ***Section 1 of House Bill 315 provides that the value of a classified motor vehicle for property tax purposes would be determined as of January 1 preceding the due date of the tax. Section 2 of House Bill 315 amends G.S. 105-322(e) to allow the Stokes County Board of Equalization and Review to continue meeting after it has carried out its duties to examine and review the county's tax list for the current year and to hear a request from a taxpayer regarding the taxpayer's property appraisal or listing. Section 1 of this bill was given a favorable report by House Finance.***

CURRENT LAW: The General Assembly classified motor vehicles registered with the Division of Motor Vehicles as a special class of property in 1991. Classified vehicles are taxed on a revolving, year-round schedule. Every month, DMV provides each county a list of the motor vehicles in the county for which registration was renewed or obtained two months earlier. The county lists and appraises the vehicles and sends the vehicle owners a bill for the county, city, and special district taxes due. If the owner does not pay the taxes due on a classified, registered vehicle, DMV will refuse to renew the vehicle registration the following year unless the owner obtains a receipt showing that the taxes have been paid.

For classified motor vehicles, the ownership, situs, and taxability of the vehicle is determined annually as of the day on which a new registration is applied for or the day on which the current vehicle registration is renewed. However, the value of the vehicle is determined annually as of January 1 preceding the date the new registration is applied for or the current registration expires. Therefore, property tax bills that a taxpayer receives in January through April of each year are based on the value of the vehicle as of the preceding January.

The value of a vehicle, like all other tangible personal property, is based upon it true value in money as prescribed by G.S. 105-283. The words "true value in money" mean the price at which the property would change hands between a willing and financially able buyer and a willing seller. To determine "true value", counties use a pricing guide. Most counties use a pricing guide developed by Tax Equity Consultants. The pricing guides used by counties reflect the average retail prices paid for motor vehicles. In determining retail prices, all costs that are necessary to acquire and operate a motor vehicle are considered. A taxpayer who disagrees with the appraised value of a vehicle has 30 days after the date the tax notice was prepared to appeal the value. Counties will adjust an appraised value for reasons such as the vehicle's condition or excessive mileage.

BILL ANALYSIS: Section 1 of the proposed committee substitute for HB 315 provides that a classified motor vehicle's property tax value would be determined on January 1 of the year the taxes are due.

As background, the General Assembly enacted the classification to improve the collection rate f property taxes on motor vehicles. Millions of dollars in property tax revenue was being lost each ye because of noncompliance with the requirement to list motor vehicles for property taxes. By tying the listing of most motor vehicles to the registration of the vehicles, the 1991 act eliminated most of the opportunity for noncompliance.

Section 2 of the bill amends G.S. 105-322 (County board of equalization and review) to authorize the Stokes County Board of E & R to continue meeting after they have performed their duties to examine and review the tax lists for the current year and to hear requests from taxpayers. The Board will continue to meet to carry out the following:

1. To hear and decide appeals relating to discovered property.
2. To hear and decide appeals regarding classified motor vehicles.
3. To hear and decide appeals relating to audits of property classified at present-use value and property exempted or excluded from taxation.

Section 3 of the bill states that Section 2 applies only to Stokes County.

EFFECTIVE DATES: Section 1 is effective for taxes imposed for taxable years beginning on or after July 1, 2000. Section 2 and 3 are effective when they become law.

H315-SMRB-001

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 315 Proposed Senate Finance Committee Substitute DRAFT NOTE

SHORT TITLE: Motor Vehicle Tax Value

SPONSOR(S): Rep. Connie Wilson

FISCAL IMPACT

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

(Millions)

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
General Fund		* No General Fund Impact *			
Local Governments	0	($27.6)	($29.5)	($31.6)	($33.8)

PRINCIPAL DEPARTMENT (S) & PROGRAM (S) AFFECTED: County and City Governments and the Stokes County Board of Equalization and Review.

EFFECTIVE DATE: Effective for taxes imposed for taxable years beginning on or after July 1, 2000.

BILL SUMMARY: Currently all vehicles are valued as of January in the year in which the registration is due. The taxes are due three months after the registration. Section 1 of the bill requires the assessors to value the vehicle as of the January proceeding the due date of the tax. The registration date is no longer a factor in determining tax value. Section 2 of the bill authorizes the Stokes County Board of Equalization and Review to meet after their formal adjournment for specific purposes.

ASSUMPTIONS AND METHODOLOGY: Under the current system, vehicles can now be valued for property tax purposes on the January proceeding registration. This means that the property tax assessment can reflect values as old as 16 months. The bill effectively changes the vehicle tax bills due in the last four months of the year to reflect the value on the most recent January. For example, an automobile is purchased in the fall. The vehicle registration is due in November 1998. The taxes on that vehicle are due three months later in March 1999. Under current law, the tax is based on the vehicle's value on January 1, 1998. With this legislation the vehicle will be taxed on its value as of January 1, 1999.

The total **statewide value of all vehicles**, as reported to the Department of Revenue, for fiscal years 1995-96 through 1998-99 is as follows:

	1995-96	1996-97	1997-98	1998-99*
Vehicle Value	33,430,604,088	37,563,953,946	45,081,633,555	45,456,523,592

** Indicates this is preliminary data, with only 95 of 100 counties reporting.*

While growth in this sector has been very strong, it is expected to level off in the next few years. As such, this note assumes a 7% growth rate.

The 1997-98 weighted average property tax rate for all governmental jurisdictions in the state (cities and counties) was $0.968 per $100.00 of assessed value. The rate has varied from in the past ten years from a low of $0.938 per $100.00 (1988-89) to a high of $0.994 per $100.00 (1993-94 and 1994-95). Because of increasing pressures to build schools and provide other services, this note assumes a rate of $1.00 per $100.00 of assessed value for the five year period of the note.

Assuming 7% annual growth in the motor vehicle tax base, and a flat weighted average tax rate of $1.00 per $100.00 of assessed value, the expected property tax revenue from motor vehicles is as follows:

	1999-00	**2000-01**	**2001-02**	**2002-03**	**2003-04**
Vehicle Value	$51,613,962,257	$55,226,939,615	$59,092,825,388	$63,229,323,165	$67,655,375,787
Property Tax	$516,139,623	$552,269,396	$590,928,254	$632,293,232	$676,553,758

A statewide survey of county assessors indicates that most responding assessors expect to loose between 5% and 6% of the motor vehicle property tax base as a result of this proposal. No county reported a potential loss or gain outside of this range. Assuming 5% of the vehicle base is lost, the actual statewide county revenue loss is as follows:

	1999-00	2000-01	2001-02	2002-03	2003-04
Change	($25,806,981.15)	($27,613,469.80)	($29,546,412.70)	($31,614,661.60)	($33,827,687.90)

Because the bill does not become effective until July 1, 2000 the loss does not take effect until the FY 2000-01 fiscal year. This shift for the effective date is reflected in the chart.

No fiscal impact is expected as a result of Section 2 of the bill.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Linda Struyk Millsaps

APPROVED BY:

DATE: July 6, 1999

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 3

HOUSE BILL 1476
Committee Substitute Favorable 6/15/99
Third Edition Engrossed 6/24/99

Short Title: Update I.R.C. Ref./Conform Criminal Deadline. (Public)

Sponsors:

Referred to:

May 13, 1999

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE USED IN DEFINING AND DETERMINING CERTAIN STATE TAX PROVISIONS AND TO CONFORM TO THE FEDERAL STATUTE OF LIMITATIONS FOR WILLFUL FAILURE TO COMPLY WITH STATE TAX LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-228.90(b)(1a) reads as rewritten:

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

. . .

(1a) Code. -- The Internal Revenue Code as enacted as of ~~September 1, 1998,~~ June 1, 1999, including any provisions enacted as of that date which become effective either before or after that date."

Section 2. G.S. 105-236(8) reads as rewritten:

"(8) Willful Failure to Collect, Withhold, or Pay Over Tax. -- Any person required to collect, withhold, account for, and pay over any tax who willfully fails to collect or truthfully account for and pay over the tax shall, in addition to other penalties provided by law, be guilty of a Class 1 misdemeanor. Notwithstanding any other provision of law, no prosecution for a violation brought under this subdivision shall be barred before the expiration of ~~three~~ six years after the date of the violation."

Section 3. G.S. 105-236(9) reads as rewritten:

"(9) Willful Failure to File Return, Supply Information, or Pay Tax. -- Any person required to pay any tax, to make a return, to keep any records, or to supply any information, who willfully fails to pay the tax, make the return, keep the records, or supply the information, at the time or times required by law, or rules issued pursuant thereto, shall, in addition to other penalties provided by law, be guilty of a Class 1 misdemeanor. Notwithstanding any other provision of law, no prosecution for a violation brought under this subdivision shall be barred before the expiration of ~~three~~ six years after the date of the violation."

Section 4. Sections 2 and 3 of this act become effective December 1, 1999, and apply to prosecutions brought on or after that date for cases where the three-year statute of limitations had not expired prior to December 1, 1999. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1476
Committee Substitute Favorable 6/15/99
Third Edition Engrossed 6/24/99
Proposed Senate Committee Substitute H1476-PCS3456-LC

Short Title: Code Update/Criminal Deadline/Research. (Public)

Sponsors:

Referred to:

May 13, 1999

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE USED IN DEFINING AND DETERMINING CERTAIN STATE TAX PROVISIONS, TO EARMARK PART OF THE RESULTING REVENUE GAIN FOR TAX RESEARCH, AND TO CONFORM TO THE FEDERAL STATUTE OF LIMITATIONS FOR WILLFUL FAILURE TO COMPLY WITH STATE TAX LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-228.90(b)(1a) reads as rewritten:

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

. . .

(1a) Code. -- The Internal Revenue Code as enacted as of ~~September 1, 1998,~~ June 1, 1999, including any provisions enacted as of that date which become effective either before or after that date."

Section 2. G.S. 105-236(8) reads as rewritten:

"(8) Willful Failure to Collect, Withhold, or Pay Over Tax. -- Any person required to collect, withhold, account for, and pay over any tax who willfully fails to collect or truthfully account for and pay over the tax shall, in addition to other penalties provided by law, be guilty of a Class 1 misdemeanor. Notwithstanding any other provision of law, no prosecution for a violation brought under this

subdivision shall be barred before the expiration of ~~three~~ six years after the date of the violation."

Section 3. G.S. 105-236(9) reads as rewritten:

"(9) Willful Failure to File Return, Supply Information, or Pay Tax. -- Any person required to pay any tax, to make a return, to keep any records, or to supply any information, who willfully fails to pay the tax, make the return, keep the records, or supply the information, at the time or times required by law, or rules issued pursuant thereto, shall, in addition to other penalties provided by law, be guilty of a Class 1 misdemeanor. Notwithstanding any other provision of law, no prosecution for a violation brought under this subdivision shall be barred before the expiration of ~~three~~ six years after the date of the violation."

Section 4. The Secretary of Revenue may draw the following amounts from funds generated by Section 1 of this act that would otherwise be credited to the General Fund, to fund four tax analyst positions in the Tax Research Division of the Department of Revenue, effective January 1, 2000, as recommended by the Revenue Laws Study Committee:

(1) One hundred seventy-eight thousand thirty-eight dollars ($178,038) in the 1999-2000 fiscal year.

(2) Two hundred eighty-three thousand two hundred seventy-five dollars ($283,275) in the 2000-2001 fiscal year.

Section 5. Sections 2 and 3 of this act become effective December 1, 1999, and apply to prosecutions brought on or after that date for cases where the three-year statute of limitations had not expired prior to December 1, 1999. The remainder of this act is effective when it becomes law.

HOUSE BILL 1476:
Code Update/Criminal Deadline/Research

BILL ANALYSIS

Committee:	Senate Finance	**Sponsor:**	Rep. Miller
Date:	July 6, 1999	**Analysis by:**	Martha H. Harris
Version:	Senate PCS for 3rd Edition		Staff Attorney

SUMMARY: ***House Bill 1476 would make the following three changes. The second change was added by the House Committee Substitute and the third is added by this proposed Senate Committee Substitute:***

1. ***It rewrites the definition of the Internal Revenue Code used in State tax statutes to change the reference date from September 1, 1998 to June 1, 1999. Updating the Internal Revenue Code reference makes recent amendments to the Code applicable to the State to the extent that State tax law previously tracked federal law.***
2. ***It incorporates House Bill 1197, introduced by Rep. Miller. House Bill 1197 conforms the State statute of limitations, with respect to the willful failure to comply with the State's tax laws, to the federal statute of limitations.***
3. ***It earmarks part of the revenue generated by this act to pay for four new tax research positions for the Department of Revenue, as recommended by the Revenue Laws Study Committee.***

1. UPDATE CODE REFERENCE: Since the General Assembly updated the State's reference to the Internal Revenue Code to September 1, 1998, Congress has enacted two bills that affect the Internal Revenue Code. On October 21, 1998, the President signed into law Public Law 105-277, which includes the Tax and Trade Relief Extension Act of 1998. On April 19, 1999, the President signed into law Public Law 106-21, which extends the tax benefits available with respect to services performed in a combat zone to services performed in the Kosovo area.

Public Law 105-277: This act extended the research and development credit, created or extended tax breaks aimed particularly at individuals, small businesses, and farmers, narrowed some tax exemptions, and made many technical changes. The following is a summary of the some of the more significant provisions:

- It extends the research and development credit through June 30, 1999. North Carolina's credit for research and development is based upon this federal credit.
- It accelerates the deduction for health insurance costs of self-employed individuals. Self-employed individuals are entitled to deduct a portion of the amount paid for health insurance for the self-employed individual and the individual's spouse and dependents. Under prior law, the amount that could be deducted was increasing from 45% in 1998 to 100% in 2007. The legislation passed last year accelerated the amount that could be deducted to 60% for tax years beginning in 1999 through 2001, to 70% for tax years beginning in 2002, and to 100% for tax years beginning in 2003 and thereafter. An employee may exclude from income 100% of employer-provided health insurance.
- It provides a five-year net operating loss carryback for farmers, effective for NOLs arising in taxable years beginning after December 31, 1997. A NOL is the amount by which business deductions exceed business gross income. Generally, a NOL may be carried back two years and forward 20 years

to offset taxable income in such years. The act created an exception for farming losses. A farming loss is defined as the amount of any net operating loss attributable to the income and deductions of a farming business.

- It permanently extends the income averaging provision for farmers. An individual engaged in a farming business may elect to compute current year tax liability by averaging, over the prior three-year period, all or a portion of the taxable income that is attributable to the farming business. Prior to this act, this provision would have expired for taxable years beginning on or after January 1, 2001.
- It allows a taxpayer that wins a contest, lottery, jackpot, etc. and elects to take the payment as an annuity to claim the prize winnings as income at the time they are received. Prior to the enactment of this act, a person who had the option of receiving either a lump-sum distribution or an annuity was required to include the value of the award in gross income in the year in which the prize was won, even if the annuity option was exercised.
- It permanently extends the charitable market-value deduction for contributions of qualified appreciated stock to private foundations.
- It limits specified liability losses to product liability losses and amounts allowable as a deduction that are in satisfaction of a liability under a federal or state law requiring the reclamation of land, decommissioning of a nuclear power plant, dismantlement of a drilling platform, remediation of environmental contamination, or a payment under any workers compensation act. A specified liability loss may be carried back 10 years rather than being limited to the general two-year carryback period. Prior to the enactment of this act, a specified liability loss included other liabilities that arose under federal or state law or out of any tort of the taxpayer.
- It requires certain deductible liquidating distributions of a regulated investment company or real estate investment trust to an 80% corporate owner to be included in the corporation's income.

Public Law 106-21: This act extends the tax benefits available under the Internal Revenue Code for services performed in a combat zone to members of the armed forces for services performed in the Federal Republic of Yugoslavia, Albania, the Adriatic Sea, and the northern Ionian Sea.

Under the Code, all or most of military personnel's combat pay is exempt from income tax. Since North Carolina begins its calculation of taxable income with federal taxable income, the pay is also exempt from State income tax.

The Code also extends the time military personnel and those serving in support of the military personnel have to file and pay their taxes. The extension applies to those individuals within the "qualified hazardous duty area" and to those individuals supporting Operation Allied Force who are away from their permanent duty stations but are not within the designated combat zone. The extension lasts until 180 days after taxpayers leave the combat zone or their supporting operation, plus the number of days they were there during the tax filing season after the air strikes began on March 24, 1999. The tax relief provisions also apply during any period of hospitalization resulting from injuries or illness incurred while serving in the combat zone. During the extension, affected taxpayers will not accrue any interest or penalty charges and the IRS will not pursue any tax enforcement action. Likewise, G.S. 105-249.2 prohibits the Secretary of Revenue from assessing interest or a penalty against a taxpayer for any period that is disregarded for federal income tax purposes.

2. CONFORM CRIMINAL DEADLINE TO FEDERAL: The House committee substitute incorporates House Bill 1197. It is a Class 1 misdemeanor to willfully fail to collect, withhold, or pay over taxes or to willfully fail to file a return or pay the tax due. Under North Carolina law, the State has three years from the date of the violation to prosecute the taxpayer that violated the tax law. Under federal law, the IRS has six years from the date of the prosecution to pursue the violation. Sections 2 and 3 conform the State statute of limitations to the federal statute of limitations by extending the time the State has to pursue a violation of the tax laws from three years to six years. This change becomes effective December 1, 1999, for cases where the three-year statute of limitations has not already expired.

3. TAX RESEARCH POSITIONS. Section 4 of this bill would authorize the Secretary of Revenue to draw funds from the revenues generated by Section 1 of this bill to fund four tax research positions in the Department of Revenue, effective January 1, 2000, as recommended by the Revenue Laws Study Committee. The Revenue Laws Study Committee determined that there is a need for in-depth tax research that cannot be met by the current three-person staff. Adding four new tax analyst positions would provide a tax research resource capable of serving the needs of the legislative and executive branches for analyses of various tax proposals and of the effect of changes in the economy on the tax base.

The Tax Research Division compiles and publishes statistical and descriptive information on State and local taxes, analyzes the impact of proposed changes in the tax laws, and answers inquiries from other State agencies and the public about the tax laws. In recent years, the General Assembly had made additional demands on the Division for reports and estimates, and this trend will undoubtedly continue. With additional tax analysts, the Tax Research Division could develop tax databases and models to provide quick estimates of various tax proposals as they arise. There are many important issues facing the General Assembly at this time and extensive tax research will be required to provide the information necessary to evaluate these issues. Examples of these issues are:

- The effect on the current tax structure of the change from a manufacturing and farming economy to a service economy
- The effectiveness and cost of tax incentives
- The impact that utility deregulation will have on State and local taxes
- The effect of allowing combined or consolidated corporate income tax returns, rather than the current single-entity returns
- The effect on revenues and on various taxpayers groups of changing the three-factor corporate apportionment formula to a single-factor formula
- Whether to adopt the Multistate Tax Commission's uniform apportionment formula for financial institutions in place of the current single-factor formula
- How to simplify the formulas for distribution of State-shared revenues

The Department of Revenue surveyed other states to determine the number of tax research personnel each employs in its executive branch. The following table shows the number of tax research employees for twenty states, ranked by size of state population. For those states that have positions devoted partly to tax research and partly to other duties, the number represents the portion of staff time dedicated to forecasting.

State	Number of Employees
California	10
Texas	81
New York	16

State	Number of Employees
Florida	12
Pennsylvania	9
Illinois	4
Ohio	5
Michigan	11
New Jersey	6
Georgia	1
North Carolina	3
Virginia	6
Massachusetts	5
Indiana	1
Washington	13
Missouri	5
Tennessee	3
Wisconsin	11
Maryland	3
Minnesota	14

BACKGROUND: Since the State corporate income tax was changed to a percentage of federal taxable income in 1967, the reference date to the Internal Revenue Code has been updated periodically. In discussing bills to update the Code reference, the question frequently arises as to why the statutes refer to the Code on a particular date instead of referring to the Code and any future amendments to it, thereby eliminating the necessity of bills like this one. The answer to the question lies in both a policy decision and a potential legal restraint.

First, the policy reason for specifying a particular date is that, in light of the many changes made in federal tax law from year to year, the State may not want to adopt automatically federal changes, particularly when these changes result in large revenue losses. By pinning references to the Code to a certain date, the State ensures that it can examine any federal changes before making the changes effective for the State.

Secondly, and more importantly, however, the North Carolina Constitution imposes an obstacle to a statute that automatically adopts any changes in federal tax law. Article V, Section 2(1) of the Constitution provides in pertinent part that the "power of taxation ... shall never be surrendered, suspended, or contracted away." Relying on this provision, the North Carolina court decisions on delegation of legislative power to administrative agencies, and an analysis of the few federal cases on this issue, the Attorney General's Office concluded in a memorandum issued in 1977 to the Director of the Tax Research Division of the Department of Revenue that a "statute which adopts by reference future amendments to the Internal Revenue Code would ... be invalidated as an unconstitutional delegation of legislative power.

In 1997, the Revenue Laws Study Committee explored the possibility of legislation that would automatically adopt federal changes to the Code each year, with legislative review and approval required in the succeeding legislative session. It was hoped that this approach would avoid the practical difficulties that occur when Code changes go into effect many months before the General Assembly has a chance to pass legislation adopting the changes. The Attorney General's Office reviewed the relevant case law in this State and other states before concluding that this approach would be unlikely to withstand a constitutional challenge.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1476 (Proposed Senate Finance Committee Substitute)

SHORT TITLE: Code Update/ Criminal Deadline/ Research

SPONSOR(S):

FISCAL IMPACT

Yes (x) **No ( )** **No Estimate Available ( )**

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
GENERAL FUND					
REVENUES	$11,800,000	$3,200,000	$1,400,000	$900,000	$100,000
EXPENDITURES	$178,038	$283,275			
Net General Fund	**$11,621,962**	**$2,916,725**	**$1,400,000**	**$900,000**	**$100,000**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue

EFFECTIVE DATE: Sections 2 and 3 of this bill are effective December 1, 1999, and apply to prosecutions brought on or after that date. The positions in section 4 are effective January 1, 2000. The remainder of the bill is effective when it becomes law.

BILL SUMMARY:

Section 1 of the bill changes the reference to the Internal Revenue Code used in defining and determining certain state income tax provisions from September 1, 1998 to June 1, 1999. Sections 2 and 3 conform the state statute of limitations for willful failure to comply with the state's tax laws, to the federal statute of limitations. Section 4 allows the Department of Revenue to fund four tax analyst positions in its Tax Research Division from revenue gained in this bill.

ASSUMPTIONS AND METHODOLOGY:

Section 1

Since the General Assembly last updated its reference to the Internal Revenue Code, Congress passed the Tax and Trade Relief Extension Act of 1998 (P.L. 105-277) and a proposal relating to tax relief for personnel in the Kosovo conflict (P.L. 106-21). The chart on the next page lists the major items that impact the North Carolina income tax code. The Congressional Joint Committee

on Taxation estimated the fiscal impact of these bills on the US Treasury. North Carolina's share of the revenue loss was determined by dividing N. C. actual tax collections by national tax collections.

Sections 2 & 3

These sections extend the statute of limitations for criminal violations from three years to six years for 1) willful failure to collect, withhold, or pay over tax and 2) willful failure to file return, supply information, or pay tax. These sections conform North Carolina statutes to the Internal Revenue Code. These sections also bring North Carolina law into line with other southeastern states such as South Carolina, Virginia, and Tennessee. The Department of Revenue does not anticipate an increase in the number of criminal prosecutions due to this change, but will increase the number of criminal charges per case. No additional revenue is anticipated from this change.

Section 4

This section allows funding for four Tax Analyst positions in the Tax Research Division of the Department of Revenue. These positions were recommended by the Revenue Laws Study Committee and are included in SB 74 and HB 55. The Tax Research Division compiles and publishes statistical and descriptive information on state and local taxes, analyzes the impact of proposed changes in the tax laws, and answers inquiries from the General Assembly, other state agencies, and the public about the tax laws. The four additional personnel will enable the Department to do the research and analysis needed to meet reporting requirements imposed by the General Assembly.

Each position is a Tax Analyst, grade 79, budgeted at an annual salary of $57,590. The estimated budget for these positions is shown below. The salaries are not adjusted for any potential pay increases in future years. Salaries and benefits, telephone service, and general office supplies are half of the annual amount needed due to a January 1, 2000 effective date. The furniture, computers, and office equipment are one-time costs.

Account Title	**1999-00**	**2000-01**
SPA Regular Salaries	$115,180	$230,360
Social Security Contributions	8,812	17,623
Retirement Contributions	12,474	24,948
Medical Insurance Contributions	3,472	6,944
Telephone Service	700	1,400
General Office Supplies	1,000	2,000
Furniture-Office (Workstation and Chair)	18,000	
Office Equipment (Calculator)	400	
Equipment - Computer (Desktop/Laptop)	18,000	
Total	$178,038	$283,275

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic

APPROVED BY:

HB 1476 Update IRC Reference
STATE BUDGET/REVENUE ESTIMATES
FY 1999-2007
($ Millions)

Provision	Effective	1999	2000	2001	2002	2003	2004	2005	2006	2007
A. Extend the Research Tax Credit [through 6-30-99] [1]	7/1/98	Revenue loss already included in tax forecast								
B. Extend Contributions of Appreciated Stock to Private Foundations [permanent]; Public Inspection of Private Foundation Annual Returns	7-1-98 [2]	-0.17	-0.40	-0.51	-0.60	-0.66	-0.69	-0.72	-0.75	-0.79
C. Extend Tax Information Reporting for Income Contingent Student Loan Program [through 9-30-03]	10/1/98	Negligible Budget Effect								
D. Provide Special Rule for Cash Options for Receipt of Qualified Prizes by Individuals	[3]	NA	NA	NA	NA	NA	NA	NA	NA	NA
E. Restrict Special Net Operating Loss Carry-back Rules for Specified Liability Losses	NOLgi tyea DOE	0.08	0.11	0.16	0.21	0.23	0.22	0.22	0.22	0.23
F. Extend the Net Operating Loss Carryback Period for Farmer Losses	NOLgi tyba 12/31/97	-0.53	-0.48	-0.43	-0.40	-0.36	-0.33	-0.30	-0.28	-0.26
G. Accelerate the Self-Employed Health Insurance Deduction – 60% in 1999 through 2001, 70% in 2002, and 100% in 2003 and thereafter [4]	tyba 12-31-98	-0.76	-2.09	-1.70	-1.81	-2.78	-4.61	-4.92	-4.35	-1.86
H. Change the Treatment of Certain Deductible Liquidating Distributions of RICs and REITs	dma 5-21-98	13.14	6.01	3.92	3.47	3.64	3.82	4.02	4.22	4.43
TOTAL		11.76	3.15	1.43	.87	.07	-1.59	-1.71	-.94	1.75

Legend for "Effective" Column:
DOE = date of enactment
NOLgi = net operating losses generated in
dma = distributions made after
tyba - taxable years beginning after
tyea = taxable years ending after

NOTES:

North Carolina estimates are based on a percentage of the federal estimate calculated by the Congressional Joint Committee on Taxation. The percentage used is N.C. actual tax collections divided by national tax collections. (Individual = .723% Corporate = .542%)

[1] Based on previous federal extensions of this tax credit, the General Fund revenue forecast assumes the renewal of this credit.

2] Effective for requests made after the later of the date which is 60 days after the date on which the Treasury Department published regulations or 12/31/98.

3] The provision applies with respect to any qualified prize to which a person first becomes entitled after the date of enactment. In addition, the provision also applies to any qualified prize to which a person became entitled on or before the date of enactment if the person has an option to receive a lump-sum payment only during some portion of the 18 month period beginning on 7/1/99. The national data is not useful in estimating North Carolina impact due to the lack of a state lottery or other games that provide large prizes.

[4] Under present law, the self-employed health insurance deduction rates are 45% in 1998 and 1999, 50% in 2000 and 2001, 60% in, 80% in 2003 through 2005, 90% in 2006, and 100% in 2007 and thereafter,

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 1433
Committee Substitute Favorable 6/22/99

Short Title: Use Tax Payment/Other Changes. (Public)

Sponsors:

Referred to:

April 29, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR INDIVIDUALS TO PAY THEIR ANNUAL USE TAX WITH THEIR INCOME TAX FORMS, TO PROMOTE ELECTRONIC FILING, AND TO IMPROVE TAX COLLECTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-164.16(d) reads as rewritten:

"(d) Use Tax on Out-of-State Purchases. -- ~~Notwithstanding subsection (b),~~ Use tax payable by an individual who purchases tangible personal property outside the State for a nonbusiness purpose ~~shall file a use tax return~~ is due on an annual basis. ~~The~~ For an individual who is not required to file an individual income tax return under Part 2 of Article 4 of this Chapter, the annual reporting period ends on the last day of the calendar ~~year. The return is due by the due date, including any approved extensions, for filing the individual's income tax return.~~ year and a use tax return is due by the following April 15. For an individual who is required to file an individual income tax return, the annual reporting period ends on the last day of the individual's income tax year, and the use tax must be paid on the income tax return as provided in G.S. 105-269.14."

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

"**§ 105-269.14. Payment of use tax with individual income tax.**

(a) Requirement. -- An individual who owes use tax that is payable on an annual basis pursuant to G.S. 105-164.16(d) and who is required to file an individual income tax return under Part 2 of Article 4 of this Chapter must pay the use tax with the

individual income tax return for the taxable year. The Secretary must provide appropriate space and information on the individual income tax form and instructions. The information must include the following:

(1) An explanation of an individual's obligation to pay use tax on items purchased from mail order, Internet, or other sellers that do not collect State and local sales and use taxes on the items.

(2) A method to help an individual determine the amount of use tax the individual owes. The method must list categories of items, such as personal computers and clothing, that are commonly sold by mail order or Internet and must include a table that gives the average amounts of use tax payable by taxpayers in various income ranges.

(b) Distribution. -- The Secretary must distribute one-third of the net use tax proceeds collected under this section to counties and cities in proportion to their total distributions under Articles 39, 40, and 42 of this Chapter and Chapter 1096 of the 1967 Session Laws for the most recent period for which data is available. The provisions of G.S. 105-472, 105-486, and 105-501 do not apply to tax proceeds distributed under this section."

Section 3. To pay for the costs of programming, form revision, and resources for taxpayer assistance to implement Sections 1 and 2 of this act, the Secretary of Revenue may draw up to one hundred fifty thousand dollars ($150,000) for the 1999-2000 fiscal year from net collections that would otherwise be credited to the General Fund under G.S. 105-269.14, enacted by Section 2 of this act.

Section 4. During the 1999-2000 fiscal year, the Secretary of Revenue shall implement a program to allow those taxpayers required under G.S. 105-164.16 to report and pay sales and use taxes on a semimonthly basis to file the semimonthly return electronically. To pay for this program, the Secretary may draw up to five hundred thousand dollars ($500,000) for the 1999-2000 fiscal year from net collections that would otherwise be credited to the General Fund under G.S. 105-269.14, enacted by Section 2 of this act.

Section 5.(a) The Secretary of Revenue shall contract during the 1999-2001 fiscal biennium for the collection of delinquent tax debts owed by nonresidents and foreign entities. To implement this section, the Secretary may draw funds for the 1999-2000 fiscal year from net collections that would otherwise be credited to the General Fund under G.S. 105-269.14, enacted by Section 2 of this act. The Secretary of Revenue shall report annually to the Revenue Laws Study Committee on its collections pursuant to this contract during the biennium.

Section 5.(b) The following definitions apply in this section:

(1) Delinquent tax debt. -- The amount of tax due as stated in a final notice of assessment issued to the taxpayer by the Secretary of Revenue when the taxpayer no longer has a right to contest the debt.

(2) Foreign entity. -- A foreign corporation as defined in G.S. 55-1-40, a foreign limited liability company as defined in G.S. 57C-1-03, a

foreign limited partnership as defined in G.S. 59-102, or a general partnership formed under the laws of a jurisdiction other than this State.

Section 6. The Department of Revenue shall conduct a study to identify and evaluate proposals for more efficient collection of taxes, including using electronic commerce and other technology to increase efficiency. The study shall include an analysis of the most efficient tax collection methods used in other states. The State Controller shall cooperate with the Department of Revenue in this study. The Department shall report the results of its study, including findings, recommendations, and estimated revenue gains of each recommendation, to the Revenue Laws Study Committee by May 1, 2000. To implement this section, the Secretary of Revenue may draw up to fifty thousand dollars ($50,000) for the 1999-2000 fiscal year from net collections that would otherwise be credited to the General Fund under G.S. 105-269.14, enacted by Section 2 of this act.

Section 7. Article 3 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-59.1. Contracts with certain foreign vendors.**

The Secretary of Administration and other entities to which this Article applies shall not contract for goods or services with a vendor if the vendor or an affiliate of the vendor meets one or more of the conditions of G.S. 105-164.8(b) but refuses to collect the use tax levied under Article 5 of Chapter 105 of the General Statutes on its sales delivered to North Carolina. The Secretary of Revenue shall provide the Secretary of Administration periodically with a list of vendors to which this section applies. For the purpose of this section, the term 'affiliate' has the meaning provided in G.S. 105-163.010."

Section 8. G.S. 105-259(b) is amended by adding two new subdivisions to read:

"(22) To provide the Secretary of Administration pursuant to G.S. 143-59.1 a list of vendors and their affiliates who meet one or more of the conditions of G.S. 105-164.8(b) but refuse to collect the use tax levied under Article 5 of this Chapter on their sales delivered to North Carolina.

(23) To provide public access to a database containing the names and account numbers of taxpayers who are not required to pay sales and use taxes under Article 5 of this Chapter to a retailer because of an exemption or because they are authorized to pay the tax directly to the Department of Revenue."

Section 9. Sections 1 and 2 of this act are effective for taxable years beginning on or after January 1, 1999. The remainder of this act becomes effective July 1, 1999.

HOUSE BILL 1433:
Use Tax Payment/Other Changes

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Rep. Miller
Date:	July 6, 1999	**Summary by:**	Cindy Avrette
Version:	2nd Edition		Staff Attorney

SUMMARY: House Bill 1433 simplifies use tax collection and seeks to improve tax collections in several ways:

- ***It provides that an individual who owes use tax to the State can pay the tax with the individual's income tax.***
- ***It promotes the electronic filing of semimonthly sales tax reports.***
- ***It directs the Secretary of Revenue to contract for the collection of delinquent tax debts owed by nonresidents and foreign entities.***
- ***It directs the Department of Revenue and the State Controller to study the feasibility of a central collection operation.***
- ***It prohibits the State agencies from contracting with a vendor who is required under G.S. 105-164.8(b) to collect State sales and use tax but refuses to do so.***

The first part of the bill becomes effective for taxable years beginning on or after January 1, 1999. The remainder of the bill becomes effective July 1, 1999.

CURRENT LAW: North Carolina has a 6% sales and use tax. The sales tax is paid on purchases made in this State. The tax is collected by the retailer and remitted to the State. The use tax complements the sales tax by taxing transactions that are not subject to the sales tax because of movement in interstate commerce. Like the sales tax, the use tax is imposed on the purchaser. Unlike the sales tax, the responsibility for remitting the tax to the Department of Revenue is also on the purchaser.

Last biennium, the General Assembly sought to make the remittance of use tax by the taxpayer to the State less burdensome by providing that use tax on goods purchased out-of-state for a non-business purpose may be filed on an annual basis. The return and the tax are due at the same time as the personal income tax return.

BILL ANALYSIS: Sections 1 and 2 of House Bill 1433 provide that the use tax will be paid on the taxpayers' income tax returns. The bill provides that a taxpayer who owes use tax and who must remit a State tax return must pay the use tax owed with the tax return. The tax return will have space on it to indicate the amount of use tax owed. By placing the use tax <u>on</u> the individual income tax return, as opposed to a separate return sent to the taxpayer <u>with</u> the tax return, it is hoped that taxpayers' awareness of their responsibility to pay the tax will increase since taxpayers must affirm that the information on the return is true and complete by signing the return.

The bill requires the Secretary of Revenue to provide information on the individual income tax form and instructions to explain a person's obligation to pay use tax on items purchased from mail order, Internet, or other sellers that do not collect State sales tax on the items. The Secretary must also provide a method to help an individual determine the amount of use tax owed. The method must list categories of items that are commonly sold by mail order or Internet and must include a table that gives the average amounts of use tax payable by taxpayers in various income ranges.

Seven states provide a line on the individual income tax return for the collection of use tax. Another 7 states provide a use tax return with the individual income tax return and provide that the use tax return is due at the same time as the income tax return. Of the seven states that provide a line on the return for the collection of use tax, only Maine provides for an estimated amount of tax due.

The bill allows the Department to use some of the additional use tax revenue collected under this bill to promote tax collections:

- The Department may use $150,000 to pay for the costs of programming, form revision, and resources for taxpayer assistance in connection with the new use tax collection method.
- The Department may use $500,000 to implement a program to allow semimonthly sales and use taxpayers to file their returns electronically.
- The Department may use some of the revenue to contract for the collection of delinquent tax debts owed by nonresidents and foreign entities. A delinquent tax debt is the amount of tax due as stated in a final notice of assessment issued to the taxpayer when the taxpayer no longer has a right to contest the debt. The Department must report on its collections pursuant to this contract to the Revenue Laws Study Committee.
- The Department may use up to $50,000 to conduct a study, in cooperation with the State Controller, to identify and evaluate proposals for more efficient collection of taxes. The Department must report its findings, recommendations, and estimated revenue gains to the Revenue Laws Study Committee by May 1, 2000.

The bill prohibits the State from contracting with a vendor for goods or services if the vendor is required by G.S. 105-164.8(b) to collect use tax for the State but refuses to do so. G.S. 105-164.8 requires a retailer who is engaged in business in this State to collect use tax on a mail order sale. G.S. 105-164.8(b) provides that a retailer who makes a mail order sale is engaged in business in this State if the retailer meets one or more of the following conditions:

- Is a corporation engaged in business under the laws of this State.
- Maintains offices in this State.
- Has representatives in this State who solicit business or transact business on behalf of the retailer.
- Is purposefully or systematically exploiting the market in this State by any media-assisted, media-facilitated, or media-solicited means, including direct mail advertising, distribution of catalogs, computer-assisted shopping, etc.
- Resides in a jurisdiction that has a compact or reciprocity with North Carolina to support North Carolina's taxing power.
- Consents to the imposition of the collection of the tax.

Lastly, the bill amends the tax secrecy provisions to allow the Secretary of Revenue to do two things:

- Provide the Secretary of Administration with a list of vendors who refuse to collect the State's use tax even though they are required to do so under G.S. 105-164.8.
- Provide public access to a database containing the names and account numbers of taxpayers who are not required to pay sales and use tax because of an exemption or because they are authorized to pay the tax directly to the Department.

BACKGROUND: In the 1980s, states around the country became increasing aware of the revenue loss associated with taxpayer avoidance of the use tax. The potential increase in State and local revenue for North Carolina, if full taxpayer compliance were achieved, would exceed $100 million.

The most cost-effective manner to collect the tax, from a state's point-of-view, is to require the out-of-state retailers to collect and remit the use tax. However, in 1967, the U.S. Supreme Court ruled in Bellas Hess that a state could not require an out-of-state retailer to collect its use tax unless the retailer has enough contacts with the state to subject it to the state's taxing jurisdiction. The Supreme Court reaffirmed this decision in 1992 in Quill Company v. North Dakota.

States have negotiated with direct marketers on at least two occasions to craft a voluntary collection agreement where marketers would collect the tax and states would simplify their reporting requirements. Both of these efforts were unsuccessful.

There are three efforts currently under way to address the issue of out-of-state purchases:

- The National Tax Association Communications and Electronic project is focusing on simplification issues and some policy principles to apply to remote commerce.
- The Advisory Commission on Electronic Commerce was established by the Internet Tax Freedom Act. It has 18 months to study electronic commerce issues and to make a report to Congress.
- The Multistate Tax Commission Tax Simplification Project is comprised of representatives of business and state and local governments who are focusing on ways to simplify the sales and use tax in the areas of uniformity and reporting. Sections 4 and 8 of this bill are two of the recommendations of the group working in North Carolina.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: H.B. 1433 HFCS

SHORT TITLE: Use Tax Payment/Other Changes

SPONSOR(S): Rep. Miller

FISCAL IMPACT

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

	$ Millions				
	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
State					
Revenue Gain	**3.33**	**3.50**	**3.68**	**3.86**	**4.05**
Less Expend.	**(0.70)**	**-**	**-**	**-**	**-**
Net Change	**2.63**	**3.50**	**3.68**	**3.86**	**4.05**
Local					
Net Change	**1.67**	**1.75**	**1.84**	**1.93**	**2.03**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue, Department of Administration, all other state agencies have purchasing authority.

EFFECTIVE DATE: Sections 1 and 2 of this act are effective for taxable years beginning on or after January 1, 1999. The remainder of this act becomes effective July 1, 1999.

BILL SUMMARY: The bill makes several changes to the policies and procedures surrounding North Carolina's use tax, income tax, and state purchasing. **Sections 1 and 2** require individuals who file an income tax return to include with that return a use tax payment for purchases made by retailers that do not charge sales tax. The tax shall be calculated at a standard rate of 6%. If the taxpayer does not know the amount due, the taxpayer may pay the tax actually due on purchases of $1000 or more, and an estimated amount on purchases of less than $1000. The estimated amount due for the small purchases is either 0.06% of the individual's North Carolina taxable income or the equivalent amount provided in a table calculated by the Secretary of Revenue. Individuals who do not file an income tax return are still required to submit a use tax report. These sections also direct the Department of Revenue to provide appropriate space and information on the use tax requirements on the state's income tax materials. Section 2 also

directs to the Secretary of Revenue to distribute one-third of the net use tax proceeds to the cities and counties.

Section 3 allows the Secretary of Revenue to draw up to $150,000 in FY 1999-00 to provide taxpayer assistance related to the use tax. **Section 4** requires that the Department of Revenue implement a program to allow businesses that are required to file sales and use taxes twice a month to file their sales tax returns electronically. It allows the Secretary to draw up to $500,000 in FY 1999-00 from net sales tax collections to pay for the program. **Section 5** directs the Department to contract for collection of delinquent taxes owed by nonresidents and foreign entities. Funding for the contract shall be drawn from use tax proceeds. The results must be reported annually to Revenue Laws. **Section 6** directs the Department of Revenue to conduct a study, and identify and evaluate proposals for more efficient collection of taxes, including the use of electronic commerce and other technologies. The State Controller is directed to assist with the study. This section also authorizes the Secretary to draw up to $50,000 for the 1999-00 fiscal year to fund the study. A report with recommendations must be made to Revenue Laws by May 1, 2000. **Section 7** bars the Secretary of Administration and all other state purchasing entities from contracting with vendors if that vendor (or its affiliate) refuses to collect the use tax on sales delivered to North Carolina. It directs the Department of Revenue to supply the Secretary of Administration with a list of such vendors. **Section 8** directs the Secretary of Revenue to provide public access to a database containing the names and account numbers of taxpayers who are not required to pay sales and use taxes because they are either exempt or are authorized to pay the Department directly.

ASSUMPTIONS AND METHODOLOGY: The bill makes several changes to tax collection and government purchasing procedures.

Sections 1& 2: These sections of the bill direct the Department of Revenue to alter their procedures for assessing and collecting individual use tax payments. The bill directs the Department to include specific space on the individual income tax return to report use tax payments, and provide a table to assist taxpayers in calculating their potential use tax liability.

Currently the Department of Revenue includes a form for individual use tax payments in the income tax instructions. However, the Department believes placing a special line for use tax payments on the individual income tax form will be much more effective and result in higher use tax payments. Based on a recent Department conducted survey, the Department of Revenue believes that at least seven other states now have a line item on their individual income tax form for use tax payments. Two of the states with a line on the form are Maine and Connecticut. Maine indicated to the North Carolina Department of Revenue that they collected $1.7 million in use taxes on individual income tax returns filed for 1997. Of the 576,000 returns filed, Maine reports that approximately 95,000 paid some use taxes. The North Carolina Department of Revenue receives approximately 3,000,000 returns annually. Based on this information and the data from Maine, the Sales Tax Division estimates that North Carolina will see a revenue increase of approximately $5,000,000. This amount is increase by 5% each year to reflect future growth. Because this revenue would be divided between the state and local governments, the actual fiscal impact is as follows:

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
State	3,333,333	3,500,000	3,675,000	3,858,750	4,051,688
Local	1,666,667	1,750,000	1,837,500	1,929,375	2,025,844
Total	5,000,000	5,250,000	5,512,500	5,788,125	6,077,531

Section 3: This section allows the Secretary of Revenue to deduct up to $150,000 from use tax proceeds to fund taxpayer assistance. This is amount is shown in the chart as a loss to the potential revenue stream created by the bill.

Section 4: This section authorizes the Secretary of Revenue to deduct up to $500,000 from use tax proceeds to fund electronic filing of semi-monthly sales tax returns. Under the bill businesses are not required to file electronically, they are merely given the option. This may increase revenues, as the Department may be able to draw more interest on the "float". However, because the electronic filing language is permissive, allowing retailers to decide if they will file electronically, no reliable estimate of the potential revenue change is possible. The note does assume that the Secretary will draw the $500,000. This amount is shown as a loss to the potential revenue stream.

Section 5: This section directs the Department to contract out the collection of out of state delinquent taxes. Because no contract has been negotiated, no accurate cost estimate is possible. It handled appropriately, contracting out should increase collections. However, no estimate is available on the potential gains. Since this information is not available no estimate is possible on the net potential revenue gain from this section of the Bill.

Section 6: This section directs the Department and the State Controller to study more efficient ways to collect taxes, and report their findings and recommendations to Revenue Laws. The note assumes the Secretary will draw the full $50,000 allowed for the study. No other fiscal impact is expected.

Section 7: This section of the bill bars the Department of Administration and other state purchasing entities from contracting with an out of state vendor that refuses to collect use tax on purchases delivered to North Carolina. Fiscal Research appropriations staff members do not believe this will have a fiscal impact on the Department of Administration or other organizations. There will be cost associated with Revenue compiling the list of barred vendors. However, the Department believes they can administer this portion of the bill without additional appropriations.

Section 8: This section directs the Department to create a public access database of those not required to pay sales taxes to vendors. While there may be some cost associated with this section of the bill, the Department should be able to fund this change through existing resources and those committed elsewhere in the bill.

Total Impact: Given the revenue increase created in Sections 1 and 2, and the expenses in the remainder of the bill, the net revenue gain as a result of the legislation is as follows:

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
State					
Revenue Gain	3,333,333	3,500,000	3,675,000	3,858,750	4,051,688
Less Expend.	(700,000)	-	-	-	-
Net Change	2,633,333	3,500,000	3,675,000	3,858,750	4,051,688
Local					
Net Change	1,666,667	1,750,000	1,837,500	1,929,375	2,025,844

TECHNICAL CONSIDERATIONS: The bill requires a fairly significant change in the state purchasing process. As a result, the Departments of Revenue and Administration may require some time to transition their systems and inform all appropriate entities. Therefore, Fiscal Research suggests the effective date be delayed at least three months to allow for a smooth transition.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Linda Struyk Millsaps

APPROVED BY: Tom Covington

DATE: Tuesday, June 15, 1999

VISITOR REGISTRATION SHEET

SENATE FINANCE

WEDNESDAY, JULY 7, 1999
8:30 A.M.

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
David Simmons	ZPA, PA
Alice Garland	Electricities
John M May	NC CWA Council
Jack Cozort	Parker Poe Adams & Bernstein
Sabra Faires	Dept of Revenue
Hal Miller	NCACCT
Anne Wicker	NCACDC
M McBride	NCMA
Kim Hibbard	NCLM
S Markham	EGHS
John McAlister	Duke Energy

VISITOR REGISTRATION SHEET

SENATE FINANCE — WEDNESDAY, JULY 7, 1999
8:30 A.M.

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Joe McClees	Safety Professionals
Steve Nonsen	TRALA
Bernard Allen	SOS
BRUCE THOMPSON	PPAB
Steve Woodson	NC Farm Bureau
John Bailey	NCDOR
David Boken	NCDOR
PERRI MORGAN	NFIB
LYMAN COOPER	LST.
John Hunter	NCFPC
Jim Blackburn	Assoc. County Commrs

VISITOR REGISTRATION SHEET

SENATE FINANCE — WEDNESDAY, JULY 7, 1999
8:30 A.M.

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sheila Pope	SOS
Patti Seawell	NC DOR
Tom Dixon	NCDOR
Nancy Pomeranz	NC DOR
Doris Weaver	NC CWA Political Council
Ian Rose	UNC
[illegible]	ASSE
Arlene Edwards	ASSE
GARY PARKER	ASSE
JOHN PAULS	ASSE
Henri McClees	McClees Consulting

VISITOR REGISTRATION SHEET

SENATE FINANCE — WEDNESDAY, JULY 7, 1999
8:30 A.M.

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ron Crisco	Hallmark
Hugh Tilson	NCHA
Gene Upchurch	CPA
Carl Williams	NCHFA
Karen Killian	Moore - Van Allen
Jerry Bentley	Bentley & Assoc.
Larry Heckner	Household Financial Group.
John McMillan	MFAs

VISITOR REGISTRATION SHEET

SENATE FINANCE — WEDNESDAY, JULY 7, 1999
8:30 A.M.

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Andy Romanet	N.C.L.M.
Rick Corbett	NC Dept. of Commerce
Lennie Collins	NC Dept of Rev.
PG	NC 76
Brad Adcock	BCBSNC
Philip A. Reale	Philip A. Reale, Atty at Law/ GTECH
J. Allen Cobb	GTECH - Parker, Poe, Adams & Bernstein
Ed Regan	N.C. Assn. of Co. Comm
Suzanne Williams	NCCCS
John Cyrus	N.C. State Grange
Mark Dixon	Capitol Group

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Wednesday, July 07, 1999

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

FAVORABLE

H.B.(CS #1)**812** Remove Sunset/Craven Proceeds Use.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1)**1433** Use Tax Payment/Other Changes.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1)**315** Motor Vehicle Tax Value.
Draft Number: PCS8153
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1)**1476** Update I.R.C. Ref./Conform Criminal Deadline.
Draft Number: PCS3456
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 4

Committee Clerk Comment: HB 315 812 1433 1476

AGENDA

SENATE FINANCE MEETING
WEDNESDAY, JULY 7, 1999
1:30 PM - ROOM 544

I. MEETING CALLED TO ORDER – SEN. HOYLE

II. INTRODUCTION OF PAGES

III. BILLS TO BE HEARD:

SB 330 – Spay/Neuter Program – Sen. Kinnaird

SB 562 – Fee Repeals and Increases – Sen. Miller

SB 897 – Safety Professionals – Sen. Dalton

SB 968 – Waiver of Competitive Bidding Modified – Sen. Larry Shaw

HB 19 – Casino Boats Regulated – Rep. Redwine

HB 120 – Tax Lien Advertisement and Collection – Rep. Owens

HB 280 – Motor Vehicle Tech. Amendments – Rep. Cole

HB 507-Cape Carteret/Bogue Annex – Rep. Smith

HB 651 – Brunswick Fire Fees – Rep. Redwine

HB 1479 – Newsprint Tax Credit Change – Rep. Miller

SENATE FINANCE COMMITTEE

WEDNESDAY, JULY 7, 1999

1:30 PM – ROOM 544

The Senate Finance Committee met on Wednesday, July 7, 1999 at 1:30 PM in Room 544 with Senator Hoyle presiding. There were 27 committee members present. Taylor Floyd from Garner, North Carolina and Dustin Weaver from Marion, North Carolina were introduced as the pages for the meeting.

HB 507 – Cape Carteret/Bogue Anex

Representative Ronnie Smith was recognized to explain this bill and at the conclusion of his explanation, Senator Lee moved for a "Favorable Report", motion passed. Copy of Bill is included in the minutes.

HB 280 – Motor Vehicle Tech. Amendments

Senator Soles moved for adoption of proposed committee substitute for discussion, motion passed. Representative Cole was recognized to explain the bill. Senator Hoyle decided to displace the Bill until later in the meeting.

HB 651 – Brunswick Fire Fees

Representative Redwine was recognized to explain this bill. Senator Soles sent forth an amendment to the bill and moved for adoption of the amendment, motion passed. Senator Soles also moved to give the bill as amended a "Favorable Report to be rolled into a committee substitute", motion passed. Copy of Bill and supporting documents are included in the minutes.

HB 19 – Casino Boards Regulated

Representative Redwine was recognized to explain this bill. After a discussion on the Bill, Senator Kerr sent forth an amendment to the bill and explained the amendment. Martha Harris, Staff Attorney, continued to explain the amendment. Jerry Hancock representing the Travel and Tourism Coalition of North Carolina spoke on the Bill. Senator Kerr made a motion for adoption of the amendment that he had sent forward. It was decided to delay the bill for consideration at the next Finance Meeting. Copy of Bill and supporting documents are included in the minutes.

HB 280 – Motor Vehicle Tech. Amendments

Representative Cole was once again recognized to explain this bill. Senator Wellons gave a subcommittee report on this bill, which was to leave bill as was originally and Senator Wellons moved to give the bill a "Favorable Report", motion not voted on. Senator Dannelly moved for adoption of a proposed committee substitute, motion passed. Senator Kerr moved for adoption of an amendment to the bill, motion passed. Ms. Sabre Faires of the Department of Revenue spoke on the amendment. Senator Dalton moved to give the committee substitute a "Favorable Report", motion passed. Copy of Bill and supporting documents are included in the minutes.

SB 330 – Spay/Neuter Program

Senator Kerr moved for adoption of the proposed committee substitute for this bill, motion passed. Senator Kinnaird was recognized to explain the bill, after which Senator Soles moved to give the bill a "Favorable Report", motion passed. It was noted that the Bill would go to Rules and be put into the Study Bill. Copy of Bill and supporting documents are included in the minutes.

SB 897 – Safety Professionals

Senator Dalton was recognized to explain the bill. Linda Millsaps, Staff, explained the new fiscal note on this bill. Senator Wellons asked the question relative to who are Safety Professionals. Mr. Jay Springle with the Safety Engineers explained what they are. After some discussion on the bill, Senator Metcalf moved to give they bill a "Favorable Report", motion passed. Copy of Bill and supporting documents are included in the minutes.

Meeting adjourned.

David W. Hoyle, Co-Chair

John H. Kerr, III Co-Chair

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

Visitors' Sign Up Sheet is Attachment #1
Committee Report dated July 7, 1999 is Attachment #2
Committee Report dated July 8, 1999 is Attachment #3

NOTE: SB 562 – Fee Repeals and Increases; SB 968 – Waiver of Competitive Bidding Modified; HB 120 – Tax Lien Advertisement and Collection and HB 1479 – Newsprint Tax Credit Change were not heard at this meeting

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 507
Committee Substitute Reported Without Prejudice 6/21/99

Short Title: Cape Carteret/Bogue Annexations. (Local)

Sponsors:

Referred to:

March 22, 1999

A BILL TO BE ENTITLED

AN ACT CONCERNING ANNEXATIONS BY THE TOWNS OF CAPE CARTERET AND BOGUE.

The General Assembly of North Carolina enacts:

Section 1. The following described property is added to the Town of Bogue:

Those properties bearing Carteret County tax parcel numbers 538519710111, 538519700935, 538519617136, 538519614172, 538519606934, 538519606843, 538519604475, 538519603441, and 538519601347 regardless of their inclusion in Town of Cape Carteret Annexation Ordinance 96-07-01.

Section 2. The following described property is added to the Town of Cape Carteret:

- Lots 1, 4 (and that unnumbered area north of Lot 4), 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, Section C, and the "Recreation Area" south of Lot 1, Section C, all according to the plat of Quail Wood Acres recorded in Map Book 23, Page 41, Carteret County Registry.
- Lots 1, 2, 3, and 23, Section A, Quail Wood Acres, as recorded in Map Book 15, Page 55, Carteret County Registry.
- That portion of Fox Drive north of a westward extension of the northern boundary line of Carteret County tax parcel number 538519710111.

Section 3. Except for those properties added to the Town of Bogue in Section 1 of this act, Town of Cape Carteret Annexation Ordinance No. 96-07-01 is

approved and shall become effective on July 1, 1999, or when this act becomes law, whichever occurs later.

Section 4. The Town of Cape Carteret and the Town of Bogue shall have the authority, prospectively or retroactively, to agree to the establishment of zoning buffers along their common city limit lines.

Section 5. This act is effective on July 1, 1999, or when it becomes law, whichever occurs later.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 651
Committee Substitute Favorable 4/19/99

Short Title: Brunswick Fire Fees. (Local)

Sponsors:

Referred to:

March 29, 1999

A BILL TO BE ENTITLED

AN ACT TO ALLOW BRUNSWICK COUNTY TO ASSESS A FIRE PROTECTION FEE.

The General Assembly of North Carolina enacts:

Section 1. **Fee-supported fire districts.**

Section 1.(a) Request for Fee-Supported District. -- A county may create a fee-supported fire district for insurance grading purposes if it receives one of the following:

(1) A written request to create the district signed by at least two-thirds of the members of the board of directors of a fire department that contracts with the county to provide fire protection within an area of the county.

(2) A petition requesting creation of a district signed by fifteen percent (15%) of the resident freeholders living in an area in the county. The petition must describe the area to be designated as the district.

Section 1.(b) Creation of Fee-Supported District. -- Upon receipt of a request as provided in subsection (a), the county may adopt a resolution establishing a fee-supported fire district and imposing annual fees for the provision of fire protection services within the district. The fee may be established or changed only after the county board of commissioners has received the recommendations of the committee for that district, established under subsection (b1) of this section. The district may not include any area that is within (i) a tax-supported fire district established under Article 3A of Chapter 69 of the General Statutes; (ii) a county

service district established under Article 16 of Chapter 153A of the General Statutes for fire protection purposes; or (iii) another fee-supported fire district. The district may not include any area that is within the corporate limits of a municipality unless the governing body of the municipality agrees to the inclusion. However, it is not necessary to obtain the consent of a municipality if the municipality has not levied a tax, performed any official act, nor held any elections within a period of 10 years preceding the adoption of the resolution including the area within the district.

Section 1.(b1) Committee for District. -- Each district shall have a committee to allow local control over the fee-setting process. In each district that does not include any territory in a participating municipality, the committee shall consist of five members as follows: The Fire Chief, the member of the board of county commissioners in whose electoral district more than fifty percent (50%) of the land area of the district lies, a community member chosen by the Fire Department Board of Directors, a community member chosen by the board of county commissioners, and the Fire Marshal. In each district that does include any territory in a participating municipality, the committee shall consist of members as follows: The Fire Chief, the mayor of each participating municipality in the district, the member of the board of county commissioners in whose electoral district more than fifty percent (50%) of the land area of the district lies, a community member chosen by the Fire Department Board of Directors, a community member chosen by the board of county commissioners, and the Fire Marshal. In either type of district, the Fire Marshal shall chair the committee, but may vote only to break a tie. The committee shall conduct an inquiry into the amount of funds required by the district to meet its needs, and shall make findings on the issue. The committee will communicate these findings to the board of county commissioners and recommend a fee. The board of county commissioners will then set the fee. The same process shall be used for changes to the fee once established.

Section 1.(c) Fees. -- The fees imposed by the county may not exceed the cost of providing fire protection services within the district and may be imposed on owners of all real property that benefits from the availability of fire protection and on owners of all manufactured or mobile homes that benefit from the availability of fire protection. For the purpose of this section, the term 'fire protection' includes furnishing emergency medical, rescue, and ambulance services to protect persons in the district from injury or death. The county shall establish a schedule of fees for different classes of property and the fee for each class of property shall be proportional to the estimated cost of providing fire protection services to that class of property. The schedule of fees shall include the following classes of property and the fee on each class of property shall not exceed the following maximums:

(1) A single-family dwelling or manufactured or mobile home, and appurtenant structures, plus up to five acres of surrounding land. The fee on this class of property may not exceed fifty dollars ($50.00) per site per year.

(2) Unimproved land other than the five acres of land classified as part of a single-family dwelling or manufactured or mobile home. The

county may establish a maximum fee for unimproved land of not more than five dollars ($5.00) per year.

(3) An animal production or horticultural operation. The fee on this class of property may not exceed ten dollars ($10.00) per site per year.

(4) A commercial facility other than an animal production or horticultural operation. The fee on this class of property may not exceed fifty dollars ($50.00) per site per year for commercial facilities with structures encompassing less than 5,000 square feet and one hundred dollars ($100.00) per site per year for commercial facilities with structures encompassing 5,000 square feet or more.

(5) A multiple-family dwelling. Each unit in a multiple-family dwelling shall be treated as a single-family dwelling under subdivision (1) of this subsection.

(6) Any other class of property selected by the county. The fee on these classes of property may not exceed fifty dollars ($50.00) per year.

Section 1.(d) Billing of Fees. -- The county may include a fee imposed under this section on the property tax bill for the real property, or the manufactured or mobile home, on which the fee is imposed.

Section 1.(e) Use of Fees. -- The county shall credit the fees collected within the district to a separate fund to be used only to furnish fire protection in the district. The board of commissioners shall administer the fund to provide fire protection by one or more of the following methods:

(1) Contracting with any municipality, any incorporated nonprofit volunteer or community fire department, or the Department of Environment and Natural Resources.

(2) Furnishing fire protection itself if it maintains an organized fire department.

(3) Establishing a fire department in the district.

Section 1.(f) Audit of Fire Department. -- If the county contracts with a fire department to provide fire protection services in a fee-supported fire district, the fire department shall prepare an annual budget based on anticipated revenues and shall submit the budget to the county for processing and approval through the county's regular budget procedure. Upon request of the county, the fire department shall make quarterly or semiannual reports to the county detailing its revenues, expenditures, and activities. The county may audit the fire department's financial records upon reasonable notice to the fire department.

Section 1.(g) Extension of Area of District. -- The county may by resolution annex to any fee-supported fire district any territory that it could include in a new district under subsection (c) of this section, upon finding that:

(1) The area to be annexed is contiguous to the district, with at least one-eighth of the area's aggregate external boundary coincident with the existing boundary of the district; and

(2) The area to be annexed requires the services of the district.

The county may also by resolution annex to any fee-supported fire district any territory it could include in a new district under subsection (c) of this section if one hundred percent (100%) of the real property owners in the territory to be annexed have petitioned the board of commissioners for annexation to the service district.

The area of any fee-supported fire district may be increased by including within the boundaries of the district any adjoining territory lying within a municipality if the territory is not already included in another fire protection district, and both the municipal governing body and the county commissioners of the county in which the district is located agree by resolution to the inclusion. However, it is not necessary to obtain the consent of a municipality if the municipality has not levied a tax, performed any official act, nor held any elections within a period of 10 years preceding the adoption of the resolution including the area within the district.

Section 1.(h) Annexation of District. -- When any portion of a fee-supported fire district has been annexed by a municipality furnishing fire protection to its citizens, and the municipality has not agreed to allow territory within it to be in the district, then the portion of the district annexed is no longer part of a fee-supported district. For the purposes of this section and regardless of the actual effective date of annexation, the date of annexation shall be considered to be a date in the month of June.

Section 1.(i) Abolition of District. -- Upon finding that there is no longer a need for a given fee-supported fire district, the board of commissioners may repeal the resolution establishing the district and thus abolish the district."

Section 2. This act applies to Brunswick County only.

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

HOUSE BILL 651:
Brunswick Fire Fees

BILL ANALYSIS

Committee: Senate Finance
Date: July 7, 1999
Version: 2nd Edition

Introduced by: Rep. Redwine
Summary by: Cindy Avrette and Martha Walston, Staff Attorneys

SUMMARY: ***House Bill 651 authorizes Brunswick County to create a fee-supported fire district and to impose annual fees for the provision of fire protection services within the district. The bill would become effective when it becomes law. The General Assembly passed similar legislation for Union County in 1992. The current version only makes clarifying changes to the original bill and was given a favorable report in House Finance.***

CURRENT LAW: Fire protection in areas outside cities is provided through the establishment of fire protection districts. The statutes provide for the creation of three types of rural fire districts:

- **Insurance districts.** G.S. 153A-233 authorizes counties to designate fire districts and prescribe their boundaries for insurance-grading purposes. To pay for this protection, the county is authorized to appropriate funds "not otherwise limited as to use by law."
- **Tax-supported fire districts.** Article 3A of Chapter 69 of the General Statutes authorizes tax-supported fire districts. They are created by a petition and an election. To pay for this protection, a special tax is levied and collected on all taxable property in the district at a rate not exceeding 15¢ on the $100 valuation of property.
- **County service districts for fire protection.** Article 16 of Chapter 153A of the General Statutes authorizes the county commissioners to define service districts for fire protection after a public hearing. To pay for this protection, a county may levy an additional property tax within the district for the purpose of financing fire protection services. The county may also use revenues whose use is not otherwise restricted by law and it may issue general obligation bonds.

BILL ANALYSIS: House Bill 651 establishes a fourth type of fire district for Brunswick County: a **fee supported fire district**. Under the legislation, Brunswick County may create a fee supported fire district if the board of commissioners receive one of the following requests:

- A written request to create the district signed by at least 2/3 of the members of the board of directors of a fire department that contracts with the county to provide fire protection within an area of the county.
- A petition requesting a district signed by 15% of the residents living in an area in the county.

Upon receipt of a proper request, the county may adopt a resolution establishing a fee-supported f district and imposing annual fees for the provision of fire protection services within the district.

The amount of the fees may not exceed the cost of providing the service. It is imposed on all real property and all manufactured or mobile homes that benefit from the availability of fire protection. The county may establish a fee schedule for different classes of property and the fee for each class of property must be proportional to the estimated cost of providing fire protection services to that class of property. The bill creates six classes of property and establishes a maximum fee amount for each class:

Class of Property	Maximum Fee Amount
Single-family dwelling or manufactured or mobile home, plus up to 5 acres of surrounding land	$50.00
Unimproved land	$5.00
An animal production nor horticultural operation	$10.00
Any other commercial facility	$50.00
Multiple-family dwelling	Each unit treated as single-family dwelling
Any other class of property	$50.00

The fee may be established or changed only after the county board of commissioners has received a recommended fee schedule from a committee created to give the people in the district some control over the fee-setting process. In a district that does not include any area within a participating municipality, the committee must consist of five members:

1. The Fire Chief.
2. The member of the board of county commissioners in whose electoral district more than 50% of the land are of the district lies.
3. A community member chosen by the board of county commissioners.
4. A community member chosen by the Fire Department Board of Directors.
5. The Fire Marshal.

If the district includes areas within a participating municipality, then the committee must include the mayor of the municipality.

The fee may be included on the property owner's property tax bill. The revenue generated by the fees must be credited to a separate fund and used only to furnish fire protection services in the district. The board of commissioners will administer the fund. The board may provide fire protection to the district by contracting for the services with someone else or by providing the service itself if it maintains or create an organized fire department in the district.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 651 (First Edition)

SHORT TITLE: Brunswick Fire Fees

SPONSOR(S): Representatives Redwine and Hill

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES	See Assumptions and Methodology				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Brunswick County Commissioners

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

BILL SUMMARY: The bill allows Brunswick County to create fee-supported fire districts if it receives either 1) a written request to create a district by at least 2/3 of the members of a fire department's board of directors or 2) a petition requesting creation of a district signed by 15% of the residents living in the proposed district area.

ASSUMPTIONS AND METHODOLOGY: The twenty-one fire departments in Brunswick County have requested the creation of fire districts. However, the anticipated revenue per fire district has not been calculated. There are approximately 100,000 parcels of property detailed on 1,400 tax maps in Brunswick County. The County Tax Assessor estimates that it will take five to six months for his staff to manually match parcels to fire districts. No work has begun on the proposed fire districts, because all tax office resources are now directed toward a revaluation process and its resulting appeals. The Tax Assessor believes the first fire district tax would not be collected until FY 2000-01.

Although individual fire district revenues can't be determined, the tax revenue for all 21 fire districts can be estimated as follows:

Single-family dwelling	35,000 parcels	X $25 per parcel	$875,000
Commercial property	2,000 parcels	X $50 per parcel	$100,000
Vacant property	63,000 parcels	X $2.50 per parcel	$157,500
			$1,132,500

The County Tax Assessor provided the breakdown of parcels by property type. The tax values per parcel are those used in preliminary staff projections reviewed by the Brunswick County Commissioners. The estimate assumes all 21 fire districts choose to impose a tax.

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

APPROVED BY: Tom Covington

DATE: Monday, April 12, 1999

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 651 2nd Ed DATE _____

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

COMMITTEE SUBSTITUTE _____

Rep.) Soles
)
Sen.)

1 moves to amend the bill on page 4, line 4

2 ( ) WHICH CHANGES THE TITLE

3 by deleting "one hundred percent (100%)" and substituting

4 "seventy-five percent (75%)".

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SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 651
Committee Substitute Favorable 4/19/99
Proposed Committee Substitute H651-PCSA164-LA

Short Title: Brunswick Fire Fees. (Local)

Sponsors:

Referred to:

March 29, 1999

A BILL TO BE ENTITLED

AN ACT TO ALLOW BRUNSWICK COUNTY TO ASSESS A FIRE PROTECTION FEE.

The General Assembly of North Carolina enacts:

Section 1. **Fee-supported fire districts.**

Section 1.(a) Request for Fee-Supported District. -- A county may create a fee-supported fire district for insurance grading purposes if it receives one of the following:

(1) A written request to create the district signed by at least two-thirds of the members of the board of directors of a fire department that contracts with the county to provide fire protection within an area of the county.

(2) A petition requesting creation of a district signed by fifteen percent (15%) of the resident freeholders living in an area in the county. The petition must describe the area to be designated as the district.

Section 1.(b) Creation of Fee-Supported District. -- Upon receipt of a request as provided in subsection (a), the county may adopt a resolution establishing a fee-supported fire district and imposing annual fees for the provision of fire protection services within the district. The fee may be established or changed only after the county board of commissioners has received the recommendations of the committee for that district, established under subsection (b1) of this section. The district may not include any area that is within (i) a tax-supported fire district

established under Article 3A of Chapter 69 of the General Statutes; (ii) a county service district established under Article 16 of Chapter 153A of the General Statutes for fire protection purposes; or (iii) another fee-supported fire district. The district may not include any area that is within the corporate limits of a municipality unless the governing body of the municipality agrees to the inclusion. However, it is not necessary to obtain the consent of a municipality if the municipality has not levied a tax, performed any official act, nor held any elections within a period of 10 years preceding the adoption of the resolution including the area within the district.

Section 1.(b1) Committee for District. -- Each district shall have a committee to allow local control over the fee-setting process. In each district that does not include any territory in a participating municipality, the committee shall consist of five members as follows: The Fire Chief, the member of the board of county commissioners in whose electoral district more than fifty percent (50%) of the land area of the district lies, a community member chosen by the Fire Department Board of Directors, a community member chosen by the board of county commissioners, and the Fire Marshal. In each district that does include any territory in a participating municipality, the committee shall consist of members as follows: The Fire Chief, the mayor of each participating municipality in the district, the member of the board of county commissioners in whose electoral district more than fifty percent (50%) of the land area of the district lies, a community member chosen by the Fire Department Board of Directors, a community member chosen by the board of county commissioners, and the Fire Marshal. In either type of district, the Fire Marshal shall chair the committee, but may vote only to break a tie. The committee shall conduct an inquiry into the amount of funds required by the district to meet its needs, and shall make findings on the issue. The committee will communicate these findings to the board of county commissioners and recommend a fee. The board of county commissioners will then set the fee. The same process shall be used for changes to the fee once established.

Section 1.(c) Fees. -- The fees imposed by the county may not exceed the cost of providing fire protection services within the district and may be imposed on owners of all real property that benefits from the availability of fire protection and on owners of all manufactured or mobile homes that benefit from the availability of fire protection. For the purpose of this section, the term 'fire protection' includes furnishing emergency medical, rescue, and ambulance services to protect persons in the district from injury or death. The county shall establish a schedule of fees for different classes of property and the fee for each class of property shall be proportional to the estimated cost of providing fire protection services to that class of property. The schedule of fees shall include the following classes of property and the fee on each class of property shall not exceed the following maximums:

(1) A single-family dwelling or manufactured or mobile home, and appurtenant structures, plus up to five acres of surrounding land. The fee on this class of property may not exceed fifty dollars ($50.00) per site per year.

(2) Unimproved land other than the five acres of land classified as part of a single-family dwelling or manufactured or mobile home. The county may establish a maximum fee for unimproved land of not more than five dollars ($5.00) per year.

(3) An animal production or horticultural operation. The fee on this class of property may not exceed ten dollars ($10.00) per site per year.

(4) A commercial facility other than an animal production or horticultural operation. The fee on this class of property may not exceed fifty dollars ($50.00) per site per year for commercial facilities with structures encompassing less than 5,000 square feet and one hundred dollars ($100.00) per site per year for commercial facilities with structures encompassing 5,000 square feet or more.

(5) A multiple-family dwelling. Each unit in a multiple-family dwelling shall be treated as a single-family dwelling under subdivision (1) of this subsection.

(6) Any other class of property selected by the county. The fee on these classes of property may not exceed fifty dollars ($50.00) per year.

Section 1.(d) Billing of Fees. -- The county may include a fee imposed under this section on the property tax bill for the real property, or the manufactured or mobile home, on which the fee is imposed.

Section 1.(e) Use of Fees. -- The county shall credit the fees collected within the district to a separate fund to be used only to furnish fire protection in the district. The board of commissioners shall administer the fund to provide fire protection by one or more of the following methods:

(1) Contracting with any municipality, any incorporated nonprofit volunteer or community fire department, or the Department of Environment and Natural Resources.

(2) Furnishing fire protection itself if it maintains an organized fire department.

(3) Establishing a fire department in the district.

Section 1.(f) Audit of Fire Department. -- If the county contracts with a fire department to provide fire protection services in a fee-supported fire district, the fire department shall prepare an annual budget based on anticipated revenues and shall submit the budget to the county for processing and approval through the county's regular budget procedure. Upon request of the county, the fire department shall make quarterly or semiannual reports to the county detailing its revenues, expenditures, and activities. The county may audit the fire department's financial records upon reasonable notice to the fire department.

Section 1.(g) Extension of Area of District. -- The county may by resolution annex to any fee-supported fire district any territory that it could include in a new district under subsection (c) of this section, upon finding that:

(1) The area to be annexed is contiguous to the district, with at least one-eighth of the area's aggregate external boundary coincident with the existing boundary of the district; and

(2) The area to be annexed requires the services of the district.

The county may also by resolution annex to any fee-supported fire district any territory it could include in a new district under subsection (c) of this section if seventy-five percent (75%) of the real property owners in the territory to be annexed have petitioned the board of commissioners for annexation to the service district.

The area of any fee-supported fire district may be increased by including within the boundaries of the district any adjoining territory lying within a municipality if the territory is not already included in another fire protection district, and both the municipal governing body and the county commissioners of the county in which the district is located agree by resolution to the inclusion. However, it is not necessary to obtain the consent of a municipality if the municipality has not levied a tax, performed any official act, nor held any elections within a period of 10 years preceding the adoption of the resolution including the area within the district.

Section 1.(h) Annexation of District. -- When any portion of a fee-supported fire district has been annexed by a municipality furnishing fire protection to its citizens, and the municipality has not agreed to allow territory within it to be in the district, then the portion of the district annexed is no longer part of a fee-supported district. For the purposes of this section and regardless of the actual effective date of annexation, the date of annexation shall be considered to be a date in the month of June.

Section 1.(i) Abolition of District. -- Upon finding that there is no longer a need for a given fee-supported fire district, the board of commissioners may repeal the resolution establishing the district and thus abolish the district.

Section 2. This act applies to Brunswick County only.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 4

HOUSE BILL 19
Committee Substitute Favorable 2/24/99
Committee Substitute #2 Favorable 3/18/99
Fourth Edition Engrossed 3/25/99

Short Title: Gambling Boats Regulated. (Public)

Sponsors:

Referred to:

February 3, 1999

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT CASINO BOATS FROM OPERATING IN NORTH CAROLINA, TO REGULATE CERTAIN GAMBLING BOATS THAT OPERATE IN NORTH CAROLINA PURSUANT TO FEDERAL LAW, TO LEVY A PRIVILEGE TAX ON GAMBLING BOATS OPERATING IN NORTH CAROLINA, AND TO REQUIRE WITHHOLDING FROM CERTAIN GAMBLING BOAT WINNINGS.

The General Assembly of North Carolina enacts:

Section 1. Article 37 of Chapter 14 of the General Statutes is amended by adding a new Part to read:

"Part 4. Casino Boats.

"**§ 14-309.30. Definitions.**

The following definitions apply in this Part:

(1) Casino boat. -- A vessel that meets both of the following conditions:

a. Embarks from a point within this State and disembarks at the same or another point within this State without making an intervening stop.

b. Is operated or maintained for the purpose of gambling and carries or operates gambling devices for the use of its

passengers or otherwise provides facilities for the purpose of gambling.

(2) Gambling. -- A game of chance at which money, property, or some other thing of value is bet, whether the same be in stake or not.

(3) Gambling device. -- A device as defined in 15 U.S.C. § 1171 and any other device used to facilitate gambling, such as a gaming table and a punchboard.

(4) Intervening stop. -- When a vessel does all of the following:

a. Docks at a port within the boundaries of another state, possession of the United States, or foreign country.

b. Remains continuously at that port for at least six hours.

c. Allows passengers to disembark the vessel for sightseeing, shopping, or other similar tourism-related activities at that port.

(5) Operate. -- To manage, supervise, control, or own, either alone or in association with others.

(6) Vessel. -- A boat, barge, ship, vessel, or watercraft.

"**§ 14-309.31. Casino boats prohibited.**

(a) Unlawful Activity. -- It shall be unlawful to do any one or more of the following:

(1) To operate a casino boat.

(2) To manufacture, recondition, repair, sell, transport, possess, or use a gambling device on a casino boat.

(3) To solicit, entice, induce, persuade, or procure, or to aid in soliciting, enticing, inducing, persuading, or procuring a person to visit or embark on a casino boat.

(b) Penalty and Conviction. -- A person who violates subsection (a) of this section shall be guilty of a Class A1 misdemeanor. Upon conviction, a court of competent jurisdiction shall enter an order directing the seizure, forfeiture, and sale of the vessel, along with all of its gear, engines, tackle, and all other nautical, navigation, and safety equipment, furniture, and personal property of any description. The proceeds of a sale in accordance with this subsection shall be applied, in order, to the costs of seizure, storage, and sale, with the balance paid to the public school fund in the county in which the property is seized.

(c) Applicability. -- This section shall not apply to possession or transportation of gambling devices on United States-flagged or foreign-flagged vessels during travel from a foreign nation or another state or possession of the United States up to the first point of entry into North Carolina waters or during travel to a foreign nation or another state or possession of the United States from the point of departure from North Carolina waters.

(d) Prosecution for Other Offenses. -- Nothing contained in this section shall preclude prosecution for another offense under this Article or for the use of a gambling device on a vessel while docked within the territorial waters of this State.

"**§ 14-309.32. Enforcement.**

A law enforcement officer with subject matter and territorial jurisdiction over a vessel may take any one or more of the following actions if the officer has probable cause to believe that a violation of G.S. 14-309.31 is occurring on the vessel:

(1) Seize the illegal gambling device.

(2) Seize any monies, other property, or thing of value used in conjunction with or derived from the unlawful use of the illegal gambling device.

(3) Seize the vessel upon which an illegal gambling device is found.

"**§ 14-309.33. Regulation of gambling boats operating pursuant to federal law.**

The operator of a vessel, the operation of which would be illegal in this State except for the exclusions provided in 15 U.S.C. § 1175(b)(2), shall comply with all of the following:

(1) The applicable provisions of Chapter 105 of the General Statutes.

(2) The Safety of Life at Sea (SOLAS) standards and requirements normally applicable in international waters.

(3) The passengers must be at least 21 years of age."

Section 2. G.S. 105-228.90(b) is amended by adding a new subdivision to read:

"(4) Gambling boat voyage. -- A voyage of a commercial vessel transporting passengers engaged in gambling aboard the vessel, during which passengers embark in this State and disembark only in this State or a contiguous state."

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

"**§ 105-40.1. Gambling boat voyages.**

A person engaged in the business of operating gambling boat voyages must pay a tax on the business at the rate of six dollars ($6.00) for each passenger who embarks on a gambling boat voyage in this State. Within the first 10 days of each month, the taxpayer must report to the Secretary the number of passengers who embarked on the taxpayer's gambling boat voyages during the previous month and must pay the tax at the time the report is due."

Section 4. G.S. 105-163.1 is amended by adding a new subdivision to read:

"(5a) Gambling boat operator. -- A person engaged in the business of operating gambling boat voyages."

Section 5. G.S. 105-163.1(14) reads as rewritten:

"(14) Withholding agent. -- An ~~employer~~ employer, a gambling boat operator, or a payer."

Section 6. Article 4A of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-163.3A. Gambling boat operators must withhold taxes.**

(a) Requirement. -- Every gambling boat operator who pays a resident of this State more than six hundred dollars ($600.00) in gambling winnings during a gambling boat voyage must deduct and withhold from the winnings paid to the resident the

State income taxes due on the winnings as provided in this section. The amount of taxes to be withheld is seven percent (7%) of the winnings paid to the resident. The taxes a gambling boat operator withholds are held in trust for the Secretary.

(b) Returns; Due Date. -- A gambling boat operator must file a return with the Secretary on a form prepared by the Secretary and must provide any information required by the Secretary. The return is due and the withheld taxes are payable by the last day of the first month after the end of each calendar quarter during which the gambling boat operator pays gambling winnings to a resident of this State. The Secretary may extend the time for filing the return or paying the tax as provided in G.S. 105-263.

(c) Annual Statement. -- A gambling boat operator required to deduct and withhold from a resident's gambling winnings under this section must furnish to the resident duplicate copies of a written information statement. The statement is due by January 31 following the calendar year and must show the following:

(1) The gambling boat operator's name, address, and taxpayer identification number.

(2) The resident's name, address, and taxpayer identification number.

(3) The total amount of gambling winnings paid during the calendar year.

(4) The total amount deducted and withheld under this section during the calendar year.

(5) Any other information required by the Secretary.

(d) Report to Secretary. -- Each gambling boat operator must file with the Secretary an annual report that compiles the information contained in each of the operator's statements to residents and any other information required by the Secretary. This report is due on the date prescribed by the Secretary and is in lieu of the information report required by G.S. 105-154.

(e) Records. -- If a gambling boat operator does not withhold from any gambling winnings paid to an individual, the operator must obtain from the individual documentation proving that he or she is not a resident of this State. The operator must retain this information with its records."

Section 7. G.S. 105-163.9 reads as rewritten:

"**§ 105-163.9. Refund of overpayment to withholding agent.**

A withholding agent who pays the Secretary more under this Article than the Article requires the agent to pay may obtain a refund of the overpayment by filing an application for a refund with the Secretary. No refund is allowed, however, if the withholding agent withheld the amount of the overpayment from the ~~wages~~ wages, winnings, or compensation of the agent's ~~employees~~ employees, passengers, or contractors. A withholding agent must file an application for a refund within the time period set in G.S. 105-266. Interest accrues on a refund as provided in G.S. 105-266."

Section 8. G.S. 105-163.10 reads as rewritten:

"**§ 105-163.10. Withheld amounts credited to taxpayer for calendar year.**

The amount deducted and withheld under this Article during any calendar year from the ~~wages~~ wages, winnings, or compensation of an individual ~~shall be~~ is allowed as a credit to that individual against the tax imposed by Article 4 of this Chapter for taxable years beginning in that calendar year. The amount deducted and withheld under this Article during any calendar year from the compensation of a nonresident entity ~~shall be~~ is allowed as a credit to that entity against the tax imposed by Article 4 of this Chapter for taxable years beginning in that calendar year. If the nonresident entity is a pass-through entity, the entity shall pass through and allocate to each owner the owner's share of the credit.

If more than one taxable year begins in the calendar year during which the withholding occurred, the amount ~~shall be~~ is allowed as a credit against the tax for the last taxable year so beginning. To obtain the credit allowed in this section, the individual or nonresident entity must file with the Secretary one copy of the withholding statement required by G.S. ~~105-163.3 or G.S.~~ 105-163.3, 105-163.3A, or 105-163.7 and any other information the Secretary requires."

Section 9. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

Section 10. This act is effective when it becomes law. Sections 2 through 8 of this act become effective on the first day of the third calendar month after this act becomes law.

HOUSE BILL 19:
Gambling Boats Regulated

BILL ANALYSIS

Committee: Senate Finance
Date: July 6, 1999
Version: Fourth Edition

Introduced by: Rep. Redwine
Summary by: Martha K. Walston
Committee Counsel

SUMMARY: ***House Bill 19 prohibits casino boat cruises to nowhere in North Carolina. North Carolina cannot prohibit gambling boat cruises that engage in interstate commerce by making at least one stop outside the State. However, the bill imposes the following requirements on gambling boat cruises that originate and end in North Carolina:***

- ***A privilege license tax at the rate of $6.00 for each passenger.***
- ***A requirement that the gambling boat operator deduct and withhold from a North Carolina resident's winnings individual income taxes equal to 7% of the winnings paid to the resident.***

An earlier version of the bill imposed a annual gambling boat permit of $10,000, if the gambling boat operator desired to sell alcoholic beverages on the voyage while it was within the State's boundaries.

House Bill 19 has been in House Judiciary I, House Finance, and Senate Commerce.

BACKGROUND: Gambling and the possession and use of gambling devices, such as slot machines, punchboards, and gaming tables, are illegal in North Carolina. However, because of changes in the federal law since 1992, it is legal to transport and possess gambling devices on US flagships within the boundaries of a state if the use of the devices occurs outside the boundaries of the state and the devices remain onboard the vessel while it is within the state's boundaries. The 1992 changes to the Johnson Act, 15 U.S.C. § 1175, were enacted in part to end the discrimination between US flagships and foreign flagships. This change in the federal law means that it would be permissible for a person in North Carolina to have a vessel equipped with gambling devices and to take passengers on voyages for the purpose of gambling, so long as the vessel travels outside the 3 mile territorial boundary of the State before initiating the gambling games. This type of voyage is commonly referred to as a "cruise to nowhere".

The Johnson Act does permit states to prohibit casino boat cruises to nowhere if the voyage begins and ends in the same state without making an intervening stop. To prohibit casino boat cruises to nowhere, a state must pass legislation that bans the use of gambling devices outside the boundaries of the state on voyages that begin and end in the state without making an intervening stop. A South Carolina court case and a Georgia AG opinion, as well as legislative discussions in several other states, have concluded that to escape the effect of the 1992 amendments to the Johnson Act, a state must pass specific legislation to prohibit casino boat cruises to nowhere. North Carolina's current statutes prohibiting gambling and the possession of gambling devices are not sufficient to meet this "opt out" provision in the federal law.

House Bill 19 provides the specific legislation necessary to prohibit casino boat cruises to nowhere in North Carolina.

BILL ANALYSIS: Section 1 of the bill defines a "casino boat" as a vessel that leaves from and returns to a port in North Carolina for the purpose of gambling without making an intervening stop in another state or country. Although federal law does not define "an intervening stop", this bill does. It defines an "intervening stop" as a docking at a port outside the boundaries of North Carolina for a period of at least six hours where the passengers may disembark the vessel for sightseeing, shopping, or other similar tourism-related activities.

The bill makes it unlawful to operate a casino boat, to possess, use, or repair a gambling device on a casino boat, or to solicit people to embark on a casino boat. A person who violates this law is guilty of a Class A1 misdemeanor. A Class A1 misdemeanor is the most serious misdemeanor offense. It is punishable by community punishment, intermediate punishment, or active punishment. A monetary fine maybe imposed in the discretion of the court. Upon conviction, a person's vessel, along with all of its equipment, maybe seized, forfeited, and sold. If a law enforcement officer has probable cause to believe that a violation of this law is occurring, the officer may seize the illegal gambling devices, seize any monies or property used in conjunction with or derived from the unlawful use of the illegal gambling devices, and seize the vessel upon which the illegal gambling devices are found. The bill clarifies that the law does not apply to vessels engaged in interstate commerce and that it does not prevent the prosecution for other gambling offenses. (An earlier version of the bill allowed the seizure of any means conveyance to and from an illegally used vessel.)

North Carolina cannot prohibit gambling voyages that are allowed by federal law. Therefore, a person may offer gambling voyages that begin and end in North Carolina so long as the voyage makes an intervening stop in another state or country and all the gambling takes place beyond the 3 mile territorial boundary of the State. However, North Carolina can regulate these gambling boat voyages.

Section 1 of the bill provides that the vessel must met the Safety of Life at Sea (SOLAS) standards and requirements normally applicable in international waters. SOLAS ensures that, with regard to the passengers' safety, the vessel is fit for service. Vessels are inspected by the U.S. Coast Guard. It also provides that all of the vessel's passengers must be at least 21 years of age.

Section 2 of the bill defines a gambling boat voyage for North Carolina tax purposes as a voyage that meets all of the following conditions:

- It transports passengers engaged in gambling aboard the vessel.
- Its passengers embark the vessel in this State.
- Its passengers disembark the vessel only in this State or a contiguous state.

This definition of "gambling boat voyage" eliminates the imposition of the tax obligations on cruise ship that travel and dock in noncontiguous states or another country.

The remainder of the bill creates tax obligations for the gambling boat operator that do not exist under current law. A gambling boat operator is a person engaged in the business of operating a gambling boat voyage. Section 3 imposes a privilege license tax on gambling boat voyages at a rate equal to $6 per passenger. Section 6 requires a gambling boat operator who pays a resident of this State more than $600 in gambling winnings during a gambling boat voyage to deduct and withhold income tax from the resident's winnings. The federal government requires that taxes be withheld if the winnings exceed $5,000. The amount of State taxes to be withheld is 7% of the winnings paid to the resident. If the gambling boat operator does not withhold from any gambling winnings paid to an individual, the operator must obtain from the individual documentation proving that the individual is not a resident of North Carolina. The operator must remit the withheld tax payments to the State quarterly.

The following tax laws would also apply to businesses engaged in the gambling boat voyage business: State income tax and sales tax on any sales of tangible personal property that occur while the boat is in North Carolina's territorial boundaries. Also under current law, residents of North Carolina must pay tax on any income derived from gambling activities, whether they occur inside or outside the State's territorial boundaries.

EFFECTIVE DATE: This act is effective when it becomes law. The tax sections of this act become effective on the first day of the third calendar month after this act becomes law.

This summary was contributed to by Mary Shuping and Cindy Avrette, Research Division.

H19-SMRB-1

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 19 (Fourth Edition)

SHORT TITLE: Gambling Boats Regulated

SPONSOR(S): Representative Redwine

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
EXPENDITURES					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue; Alcoholic Beverage Control Commission

EFFECTIVE DATE: Sections 2 through 8 of this act are effective on the first day of the third calendar month after this act becomes law. All other sections are effective when the bill becomes law.

BILL SUMMARY:

The bill prohibits in North Carolina those casino equipped boats that take gambling cruises to nowhere in the Atlantic Ocean. Ships that embark passengers in North Carolina for "gambling boat voyages" to contiguous states must pay a privilege tax of $6 per passenger, obtain a $10,000 ABC license if it has a home port in the state, and withhold 7% of winnings from North Carolina residents. When traveling outside North Carolina's three-mile criminal jurisdictional limit, HB 19 requires a casino boat to make an intervening stop in another state or country for 6 hours and allow its passengers to disembark or country and embark passengers in North Carolina ports.

ASSUMPTIONS AND METHODOLOGY:

There are no casino boats based in North Carolina nor are there casino boats in the contiguous states of Virginia and South Carolina that embark passengers in North Carolina for gambling boat voyages. There are two small cruise lines that have scheduled stops in North Carolina, but these ships do not offer gambling. Although North Carolina is visited infrequently by the major cruise lines that have casino operations onboard, these vessels are exempt from tax because they do not have home ports in the state and do not arrange cruises to contiguous states.

No information is available to estimate the potential for gambling boat voyages in the future. It is uncertain how prospective casino boat operators will react to the restrictions and taxes imposed in HB 19. Fiscal Research talked to the owner of the Stardancer, one of two casino boats based in Little River, South Carolina, and found that the owner had no intention of expanding his business into North Carolina. Furthermore, the intervening stop requirements of HB 19 may make travel to North Carolina impracticable and less profitable. The Stardancer casino boat has a cruise time of five hours (1 hour to reach the 3-mile limit, 3 hours to gamble, and 1 hour to return) and makes two trips a day. The six hour intervening stop requirement would prohibit the Stardancer casino boat from making two daily trips and would increase costs due to additional staff hours spent on board.

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 19

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

H19-ALC-7/7

Date_____,1999

Comm. Sub. [YES]
Amends Title []
Fourth Edition

Senator Kerr

moves to amend the bill on page 1, line 14, through page 2, line 2, by rewriting the lines to read:

"(1) Casino boat. -- A vessel that meets all of the following conditions:

a. It embarks from a point within this State and disembarks at the same or another point within this State without making an intervening stop.

b. It is operated or maintained for the purpose of gambling and carries or operates gambling devices for the use of its passengers or otherwise provides facilities for the purpose of gambling.

c. It is not an oceangoing ship with sleeping cabins for 200 or more persons.";

and on page 3, lines 19 - 22, by rewriting the lines to read:

"'(4) Gambling boat voyage. -- A voyage that meets both of the following conditions:

a. It is undertaken by a commercial vessel other than an oceangoing ship with sleeping cabins for 200 or more persons.

b. Passengers on the voyage engage in gambling aboard the vessel, embark in this State, and disembark only in this State or a contiguous state.'"

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

Hold for new PCS 5

H

HOUSE BILL 280
Committee Substitute Favorable 4/12/99
Committee Substitute #2 Favorable 4/20/99
Fourth Edition Engrossed 4/23/99
Senate Judiciary I Committee Substitute Adopted 6/15/99

Short Title: Motor Vehicle Tech. Amendments/AB. (Public)

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL, CLARIFYING, AND OTHER CHANGES TO THE MOTOR VEHICLE LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-4.01 is amended by adding a new subdivision to read:

"(4b) Crash. -- Any event that results in injury or property damage attributable directly to the motion of a motor vehicle or its load. The terms collision, accident, and crash and their cognates are synonymous."

Section 2. G.S. 20-4.01(12a) reads as rewritten:

"(12a) Gross Vehicle Weight Rating (GVWR). -- The value specified by the manufacturer as the maximum loaded weight of a vehicle. The GVWR of a combination vehicle is the GVWR of the power unit plus the GVWR of the towed unit or units. When a vehicle is determined by an enforcement officer to be structurally altered from the manufacturer's original design, the license weight or the total weight of the vehicle or combination of vehicles may be deemed as the GVWR for the purpose of enforcing this Chapter."

Section 3. G.S. 20-4.01(33b) reads as rewritten:

"(33b) Reportable ~~Accident.~~ Crash. -- ~~An accident or collision~~ A crash involving a motor vehicle that results in ~~either~~ one or more of the following:

a. Death or injury of a human being.

b. Total property damage of one thousand dollars ($1,000) or more, or property damage of any amount to a vehicle seized pursuant to G.S. 20-28.3."

Section 4. G.S. 20-9(g)(1) reads as rewritten:

"(1) The Division may issue a license to any person who is afflicted with or suffering from a physical or mental disability set out in subsection (e) of this section who is otherwise qualified to obtain a license, provided such person submits to the Division a certificate in the form prescribed in subdivision (2). Until a license issued under this subdivision expires or is revoked, the license continues in force as long as the licensee presents to the Division ~~one year from the date of issuance of such license and at yearly intervals thereafter a certificate in the form prescribed in subdivision (2), provided the Commissioner may require the submission of such certificate at six-month intervals where in his opinion public safety demands.~~ a certificate in the form prescribed in subdivision (2) of this subsection at the intervals determined by the Division to be in the best interests of public safety."

Section 5. G.S. 20-11(k) reads as rewritten:

"(k) Supervising Driver. -- A supervising driver ~~must~~ shall be a parent or guardian of the permit holder or license holder or a responsible person approved by the parent or guardian or the Division. A supervising driver ~~must~~ shall be a licensed driver who has been licensed for at least five years. ~~A~~ At least one supervising driver ~~must~~ shall sign the application for a permit or license. ~~Each permit or license issued pursuant to this section shall be limited to a maximum of two supervising drivers.~~"

Section 6. G.S. 20-16(d) reads as rewritten:

"(d) Upon suspending the license of any person as authorized in this section, the Division shall immediately notify the licensee in writing and upon his request shall afford him an opportunity for a hearing, not to exceed 60 days after receipt of the request, unless a preliminary hearing was held before his license was ~~suspended, as early as practical within not to exceed 30 days after receipt of such request. The hearing shall be conducted in the district court district as defined in G.S. 7A-133 wherein the licensee resides. Hearings shall be rotated among all the counties within that district if the district contains more than one county unless the Division and the licensee agree that such hearing may be held in some other district, and such notice shall contain the provisions of this section printed thereon.~~ suspended. Upon such hearing the duly authorized agents of the Division may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the licensee. Upon such hearing the Division shall either rescind its order of suspension, or good cause appearing therefor,

may extend the suspension of such license. Provided further upon such hearing, preliminary or otherwise, involving subsections (a)(1) through (a)(10a) of this section, the Division may for good cause appearing in its discretion substitute a period of probation not to exceed one year for the suspension or for any unexpired period of suspension. Probation shall mean any written agreement between the suspended driver and a duly authorized representative of the Division and such period of probation shall not exceed one year, and any violation of the probation agreement during the probation period shall result in a suspension for the unexpired remainder of the suspension period. The authorized agents of the Division shall have the same powers in connection with a preliminary hearing prior to suspension as this subsection provided in connection with hearings held after suspension. These agents shall also have the authority to take possession of a surrendered license on behalf of the Division if the suspension is upheld and the licensee requests that the suspension begin immediately."

Section 7. G.S. 20-19(d) reads as rewritten:

"(d) When a person's license is revoked under ~~subdivision (2) of G.S. 20-17~~ G.S. 20-17(a)(2) and the person has another offense involving impaired driving for which he has been convicted, which offense occurred within three years immediately preceding the date of the offense for which his license is being revoked, the period of revocation is four years, and this period may be reduced only as provided in this section. The Division may conditionally restore the person's license after it has been revoked for at least two years under this subsection if he provides the Division with satisfactory proof that:

(1) He has not in the period of revocation been convicted in North Carolina or any other state or federal jurisdiction of a motor vehicle offense, an alcoholic beverage control law offense, a drug law offense, or any other criminal offense involving the possession or consumption of alcohol or drugs; and

(2) He is not currently an excessive user of alcohol or drugs.

If the Division restores the person's license, it may place reasonable conditions or restrictions on the person for the duration of the original revocation period."

Section 8. G.S. 20-19(e) reads as rewritten:

"(e) When a person's license is revoked under ~~subdivision (2) of G.S. 20-17~~ G.S. 20-17(a)(2) and the person has two or more previous offenses involving impaired driving for which he has been convicted, and the most recent offense occurred within the five years immediately preceding the date of the offense for which his license is being revoked, the revocation is permanent. The Division may, however, conditionally restore the person's license after it has been revoked for at least three years under this subsection if he provides the Division with satisfactory proof that:

(1) In the three years immediately preceding the person's application for a restored license, he has not been convicted in North Carolina or in any other state or federal court of a motor vehicle offense, an alcohol beverage control law offense, a drug law offense, or any

criminal offense involving the consumption of alcohol or drugs; and

(2) He is not currently an excessive user of alcohol or drugs.

If the Division restores the person's license, it may place reasonable conditions or restrictions on the person for any period up to three years from the date of restoration."

Section 9. G.S. 20-63(g) reads as rewritten:

"(g) Alteration, Disguise, or Concealment of Numbers. -- Any operator of a motor vehicle who shall willfully mutilate, bend, twist, cover or cause to be covered or partially covered by any bumper, light, spare tire, tire rack, strap, or other device, or who shall paint, enamel, emboss, stamp, print, perforate, or alter or add to or cut off any part or portion of a registration plate or the figures or letters thereon, or who shall place or deposit or cause to be placed or deposited any oil, grease, or other substance upon such registration plates for the purpose of making dust adhere thereto, or who shall deface, disfigure, change, or attempt to change any letter or figure thereon, or who shall display a number plate in other than a horizontal upright position, shall be guilty of a Class 2 misdemeanor. Any operator of a motor vehicle who shall otherwise cover any number or registration renewal sticker on a registration plate with any material that makes the number or registration renewal sticker illegible commits an infraction and shall be fined under G.S. 14-3.1."

Section 10. G.S. 20-63 is amended by adding a new subsection that reads:

"(i) Electronic Applications and Collections. -- The Division is authorized to accept electronic applications for the issuance of registration plates, registration certificates, and certificates of title, and to electronically collect fees and penalties."

Section 11. G.S. 20-78(b) reads as rewritten:

"(b) The Division shall maintain a record of certificates of title ~~issued, maintaining at all times the records of the last two owners.~~ issued by the Division for a period of 20 years. After 20 years, the Division shall maintain a record of the last two owners.

The Commissioner is hereby authorized and empowered to provide for the photographic or photostatic recording of certificate of title records in such manner as he may deem expedient. The photographic or photostatic copies herein authorized shall be sufficient as evidence in tracing of titles of the motor vehicles designated therein, and shall also be admitted in evidence in all actions and proceedings to the same extent that the originals would have been admitted."

Section 12. G.S. 20-79.4(b)(27) reads as rewritten:

"(27) Military Retiree. -- Issuable to an individual who has retired from the armed forces of the United States. The plate shall bear the word "Retired" and the name and insignia of the branch of service from which the individual retired. ~~The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.~~"

Section 13. G.S. 20-87(2) reads as rewritten:

"(2) U-Drive-It Passenger Vehicles. -- U-drive-it passenger vehicles shall pay the following tax:

Motorcycles:	1-passenger capacity	$18.00
	2-passenger capacity	22.00
	3-passenger capacity	26.00

~~Automobiles: Forty-one dollars ($41.00) per year for each vehicle of fifteen-passenger capacity or less, and vehicles of over fifteen-passenger capacity shall be classified as buses and shall pay one dollar and forty cents ($1.40) per hundred pounds empty weight of each vehicle.~~

Automobiles:	15 or fewer passengers	$41.00
Buses:	16 or more passengers	$ 1.40 per hundred pounds of empty weight
Trucks under 7,000 pounds that do not haul products for hire:	4,000 pounds	$41.50
	5,000 pounds	$51.00
	6,000 pounds	$61.00."

Section 14. G.S. 20-96 reads as rewritten:

"**§ 20-96. ~~Collection of delinquent penalties and taxes.~~ Detaining property-hauling vehicles until penalties and taxes are collected.**

~~A law enforcement officer who discovers that a vehicle used for the transportation of property is being operated on the highways and that the owner of the vehicle is more than 30 days overdue in paying any of the following may detain the vehicle:~~

~~(1) A penalty previously assessed under this Chapter against the owner for a violation attributable to the failure of a vehicle to comply with this Chapter.~~

~~(2) A tax or penalty previously assessed against the owner under Article 36B of Chapter 105 of the General Statutes.~~

~~The officer may detain the vehicle until the delinquent penalties and taxes are paid.~~

(a) Authority to Detain Vehicles. -- A law enforcement officer may seize and detain the following property-hauling vehicles operating on the highways of the State:

(1) A property-hauling vehicle with an overload in violation of G.S. 20-88(k) and G.S. 20-118.

(2) A property-hauling vehicle that does not have a proper registration plate as required under G.S. 20-118.3.

(3) A property-hauling vehicle that is owned by a person liable for any overload penalties or assessments due and unpaid for more than 30 days.

(4) A property-hauling vehicle that is owned by a person liable for any taxes or penalties under Article 36B of Chapter 105 of the General Statutes.

The officer may detain the vehicle until the delinquent penalties and taxes are paid and, in the case of a vehicle that does not have the proper registration plate, until the proper registration plate is secured.

(b) Storage; Liability. -- When necessary, an officer who detains a vehicle under this section may have the vehicle stored. The owner of a vehicle that is detained or stored under this section is responsible for the care of any property being hauled by the vehicle and for any storage charges. The State ~~is~~ shall not be liable for damage to the vehicle or loss of the property being hauled."

Section 15. G.S. 20-166.1(h) reads as rewritten:

"(h) Forms. -- The Division ~~must~~ shall provide forms or procedures for submitting crash data to persons required to make reports under this section and the reports ~~must~~ shall be made ~~on the forms provided.~~ in a format approved by the Commissioner. ~~The forms must ask for the~~ The following information shall be included about a reportable ~~accident:~~ crash:

(1) The cause of the ~~accident.~~ crash.

(2) The conditions existing at the time of the ~~accident.~~ crash.

(3) The persons and vehicles involved.

(4) Whether the vehicle has been seized and is subject to forfeiture under G.S. 20-28.2."

Section 16. G.S. 20-309(e) reads as rewritten:

"(e) Upon termination by cancellation or otherwise of an insurance policy provided in subsection (b) of this section, the insurer shall notify the Division of ~~such termination;~~ the termination within 20 business days; provided, no cancellation notice is required if the same insurer issues a ~~new~~ replacement insurance policy complying with this Article at the same time the insurer cancels or otherwise terminates the old policy, no lapse in coverage results, and the insurer sends the certificate of insurance form for the new policy to the Division. The insurer shall notify the Division of any new policy for insurance within 20 working days of its issuance unless the new coverage is a replacement insurance policy for a policy terminated by the same insurer. Any insurance company with twenty-five million dollars ($25,000,000) or more in annual vehicle insurance premium volume must submit the notices required under this section by electronic means. All other insurance companies may submit the notices required under this section by either paper or electronic means. The beginning date and termination date of insurance coverage provided to the Division by the insurer pursuant to this paragraph shall constitute a designated trade secret under G.S. 132-1.2.

The Division, upon receiving notice of ~~cancellation or termination of an owner's financial responsibility as required by this Article,~~ a lapse in insurance coverage, shall

notify ~~such~~ the owner of ~~such cancellation or termination,~~ the lapse in coverage, and ~~such~~ the owner shall, to retain the registration plate for the vehicle registered or required to be registered, within 10 days from date of notice given by the Division either:

(1) Certify to the Division that he had financial responsibility effective on or prior to the date of such termination; or

(2) In the case of a lapse in financial responsibility, pay a fifty dollar ($50.00) civil penalty; and certify to the Division that he now has financial responsibility effective on the date of certification, that he did not operate the vehicle in question during the period of no financial responsibility with the knowledge that there was no financial responsibility, and that the vehicle in question was not involved in a motor vehicle ~~accident~~ crash during the period of no financial responsibility.

Failure of the owner to certify that he has financial responsibility as herein required shall be prima facie evidence that no financial responsibility exists with regard to the vehicle concerned and unless the owner's registration plate has on or prior to the date of termination of insurance been surrendered to the Division by surrender to an agent or representative of the Division designated by the Commissioner, or depositing the same in the United States mail, addressed to the Division of Motor Vehicles, Raleigh, North Carolina, the Division shall revoke the vehicle's registration for 30 days.

In no case shall any vehicle, the registration of which has been revoked for failure to have financial responsibility, be reregistered in the name of the registered owner, spouse, or any child of the spouse, or any child of such owner within less than 30 days after the date of receipt of the registration plate by the Division of Motor Vehicles, except that a spouse living separate and apart from the registered owner may register such vehicle immediately in such spouse's name. Additionally, as a condition precedent to the reregistration of the vehicle by the registered owner, spouse, or any child of the spouse, or any child of such owner, except a spouse living separate and apart from the registered owner, the payment of a restoration fee of fifty dollars ($50.00) and the appropriate fee for a new registration plate is required. Any person, firm or corporation failing to give notice of termination shall be subject to a civil penalty of two hundred dollars ($200.00) to be assessed by the Commissioner of Insurance upon a finding by the Commissioner of Insurance that good cause is not shown for such failure to give notice of termination to the Division."

Section 17. G.S. 20-376 reads as rewritten:

"**§ 20-376. Definitions.**

The following definitions apply in this Article:

(1) Federal safety and hazardous materials regulations. -- The federal motor carrier safety regulations contained in 49 C.F.R. Parts ~~170 through 190,~~ 171 through 180, 382, and 390 through 398.

(2) Foreign commerce. -- Commerce between any of the following:

a. A place in the United States and a place in a foreign country.
b. Places in the United States through any foreign country.

(3) Interstate commerce. -- As defined in 49 C.F.R. Part 390.5. ~~Commerce between any of the following:~~
~~a. A place in a state and a place in another state.~~
~~b. Places in the same state through another state.~~

(4) Intrastate commerce. -- As defined in 49 C.F.R. Part 390.5. ~~Commerce that is between points and over a route wholly within this State and is not part of a prior or subsequent movement to or from points outside of this State in interstate or foreign commerce.~~"

Section 18. G.S. 20-381(b) reads as rewritten:

"(b) The definitions set out in 49 Code of Federal Regulations § 171.8 apply to this subsection. ~~Citations to the Code of Federal Regulations (CFR) in this subsection refer to the 1 October 1997 Edition of the CFR.~~ The transportation of an agricultural product, other than a Class 2 material, over local roads between fields of the same farm by a farmer operating as an intrastate private motor carrier is exempt from the requirements of Parts 171 through 180 of 49 CFR as provided in 49 CFR § 173.5(a). The transportation of an agricultural product to or from a farm within 150 miles of the farm by a farmer operating as an intrastate private motor carrier is exempt from the requirements of Subparts G and H of Part 172 of 49 CFR as provided in 49 CFR § 173.5(b)."

Section 19. G.S. 20-118(c)(5) reads as rewritten:

"(5) The light-traffic road limitations provided for pursuant to subdivision (b)(4) of this section do not apply to a vehicle while that vehicle is transporting only the following from its point of origin on a light-traffic road to the nearest highway that is not a light-traffic road:

a. Processed or unprocessed seafood transported from boats or any other point of origin to a processing plant or a point of further distribution.
b. Meats or agricultural crop products transported from a farm to first market.
c. Forest products originating and transported from a farm or from woodlands to first market without interruption or delay for further packaging or processing after initiating transport.
d. Livestock or poultry transported from their point of origin to first market.
e. Livestock by-products or poultry by-products transported from their point of origin to a rendering plant.
f. Recyclable material transported from its point of origin to a scrap-processing facility for processing. As used in this

subpart, the terms ~~"recyclable"~~ "recyclable material" and "processing" have the same meaning as in G.S. 130A-290(a).

g. Garbage collected by the vehicle from residences or garbage dumpsters if the vehicle is fully enclosed and is designed specifically for collecting, compacting, and hauling garbage from residences or from garbage dumpsters. As used in this subpart, the term "garbage" does not include hazardous waste as defined in G.S. 130A-290(a), spent nuclear fuel regulated under G.S. 20-167.1, low-level radioactive waste as defined in G.S. 104E-5, or radioactive material as defined in G.S. 104E-5.

h. Treated sludge collected from a wastewater treatment facility.

i. Apples when transported from the orchard to the first processing or packing point.

j. Trees grown as Christmas trees from the field, farm, stand, or grove to first processing point."

Section 20. The Division of Motor Vehicles shall develop a plan to improve the system of collecting and maintaining proof of financial responsibility for newly licensed drivers classified as inexperienced operators. The Division shall submit its report to the Joint Legislative Transportation Oversight Committee by December 1, 1999.

Section 21. G.S. 20-183.8(b) reads as rewritten:

"(b) Defenses to Infractions. -- Any of the following is a defense to a violation under subsection (a) of this section:

(1) The vehicle was continuously out of State for at least the 30 days preceding the date the inspection sticker expired and a current inspection sticker was obtained within 10 days after the vehicle came back to the State.

(2) The vehicle displays a dealer license plate or a transporter plate, the dealer repossessed the vehicle or otherwise acquired the vehicle within the last 10 days, and the vehicle is being driven from its place of acquisition to the dealer's place of business or to an inspection station.

(3) Repealed by Session Laws 1997-29, s. 5.

(4) The charged infraction is described in subdivision (a)(1) of this section, the vehicle is subject to a ~~safety-only inspection,~~ safety inspection or an emissions inspection and the vehicle owner establishes in court that the vehicle was inspected after the citation was issued and within 30 days of the expiration date of the inspection sticker that was on the vehicle when the citation was issued."

Section 22. Section 5 of this act becomes effective July 1, 1999. Section 16 of this act becomes effective October 1, 2000. The remainder of this act becomes effective October 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

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The General Assembly of North Carolina enacts:

Section 1. G.S. 20-4.01 is amended by adding a new subdivision to read:

"(4b) Crash. -- Any event that results in injury or property damage attributable directly to the motion of a motor vehicle or its load. The terms collision, accident, and crash and their cognates are synonymous."

Section 2. G.S. 20-4.01(12a) reads as rewritten:

"(12a) Gross Vehicle Weight Rating (GVWR). -- The value specified by the manufacturer as the maximum loaded weight of a vehicle. The GVWR of a combination vehicle is the GVWR of the power unit plus the GVWR of the towed unit or units. When a vehicle is determined by an enforcement officer to be structurally altered from the manufacturer's original design, the license weight or the total weight of the vehicle or combination of vehicles may be deemed as the GVWR for the purpose of enforcing this Chapter."

Section 3. G.S. 20-4.01(27)e. reads as rewritten:

"e. U-drive-it passenger vehicles. -- ~~Vehicles rented or leased to be operated by the lessee. This shall not include vehicles of nine-passenger capacity or less which are leased for a term of one year or more to the same person or vehicles leased or rented to public school authorities for driver training instruction.~~ Passenger vehicles included in the definition of U-drive-it vehicles set forth in this section."

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b. Total property damage of one thousand dollars ($1,000) or more, or property damage of any amount to a vehicle seized pursuant to G.S. 20-28.3."

Section 5. G.S. 20-4.01 is amended by adding a new subdivision to read:

"(48.1) U-drive-it vehicles. -- The following vehicles that are rented to a person, to be operated by that person:

a. A private passenger vehicle other than the following:

1. A private passenger vehicle of nine-passenger capacity or less that is rented for a term of less than one year.

2. A private passenger vehicle that is rented to public school authorities for driver-training instruction.

b. A property-hauling vehicle under 7,000 pounds that does not haul products for hire and that is rented for a term of less than one year.

c. Motorcycles."

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Section 13. G.S. 20-78(b) reads as rewritten:

"(b) The Division shall maintain a record of certificates of title ~~issued, maintaining at all times the records of the last two owners.~~ issued by the Division for a period of 20 years. After 20 years, the Division shall maintain a record of the last two owners.

The Commissioner is hereby authorized and empowered to provide for the photographic or photostatic recording of certificate of title records in such manner as he may deem expedient. The photographic or photostatic copies herein authorized shall be sufficient as evidence in tracing of titles of the motor vehicles designated therein, and shall also be admitted in evidence in all actions and proceedings to the same extent that the originals would have been admitted."

Section 14. G.S. 20-79.4(b)(27) reads as rewritten:

"(27) Military Retiree. -- Issuable to an individual who has retired from the armed forces of the United States. The plate shall bear the word "Retired" and the name and insignia of the branch of service from which the individual retired. ~~The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate.~~"

Section 15. G.S. 20-87(2) reads as rewritten:

"(2) U-Drive-It ~~Passenger~~ Vehicles. -- U-drive-it ~~passenger~~ vehicles shall pay the following tax:

Motorcycles:	1-passenger capacity	$18.00
	2-passenger capacity	22.00
	3-passenger capacity	26.00

~~Automobiles: Forty-one dollars ($41.00) per year for each vehicle of fifteen-passenger capacity or less, and vehicles of over fifteen-passenger capacity shall be classified as buses and shall pay one dollar and forty cents ($1.40) per hundred pounds empty weight of each vehicle.~~

Automobiles:	15 or fewer passengers	$41.00
Buses:	16 or more passengers	$ 1.40 per hundred pounds of empty weight
Trucks under 7,000 pounds that do not haul products for hire:	4,000 pounds	$41.50
	5,000 pounds	$51.00
	6,000 pounds	$61.00."

Section 16. G.S. 20-96 reads as rewritten:

"**§ 20-96.** ~~**Collection of delinquent penalties and taxes.**~~ **Detaining property-hauling vehicles until penalties and taxes are collected.**

~~A law enforcement officer who discovers that a vehicle used for the transportation of property is being operated on the highways and that the owner of the vehicle is more than 30 days overdue in paying any of the following may detain the vehicle:~~

~~(1) A penalty previously assessed under this Chapter against the owner for a violation attributable to the failure of a vehicle to comply with this Chapter.~~

~~(2) A tax or penalty previously assessed against the owner under Article 36B of Chapter 105 of the General Statutes.~~

~~The officer may detain the vehicle until the delinquent penalties and taxes are paid.~~

(a) Authority to Detain Vehicles. -- A law enforcement officer may seize and detain the following property-hauling vehicles operating on the highways of the State:

(1) A property-hauling vehicle with an overload in violation of G.S. 20-88(k) and G.S. 20-118.

(2) A property-hauling vehicle that does not have a proper registration plate as required under G.S. 20-118.3.

(3) A property-hauling vehicle that is owned by a person liable for any overload penalties or assessments due and unpaid for more than 30 days.

(4) A property-hauling vehicle that is owned by a person liable for any taxes or penalties under Article 36B of Chapter 105 of the General Statutes.

The officer may detain the vehicle until the delinquent penalties and taxes are paid and, in the case of a vehicle that does not have the proper registration plate, until the proper registration plate is secured.

(b) Storage; Liability. -- When necessary, an officer who detains a vehicle under this section may have the vehicle stored. The owner of a vehicle that is detained or stored under this section is responsible for the care of any property being hauled by the vehicle and for any storage charges. The State ~~is~~ shall not be liable for damage to the vehicle or loss of the property being hauled."

Section 17. G.S. 20-166.1(h) reads as rewritten:

"(h) Forms. -- The Division ~~must~~ shall provide forms or procedures for submitting crash data to persons required to make reports under this section and the reports ~~must~~ shall be made ~~on the forms provided.~~ in a format approved by the Commissioner. ~~The forms must ask for the~~ The following information shall be included about a reportable ~~accident.~~ crash:

(1) The cause of the ~~accident.~~ crash.

(2) The conditions existing at the time of the ~~accident.~~ crash.

(3) The persons and vehicles involved.

(4) Whether the vehicle has been seized and is subject to forfeiture under G.S. 20-28.2."

Section 18. G.S. 20-309(e) reads as rewritten:

"(e) Upon termination by cancellation or otherwise of an insurance policy provided in subsection (b) of this section, the insurer shall notify the Division of ~~such termination;~~ the termination within 20 business days; provided, no cancellation notice is required if the same insurer issues a ~~new~~ replacement insurance policy complying with this Article at the same time the insurer cancels or otherwise terminates the old policy, no lapse in coverage results, and the insurer sends the certificate of insurance form for the new policy to the Division. The insurer shall notify the Division of any new policy for insurance within 20 working days of its issuance unless the new coverage is a replacement insurance policy for a policy terminated by the same insurer. Any insurance company with twenty-five million dollars ($25,000,000) or more in annual vehicle insurance premium volume must submit the notices required under this section by electronic means. All other insurance companies may submit the notices required under this section by either paper or electronic means. The names of insureds and the beginning date and termination date of insurance coverage provided to the Division by the insurer pursuant to this paragraph shall constitute a designated trade secret under G.S. 132-1.2.

The Division, upon receiving notice of ~~cancellation or termination of an owner's financial responsibility as required by this Article,~~ a lapse in insurance coverage, shall notify ~~such~~ the owner of ~~such cancellation or termination,~~ the lapse in coverage, and ~~such~~ the owner shall, to retain the registration plate for the vehicle registered or required to be registered, within 10 days from date of notice given by the Division either:

(1) Certify to the Division that he had financial responsibility effective on or prior to the date of such termination; or

(2) In the case of a lapse in financial responsibility, pay a fifty dollar ($50.00) civil penalty; and certify to the Division that he now has financial responsibility effective on the date of certification, that he did not operate the vehicle in question during the period of no financial responsibility with the knowledge that there was no financial responsibility, and that the vehicle in question was not involved in a motor vehicle ~~accident~~ crash during the period of no financial responsibility.

Failure of the owner to certify that he has financial responsibility as herein required shall be prima facie evidence that no financial responsibility exists with regard to the vehicle concerned and unless the owner's registration plate has on or prior to the date of termination of insurance been surrendered to the Division by surrender to an agent or representative of the Division designated by the Commissioner, or depositing the same in the United States mail, addressed to the Division of Motor Vehicles, Raleigh, North Carolina, the Division shall revoke the vehicle's registration for 30 days.

In no case shall any vehicle, the registration of which has been revoked for failure to have financial responsibility, be reregistered in the name of the registered owner, spouse, or any child of the spouse, or any child of such owner within less than 30

days after the date of receipt of the registration plate by the Division of Motor Vehicles, except that a spouse living separate and apart from the registered owner may register such vehicle immediately in such spouse's name. Additionally, as a condition precedent to the reregistration of the vehicle by the registered owner, spouse, or any child of the spouse, or any child of such owner, except a spouse living separate and apart from the registered owner, the payment of a restoration fee of fifty dollars ($50.00) and the appropriate fee for a new registration plate is required. Any person, firm or corporation failing to give notice of termination shall be subject to a civil penalty of two hundred dollars ($200.00) to be assessed by the Commissioner of Insurance upon a finding by the Commissioner of Insurance that good cause is not shown for such failure to give notice of termination to the Division."

Section 19. G.S. 20-376 reads as rewritten:

"**§ 20-376. Definitions.**

The following definitions apply in this Article:

(1) Federal safety and hazardous materials regulations. -- The federal motor carrier safety regulations contained in 49 C.F.R. Parts ~~170 through 190,~~ 171 through 180, 382, and 390 through 398.

(2) Foreign commerce. -- Commerce between any of the following:

a. A place in the United States and a place in a foreign country.

b. Places in the United States through any foreign country.

(3) Interstate commerce. -- As defined in 49 C.F.R. Part 390.5. ~~Commerce between any of the following:~~

~~a. A place in a state and a place in another state.~~

~~b. Places in the same state through another state.~~

(4) Intrastate commerce. -- As defined in 49 C.F.R. Part 390.5. ~~Commerce that is between points and over a route wholly within this State and is not part of a prior or subsequent movement to or from points outside of this State in interstate or foreign commerce.~~"

Section 20. G.S. 20-381(b) reads as rewritten:

"(b) The definitions set out in 49 Code of Federal Regulations § 171.8 apply to this subsection. ~~Citations to the Code of Federal Regulations (CFR) in this subsection refer to the 1 October 1997 Edition of the CFR.~~ The transportation of an agricultural product, other than a Class 2 material, over local roads between fields of the same farm by a farmer operating as an intrastate private motor carrier is exempt from the requirements of Parts 171 through 180 of 49 CFR as provided in 49 CFR § 173.5(a). The transportation of an agricultural product to or from a farm within 150 miles of the farm by a farmer operating as an intrastate private motor carrier is exempt from the requirements of Subparts G and H of Part 172 of 49 CFR as provided in 49 CFR § 173.5(b)."

Section 21. G.S. 20-118(c)(5) reads as rewritten:

"(5) The light-traffic road limitations provided for pursuant to subdivision (b)(4) of this section do not apply to a vehicle while

that vehicle is transporting only the following from its point of origin on a light-traffic road to the nearest highway that is not a light-traffic road:

a. Processed or unprocessed seafood transported from boats or any other point of origin to a processing plant or a point of further distribution.

b. Meats or agricultural crop products transported from a farm to first market.

c. Forest products originating and transported from a farm or from woodlands to first market without interruption or delay for further packaging or processing after initiating transport.

d. Livestock or poultry transported from their point of origin to first market.

e. Livestock by-products or poultry by-products transported from their point of origin to a rendering plant.

f. Recyclable material transported from its point of origin to a scrap-processing facility for processing. As used in this subpart, the terms ~~"recyclable"~~ "recyclable material" and "processing" have the same meaning as in G.S. 130A-290(a).

g. Garbage collected by the vehicle from residences or garbage dumpsters if the vehicle is fully enclosed and is designed specifically for collecting, compacting, and hauling garbage from residences or from garbage dumpsters. As used in this subpart, the term "garbage" does not include hazardous waste as defined in G.S. 130A-290(a), spent nuclear fuel regulated under G.S. 20-167.1, low-level radioactive waste as defined in G.S. 104E-5, or radioactive material as defined in G.S. 104E-5.

h. Treated sludge collected from a wastewater treatment facility.

i. Apples when transported from the orchard to the first processing or packing point.

j. Trees grown as Christmas trees from the field, farm, stand, or grove to first processing point."

Section 22. The Division of Motor Vehicles shall develop a plan to improve the system of collecting and maintaining proof of financial responsibility for newly licensed drivers classified as inexperienced operators. The Division shall submit its report to the Joint Legislative Transportation Oversight Committee by December 1, 1999.

Section 23. G.S. 20-183.8(b) reads as rewritten:

"(b) Defenses to Infractions. -- Any of the following is a defense to a violation under subsection (a) of this section:

(1) The vehicle was continuously out of State for at least the 30 days preceding the date the inspection sticker expired and a current

inspection sticker was obtained within 10 days after the vehicle came back to the State.

(2) The vehicle displays a dealer license plate or a transporter plate, the dealer repossessed the vehicle or otherwise acquired the vehicle within the last 10 days, and the vehicle is being driven from its place of acquisition to the dealer's place of business or to an inspection station.

(3) Repealed by Session Laws 1997-29, s. 5.

(4) The charged infraction is described in subdivision (a)(1) of this section, the vehicle is subject to a ~~safety-only inspection,~~ safety inspection or an emissions inspection and the vehicle owner establishes in court that the vehicle was inspected after the citation was issued and within 30 days of the expiration date of the inspection sticker that was on the vehicle when the citation was issued."

Section 24. G.S. 105-550(7) reads as rewritten:

"(7) U-drive-it ~~passenger~~ vehicle. -- Defined in G.S. 20-4.01."

Section 25. G.S. 105-551(a) reads as rewritten:

"(a) Tax. -- The board of trustees of an Authority may levy a privilege tax on a retailer who is engaged in the business of leasing or renting U-drive-it ~~passenger~~ vehicles or motorcycles based on the gross receipts derived by the retailer from the short-term lease or rental of these vehicles. The tax rate must be a percentage and may not exceed five percent (5%). A tax levied under this section applies to short-term leases or rentals made by a retailer whose place of business or inventory is located within the territorial jurisdiction of the Authority. This tax is in addition to all other taxes."

Section 26. G.S. 105-552(b) reads as rewritten:

"(b) Collection. -- A tax levied by an Authority under this Article shall be collected by the Authority but shall otherwise be administered in the same manner as the optional gross receipts tax levied by G.S. 105-187.5. Like the optional gross receipts tax, a tax levied under this Article is to be added to the lease or rental price of a U-drive-it ~~passenger~~ vehicle or motorcycle and thereby be paid by the person to whom it is leased or rented.

A tax levied under this Article applies regardless of whether the retailer who leases or rents the U-drive-it ~~passenger~~ vehicle or motorcycle has elected to pay the optional gross receipts tax on the lease or rental receipts from the vehicle. A tax levied under this Article must be paid to the Authority that levied the tax by the date an optional gross receipts tax would be payable to the Secretary of Revenue under G.S. 105-187.5 if the retailer who leases or rents the U-drive-it ~~passenger~~ vehicle or motorcycle had elected to pay the optional gross receipts tax."

Section 26.1. G.S. 105-259(b)(7) reads as rewritten:

"(b) Disclosure Prohibited. -- An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the

State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

. . .

(7) To exchange information with the Division of Motor Vehicles of the Department of Transportation or the International Fuel Tax Association, Inc., when the information is needed to fulfill a duty imposed on the Department of Revenue or the Division of Motor Vehicles."

Section 27. Section 7 of this act becomes effective July 1, 1999. Section 21 of this act becomes effective October 1, 2000. The remainder of this act becomes effective October 1, 1999.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 280 (House Finance Committee Substitute)

SHORT TITLE: Motor Vehicle Technical Amendments/AB

SPONSOR(S): Representative Cole

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
Highway Fund					
U-Drive-it trucks	$27,937	$37,995	$38,754	$39,529	$40,319
Internet registration		see ASSUMPTIONS AND METHODOLOGY			
EXPENDITURES					
Highway Fund					
Insurance notices		($78,300)	($104,400)	($104,400)	($104,400)
Internet registration		see ASSUMPTIONS AND METHODOLOGY			

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Transportation – Division of Motor Vehicles

EFFECTIVE DATE: Section 5 (graduated drivers license change) becomes effective July 1, 1999. Section 17 (notification of terminated insurance policies) becomes effective October 1, 2000. The remainder of the act becomes effective October 1, 1999.

BILL SUMMARY: The bill makes numerous changes to the motor vehicle laws found in Chapter 20 of the North Carolina General Statutes.

ASSUMPTIONS AND METHODOLOGY:

REVENUES

Section 14 of the bill has a direct fiscal impact on the Highway Fund. Small daily rental trucks are now issued a "for-hire" plate that is renewed annually. This "for-hire" status requires the vehicle owner to carry a high insurance liability policy. The proposal is to classify small daily rental trucks as U-drive-it passenger vehicles, a category that now includes cars and buses. These

daily rentals will require lower insurance liability policies, but will pay higher fees for the privilege.

The Division of Motor Vehicles (DMV) estimates that 2,500 small trucks are licensed each year as daily rentals. The chart below shows the estimated number of trucks by weight class. The chart also shows the current and proposed fees. The first year revenue gain is reduced by one fourth due to an October 1, 1999 starting date. DMV estimates that the number of trucks licensed in future years will grow by 2% annually.

Truck Weight	# of Trucks	Current Fees	Current Revenue	Proposed Fees	Proposed Revenue	Net Gain
4,000 lbs	1000	$21.50	$21,500	$41.50	$41,500	$20,000
5,000 lbs	1000	$40.75	$40,750	$51.00	$51,000	$10,250
6,000 lbs	500	$47.00	$23,500	$61.00	$30,500	$7,000
	2,500		$85,750		$123,000	$37,250

Section 10 has the potential to both lose revenues and to decrease expenditures. The section allows DMV "to accept electronic applications for the issuance of registration plates, registration certificates, and certificates of title, and to electronically collect fees and penalties". Currently registration renewal can be done by mail or by a visit to a contract tag agent. Renewal by mail requires the payment of a $1 processing fee in addition to the registration renewal fee. There were 1.2 million mail-in renewals last year and thus $1.2 million in administrative fees paid to the Highway Fund. If vehicle owners that now renew by mail are allowed to renew over the internet, then DMV will lose a portion of this revenue. To be revenue neutral, the bill must be amended to allow DMV to charge a $1 processing fee to use this electronic service. However, electronic renewal is a moot point since DMV does not have the authority to accept credit cards for payment and it is uncertain when this approval will be granted.

EXPENDITURES

As mentioned above, Section 10 also has the potential to reduce expenditures. A 1995 study by the NCDOT Productivity Management unit reported that registration renewals performed by DMV were less expensive than those completed by contract tag agents. In 1995, DMV paid $1.73 for renewals by contract agents and spent $1.44 for in-house processing. Most of the cost for contract agents was the $1.20 transaction fee (now $1.35). If a vehicle owner that now uses a tag agent chooses to renew electronically, then DMV saves 29 cents per transaction. With the increase in internet commerce, it is likely that consumers will choose on-line payment versus a trip to a tag agent for simple transactions. The problem is that registration renewals are the easiest and most profitable transactions for branch agents. The smaller volume contract agents unable to absorb the lost revenue may have to close. Again, the General Assembly has to give DMV the authority to use credit cards for payment. In turn, the General Assembly must decide the role of contract tag agents under electronic commerce.

Section 17 requires insurance companies to notify DMV when they terminate policies and issue new ones within 10 days. This section will reduce the number of vehicle owners contacted by DMV who have not experienced a lapse in coverage, but have only "shopped around" for lower premiums. DMV estimates that 400,000 unnecessary letters will be eliminated due to this change

in policy. At a pre-sort postage rate of 26.1 cents per letter, this will create annual savings of $104,400. The section is effective beginning October 1, 2000, thus first year savings in FY 2000-01 are for nine months. No postal rate increases are included in this note.

Section 11 requires DMV to maintain records for 20 years instead of the life of the vehicle. This could save DMV computer storage space, but no savings have been estimated for this item.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic

APPROVED BY: Tom Covington

DATE: Tuesday, April 20, 1999

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 280

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

H280-ALC-7/6

Date _____, 199__

Comm. Sub. [YES]
Amends Title []
PCS8150

Sen. Kerr

moves to amend the bill on page 10, lines 40 - 41, by adding the following between the lines:

"Section 26.1. G.S. 105-259(b)(7) reads as rewritten:

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

. . .

(7) To exchange information with the Division of Motor Vehicles of the Department of Transportation or the International Fuel Tax Association, Inc., when the information is needed to fulfill a duty imposed on the Department of Revenue or the Division of Motor Vehicles.'"

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 330*

Short Title: Spay/Neuter Program. (Public)

Sponsors: Senators Kinnaird; Allran, Ballance, Carpenter, Carrington, Carter, Clodfelter, Cooper, Dalton, Dannelly, East, Forrester, Garrou, Garwood, Gulley, Hagan, Harris, Hartsell, Hoyle, Jordan, Kerr, Lee, Lucas, Martin of Pitt, Martin of Guilford, Metcalf, Miller, Odom, Perdue, Phillips, Purcell, Rand, Reeves, Shaw of Cumberland, Soles, Warren, and Weinstein.

Referred to: Finance.

March 11, 1999

A BILL TO BE ENTITLED

AN ACT TO CREATE A STATE SPAY/NEUTER FUND, TO IMPOSE A FEE OF FIFTY CENTS ON RABIES VACCINATIONS TO RAISE MONEY FOR THE SPAY/NEUTER FUND, TO ESTABLISH A STATEWIDE EDUCATIONAL PROGRAM ON THE BENEFITS OF SPAYING AND NEUTERING PETS, AND TO PROVIDE AN INCENTIVE TO COUNTIES AND CITIES TO LEVY A DIFFERENTIAL TAX ON DOGS AND CATS THAT ARE NOT SPAYED OR NEUTERED.

The General Assembly of North Carolina enacts:

Section 1. Article 34 of Chapter 106 of the General Statutes is amended by adding a new Part to read:

"Part 6A. Spay/Neuter Fund.

"§ 106-363.5. Spay/Neuter Fund established; education program; distributions to counties.

(a) Spay/Neuter Fund. -- The Spay/Neuter Fund is established in the Animal Welfare Section of the Animal Health Division of the Department of Agriculture and Consumer Services as a nonreverting special revenue account consisting of funds credited to the Fund under G.S. 130A-190 or any other provision of law. The money in the Fund shall be used for the following purposes:

(1) Up to twenty percent (20%) of the money in the Fund may be used by the Department to educate the public on the benefits of having pets spayed and neutered.

(2) The remainder of the money in the Fund shall be distributed at the end of each fiscal year to units of local government eligible to receive a distribution from the Fund under the provisions of subsection (c) of this section.

(b) Statewide Education Program. -- The Department of Agriculture and Consumer Services shall establish a statewide education program to educate the public on the benefits of having dogs and cats spayed and neutered. The Department may use up to twenty percent (20%) of the money in the Fund to defray the costs of providing staff to the program and may employ outside consultants to assist with the program. The Department may work cooperatively on the program with the North Carolina School of Veterinary Medicine at Raleigh, with other departments of State government, with municipal health and animal control departments, and with statewide and local humane organizations.

(c) Spay/Neuter Programs. -- To receive a distribution of money from the Spay/Neuter Fund, a unit of local government must apply to the Department of Agriculture and Consumer Services by April 1 of each year. To be eligible for a distribution from the Fund, the applicant must levy an animal tax on dogs and cats under either G.S. 153A-153 or G.S. 160A-212 and the amount of the tax levied on a dog or cat that has not been spayed or neutered must be at least three times higher than the amount of the tax levied on a dog or cat that has been spayed or neutered. The applicant must also offer one or more of the following programs on a year-round basis for the purpose of reducing the cost of spaying and neutering procedures for dogs and cats:

(1) A spay/neuter clinic operated by the applicant.

(2) A spay/neuter clinic operated by a private organization under contract or other arrangement with the applicant.

(3) A contract or contracts with one or more veterinarians, whether or not located within the county, to provide reduced-cost spaying and neutering procedures.

(4) Subvention of the spaying and neutering costs incurred by low-income pet owners through the use of vouchers or other procedure that provides a discount of the cost of the spay or neuter procedure fixed by a participating veterinarian or other provider.

(5) Subvention of the costs of spaying and neutering costs incurred by persons who adopt a pet from an animal shelter operated by or under contract with the applicant.

The Department shall distribute the money in the Fund to the eligible applicants in proportion to the number of dogs and cats that have received a rabies vaccination during the preceding fiscal year in that unit of local government as compared to the number of dogs and cats that have received a rabies vaccination during the preceding fiscal year by all of the eligible applicants. A unit of local government receiving a

distribution from the Spay/Neuter Fund may spend the money only on programs that lower the cost of spaying and neutering dogs and cats.

(d) Definition. -- For the purposes of this section, the term "unit of local government" means a city as defined in G.S. 160A-1 or a county as defined in G.S. 153A-1.

"**§ 106-363.6. Fee on rabies vaccination.**

(a) Fee. -- A fee of fifty cents (50¢) is payable by the owner of a dog or cat when the dog or cat receives a rabies vaccination. The fee is payable to the licensed veterinarian or certified rabies vaccinator that administers the rabies vaccination. The licensed veterinarian or certified rabies vaccinator must submit the fees collected under this subsection to the Animal Welfare Section of the Department of Agriculture and Consumer Services within 30 days after the end of each calendar quarter. The Department shall credit these payments to the Spay/Neuter Fund established in G.S. 106-363.5.

(b) Exception. -- The fee in subsection (a) of this section does not apply to rabies vaccinations administered at a countywide rabies vaccination clinic where the fee charged for the rabies vaccination is set by the county board of commissioners under G.S. 130A-188.

"**§ 106-363.7. Report by Veterinary Public Health Director.**

The Veterinary Public Health Director in the Department of Health and Human Services shall report to the Director of the Animal Welfare Section of the Department of Agriculture and Consumer Services on the number of rabies vaccination tags sold to licensed veterinarians and certified rabies vaccinators."

Section 2. This act becomes effective January 1, 1999, and applies to rabies vaccinations administered on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 330*
Proposed Committee Substitute S330-PCS1756-LA

Short Title: Spay/Neuter Program. (Public)

Sponsors:

Referred to:

March 11, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION TO STUDY THE ISSUES OF ESTABLISHING A SPAY/NEUTER FUND AND OF ESTABLISHING A STATEWIDE EDUCATIONAL PROGRAM ON THE BENEFITS OF SPAYING AND NEUTERING PETS.

The General Assembly of North Carolina enacts:

Section 1.(a) The Legislative Research Commission is authorized to study issues related to the establishment of a State Spay/Neuter Fund and a statewide educational program on the benefits of spaying and neutering pets.

Section 1.(b) The study shall include the assessment of fees to fund the Spay/Neuter Fund and the distribution of the money in the Fund (i) to establish a statewide education program to educate the public on the benefits of having dogs and cats spayed and neutered, and (ii) to assist units of local government in providing programs that lower the cost of spaying and neutering dogs and cats.

Section 2. The Legislative Research Commission shall make a final report of its findings and recommendations to the 2001 General Assembly and may make an interim report to the 1999 General Assembly, 2000 Regular Session.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 2

SENATE BILL 897*
Judiciary I Committee Substitute Adopted 6/29/99

Short Title: Safety Professionals. (Public)

Sponsors:

Referred to:

April 14, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE TITLE PROTECTION FOR THE SAFETY PROFESSION.

The General Assembly of North Carolina enacts:

Section 1. Chapter 90 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 37.
"Safety Profession.

"**§ 90-646. Definitions.**

The following definitions apply in this Article:

(1) Associate Safety Professional (ASP). -- A person who has met the education, experience, and examination requirements established by the Board of Certified Safety Professionals for an Associate Safety Professional.

(2) Board of Certified Safety Professionals (BCSP). -- A nonprofit corporation, incorporated in Illinois in 1969, established to improve the practice and educational standards of the profession of safety by certifying individuals who meet its education, experience, examination, and maintenance requirements.

(3) Certified Safety Professional (CSP). -- A person who has met the education, experience, and examination requirements established by the Board of Certified Safety Professionals for a Certified Safety Professional.

"**§ 90-647. Unlawful acts; injunctive relief; exclusion.**

(a) No person shall represent himself or herself as a Certified Safety Professional or Associate Safety Professional unless that person is certified by the Board of Certified Safety Professionals.

(b) A violation of this section constitutes an unfair trade practice under G.S. 75-1.1 and a court may impose a civil penalty against the defendant and shall be empowered to issue a restraining order to prevent further use of the title.

"**§ 90-648. Exemptions and limitations.**

(a) This Article does not apply to:

(1) A person who holds a license issued by a State board, commission, or other agency, is engaged in activities authorized by his or her license, and does not represent himself or herself as an Associate Safety Professional or Certified Safety Professional.

(2) A person who practices within the scope of safety, injury, or illness prevention and does not use the title 'Associate Safety Professional' or 'Certified Safety Professional', the initials, 'ASP' or 'CSP', or otherwise represents himself or herself to the public as an Associate Safety Professional or Certified Safety Professional.

(3) A person who is licensed as an architect under Chapter 83A of the General Statutes or any person working under the supervision of a licensed architect.

(b) Nothing in this Article shall permit the practice of engineering by persons who are not licensed under Chapter 89C of the General Statutes.

"**§ 90-649. Certification registry.**

The Board shall file with the Secretary of State the name, address, telephone number, and date of certification for all Associate Safety Professionals and Certified Safety Professionals. The Board shall remit a filing fee of thirty-five dollars ($35.00) to the Secretary of State with each certification filed. All fees paid to the Department shall be used to pay the costs incurred in administering and enforcing this Article. The Board may require this filing fee to be paid by the person whose certification is being filed. The Board shall promptly notify the Secretary of State when a person's certification is revoked or no longer in effect.

The Secretary of State shall maintain a registry of all current Associate Safety Professionals and Certified Safety Professionals as furnished by the Board."

Section 2. This act becomes effective January 1, 2000, and applies to acts committed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 897 Senate Judiciary Committee Substitute

SHORT TITLE: Safety Professionals

SPONSOR(S):

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
Secretary of State	**$7,875**	*** Less than $1,000 annually ***			
EXPENDITURES					
Secretary of State	**$19,000 *See Assumptions and Methodology ***				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:

EFFECTIVE DATE: January 1, 2000 and applies to offenses committed on or after that date.

BILL SUMMARY: The bill creates a new "safety profession" and provides that only those individuals who are certified as either a Certified Safety Professional or an Associate Safety Professional may present themselves as safety professionals in North Carolina. The national, private Board of Certified Safety Professionals must certify these individuals. The bill defines the terms "Associate Safety Professional", "Board of Certified Safety Professionals", and "Certified Safety Professional". Under the bill, representing that someone is a safety professional without having the appropriate certification will be considered an unfair and deceptive trade practice. The bill exempts from these requirement professionals who are licensed in another field and are engaged in the practice of that profession. Persons who practice in the field of safety, injury or illness prevention and who do not use titles, engineers, architects, and those under the supervision of architects are also exempt. Finally, the bill requires the Board to file with the Secretary of State the name, address, telephone number and date of certification of all certified and associate safety professionals. This listing must be accompanied by $35.00 for each certification.

ASSUMPTIONS AND METHODOLOGY: The only potential fiscal impact of the bill relates to the fee. Information from the Board of Certified Safety Professionals indicates that there were 200 certified safety professionals practicing in North Carolina in 1997. No more recent information is available. Assuming the number of Certified Safety Professionals increases

to 225 in 2000, the potential revenue is $7875 (225 certifications * $35 each). This amount would likely decrease significantly once the initial information was transferred. These funds are deposited with the Secretary of State, with the balance reverting to the General Fund at the end of the fiscal year.

The Secretary of State's Office indicates that they expect to hire one part time person (Pay grade 59) to input and manage the initial data entry. They also expect to incur about $5,000 in programming and related costs. The total expected on time cost to the Secretary of State is estimated to be approximately $19,000.

NOTE: Neither the revenue nor expenditures associated with this bill have been included in the state budget.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Linda Struyk Millsaps

APPROVED BY:

DATE:

SENATE BILL 897:
Safety Professionals

BILL ANALYSIS

Committee: Senate Finance
Date: July 6, 1999
Version: 2nd Edition

Introduced by: Senator Dalton
Summary by: Martha K. Walston
Committee Counsel

SUMMARY: ***Senate Bill 897 would create a new Article 37 "Safety Profession" in Chapter 90 of the General Statutes, which governs medicine and allied occupations, to provide that only those persons certified by the private Board of Certified Safety Professionals as either a Certified Safety Professional or an Associate Safety Professional may represent themselves as certified safety professionals. The current version of the bill was given a favorable report in Senate Judiciary I. The bill is before Senate Finance because it requires that a $35.00 filing fee be paid to the Secretary of State for each associate safety professional and safety professional certification.***

CURRENT LAW: Current law does not provide for certification of safety professionals as defined in the bill nor does the law restrict the use of the name safety professional.

BILL ANALYSIS: Section 1 of the bill creates four new statutory sections. **G.S. 90-646** defines "Associate Safety Professional", "Board of Certified Safety Professionals", and Certified Safety Professional". An Associate or Certified Safety Professional is defined as a person who has met the education, experience and examination requirements established by the Board for that classification.

G.S. 90-467 would make it an unfair and deceptive trade practice for a person to represent themselves as a Certified Safety Professional or an Associate Safety Professional unless the person is certified by the Board of Certified Safety Professionals. This section would authorize a court to impose a civil penalty and injunctive relief for violations of this section.

G.S. 90-468 exempts from the application of this new Article persons who are licensed as other professionals and are engaged in the practice of that profession, persons who practice within the scope of safety, injury, or illness prevention and who do not use specific titles, a person licensed as an architect and any person working under the supervision of a licensed architect. This section also makes it clear that this Article does not permit the practice of engineering except by licensed engineers.

G.S. 90-649 requires the Board to file with the Secretary of State the name, address, telephone number and the date of certification of all associate safety professionals and certified safety professionals and to pay a $35 filing fee. This fee will be used by the Secretary to pay the cost incurred in administering and enforcing the Safety Profession Article. The Secretary of State is required to keep a registry of safety professionals.

EFFECTIVE DATE: The bill becomes effective January 1, 2000 and applies to offenses committed on or after that date.

O. Walker Reagan, committee counsel to Senate Judicary I, contributed substantially to this summary.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 897 Senate Judiciary Committee Substitute DRAFT NOTE

SHORT TITLE: Safety Professionals

SPONSOR(S):

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
Secretary of State	**$9,625**	**$1,330**	**$1,330**	**$1,330**	**$1,330**
EXPENDITURES					
Secretary of State		***See Assumptions and Methodology ***			

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Secretary of State.

EFFECTIVE DATE: January 1, 2000 and applies to offenses committed on or after that date.

BILL SUMMARY: The bill creates a new "safety profession" and provides that only those individuals who are certified as either a Certified Safety Professional or an Associate Safety Professional may present themselves as safety professionals in North Carolina. The national, private Board of Certified Safety Professionals must certify these individuals. The bill defines the terms "Associate Safety Professional", "Board of Certified Safety Professionals", and "Certified Safety Professional". Under the bill, representing that someone is a safety professional without having the appropriate certification will be considered an unfair and deceptive trade practice. The bill exempts from these requirement professionals who are licensed in another field and are engaged in the practice of that profession. Persons who practice in the field of safety, injury or illness prevention and who do not use titles, engineers, architects, and those under the supervision of architects are also exempt. Finally, the bill requires the Board to file with the Secretary of State the name, address, telephone number and date of certification of all certified and associate safety professionals. This listing must be accompanied by $35.00 for each certification.

ASSUMPTIONS AND METHODOLOGY: The only potential fiscal impact of the bill relates to the fee. The Board of Certified Safety Professionals indicates that there are currently 275 certified safety professionals practicing in North Carolina. The potential revenue is $9,625 (275 certifications * $35 each) for the first fiscal year.

Fiscal Research expects that the revenue generated will decrease significantly in the out years. The Board indicates that they would be able to provide an updated list of professionals via computer disc or e-mail on whatever timetable the Secretary of State and the law deems appropriate. The Board reports that the number of certified professionals in North Carolina has increased from 200 in 1997 to 275 in 1999. Assuming the approximately 38 new professionals are added each year, the potential revenue stream from changes only would be approximately $1,330.

The Secretary of State's Office indicates that they expect to hire one part time temporary person (Pay grade 59), to manage data and consumer inquires. Therefore, the Secretary of State estimates cost of approximately $9,000 - $10,000 to implement the bill. Fiscal Research staff believes this is a reasonable initial request, however one year's experience with the bill can used to determine future resource requirements.

Any remaining revenue from this bill, less expenses, will revert to the general fund.

NOTE: Neither the revenue nor expenditures associated with this bill have been included in the state budget. Also, the Board indicates that the names of certified professionals, as well as their city and state are frequently released to the public. However, they believe that forwarding the addresses and telephone numbers as suggested by the bill would take a either a vote of the Board of Directors or the approval of the certified professional.

TECHNICAL CONSIDERATIONS: As mentioned previously, the bill is unclear about how often the listing will be updated once the initial database is installed. Additional language may be needed to clarify this issue.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Linda Struyk Millsaps and Marilyn Chism

APPROVED BY:

DATE:

(Attachment #1)

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 9/7/99 (1:30PM)

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
John Lyons	N.C. State Grange
MPK Hale	NC DOT
Daschel Propes	NC DOT
Bob Brooks	NCSBCPAE
Alan Miles	Bentley & Dixon LLP
Steve Nouse	TRALA
Ed Tullis	NC Bd. of Examiners for Engineers & Surveyors

(Attachment #2)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Wednesday, July 07, 1999

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

FAVORABLE

H.B.(CS #1)**507** Cape Carteret/Bogue Annexations
Sequential Referral: None
Recommended Referral: None

S.B.(CS #1)**897** Safety Professionals
Sequential Referral: None
Recommended Referral: None

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

S.B.**330** Spay/Neuter Program
Draft Number: PCS1756
Sequential Referral: None
Recommended Referral: Rules
Long Title Amended: Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1)**120** Tax Lien Advertisement and Collection
Draft Number: PCS1308
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 4

Committee Clerk Comment:

(Attachment #3)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Thursday, July 08, 1999

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

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

H.B.(CS #1)**651** Brunswick Fire Fees

Draft Number:	PCSA164
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 2

H.B.(SCS #1)**280** Motor Vehicle Tech. Amendments/AB

Draft Number:	PCS1316
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comment: These bills heard on 7-07-99 in Sen Finance at 1:30 PM

AGENDA

THURSDAY, JULY 8, 1999

SENATE FINANCE COMMITTEE

8:30 PM - Room 1027

I CALL TO ORDER

II INTRODUCTION OF PAGES

III BILLS TO BE CONSIDERED

SB 562 – Fee Repeals and Increases – Sen. Miller

SB 864 – Lab Testing Facility Sales Tax – Sen. Gulley

SB 968 – Waiver of Competitive Bidding Modified – Sen. Larry Shaw

HB 19 – Casino Boats Regulated – Rep. Redwine

HB 794 – Farmville Annexation – Rep. Warren

HB 1120 – Authorize Public Hospital Debt – Rep. Wright

HB 1186 – Unearned Premium Reserves – Rep. Miner

HB 1246 – Animal Lovers Special Plate – Rep. Clary

HB 1479 – Newsprint Tax Credit Change – Rep. Miller

SENATE FINANCE COMMITTEE

THURSDAY, JULY 8, 1999

8:30 A.M. - ROOM 1027

The Senate Finance Committee met on Thursday, July 8, 1999, at 8:30 A.M. in Room 1027 with Senator John Kerr presiding. There were 21 committee members present for the meeting.

HB 794 – Farmville Annexation.

Representative Edith Warren was recognized and explained her Bill. Senator Dannelly moved for a Favorable Report and the motion carried. Copy of Bill included in the minutes.

HB 1246 – Animal Lovers Special Plate.

Representative Clary, Bill Sponsor, was not present and Senator Dalton explained this Bill. Senator Weinstein sent forth an Amendment which was adopted on his motion. Senator Weinstein moved for a Favorable Report, as amended, and the motion carried. Copy of Amendment not available. Copy of Original Bill, Committee Sub, Explanation and Fiscal Note included in the minutes.

SB 562 – Fee Repeals and Increases.

Senator Miller was recognized to explain his Bill. On motion by Senator Dannelly, a Committee Substitute was adopted. Bill Hale, NC Department of Insurance, spoke in support of this Bill. Senator Wellons moved for a Favorable Report and the motion carried. Copy of Original Bill, Committee Sub and Explanation included in the minutes.

HB 1120 – Authorize Public Hospital Debt.

Representative Wright was not present at the committee meeting and Senator Rand explained this Bill. Hugh Tilson, North Carolina Hospital Association, spoke in support of this Bill. Senator Dannelly moved for a Favorable Report and the motion carried. Copy of Bill, Explanation and Fiscal Note included in the minutes.

HB 19 – Casino Boats Regulated.

Representative Redwine was recognized to explain previous action taken on this Bill. Senator Kerr withdrew his previous Amendments and offered a new Amendment. Martha Walston explained the new Amendment and answered questions from the committee members. Gerry Hancock, representing North Carolina Travel and Tourism, was recognized to speak on this Bill. Jim Brown, North Carolina State Ports Authority, also spoke on the Bill. Senator Kerr withdrew his Amendment and Senator Hoyle offered a new Amendment. John Rustin, North Carolina Family Service Council, spoke in opposition to this new Amendment. The Amendment was not accepted. Senator Hoyle then moved to give the Original Bill a Favorable Report and the motion carried. Copy of Bill, Explanation, Fiscal Note and two Amendments included in the minutes.

HB 1186 – Unearned Premium Reserves.

Representative Minor was recognized to explain his Bill. Bill Hale, North Carolina Department of Insurance, spoke in support of this Bill. Senator Lee moved for a Favorable Report and the motion carried. Copy of Bill, Explanation and Information included in the minutes.

SB 864 – Lab Testing Facility Sales Tax.

Senator Gulley was recognized to explain his Bill and moved to adopt a new Committee Sub. Motion carried. Senator Gulley and Linda Millsap, Fiscal Research, explained this new Committee Sub and answered questions from the committee members. Senator Soles moved for a Favorable Report and the motion carried. Copy of Original Bill, Committee Sub, Explanation and Fiscal Note included in the minutes.

SB 968 – Waiver of Competitive Bidding Modified.

Senator Larry Shaw was recognized to explain his Bill. Senator Shaw then sent forth an Amendment which was adopted by the committee. After a general discussion, the vote on the Amendment was reconsidered and the Amendment failed. Senator Lee moved for a Favorable Report and the motion carried. Copy of Bill, Explanation and Fiscal Note included in the minutes.

HB 1479 – Newsprint Tax Credit Change.

Representative Miller was not present at the committee meeting and the Bill was explained by a representative of the North Carolina Department of Environment and Natural Resources. Senator Purdue moved for a Favorable Report and the motion carried. Copy of Bill, Explanation and Fiscal Note included in the minutes.

Meeting adjourned.

David W. Hoyle, Co-Chair
Senate Finance Committee

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

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

Visitors' Sign Up Sheet is Attachment # 1
Committee Report(s) are Attachment # 2

HB 1186 was held and reported out on July 14, 1999

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 794

Short Title: Farmville Annexation. (Local)

Sponsors: Representative Warren.

Referred to: Finance.

April 1, 1999

A BILL TO BE ENTITLED

AN ACT ADDING CERTAIN DESCRIBED PROPERTY TO THE CORPORATE LIMITS OF THE TOWN OF FARMVILLE.

The General Assembly of North Carolina enacts:

Section 1. The following described property is added to the corporate limits of the Town of Farmville:

BEGINNING at an iron pipe at the intersection of the south line of the CSX Railroad right of way with the east line of the Monk-Austin International, Inc., tract as recorded in deed book 323 page 655, Pitt County Deed Registry, said iron being located *S 86-06-08 W 3033.035 feet from a concrete monument marking North Carolina Geodetic Survey station "PARKER" having North Carolina Coordinate System coordinates of x = 2,417,773.238 feet and y = 673,990.171 feet, North American Datum of 1983, and running thence with the south line of the CSX Railroad right of way and a new corporate limit line for the Town of Farmville N 86-14-38 E 866.705 feet to an iron pipe in the west line of the Southern States Cooperative, Inc. lot, a point in the existing corporate limits of the Town of Farmville; thence with the existing corporate limits of the Town of Farmville the remaining courses and distances in this description as follows: along the west line of the Southern States Cooperative, Inc. lot S 06-04-22 W 353.468 feet to an iron pipe; thence with the south line of the Southern States Cooperative lot N 88-54-33 E 902.408 feet to an iron pipe; thence with the south line of the Southern States lot S 81-39-10 E 354.539 feet to an iron in the west line of Fields Street; thence crossing Fields Street S 81-39-10 E 71.655 feet to a point in the east line of Fields Street; thence with the east line of Fields Street S 39-59-54 W 596.383 feet to an iron pipe at

the intersection of the north line of Perry Street with the east line of Fields Street; thence with the east line of Fields Street S 39-59-54 W 50.000 feet to an iron pipe in the south line of Perry Street; thence along the south line of Perry Street along a curve whose chord bears S 63-57-50 E 132.705 feet to an iron pipe; thence along the south line of Perry Street S 77-55-33 E 442.050 feet to an iron pipe at the northwest corner of Williams Acres, Section 3; thence along the west line of Williams Acres, Section 3, S 12-40-45 W 564.915 feet to an iron pipe; thence with the south line of lot 6, Williams Acres, Section 3, S 77-19-15 E 130.000 feet to an iron pipe in the west line of Wright Drive; thence with the west line of Wright Drive S 12-40-45 W 277.522 feet to an iron pipe; thence with the south line of Wright Drive S 77-19-15 E 40.000 feet to an iron pipe in the east line of Wright Drive; thence with the south line of Williams Acres, Section 2, N 89-52-45 E 48.400 feet to an iron pipe in a ditch; thence continuing with the south line of Williams Acres, Section 2, and said ditch S 81-10-15 E 483.861 feet to a point in the west line of the old East Carolina Railway right of way; thence with said right of way along a curve whose chord bears S 03-29-01 E 562.009 feet to a point in the Farmville Housing Authority tract; thence with the north line of said tract N 74-03-31 W 41.544 feet to an iron pipe; thence with the west line of the Farmville Housing Authority tract S 09-50-43 W 433.299 feet to an iron pipe in the north line of Darden Street extended; thence S 70-41-16 E 144.102 feet with the north line of Darden Street extended to an iron pipe in the west line of Williams Street extended; thence with the west line of Williams Street extended S 19-21-11 W 30.000 feet to an iron pipe; thence with the south line of Darden Street extended N 70-41-13 W 139.078 feet to an iron pipe; thence with the west line of the Farmville Housing Authority tract S 09-50-43 W 325.724 feet to an iron pipe at the northwest corner of the Carl W. Tugwell lot; thence with the west line of the Tugwell lot S 30-10-04 W 402.849 feet to an iron pipe in the north line of Marlboro Road (US 264A); thence with the north line of Marlboro Road N 62-08-42 W 1396.163 feet to a point in a ditch, a corner with the Farmville Tractor and Implement Company lot; thence with the east line of said lot and a ditch N 19-37-41 E 747.348 feet and N 04-22-08 E 145.640 feet to a point; thence along the north line of said lot S 84-22-20 W 723.087 feet to a point in a ditch, a corner with W. A. Allen; thence with the Allen line N 13-04-35 W 115.496 feet and N 11-34-46 W 374.815 feet to a point in the South line of Fields Street; thence the same course continued crossing Fields Street N 11-34-46 W 64.918 feet to a point in the north line of Fields Street; thence with the north line of Fields Street S 55-53-01 W 631.102 feet to an iron pipe at the northeast corner of the Monk-Austin Sales and Administration, Inc. tract; thence along the north line of said tract N 34-06-46 W 369.849 feet to an iron pipe and N 67-03-35 W 380.306 feet to an iron pipe in the west line of the Monk-Austin Processing, Inc. tract; thence along said line N 15-57-40 E 1580.938 feet to an iron pipe in the south line of the CSX Railroad right of way, the point of beginning, containing 140.83 acres more or less.

Section 2. The annexation of the property described in Section 1 is subject to the following conditions:

(1) The property is annexed as agricultural, horticultural, or forestland that is being taxed at present-use land value pursuant to G.S. 105-277.4, and the Pitt County Tax Assessor certifies to the Town that the land meets this requirement. Upon request for certification or upon any change in the certification, the assessor shall determine within 30 days whether the land meets the requirements and report the results to the Town.

(2) The annexation shall become effective September 1, 1999, and the property shall be considered a part of the Town only for purposes of establishing Town boundaries for additional annexations pursuant to Article 4A of the General Statutes and for the exercise of the Town's extraterritorial jurisdiction under Article 19 of Chapter 160A of the General Statutes. For all other purposes, the annexation shall not become effective until the last day of the month in which the tract or part thereof becomes ineligible for present-use value classification pursuant to G.S. 105-227.4 or no longer meets the requirements specified above.

(3) Until annexation becomes effective, the property shall not be entitled to services from the Town and shall not be subject to Town taxes. After annexation becomes effective, no back tax payments shall be required as a result of a change from present-use value.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 1246
Committee Substitute Favorable 6/23/99

Short Title: Animal Lovers Special Plate. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE SPECIAL REGISTRATION PLATES TO ANIMAL LOVERS TO PROMOTE SPAYING AND NEUTERING OF DOGS AND CATS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-79.4(b) is amended by adding a new subdivision in the correct alphabetical order to read:

"(b) Types. -- The Division shall issue the following types of special registration plates:

. . .

(3a) Animal Lovers. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a picture of a dog and cat and the phrase 'I Care.'"

Section 2. G.S. 20-79.7(a) reads as rewritten:

"(a) Fees. -- Upon request, the Division shall provide and issue free of charge one registration plate to a recipient of the Congressional Medal of Honor, a 100% disabled veteran, and an ex-prisoner of war. All other special registration plates are subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

Special Plate	Additional Fee Amount
Historical Attraction	$30.00
State Attraction	$30.00
Collegiate Insignia	$25.00

Olympic Games	$25.00
Special Olympics	$25.00
Animal Lovers	$20.00
March of Dimes	$20.00
Scenic Rivers	$20.00
School Technology	$20.00
Soil and Water Conservation	$20.00
Wildlife Resources	$20.00
Personalized	$20.00
Active Member of the National Guard	None
Purple Heart Recipient	None
All Other Special Plates	$10.00."

Section 3. G.S. 20-79.7(b) reads as rewritten:

"(b) Distribution of Fees. -- The Special Registration Plate Account and the Collegiate and Cultural Attraction Plate Account are established within the Highway Fund. The Division must credit the additional fee imposed for the special registration plates listed in subsection (a) among the Special Registration Plate Account (SRPA), the Collegiate and Cultural Attraction Plate Account (CCAPA), and the Natural Heritage Trust Fund (NHTF), which is established under G.S. 113-77.7, as follows:

Special Plate	SRPA	CCAPA	NHTF
Animal Lovers	$10	$10	0
Historical Attraction	$10	$20	0
In-State Collegiate Insignia	$10	$15	0
Out-of-state Collegiate Insignia	$10	0	$15
Personalized	$10	0	$10
Special Olympics	$10	$15	0
Olympic Games	$10	$15	0
State Attraction	$10	$20	0
March of Dimes	$10	$10	0
Scenic Rivers	$10	$10	0
School Technology	$10	$10	0
Soil and Water Conservation	$10	$10	0
Wildlife Resources	$10	$10	0
All other Special Plates	$10	0	0."

Section 4. G.S. 20-81.12 is amended by adding a new subsection to read:

"(b9) Animal Lovers Plates. -- The Division must receive 300 or more applications before an animal lovers plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of the animal lovers plate to the Department of Health and Human Services to create a statewide program to promote spaying and neutering of dogs and cats."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1246
Committee Substitute Favorable 6/23/99
Proposed Committee Substitute H1246-PCS4281-LA

Short Title: Animal Lovers Special Plate. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE SPECIAL REGISTRATION PLATES TO ANIMAL LOVERS TO PROMOTE SPAYING AND NEUTERING OF DOGS AND CATS.

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Section 1. G.S. 20-79.4(b) is amended by adding a new subdivision in the correct alphabetical order to read:

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. . .

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Section 2. G.S. 20-79.7(a) reads as rewritten:

"(a) Fees. -- Upon request, the Division shall provide and issue free of charge one registration plate to a recipient of the Congressional Medal of Honor, a 100% disabled veteran, and an ex-prisoner of war. All other special registration plates are subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

Special Plate	Additional Fee Amount
Historical Attraction	$30.00
State Attraction	$30.00

Collegiate Insignia	$25.00
Olympic Games	$25.00
Special Olympics	$25.00
Animal Lovers	$20.00
March of Dimes	$20.00
Scenic Rivers	$20.00
School Technology	$20.00
Soil and Water Conservation	$20.00
Wildlife Resources	$20.00
Personalized	$20.00
Active Member of the National Guard	None
Purple Heart Recipient	None
All Other Special Plates	$10.00."

Section 3. G.S. 20-79.7(b) reads as rewritten:

"(b) Distribution of Fees. -- The Special Registration Plate Account and the Collegiate and Cultural Attraction Plate Account are established within the Highway Fund. The Division must credit the additional fee imposed for the special registration plates listed in subsection (a) among the Special Registration Plate Account (SRPA), the Collegiate and Cultural Attraction Plate Account (CCAPA), and the Natural Heritage Trust Fund (NHTF), which is established under G.S. 113-77.7, as follows:

Special Plate	SRPA	CCAPA	NHTF
Animal Lovers	$10	$10	0
Historical Attraction	$10	$20	0
In-State Collegiate Insignia	$10	$15	0
Out-of-state Collegiate Insignia	$10	0	$15
Personalized	$10	0	$10
Special Olympics	$10	$15	0
Olympic Games	$10	$15	0
State Attraction	$10	$20	0
March of Dimes	$10	$10	0
Scenic Rivers	$10	$10	0
School Technology	$10	$10	0
Soil and Water Conservation	$10	$10	0
Wildlife Resources	$10	$10	0
All other Special Plates	$10	0	0."

Section 4. G.S. 20-81.12 is amended by adding a new subsection to read:

"(b10) Animal Lovers Plates. -- The Division must receive 300 or more applications before an animal lovers plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of the animal lovers plate to the Department of Health and Human Services to create a statewide program to promote spaying and neutering of dogs and cats."

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

HOUSE BILL 1246:
Animal Lovers Special Plate

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Rep. Clary
Date:	July 7, 1999	**Summary by:**	Martha K. Walston
Version:	2nd Edition		Committee Counsel

SUMMARY: ***House Bill 1246 authorizes the Division of Motor Vehicles to issue a special license plate depicting a picture of a dog and cat and the phrase "I Care" for an additional $20 fee. Ten dollars ($10.00) of the additional fee will go to the Department of Health and Human Services to be used to create a statewide program to promote spaying and neutering of dogs and cats. The current version of the bill was given a favorable report in House Finance and makes only technical changes to the original bill.***

CURRENT LAW: Upon request, the Division of Motor Vehicles may issue special registration plates. There are currently more than 54 special registration plates. The cost of a special registration plate is the regular registration fee plus an additional fee of at least $10. The first $10 of every additional fee amount is credited to the Special Registration Plate Account. The remainder of the additional fee, if any, is transferred quarterly to the appropriate organization named in the statute. After deducting the costs of the plates from the Special Registration Plate Account, the money in the Account is distributed as follows:

AMOUNT	PURPOSE
$525,000 distributed annually	Operating assistance for certain Visitor Centers
33% distributed quarterly	Department of Commerce for advertising the promotion of travel and industrial development in the State
50% distributed quarterly	Department of Transportation for beautification of highways
17% distributed quarterly	Department of Health and Human Services to promote travel accessibility for disabled persons.

This uniform system of fees has been in place since 1991 when a study commission recommended that the special registration plate system be simplified through a uniform fee schedule. The only exceptions to the general rule are for plates issued to a recipient of the Congressional Medal of Honor, a 100% disabled veterans, an ex-prisoner of war, an active member of the National Guard, and a recipient of the Purple Heart award.

BILL ANALYSIS: House Bill 1246 authorizes the Division to develop a special license plate bearing the phrase "I Care" and a picture of a dog and cat. The Division must receive at least 300 applications for this special plate before it can be issued. The cost of the plate is the regular registration fee plus an

additional $20. The first $10 of the additional fee would be credited to the Special Registration Plate Fund. The remaining $10 of the additional fee would go to the Collegiate and Cultural Attraction Plate Account and be transferred quarterly to the Department of Health and Human Services. The Department would use the money it receives from the special license plate to create a statewide program to promote spaying and neutering of dogs and cats.

Cindy Avrette, committee counsel to House Finance, contributed substantially to this summary.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1246 Animal Lovers Special Plates

SHORT TITLE: Animal Lovers Special Plates

SPONSOR(S): Rep. Clary, Cansler, Dedmon, Gardner, Horn, Justus, and Russell.

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
Highway Fund					
Special Reg. Plate Account	$3,000	$3,000	$3,000	$3,000	$3,000
Health & Human Services	$3,000	$3,000	$3,000	$3,000	$3,000
EXPENDITURES					
Special Reg. Plate Account	($856)				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Transportation, Division of Motor Vehicles, and Department of Health and Human Services.

EFFECTIVE DATE: When it becomes law.

BILL SUMMARY: The legislation authorizes the Division of Motor Vehicles to issue animal lovers special registration plates. It instructs the Department to develop the plate only after 300 or more applications for the plate are received. A special fee of $20.00 (in addition to the regular motor vehicle registration fee) is also authorized. Ten dollars of this amount goes to the Special Registration Plate Account, and ten dollars will be deposited in the Collegiate and Cultural Attractions Plate Account (CCAPA). The proceeds from the plate deposited in the CCAPA are transferred quarterly to the Department of Health and Human Services to create a statewide program to promote spaying and neutering of dogs and cats.

ASSUMPTIONS AND METHODOLOGY: In addition to the normal $20.00 registration fee every owner of a private passenger vehicle pays, there is a $20.00 fee for each specialized animal lover plate. Because there is no way to determine how many of the plates will be requested, this

fiscal note assumes the issuance of the minimum 300 license plates in FY 1999-00. As a result, the bill raises a total of $6,000 ($20 X 300 plates). Three thousand dollars ($3,000.00) of this amount goes to the SRPA. Three thousand dollars ($3,000.00) is deposited in the CCAPA. However, at the end of each quarter the funds deposited in the CCAPA are transferred to the Department of Health and Human Services. Therefore, the Department of Health and Human Services actually gains $3,000.00. The note also assumes that those plates will be renewed in the following years.

According to the Division of Motor Vehicles and the Department of Corrections, there is a one-time cost of $100 to design the new plate. There is also a production cost of $2.52 per plate (This assumes a basic one color design. If the design is more complex, or requires more color, the per plate cost increases). The total production cost for 300 basic plates is $856.00.

TECHNICAL CONSIDERATIONS:

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Linda Struyk Millsaps

APPROVED BY: Tom Covington

DATE: Tuesday, June 15, 1999

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 562

Short Title: Ins. Fee Repeals and Increases. (Public)

Sponsors: Senator Miller.

Referred to: Finance.

March 29, 1999

A BILL TO BE ENTITLED

AN ACT TO REPEAL FILING FEES, MISCELLANEOUS FEES, AND HMO ANNUAL REPORT FEES COLLECTED BY THE DEPARTMENT OF INSURANCE; TO INCREASE CERTAIN INSURANCE COMPANY LICENSE RENEWAL FEES COLLECTED BY THE DEPARTMENT OF INSURANCE; TO ALLOW MONEY CREDITED TO THE INSURANCE CONSUMER PROTECTION FUND TO BE USED TO RETAIN EXPERTS FOR HEARINGS; TO REQUIRE THAT MONEY RECOVERED FROM DELINQUENCY PROCEEDINGS OR CIVIL ACTIONS AGAINST THE COMMISSIONER OF INSURANCE BE CREDITED TO THE INSURANCE CONSUMER PROTECTION FUND; AND TO MOVE THE EFFECTIVE DATE FROM 2000 TO 2001 FOR THE LAW REQUIRING THE LICENSING OF THIRD PARTY ADMINISTRATORS FOR EMPLOYERS THAT SELF-INSURE THEIR WORKERS' COMPENSATION LIABILITIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-6-5 reads as rewritten:

"**§ 58-6-5. Schedule of fees and charges.**

(a) The Commissioner shall collect and pay into the ~~State treasury~~ General Fund fees and charges as follows:

(1) For filing and examining an insurance company application for ~~admission,~~ licensing or for filing and examining a workers' compensation self-insurer's application for licensing, a ~~nonrefundable~~ fee of two hundred fifty dollars ($250.00), to be submitted with ~~such filing; for filing and auditing annual statement,~~

~~one hundred dollars ($100.00), for filing any other papers required by law, twenty-five dollars ($25.00), for each certificate of examination, condition, or qualification of company or association, fifteen dollars ($15.00), for each seal when required, ten dollars ($10.00), for a list of licensed insurance companies, ten dollars ($10.00).~~ the filing.

(2) Repealed by Session Laws 1977, c. 376, s. 2.

(3) ~~The Commissioner shall receive for copy of any record or paper in his office fifty cents (50¢) per copy sheet and ten dollars ($10.00) for certifying same, or any fact or data from the records of his office and for the examination and approval of charters of companies, twenty-five dollars ($25.00).~~ A charge of fifty cents (50¢) per sheet for a copy of any record or pages in the Commissioner's office.

(4) ~~He shall collect all~~ All other fees and charges due and payable into the ~~State treasury~~ General Fund by any company, association, order, or individual under ~~his Department.~~ this Chapter.

~~(5) The Commissioner shall charge and insurers shall pay, as a prerequisite to receipt and review by the Commissioner of filings of policy forms or rates, a fee of twenty dollars ($20.00) per policy form filed and submitted for approval; a fee of twenty dollars ($20.00) for each property or casualty rate filing submitted; and a fee of twenty dollars ($20.00) for each life, accident, or health rate filing submitted. Payment of the fee shall be made at the time the form or rate filing is submitted. All fees are nonrefundable. If an insurer fails to pay the proper fee at the time of submittal, the Commissioner shall not be required to review the form or rate filed until the insurer remits the proper fee; and any statutory time periods relating to the filing shall be tolled until the insurer remits the proper fee. As used in this subdivision, "insurer" includes an entity subject to Articles 65 through 67 of this Chapter; any rating organization, advisory organization, joint underwriting association, or joint reinsurance organization subject to Articles 1 through 64 of this Chapter; and the North Carolina Rate Bureau and the North Carolina Motor Vehicle Reinsurance Facility. As used in this subdivision, "policy form" includes an application form, a declarations page, a policy jacket, a policy or contract of insurance, or an endorsement, rider, or any amendment to a policy form that has already been approved by the Commissioner; provided that an initial policy filing made by an insurer shall constitute one policy form.~~

(b) All fees and charges collected by the Commissioner under this Chapter are nonrefundable."

Section 2. G.S. 58-6-7 reads as rewritten:

"**§ 58-6-7. Annual license fees for insurance companies.**

(a) ~~As a condition precedent to doing~~ In order to do business in this State, an insurance company ~~must~~ shall apply for and obtain a license from the Commissioner ~~of Insurance~~ by March 1 of each year. The license shall become effective the following July 1 and shall remain in effect for one year. Except as provided in ~~subsections (b) and (c)~~ subsection (b) of this section, the insurance company shall pay an annual fee for the license as follows:

For each domestic farmer's mutual assessment fire insurance company ..... $ 25.00
For each fraternal order 100.00
For each of all other insurance companies, except mutual burial associations taxed under G.S. 105-121.1 ..... ~~500.00~~ 1,000.00

The fees levied in this subsection ~~shall be~~ are in addition to those specified in G.S. 58-6-5.

(b) When the paid-in capital stock ~~and/or surplus~~ or surplus, or both, of an insurance ~~company~~ company, other than a farmer's mutual assessment company or a fraternal ~~order~~ order, does not exceed one hundred thousand dollars ($100,000), the fee levied in this section shall be ~~one-half~~ one-half the amount ~~above~~ specified.

~~(c) Upon payment of the fee specified above and the fees and taxes elsewhere specified each insurance company, exchange, bureau, or agency, shall be entitled to do the types of business specified in Chapter 58, of the General Statutes of North Carolina as amended, to the extent authorized therein, except that: Insurance companies authorized to do either the types of business specified for (i) life insurance companies, or (ii) for fire and marine companies, or (iii) for casualty and fidelity and surety companies, in G.S. 58-7-75, which shall also do the types of business authorized in one or both of the other of the above classifications shall in addition to the fees above specified pay one hundred dollars ($100.00) for each such additional classification of business done.~~

(d) Any rating bureau established by action of the General Assembly of North Carolina shall be exempt from the fees ~~above levied.~~ in this section."

Section 3. G.S. 58-22-70 reads as rewritten:

"**§ 58-22-70. Registration and renewal fees.**

Every risk retention group and purchasing group that registers with the Commissioner under this Article shall pay the following fees:

Risk retention group registration	$250.00
Purchasing group registration	50.00
Risk retention group renewal	~~500.00~~ 1,000.00
Purchasing group renewal	50.00

Registration fees ~~are nonrefundable,~~ shall not be ~~prorated,~~ prorated and must be submitted with the application for registration. Renewal fees ~~are nonrefundable,~~ shall not be ~~prorated,~~ prorated and shall be paid on or before January 1 of each year."

Section 4. G.S. 58-27-10 reads as rewritten:

"**§ 58-27-10. Licenses.**

Any domestic land mortgage company, or title insurance company, wishing to do business under the provisions of this Article upon making written application and submitting proof satisfactory to the Commissioner that its business, capital and other qualifications comply with the provisions of this Article, upon paying to the Commissioner, the sum of five hundred dollars ($500.00) as a license fee and all other fees assessed against such company may be licensed to do business in this State under the provisions of this Article until the first day of the following July, and may have its license renewed for each year thereafter so long as it complies with the provisions of this Article and such rules adopted by the Commissioner. For each such renewal such company shall pay to the Commissioner the sum of ~~five hundred dollars ($500.00),~~ one thousand dollars ($1,000), and all other fees assessed against such company and such renewal shall continue in force and effect until a new license be issued or specifically refused, unless revoked for good cause. The Commissioner, or any person appointed by him, shall have the power and authority to make such rules and regulations and examinations not inconsistent with the provisions of this Article, as may be in his discretion necessary or proper to enforce the provisions hereof and secure compliance with the terms of this Article. For any examination made hereunder the Commissioner shall charge the land mortgage companies or title insurance companies examined with the actual expense of such examination."

Section 5. G.S. 58-65-55 reads as rewritten:

"**§ 58-65-55. Issuance of certificate.**

Before issuing any such license or certificate the Commissioner may make such an examination or investigation as ~~he~~ the Commissioner deems expedient. The Commissioner shall issue a certificate of authority or license upon the payment of an annual fee of ~~five hundred dollars ($500.00)~~ one thousand dollars ($1,000) and upon being satisfied on the following points:

(1) The applicant is established as a bona fide nonprofit hospital service corporation as defined by this Article and Article 66 of this Chapter.

(2) The rates charged and benefits to be provided are fair and reasonable.

(3) The amounts provided as working capital of the corporation are repayable only out of earned income in excess of amounts paid and payable for operating expenses and hospital and medical and/or dental expenses and such reserve as the Department deems adequate, as provided hereinafter.

(4) That the amount of money actually available for working capital be sufficient to carry all acquisition costs and operating expenses for a reasonable period of time from the date of the issuance of the certificate."

Section 6. G.S. 58-67-160 reads as rewritten:

"**§ 58-67-160. Fees.**

Every health maintenance organization subject to this Article shall pay to the Commissioner ~~the following fees:~~ a fee of two hundred fifty dollars ($250.00) for

filing an application for a license and a fee of one thousand dollars ($1,000) for each license renewal.

~~(1) For filing an application for a certificate of authority, two hundred fifty dollars ($250.00); for each renewal thereof, five hundred dollars ($500.00);~~

~~(2) For filing each annual report, one hundred dollars ($100.00).~~"

Section 7. G.S. 58-2-215 reads as rewritten:

"**§ 58-2-215. Consumer Protection Fund.**

(a) A special fund is created in the Office of the State Treasurer, to be known as the Department of Insurance Consumer Protection Fund. The Fund shall be placed in an interest bearing account and any interest or other income derived from the Fund shall be credited to the Fund. Moneys in the Fund shall only be spent pursuant to warrants drawn by the Commissioner on the Fund through the State Treasurer. The Fund shall be subject to the provisions of the Executive Budget Act; except that the provisions of Article 3C of Chapter 143 of the General Statutes do not apply to subdivision (b)(1) of this section.

(b) All moneys credited to the Fund shall be used only to pay the following expenses incurred by the Department:

(1) For the purpose of retaining outside actuarial and economic consultants, legal counsel, and court reporting services in the review and analysis of rate filings, in conducting all hearings, and through any final adjudication.

(1a) For the purpose of retaining meteorologists, statisticians, and other kinds of professionals and experts needed to analyze or respond to averments, testimony, allegations, or other statements made by other experts or professionals in a rate-making matter or to analyze evidence or exhibits filed or offered by an opposing party in a rate-making matter.

(2) In connection with any delinquency proceeding under Article 30 of this Chapter, for the purpose of locating and recovering the assets of or any other obligations or liabilities owed to or due an insurer that has been placed under such proceeding.

(3) In connection with any civil litigation, other than under Chapter 150B of the General Statutes or any appeal from an order of the Commissioner or his deputies, that is commenced against the Commissioner or his deputies and that arises out of the performance of their official duties, for the purpose of retaining outside consultants, legal counsel, and court reporting services to defend such litigation.

(c) Moneys appropriated by the General Assembly shall be deposited in the Fund and shall become a part of the continuation budget of the Department of Insurance. Such continuation budget amount shall equal the actual expenditures drawn from the Fund during the prior fiscal year plus the official inflation rate designated by the Director of the Budget in the preparation of the State Budget for each ensuing fiscal

year; provided that if interest income on the Fund exceeds the amount yielded by the application of the official inflation rate, such continuation budget amount shall be the actual expenditures drawn from the Fund, except that the appropriation for the 1995-96 fiscal year shall not exceed the sum of seven hundred fifty thousand dollars ($750,000) and for the 1996-97 fiscal year shall not exceed the sum of two hundred fifty thousand dollars ($250,000). In the event the amount in the Fund exceeds two hundred fifty thousand dollars ($250,000) at the end of any fiscal year, beginning with the 1995-96 fiscal year, such excess shall revert to the General Fund.

(d) Repealed by Session Laws 1995, c. 507, s. 11A(b).

(e) From any moneys received as recoveries by the estate of an insurer that is the subject of a delinquency proceeding as to which expenses have been incurred under subdivision (2) of subsection (b) of this section, there shall be credited to the Fund from the estate any amounts drawn from the Fund to pay the expenses incurred under subdivision (2) of subsection (b) of this section in connection with that estate. From any moneys received as recoveries of counterclaims, cross-claims, or any other action in connection with litigation under subdivision (3) of subsection (b) of this section, there shall be credited to the Fund any amounts drawn from the Fund to pay the expenses incurred under subdivision (3) of subsection (b) of this section."

Section 8. Section 58(b) of S.L. 1998-217 reads as rewritten:

"(b) This section becomes effective January 1, ~~2000.~~ 2002."

Section 9. This act becomes effective July 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 562
Proposed Committee Substitute S562-PCSXA662-RB

Short Title: Ins. Fee Repeals and Increases. (Public)

Sponsors:

Referred to:

March 29, 1999

A BILL TO BE ENTITLED

AN ACT TO REPEAL FORM AND RATE FILING FEES AND HMO ANNUAL REPORT FEES COLLECTED BY THE DEPARTMENT OF INSURANCE; TO INCREASE CERTAIN INSURANCE COMPANY LICENSE RENEWAL FEES COLLECTED BY THE DEPARTMENT OF INSURANCE; AND TO CLARIFY AN EXAMINATION LAW PROVIDING FOR REIMBURSEMENT FOR DEPARTMENTAL EXPENSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-6-5(5) is repealed.

Section 2. G.S. 58-6-7 reads as rewritten:

"**§ 58-6-7. Annual license fees for insurance companies.**

(a) ~~As a condition precedent to doing~~ In order to do business in this State, an insurance company ~~must~~ shall apply for and obtain a license from the Commissioner ~~of Insurance~~ by March 1 of each year. The license shall become effective the following July 1 and shall remain in effect for one year. Except as provided in ~~subsections (b) and (c)~~ subsection (b) of this section, the insurance company shall pay an annual fee for the license as follows:

For each domestic farmer's mutual assessment fire insurance company ..... $ 25.00

For each fraternal order 100.00

For each of all other insurance companies, except mutual burial associations taxed under G.S. 105-121.1 ..... ~~500.00~~ 1,000.00

The fees levied in this subsection ~~shall be~~ are in addition to those specified in G.S. 58-6-5.

(b) When the paid-in capital stock ~~and/or surplus~~ or surplus, or both, of an insurance ~~company~~ company, other than a farmer's mutual assessment company or a fraternal ~~order~~ order, does not exceed one hundred thousand dollars ($100,000), the fee levied in this section shall be ~~one-half~~ one-half the amount ~~above~~ specified.

(c) Upon payment of the fee specified above and the fees and taxes elsewhere specified each insurance company, exchange, bureau, or agency, shall be entitled to do the types of business specified in Chapter 58, of the General Statutes of North Carolina as amended, to the extent authorized therein, except that: Insurance companies authorized to do either the types of business specified for (i) life insurance companies, or (ii) for fire and marine companies, or (iii) for casualty and fidelity and surety companies, in G.S. 58-7-75, which shall also do the types of business authorized in one or both of the other of the above classifications shall in addition to the fees above specified pay one hundred dollars ($100.00) for each such additional classification of business done. All fees and charges collected by the Commissioner under this Chapter are nonrefundable.

(d) Any rating bureau established by action of the General Assembly of North Carolina shall be exempt from the fees ~~above levied.~~ in this section."

Section 3. G.S. 58-22-70 reads as rewritten:

"**§ 58-22-70. Registration and renewal fees.**

Every risk retention group and purchasing group that registers with the Commissioner under this Article shall pay the following fees:

Risk retention group registration	$250.00
Purchasing group registration	50.00
Risk retention group renewal	~~500.00~~ 1,000.00
Purchasing group renewal	50.00

Registration fees ~~are nonrefundable,~~ shall not be ~~prorated,~~ prorated and must be submitted with the application for registration. Renewal fees ~~are nonrefundable,~~ shall not be ~~prorated,~~ prorated and shall be paid on or before January 1 of each year."

Section 4. G.S. 58-27-10 reads as rewritten:

"**§ 58-27-10. Licenses.**

Any domestic land mortgage company, or title insurance company, wishing to do business under the provisions of this Article upon making written application and submitting proof satisfactory to the Commissioner that its business, capital and other qualifications comply with the provisions of this Article, upon paying to the Commissioner, the sum of five hundred dollars ($500.00) as a license fee and all other fees assessed against such company may be licensed to do business in this State under the provisions of this Article until the first day of the following July, and may have its license renewed for each year thereafter so long as it complies with the provisions of this Article and such rules adopted by the Commissioner. For each such renewal such company shall pay to the Commissioner the sum of ~~five hundred dollars ($500.00),~~ one thousand dollars ($1,000), and all other fees assessed against such company and such renewal shall continue in force and effect until a new license

be issued or specifically refused, unless revoked for good cause. The Commissioner, or any person appointed by him, shall have the power and authority to make such rules and regulations and examinations not inconsistent with the provisions of this Article, as may be in his discretion necessary or proper to enforce the provisions hereof and secure compliance with the terms of this Article. For any examination made hereunder the Commissioner shall charge the land mortgage companies or title insurance companies examined with the actual expense of such examination."

Section 5. G.S. 58-65-55 reads as rewritten:

"**§ 58-65-55. Issuance of certificate.**

Before issuing any such license or certificate the Commissioner may make such an examination or investigation as ~~he~~ the Commissioner deems expedient. The Commissioner shall issue a certificate of authority or license upon the payment of an annual fee of ~~five hundred dollars ($500.00)~~ one thousand dollars ($1,000) and upon being satisfied on the following points:

(1) The applicant is established as a bona fide nonprofit hospital service corporation as defined by this Article and Article 66 of this Chapter.

(2) The rates charged and benefits to be provided are fair and reasonable.

(3) The amounts provided as working capital of the corporation are repayable only out of earned income in excess of amounts paid and payable for operating expenses and hospital and medical and/or dental expenses and such reserve as the Department deems adequate, as provided hereinafter.

(4) That the amount of money actually available for working capital be sufficient to carry all acquisition costs and operating expenses for a reasonable period of time from the date of the issuance of the certificate."

Section 6. G.S. 58-67-160 reads as rewritten:

"**§ 58-67-160. Fees.**

Every health maintenance organization subject to this Article shall pay to the Commissioner ~~the following fees:~~ a fee of two hundred fifty dollars ($250.00) for filing an application for a license and a fee of one thousand dollars ($1,000) for each license renewal.

~~(1) For filing an application for a certificate of authority, two hundred fifty dollars ($250.00); for each renewal thereof, five hundred dollars ($500.00);~~

~~(2) For filing each annual report, one hundred dollars ($100.00).~~"

Section 7. G.S. 58-2-134 reads as rewritten:

"**§ 58-2-134. Cost of certain examinations.**

(a) An insurer shall reimburse the State Treasurer for the actual expenses incurred by the Department in any examination of those records or assets conducted ~~pursuant to~~ under G.S. 58-2-131, 58-2-132, or 58-2-133 when:

(1) The insurer maintains part of its records or assets outside this State under G.S. 58-7-50 or G.S. 58-7-55 and the examination is of the records or assets outside this State.
(2) The insurer requests an examination of its records or assets.
(3) The Commissioner examines an insurer that is impaired or insolvent or is unlikely to be able to meet obligations with respect to known or anticipated claims or to pay other obligations in the normal course of business.

(b) The amount paid by an insurer for an examination of records or assets under this section shall not exceed one hundred thousand dollars ($100,000), unless the insurer and the Commissioner agree on a higher amount. The State Treasurer shall deposit all funds received ~~pursuant to~~ under this section in the Insurance Regulatory Fund established ~~pursuant to~~ under G.S. 58-6-25. Funds received under this section shall be used by the Department for offsetting the actual expenses incurred by the Department for examinations under this section."

Section 8. This act is effective when it becomes law.

SENATE BILL 562:
Insurance Fee Repeals and Increases

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Sen. Miller
Date:	July 6, 1999	**Summary by:**	Martha K. Walston
Version:	Proposed Committee Substitute		Committee Counsel

SUMMARY: ***Senate Bill 562 repeals the schedule of fees paid to the Commissioner of Insurance and the HMO annual report fees; increases certain insurance company license renewal fees collected by the Department; and clarifies an examination law providing for reimbursement for Departmental expenses.***

BILL ANALYSIS: The following is a section by section analysis of the bill:

Section 1 repeals the statute setting out the schedule of fees paid to the Commissioner of Insurance

Section 2 increase the annual license fee from $500 to $1,000 that the following insurance companies must pay: all insurance companies except each domestic farmer's mutual assessment fire insurance company, each fraternal order, and mutual burial associations taxed under G.S. 105-121.1. Section 2 adds that all fees and charges collected by the Commissioner are nonrefundable.

Section 3 increases the risk retention group renewal for registration with the Commissioner from $500 to $1,000.

Section 4 increases the registration renewal fee for a domestic land mortgage company, or title company, wishing to do business under Article 27 (Title Insurance Companies and Land Mortgage Companies Issuing Collateral Loan Certificates) from $500 to $1,000. The license fee remains at $500.

Section 5 increases the annual fee from $500 to $1,000 for the issuance of a certificate of authority or license to a corporation organized for the purpose of operating a nonprofit hospital and/or medical and/or dental service plan.

Section 6 increases the fee for license renewal of an HMO from $500 to $1000 and repeals the $100 fee for filing an annual report. The current law refers to application for a certificate of authority.

Section 7 amends G.S. 58-2-134. This statute sets out the cost of the examination required by the Commissioner before any person is licensed to write insurance in the State. The Commissioner is required to conduct at a minimum an examination of every domestic insurer not less frequently than once every five years. If the insurer is a foreign or alien insurer licensed in this State, the Commissioner may accept an examination report prepared by the insurer's domiciliary insurance regulator. The amount an insurer pays for an examination of records or assets may not exceed $100,000 unless a higher amount is agreed upon. The funds received under this section are deposited in the Insurance Regulatory Fund in the State treasury, under the control of the Office of State Budget and Management.

Section 7 adds language that Funds received under G.S. 58-2-134 shall be used by the Department for offsetting the actual expenses incurred by the Department for examinations under this section.

Current law provides that moneys in the Fund may be spent only pursuant to appropriation by the General Assembly and in accordance with the line item budget. All moneys credited to the Fund are to be used to reimburse the General Fund for the following:

1. Money appropriated to the Department of Insurance to pay its expenses incurred in regulating the insurance industry and other industries in this State.
2. Money appropriated to State agencies to pay the expenses incurred in regulating the insurance industry, in certifying statewide data processors under Article 11A of Chapter 131E, and in purchasing reports of patient data from statewide data processors certified under that Article.
3. Money appropriated to the Department of Revenue to pay the expenses incurred in collecting and administering the taxes on insurance companies levied in Article 8B of Chapter 105.

Current law also provides that no unexpended surplus of the Fund shall revert to the General Fund.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 1120*
Committee Substitute Favorable 6/23/99

Short Title: Authorize Public Hospital Debt. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE PUBLIC HOSPITALS TO ENGAGE IN INSTALLMENT PURCHASE FINANCING AND TO ISSUE REVENUE ANTICIPATION NOTES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-20(h) is amended by adding a new subdivision to read:

"(h) As used in this section, the term 'unit of local government' means any of the following:

. . .

(12) A nonprofit corporation or association operating or leasing a public hospital as defined in G.S. 159-39."

Section 2. G.S. 160A-20 is amended by adding a new subsection to read:

"(e1) A nonprofit corporation or association operating or leasing a public hospital may only enter into a contract pursuant to this section if the nonprofit corporation or association will have an ownership interest in the property being financed, including a leasehold interest, and the security interest granted in such property being financed shall only be to the extent of such property interest. In addition, any contract entered into by a nonprofit corporation or association operating or leasing a public hospital pursuant to this section is subject to the approval of the city, county, hospital district, or hospital authority which owns such hospital. Approval of the city, county, hospital district, or hospital authority may be withheld only under one or more of the following circumstances:

(1) The contract would cause the city, county, hospital district, or hospital authority to breach or violate any covenant in an existing financing instrument entered into by such entity.

(2) The contract would restrict the ability of the city, county, hospital district, or hospital authority to incur anticipated bank eligible indebtedness under federal tax laws.

(3) The entering into of the contract would have a material adverse impact on the credit ratings of the city, county, hospital district, or hospital authority or otherwise materially interfere with an anticipated financing by such entity."

Section 3. G.S. 159-170 reads as rewritten:

"**§ 159-170. Revenue anticipation notes.**

(a) Authorization; Term. -- A unit of local government or a nonprofit corporation or association operating or leasing a public hospital as defined in G.S. 159-39, is authorized to borrow money for the purpose of paying appropriations made or expenses budgeted or incurred for the current fiscal year in anticipation of the receipt of revenues, other than taxes, estimated in its budget to be realized or collected in cash during the fiscal year, and to issue its negotiable notes in evidence thereof. A nonprofit corporation or association operating or leasing a public hospital may only borrow money pursuant to this section if it is legally entitled to collect and pledge such revenues to the payment of the noted as provided in this section. A revenue anticipation note shall mature not later than 30 days after the close of the fiscal year in which it is issued, and may not be renewed beyond that time.

(b) Limit on Amount; Disclosure. -- No revenue anticipation loan shall be made if the amount thereof, together with the amount of all revenue anticipation notes authorized or outstanding on the date the loan is authorized, would exceed eighty percent (80%) of the revenues of the issuing ~~unit,~~ unit or the nonprofit corporation or association operating or leasing a public hospital, other than taxes, estimated in its budget to be realized or collected in cash during the fiscal year. Each revenue anticipation note shall bear on its face a statement to the effect that it is payable solely from budgeted nontax revenues of the issuing unit ~~and~~ or the nonprofit corporation or association operating or leasing a public hospital and that the faith and credit of the issuing unit or, in the case of revenue anticipation notes issued by a nonprofit corporation or association operating or leasing a public hospital, the local government unit that owns the public hospital are not pledged for the payment of the ~~note, and~~ note. Each note shall also bear on its face or reverse the following certificate signed by the finance officer: 'This note and all other revenue anticipation notes of ~~(issuing unit)~~ (issuer) authorized or outstanding as of (date) amount to eighty percent (80%) or less of the budgeted nontax revenues for the current fiscal year as of the above date.' No revenue anticipation note shall be valid without this certificate.

(c) Faith and Credit Not Pledged. -- Revenue anticipation notes issued under this section shall be special obligations of the issuing ~~unit.~~ unit or the nonprofit corporation or association operating or leasing a public hospital. Neither the credit

nor the taxing power of the issuing ~~unit~~ unit or, in the case of revenue anticipation notes issued by a nonprofit corporation or association operating or leasing a public hospital, the local government unit that owns the public hospital may be pledged for the payment of revenue anticipation ~~notes, and no~~ notes. No holder of a revenue anticipation note shall have the right to compel the exercise of the taxing power by the issuing unit or, in the case of revenue anticipation notes issued by a nonprofit corporation or association operating or leasing a public hospital, the local government unit that owns the public hospital or the forfeiture of any of its property in connection with any default thereon.

(d) Any revenue anticipation notes issued by a nonprofit corporation or association operating or leasing a public hospital pursuant to this section are subject to the approval of the city, county, hospital district, or hospital authority which owns the hospital. Approval of the city, county, hospital district, or hospital authority may be withheld only under one or more of the following circumstances:

(1) The contract would cause the city, county, hospital district, or hospital authority to breach or violate any covenant in an existing financing instrument entered into by such entity.

(2) The contract would restrict the ability of the city, county, hospital district, or hospital authority to incur anticipated bank eligible indebtedness under federal tax laws.

(3) The entering into of the contract would have a material adverse impact on the credit ratings of the city, county, hospital district, or hospital authority or otherwise materially interfere with an anticipated financing by such entity."

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

HOUSE BILL 1120:
Authorize Public Hospital Debt

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Rep. Wright
Date:	July 7, 1999	**Summary by:**	Martha K. Walston
Version:	2nd Edition		Committee Counsel

SUMMARY: ***House Bill 1120 authorizes public hospitals to engage in installment purchase financing and to issue revenue anticipation bonds. The bill becomes effective when it becomes law.***

CURRENT LAW: A public hospital is a hospital that meets one of the following conditions:

- Is operated by a county, city, hospital district, or hospital authority.
- Is owned by a county, city, hospital district, or hospital authority and operated by a nonprofit corporation or association, a majority of whose board of directors or trustees are appointed by the governing body of a county, city, hospital district, or hospital authority.
- Is a hospital on whose behalf a county or city has issued and has outstanding general obligation or revenue bonds, or to which a county or city makes current appropriations.

A public hospital has exclusive control of its own budgeting and accounting, without supervision from the county, city, or the Local Government Commission (LGC). However, financing capital debt is more restricted. Public hospitals may issue revenue bonds, subject to the approval and conditions of the LGC. Counties and cities may issue general obligation bonds to provide hospital facilities and services.

BILL ANALYSIS: **House Bill 1120** authorizes two additional forms of capital financing for public hospitals: installment purchase financing and revenue anticipation bonds.

Sections 1 and 2 of the bill expand the use of installment purchase financing to public hospitals. The public hospitals hope that installment financing will enable them to respond more rapidly to their capital financing needs, such as equipment, land, and facilities. Section 1 expands the definition of "unit of local government" to include "public hospitals". As a unit of local government, public hospitals will be able to finance the purchase of real or personal property by installment contracts that create in the property purchased a security interest to secure payment of the purchase price to the person or entity financing the purchase. One type of installment financing is certificates of participation. A certificate of participation is similar to a bond, but is less costly than holding a bond referendum and issuing bonds. Section 2 requires the county or city that owns the hospital to approve any installment financing contract that a public hospital signs. The county or city must approve the contract unless it determines that the contract would adversely affect its credit worthiness, an anticipated bond issuance, or an existing bond order.

Section 3 would allow public hospitals to issue revenue anticipation bonds. A revenue anticipation bond would allow a public hospital to borrow money to pay expenses in the current fiscal year, to be repaid from the receipt of nontax revenues to be collected later in the fiscal year. A public hospital may not

issue revenue anticipation bonds unless the local government unit that owns the facility and the LGC approve the issuance. The public hospitals desire this legislation as a means of obtaining a line of credit from financial institutions to secure a means of revenue in case insurers or the hospital cannot process claims in the year 2000.

Cindy Avrette, committee counsel to House Finance, contributed substantially to this summary.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1120 Authorize Public Hospital Debt

SHORT TITLE: Authorize Public Hospital Debt

SPONSOR(S): Rep. Thomas Wright

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES		* See Assumptions and Methodology *			

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Public Hospitals and Local Governments that lease or contract for public hospital services.

EFFECTIVE DATE: When it becomes law.

BILL SUMMARY: G.S. 160A-20(h) allows counties, cities and specifically named local authorities to use installment financing for capital projects. The bill adds non-profit corporations or associations that are operating or leasing a public hospital to this list. It also authorizes pubic hospitals and the non-profit corporations or associations that operate or lease public hospitals to issue revenue anticipation notes. The bill requires that the unit of local government that owns the hospital approve these contracts and notes. The legislation also outlines under what circumstances the local government can reject the request.

ASSUMPTIONS AND METHODOLOGY: Under G.S. 160A-20, units of local government have the ability to finance the purchase of property through installment contracts. The term "local unit of government," as defined in subpart (h), currently includes counties, cities, water and sewer authorities, certain airport authorities, area mental health and substance abuse authorities, and certain school districts with independent taxing authority. The bill adds nonprofit corporations or associations operating or leasing a public hospital to the list. There is no direct impact on state or local revenues from these additions because the bill only gives them an additional financing tool.

Under G.S. 159-170 units of local government are authorized to borrow money to pay current year expenses. The notes are held in anticipation of future revenues. The legislation authorizes nonprofit organizations or associations that operate or lease public hospitals to take advantage of this financing option, under certain circumstances. There is no direct impact on state or local revenues from these additions because the bill only gives them an additional financing tool.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 4

HOUSE BILL 19
Committee Substitute Favorable 2/24/99
Committee Substitute #2 Favorable 3/18/99
Fourth Edition Engrossed 3/25/99

Short Title: Gambling Boats Regulated. (Public)

Sponsors:

Referred to:

February 3, 1999

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT CASINO BOATS FROM OPERATING IN NORTH CAROLINA, TO REGULATE CERTAIN GAMBLING BOATS THAT OPERATE IN NORTH CAROLINA PURSUANT TO FEDERAL LAW, TO LEVY A PRIVILEGE TAX ON GAMBLING BOATS OPERATING IN NORTH CAROLINA, AND TO REQUIRE WITHHOLDING FROM CERTAIN GAMBLING BOAT WINNINGS.

The General Assembly of North Carolina enacts:

Section 1. Article 37 of Chapter 14 of the General Statutes is amended by adding a new Part to read:

"Part 4. Casino Boats.

"**§ 14-309.30. Definitions.**

The following definitions apply in this Part:

(1) Casino boat. -- A vessel that meets both of the following conditions:

a. Embarks from a point within this State and disembarks at the same or another point within this State without making an intervening stop.

b. Is operated or maintained for the purpose of gambling and carries or operates gambling devices for the use of its

passengers or otherwise provides facilities for the purpose of gambling.

(2) Gambling. -- A game of chance at which money, property, or some other thing of value is bet, whether the same be in stake or not.

(3) Gambling device. -- A device as defined in 15 U.S.C. § 1171 and any other device used to facilitate gambling, such as a gaming table and a punchboard.

(4) Intervening stop. -- When a vessel does all of the following:

a. Docks at a port within the boundaries of another state, possession of the United States, or foreign country.

b. Remains continuously at that port for at least six hours.

c. Allows passengers to disembark the vessel for sightseeing, shopping, or other similar tourism-related activities at that port.

(5) Operate. -- To manage, supervise, control, or own, either alone or in association with others.

(6) Vessel. -- A boat, barge, ship, vessel, or watercraft.

"**§ 14-309.31. Casino boats prohibited.**

(a) Unlawful Activity. -- It shall be unlawful to do any one or more of the following:

(1) To operate a casino boat.

(2) To manufacture, recondition, repair, sell, transport, possess, or use a gambling device on a casino boat.

(3) To solicit, entice, induce, persuade, or procure, or to aid in soliciting, enticing, inducing, persuading, or procuring a person to visit or embark on a casino boat.

(b) Penalty and Conviction. -- A person who violates subsection (a) of this section shall be guilty of a Class A1 misdemeanor. Upon conviction, a court of competent jurisdiction shall enter an order directing the seizure, forfeiture, and sale of the vessel, along with all of its gear, engines, tackle, and all other nautical, navigation, and safety equipment, furniture, and personal property of any description. The proceeds of a sale in accordance with this subsection shall be applied, in order, to the costs of seizure, storage, and sale, with the balance paid to the public school fund in the county in which the property is seized.

(c) Applicability. -- This section shall not apply to possession or transportation of gambling devices on United States-flagged or foreign-flagged vessels during travel from a foreign nation or another state or possession of the United States up to the first point of entry into North Carolina waters or during travel to a foreign nation or another state or possession of the United States from the point of departure from North Carolina waters.

(d) Prosecution for Other Offenses. -- Nothing contained in this section shall preclude prosecution for another offense under this Article or for the use of a gambling device on a vessel while docked within the territorial waters of this State.

"**§ 14-309.32. Enforcement.**

A law enforcement officer with subject matter and territorial jurisdiction over a vessel may take any one or more of the following actions if the officer has probable cause to believe that a violation of G.S. 14-309.31 is occurring on the vessel:

(1) Seize the illegal gambling device.

(2) Seize any monies, other property, or thing of value used in conjunction with or derived from the unlawful use of the illegal gambling device.

(3) Seize the vessel upon which an illegal gambling device is found.

"**§ 14-309.33. Regulation of gambling boats operating pursuant to federal law.**

The operator of a vessel, the operation of which would be illegal in this State except for the exclusions provided in 15 U.S.C. § 1175(b)(2), shall comply with all of the following:

(1) The applicable provisions of Chapter 105 of the General Statutes.

(2) The Safety of Life at Sea (SOLAS) standards and requirements normally applicable in international waters.

(3) The passengers must be at least 21 years of age."

Section 2. G.S. 105-228.90(b) is amended by adding a new subdivision to read:

"(4) Gambling boat voyage. -- A voyage of a commercial vessel transporting passengers engaged in gambling aboard the vessel, during which passengers embark in this State and disembark only in this State or a contiguous state."

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

"**§ 105-40.1. Gambling boat voyages.**

A person engaged in the business of operating gambling boat voyages must pay a tax on the business at the rate of six dollars ($6.00) for each passenger who embarks on a gambling boat voyage in this State. Within the first 10 days of each month, the taxpayer must report to the Secretary the number of passengers who embarked on the taxpayer's gambling boat voyages during the previous month and must pay the tax at the time the report is due."

Section 4. G.S. 105-163.1 is amended by adding a new subdivision to read:

"(5a) Gambling boat operator. -- A person engaged in the business of operating gambling boat voyages."

Section 5. G.S. 105-163.1(14) reads as rewritten:

"(14) Withholding agent. -- An ~~employer~~ employer, a gambling boat operator, or a payer."

Section 6. Article 4A of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-163.3A. Gambling boat operators must withhold taxes.**

(a) Requirement. -- Every gambling boat operator who pays a resident of this State more than six hundred dollars ($600.00) in gambling winnings during a gambling boat voyage must deduct and withhold from the winnings paid to the resident the

State income taxes due on the winnings as provided in this section. The amount of taxes to be withheld is seven percent (7%) of the winnings paid to the resident. The taxes a gambling boat operator withholds are held in trust for the Secretary.

(b) Returns; Due Date. -- A gambling boat operator must file a return with the Secretary on a form prepared by the Secretary and must provide any information required by the Secretary. The return is due and the withheld taxes are payable by the last day of the first month after the end of each calendar quarter during which the gambling boat operator pays gambling winnings to a resident of this State. The Secretary may extend the time for filing the return or paying the tax as provided in G.S. 105-263.

(c) Annual Statement. -- A gambling boat operator required to deduct and withhold from a resident's gambling winnings under this section must furnish to the resident duplicate copies of a written information statement. The statement is due by January 31 following the calendar year and must show the following:

(1) The gambling boat operator's name, address, and taxpayer identification number.

(2) The resident's name, address, and taxpayer identification number.

(3) The total amount of gambling winnings paid during the calendar year.

(4) The total amount deducted and withheld under this section during the calendar year.

(5) Any other information required by the Secretary.

(d) Report to Secretary. -- Each gambling boat operator must file with the Secretary an annual report that compiles the information contained in each of the operator's statements to residents and any other information required by the Secretary. This report is due on the date prescribed by the Secretary and is in lieu of the information report required by G.S. 105-154.

(e) Records. -- If a gambling boat operator does not withhold from any gambling winnings paid to an individual, the operator must obtain from the individual documentation proving that he or she is not a resident of this State. The operator must retain this information with its records."

Section 7. G.S. 105-163.9 reads as rewritten:

"**§ 105-163.9. Refund of overpayment to withholding agent.**

A withholding agent who pays the Secretary more under this Article than the Article requires the agent to pay may obtain a refund of the overpayment by filing an application for a refund with the Secretary. No refund is allowed, however, if the withholding agent withheld the amount of the overpayment from the ~~wages~~ wages, winnings, or compensation of the agent's ~~employees~~ employees, passengers, or contractors. A withholding agent must file an application for a refund within the time period set in G.S. 105-266. Interest accrues on a refund as provided in G.S. 105-266."

Section 8. G.S. 105-163.10 reads as rewritten:

"**§ 105-163.10. Withheld amounts credited to taxpayer for calendar year.**

The amount deducted and withheld under this Article during any calendar year from the ~~wages~~ wages, winnings, or compensation of an individual ~~shall be~~ is allowed as a credit to that individual against the tax imposed by Article 4 of this Chapter for taxable years beginning in that calendar year. The amount deducted and withheld under this Article during any calendar year from the compensation of a nonresident entity ~~shall be~~ is allowed as a credit to that entity against the tax imposed by Article 4 of this Chapter for taxable years beginning in that calendar year. If the nonresident entity is a pass-through entity, the entity shall pass through and allocate to each owner the owner's share of the credit.

If more than one taxable year begins in the calendar year during which the withholding occurred, the amount ~~shall be~~ is allowed as a credit against the tax for the last taxable year so beginning. To obtain the credit allowed in this section, the individual or nonresident entity must file with the Secretary one copy of the withholding statement required by G.S. ~~105-163.3 or G.S.~~ 105-163.3, 105-163.3A, or 105-163.7 and any other information the Secretary requires."

Section 9. If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

Section 10. This act is effective when it becomes law. Sections 2 through 8 of this act become effective on the first day of the third calendar month after this act becomes law.

HOUSE BILL 19:
Gambling Boats Regulated

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Rep. Redwine
Date:	July 6, 1999	**Summary by:**	Martha K. Walston
Version:	Fourth Edition		Committee Counsel

SUMMARY: ***House Bill 19 prohibits casino boat cruises to nowhere in North Carolina. North Carolina cannot prohibit gambling boat cruises that engage in interstate commerce by making at least one stop outside the State. However, the bill imposes the following requirements on gambling boat cruises that originate and end in North Carolina:***

- ***A privilege license tax at the rate of $6.00 for each passenger.***
- ***A requirement that the gambling boat operator deduct and withhold from a North Carolina resident's winnings individual income taxes equal to 7% of the winnings paid to the resident.***

An earlier version of the bill imposed a annual gambling boat permit of $10,000, if the gambling boat operator desired to sell alcoholic beverages on the voyage while it was within the State's boundaries.

House Bill 19 has been in House Judiciary I, House Finance, and Senate Commerce.

BACKGROUND: Gambling and the possession and use of gambling devices, such as slot machines, punchboards, and gaming tables, are illegal in North Carolina. However, because of changes in the federal law since 1992, it is legal to transport and possess gambling devices on US flagships within the boundaries of a state if the use of the devices occurs outside the boundaries of the state and the devices remain onboard the vessel while it is within the state's boundaries. The 1992 changes to the Johnson Act, 15 U.S.C. § 1175, were enacted in part to end the discrimination between US flagships and foreign flagships. This change in the federal law means that it would be permissible for a person in North Carolina to have a vessel equipped with gambling devices and to take passengers on voyages for the purpose of gambling, so long as the vessel travels outside the 3 mile territorial boundary of the State before initiating the gambling games. This type of voyage is commonly referred to as a "cruise to nowhere".

The Johnson Act does permit states to prohibit casino boat cruises to nowhere if the voyage begins and ends in the same state without making an intervening stop. To prohibit casino boat cruises to nowhere, a state must pass legislation that bans the use of gambling devices outside the boundaries of the state on voyages that begin and end in the state without making an intervening stop. A South Carolina court case and a Georgia AG opinion, as well as legislative discussions in several other states, have concluded that to escape the effect of the 1992 amendments to the Johnson Act, a state must pass specific legislation to prohibit casino boat cruises to nowhere. North Carolina's current statutes prohibiting gambling and the possession of gambling devices are not sufficient to meet this "opt out" provision in the federal law.

House Bill 19 provides the specific legislation necessary to prohibit casino boat cruises to nowhere in North Carolina.

BILL ANALYSIS: Section 1 of the bill defines a "casino boat" as a vessel that leaves from and returns to a port in North Carolina for the purpose of gambling without making an intervening stop in another state or country. Although federal law does not define "an intervening stop", this bill does. It defines an "intervening stop" as a docking at a port outside the boundaries of North Carolina for a period of at least six hours where the passengers may disembark the vessel for sightseeing, shopping, or other similar tourism-related activities.

The bill makes it unlawful to operate a casino boat, to possess, use, or repair a gambling device on a casino boat, or to solicit people to embark on a casino boat. A person who violates this law is guilty of a Class A1 misdemeanor. A Class A1 misdemeanor is the most serious misdemeanor offense. It is punishable by community punishment, intermediate punishment, or active punishment. A monetary fine maybe imposed in the discretion of the court. Upon conviction, a person's vessel, along with all of its equipment, maybe seized, forfeited, and sold. If a law enforcement officer has probable cause to believe that a violation of this law is occurring, the officer may seize the illegal gambling devices, seize any monies or property used in conjunction with or derived from the unlawful use of the illegal gambling devices, and seize the vessel upon which the illegal gambling devices are found. The bill clarifies that the law does not apply to vessels engaged in interstate commerce and that it does not prevent the prosecution for other gambling offenses. (An earlier version of the bill allowed the seizure of any means of conveyance to and from an illegally used vessel.)

North Carolina cannot prohibit gambling voyages that are allowed by federal law. Therefore, a person may offer gambling voyages that begin and end in North Carolina so long as the voyage makes an intervening stop in another state or country and all the gambling takes place beyond the 3 mile territorial boundary of the State. However, North Carolina can regulate these gambling boat voyages.

Section 1 of the bill provides that the vessel must met the Safety of Life at Sea (SOLAS) standards and requirements normally applicable in international waters. SOLAS ensures that, with regard to the passengers' safety, the vessel is fit for service. Vessels are inspected by the U.S. Coast Guard. It also provides that all of the vessel's passengers must be at least 21 years of age.

Section 2 of the bill defines a gambling boat voyage for North Carolina tax purposes as a voyage that meets all of the following conditions:

- It transports passengers engaged in gambling aboard the vessel.
- Its passengers embark the vessel in this State.
- Its passengers disembark the vessel only in this State or a contiguous state.

This definition of "gambling boat voyage" eliminates the imposition of the tax obligations on cruise s that travel and dock in noncontiguous states or another country.

The remainder of the bill creates tax obligations for the gambling boat operator that do not exist under current law. A gambling boat operator is a person engaged in the business of operating a gambling boat voyage. Section 3 imposes a privilege license tax on gambling boat voyages at a rate equal to $6 per passenger. Section 6 requires a gambling boat operator who pays a resident of this State more than $600 in gambling winnings during a gambling boat voyage to deduct and withhold income tax from the resident's winnings. The federal government requires that taxes be withheld if the winnings exceed $5,000. The amount of State taxes to be withheld is 7% of the winnings paid to the resident. If the gambling boat operator does not withhold from any gambling winnings paid to an individual, the operator must obtain from the individual documentation proving that the individual is not a resident of North Carolina. The operator must remit the withheld tax payments to the State quarterly.

The following tax laws would also apply to businesses engaged in the gambling boat voyage business: State income tax and sales tax on any sales of tangible personal property that occur while the boat is in North Carolina's territorial boundaries. Also under current law, residents of North Carolina must pay tax on any income derived from gambling activities, whether they occur inside or outside the State's territorial boundaries.

EFFECTIVE DATE: This act is effective when it becomes law. The tax sections of this act become effective on the first day of the third calendar month after this act becomes law.

This summary was contributed to by Mary Shuping and Cindy Avrette, Research Division.

H19-SMRB-1

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 19 (Fourth Edition)

SHORT TITLE: Gambling Boats Regulated

SPONSOR(S): Representative Redwine

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
EXPENDITURES					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue; Alcoholic Beverage Control Commission

EFFECTIVE DATE: Sections 2 through 8 of this act are effective on the first day of the third calendar month after this act becomes law. All other sections are effective when the bill becomes law.

BILL SUMMARY:
The bill prohibits in North Carolina those casino equipped boats that take gambling cruises to nowhere in the Atlantic Ocean. Ships that embark passengers in North Carolina for "gambling boat voyages" to contiguous states must pay a privilege tax of $6 per passenger, obtain a $10,000 ABC license if it has a home port in the state, and withhold 7% of winnings from North Carolina residents. When traveling outside North Carolina's three-mile criminal jurisdictional limit, HB 19 requires a casino boat to make an intervening stop in another state or country for 6 hours and allow its passengers to disembark or country and embark passengers in North Carolina ports.

ASSUMPTIONS AND METHODOLOGY:
There are no casino boats based in North Carolina nor are there casino boats in the contiguous states of Virginia and South Carolina that embark passengers in North Carolina for gambling boat voyages. There are two small cruise lines that have scheduled stops in North Carolina, but these ships do not offer gambling. Although North Carolina is visited infrequently by the major cruise lines that have casino operations onboard, these vessels are exempt from tax because they do not have home ports in the state and do not arrange cruises to contiguous states.

No information is available to estimate the potential for gambling boat voyages in the future. It is uncertain how prospective casino boat operators will react to the restrictions and taxes imposed in HB 19. Fiscal Research talked to the owner of the Stardancer, one of two casino boats based in Little River, South Carolina, and found that the owner had no intention of expanding his business into North Carolina. Furthermore, the intervening stop requirements of HB 19 may make travel to North Carolina impracticable and less profitable. The Stardancer casino boat has a cruise time of five hours (1 hour to reach the 3-mile limit, 3 hours to gamble, and 1 hour to return) and makes two trips a day. The six hour intervening stop requirement would prohibit the Stardancer casino boat from making two daily trips and would increase costs due to additional staff hours spent on board.

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 19

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

H19-ALC-7/7

Date_____,1999

Comm. Sub. [YES]
Amends Title []
Fourth Edition

Senator Kerr

moves to amend the bill on page 1, line 14, through page 2, line 2, by rewriting the lines to read:

"(1) Casino boat. -- A vessel that meets all of the following conditions:

a. It embarks from a point within this State and disembarks at the same or another point within this State without making an intervening stop.

b. It is operated or maintained for the purpose of gambling and carries or operates gambling devices for the use of its passengers or otherwise provides facilities for the purpose of gambling.

c. It is not an oceangoing ship with sleeping cabins for 200 or more persons.";

and on page 3, lines 19 - 22, by rewriting the lines to read:

"'(4) Gambling boat voyage. -- A voyage that meets both of the following conditions:

a. It is undertaken by a commercial vessel other than an oceangoing ship with sleeping cabins for 200 or more persons.

b. Passengers on the voyage engage in gambling aboard the vessel, embark in this State, and disembark only in this State or a contiguous state.'"

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 19

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

H19-ASC-7/7A

Date_____,1999

Comm. Sub. [YES]
Amends Title []
Fourth Edition

Senator Hoyle:

moves to amend the bill on page 2, line 2,
by rewriting the line to read:
"gambling, except that the term "casino boat" does not include oceangoing ships with sleeping cabins for a minimum of 100 persons.";

and, on page 3, line 22,
by rewriting the line to read:
"in this State or a contiguous State, except that the term "gambling boat voyage" does not include voyages of oceangoing ships with sleeping cabins for a minimum of 100 persons.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 1186
Committee Substitute Favorable 4/23/99

Short Title: Unearned Premium Reserves. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO REVISE THE LAW GOVERNING THE UNEARNED PREMIUM RESERVE OF DOMESTIC TITLE COMPANIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-26-25 reads as rewritten:

"**§ 58-26-25. Amount of unearned premium reserve.**

(a) The unearned premium reserve of every domestic title insurance company shall consist of the aggregate of:

(1) The amount of the unearned premium reserve held as of ~~January 1, 1974.~~ December 31, 1998.

(2) The amount of all additions required to be made to such reserve by this section, less the reduction of such aggregate amount required hereby.

(b) ~~On each contract of title insurance issued by a~~ A domestic title insurance company on and after ~~January 1, 1974, there shall be reserved~~ January 1, 1999, shall reserve initially as an unearned premium reserve a sum equal to ten per centum (10%) of the ~~original risk premium charged therefor.~~ following items set forth in the title insurer's most recent annual statement on file with the Commissioner:

(1) Direct premiums written; and

(2) Premiums for reinsurance assumed less premiums for reinsurance ceded during the year.

(c) The aggregate of the amounts set aside in unearned premium reserves in any calendar year, pursuant to subsection (b) of this section, shall be reduced annually at

the end of each calendar year following the year in which the policy is issued, ~~at the annual rate of one twentieth of the aggregate of such amounts.~~ over a period of 20 years, pursuant to the following: twenty percent (20%) the first year; ten percent (10%) for years two and three; five percent (5%) for years four through 10; three percent (3%) for years 11 through 15; and two percent (2%) for years 16 through 20.

(d) The entire amount of the unearned premium reserve held as of ~~January 1, 1974,~~ December 31, 1998, shall be accorded a fresh start ~~added to the reserve as of that date~~ and shall be released from said reserve and restored to net profits ~~at the annual rate of one twentieth of the said entire amount, beginning in the next ensuing calendar year.~~ in accordance with the percentages set forth in subsection (c) of this section.

(e) ~~If substantially the entire outstanding liability under all policies, contracts of title insurance or reinsurance agreements of any such title insurance company shall be reinsured, the value of the consideration received by a reinsuring title insurance company authorized to transact the business of title insurance in this State, shall constitute, in its entirety, unearned portions of original premiums and be added to its unearned premium reserve and deemed, for recovery purposes, to have been provided for liabilities assumed during the year of such reinsurance. The amount of such addition to the unearned premium reserve of such assuming title insurance company shall be not less, however, than two thirds of the amount of the unearned premium reserve required to be maintained by the ceding title insurance company at the time of such reinsurance.~~ A supplemental reserve shall be established in accordance with the instructions of the annual statement required by G.S. 58-2-165 and G.S. 58-26-10 consisting of the reserves necessary, when taken in combination with the reserves required by subsections (a) through (d) of this section to cover the company's liabilities with respect to all losses, claims, and loss adjustment expenses.

(f) Each title insurer subject to the provisions of this Article shall file with its annual statement required by G.S. 58-2-165 and G.S. 58-26-10 a certification of a member in good standing of the American Academy of Actuaries. The actuarial certification required of a title insurer must conform to the annual statement instructions for title insurers of the National Association of Insurance Commissioners."

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

HOUSE BILL 1186:
Unearned Premium Reserves

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Rep. Miner
Date:	July 7, 1999	**Summary by:**	Martha K. Walston
Version:	2nd Edition		Committee Counsel

SUMMARY: ***House Bill 1186 revises the method for calculating the unearned premium reserve required for title insurance companies. The current version of the bill was given a favorable report in House Insurance.***

CURRENT LAW: Currently title insurance companies reserve 10% of the original risk premium on each title insurance policy it issues less reductions each year ($1/20^{th}$ each year) as the policy matures. Premiums received for reinsurance are considered unearned if substantially all of the liability under the policies and reinsurance agreements are reinsured.

BILL ANALYSIS: House Bill 1186 revises this language to provide that the unearned premium reserve is calculated as 10% of the aggregate of direct written premiums and reinsurance that is assumed (less reinsurance that is ceded). This aggregate is then reduced annually according to the following schedule: 20% the first year, 10% for the second and third years, 5% for the fourth through the tenth years, 3% for the eleventh through fifteenth years, and 2% for the sixteenth through twentieth years.

House Bill 1186 provides that the entire amount of the unearned premium reserve held as of December 31, 1998 (now January 1, 1974), shall be released from the reserve and restored to net profits according to the above percentages.

House Bill 1186 also provides that a supplemental reserve must be established if necessary to cover the company's liabilities, claims and loss adjustment expenses. In addition, each title insurer must file with its annual statement a certification of a member in good standing of the American Academy of Actuaries. The actuarial certification must conform to the National Association of Insurance Commissioners (NAIC) requirements.

The bill becomes effective October 1, 1999.

NORTH CAROLINA DEPARTMENT OF INSURANCE

MEMORANDUM

TO: Bill Hale, Legislative Counsel

FROM: Ray Martinez, Chief Financial Examiner

DATE: July 9, 1999

Re: HB 1186 – Title Insurance Reserves

Insurance companies are required to reserve money to guarantee payments of claims. Reserves have to be in the amounts representing actual or potential liabilities to cover debts to policyholders. Insurance companies are also required to maintain minimum amounts of surplus. Surplus is the amount by which assets exceed liabilities.

The current reserve requirements for North Carolina title insurers are extremely conservative, resulting in a competitive disadvantage for our domestic companies. The National Association of Insurance Commissioners (NAIC) adopted a model act on title insurance about three years ago, which, among other things, established reserving methodologies for title insurers. We feel that the model methodology is somewhat too liberal, so we agreed with our domestic companies to change our methodology at approximately one-half of the NAIC rate. This will not cause any solvency concerns.

Under the current law, 10% of each premium dollar received by the title insurance company is reserved. Over the next twenty years, each year 5% of the reserved premium is transferred to the company's surplus. Under H.B. 1186, 10% of each premium dollar would still be reserved, but the rate of reserves being transferred to surplus would be quicker: 20% in the first year, 10% each year in the second and third years, 5% each year in the fourth through the tenth years, 3% in the eleventh through fifteenth years, and 2% in the sixteenth through twentieth years. The bottom line is that the reserves are transferred to surplus more quickly, which increases the company's surplus.

Investors Title Insurance Company

INNOVATIVE BY INSTINCT

121 North Columbia Street (27514)
P.O. Drawer 2687
Chapel Hill, NC 27515-2687
919/968-2200, 800/326-ITIC (4842)
Corporate Fax: 919/968-2223, 800/724-8790

MEMORANDUM

TO: Senator John Kerr

FROM: Elizabeth ("Beth") P. Bryan

RE: North Carolina Statutory Premium Reserve

DATE: July 9, 1999

As requested, I am writing a synopsis of the reasons for the proposed legislative changes to North Carolina General Statute Section 58-26-25 concerning calculation of the Unearned Premium Reserve for domestic title insurance companies.

The purpose of the proposed legislation is as follows:

In April of 1996, The National Association of Insurance Commissioners ("NAIC") adopted the *Title Insurers Model Act*. The primary purpose of this Act is to provide for the effective regulation and supervision of title insurance and licensed title insurers and to create uniformity with respect to legislation among the states.

Section 10(B) of the Act discusses the Unearned Premium Reserve. In a drafting note, the Act mentions that most states have a provision for the Unearned Premium Reserve that was established many years ago and that states should consider adopting a revised Unearned Premium Reserve that more appropriately reflects current economic conditions.

As a protective measure to consumers, the NAIC has adopted a built-in safety provision whereby a supplemental reserve must be recorded when the Unearned Premium Reserve is less than actuarially estimated reserves. **This reserve gives respective state insurance departments assurance that reserves recorded by domestic title insurers are sufficient when state mandated reserves are inadequate.**

The *Title Insurers Model Act* states that a reserve that is too high can result in an unfair penalty for domestic title insurers. In North Carolina, the existing reserve requirements are extremely conservative causing a competitive disadvantage to domestic title insurers in North Carolina. Investors Title Insurance Company is the largest domestic title insurer in North Carolina

and employs approximately 210 people in this state.

Lastly, I want to address your concerns regarding the practice of "tacking." The underwriter of a policy of title insurance maintains the same level of risk on the policy regardless of whether or not a new policy "tacks" onto an existing policy. The custom of "tacking" developed in order to reduce the time it takes to complete a title search. By "tacking," the attorney performing a new search only searches back to the point of the last title insurance policy. This practice, however, does not increase the original underwriter's risk. Once a policy is issued, particularly an owner's policy, it insures the chain of title up to that point. If a problem arises for a later owner of the property, that individual can sue (by virtue of the deed warranties) the owners up the chain, regardless of whether or not the current owner's attorney "tacked" onto a prior policy. For these reasons, the practice of "tacking" does not increase the level of risk for the original underwriter.

I hope this memorandum resolves your questions concerning the proposed legislation. It is important that this legislation pass in order that domestic title insurance companies are not penalized for being domiciled in North Carolina. If you have further questions, please feel free to call me collect at home this weekend at 919-387-0183. I sincerely appreciate your time and consideration relative to this issue and would like to assist in resolving any concerns you may have.

SENATE BILL 864

Short Title: Lab Testing Facility Sales Tax. (Public)

Sponsors: Senators Gulley; and Hoyle.

Referred to: Finance.

April 13, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE SALES TAX REDUCTIONS FOR CERTAIN CLINICAL LABORATORY TESTING COMPANIES.

The General Assembly of North Carolina enacts:

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

"**§ 105-164.12C. Major clinical laboratory testing companies.**

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

(1) Clinical laboratory testing company. -- A person whose primary business is providing professional clinical laboratory tests, analyses, diagnoses, and services and clinical laboratory occupational testing services.

(2) Major clinical laboratory testing company. -- A clinical laboratory testing company that meets all of the following conditions:

a. The company's facilities in this State are designed to perform more than 1,000 different types of clinical laboratory tests or procedures.

b. The Secretary of Commerce has certified that the company will, by the end of the five-year period beginning June 1, 1999, have invested at least one hundred million dollars ($100,000,000) in capital investment placed in service at its facilities in this State.

c. The Secretary of Commerce has certified that the company will, by the end of the three-year period beginning June 1,

1999, have created at least 200 new, full-time, permanent professional laboratory jobs at its facilities in this State.

(b) Tax Preferences. -- A major clinical laboratory testing company qualifies for tax reductions under G.S. 105-164.4A and G.S. 105-164.13.

(c) Forfeiture. -- If a major clinical laboratory testing company fails to make the required minimum investment or create the required number of new jobs within the period certified by the Secretary of Commerce under this section, the company no longer qualifies for the applicable tax reductions provided in this Article and forfeits all tax reductions previously received under this Article. Forfeiture does not occur, however, if the failure was due to events beyond the company's control. Upon forfeiture of tax reductions previously received, the company is liable under this Article for a tax equal to the amount of all past taxes previously avoided as a result of the tax reductions received plus interest at the rate established in G.S. 105-241.1(i), computed from the date the taxes would have been due if the tax reductions had not been received. The tax and interest are due 30 days after the date of the forfeiture. A major clinical laboratory testing company that fails to pay the tax and interest is subject to the penalties provided in G.S. 105-236."

Section 2.(a) G.S. 105-164.4(a)(1d)a. through k. are recodified as G.S. 105-164.4A.

Section 2.(b) G.S. 105-164.4(a)(1d), as amended by this section, reads as rewritten:

"(1d) The rate of one percent (1%) applies to the sales price of the ~~following articles.~~ articles listed in G.S. 105-164.4A. The maximum tax is eighty dollars ($80.00) per article."

Section 2.(c) G.S. 105-164.4A, as recodified by this section, reads as rewritten:

"**§ 105-164.4A. Articles taxed at one percent (1%), eighty dollars ($80.00).**

The following articles are taxable under G.S. 105-164.4(a)(1d):

~~a.~~(1) Farm machinery. -- Sales to a farmer of machines and machinery, and parts and accessories for these machines and machinery, for use by the farmer in the planting, cultivating, harvesting, or curing of farm crops or in the production of dairy products, eggs, or animals. A "farmer" includes a dairy operator, a poultry farmer, an egg producer, a livestock farmer, a farmer of crops, and a farmer of an aquatic species, as defined in G.S. 106-758. Items that are exempt from tax under G.S. 105-164.13(4c) are not subject to tax under ~~this section.~~ G.S. 105-164.4.

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

The term shall include all vehicular implements, designed and sold for any use defined in this subdivision, which are operated, drawn or propelled by motor or animal power, but shall not include vehicular implements which are operated wholly by hand,

and shall not include any motor vehicles required to be registered under Chapter 20 of the General Statutes.

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

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

~~b.~~(2) Manufacturing machinery. -- Sales of mill machinery or mill machinery parts and accessories to manufacturing industries and plants, and sales to contractors and subcontractors purchasing mill machinery or mill machinery parts and accessories for use by them in the performance of contracts with manufacturing industries and plants, and sales to subcontractors purchasing mill machinery or mill machinery parts and accessories for use by them in the performance of contracts with general contractors who have contracts with manufacturing industries and plants. As used in this paragraph, the term "manufacturing industries and plants" does not include delicatessens, cafes, cafeterias, restaurants, and other similar retailers that are principally engaged in the retail sale of foods prepared by them for consumption on or off their premises.

~~c.~~(3) Telephone company property. -- Sales of central office equipment and switchboard and private branch exchange equipment to telephone companies regularly engaged in providing telephone service to subscribers on a commercial basis, and sales to these companies of prewritten computer programs used in providing telephone service to their subscribers.

~~d.~~(4) Laundry machinery. -- Sales to commercial laundries or to pressing and dry cleaning establishments of machinery used in the direct performance of the laundering or the pressing and cleaning service and of parts and accessories thereto.

~~e.~~(5) Freezer plant machinery. -- Sales to freezer locker plants of machinery used in the direct operation of ~~said~~ the freezer locker plant and of parts and accessories thereto.

~~f.~~(6) Broadcasting machinery. -- Sales of broadcasting equipment and parts and accessories thereto and towers to commercial radio and television companies which are under the regulation and supervision of the Federal Communications Commission.

~~g.~~(7) Tobacco equipment. -- Sales to farmers of bulk tobacco barns and racks and all parts and accessories thereto and similar apparatus used for the curing and drying of any farm produce.

~~h.~~(8) Farm storage facilities. -- Sales to farmers of grain, feed or soybean storage facilities and accessories thereto, whether or not dryers are attached, and all similar apparatus and accessories thereto for the storage of grain, feed or soybeans.

~~i.~~(9) Farm containers. -- Sales of containers to farmers or producers for use in the planting, producing, harvesting, curing, marketing, packaging, sale, or transporting or delivery of their products when such containers do not go with and become part of the sale of their products at wholesale or retail.

~~j.~~(10) Recycling facility equipment. -- Sales to a major recycling facility of the following tangible personal property for use in connection with the facility: cranes, structural steel crane support systems, foundations related to the cranes and support systems, port and dock facilities, rail equipment, and material handling equipment.

~~k.~~(11) **(Effective January 1, 2001)** Air courier equipment. -- Sales of the following items to an interstate air courier for use at its hub: materials handling equipment, racking systems, and related parts and accessories, for the storage or handling and movement of tangible personal property at an airport or in a warehouse or distribution facility."

Section 3. G.S. 105-164.4A, as recodified by this act, is amended by adding a new subdivision to read:

"(12) Major clinical laboratory testing equipment. -- Sales to a major clinical laboratory testing company of the following items for use in its clinical laboratory testing business: machinery, instruments, equipment, parts and accessories to these items, and computers used directly in the business."

Section 4. G.S. 105-164.13 is amended by adding a new subdivision to read:

"(46) Sales to a major clinical laboratory testing company of the following items that are not capitalized by the company and are used or consumed by it directly in its clinical laboratory testing business: medical products, medical accessories, reagents, chemicals, test kits, consumable lab supplies, and other similar tangible personal property not including machinery and equipment."

Section 5. Section 2 of this act is effective when it becomes law. The remainder of this act becomes effective July 1, 1999, and applies to sales made on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 864
Proposed Committee Substitute S864-PCS6698-LC

Short Title: Lab Testing Facility Sales Tax. (Public)

Sponsors:

Referred to:

April 13, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE A TEMPORARY SALES TAX REFUND FOR MEDICAL LABORATORY TESTING COMPANIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-164.14 is amended by adding a new subsection to read:

"(j) Medical Laboratory Testing Companies. -- A medical laboratory testing company is allowed an annual refund of fifty percent (50%) of the State sales and use taxes paid by it under this Article on the following items that are not capitalized by the company for tax purposes under the Code and are used or consumed by it directly in its medical laboratory testing business: medical products, medical accessories, reagents, chemicals, test kits, consumable laboratory supplies, and other similar tangible personal property not including machinery and equipment. Notwithstanding any other provision of law, the refund allowed in this subsection does not apply to general local sales and use taxes levied under Subchapter VIII of this Chapter, Chapter 1069 of the 1967 Session Laws, or any other local act. For the purpose of this subsection, a medical laboratory testing company is a laboratory that is primarily engaged in providing medical analytic or diagnostic services, including bodily fluid analysis, generally to the medical profession or to employers, or to patients on referral from a medical professional or employer, and is certified as a highly or moderately complex laboratory by the United States Health Care Financing Administration.

A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the State's fiscal year. Refunds applied for after the due date are barred."

Section 2. This act becomes effective October 1, 2000, and applies to taxes paid on or after that date. This act is repealed effective for taxes paid on or after October 1, 2005.

SENATE BILL 864:
Lab Testing Facility Sales Tax

BILL ANALYSIS

Committee:	Senate Finance	**Sponsor:**	Senator Gulley
Date:	July 7, 1999	**Analysis by:**	Martha H. Harris
Version:	PCS for First Edition		Staff Attorney

SUMMARY: ***Allows a temporary refund of 2¢ of the 4¢ State sales tax paid on purchases of medical supplies and non-capital laboratory equipment by complex medical laboratory testing companies, effective October 1, 2000. The refund sunsets for taxes paid on or after October 1, 2005.***

Businesses whose services and products are exempt from sales tax are required to pay sales tax on their purchases of supplies and equipment used in the business. The general sales tax rate is 4% State and 2% local (2.5% in Mecklenburg County). This bill would provide a refund of 2¢ of the 4¢ State sales tax for certain supplies and equipment purchased by complex medical laboratory testing companies, even though the services provided by those companies are also exempt from sales tax. The laboratories would continue to pay local sales and use taxes on these supplies.

The sales tax refund proposed in the bill would be allowed to laboratories primarily engaged in providing medical analytic or diagnostic services generally to the medical profession or to employers, or to patients upon referral from a medical professional or employer. To qualify for the sale tax refund, the laboratory must be certified as a highly or moderately complex laboratory by the United States Health Care Financing Administration. The sales tax refund would cover the following items used or consumed by the laboratory in its medical testing business (but not including property capitalized by the laboratory or machinery and equipment): medical products, medical accessories, reagents, chemicals, test kits, consumable lab supplies, and other similar tangible personal property.

DRAFT

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 864 – Proposed Finance Committee Substitute DRAFT NOTE

SHORT TITLE: Lab Testing Facility Sales Tax

SPONSOR(S):

FISCAL IMPACT

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

	($ Millions) FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES	**0**	**0**	**(1.2)**	**(1.7)**	**(1.8)**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Department of Revenue, Sales Tax Division.

EFFECTIVE DATE: This act becomes effective October 1, 2000 and applies to taxes paid on or after this date. This act is repealed effective for taxes paid on or after October 1, 2005.

BILL SUMMARY: The bill maintains the current 6% sales tax on many of the chemicals, test kits, and supplies used in laboratory testing, but makes these purchases eligible for a partial sales tax refund. Under the bill qualifying companies would pay the full 6% sales tax when they purchase supplies and reagents. These companies would then be eligible to receive a reimbursement for 50% of the state portion of the state sales tax charged on certain medical supply purchases. To qualify for the exemption the business must be certified by the federal Health Care Finance Administration (HCFA) as a moderate or highly complex laboratory. The lab must also be "primarily engaged in providing medical, analytic or diagnostic services, including bodily fluid analysis, generally to the medical profession or to employers, or to patients on referral from a medical professional or employer". The bill defines this type of business as a medical laboratory testing company. The request for a refund is due within six months after the end of the state fiscal year. This sales tax refund sunsets in 2005.

BACKGROUND: The legislation authorizes a state sales tax refund for part of the tax charged on the following items that are used or consumed in the clinical laboratory testing business: medical products, medical accessories, reagents, chemicals, test kits, consumable lab supplies, and other similar tangible personal property not including machinery and equipment.

The special tax treatment only applies to companies that met both of two sets of qualifications. First, they must be certified by HCFA as a moderately or highly complex laboratory. Second, laboratory services, as defined in the bill, must be their primary business. Both the bill drafting

attorney and industry representatives believe this definition includes only those companies that are laboratory service companies.

According to HCFA, there are 1,506 laboratories in North Carolina that are certified as moderately or highly complex. Most of these laboratories are in hospitals or a doctor's office. Because the primary business of these facilities (hospitals and doctors offices) is not laboratory testing, they would not qualify for the special tax treatment in the bill. Based on a list of all 1506 HCFA certified laboratories, Fiscal Research identified 80 facilities that may be stand alone laboratory testing businesses. These laboratories appear to be operated by approximately 44 companies. Fiscal Research, in conjunction with KPMG Accounting in Greensboro, surveyed these facilities to determine if they met the qualifications listed in the bill. Companies that qualified were asked to supply information about their medical supply and equipment expenditures. Of those surveyed, 15 responded or 34%. Two of these respondents indicated that they did not meet the qualifying criteria in the bill. However, according to the two largest laboratory companies in the state (LabCorp and Spectrum), they represent more than 80% of the total qualifying market. They also indicate that there are two other significantly sized firms, Great Smokey Mountains Laboratory and Triad Laboratories. Three of these four major companies responded to the initial survey. Fiscal Research and industry representatives believe those who responded to the survey, including LabCorp, Spectrum, and Great Smokey Mountains, represent between 85% and 90% of the market. The mid-point of these two points or 87.5% is used in the fiscal note.

One of the responding companies the Laboratory Corporation of America or LabCorp, provided extensive information about their expenditures, purchases, and the company as a whole. According to the organization's filings with the Security and Exchange Commission, LabCorp is the largest independent clinical laboratory company in the United States, based on 1998 net revenue. The company is headquartered in Burlington, NC, and offers more than 2,000 different clinical laboratory tests. LabCorp current maintains 25 regional testing facilities. The company reports 1998 net sales of $1.6126 billion, with a gross profit of $563.4 million, and net earnings of $68.8 million. Because of the level of detail provided by LabCorp, and their dominant market share, much of the analysis is based on their information.

ASSUMPTIONS AND METHODOLOGY: Because of the unique structure of laboratory data, the estimates in this note are divided into three parts that reflect the three data segments available. Section 1 reflects the data provided by LabCorp, while Section 2 includes the estimates associated with the 12 other companies that responded to the survey and qualified for the exemption. Section 3 provides total loss estimates, including assumed losses associated with companies who did not respond to the survey. The data included in the note reflects only information provided by laboratory companies directly. No data from the Department of Revenue is used in this analysis.

Section 1: LabCorp Information:

According to documents provided by LabCorp, the organization's North Carolina laboratories spent $50.67 million and $46.89 million on reagents and other chemicals in 1997 and 1998. This estimate assumes that 90% of all laboratory supply expenses were associated with reagents and other chemicals. LabCorp officials believe a 5% growth rate in this type of expenditure is appropriate. When questioned about using a 5% growth rate in light of the increased output

anticipated by the bill, company representatives stated that "this additional work is not expected to greatly increase lab supply costs." They cite more favorable contracts with vendors, reducing waste, increased efficiency (by the company manufacturing its own reagents), and the low per unit cost associated with many of the more routine tests which will be handled by the North Carolina facilities.

Assuming the 5% growth rate is appropriate, reagent and chemical purchases by the North Carolina portions of LabCorp will be:

	1999	2000	2001	2002	2003	2004
Reagents & Other Chemicals	42,733,800	44,870,490	47,114,015	49,469,715	51,943,201	54,540,361

Under current law a 6% sales tax applies to these purchases. The tax liability associated with these estimates, once adjusted for the fiscal year basis are:

	1999-00	2000-01	2001-02	2002-03	2003-04
Reagents & Other Chemicals	43,802,145	45,992,252	48,291,865	50,706,458	53,241,781
Sales Tax (6%)	2,628,129	2,759,535	2,897,512	3,042,387	3,194,507

Because the bill offers a sales tax refund of 2% of the state tax, the potential savings are as follows:

	1999-00	2000-01	2001-02	2002-03	2003-04
Potential Refund from Purchases Made In	876,043	919,845	965,837	1,014,129	1,064,836

Section 2: Other Laboratory Companies:

The 12 non-LabCorp companies that responded to the survey reported annual laboratory supply purchases of $20,348,831. Assuming the 6% sales tax currently applies, the total revenue associated with these purchases is $1,220,930. Under the bill, these laboratory companies are eligible for a refund of 2% of the state tax. Assuming supply purchases grow by 5%, the potential revenue impact is as follows:

	1999-00	2000-01	2001-02	2002-03	2003-04
Potential Refund from Purchases Made In	406,977	427,326	448,692	471,126	494,683

Section 3: Total Losses

As mentioned previously, survey respondents are assumed to account for 87.5% of the qualifying market. Assuming the survey results apply to the remaining 12.5%, the fiscal loss associated with the bill is as follows:

Potential Refund from Purchases Made In					
	1999-00	2000-01	2001-02	2002-03	2003-04
LabCorp	876,043	919,845	965,837	1,014,129	1,064,836
Other Survey Respondents	406,977	427,326	448,692	471,126	494,683
Other Companies	183,289	192,453	202,076	212,179	222,788
TOTAL	1,466,308	1,539,623	1,616,605	1,697,435	1,782,307

Because the bill does not become effective until October 1, 2000 there will be no fiscal impact in FY 1999-00. Under the bill refunds will not be issued until January 1, 2002. Therefore, there will be no fiscal impact until FY 2001-02. The FY 2001-02 estimate is reduced by ¼ to account for the October 1 effective date. The bill sunsets with purchases made on or after October 1, 2005. Therefore the final year of fiscal impact will be 2006-7.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Linda Struyk Millsaps

APPROVED BY:

DATE:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 2

SENATE BILL 968
Commerce Committee Substitute Adopted 6/23/99

Short Title: Waiver of Competitive Bidding Modified. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REGARDING THE WAIVER OF COMPETITIVE BIDDING AND TO REQUIRE BID PROTESTS INVOLVING CONTRACTS OVER A CERTAIN AMOUNT TO BE HANDLED BY THE DEPARTMENT OF ADMINISTRATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-53(a)(1) reads as rewritten:

"(1) Prescribing the routine and procedures to be followed in canvassing bids and awarding contracts, and for reviewing decisions made pursuant thereto, and the decision of the reviewing body shall be the final administrative review. The Division of Purchase and Contract shall review and decide a protest on a contract valued at twenty-five thousand dollars ($25,000) or more. The Secretary shall adopt rules or criteria governing the review of and decision on a protest on a contract of less than twenty-five thousand dollars ($25,000) by the agency that awarded the contract."

Section 2. G.S. 143-53(a)(5) reads as rewritten:

"(5) Prescribing conditions under which purchases and contracts for the purchase, rental or lease of equipment, materials, supplies or services may be entered into by means other than competitive bidding. Notwithstanding the provisions of subsections (a) and (b) of this section, any waiver of competition for the purchase, rental,

or lease of equipment, materials, supplies, or services is subject to prior review by the Secretary, if the expenditure exceeds ten thousand dollars ($10,000). The Division may levy a fee, not to exceed one dollar ($1.00), for review of each waiver application."

Section 3. G.S. 143-57 reads as rewritten:

"**§ 143-57. Purchases of articles in certain emergencies.**

In case of any emergency or pressing need arising from unforeseen causes including but not limited to delay by contractors, delay in transportation, breakdown in machinery, or unanticipated volume of work, the Secretary of Administration shall have power to obtain or authorize obtaining in the open market any necessary supplies, materials, equipment, printing or services for immediate delivery to any department, institution or agency of the State government. A report on the circumstances of such emergency or need and the transactions thereunder shall be made a matter of record promptly thereafter. If the expenditure exceeds ten thousand dollars ($10,000), the report shall also be made promptly thereafter to the Division of Purchase and Contract."

Section 3.1. This act does not apply to an agency, board, department, institution, or commission that is exempt from Article 3 of Chapter 143 of the General Statutes or from the provisions of that Article that require certain contracts to be awarded by the Department of Administration.

Section 4. This act becomes effective July 1, 1999. Section 1 applies to bid protests filed on or after that date. Sections 2 and 3 of this act apply to contracts awarded on or after that date.

SENATE BILL 968:
Waiver of Competitive Bidding Modified

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Sen. Larry Shaw
Date:	July 2, 1999	**Summary by:**	Martha K. Waslton
Version:	2nd Edition		Committee Counsel

SUMMARY: ***Senate Bill 968 amends the law regarding the waiver of competitive bidding and requires bid protests involving contracts over a certain amount to be handled by the Department of Administration. The current version of the bill was given a favorable report in Senate Commerce on June 23, 1999. The bill is before the Senate Finance Committee because it allows the Secretary of Administration to levy a fee, not to exceed $1.00 for reviewing each waiver application.***

BILL ANALYSIS:

Section 1 of the bill provides that bid protests on State procurement contracts of $25,000 or more will be handled by the Division of Purchase and Contract. Currently, those protests are being handled by the agency that awarded the contract. Bid protests on contracts awarded by agencies under $25,000 would continue to be handled by the respective agencies, subject to rules adopted by the Secretary of Administration.

Section 2 provides that if an agency wants to waive competitive sealed bidding on a purchase that costs more than $10,000, the waiver is subject to prior review by the Secretary of Administration. A $1.00 fee is imposed for review of the waiver.

Section 3 provides that if the Secretary of Administration obtains goods or services pursuant to the emergency purchasing statute (G.S. 143-57), any such purchases over $10,000 must be reported to the Joint Legislative Commission on Governmental Operations promptly thereafter. The current law already requires the Secretary to note in the public record the justification for an emergency purchase.

Section 3.1 provides that agencies that are not subject to Article 3 of Chapter 143 (the laws governing the State's purchasing program) or whose contracts are not subject to that Article are exempt from this act.

The act becomes effective July 1, 1999.

Linwood Jones, committee counsel to Senate Commerce, contributed substantially to this summary.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 968 (Second Edition)

SHORT TITLE: Waivers of Competitive Bidding Modified

SPONSOR(S): Senator Larry Shaw

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
EXPENDITURES					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Administration - Division of Purchase and Contract

EFFECTIVE DATE: The act becomes effective July 1, 1999.

BILL SUMMARY:
The bill amends the law regarding the waivers of competitive bidding for expenditures over $10,000 and requires bid protests involving contracts over $25,000 to be handled by the Department of Administration.

ASSUMPTIONS AND METHODOLOGY:
Although the Division of Purchase and Contract anticipates reviewing 1000 additional requests for bid waivers, the current staff can absorb this workload. By September 1999, all agencies will be online with the Division's Interactive Purchasing System (IPS). These agencies will be able to electronically send requisitions and bid waiver requests to the Division of Purchase and Contract. Division staff can review the request on the computer screen and then approve or deny a bid waiver by electronic mail. There will be no additional revenue because the Division does not plan to impose the $1 fee authorized in the bill.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic

APPROVED BY:

DATE:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 1479
Committee Substitute Favorable 6/21/99

Short Title: Newsprint Tax Credit Change. (Public)

Sponsors:

Referred to:

May 13, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE NEWSPRINT RECYCLING TAX.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-102.6 reads as rewritten:

"**§ 105-102.6. (Effective July 1, 1999) Publishers of newsprint publications.**

(a) Purpose. -- The purpose of this section is to provide incentives for the recycling of newsprint and magazines and for the use of newsprint that contains recycled content.

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

(1) Gross tonnage of newsprint consumed. -- The weight in metric tons of all newsprint consumed by a publisher.

(2) Newsprint. -- Uncoated paper, whether supercalendered or machine finished, made primarily from mechanical wood pulp combined with some chemical wood pulp, weighing between 24.5 and 35 pounds for 500 sheets of paper two feet by three feet in size, and having a brightness of less than 60.

(2a) Nonvirgin newsprint. -- Newsprint that contains recycled postconsumer recovered paper.

(3) Postconsumer recovered paper. -- Paper products, generated by a business or consumer, that have served their intended end uses and have been separated or diverted from solid waste.

(4) Publisher. -- A person engaged in the business of producing publications printed on newsprint who acquires and uses newsprint for this business.

(5) Recycled content percentage. -- The percentage by weight of the total gross tonnage of newsprint consumed by the publisher that is recycled postconsumer recovered paper. For example, if a publisher consumes 10 tons of virgin newsprint, 10 tons of nonvirgin newsprint that contains fifty percent (50%) recycled postconsumer recovered paper, and 10 tons of nonvirgin newsprint that contains ten percent (10%) recycled postconsumer recovered paper, the publisher's recycled content percentage is 6/30 or twenty percent (20%).

(6) Recycled content tonnage. -- The weight in metric tons of the total gross tonnage of newsprint consumed by the publisher that is recycled postconsumer recovered paper.

(7) Recycling. -- Any process by which solid waste, or materials that would otherwise become solid waste, are collected, separated, or processed, and reused or returned to use in the form of raw materials or products.

(8) Recycling tonnage. -- The weight in metric tons of newsprint and magazines ~~that is~~ recycled or diverted to recycling by a publisher.

(9) Virgin newsprint. -- Newsprint that does not contain recycled postconsumer recovered paper.

(c) Minimum Recycled Content Percentage. -- The recycled content percentage of newsprint consumed by a publisher shall equal or exceed the following minimum recycled content percentages:

During 1991 and 1992, twelve percent (12%).

During 1993, fifteen percent (15%).

During 1994, twenty percent (20%).

During 1995 and 1996, twenty-five percent (25%).

During 1997 and 1998, thirty percent (30%).

During 1999 ~~and 2000,~~ through 2004, thirty-five percent (35%).

After ~~2000,~~ 2004, forty percent (40%).

A publisher who has developed and operates or contracts for the operation of a newspaper or magazine recycling program shall receive partial credit toward the recycled content percentage goals established in this subsection on the basis of ~~one-half ton~~ one ton of credit toward its total recycled content tonnage for each ton of recycling tonnage.

(d) Tax. -- Every publisher shall apply for and obtain from the Secretary a newsprint publisher tax reporting number and shall file an annual report with the Secretary by January 31 of each year. The report shall include the following information for the preceding calendar year:

(1) Tonnage of virgin newsprint consumed.

(2) Tonnage of nonvirgin newsprint consumed.

(3) Gross tonnage of newsprint consumed.
(4) Itemized percentages of recycled postconsumer recovered paper contained in tonnage of nonvirgin newsprint consumed.
(5) Recycled content tonnage.
(6) Recycled content percentage.
(7) Recycling tonnage.

In addition, each publisher whose recycled content percentage for a calendar year is less than the applicable minimum recycled content percentage provided in subsection (c) shall pay a tax of fifteen dollars ($15.00) on each ton by which the publisher's recycled content tonnage falls short of the tonnage of recycled postconsumer recovered paper needed to achieve the applicable minimum recycled content percentage provided in subsection (c). This tax is due when the report is filed. No county or city may impose a license tax on the business taxed under this section.

(e) Exemption. -- The tax levied in this section does not apply to an amount calculated pursuant to subsection (d) to the extent the amount is attributable solely to the publisher's inability to obtain sufficient recycled content newsprint because (i) recycled content newsprint was not available at a price comparable to the price of virgin newsprint; (ii) recycled content newsprint of a quality comparable to virgin newsprint was not available; or (iii) recycled content newsprint was not available within a reasonable period of time during the reporting period. In order to claim the exemption provided in this subsection, a publisher must certify to the Secretary:

(1) The amount of virgin newsprint consumed by the publisher during the reporting period solely for one of the reasons listed above.
(2) That the publisher attempted to obtain recycled content newsprint from every manufacturer of recycled content newsprint that offered to sell recycled content newsprint to the publisher within the preceding calendar year.
(3) The name, address, and telephone number of each recycled content newsprint manufacturer contacted, including the company name and the name of the company's individual representative or employee.

(f) Use of Proceeds. -- The Secretary shall, on or before April 15 of each year, credit the net proceeds of the tax imposed by this section to the Solid Waste Management Trust Fund created in G.S. 130A-309.12."

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

HOUSE BILL 1479:
Newsprint Tax Credit Change

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Rep. Miller
Date:	July 6, 1999	**Summary by:**	Cindy Avrette and Martha Walston, Staff Attorneys
Version:	2nd Edition		

SUMMARY: House Bill 1479 expands the newsprint recycling tax credit to include magazine recycling programs, increases the credit that may be received from one-half ton to one ton, and delays the minimum recycled content percentage goal of 40% until 2005. The current version of the bill was given a favorable report in House Finance.

CURRENT LAW: A publisher must pay a privilege license tax of $15 for each ton of newsprint that does not have a recycled content of 35% or more. The General Assembly enacted this excise tax on newsprint in 1991. The purpose of the tax is to encourage the use of recycled newsprint by imposing a privilege license tax on those who produce publications printed on newsprint and do not use a minimum amount of recycled paper. The minimum amount of recycled paper required has increased since 1991 from 12% to 35%. The minimum amount of recycled paper that will be required after the year 2000 is 40%.

The tax rate is $15.00 for each ton of newsprint that is consumed during an annual reporting period and has an average recycled content percentage that is less than the required minimum recycled content percentage. The proceeds of the tax are earmarked for the Solid Waste Management Trust Fund. The tax does not apply if the producer can not meet the recycled content goal because of an inability to obtain newsprint made from recycled paper at a price or quality comparable to other newsprint, to acquire an amount needed for a publication, or to acquire the amount needed in a reasonable amount of time.

There is a credit that can be used towards the recycled content percentage goals for publishers who develop and operate, or contract for the operation of, a newspaper recycling program. A publisher may receive one-half ton credit toward its total recycled content tonnage for each ton of newsprint it recycles.

BILL ANALYSIS: House Bill 1479 changes the newsprint excise tax in three ways:

- It allows a publisher a credit for developing and operating a magazine recycling program as well as a newspaper recycling program.
- It allows a credit towards the recycled content percentage goals on the basis of **one ton** of credit for each ton of newsprint or magazines it recycles. The current law only allows one-half ton of credit for each ton of newsprint it recycles.
- It delays the 40% recycled content goal until 2005. It would have become effective 2001.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1479 (First Edition)

SHORT TITLE: Newsprint Tax Credit Change

SPONSOR(S): Representative Miller

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
Solid Waste Management Trust Fund	Less than $1,000 loss per year				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue

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

BILL SUMMARY:
The bill extends the publisher tax credit to magazine recycling programs as well as newspaper recycling programs.

BACKGROUND:
A newspaper publisher pays a privilege tax of $15 for each ton of paper that does not have a recycled content of 35%. The publisher currently receives a half ton credit against the tax for each ton of newsprint it recycles. Publishers pay the tax when they file their annual report with the Secretary of Revenue by January 31 each year.

ASSUMPTIONS AND METHODOLOGY:
The Department of Revenue collected only $1,180.95 from 86 publishers in 1998. Adding magazines to the formula to determine the tax credit will reduce the amount of tax paid. However, the reduction cannot be calculated due to lack of data. The N.C. Recycling Association could not provide data on the amount of magazines that might be recycled each year.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic

APPROVED BY: Tom Covington

DATE: Monday, May 24, 1999

VISITOR REGISTRATION SHEET

SENATE FINANCE — WEDNESDAY, JULY 8, 1999
8:30 A.M.

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jim Brown	State Ports –
John Loasta	PRC
G Markham	Eghts
John Rust	NCFPC
Andy Sabol	DOR
Patti Seawell	"
Lennie Collins	DOR
HUGH TILSON	NCHA
Bob Pore	Jordan Price
Zeb Alley	LabCorp
BRAD Smith	LAB CORP

VISITOR REGISTRATION SHEET

SENATE FINANCE — WEDNESDAY, JULY 8, 1999
8:30 A.M.

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Marsha Rice	Lab Corp
John Bowdish	Zeb Alley P.A.
James Andrews	NC State AFL-CIO
[illegible]	NCJCDC
John Henderson	CALNC
[illegible]	SOS
Bill Scobbin	NC BAR ASSOC
Tom Coley	NC CWA
[illegible]	CWA
[illegible]	NC Libertarian Party
[illegible]	ZDA, PA

VISITOR REGISTRATION SHEET

SENATE FINANCE

WEDNESDAY, JULY 8, 1999
8:30 A.M.

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
	ESC
	NCHSA

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Thursday, July 08, 1999

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

FAVORABLE

✓ H.B.(CS #2)**19** Gambling Boats Regulated.
Sequential Referral: None
Recommended Referral: None

✓ H.B. **0794** Farmville Annexation.
Sequential Referral: None
Recommended Referral: None

✓ H.B.(CS #1)**1120** Authorize Public Hospital Debt.
Sequential Referral: None
Recommended Referral: None

✓ H.B.(CS #1)**1479** Newsprint Tax Credit Change.
Sequential Referral: None
Recommended Referral: None

✓ S.B.(CS #1)**968** Waiver of Competitive Bidding Modified.
Sequential Referral: None
Recommended Referral: None

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

✓ S.B. **562** Ins. Fee Repeals and Increaes.
Draft Number: PCSXA662
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

S.B. **864** ✓ Lab Testing Facility Sales Tax.

Draft Number:	PCS6698
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 7

Committee Clerk Comment: SB 562 864 968 HB 19 794 1120 1479

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Monday, July 12, 1999

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

✓ H.B.(CS #1)**1246** Animal Lovers Special Plate.

Draft Number:	PCS4281
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment: HB 1246

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Wednesday, July 14, 1999

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

FAVORABLE

✓ H.B.(CS #1)**1186** Unearned Premium Reserves.
· Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comment: HB 1186

AGENDA

SENATE FINANCE MEETING

TUESDAY, JULY 13, 1999

1:30 PM – ROOM 544 LOB

MEETING CALLED TO ORDER – SENATOR HOYLE

INTRODUCTION OF PAGES

BILLS TO BE HEARD:

HB 222 - Strengthen Littering Law - Rep. Mitchell
HB 279 - Township Hospitals - Rep. Redwine
HB 667 - Roanoke Rapids Annexation - Rep. Crawford
HB 1098 - Strengthen Sedimentation Act - Rep. Hackney
HB 1233 - Structural Pest Control Amendments - Rep. Hill
HB 1289 - 1999 Fee Bill - Rep. Luebke
HB 1470 - Impaired Dental Hygienists/Fee - Rep. Allen
HB 1471 - Adjust Highway Bond Maturity - Rep. Crawford

MEETING ADJOURNED

SENATE FINANCE COMMITTEE

TUESDAY, JULY 13, 1999

1:30 PM – ROOM 544

The Senate Finance Committee met on Tuesday, July 13, 1999 at 1:30 PM in Room 544 with Senator Hoyle presiding. There were 25 committee members present. Rawlings Tidwell and Natillie Rauch, both from Gastonia, North Carolina and Amanda Stevens from Vale, North Carolina, all sponsored by Senator Hoyle were introduced as the pages for the meeting. Senator Hoyle also introduced Mr. Johnny Blackwell who was here to shadow Senator Albertson for the day.

HB 667 – Roanoke Rapids Annexation

Representative Crawford was recognized to explain this bill and at the conclusion of the explanation, Senator Foxx moved to give the bill a "Favorable Report", motion passed. Copy of the Bill is included in the minutes.

HB 1471 – Adjust Highway Bond Maturity

Representative Crawford was recognized to explain this bill and at the conclusion of the explanation, Senator Lee moved to give the bill a "Favorable Report", motion passed. Copy of the Bill and supporting documents included in the minutes.

HB 1098 – Strengthen Sedimentation Act

Representative Hackney was recognized to explain this bill and at the conclusion of the explanation, Senator Lee moved to give the bill a "Favorable Report", motion passed. Copy of the Bill and supporting documents included in the minutes.

HB 1233 – Structural Pest Control Amendments

Representative Hill was recognized to explain this bill and at the conclusion of the explanation, Senator Foxx moved to give the bill a "Favorable Report", motion passed. Copy of the Bill and supporting documents included in the minutes.

HB 1470 – Impaired Dental Hygienists/Fee

Representative Allen was recognized to explain this bill and at the conclusion of the explanation, Senator Moore moved to give the bill a "Favorable Report", motion passed. Copy of the Bill and supporting documents included in the minutes.

HB 1289 – 1999 Fee Bill

Representative Luebke was recognized to explain this bill. The following persons spoke on the bill: Don Wall , State Controller's Office; Starla McKinney, Department of Insurance; Dascheil Propes, Department of Insurance and Steve Woods, State Farm Bureau. After the explanation and discussion on the bill, Senator Lee moved to give the bill a "Favorable Report", motion passed. Copy of Bill and supporting documents are included in the minutes.

HB 279 – Township Hospitals

Representative Redwine was recognized to explain this bill and at the conclusion of his explanation, Senator Soles moved to give the bill a "Favorable Report", motion passed. Copy of Bill and supporting documents are included in the minutes.

HB 222 – Strengthen Littering Law

Senator Kerr was recognized to explain this bill for Representative Mitchell. Senator Kerr moved for adoption of a proposed committee substitute for the purpose of discussion for this bill, motion passed. Senator Kerr explained the bill and after a time of discussion and questions and answers on the bill, Senator Phillips moved to give the committee substitute for the bill a "Favorable Report", motion passed. Copy of Bill and supporting documents are included in the minutes.

Meeting adjourned.

David W. Hoyle, Co-Chair

John H. Kerr, III Co-Chair

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

Visitors' Sign Up Sheet is Attachment #1
Committee Report dated July 13, 1999 is Attachment #2
Committee Report dated July 14, 1999 is Attachment #3

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 667
Committee Substitute Reported Without Prejudice 7/1/99

Short Title: Roanoke Rapids Annexation. (Local)

Sponsors:

Referred to:

March 29, 1999

A BILL TO BE ENTITLED

AN ACT TO ANNEX CERTAIN DESCRIBED PROPERTY TO THE CITY OF ROANOKE RAPIDS.

The General Assembly of North Carolina enacts:

Section 1. The corporate limits of the City of Roanoke Rapids are extended to include the following described territory:

That certain tract or parcel of land lying and being situated in Roanoke Rapids Township, Halifax County, North Carolina, more particularly described as follows: Beginning at new iron pin, said iron pin being the Southern right-of-way of State Road 1426, the same being in the North-Eastern right-of-way of the access road to Lakeview Plaza Development. Thence leaving said point of beginning along the Southern right-of-way of Bolling Road, State Road 1426, the following courses and distances: N 60°00'42" E chord 118.14'-with a radius of 1,656.45' and an arc of 118.17'-continuing along Bolling Road right-of-way a chord N 62°34'31" E 30.05' with a radius of 1,656.45' and an arc of 30.05' thence leaving the right-of-way of Bolling Road S 30°37'00" E 159.90' to a new 3/4 inch iron pipe, thence S 59°23'00" W. 164.99' to a new 3/4 inch iron pipe, the same being in the Eastern right-of-way of a 45' access drive to Lakeview Plaza Development, thence N 30°, thence along the aforesaid access drive N 30°37'00" W 46', thence N 30°37'39" W 100.03', and thence N 14°26'26" E 23.84' to a new iron pipe (3/4 inches), the same being the point of beginning. Said tract or parcel of land containing approximately 26,675 square feet. See plat Cabinet 4 Slide 44A and 44B for the original map showing a part of the foregoing described tract or parcel of land. The foregoing description contains the

description of the parcel of land purchased by the Grantee as per Deed recorded in Book 1733 page 354 and Deed recorded in Book 1467 page 568. The foregoing parcel of land excludes the parcel of land acquired by the Department of Transportation from the Savings Bank as per F.A. project-STP-1426 [1] also known as State Highway Project 8.2300601. Said deed is recorded in Book 1732 page 086, Halifax Public Registry.

Section 2. Real and personal property in the territory annexed pursuant to this act is subject to municipal taxes as provided in G.S. 160A-58.10.

Section 3. This act becomes effective September 30, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1471

Short Title: Adjust Highway Bond Maturity. (Public)

Sponsors: Representative Crawford.

Referred to: Finance.

May 13, 1999

A BILL TO BE ENTITLED

AN ACT TO ADJUST THE MATURITY DATE OF THE 1996 HIGHWAY BONDS TO REFLECT A CHANGE IN THE ESTIMATED COMPLETION DATE OF HIGHWAY TRUST FUND PROJECTS.

The General Assembly of North Carolina enacts:

Section 1. The General Assembly finds that:

(1) The State Highway Bond Act of 1996 provided, subject to a vote of the qualified voters of the State, for the issuance of nine hundred fifty million dollars ($950,000,000) general obligation bonds of the State for certain highway purposes.

(2) These bonds were approved by the voters.

(3) The State Highway Bond Act of 1996 stated that the bonds could be used to expedite the completion of certain highway projects that would otherwise be funded from the Highway Trust Fund only when sufficient revenues were generated.

(4) The State Highway Bond Act of 1996 also stated the intent of the General Assembly that the debt service on the bonds be paid for with the revenues that would otherwise be deposited to the Highway Trust Fund to fund highway construction.

(5) The State Highway Bond Act of 1996 recognized that these revenues would be available only until the Highway Trust Fund sunset upon completion of the highway construction it funds, estimated to occur at the end of 2013, and thus required that the bonds must mature not later than that date.

(6) Since 1996, it has been determined that the Highway Trust Fund construction projects will not be completed by 2013 but instead could take until at least 2020.

(7) Accordingly, the 2013 deadline set for the maturity of the highway bonds is no longer appropriate, and should be extended to the current estimated date for completion of Highway Trust Fund projects, which is 2020.

Section 2. Section 2(b) of Chapter 590 of the 1995 Session Laws (1996) reads as rewritten:

"(b) Findings and determinations. -- The General Assembly finds that:

(1) Pursuant to Chapter 692 of the 1989 Session Laws, the General Assembly created the Highway Trust Fund, provided for revenues to be deposited to the Highway Trust Fund, and designated how the revenues may be expended.

(2) As contemplated by Chapter 692, highway construction to be funded from the Highway Trust Fund is funded on a "pay-as-you-go" basis, with highway construction proceeding based upon the amount of funds to be available to pay the costs of the construction on a current basis, and this highway construction is expected to be completed and funded by December 31, ~~2013.~~ 2020.

(3) Providing funds from the proceeds of bonds as authorized in this act will expedite the completion of construction of urban loops, Intrastate System highways, and necessary improvements to the State secondary road highway system that otherwise would be constructed only when sufficient revenues were generated to fund this construction.

(4) The State could issue the bonds authorized by this act, expediting this construction, and could provide sufficient funds to pay debt service on the bonds from the moneys otherwise to be deposited to the Highway Trust Fund to fund highway construction.

(5) Sufficient moneys are expected to be deposited to the Highway Trust Fund to pay anticipated debt service on the bonds authorized by this act.

(6) Although the bonds authorized by this act will constitute general obligation bonds, secured by the faith and credit and taxing power of the State, and although the funds deposited to the Highway Trust Fund are not specifically pledged to pay debt service on the bonds, it is the intent of the General Assembly that the debt service on the bonds authorized by this act will be provided from amounts deposited to the Highway Trust Fund, and certain amendments to Chapter 692 of the 1989 Session Laws are necessary to facilitate this funding of payments."

Section 3. Section 10(a) of Chapter 590 of the 1995 Session Laws (1996) reads as rewritten:

"(a) Terms and conditions. Bonds or notes may bear such date or dates, may be serial or term bonds or notes, or any combination thereof, may mature in such amounts and at such time or times, not later than December 1, ~~2013,~~ 2020, may be payable at such place or places, either within or without the United States of America, in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts, may bear interest at such rate or rates, which may vary from time to time, and may be made redeemable before maturity, at the option of the State or otherwise as may be provided by the State, at such price or prices, including a price less than the face amount of the bonds or notes, and under such terms and conditions, all as may be determined by the State Treasurer, by and with the consent of the Council of State."

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

HOUSE BILL 1471:
Adjust Highway Bond Maturity

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Rep. Crawford
Date:	July 12, 1999	**Summary by:**	Martha K. Walston
Version:	First Edition		Committee Counsel

SUMMARY: ***House Bill 1471 extends the maturity date of the 1996 Highway Bonds from 2013 to 2020 to reflect the change in the estimated completion date of Highway trust Fund Projects. The bill is effective when it becomes law. House Bill 1471 was given a favorable report in House Finance.***

CURRENT LAW: The State Highway Bond Act of 1996, as voted on by the people, provided for the issuance of $950 million of general obligation bonds for certain highway purposes. These bonds could be used to expedite the completion of certain highway projects that would otherwise be funded from the Highway Trust Fund only when sufficient revenues were generated. It was the intent that the debt service on these bonds be paid for with the revenues that would otherwise be deposited to the Highway Trust Fund to fund highway construction. These revenues would only be available until the Highway Trust Fund sunset upon completion of the highway construction it funds. This completion was estimated to occur at the end of 2013.

It has been determined that the Highway Trust Fund construction projects will not be completed by 2013 but could take until at least 2020.

BILL ANALYSIS: House Bill extends the maturity date of the State highway bonds from 2013 to 2020 and amends the State Bond Highway Act of 1996 to reflect this new estimated date for completion of the projects and payment of the bonds.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 1098
Committee Substitute Favorable 6/14/99

Short Title: Strengthen Sedimentation Act. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE SEDIMENTATION POLLUTION CONTROL ACT OF 1973 AND TO REQUIRE THAT THE EXAMINATION FOR A GENERAL CONTRACTOR'S LICENSE INCLUDE QUESTIONS THAT TEST AN APPLICANT'S KNOWLEDGE OF THE REQUIREMENTS OF THE SEDIMENTATION POLLUTION CONTROL ACT OF 1973.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113A-54.1 reads as rewritten:

"**§ 113A-54.1. Approval of erosion control plans.**

(a) A draft erosion control plan must contain the applicant's address and, if the applicant is not a resident of North Carolina, designate a North Carolina agent for the purpose of receiving notice from the Commission or the Secretary of compliance or noncompliance with the plan, this Article, or any rules adopted pursuant to this Article. The Commission shall approve, approve with modifications, or disapprove a draft erosion control plan for those land-disturbing activities for which prior plan approval is required within 30 days of receipt. The Commission shall condition approval of a draft erosion control plan upon the applicant's compliance with federal and State water quality laws, regulations, and rules. Failure to approve, approve with modifications, or disapprove a completed draft erosion control plan within 30 days of receipt shall be deemed approval of the plan. If the Commission disapproves a draft erosion control plan or a revised erosion control plan, it must state in writing the specific reasons that the plan was disapproved. Failure to approve, approve with modifications, or disapprove a revised erosion control plan within 15 days of receipt

shall be deemed approval of the plan. The Commission may establish an expiration date for erosion control plans approved under this Article.

(b) If, following commencement of a land-disturbing activity pursuant to an approved erosion control plan, the Commission determines that the plan is inadequate to meet the requirements of this Article, the Commission may require any revision of the plan that is necessary to comply with this Article. Failure to approve, approve with modifications, or disapprove a revised erosion control plan within 15 days of receipt shall be deemed approval of the plan.

(c) The ~~Director of the Division of Land Resources~~ Commission shall disapprove an erosion control plan if ~~the plan, when implemented,~~ implementation of the plan would result in a violation of rules adopted by the Environmental Management Commission to protect riparian buffers along surface waters. The Director of the Division of Land Resources may disapprove an erosion control plan upon finding that an applicant or a parent, subsidiary, or other affiliate of the applicant:

(1) Is conducting or has conducted land-disturbing activity without an approved plan, or has received notice of violation of a plan previously approved by the Commission or a local government pursuant to this Article and has not complied with the notice within the time specified in the notice;

(2) Has failed to pay a civil penalty assessed pursuant to this Article or a local ordinance adopted pursuant to this Article by the time the payment is due;

(3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to this Article; or

(4) Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to this Article.

(d) In the event that an erosion control plan is disapproved by the Director pursuant to subsection (c) of this section, the Director shall state in writing the specific reasons that the plan was disapproved. The applicant may appeal the Director's disapproval of the plan to the Commission. For purposes of this subsection and subsection (c) of this section, an applicant's record may be considered for only the two years prior to the application date."

Section 2. G.S. 113A-57(4) reads as rewritten:

"(4) No person shall initiate any land-disturbing activity on a tract if more than one acre is to be uncovered unless, 30 or more days prior to initiating the activity, an erosion and sedimentation control plan for such activity is filed with the agency having jurisdiction. The agency having jurisdiction shall forward to the Director of the Division of Water Quality a copy of each erosion and sedimentation control plan for a land-disturbing activity that involves the utilization of ditches for the purpose of de-watering or lowering the water table of the tract."

Section 3. G.S. 113A-61(b1) reads as rewritten:

"(b1) A local government shall condition approval of a draft erosion control plan upon the applicant's compliance with federal and State water quality laws, regulations, and rules. A local government shall disapprove an erosion control plan if ~~the plan, when implemented,~~ implementation of the plan would result in a violation of rules adopted by the Environmental Management Commission to protect riparian buffers along surface waters. A local government may disapprove an erosion control plan upon finding that an applicant or a parent, subsidiary, or other affiliate of the applicant:

(1) Is conducting or has conducted land-disturbing activity without an approved plan, or has received notice of violation of a plan previously approved by the Commission or a local government pursuant to this Article and has not complied with the notice within the time specified in the notice;

(2) Has failed to pay a civil penalty assessed pursuant to this Article or a local ordinance adopted pursuant to this Article by the time the payment is due;

(3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to this Article; or

(4) Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to this Article."

Section 4. G.S. 113A-64(a) reads as rewritten:

"(a) Civil Penalties. --

(1) Any person who violates any of the provisions of this Article or any ordinance, rule, or order adopted or issued pursuant to this Article by the Commission or by a local government, or who initiates or continues a land-disturbing activity for which an erosion control plan is required except in accordance with the terms, conditions, and provisions of an approved plan, is subject to a civil penalty. The maximum civil penalty for a ~~violation, other than a violation of a stop-work order issued under G.S. 113A-65.1, is five hundred dollars ($500.00). The maximum civil penalty for a violation of a stop-work order~~ violation is five thousand dollars ($5,000). ~~No penalty shall be assessed until the person alleged to be in violation has been notified of the violation as provided in G.S. 113A-61.1(b).~~ A civil penalty may be assessed from the date ~~the notice of violation is served.~~ of the violation. Each day of a continuing violation shall constitute a separate violation.

(2) The Secretary or a local government that administers an erosion and sediment control program approved under G.S. 113A-60 shall determine the amount of the civil penalty and shall notify the person who is assessed the civil penalty of the amount of the penalty and the reason for assessing the penalty. The notice of assessment shall be served by any means authorized under G.S.

1A-1, Rule 4, and shall direct the violator to either pay the assessment or contest the assessment within 30 days by filing a petition for a contested case under Article 3 of Chapter 150B of the General Statutes. If a violator does not pay a civil penalty assessed by the Secretary within 30 days after it is due, the Department shall request the Attorney General to institute a civil action to recover the amount of the assessment. If a violator does not pay a civil penalty assessed by a local government within 30 days after it is due, the local government may institute a civil action to recover the amount of the assessment. The civil action may be brought in the superior court of any county where the violation occurred or the violator's residence or principal place of business is located. A civil action must be filed within three years of the date the assessment was due. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment.

(3) In determining the amount of the penalty, the Secretary shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the violator saved by noncompliance, whether the violation was committed willfully and the prior record of the violator in complying or failing to comply with this Article.

(4) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 776, s. 11.

(5) The clear proceeds of civil penalties collected by the Department or other State agency under this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Civil penalties collected by a local government under this subsection shall be credited to the general fund of the local government as nontax revenue."

Section 5. G.S. 113A-54.2(a) reads as rewritten:

"(a) The Commission may establish a fee schedule for the review and approval of erosion control plans under this Article. In establishing the fee schedule, the Commission shall consider the administrative and personnel costs incurred by the Department for reviewing the plans and for related compliance activities. ~~The total amount of fees collected under this section in any fiscal year may not exceed one-third of the total administrative and personnel costs incurred by the Department for reviewing the plans and for related compliance activities in the prior fiscal year.~~ An application fee may not exceed fifty dollars ($50.00) per acre of disturbed land shown on an erosion control plan or of land actually disturbed during the life of the project."

Section 6. G.S. 113A-61.1(c) reads as rewritten:

"(c) If the Secretary, a local government that administers an erosion and sediment control program approved under G.S. 113A-60, or other approving authority

determines that the person engaged in the land-disturbing activity has failed to comply with this Article, the Secretary, local government, or other approving authority shall immediately serve a notice of violation upon that person. The notice may be served by any means authorized under G.S. 1A-1, Rule 4. A notice of violation shall specify a date by which the person must comply with this Article and inform the person of the actions that need to be taken to comply with this Article. Any person who fails to comply within the time specified is subject to ~~the~~ additional civil and criminal penalties for a continuing violation as provided in G.S. 113A-64."

Section 7. G.S. 87-10(b), as amended by Section 1 of S.L. 1999-123, reads as rewritten:

"(b) The Board shall conduct an examination, either oral or written, of all applicants for license to ~~ascertain~~ ascertain, for the classification of license for which the applicant has applied: (i) the ability of the applicant to make a practical application of ~~his~~ the applicant's knowledge of the profession of ~~contracting,~~ contracting; ~~under the classification contained in the application, and to ascertain~~ (ii) the qualifications of the applicant in reading plans and specifications, knowledge of estimating costs, construction, ~~ethics~~ ethics, and other similar matters pertaining to the contracting ~~business~~ business; (iii) the knowledge of the applicant as to the responsibilities of a contractor to the public and of the requirements of the laws of the State of North Carolina relating to contractors, ~~construction and liens.~~ construction, and liens; and (iv) the applicant's knowledge of requirements of the Sedimentation Pollution Control Act of 1973, Article 4 of Chapter 113A of the General Statutes, and the rules adopted pursuant to that Article. If the results of the examination of the applicant shall be satisfactory to the Board, then the Board shall issue to the applicant a certificate to engage as a general contractor in the State of North Carolina, as provided in said certificate, which may be limited into five classifications as ~~the common use of the terms are known -- that is,~~ follows:

(1) Building contractor, which shall include private, public, commercial, industrial and residential buildings of all ~~types;~~ types.

(1a) Residential contractor, which shall include any general contractor constructing only residences which are required to conform to the residential building code adopted by the Building Code Council pursuant to G.S. ~~143-138;~~ 143-138.

(2) Highway ~~contractor;~~ contractor.

(3) Public utilities contractors, which shall include those whose operations are the performance of construction work on the following subclassifications of facilities:

a. Water and sewer ~~mains and~~ mains, water service ~~lines~~ lines, and house and building sewer lines as defined in the North Carolina State Building Code, and water storage tanks, lift stations, pumping stations, and appurtenances to water storage tanks, lift ~~stations~~ stations, and pumping ~~stations;~~ stations.

b. Water and wastewater treatment facilities and appurtenances ~~thereto;~~ thereto.

c. Electrical power transmission facilities, and primary and secondary distribution facilities ahead of the point of delivery of electric service to the ~~customer;~~ customer.

d. Public communication distribution ~~facilities; and~~ facilities.

e. Natural gas and other petroleum products distribution facilities; provided the General Contractors Licensing Board may issue license to a public utilities contractor limited to any of the above subclassifications for which the general contractor ~~qualifies, and~~ qualifies.

(4) Specialty contractor, which shall include those whose operations as such are the performance of construction work requiring special skill and involving the use of specialized building trades or crafts, but which shall not include any operations now or hereafter under the jurisdiction, for the issuance of license, by any board or commission pursuant to the laws of the State of North Carolina.

(b1) Public utilities contractors constructing water service lines and house and building sewer lines as provided in ~~(3)a above~~ sub-subdivision a. of subdivision (3) of subsection (b) of this section shall terminate said lines at a valve, box, meter, or manhole or cleanout at which the facilities from the building may be connected. Public utilities contractors constructing fire service mains for connection to fire sprinkler systems shall terminate those lines at a flange, cap, plug, or valve inside the building one foot above the finished floor. All fire service mains shall comply with the NFPA standards for fire service mains as incorporated into and made applicable by Volume V of the North Carolina Building Code."

Section 8. This act becomes effective 1 October 1999 and applies to land-disturbing activity that occurs on or after that date.

HOUSE BILL 1098:
Strengthen Sedimentation Act

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Representative Hackney
Date:	July 13, 1999	**Summary by:**	Rick Zechini
Version:	Second Edition		Staff Attorney

SUMMARY: House Bill 1098 amends the Sedimentation Pollution Control Act of 1973 by raising the maximum civil penalty for a violation to $5,000, clarifying when civil penalties may be assessed, removing a cap on the total amount of fees that may be collected in a fiscal year, requiring that erosion control plans for certain types of land-disturbing activities be forwarded to the Division of Water Quality, requiring the State Licensing Board for General Contractors to include questions regarding the Sedimentation Pollution Control Act on the general contractors examination, and requiring applicants for erosion control plans to comply with federal and State water quality laws, regulations, and rules.

CURRENT LAW: The Sedimentation Pollution Control Act (Act) requires a person conducting a land-disturbing activity involving the uncovering of more than one acre to file an erosion control plan at least 30 days prior to initiating the activity. In addition, the Act requires the installation of sedimentation and erosion control devices and practices that are sufficient to retain the sediment generated by the construction within the boundaries of the tract during construction and provide for permanent ground cover after completion of construction.

BILL ANALYSIS: House Bill 1098 raises the maximum civil penalty for a violation of the Act to $5,000. The current maximum civil penalty for a violation of the Act, other than a violation of a stop-work order, is $500. The current maximum civil penalty for a violation of a stop-work order is $5,000. A civil penalty may be assessed for each day of a continuing violation. The bill also clarifies that a person may be assessed a civil penalty from the date of the original violation and may be assessed additional civil penalties for continuing violations. In addition, the bill removes the cap that limits the total amount of fees that may be collected in a fiscal year for the review and approval of erosion control plans to one-third of the total administrative and personnel costs incurred by the Department of Environment and Natural Resources in reviewing the plans and for related compliance activities in the prior fiscal year. The bill provides that the approval of an erosion control plan is conditioned on the applicant's compliance with federal and State water quality laws, regulations, and rules. The bill also adds the requirement that a copy of any erosion control plan for a land-disturbing activity that involves the utilization of ditches for the purpose of de-watering or lowering the water table be forwarded to the Director of the Division of Water Quality. Furthermore, the bill adds the requirement that the State Licensing Board for General Contractors is to include questions on the Sedimentation Pollution Control Act and the rules adopted pursuant to the Act on the general contractors examination.

EFFECTIVE DATE: The act becomes effective October 1, 1999, and applies to land-disturbing activity that occurs on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: H.B. 1098 - Sedimentation Control Act Amendments

SHORT TITLE: Sedimentation Control Act Amendments

SPONSOR(S): Rep. Joe Hackney

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
DENR Special Acct.	*** Minimum Revenue Increase of $869,000 ***				
	*** See Assumptions and Methodology ***				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: The Department of Environment and Natural Resources, Land Resource Division and the North Carolina General Contractors Licensing Board.

EFFECTIVE DATE: October 1, 1999 and applies to land-disturbing activity that occurs on or after that date.

BILL SUMMARY: The bill makes several changes to the existing Sedimentation Control Act of 1973. The Sedimentation Control Act requires that a person conducting a land disturbing activity involving the uncovering of more than one acre to file an erosion control plan at least 30 days in advance. It also outlines several erosion and sedimentation limitation practices and devises that must be used during construction and after the project is completed. The bill raises the maximum civil penalty for a violation of the act to $5,000. It also clarifies that the penalty can be assessed from the date of the original violation and that additional penalties can apply for continued violations. The bill also removes the cap on the total amount of fees collected under this program. The bill also clarifies that a plan approval is conditional on the applicant's compliance with federal and state laws, regulations and rules. The legislation also states that certain types of erosion control plans must be forwarded to the Division of Water Quality. Finally, the bill mandates that questions on the Sedimentation Control Act be included on the general contractors licensing exam.

ASSUMPTIONS AND METHODOLOGY: There are three potential fiscal impacts to the bill. First, the bill increases the maximum civil penalty for a violation of the Sedimentation Control Act to $5,000. The current maximum charge is $500. The Division of Land Resources estimates that in FY 1996-97 forty (40) cases were referred to enforcement. In FY 1997-98 that

number increased to seventy-four (74). The Division reports that very few violators were actually charged the maximum per day penalty of $500. In FY 1996-97 there were three cases where civil penalties of $500 per day were charged. In FY 1997-98 there were four such cases. The Division can not effectively estimate the how often they would charge the new maximum per day penalty of $5,000. Therefore, while there could be a small revenue increase as a result of this portion of the bill, an accurate fiscal estimate is not possible.

The second potential fiscal impact relates to removing the fee cap. Currently the Department can not charge more than $50 per acre. Also, the total amount collected can not excess 1/3 of the administrative and personnel costs associated with the program in the previous fiscal year. The Division of Land Resources reports that 1/3 cap is the true constraint. The current per acre fee is now approximately $20. If the 1/3 expenditure cap were removed, the Division could increase its fee to as much as $50. In FY 1996-97 the Division collected $515,031 in per acre fees. In 1997-98 that amount increased to $580,565. These numbers suggest that fees were charged on approximately 29,000 acres in FY 1997-98. Assuming the Division increased the fee to $50, and the number of acres included remained at approximately 29,000, the fee revenue will increase to approximately $1,450,00. This is an increase of approximately $869,435. These funds are deposited in a special non-reverting account in the Department of Environment and Natural Resources and are used to offset the cost of the sedimentation program.

The third potential impact relates to changes in the general contractor's exam. The bill requires that the general contractor exam be modified to include questions about the Sedimentation Control Act. The Department of Insurance staffs the General Contractor's Licensing Board. Because the Division of Land Resources in DENR has agreed to write the questions, the cost to the Department of Insurance should be minimal.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Linda Struyk Millsaps

APPROVED BY: Tom Covington

DATE: Monday, June 28, 1999

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 1233
Committee Substitute Favorable 6/29/99

Short Title: Structural Pest Control Amendments. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE STRUCTURAL PEST CONTROL ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 106-65.23 reads as rewritten:

"**§ 106-65.23. Structural Pest Control Division of Department of Agriculture and Consumer Services recreated; Director; powers and duties of Commissioner; Structural Pest Control Committee created; appointment; terms; powers and duties; quorum.**

(a) There is recreated, within the North Carolina Department of Agriculture and Consumer Services, a Division to be known as the Structural Pest Control Division. The Commissioner of Agriculture may appoint a Director of the ~~Division~~ Division, chosen from a list of nominees submitted to him by the Structural Pest Control Committee created in this section, whose duties and authority shall be determined by the ~~Commissioner.~~ Commissioner in consultation with the Committee. The Director shall be responsible for and answerable to the Commissioner of Agriculture and the Structural Pest Control Committee as to the operation and conduct of the Structural Pest Control Division. The Director shall act as secretary to the Structural Pest Control ~~Committee created in this section.~~ Committee.

(b) The Commissioner shall have the following powers and duties under this Article:

(1) To administer and enforce the provisions of this Article and the rules adopted thereunder by the Structural Pest Control Committee. In order to carry out these powers and duties, the Commissioner may delegate to the Director of the Structural Pest

Control Division the powers and duties assigned to him under this Article.

(2) To assign the administrative and enforcement duties assigned to him in this Article.

(3) To direct, in consultation with the Structural Pest Control Committee, the work of the personnel employed by the Structural Pest Control Committee and the work of the personnel of the Department assigned to perform the administrative and enforcement functions of this Article.

(4) To develop, for the Structural Pest Control Committee's consideration for adoption, proposed rules, policies, new programs, and revisions of existing programs under this Article.

(5) To monitor existing enforcement programs and to provide evaluations of these programs to the Structural Pest Control Committee.

(6) To attend all meetings of the Structural Pest Control Committee, but without the power to vote unless the Commissioner attends as the designee on the Committee from the Department of Agriculture and Consumer Services.

(7) To keep an accurate and complete record of all meetings of the Structural Pest Control Committee and to have legal custody of all books, papers, documents, and other records of the Committee.

(8) To perform such other duties as may be assigned to him by the Structural Pest Control Committee.

(c) There is hereby created a Structural Pest Control Committee to be composed of the following members. The Commissioner shall appoint one member of the Committee who is not in the structural pest control business for a four-year term. The Commissioner of Agriculture shall designate an employee of the Department of Agriculture and Consumer Services to serve on the Committee at the pleasure of the Commissioner. The dean of the School of Agriculture of North Carolina State University at Raleigh shall appoint one member of the Committee who shall serve for one term of two years and who shall be a member of the entomology faculty of the University. The vacancy occurring on the Committee by the expired term of the member from the entomology faculty of the University shall be filled by the dean of the School of Agriculture of North Carolina State University at Raleigh who shall designate any person of the dean's choice from the entomology faculty of the University to serve on the Committee at the pleasure of the dean. The Secretary of Health and Human Services shall appoint one member of the Committee who shall be an epidemologist and who shall serve at the pleasure of the Secretary. The Governor shall appoint two members of the Committee who are actively engaged in the pest control industry, who are licensed in at least two phases of structural pest control as provided under G.S. 106-65.25(a), and who are residents of the State of North Carolina but not affiliates of the same company.

One member of the Committee shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, and one member of the Committee shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. Vacancies in such appointments shall be filled in accordance with G.S. 120-122.

The initial Committee members from the pest control industry shall be appointed as follows: one for a two-year term and one for a three-year term. The Governor shall appoint one member of the Committee who is a public member and who is unaffiliated with the structural pest control industry, the pesticide industry, the Department of Agriculture and Consumer Services, the Department of Health and Human Services and the School of Agriculture at North Carolina State University at Raleigh. The initial public member shall be appointed for a term of two years, commencing July 1, 1991. After the initial appointments by the Governor, all ensuing appointments by the Governor shall be for terms of four years. Appointments made by the General Assembly shall be for terms of two years. Any vacancy occurring on the Committee by reason of death, resignation, or otherwise shall be filled by the Governor or the Commissioner of Agriculture, as the case may be, for the unexpired term of the member whose seat is vacant.

(d) The Structural Pest Control Committee shall have the following powers and duties:

(1) To adopt rules and make policies as provided in this Article.

(2) To issue, deny, suspend, revoke, modify, or restrict licenses, certified applicator cards, and registered technician cards under the provisions of this Article. In all matters affecting licensure, the decision of the Committee shall constitute the final agency decision.

~~make final decisions under this Article concerning licenses, certified applicator cards, and identification cards. The Committee shall~~

(3) To report annually to the Board of Agriculture the action taken in the Committee's final decisions and the financial status of the Structural Pest Control Division.

~~The Director shall be responsible for and answerable to the Commissioner of Agriculture as to the operation and conduct of the Structural Pest Control Division.~~

(e) Each member of the Committee who is not an employee of the State shall receive as compensation for services per diem and necessary travel expenses and registration fees in accordance with the provisions as outlined for members of occupational licensing boards and currently provided for in G.S. 93B-5. Such per diem and necessary travel expenses and registration fees shall apply to the same effect that G.S. 93B-5 might hereafter be amended.

Five members of the Committee shall constitute a quorum but no action at any meeting of the Committee shall be taken without four votes in accord. The chairman shall be entitled to vote at all times.

The Committee shall meet at such times and such places in North Carolina as the chairman shall direct; provided, however, that four members of the Committee may call a special meeting of the Committee on five days' notice to the other members thereof.

Except as otherwise provided herein, all members of the Committee shall be appointed or designated, as the case may be, prior to and shall commence their respective terms on July 1, 1967.

At the first meeting of the Committee they shall elect a chairman who shall serve as such at the pleasure of the Committee.

Section 2. G.S. 106-65.24 reads as rewritten:

"**§ 106-65.24. Definitions.**

~~For the purposes of this Article, the following terms, when used in the Article or the rules and regulations, or orders made pursuant thereto, shall be construed respectively to mean:~~ As used in this Article:

(1) 'Animal' means all vertebrate and invertebrate species, including but not limited to man and other mammals, birds, fish, and shellfish.

(1a) 'Applicant for a certified applicator's identification card' means any person making application to use restricted use pesticides in any phase of structural pest control.

(2) 'Applicant for a license' means any person in charge of any individual, firm, partnership, corporation, association, or any other organization or any combination thereof, making application for a license to engage in structural pest control, control of structural pests or household pests, or fumigation operations, or any person qualified under the terms of this Article.

(3) 'Attractants' means substances, under whatever name known, which may be toxic to insects and other pests but are used primarily to induce insects and other pests to eat poisoned baits or to enter traps.

(3a) Repealed by Session Laws 1989, c. 725.

(3b) 'Branch Office' means any office under the management of a licensee that is not a home office. ~~'Call office' means any office or telephone answering service other than a licensee's home office which is used by a licensee to conduct structural pest control work and which employs no more than one individual engaged in structural pest control work.~~

(4) 'Certified applicator' means any individual who is certified under G.S. 106-65.25 as authorized to use or supervise the use of any pesticide which is classified for restricted use.

(5) 'Commissioner' means the Commissioner of Agriculture of the State of North Carolina.

(6) 'Committee' means the Structural Pest Control Committee.

(6a) 'Deviation' means failure of the licensee or certified applicator or registered technician card holder to follow any rule adopted by the Committee under provisions of this Article.

(7) 'Device' means any instrument or contrivance (other than a firearm) which is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than bacteria, virus, or other microorganism on or in living man or other living animals); but not including equipment used for the application of pesticides when sold separately therefrom.

(8) Repealed by Session Laws 1975, c. 570, s. 4.

(8a) 'Director' means the Director of the Structural Pest Control Division of the Department of Agriculture and Consumer Services.

(9) 'Employee' means any person employed by a licensee with the exceptions of clerical, janitorial, or office maintenance employees, or those employees performing work completely disassociated with the control of insect pests, rodents or the control of wood-destroying organisms.

(9a) 'Enforcement agency' means the Structural Pest Control Division of the Department of Agriculture and Consumer Services.

(10) 'Fumigants' means any substance which by itself or in combination with any other substance emits or liberates a gas or gases, fumes or vapors and which gas or gases, fumes or vapors when liberated and when used will destroy vermin, rodents, insects, and other pests; but may be lethal, poisonous, noxious, or dangerous to human life.

(11) 'Fungi' means wood-decaying fungi.

(11a) 'Home office' means the ~~licensee's principal place of business.~~ office identified to the enforcement agency by a licensee as his or her principal place of business.

(12) 'Insect' means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class Insects, comprising six-legged, usually winged forms, as for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as for example, spiders, mites, ticks, centipedes, and sowbugs.

(13) 'Insecticides' means substances, not fumigants, under whatever name known, used for the destruction or control of insects and similar pests.

(14) 'Label' means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.

(14a) The term 'labeling' means all labels and other written, printed, or graphic matter:

a. Upon the pesticide (or device) or any of its containers or wrappers;
b. Accompanying the pesticide (or device) at any time;
c. To which reference is made on the label or in literature accompanying the pesticide (or device) except when accurate nonmisleading reference is made to current official publications of the United States Department of Agriculture or Interior, the United States Public Health Service, state experiment stations, state agricultural colleges, or other similar federal institutions or official agencies of this State or other states authorized by the law to conduct research in the field of pesticides.

(15) 'Licensee' means ~~the designated person in charge of the business establishment or business entity, whether it be individual, firm, partnership, corporation, association or any organization, or any combination thereof, engaged in pest control work covered under the provisions of this Article. Each branch office of a business establishment is to be in charge of a person who has a license herein provided for.~~ any person qualified for and holding a license for any phase of structural pest control pursuant to this Article.

(16) 'Person' means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

(17) 'Pest' means any living organism, including but not limited to, insects, rodents, birds, and fungi, which the Commissioner declares to be a pest.

(18) 'Pesticide' means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest.

(19) 'Registered pesticide' means a pesticide which has been registered by federal and/or State agency responsible for registering pesticides.

(19a) 'Registered technician' means any individual who is required to be registered with the Structural Pest Control Division under G.S. 106-65.31.

(20) 'Repellents' means substances, not fumigants, under whatever name known, which may be toxic to insects and related pests, but are generally employed because of capacity for preventing the entrance or attack of pests.

(21) 'Restricted use pesticide' means a pesticide which has been designated as such by the federal and/or State agency responsible for registering pesticides.

(22) 'Rodenticides' means substances, not fumigants, under whatever name known, whether poisonous or otherwise, used for the destruction or control of rodents.

(23) 'Structural pest control' means the control of wood-destroying organisms or household pests (including, but not limited to, animals such as moths, cockroaches, ants, beetles, flies, mosquitoes, ticks, wasps, bees, fleas, mites, silverfish, millipedes, centipedes, sowbugs, crickets, termites, wood borers, etc.), including the identification of infestations or infections, the making of inspections, the use of pesticides, including insecticides, repellents, attractants, rodenticides, fungicides, and fumigants, as well as all other substances, mechanical devices or structural modifications under whatever name known, for the purpose of preventing, controlling and eradicating insects, vermin, rodents and other pests in household structures, commercial buildings, and other structures (including household structures, commercial buildings and other structures in all stages of construction), and outside areas, as well as all phases of fumigation, including treatment of products by vacuum fumigation, and the fumigation of railroad cars, trucks, ships, and airplanes, or any one or any combination thereof.

(24) 'Under the direct supervision of a certified applicator' means, unless otherwise prescribed by its labeling, a pesticide shall be considered to be applied under the direct supervision of a certified applicator if it is applied by a competent person acting under the instructions and control of a certified applicator who is available if and when needed, even though such certified applicator is not physically present at the time and place the pesticide is applied."

Section 3. G.S. 106-65.25 reads as rewritten:

"**§ 106-65.25. Phases of structural pest control; prohibited acts; license required; exceptions.**

(a) The Committee shall classify license phases to be issued under this Article. Separate phases or subphases shall be specified for:

(1) Control of household pests by any method other than fumigation ('P' phase);

(2) Control of wood-destroying organisms by any method other than fumigation ('W' phase); and

(3) Fumigation ('F' phase).

(b) It shall be unlawful for any person ~~to act in the capacity of a structural pest control licensee,~~ to:

(1) ~~advertise~~ Advertise as, offer to engage in, or engage in or supervise work as a manager, owner, or owner-operator in any phase of structural pest control or otherwise act in the capacity of a structural pest control licensee unless ~~he~~ the person is licensed ~~as provided for in~~ pursuant to this ~~Article.~~ Article or has engaged the services of a licensee as a full-time regular employee who is responsible for the structural pest control performed by the

company. A license is required for each phase of structural pest control. ~~No person may hold~~

(2) Hold more than one license for each ~~phase.~~ phase of structural pest control. ~~The licensee shall be responsible for the supervision of the work performed under his license.~~

(3) Use a restricted use pesticide in any phase of structural pest control, whether it be on the person's own property or on the property of another, unless the person:

a. Qualifies as a certified applicator for that phase of structural pest control; or

b. Is under the direct supervision of a certified applicator who possesses a valid certified applicator's identification card for that phase of structural pest control.

(4) Use or supervise the use of restricted use pesticides in demonstrating or supervising a demonstration to the public of the proper use and techniques of the application of pesticides or conducting field research with pesticides unless:

a. The person possesses a valid certified applicator's identification card;

b. The person is conducting laboratory research involving restricted use pesticides; or

c. The person is a doctor of medicine or a doctor of veterinary medicine applying restricted use pesticides as drugs or medication during the course of his or her normal professional practice.

This subdivision applies to all persons, including cooperative extension specialists demonstrating pesticide products, individuals demonstrating methods used in public programs, and local, State, federal, commercial, and other persons conducting field research on or using restricted use pesticides.

(c) ~~A licensee may not establish any office other than his home office from which more than one employee is performing structural pest control work unless a separate licensee is placed in charge of that office.~~ It shall be unlawful for any licensee to do any of the following:

(1) Establish, be in charge of, or manage any branch office in excess of the number of branch offices that may be established, supervised, or managed by a licensee as set forth in rules adopted by the Committee.

(2) Fail to supervise the structural pest control performed out of the licensee's home office or any branch office under the licensee's management.

(3) Allow his or her license to be used by any person or company for which he or she is not a full-time regular employee actively and

personally engaged in the supervision of the structural pest control performed under the license.

(4) Use any pesticide, material, or device prohibited by the Committee or use any approved pesticide, material, or device in a manner prohibited by the Committee.

(5) Use or supervise the use of restricted use pesticides in a phase of structural pest control for which the person is not licensed or qualified as a certified applicator unless the person's use is under the supervision of a licensee or certified applicator certified in that phase of structural pest control.

(c1) The Committee shall adopt rules that permit a licensee to establish branch offices in addition to a home office. In no event shall the rules adopted restrict the number of branch offices a licensee can establish, supervise, or manage to fewer than two branch offices. The rules shall include provisions to ensure that the licensee can adequately supervise all structural pest control performed from the offices and under his or her license.

(d) A license is not required for any person (or ~~his~~ the person's full-time regular employees) doing structural pest control ~~work~~ on ~~his~~ the person's own ~~property: provided, however, that no~~ property. No fee may be charged for structural pest control ~~work~~ performed by any such person.

~~(e) Any person who uses a restricted use pesticide in any phase of structural pest control, whether it be on his own property or on the property of another, must:~~

~~(1) Qualify as a certified applicator for that phase of structural pest control; or~~

~~(2) Be under the direct supervision of a certified applicator possessing a valid identification card for that phase of structural pest control.~~

~~(f) Persons who demonstrate to the public the proper use and techniques of application of pesticides or supervise such demonstration or conduct field research with pesticides, and in doing so, use or supervise the use of restricted use pesticides must possess a valid certified applicator's identification card. Included in the first group are such persons as extension representatives demonstrating pesticide products and those individuals demonstrating methods used on public programs. The second group includes local, State, federal, commercial, and other persons conducting field research on or utilizing restricted use pesticides.~~

~~This subsection does not apply to the following persons:~~

~~(1) Persons conducting laboratory-type research involving restricted use pesticides; or~~

~~(2) Doctors of medicine and doctors of veterinary medicine applying restricted use pesticides as drugs or medication during the course of their normal practice.~~

(g) Any person issued a license for any one or any combination of the phases of structural pest control shall be deemed to be a 'certified applicator' to use or supervise the use of restricted use pesticides so long as the pesticides are being used only in the ~~phase(s)~~ phase of structural pest control for which the person is licensed.

(h) Licenses and certified applicator's identification cards may only be issued to individuals. License certificates and certified applicator's identification cards shall be issued in the name of the individual, shall bear the name and address of ~~his~~ the individual's business or employer's business and shall indicate the phase or phases for which the individual is qualified and such other information as the Committee may specify."

Section 4. G.S. 106-65.26(d) reads as rewritten:

"(d) All applicants for license must have practical experience and knowledge of practical and scientific facts underlying the practice of structural pest control, control of wood-destroying ~~organisms~~ organisms, or fumigation. ~~No person who has within five years of his application been convicted of or has entered a plea of guilty or a plea of nolo contendere to a crime involving moral turpitude, or who has forfeited bond to a charge involving moral turpitude, shall be entitled to take an examination or the issuance of a license under the provisions of this Article.~~ No applicant is entitled to take an examination for the issuance of a license pursuant to this Article who has within five years of the date of application been convicted, entered a plea of guilty or of nolo contendre, or forfeited bond in any State or federal court for a violation of G.S. 106-65.25(b), any felony, or any crime involving moral turpitude."

Section 5. G.S. 106-65.27(c1) reads as rewritten:

"(c1) When there is a transfer of ownership, management, operation of a structural pest control business or in the event of the death or disability of a licensee there shall be not more than a total of 90 days during any 12-month period in which said business shall operate without a licensee assigned to ~~it.~~ it; provided that, in the event of the death or disability of a licensee, the Committee shall have the authority to grant up to an additional 90 days within the 12-month period in which a business may operate without a licensee assigned to it.

The owner, partnership, corporation, or other entity operating said business shall, within 10 days of such transfer or disability or within 30 days of death, designate in writing to the Division a certified applicator who shall be responsible for and in charge of the structural pest control operations of said business during the 90-day period. If the owner, partnership, corporation, or other entity operating the business fails to designate a certified applicator who shall be responsible for the operation of the business during the 90-day period, the business shall cease all structural pest control activities upon expiration of the applicable notification period and shall not resume operations until a certified applicator is so designated.

During the 90-day period the use of any restricted use pesticide shall be by or under the direct supervision of the certified applicator designated in writing to the Division. The designated certified applicator shall be responsible for correcting all deviations on all existing contracts and for all work performed under his supervision.

The new licensee shall be responsible for correcting all deviations on all existing contracts and for all work performed under his supervision."

Section 6. G.S. 106-65.28 is amended by adding a new subsection to read:

"(g) Any pesticide, material, or device for which such information is requested by the Committee pursuant to G.S. 106-65.29(9a) and denied by the registrant or manufacturer shall not be used in any structural pest control performed for compensation and may only be used by an individual performing structural pest control on the individual's own property."

Section 7. G.S. 106-65.29 reads as rewritten:

"**§ 106-65.29. Rules and regulations.**

In order to ensure that persons licensed and certified under this Article are capable of performing a high quality of workmanship, the Committee ~~is hereby authorized and empowered to make~~ may adopt rules ~~and regulations~~ with respect to:

(1) The amount and kind of training required of an applicant for a license and certified applicator's card to engage in any one or more of the three phases of structural pest control, and the amount and kind of training required of an applicant for a registered technician's identification card.

(2) The type, frequency and passing score of any examination given an applicant for a license and certified applicator's card under this Article.

(3) The amount, kind and frequency of continuing education required of a licensee and certified applicator.

(4) The methods and materials to be used in performing any work authorized by the issuance of a license and certified applicator's card under this Article.

(5) The business records to be made and maintained by licensees and certified applicators under this Article necessary for the Committee to determine whether the licensee and certified applicator is performing a high quality of workmanship.

(6) The credentials and identification required of licensees and certified applicators, their employees and equipment, including service vehicles, when engaged in any work defined under this Article.

(7) Safety methods and procedures for structural pest control work.

(8) Fees for reinspection following a finding of a deviation, as defined by the Committee.

(9) Fees for training materials provided by the Committee or the Division. Such fees may be placed in a revolving fund to be used for training and continuing education purposes and shall not revert to the General Fund.

(9a) Efficacy data and other technical information to be submitted by registrants and manufacturers of pesticides and other materials or devices for review and approval, in order for the Committee and the enforcement agency to ensure the efficacy of pesticides and other materials or devices used in structural pest control in this State. This subdivision does not require either the Committee or

the enforcement agency to disclose any information that is confidential information within the meaning of G.S. 132-1.2.

(10) The policies and programs set forth in this Article."

Section 8. G.S. 106-65.30 reads as rewritten:

"**§ 106-65.30. Inspectors; inspections and reports of violations; designation of resident agent.**

(a) For the enforcement of the provisions of this Article the Commissioner is authorized to appoint one or more qualified inspectors and such other employees as are necessary in order to carry out and enforce the provisions of this Article. The inspectors shall be known as "structural pest control inspectors." The Commissioner ~~shall~~ may enforce compliance with the provisions of this Article by making or causing to be made periodical and unannounced inspections of work done by licensees and certified applicators under this Article who engage in or supervise any one or more phases of structural pest control as defined in G.S. 106-65.25. The Commissioner shall cause the prompt and diligent investigation of all reports of violations of the provisions of this Article and all rules and regulations adopted pursuant to the provisions hereof; provided, however, no inspection shall be made by a representative of the Commissioner of any property without first securing the permission of the owner or occupant thereof.

(b) Prior to the issuance or renewal of a license or certified applicator's identification card, every nonresident owner of a business performing any phase of structural pest control work shall designate in writing to the Commissioner or his authorized agent a resident agent upon whom service of notice or process may be made to enforce the provisions of this Article and rules and regulations adopted pursuant to the provisions hereof or any civil or criminal liabilities arising hereunder.

(c) The Commissioner shall have authority to appoint personnel of the Structural Pest Control Division as special inspectors and said special inspectors are hereby vested with the authority to arrest with a warrant, or to arrest without a warrant when a violation of this Article is being committed in their presence or they have reasonable grounds to believe that a violation of this Article is being committed in their presence. Said special inspectors shall take offenders before the several courts of this State for prosecution or other proceedings. The provisions of this section do not apply to any person holding a valid structural pest control license, or a certified applicator's identification card, or a registered technician's identification card as issued under the provisions of this Article. Special inspectors shall not be entitled to the benefits of the Law Enforcement Officers' Benefit and Retirement Fund or the benefits of the Law Enforcement Officers' and Others Death Benefit Act as provided for in Articles 12 and 12A of Chapter 143 of the General Statutes, respectively."

Section 9. G.S. 106-65.31(b) reads as rewritten:

"(b) License. -- The fee for the issuance or renewal of a license for any one phase of structural pest control shall be ~~one hundred twenty-five dollars ($125.00).~~ one hundred fifty dollars ($150.00). Each additional phase shall be ~~fifty dollars ($50.00).~~ sixty-five dollars ($65.00). The fee for each subphase shall be ~~ten dollars ($10.00).~~ fifteen dollars ($15.00). Licenses shall expire on June 30 of each year and shall be

renewed annually. All licensees who fail or neglect to renew their license on or before June 30, but who make application before January 1 of the following year, may have their license renewed without having to be reexamined, unless the applicant is scheduled for periodic reexamination under regulations adopted pursuant to G.S. 106-65.27(d)(3). No structural pest control work may be performed until the license has been renewed or until a new license has been issued.

Any licensee whose employment is terminated by his employer or any licensee who is transferred to another company or location other than the company or location shown on his license certificate, may at any time, have his license reissued for the remainder of the license year for a fee of ten dollars ($10.00).

Any licensee whose license is lost or destroyed may secure a duplicate license for a fee of ten dollars ($10.00)."

Section 10. G.S. 106-65.33 reads as rewritten:

"**§ 106-65.33. Violation of Article, falsification of records, or misuse of registered pesticide a misdemeanor.**

(a) Any person who shall be adjudged to have violated any provision of this Article or who falsifies any records required to be kept by this Article or by the rules and regulations pursuant to this Article or who uses a registered pesticide in a manner inconsistent with its labeling shall be guilty of a Class 2 misdemeanor. In addition, if any person continues to violate or further violates any provision of this Article after written notice from the Committee, the court may determine that each day during which the violation continued or is repeated constitutes a separate violation subject to the foregoing penalties.

(b) Nothing in this Article shall be construed to require the Committee or the Commissioner to initiate, or attempt to initiate, any criminal or administrative proceedings under this Article for a minor violation of this Article whenever the Committee or Commissioner determines that the public interest will be adequately served in the circumstances by a suitable written notice or warning."

Section 11. G.S. 106-65.41 reads as rewritten:

"**§ 106-65.41. Civil penalties.**

A civil penalty of not more than two thousand dollars ($2,000) may be assessed by the Committee against any person for any one or more of the causes set forth in G.S. 106-65.28(a)(1) through ~~(12).~~ (12) and G.S. 106-65.28(a)(14) and (15), or who violates or directly causes a violation of any provision of this Article or any rule adopted pursuant to this Article. In determining the amount of any penalty, the Committee shall consider the degree and extent of harm caused by the violation. No civil penalty may be assessed under this section unless the person has been given an opportunity for a hearing pursuant to Chapter 150B of the General Statutes. Assessments may be collected, following judicial review, if any, of the Committee's final decision imposing the assessment, in any lawful manner for the collection of a debt.

The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2."

Section 12. This act becomes effective October 1, 1999.

BILL ANALYSIS

HB 1233:
Structural Pest Control Act Amendments

Committee:	Senate Finance	**Introduced by:**	Representative Hill
Date:	July 12, 1999	**Summary by:**	Martha K. Walston
Version:	2nd Edition		Committee Counsel

SUMMARY:

House Bill 1233 makes several changes to the Structural Pest Control Statutes, including a clarification of the responsibilities of the Department of Agriculture and Consumer Services and the Structural Pest Control Committee, the allowance of branch offices, and the increase of annual licensing fees. The current version of HB 1233 was given a favorable report in House Agriculture and House Finance. The act becomes effective October 1, 1999.

BACKGROUND:

Structural pest control is the control of household pests and wood destroying insects, including inspection, identification, and the use of pesticides and other substances to eradicate or control pests in household structures, commercial buildings and other structures and outside areas. G.S. 105-65.24(23). The structural pest control industry is regulated under the Structural Pest Control Act, Article 4C of Chapter 106 of the General Statutes. The act is administered by Structural Pest Control Division (the Division) of the North Carolina Department of Agriculture and Consumer Services. Currently, the Director of the Division is appointed by the Commissioner of Agriculture, who also sets out the Director's duties and authority. The Act also provides for the appointment of a Structural Pest Control Committee (SPCC) that is charged with making the final agency decisions on licensing matters and authorized to make rules on training and education requirements, examination scores, methods and materials to be used in pest control work, safety, credentials and other matters. The membership of the SPCC includes one member appointed by the Commissioner who is not in the structural pest business, one member appointed by the Commissioner who is an employee of NCDA, one member appointed by the Dean of the College of Ag at NCSU who is on the entomology faculty, one member appointed by the Secretary of Health and Human Services who is an epidemiologist, two members appointed by the Governor who are actively engaged in the structural pest control business, and two members appointed by the General Assembly.

BILL ANALYSIS:

The first portion of House Bill 1233 rewrites the provisions of G.S. 106-65.23 clarifying the powers and duties of the Commissioner and those of the SPCC with respect to the administration of the structural pest control law. The bill provides that Commissioner shall have the power to:

- Administer and enforce the provisions of the Act and the rules adopted thereunder.
- Assign administrative and enforcement duties.
- Direct the work of the Division's employees and personnel assigned to the SPCC.

- Develop proposed rules and programs for consideration for adoption by the SPCC.
- Monitor and evaluate existing programs and report on these to the SPCC.
- Attend and keep records of the meetings of the SPCC.
- Perform other duties assigned by the SPCC.

The SPCC is given the authority to:

- Adopt rules and make policies as provided for in the Article.
- Issue, deny, suspend, revoke, modify or restrict licenses.
- Report annually to the Board of Agriculture.

In addition, the amendments to Article 4C allow the SPCC a larger role in the selection and oversight of the Director of the Division. Currently appointed by the Commissioner, the bill provides that the Director shall be chosen from a list of nominees provided by the SPCC. The Director's duties are to be set by the Commissioner in consultation with the SPCC and the Director is to be answerable to both the Commissioner and the SPCC for the operation of the Division.

Section 2 of the bill rewrites definitions. The term "call office" is deleted and replaced with the term "branch office". A branch office is any office under the management of a licensee that is not a home office. The term "home office" is redefined to mean the place of business identified to the Division as the principle place of business. The term "licensee" is redefined to mean a person qualified and holding a license for any phase of structural pest control.

Section 3 of the bill makes two substantial changes to G.S. 106-65.25 regarding prohibited acts.

The first major change provides some flexibility to persons who wish to engage in the structural pest control business. Currently such a person must himself be licensed. The amendment would allow a person to advertise, engage in, or supervise work in any phase of structural pest control, or otherwise act in the capacity of structural pest control licensee if the person either is licensed or employs a licensee as a full time regular employee responsible for each phase of structural pest control.

The second major change would allow a licensee to establish branch offices, the maximum number of which is to be set by the SPCC but in no event fewer than two branch offices in addition to a home office. It is unlawful for a licensee to establish more branch offices than allowed by rule, fail to supervise the work performed out of any office under his management, allow his license to be used by a person or company for which he is not a full-time regular employee, use prohibited materials or devices or use approved pesticides or devices in an unapproved manner, or use or supervise the use of a restricted use pesticide for which he is not licensed.

Other portions of G.S. 106-65.25 are also rewritten for clarity and moved within the section.

Section 4 of the bill amends G.S. 106-65.26(d) expanding the bases for refusing to allow a license applicant to sit for an examination. As rewritten these will include violations of G.S. 106-65.25(b), regarding the operation and supervision of branch offices, and felonies, in addition to crimes involving moral turpitude.

Section 5 of the bill amends G.S. 106-65.27(c1) to allow the SPCC to grant an additional 90 days during which a structural pest control business may operate without a licensee assigned to it in the event of the death or disability of the licensee.

Section 6 of the bill adds a new subsection to G.S. 106-65.28 that would curtail the commercial use of any pesticide, material, or device for which the SPCC has requested information from the manufacturer or registrant but that request has been denied. Such pesticides and other material may only be used by an individual applying the material on his own property.

Section 7 of the bill would allow the SPCC to adopt rules that would require manufacturers and registrants of pesticides and other materials to provide efficacy data and other technical information on such products. Confidential information provided under these rules is not required to be disclosed by the Division or SPCC.

Section 8 of the bill provides the Division with discretion as to the number of inspections it conducts of work done by licensees.

Section 9 of the bill raises the fee for any one phase of structural pest control from $125 to $150 per year. Each additional phase license fee is raised from $50 to $65. The fee for each subphase license is raised from $10 to $15 annually.

Section 10 of the bill amends G.S. 106-65.33, Violation of Article, to provide that the SPCC and the Commissioner are not required under the provisions of Article 4C to initiate criminal or administrative proceedings for minor violations of the article if the SPCC or Commissioner determines that the public interest would be adequately served by written warning.

Section 11 of the bill amends the civil penalties portion of Article 4C to authorize the SPCC to impose a civil penalty for violations of G.S. 106-65.28(a)(14) and (15). Subsection (14) prohibits applying a substance that contains the active ingredients of a registered pesticide but is not a registered pesticide. Subsection (15) prohibits combining a substance whose application is prohibited pursuant to Subsection (14) with any other substance to apply as a pesticide or for any other reason. The amendment also provides that a civil penalty may be levied against any person who violates the provisions of Article 4C or the rules adopted thereunder by the SPCC.

Barbara Riley, Committee Counsel to Senate Agriculture/Environment/ Natural Resources contributed substantially to this summary.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1233 (Second Edition)

SHORT TITLE: Structural Pest Control Amendments

SPONSOR(S): Representative Hill

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
Departmental Receipt	-	$29,675	$31,145	$32,720	$34,350

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Agriculture and Consumer Services

EFFECTIVE DATE: The act becomes effective October 1, 1999.

BILL SUMMARY: The bill makes changes to the Structural Pest Control Statutes.

ASSUMPTIONS AND METHODOLOGY:
Section 9 of bill increases the license fee for structural pest control as follows:

Phase one increased from $125 to $150
Additional phases increased from $50 to $65
Subphases increased from $10 to $15

The Department of Agriculture and Consumer Services reports that as of June 30, 1999 there are 753 phase one licenses, 629 phase two/three licenses, and zero subphase licenses. Since the fee increase becomes effective after licenses are renewed on July 1, 1999, there will be no increase in revenue for FY 1999-00. Based on prior year experience, the number of licenses is projected to grow by 5% a year over the next five years as follows:

	Phase 1	Additional Phases
FY 1999-00	753	629
FY 2000-01	791	660
FY 2001-02	830	693
FY 2002-03	872	728
FY 2003-04	915	765

The revenue generated by the fee increase in FY 2000-01 is calculated as follows:

	Current	Proposed	No. Licenses	Additional Revenue
One Phase	$125	$150	791	$19,775
Additional Phases	$50	$65	660	$9,900
Total			1,451	$29,675

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic

APPROVED BY: Tom Covington

DATE: Wednesday, June 30, 1999

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 1470
Committee Substitute Favorable 6/8/99

Short Title: Impaired Dental Hygienists/Fee. (Public)

Sponsors:

Referred to:

May 13, 1999

A BILL TO BE ENTITLED

AN ACT ALLOWING THE NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS TO ENTER INTO AGREEMENTS WITH SPECIAL IMPAIRED DENTIST PEER REVIEW ORGANIZATIONS TO INCLUDE PROGRAMS FOR IMPAIRED DENTAL HYGIENISTS, TO COLLECT FEES TO FUND SUCH PROGRAMS, AND TO PROVIDE FOR REPRESENTATION FOR DENTAL HYGIENISTS ON THE STATEWIDE SUPERVISORY COMMITTEE.

The General Assembly of North Carolina enacts:

Section 1. Article 2 of Chapter 90 is amended by adding a new section to read:

"**§ 90-48.3. Board authority to include impaired dental hygienists in programs developed for impaired dentists.**

The Board may enter into agreements with special impaired dentist peer review organizations to include programs for impaired dental hygienists, and the provisions of G.S. 90-48.2 shall apply to any such agreements and programs. Special impaired dentist peer review organizations shall have the authority to appoint to the organizations, upon the recommendation of the dental hygienist member of the Board, one additional member who is a licensed dental hygienist and the member shall participate in activities and programs as they relate to impaired dental hygienists. Peer liaisons and volunteers participating in programs for impaired dental hygienists shall be dental hygienists. Dental hygienists who work with special impaired dentist peer review organizations in conducting programs for impaired dental hygienists shall have the same protections and responsibilities as members of

traditional State and local dental society peer review committees under Article 2A of this Chapter and as provided in G.S. 90-48.2. The provisions of G.S. 90-48.2 regarding confidentiality shall also be applicable to all dental hygienist activities authorized under this section."

Section 2. G.S. 90-223 is amended by adding a new subsection to read:

"(e) The Board shall have the authority to provide for programs for impaired dental hygienists as authorized in G.S. 90-48.3."

Section 3. G.S. 90-232 reads as rewritten:

"**§ 90-232. Fees.**

In order to provide the means of carrying out and enforcing the provisions of this Article and the duties devolving upon the North Carolina State Board of Dental Examiners, it is authorized to charge and collect fees established by its rules and regulations not exceeding the following:

(1)	Each applicant for examination	$125.00
(2)	Each renewal certificate, which fee shall be annually fixed by the Board and not later than November 30 of each year it shall give written notice of the amount of the renewal fee to each dental hygienist licensed to practice in this State by mailing such notice to the last address of record with the Board of each such dental hygienist	60.00
(3)	Each restoration of license	60.00
(4)	Each provisional license	60.00
(5)	Each certificate of license to a resident dental hygienist desiring to change to another state or territory	25.00
(6)	Annual fee to be paid upon license renewal to assist in funding programs for impaired dental hygienists	40.00.

In no event may the annual fee imposed on dental hygienists to fund the impaired dental hygienists program exceed the annual fee imposed on dentists to fund the impaired dentist program. All fees shall be payable in advance to the Board and shall be disposed of by the Board in the discharge of its duties under this Article."

Section 4. G.S. 90-48.2(a) reads as rewritten:

"(a) The State Board of Dental Examiners may, under rules adopted by the Board in compliance with Chapter 150B of the General Statutes, enter into agreements with special impaired dentist peer review organizations formed by the North Carolina Dental Society. The organizations shall be made up of Dental Society members designated by the Society, the Board, and the Dental School of the University of North Carolina. Peer review activities to be covered by such agreements shall include investigation, review and evaluation of records, reports, complaints, litigation, and other information about the practices and practice patterns of dentists licensed by the Board, as such matters may relate to impaired dentists. Special impaired dentist peer review organizations may include a statewide supervisory committee and various

regional and local components or subgroups. The statewide supervisory committee shall consist of representatives from the North Carolina Dental Society, the UNC School of Dentistry, and the Board. When the statewide supervisory committee considers activities and programs that relate to impaired dental hygienists pursuant to G.S. 90-48.3, its membership shall be expanded to include two dental hygienists appointed upon the recommendation of the dental hygienist member of the Board."

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

HOUSE BILL 1470:
Impaired Dental Hygienists/Fee

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Rep. Allen
Date:	July 9, 1999	**Summary by:**	Martha K. Walston
Version:	2nd Edition		Committee Counsel

SUMMARY: ***House Bill 1470 authorizes the State Board of Dental Examiners to include impaired dental hygienists in programs developed for impaired dentists. The bill imposes an additional $40 annual fee on dental hygienists to support the programs for impaired dental hygienists. The current version of the bill was given a favorable report in House Finance and Senate Health Care.***

CURRENT LAW: The "Caring Dentist Program" is a program established through agreements between the State Board of Dental Examiners and special impaired dentist peer review organizations formed by the North Carolina Dental Society. The purpose of the program is to identify dentists who have a chemical dependency or a mental illness. If an impairment exists, the peer review organization seeks to intervene and treat the dentist. The peer review organization must report information to the State Board of Dental Examiners if it determines that:

- The dentist constitutes an imminent danger to the public or himself.
- The dentist refuses to cooperate with the program, refuses to submit to treatment, or is still impaired after treatment and exhibits professional incompetence.
- It reasonably appears that there are other grounds for disciplinary action.

The agreements, which establish the Caring Dentist Program, must provide for the investigation, review, and evaluation of information about the practice of licensed dentists as the practices may relate to an impairment. They must also provide for the identification, intervention, treatment, referral, and follow-up care of impaired dentists and for the due process rights of the dentist subject to the Program.

The members of the special impaired dentist peer review organization are volunteer Dental Society members selected by the Board of Directors of the Caring Dentist Program. The members may not be held liable in damages to any person for any action taken or recommendation made within the scope of the functions of that committee. As a general rule, the proceedings and records of a committee must be held in confidence and may not be subject to discovery or introduction into evidence in any civil action arising out of the matters which are the subject of an evaluation and review by the committee

The Board of Directors of the Caring Dentist Program is comprised of representatives from the Dental Society, the State Board of Dental Examiners, and the UNC School of Dentistry. Dentists must pay an annual fee of $50, in addition to the annual renewal fee, to help support the special peer review organizations for impaired dentists.

BILL ANALYSIS: House Bill 1470 would allow the State Board of Dental Examiners to enter into agreements with special impaired dentist peer review organizations to include programs for impaired dental hygienists. The provisions required to be in the agreements concerning impaired dentists would also apply to the agreements concerning impaired dental hygienists.

The bill would give the special impaired dentist peer review organizations the authority to appoint to the organizations one additional member who is a licensed dental hygienist. The organization would make the appointment upon the recommendation of the dental hygienist member of the State Board of Dental Examiners. The dental hygienist member of the State Board is elected by all the licensed dental hygienists. The dental hygienist member of the peer review organization would participate in activities and programs as they relate to impaired dental hygienists. Dental hygienists who work with the special peer review organizations would have the same responsibilities and protections that the dental members have. Peer liaisons and volunteers who work with impaired dental hygienists are required to be dental hygienists.

The bill would add two dental hygienists to the statewide supervisory committee of the Caring Dentist Program. The dental hygienist members would be present whenever the Committee considers activities and programs that relate to impaired dental hygienists. The two dental hygienists would be appointed to the committee upon the recommendation of the dental hygienist member of the Board.

The bill would also impose an additional annual fee on dental hygienists. The fee could not exceed $40, not could it exceed the annual fee amount imposed on dentists for the impaired dentist program. The fee would be payable upon license renewal. Licenses must be renewed on or before January 1 of each year. The fee would be used to help fund programs for impaired dental hygienists.

Cindy Avrette, committee counse to House Finance, contributed substantially to this summary.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1470 (First Edition)

SHORT TITLE: Impaired Dental Hygienists/Fee

SPONSOR(S): Representative Gordon Allen

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES *					
NC Caring Dentist Program	$177,840	$183,887	$190,139	$196,603	$203,288
EXPENDITURES	Not yet determined by Board				

* Assume maximum $40 fee

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina State Board of Dental Examiners, North Carolina Dental Society

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

BILL SUMMARY:
This bill authorizes the North Carolina State Board of Dental Examiners to include impaired dental hygienists in programs developed for impaired dentists. The bill imposes an annual $40 fee on dental hygienists to support the program for impaired dental hygienists.

BACKGROUND:
The 1993 General Assembly approved HB 914 (SL 93, chapter 420) that authorized the North Carolina State Board of Dental Examiners to collect a fee of up to $50 from licensed dentists to be used for a program for impaired dentists operated by a new state – sanctioned peer review organization. The N.C. State Board of Dental Examiners and the N.C. Dental Society signed a Memorandum of Agreement on May 21, 1994 to create the Caring Dentist Program . The purpose of the Caring Dentist Program is to provide intervention and rehabilitation for dental practitioners impaired by chemical dependency or mental illness. Appropriate treatment programs and aftercare monitoring are sought for the impaired dentists. An eight-member Board of Directors oversees the Caring Dentist Program.

Although G.S. 90-39 allows a fee of $50 to be charged to pay for the program, only $15 has been assessed each dentist renewing his license since 1994. (NCAC 21-16M.0001) Actual fees collected in 1997 were $55,300 and actual program expenses for 1997 were $43,681. The 1997 fund balance for the program was $88,861.74. This fee is proposed to rise to $25 in 1999 and annual revenue will rise to $97,775. The increase will be used to fund a full-time director.

ASSUMPTIONS AND METHODOLOGY:
House Bill 1470 will allow the N.C. State Board of Dental Examiners to create a program for impaired dental hygienists similar to the Caring Dentist Program. The bill allows the Board to charge up to $40 for this program. Although the Director of the State Board of Dental Examiners suggested the initial fee would probably be $15, this fiscal note assumes the maximum of $40 for budget projection purposes. As of April 1, 1999, North Carolina has 4,446 licensed dental hygienists. Over the last five years, the number of licensed hygienists has grown 3.4% per year. This growth rate is projected to continue over the next five years as shown in the chart below.

	Hygienists	Revenue
FY 1999-00	4,446	$177,840
FY 2000-01	4,597	$183,887
FY 2001-02	4,753	$190,139
FY 2002-03	4,915	$196,603
FY 2003-04	5,082	$203,288
FY 2004-05	5,255	$210,200

Since the $40 fee is assessed upon renewal, the 4,446 currently licensed hygienists will pay the new fee in FY 1999-00. Those receiving a license in FY 1999-00 will begin paying the additional $40 fee in FY 2000-01 and so on. This simplified chart is an estimate and can not precisely account for attrition and new applicants each year.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic

APPROVED BY: Tom Covington

DATE: Monday, May 31, 1999

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 1289
Committee Substitute Favorable 7/1/99

Short Title: 1999 Fee Bill. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO SET THE PUBLIC UTILITY REGULATORY FEES, TO SET THE INSURANCE REGULATORY CHARGE, TO IMPOSE THE INSURANCE REGULATORY CHARGE ON SERVICE CORPORATIONS AND ON HEALTH MAINTENANCE ORGANIZATIONS IN THE YEAR 2000, AND TO ALLOW THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES TO IMPOSE FEES THAT REFLECT THE ACTUAL COST OF RENDERING THE SERVICE.

The General Assembly of North Carolina enacts:

Section 1. The percentage rate to be used in calculating the public utility regulatory fee under G.S. 62-302(b)(2) is nine-hundredths percent (0.09%) of each public utility's North Carolina jurisdictional revenues earned during each quarter that begins on or after July 1, 1999.

Section 2. The annual fee imposed on The North Carolina Electric Membership Corporation under G.S. 62-302(b1), as enacted by House Bill 476, 1999 General Assembly, S.L. 1999-180, for the 1999-2000 fiscal year is two hundred thousand dollars ($200,000).

Section 3. The percentage rate to be used in calculating the insurance regulatory charge under G.S. 58-6-25 is seven percent (7%) for the 1999 calendar year.

Section 4. G.S. 58-6-25 reads as rewritten:

"**§ 58-6-25. Insurance regulatory charge.**

(a) Charge Levied. -- There is levied on each insurance company an annual charge for the purposes stated in subsection (d) of this section. ~~As used in this section, the term "insurance company" means a company that pays the gross premiums tax levied in G.S. 105-228.5 and G.S. 105-228.8, except a service corporation subject to Article 65 of this Chapter. A health maintenance organization subject to Article 67 of this Chapter is not subject to those taxes and is therefore not subject to the charge levied in this section.~~ The charge levied in this section is in addition to all other fees and taxes. The percentage rate of the charge is established pursuant to subsection (b) of this section. For each insurance company that is not an Article 65 corporation nor a health maintenance organization, the rate is applied to ~~charge shall be at a percentage rate of~~ the company's premium tax liability for the taxable year. For Article 65 corporations and health maintenance organizations, the rate is applied to a presumed premium tax liability for the taxable year calculated as if the corporation or organization were an insurer providing health insurance. In determining an insurance company's premium tax liability for a taxable year, the following shall be disregarded:

(1) Additional taxes imposed by G.S. 105-228.8.
(2) The additional local fire and lightning tax imposed by G.S. 105-228.5(d)(4).
(3) Any tax credits for guaranty or solvency fund assessments under G.S. 105-228.5A or G.S. 97-133(a).
(4) Any tax credits allowed under Chapter 105 of the General Statutes other than tax payments made by or on behalf of the taxpayer.

(b) Rates. -- The rate of the charge for ~~the 1991 taxable year shall be six and five-tenths percent (6.5%). For subsequent taxable years, the rate~~ each taxable year shall be the percentage rate established by the General Assembly. When the Department prepares its budget request for each upcoming fiscal year, the Department shall propose a percentage rate of the charge levied in this section. The Governor shall submit that proposed rate to the General Assembly each fiscal year. The General Assembly shall set by law the percentage rate of the charge levied in this section. The percentage rate may not exceed the rate necessary to generate funds sufficient to defray the estimated cost of the operations of the Department for each upcoming fiscal year, including a reasonable margin for a reserve fund. The amount of the reserve may not exceed one-third of the estimated cost of operating the Department for each upcoming fiscal year. In calculating the amount of the reserve, the General Assembly shall consider all relevant factors that may affect the cost of operating the Department or a possible unanticipated increase or decrease in North Carolina premiums or other charge revenue.

(c) Returns; When Payable. -- The charge levied on each health maintenance organization is payable March 15 following the end of each calendar year. The charge levied on each insurance company other than a health maintenance organization is payable at the time the insurance company remits its premium tax. If the insurance company is required to remit installment payments of premiums tax under G.S. 105-228.5 for a taxable year, it shall also remit installment payments of the

charge levied in this section for that taxable year at the same time and on the same basis as the premium tax installment payments. Each installment payment shall be equal to at least thirty-three and one-third percent (33.3%) of the insurance company's regulatory charge liability incurred in the immediately preceding taxable year.

Every insurance company shall, on or before the date the charge levied in this section is due, file a return on a form prescribed by the Secretary of Revenue. The return shall state the company's total North Carolina premiums or presumed premiums for the taxable year and shall be accompanied by any supporting documentation that the Secretary of Revenue may by rule require.

(d) Use of Proceeds. -- The Insurance Regulatory Fund is created in the State treasury, under the control of the Office of State Budget and Management. The proceeds of the charge levied in this section and all fees collected under Articles 69 through 71 of this Chapter and under Articles 9 and 9C of Chapter 143 of the General Statutes shall be credited to the Fund. The Fund shall be placed in an interest-bearing account and any interest or other income derived from the Fund shall be credited to the Fund. Moneys in the Fund may be spent only pursuant to appropriation by the General Assembly and in accordance with the line item budget enacted by the General Assembly. The Fund is subject to the provisions of the Executive Budget Act, except that no unexpended surplus of the Fund shall revert to the General Fund. All money credited to the Fund shall be used to reimburse the General Fund for the following:

(1) Money appropriated to the Department of Insurance to pay its expenses incurred in regulating the insurance industry and other industries in this State.

(2) Money appropriated to State agencies to pay the expenses incurred in regulating the insurance industry, in certifying statewide data processors under Article 11A of Chapter 131E of the General Statutes, and in purchasing reports of patient data from statewide data processors certified under that Article.

(3) Money appropriated to the Department of Revenue to pay the expenses incurred in collecting and administering the taxes on insurance companies levied in Article 8B of Chapter 105 of the General Statutes.

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

(1) Article 65 corporation. -- Defined in G.S. 105-228.3.

(2) Insurance company. -- A company that pays the gross premiums tax levied in G.S. 105-228.5 and G.S. 105-228.8 or a health maintenance organization.

(3) Insurer. -- Defined in G.S. 105-228.3."

Section 5. G.S. 106-6.1 reads as rewritten:

"**§ 106-6.1. ~~Fees not to exceed actual cost.~~ Fees.**

~~Fees or charges established by any board or commission within the Department of Agriculture and Consumer Services for services rendered or for duties performed~~

~~shall not exceed the actual cost to the Department of rendering such service or performing such duty. As used herein, "cost" shall mean expenses incurred for mileage, subsistence, postage, computer time, salaries, materials, supplies, or other similar expenses which are incurred as a direct result of rendering the service or performing the duty. As used herein, "cost" shall not include fixed overhead expenses such as buildings, equipment, machinery, or other similar expenses which are indirectly related to a particular service or duty.~~ A board or commission within the Department of Agriculture and Consumer Services may establish fees or charges for the services it provides. The Board of Agriculture, subject to the provisions of Chapter 146 of the General Statutes, may establish a rate schedule for the use of facilities operated by the Department of Agriculture and Consumer Services."

Section 6. Section 4 of this act becomes effective January 1, 2000, and applies to the insurance regulatory charge levied for the 2000 calendar year. The remainder of this act is effective when it becomes law.

HOUSE BILL 1289:
1999 Fee Bill

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Rep. Luebke
Date:	July 7, 1999	**Summary by:**	Martha K. Walston
Version:	2nd Edition		Committee Counsel

SUMMARY: ***House Bill 1289 sets the public utility regulatory fee at 0.09%, it sets the public utility regulatory fee on The North Carolina Electric Membership Corporation at $200,000, it sets the insurance regulatory charge at 7%, it imposes the insurance regulatory charge on HMOs, Blue Cross Blue Shield of NC, and Delta Dental of NC in the year 2000, and it allows the Department of Agriculture and Consumer Services to consider indirect costs when establishing its fee schedule. The current version of the bill was given a favorable report in HouseFinance on July 1, 1999.***

PUBLIC UTILITY REGULATORY FEE: **Section 1** sets the public utility regulatory fee for fiscal year 1999-2000 at 0.09%. The rate maintains the current 0.09% rate set in fiscal year 1997-98. The utility regulatory fee was imposed in 1989. Its purpose is to defray the State's cost in regulating public utilities. The regulatory fee is imposed on all utilities that are subject to regulation by the North Carolina Utilities Commission. The fee is a percentage of the utility's North Carolina jurisdictional revenues. In general, jurisdictional revenue is revenue derived from providing utility service in North Carolina.

In addition to funding the State's cost in regulating public utilities, the money in the Utilities Commission and Public Staff Fund was used last biennium to finance the work of the Study Commission on the Future of Electric Service in North Carolina. Legislation has been introduced this session, House Bill 777 and Senate Bill 266, to continue funding this Commission with revenue from the Fund for the upcoming fiscal year. The General Assembly established the Commission in 1997. The purpose of the Commission is to examine the cost, adequacy, availability, and pricing of electric rates and service in North Carolina to determine whether legislation is necessary to assure an adequate and reliable source of electricity and an economical, fair, and equitable rates for all consumers of electricity in North Carolina.

Section 2 of the bill establishes the public utility regulatory fee to be paid by The North Carolina Electric Membership Corporation for the 1999-2000 fiscal year at $200,000. This section becomes effective if and only if House Bill 476 is enacted. The General Assembly ratified this bill on June 10. It has been presented to the Governor to sign. House Bill 476 authorizes electric membership corporations to form subsidiary corporations that may provide energy services and products, telecommunications services and products, and water and wastewater collection and treatment. The subsidiaries must fully compensate the electric membership corporation for its use of the corporation's personnel, services, equipment, and property. Under House Bill 476, the Utilities Commission is charged with regulating this aspect of the subsidiary's business. To pay for the cost of this regulation, the bill creates a flat regulatory fee to be paid by The North Carolina Electric Membership Corporation to the Utilities Commission and Public Staff Fund. The General Assembly must establish the flat fee amount each year. This bill sets the fee amount at $200,000 for the 1999-2000 fiscal year.

INSURANCE REGULATORY CHARGE: **Section 3** increases the insurance regulatory charge from 6% to 7%. This charge was first imposed in 1991. Its purpose is to make the Department of

Insurance receipt-supported and thereby eliminate General Fund support of the Department. The regulatory fee is imposed on insurance companies that pay the gross premiums tax, other than service corporations such as Blue Cross Blue Shield and Delta Dental Corporation. Health maintenance organizations do not pay the regulatory charge because they do not pay the gross premiums tax. The charge is a percentage of the insurance company's premiums tax liability.

In 1995, the General Assembly eliminated the insurance audit and examination fees for insurance companies, HMOs, medical corporations, and guaranty associations. The revenue generated by these audit fees was an estimated $4.5 million annually. Consequently, the costs of the audits are now paid for by the insurance regulatory charge as part of the costs of regulating the insurance industry.

Section 4 of the bill imposes the regulatory charge on the HMOs and the medical corporations, effective January 1, 2000. The fee will be levied on an imaginary amount of dollars the HMOs and medical corporations would owe if they paid the gross premiums tax at the 1.9% rate like other insurers. HMOs do not pay the gross premiums tax. Medical corporations pay the gross premiums tax at a rate of one-half of one percent (0.05%).

AGRICULTURAL FEES AND CHARGES: **Section 5** allows the Department of Agriculture and Consumer Services to consider its indirect costs when establishing its fees and charges. Under current law, the term "costs" is defined for purposes of the fees and charges the Department may impose. Under the definition, the Department can consider expenses such as mileage, computer time, salaries, supplies, etc. It may not consider fixed overhead expenses such as buildings, equipment, machinery, or other similar expenses which are indirectly related to a particular service or duty. This limitation is troublesome when rental rates and fees are established for the use of agency facilities at fairs and agricultural centers because most of the Department's costs are in the form of fixed overhead expenses. The Appropriations Committee has indicated that a "break even" philosophy should be followed at fairs, agricultural centers, and farmers' markets. The revision of this statute is needed for the Department to be able to establish a "break even" rental rate for these types of facilities. The Department must continue to establish rental rates and fees under the provisions of the Administrative Procedures Act.

Cindy Avrette, committee counsel to House Finance, contributed substantially to this summary.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1289 House Finance Committee Substitute Set Regulatory Fees/Expand Ins. Reg. Fee

SHORT TITLE: Set Regulatory Fees/Expand Ins. Reg. Fee

SPONSOR (S):

FISCAL IMPACT

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

($ Millions)

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
Utilities Special Fund	$8.7	($0.36 million increase over FY 1998-99)			
(Regulatory Fee Revenue = $8.5)					
(NC EMC Fee = $0.2)					
Insurance Regulatory Fund	$20.65	($1.45 million increase over 1998)			
Department of Agriculture		* See Assumptions and Methodology *			

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: N.C. Department of Insurance, N.C. Utilities Commission/Public Staff, and N.C. Department of Agriculture.

EFFECTIVE DATE: Section 1 becomes effective July 1, 1999. The remainder becomes effective when it becomes law.

BILL SUMMARY: Each year the General Assembly must set the regulatory fees for the insurance industry and public utilities. The bill sets the public utility regulatory fee at nine-hundredths percent (0.09%) of each public utility's North Carolina jurisdictional revenues. It also sets a flat fee of $200,000 to be assessed on the North Carolina Electric Membership Corporation. This funding is to cover the cost associated with the Commission's new oversight responsibilities as outlined in H.B. 476. The bill also sets the insurance regulatory fee at seven percent (7.0%) of a company's premiums tax liability. The bill applies the insurance regulatory fee to Health Maintenance Organizations (HMO) starting with the January 1, 2000 calendar year. The rate for HMOs is based on a "presumed premiums tax liability". This presumed liability is calculated on what these companies would have paid in premiums tax if they were liable for such a tax (the HMOs do not pay a premiums tax). The bill applies the fee to a presumed premiums tax liability of 1.9% of the company's premium base. The bill also presumes an Article 65

corporate tax liability of 1.9% of their premium base. (Their actual premiums tax rate is 0.5%). This provision also becomes effective for the calendar year beginning January 1, 2000. The HMO payment is due on March 15th of each year for the previous year's tax. All other companies remit the fee when they pay the premiums tax.

ASSUMPTIONS AND METHODOLOGY: The bill sets three fees - the public utilities regulatory fee, the electric membership corporation regulatory fee, and the insurance regulatory fee. The bill also authorizes the Department of Agriculture to charge fees that exceed the direct costs associated with an event. Currently the Department's fees for participation in fairs, festivals, and farmers markets can reflect only the direct cost of that involvement.

Public Utilities Regulatory Fee: The legislation sets the utilities regulatory fee at 0.09% of each public utilities' North Carolina jurisdictional revenues earned during each quarter that begins on or after July 1, 1999. (This maintains the current 0.09% rate set in fiscal year 1998-99.) The revenue generated from this fee supports the operations of the North Carolina Utilities Commission and Public Staff.

G.S. 62-302(b)(2) states that the percentage rate established by the General Assembly and assessed by the Commission "may not exceed the amount necessary to generate funds sufficient to defray the estimated cost of the operations of the Commission and Public Staff for the upcoming fiscal year, including a reasonable margin for a reserve fund." The Utilities Commission estimates that combined operations of the Commission and the Public Staff in FY 1999-2000 will require expenditures of not less than $10,244,533. Revenues generated by the proposed utilities regulatory fee are estimated to be $8,500,000. The balance will be derived from other revenues generated by Commission fees and charges, or from the Accumulated Fee Margin Reserve Account.

The Utilities Commission indicates that the status of the Accumulated Fee Margin Reserve is as follows:

Balance as of 6/30/99	$ 7,414,519
Add: Estimated Collections and Interest for FY 1999-2000 using 0.09%	$ 9,400,000
Total Funds Available	$16,814,519
Less: Estimated FY 1999-2000 Expenditures Reimbursable from Fees	$(10,244,553)*
Estimated Margin Reserve for Period Ending 6/30/2000	$ 6,569,966

** The Utilities Commission indicates that potential costs incurred by the Legislative Study Commission on the Future of Electric Service in North Carolina are not included in FY 1999-2000 estimated expenditures. That cost, if any, is not estimated at this time. House Bill 777 and Senate Bill 26, both introduced this session, extend the authorization of study commission expenses from the reserve fund through FY 1999-2000. Both bills have been referred to their respective chambers' appropriations committees for consideration.*

Based on [illegible] reserve, the fee of 0.0[illegible] be sufficient to cover the [illegible] Public Staff.

[illegible] Corporation (E[illegible] **[illegible]atory Fee:** House Bill 1289 [illegible]CS also [illegible] be paid by the North Carolina EMC totaling $200,000. This fee [illegible] House Bill 1[illegible], which authorizes electric membership corporations to form subs[illegible] corporations to provide additional services beyond traditional electric services. House Bi[illegible] charges the Utilities Commission with regulating these new subsidiaries. The North Car[illegible] EMC will now be required to remit an annual fee to the Utilities Special Fund to pay for th[illegible] of this regulation. The Utilities Commission esti[illegible]nates that $200,000 will be sufficient [illegible]er these anticipated costs in FY 1999-2000.

Insurance [illegible]egulatory Fee: The bill sets the insurance regulatory charge effective for calendar year 1999 [illegible].0%. (This is an increase of 1.0% over the previous year). The charge is based on a percentag[illegible] a company's premiums tax liability for the taxable year. Every insurance company [illegible]ct to the premiums tax levied under G.S. 105-228.[illegible] is required to pay the insurance [illegible]atory charge.

G.S. 58-6-[illegible] states that the percentage rate, set annually, cannot exceed the rate necessary to generate [illegible] sufficient to defray the estimated cost of operatin[illegible] the Department of Insurance for the upc[illegible]ng year including a reasonable margin for a reserve fund. The reserve fund should not exceed [illegible]-third of the estimated operating cost. The revenue collected from the charge is deposited int[illegible] the Insurance Regulatory Fund invested with the State Treasurer and managed by the Office of [illegible]tate Budget and Management. Funds generated by the regulatory charge are used to reimburse [illegible]e General Fund for the amount appropriated to the Department of Insurance.

The historic [illegible]ase against which the fee is charged, and the associated rate, is listed below.

	1997-98	1998-99
Estimated Gross Premiums Tax	$268 million	$281 million
Regulatory [illegible]ate	0.0875	0.06
Total Reve[illegible]ue	$23.45 million	$16.86 million

The historic [illegible]ase excludes Health Maintenance Organizations, and includes Article 65 companies [illegible]ue Cross/Blue Shield and Delta Dental) at a reduced rate.

The projecte[illegible] revenue for 1999-00, with a regulatory surcharge rate [illegible]f 7% is as follows:

	1999-00
Estimated [illegible]ross Premiums Tax	$295.05 million
Regulator[illegible] ate	0.070
Total Reve[illegible]ue	$20.65 million

The Department estimates that $3.3 million in refunds will be [illegible] companies that overpaid their surcharge in the previous year. Thus, the net collection[illegible] [illegible]7.35 million (20.65

minus 3.30). The Department estimates that the operating expenditures for 1999-2000 will be approximately $20.8 million, and that the reserve fund will have a beginning balance of $8.70 million. The total available from the reserve fund ($8.7 million) and the estimated net collections ($17.35 million) will be $26.05 million. The total available, less the estimated operating expenditures of $20.8 million, will leave a year-end reserve balance of $5.25 million, which is approximately one-quarter or 25% of the estimated operating expenditures.

Based on the above and the advise of the executive branch, the regulatory surcharge rate of 7.0% assessed against companies in the existing base is sufficient to defray the estimated cost of the operations of the Department including a reasonable reserve fund.

The bill also includes the premiums tax bases of the Article 65 organizations and the HMOs will be included in next year's rate setting base. Because the changes affecting the HMOs and the Article 65 companies do not become effective until the calendar year beginning with January 1, 2000, only the historic base is included in the calculation of the current year's revenue stream and the associated regulatory fee. Adding these two groups will increase the base against which the fee is charged in future years by approximately $35 to $40 million annually.

Agricultural Fees: Under current law the Department of Agriculture can charge fees for participation in fairs, festivals and farmers markets. Under current law these fee can only reflect the marginal cost associated with a particular participant or vendor. They can not use fee revenue to address the fixed costs of these events. This includes ongoing maintenance and repairs. This portion of the bill would allow the Department to increase their fees to include more than just the marginal cost. The Department has not established a new proposed fee schedule, and can not estimate how much additional revenue they hope to receive as a result of the bill. As a result, no fiscal estimate is possible on this portion of the bill.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Jennifer Herrera, Marilyn Chism, and Linda Struyk Millsaps

APPROVED BY:

DATE:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 279
Committee Substitute Favorable 7/6/99

Short Title: Township Hospitals. (Public)

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE TOWNSHIP HOSPITALS STILL OPERATING UNDER PRE-1983 LAW TO LEVY ADDITIONAL TAXES AFTER A REFERENDUM, AND TO MODERNIZE PROVISIONS OF LAW APPLICABLE TO THEM.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131-4, as it applies to hospitals continuing to operate under Article 2, Chapter 131 of the North Carolina General Statutes pursuant to Section 3, Chapter 775 of the 1983 Session Laws, is amended by adding a new subdivision to read:

"(4) Extension of Tax Levy. Prior to or following the expiration of the tax levy specified in subdivision (3) of this section, a new petition may be presented to the governing body of any county in which a township is located, signed by 200 resident freeholders of such township asking that an annual tax continue to be levied for the maintenance, operation, and improvement of the public hospital, after the expiration of the tax levy specified in subdivision (3). The procedure for submitting the petition and holding an election on the issue of continuing the tax levy shall be the same as the procedure for the petition and election for establishment of the initial tax levy, provided that the requirement that 150 of the 200 petitioners not be residents of the city, town, or village where the hospital is to be located shall not apply. The tax to be levied

under such new election shall not exceed one twenty-fifth of one cent (1/25 of 1 cent) on the dollar ($1.00) for a period of time not exceeding 30 years and shall be for the issue of county or township bonds to provide funds for the maintenance and improvement of the public hospital."

Section 2. G.S. 131-5 reads as rewritten:

"**§ 131-5. Election on tax levy; collection and application of funds.**

The board of elections of such county, township, or town shall submit to the qualified electors thereof, at a regular or special election, the question whether there shall be levied upon the assessed property of such county, township, or town a tax of one fifteenth of one cent (1/15 of 1¢) on the dollar ($1.00) for the purchase of real estate for hospital purposes, for the construction of hospital buildings, and for maintaining same, or for either or all of such purposes. The ballots to be used at any election at which the hospital question is submitted shall be printed with a statement substantially as follows:

[ ] Yes.

For a ..... cent tax for a bond issue for a public hospital and for maintenance of same.

[ ] No.

If a majority of the qualified voters at such election on the proposition shall be in favor of a tax as submitted for a bond issue for a public hospital and for maintenance of same, the governing body shall levy the tax so authorized, which shall be collected in the same manner as other taxes are collected, and credited to the "Hospital Fund," and shall be paid out on the order of the hospital trustees for the purposes authorized by this Article, and for no other purposes whatever.

The procedure for the submission of the issue of the continuation of the tax levy shall be the same as set forth above, provided that the tax shall not exceed one twenty-fifth of one cent (1/25 of 1 cent) on the dollar ($1.00) and the issue to be submitted to the voters shall be as follows:

'[ ] FOR [ ] AGAINST

A ----- cent tax for a bond issue for maintenance and improvement of the public hospital'."

Section 3. All hospitals which continue to operate under Article 2 of Chapter 131 of the General Statutes pursuant to Section 3 of Chapter 775 of the 1983 Session Laws shall, in addition to the powers and authorities set forth in Article 2 of Chapter 131 of the General Statutes have the powers set forth in G.S. 131 E-7(a)(1), (3), (5), (6), 131E-7(b), 131E-7(c), 131E-7.1, 131E-11, 131E-23(1), (2), (5), (6), (7), (8), (10), (11), (12), (13), (14), (15), (16), (17), (18), (19), (23), (24), (25), (26), (27), (28), (30), (31), (32), (33), (34), 131E-26, and 131E-27.

Section 4. Any hospital continuing to operate under Article 2 of Chapter 131 of the General Statutes pursuant to Section 3 of Chapter 775 of the 1983 Session Laws shall be considered to be a "public hospital" within the meaning of G.S. 159-39 and to be a "unit of local government" within the meaning of G.S. 160A-20.

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

HOUSE BILL 279:
Township Hospitals

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Rep. Redwine
Date:	July 12, 1999	**Summary by:**	Martha K. Walston
Version:	2nd Edition		Committee Counsel

SUMMARY: ***House Bill 279 authorizes township hospitals still operating under pre-1983 law to levy additional taxes after a referendum. The second edition of House Bill 279 was given a favorable report in House Finance. The act is effective when it becomes law.***

BILL ANALYSIS: House Bill 279 provides that a petition may be presented to a governing body of a county in which a township is located, signed by 200 resident freeholders of the township, asking that the annual tax continue to be levied for the maintenance, operation, and improvement of a public hospital in the township after expiration of the tax levy imposed under the pre-1983 law. The tax to be levied may not exceed 1/25 of 1 cent on the dollar for a period of time not to exceed 30 years and shall be for the issue of county or township bonds to provide funds for the maintenance and improvement of the public hospital.

These hospitals are to be considered a public hospital under G.S. 159-39. A public hospital is a hospital that:

1. Is operated by a county, city, hospital district, or hospital authority, or
2. Is owned by a county, city, hospital district or hospital authority and operated by a nonprofit corporation or association, a majority of whose board of directors or trustees are appointed by the governing body of a county, city, hospital district, or hospital authority, or
3. On whose behalf a county or city has issued and has outstanding general obligation or revenue bonds, or to which a county or city makes current appropriations.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 3

HOUSE BILL 222
Committee Substitute Favorable 3/22/99
Committee Substitute #2 Favorable 4/20/99

Short Title: Strengthen Littering Law. (Public)

Sponsors:

Referred to:

March 3, 1999

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE LITTERING LAW BY INCREASING THE MINIMUM AND MAXIMUM FINES AND BY REQUIRING COMMUNITY SERVICE IN THOSE INSTANCES WHERE IT IS CURRENTLY PERMISSIVE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-399 reads as rewritten:

"**§ 14-399. Littering.**

(a) No person, including but not limited to, any firm, organization, private corporation, or governing body, agents or employees of any municipal corporation shall intentionally or recklessly throw, scatter, spill or place or intentionally or recklessly cause to be blown, scattered, spilled, thrown or placed or otherwise dispose of any litter upon any public property or private property not owned by him within this State or in the waters of this State including, but not limited to, any public highway, public park, lake, river, ocean, beach, campground, forest land, recreational area, trailer park, highway, road, street or alley except:

(1) When such property is designated by the State or political subdivision thereof for the disposal of garbage and refuse, and such person is authorized to use such property for such purpose; or

(2) Into a litter receptacle in such a manner that the litter will be prevented from being carried away or deposited by the elements upon any part of such private or public property or waters.

(b) When litter is blown, scattered, spilled, thrown or placed from a vehicle or watercraft, the operator thereof shall be presumed to have committed such offense. This presumption, however, does not apply to a vehicle transporting agricultural products or supplies when the litter from that vehicle is a nontoxic, biodegradable agricultural product or supply.

(c) Any person who violates this section in an amount not exceeding 15 pounds and not for commercial purposes is guilty of a Class 3 misdemeanor punishable by a fine of not less than ~~one hundred dollars ($100.00)~~ two hundred fifty dollars ($250.00) nor more than ~~five hundred dollars ($500.00)~~ one thousand dollars ($1,000) for the first offense. In addition, the court ~~may~~ shall require the violator to perform community service of not less than eight hours nor more than 24 hours. The community service required shall be to pick up litter if feasible, and if not feasible, to perform other labor commensurate with the offense committed. Any second or subsequent offense within three years after the date of a prior offense is punishable by a fine of not less than ~~one hundred dollars ($100.00)~~ five hundred dollars ($500.00) nor more than ~~one thousand dollars ($1,000).~~ two thousand dollars ($2,000). In addition, the court ~~may~~ shall require the violator to perform community service of not less than 16 hours nor more than 50 hours. The community service required shall be to pick up litter if feasible, and if not feasible, to perform other labor commensurate with the offense committed.

(d) Any person who violates this section in an amount exceeding 15 pounds but not exceeding 500 pounds and not for commercial purposes is guilty of a Class 3 misdemeanor punishable by a fine of not less than ~~one hundred dollars ($100.00)~~ five hundred dollars ($500.00) nor more than ~~one thousand dollars ($1,000).~~ two thousand dollars ($2,000). In addition, the court shall require the violator to perform community service of not less than 24 hours nor more than 100 hours. The community service required shall be to pick up litter if feasible, and if not feasible, to perform other community service commensurate with the offense committed.

(e) Any person who violates this section in an amount exceeding 500 pounds or in any quantity for commercial purposes, or who discards litter that is a hazardous waste as defined in G.S. 130A-290 is guilty of a Class I felony. In addition, the court ~~may~~ shall order the violator to:

(1) Remove, or render harmless, the litter that he discarded in violation of this section;

(2) Repair or restore property damaged by, or pay damages for any damage arising out of, his discarding litter in violation of this section; or

(3) Perform community public service relating to the removal of litter discarded in violation of this section or to the restoration of an area polluted by litter discarded in violation of this section.

(f) A court may enjoin a violation of this section.

(f1) If a violation of this section involves the operation of a motor vehicle, upon a finding of guilt, the court shall forward a record of the finding to the Department of Transportation, Division of Motor Vehicles, which shall record a penalty of one point

on the violator's drivers license pursuant to the point system established by G.S. 20-16. There shall be no insurance premium surcharge or assessment of points under the classification plan adopted pursuant to ~~G.S. 58-30.4~~ G.S. 58-36-65 for a finding of guilt under this section.

(g) A motor vehicle, vessel, aircraft, container, crane, winch, or machine involved in the disposal of more than 500 pounds of litter in violation of this section is declared contraband and is subject to seizure and summary forfeiture to the State.

(h) If a person sustains damages arising out of a violation of this section that is punishable as a felony, a court, in a civil action for such damages, shall order the person to pay the injured party threefold the actual damages or two hundred dollars ($200.00), whichever amount is greater. In addition, the court shall order the person to pay the injured party's court costs and attorney's fees.

(i) For the purpose of the section, unless the context requires otherwise:

(1) "Aircraft" means a motor vehicle or other vehicle that is used or designed to fly, but does not include a parachute or any other device used primarily as safety equipment.

~~(2) "Commercial vehicle" means a vehicle that is owned or used by a business, corporation, association, partnership, or sole proprietorship or any other entity conducting business for economic gain.~~

(2a) "Commercial purposes" means litter discarded by a business, corporation, association, partnership, sole proprietorship, or any other entity conducting business for economic gain, or by an employee or agent of such entity.

(3) "Law enforcement officer" means any officer of the North Carolina Highway Patrol, the State Bureau of Investigation, the Division of Motor Vehicles of the Department of Transportation, a county sheriff's department, a municipal law enforcement department, a law enforcement department of any other political subdivision, the Department, or the North Carolina Wildlife Resources Commission. In addition, and solely for the purposes of this section, "law enforcement officer" means any employee of a county or municipality designated by the county or municipality as a litter enforcement officer; or wildlife protectors as defined in G.S. 113-128(9);

(4) "Litter" means any garbage, rubbish, trash, refuse, can, bottle, box, container, wrapper, paper, paper product, tire, appliance, mechanical equipment or part, building or construction material, tool, machinery, wood, motor vehicle or motor vehicle part, vessel, aircraft, farm machinery or equipment, sludge from a waste treatment facility, water supply treatment plant, or air pollution control facility, dead animal, or discarded material in any form resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations. "Litter" does not include

political pamphlets, handbills, religious tracts, newspapers, and other such printed materials the unsolicited distribution of which is protected by the Constitution of the United States or the Constitution of North Carolina.

(5) "Vehicle" has the same meaning as in G.S. 20-4.01(49); and

(6) "Watercraft" means any boat or vessel used for transportation across the water.

(j) It shall be the duty of all law enforcement officers to enforce the provisions of this section.

(k) This section does not limit the authority of any State or local agency to enforce other laws, rules or ordinances relating to litter or solid waste management."

Section 2. The Commissioner of Motor Vehicles is directed to include at least one question relating to littering on the next drivers license examination prepared by the Division of Motor Vehicles.

Section 3. This act becomes effective December 1, 1999, and applies to offenses committed on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 222
Committee Substitute Favorable 3/22/99
Committee Substitute #2 Favorable 4/20/99
Proposed Senate Committee Substitute H222-PCS3461-LA

Short Title: Strengthen Littering Law. (Public)

Sponsors:

Referred to:

March 3, 1999

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE LITTERING LAW BY INCREASING THE MINIMUM AND MAXIMUM FINES AND BY REQUIRING COMMUNITY SERVICE IF THE LITTER IS MORE THAN FIVE HUNDRED POUNDS, IS A HAZARDOUS WASTE, OR IS DISCARDED FOR COMMERCIAL PURPOSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-399 reads as rewritten:

"**§ 14-399. Littering.**

(a) No person, including but not limited to, any firm, organization, private corporation, or governing body, agents or employees of any municipal corporation shall intentionally or recklessly throw, scatter, spill or place or intentionally or recklessly cause to be blown, scattered, spilled, thrown or placed or otherwise dispose of any litter upon any public property or private property not owned by him within this State or in the waters of this State including, but not limited to, any public highway, public park, lake, river, ocean, beach, campground, forest land, recreational area, trailer park, highway, road, street or alley except:

(1) When such property is designated by the State or political subdivision thereof for the disposal of garbage and refuse, and such person is authorized to use such property for such purpose; or

(2) Into a litter receptacle in such a manner that the litter will be prevented from being carried away or deposited by the elements upon any part of such private or public property or waters.

(b) When litter is blown, scattered, spilled, thrown or placed from a vehicle or watercraft, the operator thereof shall be presumed to have committed such offense. This presumption, however, does not apply to a vehicle transporting agricultural products or supplies when the litter from that vehicle is a nontoxic, biodegradable agricultural product or supply.

(c) Any person who violates this section in an amount not exceeding 15 pounds and not for commercial purposes is guilty of a Class 3 misdemeanor punishable by a fine of not less than ~~one hundred dollars ($100.00)~~ two hundred fifty dollars ($250.00) nor more than ~~five hundred dollars ($500.00)~~ one thousand dollars ($1,000) for the first offense. In addition, the court may require the violator to perform community service of not less than eight hours nor more than 24 hours. The community service required shall be to pick up litter if feasible, and if not feasible, to perform other labor commensurate with the offense committed. Any second or subsequent offense within three years after the date of a prior offense is punishable by a fine of not less than ~~one hundred dollars ($100.00)~~ five hundred dollars ($500.00) nor more than ~~one thousand dollars ($1,000).~~ two thousand dollars ($2,000). In addition, the court may require the violator to perform community service of not less than 16 hours nor more than 50 hours. The community service required shall be to pick up litter if feasible, and if not feasible, to perform other labor commensurate with the offense committed.

(d) Any person who violates this section in an amount exceeding 15 pounds but not exceeding 500 pounds and not for commercial purposes is guilty of a Class 3 misdemeanor punishable by a fine of not less than ~~one hundred dollars ($100.00)~~ five hundred dollars ($500.00) nor more than ~~one thousand dollars ($1,000).~~ two thousand dollars ($2,000). In addition, the court shall require the violator to perform community service of not less than 24 hours nor more than 100 hours. The community service required shall be to pick up litter if feasible, and if not feasible, to perform other community service commensurate with the offense committed.

(e) Any person who violates this section in an amount exceeding 500 pounds or in any quantity for commercial purposes, or who discards litter that is a hazardous waste as defined in G.S. 130A-290 is guilty of a Class I felony. In addition, the court ~~may~~ shall order the violator to:

(1) Remove, or render harmless, the litter that he discarded in violation of this section;

(2) Repair or restore property damaged by, or pay damages for any damage arising out of, his discarding litter in violation of this section; or

(3) Perform community public service relating to the removal of litter discarded in violation of this section or to the restoration of an area polluted by litter discarded in violation of this section.

(f) A court may enjoin a violation of this section.

(f1) If a violation of this section involves the operation of a motor vehicle, upon a finding of guilt, the court shall forward a record of the finding to the Department of Transportation, Division of Motor Vehicles, which shall record a penalty of one point on the violator's drivers license pursuant to the point system established by G.S. 20-16. There shall be no insurance premium surcharge or assessment of points under the classification plan adopted pursuant to ~~G.S. 58-30.4~~ G.S. 58-36-65 for a finding of guilt under this section.

(g) A motor vehicle, vessel, aircraft, container, crane, winch, or machine involved in the disposal of more than 500 pounds of litter in violation of this section is declared contraband and is subject to seizure and summary forfeiture to the State.

(h) If a person sustains damages arising out of a violation of this section that is punishable as a felony, a court, in a civil action for such damages, shall order the person to pay the injured party threefold the actual damages or two hundred dollars ($200.00), whichever amount is greater. In addition, the court shall order the person to pay the injured party's court costs and attorney's fees.

(i) For the purpose of the section, unless the context requires otherwise:

(1) "Aircraft" means a motor vehicle or other vehicle that is used or designed to fly, but does not include a parachute or any other device used primarily as safety equipment.

~~(2) "Commercial vehicle" means a vehicle that is owned or used by a business, corporation, association, partnership, or sole proprietorship or any other entity conducting business for economic gain.~~

(2a) "Commercial purposes" means litter discarded by a business, corporation, association, partnership, sole proprietorship, or any other entity conducting business for economic gain, or by an employee or agent of such entity.

(3) "Law enforcement officer" means any officer of the North Carolina Highway Patrol, the State Bureau of Investigation, the Division of Motor Vehicles of the Department of Transportation, a county sheriff's department, a municipal law enforcement department, a law enforcement department of any other political subdivision, the Department, or the North Carolina Wildlife Resources Commission. In addition, and solely for the purposes of this section, "law enforcement officer" means any employee of a county or municipality designated by the county or municipality as a litter enforcement officer; or wildlife protectors as defined in G.S. 113-128(9);

(4) "Litter" means any garbage, rubbish, trash, refuse, can, bottle, box, container, wrapper, paper, paper product, tire, appliance, mechanical equipment or part, building or construction material, tool, machinery, wood, motor vehicle or motor vehicle part, vessel, aircraft, farm machinery or equipment, sludge from a waste treatment facility, water supply treatment plant, or air pollution

control facility, dead animal, or discarded material in any form resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations. "Litter" does not include political pamphlets, handbills, religious tracts, newspapers, and other such printed materials the unsolicited distribution of which is protected by the Constitution of the United States or the Constitution of North Carolina.

(5) "Vehicle" has the same meaning as in G.S. 20-4.01(49); and

(6) "Watercraft" means any boat or vessel used for transportation across the water.

(j) It shall be the duty of all law enforcement officers to enforce the provisions of this section.

(k) This section does not limit the authority of any State or local agency to enforce other laws, rules or ordinances relating to litter or solid waste management."

Section 2. The Commissioner of Motor Vehicles is directed to include at least one question relating to littering on the next drivers license examination prepared by the Division of Motor Vehicles.

Section 3. This act becomes effective December 1, 1999, and applies to offenses committed on or after that date.

HOUSE BILL 222:
Strengthen Littering Law

BILL ANALYSIS

Committee: Senate Finance
Date: July 9, 1999
Version: Proposed Senate Committee Substitute

Introduced by: Representative Mitchell
Summary by: Martha K. Walston
Committee Counsel

SUMMARY: ***House Bill 222 will increase the minimum and maximum fines for discarding litter in any amount. The bill has been through House Judiciary III, House Finance, and Senate Judiciary II. The version of the bill passed by House Finance imposed mandatory community service for certain violations of the littering law. The Senate Proposed Committee Substitute reinstates the current law that gives the court the discretion to impose community service for discarding 15 pounds or less of litter not for commercial purposes.***

CURRENT LAW: ***Current law requires the following:***

Amount of Litter Discarded	Classification	Fine	Community Service
15 lbs. Or less; not for commercial purposes – *1st offense*	Class 3 Misdemeanor	$100 - $500	*May* require 8 – 24 hours of picking up litter or other labor commensurate with the offense
15 lbs. or less; not for commercial purposes – *2nd or subsequent offense committed within 3 years*	Class 3 Misdemeanor	$100 - $1,000	*May* require 16 - 50 hours of picking up litter or other labor commensurate with the offense
15 lbs. – 500 lbs.; not for commercial purposes	Class 3 Misdemeanor	$100 - $1,000	*Shall* require 24 – 100 hours of picking up litter or other labor commensurate with the offense.
> 500 lbs. ; or for commercial purposes; or hazardous waste	Class I Felony	Discretion of the court	*May* order the violator to remove or render harmless the litter; repair, restore, or pay for any property damage; or perform community service.

BILL ANALYSIS: House Bill 222 would (1) increase the fines for littering and (2) would make community service ,removal of litter, or payment of property damage mandatory for discarding more than 500 lbs. or for discarding any amount for commercial purposes, or for discarding litter that is a hazardous waste as follows:

Amount of Litter Discarded	Classification	Fine	Community Service
15 lbs. or less; not for commercial purposes – *1st offense*	Class 3 Misdemeanor	**$250 – $1,000**	*(Required under current law)*
15 lbs. or less; not for commercial purposes – *2nd or subsequent offense committed within 3 years*	Class 3 Misdemeanor	**$500 – $2,000**	*(Required under current law)*

15 lbs. – 500 lbs.; not for commercial purposes	Class 3 Misdemeanor	**$500 – $2,000**	*(Required under current law)*
> 500 lbs.; or for commercial purposes; or hazardous waste	Class I Felony	Discretion of the court	***Shall*** order the violator to remove or render harmless the litter; repair, restore, or pay for any property damage; or perform community service.

"Commercial purposes" is used throughout existing law, but was not defined. The bill defines "commercial purposes" and removes the definition of "commercial vehicle" since the term was not used in this section. "Commercial purposes" means "litter discarded by a business, corporation, association, partnership, sole proprietorship, or any other entity conducting business for economic gain, or by an employee or agent of such entity."

"Hazardous waste" is defined in G.S. 130A-290 as "a solid waste or combination of solid wastes, which because of its quantity, concentration or physical, chemical or infectious characteristics may:

a. cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

b. pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed.

EFFECTIVE DATE: House Bill 222 would become effective December 1, 1999, and apply to offenses committed on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 222—PCSSC-001 Strengthen Littering Laws

SHORT TITLE: Strengthen Littering Laws

SPONSOR(S): Rep. William Mitchell

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES	$666,675	$666,675	$666,675	$666,675	$666,675
EXPENDITURES		NONE			
POSITIONS:		NONE			

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Administrative Office of the Courts, Community Service Work Program (Crime Control and Public Safety); Division of Motor Vehicles

EFFECTIVE DATE: December 1, 1999

BILL SUMMARY: **H 222. STRENGTHEN LITTERING LAW.** TO STRENGTHEN THE LITTERING LAW BY INCREASING THE MINIMUM AND MAXIMUM FINES, BY REQUIRING COMMUNITY SERVICE IN THOSE INSTANCES WHERE IT IS CURRENTLY PERMISSIVE, AND BY AUTHORIZING AN INSURANCE PREMIUM SURCHARGE AND ASSESSMENT OF POINTS PURSUANT TO G.S. 58-30.4 FOR PERSONS CONVICTED OF LITTERING. Amends GS 14-399 (basic prohibition against littering) to raise the minimum and maximum fines for each kind (first or subsequent offense, size of litter) of offense and to require community service (picking up litter, if feasible) where it is now discretionary. For amounts exceeding 500 pounds or for commercial purposes or hazardous waste, the court must (now, may) order removal and repair and community service relating to removal of litter and repair of damaged areas. Bill also removes provision specifying that no insurance premium surcharge or assessment of points may be made for a finding of guilt for littering . Defines "commercial purposes" as an offense committed by a business, corporation, association, partnership, sole proprietorship, or any other entity conducting business for economic gain, or by an employee or agent of such entity.

Also directs DMV to include at least one question on littering on next drivers license exam.

ASSUMPTIONS AND METHODOLOGY:

I. Fine Increase

This bill does not affect the criminal penalty for littering (Class 3 Misdemeanor for quantities through 500 pounds; Class I Felony for higher quantities, commercial or hazardous) but raises the fines for the misdemeanor penalty. The statute specifies the minimum and maximum fine for each violation but the judge has some discretion in setting the exact amount. The amounts are changed as follows:

Not exceeding 15 pounds/1st offense	raise minimum from $100 to $250 Maximum from $500 to $1000
Not exceeding 15 pounds/subse offense	minimum from $100 to $500 Maximum from $1000 to $2000
Exceeding 15 pounds Not exceeding 500 pounds/1st offense	mimimum from $100 to $500 Maximum from $1000 to $2000

In Calendar Year 1998, there were 3,229 charges for misdemeanor littering and 1,944 convictions. The Administrative Office of the Courts does not keep data broken down by specific criminal fines so we do not know the total amount of fine collected.

1,851 of the convictions were for amounts not exceeding 15 pounds. Assuming judges have on average used the midpoint of the range of possible fines, the average fine will increase from $300 to $625. Assuming all 1,851 convictions were first offenses, this increases fines levied by $601,575 (=1851*325).

An additional 93 convictions were for amounts from 15 pounds-500 pounds. Again assuming the midpoint of the range of fines, the average fine will increase from $550 to $1250, increasing total fines levied by $65,100.

The total increase in fines	**$601,575**
	$ 65,100
	$666,675

To the extent that more of the CY 1998 convictions were subsequent offenses or that judges levy fines closer to the maximum, this figure will increase. (If judges have been and continue levying the maximum fine, the total increase would be $1.02 Million. If they choose the minimum fines, increase would be $314,850)

II. Community Service Work Requirement

Current statute allows the judge to order community service for all categories of the offense, specifying the range of possible hours and that the service shall be picking up litter if feasible. The Community Service Work Program reports that they currently have only a handful of offenders sentenced for littering. Based on 1,994 convictions and assuming judges will use the

midpoint of the range of possible hours, this section would increase total community service work hours as follows:

Amounts less than 15#/1st offense	**@ 16 hours:**	**29,616**
Amounts greater than 15#	**@ 33 hours:**	**3,069**
Over 500 or commercial	**hours not specified**	
Total Increase in Hours		**32,685**

(If judges choose the minimum hours, increase would be 17,040; if they choose the maximum it will be 53,724)

In 1997-98, hours worked in the Community Service Work Program totalled 2.35 Million. Increases in the number of offenders and hours can be absorbed by the Department within current resources.

III. License Exam

Because the statute specifies a question on littering shall be included in the next examination, there is no fiscal impact of this section. The new question will be added at the time of next redesign/reprinting of the exams.

IV. Administrative Office of the Courts

The higher fines and mandatory community service requirement may cause defendants to mount a more vigorous defense which would increase the workload in the court system. However, no data is available to estimate this impact.

TECHNICAL CONSIDERATIONS

Most offenders sentenced to Community Service must pay a $100 fee which goes to the General Fund. The statutes governing different aspects (for DWI offenders, for parolees, etc) of the Community Service program specify this fee. Since GS 14-399 does not specify the fee, littering offenders would not be obligated to pay it unless the judge specifically includes it in their order. If all littering offenders sentenced to Community Service paid the fee, it would generate an additional $194,400 .

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Elisa Wolper

APPROVED BY: Tom Covington

DATE: Monday, April 19, 1999

(Attachment #1)

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 7/13/99

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
JEREMIAH JACKSON	NCCCS
Paul Gronin	OSBM
V McBride	DOA
Lynn Duncan	WCSR / Dry cleaners
Joyce Anders	APASSOC -
Don Waugh	OSC
Danny Shaffer	NC Dry Cleaning & Laundry Assoc
Sam Taylor	"
Jon Mc Cargo	Moore & Van Allen
Bob Powers	Jordan Price
Doug Misken	IBM
RA	NCHC
Lu-Ann Cox	F3

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 7/13/99

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Natalie English	NCAC
Stacy Flannery	NCHCFA
Crissi Porter	Bone & Associates
Lisa Perry	NC Dental Society
Lon Wilson	NC AATC Z
John Phelps	NCLM
Kim Hibbard	NCLM
Ed Regan	N.C.A.C.C.
[illegible]	NCAHP
Katherine Davis	Electricities
Sheila McKenney	NCDOT

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 7/13/99

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Bill Hale	DOI
Donald Rogers	DOI
Elizabeth Henderson	Small Hydro Grp.
Robert S. Gillam	Public Staff - NCUC
Robert A. Matula	N.C. Utilities Commission
Robert Bennink	" "
Hal Miller	NCACCT
Angie McMillan	TWC
Butch Gunnells	NC Soft Drink Assoc.
Jim Holmes	DENR
AB Watkins	DENR

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 7/13/99

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Paul Wilms	NCMBA
Mike Conner	NCMBA
[signature]	
Sean Haugh	Libertarian Party of NC
Dale McKeel	Scenic NC, Inc.
Lois Nixon	KAB
Tom Kilian	Moore Van Allen
Mike Herman	Health Insurance Association of America
Nat Mund	CCNC
Jim Norvell	OSBM
JW Reed	OSBM

(Attachment #2)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Tuesday, July 13, 1999

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

FAVORABLE

H.B.(CS #1)**279** Township Hospitals
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1)**667** Roanoke Rapids Annexation
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1)**1098** Strengthen Sedimentation Act
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1)**1233** Structural Pest Control Amendments
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1)**1289** 1999 Fee Bill
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1)**1470** Impaired Dental Hygienists/Fee
Sequential Referral: None
Recommended Referral: None

H.B. **1471** Adjust Highway Bond Maturity
Sequential Referral: None
Recommended Referral: None

**UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL**

H.B.(CS #2)**222** Strengthen Littering Law

Draft Number:	PCS3461
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 8

Committee Clerk Comment:

(Attachment #3)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Wednesday, July 14, 1999

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

FAVORABLE

H.B.(CS #1)**240** UNC Nonappropriated Capital Projects.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #2)**964** Municipal Incorporation Process.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #2)**1010** Cotton Gins, Warehouses, Merchants.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1)**1084** County Bonds for Landbanking.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1)**1466** Pension Tax Withholding.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 5

Committee Clerk Comment: HB 240 964 1010 1084 1466

AGENDA

WEDNESDAY, JULY 14, 1999

SENATE FINANCE COMMITTEE

1:30 PM - Room 544

I CALL TO ORDER

II INTRODUCTION OF PAGES

III BILLS TO BE CONSIDERED

HB 240 – UNC Nonappropriated Capital Projects. – Reps. Insko and Hackney

HB 964 – Municipal Incorporation Process – Rep. Jarrell

HB 1010 – Cotton Gins, Warehouses, Merchants – Rep. Hill

HB 1084 – County Bonds for Landbanking. – Rep. McMahan

HB 1466 – Pension Tax Withholding – Rep. Cansler

SENATE FINANCE COMMITTEE

WEDNESDAY, JULY 14, 1999

1:30 P.M. - ROOM 544

The Senate Finance Committee met on Wednesday, July 14, 1999, at 1:30 P.M. in Room 544 with Senator John Kerr presiding. There were 25 committee members present for the meeting. The pages were Courtney Monsour from Fayetteville, Stacy Robinson from Ivanhoe, Emily Crites from Sylva, and Elise Reynolds from Webster.

HB 1010 – Cotton Gins, Warehouses, Merchants.

Representative Hill was recognized to explain his Bill. After questions and discussion, Senator Albertson moved for a Favorable Report and the motion carried. Copy of Bill, Explanation and Fiscal Note included in the minutes.

HB 1466 – Pension Tax Witholding.

Representative Cansler was recognized to explain his Bill. Senator Harris moved to give the Bill a Favorable Report and the motion carried. Copy of Bill, Explanation and Fiscal Note included in the minutes.

HB 1084 – County Bonds for Landbanking.

Representative McMahan was recognized to explain his Bill. Gerry Cohen gave a further explanation and answered questions by the committee members. Senator Hartsell and Senator Albertson moved for a Favorable Report and the motion carried. Copy of Bill, Explanation and Fiscal Note included in the minutes.

HB 240 – UNC Nonappropriated Capital Projects.

Representative Insko was recognized and explained her Bill. Senator Rand moved for a Favorable Report and the motion carried. Copy of Bill, Information and Fiscal Note included in the minutes.

HB 964 – Municipal Incorporation Process.

Representative Jarrell was recognized and explained her Bill. After a lengthy discussion by the committee, Senator Clodfelter moved for a Favorable Report and the motion carried. Copy of Bill included in the minutes.

Meeting adjourned.

David W. Hoyle, Co-Chair
Senate Finance Committee

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

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 3

HOUSE BILL 1010*
Committee Substitute Favorable 6/1/99
Committee Substitute #2 Favorable 7/5/99

Short Title: Cotton Gins, Warehouses, Merchants. (Public)

Sponsors:

Referred to:

April 13, 1999

A BILL TO BE ENTITLED

AN ACT TO REGULATE COTTON GINS, COTTON WAREHOUSES, AND COTTON MERCHANTS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 106 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 38B.

"Cotton Gins, Warehouses, Merchants.

"**§ 106-451.40. Definitions.**

(1) "Cotton gin" means any cotton gin.

(2) "Cotton merchant" means any person who buys cotton from the producer for the purpose of resale, or acts as a broker or agent for the producer in arranging the sale of cotton. It does not include a person who buys cotton for his own use.

(3) "Cotton warehouse" means any enclosure in which producer-owned cotton is stored or held for longer than 48 hours.

"**§ 106-451.41. Registration required.**

No person shall engage in business as a cotton gin, cotton warehouse, or cotton merchant without first having registered with the Commissioner of Agriculture. This shall include a cotton marketing cooperative or association that performs any of these functions.

"**§ 106-451.42. Application; bond; display of certificate of registration.**

(a) A cotton gin, cotton warehouse, cotton merchant, or cotton marketing cooperative or association shall, on or before July 1 of each year, file an application for registration on a form provided by the Commissioner of Agriculture. A fee of twenty-five dollars ($25.00) shall be submitted with each application.

(b) An application for registration as a cotton warehouse shall also be accompanied by a bond in the amount of three hundred thousand dollars ($300,000) issued by a company authorized to issue surety bonds in North Carolina and shall be conditioned upon fulfillment of contractual obligations related to the purchase or storage of cotton. A bond shall not be required for a person who is licensed and bonded under the U.S. Warehouse Act.

(c) The registration certificate shall be conspicuously displayed at the place of business.

"**§ 106-451.43. Records; receipts; other duties; denial of registration.**

(a) Cotton gins, cotton warehouses, cotton merchants, and cotton cooperatives or associations shall keep records of producer-owned cotton transactions for seven years, showing the producer's name, bale number, and bale weight.

(b) Cotton gins shall, within 48 hours of ginning, make available to the person from whom cotton was received, a paper document showing the bale number and weight for each bale of cotton ginned.

(c) Cotton gins, cotton warehouses, cotton merchants, and cotton cooperatives or associations shall not market, obligate for sale, or otherwise dispose of producer-owned cotton without written consent from the producer.

(d) Cotton gins, cotton warehouses, cotton merchants, and cotton cooperatives or associations shall assist the Commissioner of Agriculture or his agents in inspecting records of producer-owned cotton transactions. Cotton gins, cotton warehouses, cotton merchants, and cotton cooperatives or associations shall assist the Commissioner or his agents in weighing or reweighing a representative sample of cotton bales stored or held at their premises, using sampling procedures approved by the Board of Agriculture.

(e) Violation of any of the requirements of this section shall be grounds for denial, suspension, or revocation of registration under G.S. 106-451.41.

"**§ 106-451.44. Operation without registration unlawful; injunction.**

Engaging in business as a cotton gin, cotton warehouse, or cotton merchant without being registered under G.S. 106-451.41 is punishable as a Class 2 misdemeanor. In addition, the Commissioner of Agriculture may apply to any court of competent jurisdiction to obtain injunctive relief to prevent violations of this act."

Section 2. This act becomes effective January 1, 2000.

HOUSE BILL 1010:
Cotton Gins, Warehouses, Merchants

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Representative Hill
Date:	July 14, 1999	**Summary by:**	Mary Shuping
Version:	3rd Edition		Research Assistant

SUMMARY: ***House Bill 1010 requires all cotton gins, cotton warehouses, and cotton merchants to be registered. The bill also establishes the registration fee and bond requirements and provides that operation without registration is a Class 2 misdemeanor.***

The bill received a favorable report from the Senate Agriculture Committee on July 12, 1999.

CURRENT LAW & BILL ANALYSIS: Under current law, there is no requirement that cotton gins, warehouses, or merchants be registered.

House Bill 1010 would regulate cotton gins, warehouses, and merchants, as follows:

Cotton Gins, Cotton Warehouses, and Cotton Merchants would be required to register with the Commissioner of Agriculture before engaging in business. A "cotton warehouse" is an enclosure in which producer-owned cotton is stored or held for longer than 48 hours. A "cotton merchant" is a person who buys cotton for the purpose of resale, or acts as a broker or agent for the producer. The term does not include someone who buys cotton for his own use.

Registration Fee; Bond. Cotton gins, cotton merchants, and cotton warehouses would be required to register with the Department of Agriculture by July 1 of each year. The annual fee for registration is $25.00. In addition, cotton warehouses that are not licensed and bonded under the U.S. Warehouse Act must submit a bond in the amount of $300,000.

Records; Receipts; Denial of Registration. Cotton gins, cotton warehouses, cotton merchants, and cotton cooperatives or associations are required to keep records of producer-owned cotton transactions for 7 years and cannot dispose of the cotton without consent from the producer. Gins are required to give a document showing the bale number and weight for each bale to the grower within 48 hours. Finally, these entities are required to assist agents of the NC Department of Agriculture in inspection of records and weighing or re-weighing cotton bales samples. Violations of these requirements are grounds for denial, suspension, or revocation of registration.

Operation Without Registration is punishable as a Class 2 misdemeanor.

EFFECTIVE DATE: The act is effective January 1, 2000.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: H.B. 1010 – Agriculture Committee Substitute Cotton Gins, Warehouses, Merchants.

SHORT TITLE: Cotton Gins, Warehouses, Merchants.

SPONSOR(S):

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES	$2,400	$2,400	$2,400	$2,400	$2,400
EXPENDITURES Dept. of Agriculture	* See Assumptions and Methodology *				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Department of Agriculture.

EFFECTIVE DATE: January 1, 2000.

BILL SUMMARY: The legislation requires that all cotton gins, cotton merchants, cotton warehouses and cotton marketing cooperative associations that gin, sell, or warehouse cotton register with the state. They must also pay a $25.00 annual fee. The fee is due on July 1 of each year. The registration must be conspicuously displayed at the place of business. The bill also requires that registration applications for cotton warehouses also include a bond of $300,000. No bond is required if the person involved is licensed and bonded under the U.S. Warehouse Act. Additionally the bill directs that gins, merchants, warehouses and cooperative associations maintain transaction records for seven years. Cotton gins must also, within 48 hours of ginning, make documents available to those who provided the cotton, showing the bale number and weight for each bale ginned. The bill also requires that gins, merchants, warehouses and cooperative associations get written consent from the producer before the product is sold or committed. The same organizations must also assist the Agriculture Commissioner and his agents when inspecting records or weighing cotton bales. Violation of any of the recording, sale, or assistance provisions is grounds for denial, suspension, or revocation of registration. Engaging in this business without the appropriate registration is punishable as a Class 2 misdemeanor. The Commission is authorized to apply for an injunction to prevent violations of the act.

ASSUMPTIONS AND METHODOLOGY: Under the legislation, each cotton gin, warehouse, merchant, and cooperative engaged in one or more of these businesses must register and pay a $25.00 annual fee. The Department of Agriculture reports that there where 48 cotton gins, 28 cotton warehouses, and 20 cotton merchants in 1997. Assuming each paid the $25.00 annual fee, the potential revenue is as follows:

	Number	Potential Revenue
Cotton Gins	48	1,200
Cotton Warehouses	28	700
Cotton Merchants	20	500
TOTAL	**96**	**2,400**

The fiscal note assumes no significant growth in the number of gins, warehouses, or merchants in the next five years.

The bill also makes operating a gin, warehouse or merchant without a registration a Class 2 misdemeanor. Because the maximum prison time associated with a Class 2 misdemeanor is 60 days, and the number of violations is expected to be extremely low, Fiscal Research does not anticipate the bill will create a cost to the prison system.

The Department of Agriculture reports that the registration and inspection processes outlined in the bill can be handled by existing staff.

TECHNICAL CONSIDERATIONS:

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Linda Struyk Millsaps

APPROVED BY: Tom Covington

DATE: Tuesday, June 29, 1999

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 1466
Committee Substitute Favorable 7/7/99

Short Title: Pension Tax Withholding. (Public)

Sponsors:

Referred to:

May 12, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR WITHHOLDING OF NORTH CAROLINA INCOME TAXES FROM TAXABLE PENSIONS, ANNUITIES, AND DEFERRED COMPENSATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-163.1 is amended by adding two new subdivisions to read:

"(11a) Pension payer. -- A payor or a plan administrator with respect to a pension payment under section 3405 of the Code.

(11b) Pension payment. -- A periodic payment or a nonperiodic distribution that is not an eligible rollover distribution, as defined in section 3405 of the Code."

Section 2. G.S. 105-163.1(14) reads as rewritten:

"(14) Withholding agent. -- An ~~employer~~ employer, a pension payer, or a payer."

Section 3. Article 4A of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-163.2A. Pension payers must withhold taxes.**

(a) Definitions. -- The definitions provided in section 3405 of the Code apply in this section.

(b) Withholding Required. -- A pension payer required to withhold federal taxes under section 3405 of the Code on a pension payment to a resident of this State must deduct and withhold from the payment the State income taxes payable on the

payment. Liability for withholding and paying taxes under this section on a pension payment falls on the person who would be liable under section 3405 of the Code for withholding federal taxes on the payment.

Except as otherwise provided in this section, the provisions of this Article apply to a pension payer's pension payment to a resident of this State as if it were an employer's payment of wages to an employee. If a pension payer has more than one arrangement under which it may make pension payments to a resident of this State, each arrangement must be treated separately under this section.

(c) Amount. -- In the case of a periodic payment, the pension payer must withhold the amount that would be required to be withheld under this Article if the payment were a payment of wages by an employer to an employee for the appropriate payroll period. If the recipient of periodic payments fails to file an exemption certificate under G.S. 105-163.5, the pension payer must compute the amount to be withheld as if the recipient were a married individual claiming three withholding exemptions.

In the case of a nonperiodic distribution, the pension payer must withhold taxes equal to four percent (4%) of the nonperiodic distribution.

(d) Election of No Withholding. -- The recipient may elect not to have taxes withheld under this section. The election must be in the form required by the Secretary. In the case of periodic payments, the election remains in effect until revoked by the recipient. In the case of a nonperiodic distribution, the election applies on a distribution-by-distribution basis unless it meets conditions prescribed by the Secretary for it to apply to subsequent nonperiodic distributions by the pension payer.

A pension payer must notify each recipient of the right to elect not to have taxes withheld under this section. The notice must comply with the requirements of section 3405 of the Code and any additional requirements prescribed by the Secretary.

A recipient's election not to have taxes withheld under this section is void if the recipient fails to furnish the recipient's tax identification number to the pension payer, or the Secretary has notified the pension payer that the tax identification number furnished by the recipient is incorrect.

(e) Exemptions. -- This section does not apply to the following pension payments:

(1) A pension payment that is wages under this Article.

(2) Any portion of a pension payment that meets both of the following conditions:

a. It is not a distribution or payment from an individual retirement plan as defined in section 7701 of the Code.

b. The pension payer reasonably believes it is not taxable to the recipient under Article 4 of this Chapter.

(3) A distribution described in section 404(k)(2) of the Code, relating to dividends on corporate securities.

(4) A pension payment that consists only of securities of the recipient's employer corporation plus cash not in excess of two

hundred dollars ($200.00) in lieu of securities of the employer corporation."

Section 4. This act becomes effective January 1, 2001.

HOUSE BILL 1466:
Pension Tax Withholding

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Rep. Cansler
Date:	July 14, 1999	**Summary by:**	Martha K. Walston
Version:	2nd Edition		Committee Counsel

SUMMARY: House Bill 1466 requires a person paying pensions, annuities, and deferred compensation to withhold North Carolina individual income tax from the payments unless the recipient elects not to have the tax withheld. The bill becomes effective January 1, 2001 The current version of House Bill 1466 was given a favorable report in House Finance.

CURRENT LAW: As a general rule, retirement income is not considered wages for income tax purposes. Under federal law, withholding is required on pensions, annuities, and certain deferred income, including IRAs. However, North Carolina does not piggyback this aspect of federal withholding law. Individuals whose income is not subject to withholding must estimate their income tax liability each year and pay the tax in four installments.

The Department of Revenue does allow voluntary withholding by employers. The holder of an IRA, although not an employer, may also enter into a voluntary withholding agreement. The voluntary agreements are optional – the payee can refuse to do it. Also, if the payer withholds the tax but does not pay it to the Department of Revenue, the taxpayer's only recourse is against the payer. The Department cannot credit the taxpayer and pursue the payer.

BILL ANALYSIS: House Bill 1466 provides that a pension payer required to withhold federal income tax on a pension payment to a resident of North Carolina must also withhold State income tax. A recipient may elect to not have tax withheld from the pension payment. The pension payer must notify each recipient of the right to elect not to have tax withheld.

In the case of periodic payments, the pension payer must withhold as if the recipient were a married person with three exemptions, unless the recipient provides an exemption certificate reflecting a different filing status or number of exemptions. For a non-periodic payment, the pension payer must withhold 4% of the payment. A pension payer who fails to withhold or remit the tax that is withheld is liable for the tax.

Cindy Avrette, committee counsel to House Finance, contributed substantially to this summary.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1466 (First Edition)

SHORT TITLE: Pension Tax Withholding

SPONSOR(S): Representative Lanier Cansler

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
General Fund	see ASSUMPTIONS AND METHODOLOGY				
EXPENDITURES					
General Fund	No Fiscal Impact				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue

EFFECTIVE DATE: This act becomes effective January 1, 2001.

BILL SUMMARY:
The bill provides that a pension payer required to withhold federal taxes on a pension payment to a North Carolina resident must withhold state taxes on a pension payment, annuity, or deferred compensation unless the recipient elects not to withhold.

BACKGROUND:
Under current law, an employer or pension payer may enter into a voluntary agreement to withhold North Carolina tax on pensions or other income not requiring withholding. However, because the agreement is voluntary, the Department of Revenue may not pursue the pension payer for tax it withholds but does not remit. If the pension payer does not remit the tax to the Department of Revenue, then the retiree or pension recipient is not allowed credit against his tax liability for the tax withheld.

ASSUMPTIONS AND METHODOLOGY:
This bill does not apply to federal, state and local retirees with 5 years creditable service as of August 12, 1989. These groups are exempt from state income tax due to a court decision in the Bailey, Emory, and Patton lawsuits. Instead the bill will help the estimated 280,000 private sector

retirees in the state with pension income (estimate by Fiscal Research Division using Current Population Survey).

The Internal Revenue Service (IRS) does not know how many taxpayers have federal income tax withheld from their pension payment, annuity, or deferred compensation. When a company submits withheld income taxes, it does not separately account for current and former employees. Similarly, the North Carolina Department of Revenue has no data on the number of taxpayers that have chosen voluntary withholding of their pension payment, annuity, or deferred compensation. Without state and federal tax data, no estimate can be made on the General Fund impact of HB 1466. It can be assumed that the state General Fund could gain interest on funds that are withheld monthly instead of submitted quarterly in estimated payments. Unfortunately, the extent of this gain cannot be quantified.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic

APPROVED BY: Tom Covington

DATE: Monday, June 21, 1999

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 3

HOUSE BILL 1084
Committee Substitute Favorable 7/8/99
Third Edition Engrossed 7/12/99

Short Title: County Bonds for Landbanking. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE COUNTIES TO ISSUE BONDS TO PURCHASE LAND FOR MULTIPLE USE FOR PRESENT OR FUTURE COUNTY, OPEN SPACE, COMMUNITY COLLEGE, AND PUBLIC SCHOOL PURPOSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 159-48(c) reads as rewritten:

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

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

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

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

(4) Providing school facilities, including without limitation schoolhouses, buildings, plants and other facilities, physical and

vocational educational buildings and facilities, including in connection therewith classrooms, laboratories, libraries, auditoriums, administrative offices, gymnasiums, athletic fields, lunchrooms, utility plants, garages, and school buses and other necessary vehicles.

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

(4b) Providing land for present or future county corporate, open space, community college, and public school purposes.

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

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

HOUSE BILL 1084:
County Bonds for Landbanking

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Rep. McMahan
Date:	July 12, 1999	**Summary by:**	Martha K. Walston Committee Counsel
Version:	Third Edition		

SUMMARY: House Bill 1084 clarifies that a county may issue general obligation bonds to purchase land, to use either immediately or in the future, for county corporate, open space, community college, and public school purposes. The 2nd Edition of the bill was given a favorable report in House Finance, and the House made only technical changes.

CURRENT LAW: The Local Government Bond Act lists the purposes for which a county may issue general obligation bonds. Those purposes include land for corporate purposes, providing for community college facilitates, providing for school facilities, and providing for any purpose for which it is authorized to appropriate money. For each of these purposes, the bond money can be used to pay capital costs. The term "capital costs" is defined to include the costs of all property useful for the purpose authorized.

Bonds issued to provide land for corporate purposes or to provide for a purpose for which a county may appropriate money must be approved by the voters. As a general rule, general obligation bonds issued for community college and school purposes are also subject to a vote of the people. The Constitution does provide that bonds issued for certain purposes, including community college and school purposes, may be issued without a vote of the people to the extent that the aggregate principal sum does not exceed two-thirds of the amount by which the outstanding indebtedness of the issuing county has been reduced during the next preceding fiscal year.

BILL ANALYSIS: While it is clear that current law allows a county to issue bonds to pay the costs of acquiring land for county corporate, community college, and school purposes, it is not clear whether it can acquire the land for future use for these purposes. The current provision that authorizes the expenditure of bond proceeds to pay land costs is normally associated with the immediate use of the land for the purposes for which the bond itself was issued. The situation presented in this bill is slightly different. The primary purpose of the bonds being issued under the authority created by this bill is the purchase of the land itself.

While it can be inferred from current law that a county could issue bonds for the purpose of "landbanking" property for county corporate, community college, or school purposes, it is not clear. This bill clarifies the matter by providing specific, clear statutory authorization for the issuance of bonds for this purpose.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1084 (House Finance Committee Substitute)

SHORT TITLE: County Bonds for Landbanking

SPONSOR(S): Representative McMahan

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
EXPENDITURES					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: County governments

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

BILL SUMMARY: The bill authorizes counties to issue bonds to purchase land for multiple use for present or future county, community college, and public school purposes.

ASSUMPTIONS AND METHODOLOGY:
The bill clarifies the statutory authority of counties to issue General Obligation bonds to purchase land for multiple uses instead of issuing a General Obligation bond for each land use. Some bond attorneys have advised the State Treasurer that counties already have the authority for landbanking, but this bill clearly states county bond powers in order to avoid any court challenges.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic

APPROVED BY: Tom Covington

DATE: Monday, June 21, 1999

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 240
Committee Substitute Reported Without Prejudice 4/29/99

Short Title: UNC Nonappropriated Capital Projects. (Public)

Sponsors:

Referred to:

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CONSTRUCTION AND THE FINANCING, WITHOUT APPROPRIATIONS FROM THE GENERAL FUND, OF CERTAIN CAPITAL IMPROVEMENTS PROJECTS OF THE CONSTITUENT INSTITUTIONS OF THE UNIVERSITY OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. The purpose of this act is (i) to authorize the construction or acquisition by certain constituent institutions of The University of North Carolina, of the capital improvements projects listed in the act for the respective institutions, and (ii) to authorize the financing of these projects with funds available to the institutions from gifts, grants, receipts, self-liquidating indebtedness, or other funds, or any combination of these funds, but not including funds appropriated from the General Fund of the State.

Section 2. The capital improvements projects, and their respective costs, authorized by this act to be constructed and financed as provided in Section 1 of this act, are as follows:

1. **Appalachian State University**

Athletic Facilities	$6,241,500
Improvements to Student Residence Facilities	9,417,000
Central Campus Parking Deck	9,169,400
Plemmons Student Union Interior/Exterior Renovations	4,046,700
Bookstore Renovations	2,250,000

2. East Carolina University	
Materials Warehouse	2,900,300
Jones Hall Renovations and College Hill Central Chiller Plant	18,544,200
Strength and Conditioning Center	8,587,000
3. Elizabeth City State University	
Renovation of Residence Halls	2,050,000
4. North Carolina A&T State University	
Williams Cafeteria Renovation and Expansion	8,579,100
5. North Carolina State University	
Central Stores Surplus Warehouse Expansion	4,185,400
Academic and Practice Facility	22,071,100
East Campus Dining Facility	3,134,800
6. The University of North Carolina at Asheville	
New Residence Hall	5,699,700
North Carolina Center for Creative Retirement	3,471,600
7. The University of North Carolina at Chapel Hill	
Teaching Research Building - School of Public Health	25,598,300
Addition to Carrington Hall - School of Nursing	7,904,000
Residence Halls for 1,000 Students	42,067,500
Medical School Office Building	33,677,000
Acquisition of Chapel Hill North Office Building	6,200,000
Airport Drive Office Building	7,005,200
8. The University of North Carolina at Charlotte	
Bookstore	4,099,200
Cone Center Renovations	4,473,400
Parking Deck 'F'	8,223,400
9. The University of North Carolina at Greensboro	
High-Rise Residence Hall Roof Replacements	737,500
Residence Hall Data Wiring and Electrical Renovations	4,525,000
Elliott University Center Renewal and Bookstore/Food Court Addition	22,000,000

10. The University of North Carolina at Wilmington	
Housing for 200 Students	8,043,900
University Union Addition and Renovation	7,615,000
11. Western Carolina University	
Hinds University Center Addition	4,904,200
New Student Housing (300 Beds)	14,480,600
Housing for Students with Families (20 units)	1,476,300.

Section 3. At the request of the Board of Governors of The University of North Carolina and upon determining that it is in the best interest of the State to do so, the Director of the Budget may authorize an increase or decrease in the cost of, or a change in the method of funding the projects authorized by this act. In determining whether to authorize a change in cost or funding, the Director of the Budget may consult with the Joint Legislative Commission on Governmental Operations.

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

PROPOSED
SELF-LIQUIDATING CAPITAL IMPROVEMENTS PROJECTS

The University of North Carolina

1999

May 24, 1999

THE UNIVERSITY OF NORTH CAROLINA
CAPITAL PROJECTS TO BE FUNDED
FROM NON-APPROPRIATED SOURCES

The proposed legislation provides for thirty-two self-liquidating capital improvements projects at eleven constituent institutions of The University of North Carolina. A description of each project follows:

Appalachian State University

Athletic Facilities, $6,241,500
The project would provide for the construction of a 20,000 square-foot indoor swimming complex with a 25-meter pool. As a part of the project, the University's existing swimming pool would be renovated; however, the existing pool is over 30 years old and is not large enough to meet current instructional and recreational demands. The project further provides for the construction of four new outdoor athletic fields to provide facilities for intramural athletics. The project would be financed through the sale of revenue bonds to be repaid from a new debt service fee of $25 annually.

Improvements to Student Residence Facilities, $9,417,000
The project provides for a variety of improvements in eight student residence halls constructed prior to 1980. The University proposes to systematically replace roofs, windows, doors, security systems, floor coverings, and fixed equipment in all of the residence halls. The University further plans to upgrade plumbing, electrical and data systems in several of the residence halls. The project also provides for upgrades to the emergency controls and power sources for residence hall elevators. The University proposes to finance the project through the sale of revenue bonds to be repaid from residence hall receipts. It is estimated that room charges will increase by $55 per semester to finance the debt repayment.

Appalachian State University (continued)

Central Campus Parking Deck, $9,169,400
A parking study conducted in 1995 identified the loss of more than 700 parking spaces as a result of the construction of new facilities on the ASU campus. This loss, combined with an already existing shortage of parking facilities, requires that the University construct additional parking. The project provides for the construction of a 5-level structure located near the new Convocation Center. The structure would serve the parking needs of the campus population and would also provide parking facilities for participants attending events at the Center. The parking deck would contain 1200 square feet of office space for the traffic and parking operations department. The University proposes to finance the project through the sale of revenue bonds to be repaid from parking receipts. It is estimated that parking registration fees would increase by $50 to finance the repayment of the bonds. In addition, participants in events at the Convocation Center would pay for parking.

Plemmons Student Union Interior/Exterior Renovations, $4,046,700
The project provides for the addition of 20,000 square feet of space to the Plemmons Student Union as well as the renovation of approximately 10,000 square feet of space in the student union building. The added space would provide student areas and an informal eating area. The University proposes to finance the project through the sale of revenue bonds to be repaid from a new debt service fee of $15 annually.

Bookstore Renovations, $2,250,000
The University has previously received authorization to construct an addition to the campus bookstore and now seeks authority for the renovation of the existing 22,528 square-foot bookstore when the addition is completed. The University proposes to finance the project through the sale of revenue bonds to be repaid from bookstore receipts.

East Carolina University

Materials Warehouse, $2,900,300
The project would provide for the relocation of the University's warehouse facility to a location remote from the main academic campus, freeing space on campus for instructional activities. The new warehouse would contain approximately 35,000 square feet of space and would be constructed on University property located between the main campus and the School of Medicine. The University proposes to finance the project through the sale of revenue bonds to be repaid from overhead receipts and departmental charges.

East Carolina University (continued)

Jones Hall Renovations and College Hill Central Chiller Plant, $18,544,200

These projects represent the next phase of a long-term plan to upgrade and expand the quality of student services in the College Hill area of the campus. Jones Hall, a residence hall constructed in 1958, would be renovated to meet current life safety and accessibility standards. The renovations would include the replacement of the facility's mechanical systems to achieve improved environmental control as well as aesthetic renovations to both the interior and the exterior of the facility. The former cafeteria in Jones Hall would be renovated and expanded to provide an attractive alcohol-free late night entertainment alternative for students. The facility would include a juice and dessert bar and fitness center. The chiller to be installed to support this project would be located in a new facility that would provide the start of a centralized loop system for this area of campus. The University proposes to finance the project through the sale of revenue bonds to be repaid from a combination of residence hall receipts and food service receipts.

Strength and Conditioning Center, $8,587,000

In 1998, the General Assembly provided $2,000,000 for planning a Strength and Conditioning Center at ECU. The total project is estimated to cost $10,587,000 and the University requests authority to complete the financing for the facility from non-appropriated funds. The facility would be located between the stadium and the coliseum. It would serve as an athletic training and tutoring facility and would include a banquet hall capable of accommodating 500 people. Funds for this project would be privately raised by the East Carolina University Educational Foundation, Inc. Short-term bank financing may be required.

Elizabeth City State University

Renovation of Residence Halls, $2,050,000

The project provides for the first phase of renovations to six campus residence halls. Renovations would include upgrades to electrical and plumbing systems, the installation of new HVAC systems, and improvements to meet life safety requirements. The University proposes to finance the project through the issuance of revenue bonds to be repaid from residence hall receipts.

North Carolina A&T State University

Williams Cafeteria Renovation and Expansion, $8,579,100
The project would provide for the renovation and expansion of Williams Cafeteria, constructed in 1974. The project includes replacement of the HVAC, electrical, and plumbing systems; window replacement; and roof replacement. The 25,000 square foot expansion would provide for more diverse dining alternatives and would increase seating capacity by 750 seats. The University proposes to finance the project through the sale of revenue bonds to be repaid from food service receipts.

North Carolina State University

Central Stores Surplus Warehouse Expansion, $4,185,400
The project would provide for the construction of a 60,000 square-foot addition to the existing 39,000 square-foot University warehouse. Increasing remote storage capacity would allow for better utilization of core academic space. The University proposes to finance the project through indebtedness to be repaid from storage rental income.

Academic and Practice Facility, $22,071,100
The project would provide for a new 187,000 square-foot facility with training and academic areas for student athletes. Included in the facility would be study areas, tutoring spaces, computer labs, classrooms, reception areas, practice and training courts, team areas and coaches offices. Existing facilities are inadequate and do not meet the Athletics' Department needs for study, practice and training areas. The University proposes to finance the facility through gifts to the athletics department.

East Campus Dining Facility, $3,134,800
Currently, the main dining facility on the NCSU campus is located on the western end of the campus and serves several nearby residence halls. The University now proposes to construct a dining facility to serve the east end on the campus. The project would provide for the conversion of the recently vacated student infirmary into a student dining facility with a 225-seat dining capacity. The project would include upgrades to the building systems. The University proposes to finance the project through the sale of revenue bonds to be repaid from food service receipts.

The University of North Carolina at Asheville

New Residence Hall, $5,699,700
The project would provide for the construction of a new residence hall as the University begins to replace several existing residence halls that were built in the 1960s. It is more cost effective to replace these facilities than to attempt to renovate them to meet current standards. The residence hall would contain approximately 100 beds. The University proposes to finance the project through the sale of revenue bonds to be repaid from housing receipts.

North Carolina Center for Creative Retirement, $3,471,600
The Center for Creative Retirement has received grants, gifts and other receipts to finance the construction of a new 16,000 square-foot building to house the Center's activities. The facility would include classrooms, meeting rooms and administrative offices to create a learning environment for lifelong learning for retired individuals.

The University of North Carolina at Chapel Hill

Teaching Research Building – School of Public Health, $25,598,300
The project would provide for the construction of a 90,000 square-foot building with instructional facilities, research laboratories, offices, and support spaces for the School of Public Health. The building would be located south of the School's existing facilities in Rosenau Hall. The new building is needed for the School to continue the research that has led it to national prominence. The University proposes to finance the project through the sale of revenue bonds to be repaid from overhead receipts and other non-appropriated departmental funds.

Addition to Carrington Hall – School of Nursing, $7,904,000
This project provides for a 39,000 square-foot addition to Carrington Hall to meet the teaching and research needs of the School of Nursing. The six-floor addition would include an auditorium, computer laboratories, and teaching laboratories. Course offerings in Nursing have tripled since the original facility was constructed in 1969. A commensurate increase in the number of students served along with new technologies has necessitated the need to expand and modernize. The University proposes to finance the project through the sale of revenue bonds to be repaid from overhead receipts and other non-appropriated departmental funds.

Residence Halls for 1,000 Students, $42,067,500
The last residence hall constructed on the UNC-CH campus was completed in 1986. The University is now anticipating increased enrollment, more of the students want to live on campus, and the need exists to diversify the types of residence halls on campus. The project would provide for the construction of several low-rise residence halls housing 250 to 400 students each. The buildings would be located on the south end of campus proximate to the existing high-rise residence halls. The University proposes to finance the project through the sale of revenue bonds to be repaid from residence hall receipts.

Medical School Office Building, $33,677,000
The project provides for the construction of a 150,000 square-foot facility to house clinical faculty and staff, freeing up needed wet laboratory research space elsewhere on the health affairs campus. The six-story building would be located on the south side of Mason Farm Road. Two structures currently on the site would be demolished to accommodate this new structure. The building would include a 125-seat auditorium and a snack bar. Offices and conference rooms would be constructed using open architecture. The University proposes to finance the project from a combination of balances available in accounts of the University and the UNC Health Care System as well as borrowing to be repaid from overhead receipts and other non-appropriated departmental receipts.

Acquisition of Chapel Hill North Office Building, $6,200,000
The University is currently leasing this facility from the Endowment Fund of the University of North Carolina at Chapel Hill and proposes to now acquire this 50,400 square-foot facility. The building is currently fully occupied by activities that were formerly leasing commercial space throughout the towns of Chapel Hill and Carrboro. The project would be financed through the sale of revenue bonds to be repaid from charges to building occupants.

Airport Drive Office Building, $7,005,200
The University plans to lease land on Airport Road to The University of North Carolina at Chapel Hill Foundation, Inc., for the period required for the Foundation to construct a 60,000 square-foot, three-story office building. When the facility is completed, the lease would expire and the University would acquire the facility from the Foundation. The University proposes to finance the acquisition through indebtedness to be repaid from charges to building occupants.

The University of North Carolina at Charlotte

Bookstore, $4,099,200
The project would provide for the construction of a 25,000 square-foot bookstore to serve the UNC-Charlotte campus. The present bookstore was constructed in 1980 and does not adequately meet the needs of the current campus population. The new facility would be located close to parking facilities. The University proposes to finance the project from a combination of funds available in bookstore accounts and borrowing to be repaid from bookstore receipts.

Cone Center Renovations, $4,473,400
The N.C. Department of Insurance has determined that no further renovations are to be undertaken at the Cone Center until building code deficiencies are addressed in this building, a portion of which was constructed in 1962. The project would provide for the correction of the identified deficiencies as well as improvements to student government offices, student lounges, and the food court/cafeteria. The project would also provide for exterior renovation of the older section of the building to include larger windows, greater insulation and aesthetic improvements. The University proposes to finance the project from a combination of balances available in institutional accounts and borrowing to be repaid from a new debt service fee of $10 annually.

Parking Deck 'F', $8,223,400
The project would provide for the construction of an 800-space parking deck to meet the current demand for on-campus parking. The University's master plan identifies the need for multi-level parking structures located close to facilities and buffered by landscaping. The project would be financed by a combination of balances available in parking system accounts and borrowing to be paid from parking fees. A $5 increase in parking fees was approved in March of 1999. Similar increases are planned for the next two years.

The University of North Carolina at Greensboro

High-Rise Residence Hall Roof Replacements, $737,500
The project provides for the replacement of 126,200 square-feet of membrane type roofs on four high-rise residence halls. The project includes the installation of new insulation and roof drains, and restoration of parapet walls and top coping. The University proposes to finance the project through borrowing to be repaid from residence hall receipts.

The University of North Carolina at Greensboro (continued)

Residence Hall Data Wiring and Electrical Renovations, $4,525,000
The project provides for the University's share of funds needed to install data and telephone wiring in each room in fourteen of the University's residence halls. Six of the residence halls would also receive dropped ceilings and softer lighting in the hallways. The project also provides for the complete electrical renovation of two residence halls, Weil and Winfield, including replacement of electrical service, panels, outlets, wiring, lighting and fire alarm systems. The University proposes to finance the project from borrowing to be repaid from housing and dining system revenues.

Elliott University Center Renewal and Bookstore/Food Court Addition, $22,000,000
The project provides for a 51,100 square-foot addition to the Elliott University Center to include a bookstore, dining facilities, and an auditorium. The project also provides for renovation of the existing 118,600 square-foot facility to provide flexible high quality space capable of supporting social, cultural and recreational needs of the students. Building systems would be upgraded to support a higher intensity of use. The University proposes to finance the project through the sale of revenue bonds to be repaid from bookstore revenues, dining revenues, and a new student fee of $120 annually.

The University of North Carolina at Wilmington

Housing for 200 Students, $8,043,900
The project provides for the construction of 51,500 square-feet of housing for on-campus students. Currently, the demand for on-campus housing exceeds capacity by more than 100% and continued undergraduate enrollment growth at this campus will exacerbate this situation. The University proposes to finance the project from a combination of balances available in housing reserves and through the sale of revenue bonds to be repaid from housing receipts.

University Union Addition and Renovation, $7,615,000
The project provides for the addition of 41,200 square feet and the renovation of 54,300 square feet to the University Union to provide adequate space for student activities, dining, and bookstore sales. The University proposes to finance the project from a combination of balances available in institutional accounts and borrowing to be repaid from existing student fees along with dining and bookstore receipts.

Western Carolina University

Hinds University Center Addition, $4,904,200
Because WCU is located in a rural community, it lacks the off-campus amenities to which college-age students are attracted. The project provides for an addition to the Hinds University Center to accommodate increased student activities. The two-story, 31,400 square-foot addition would contain meeting spaces, lounge areas, a movie theater, post office, retail space and computer stations. The University proposes to finance the project through the sale of revenue bonds to be repaid from a new debt service fee of $65 annually.

New Student Housing (300 Beds), $14,480,600
The project provides for construction of a new residence hall with 75 residential suites serving four students each with shared living and bathroom facilities. The facility would contain 96,300 square feet of space and would include a lobby, laundry areas, housekeeping areas, offices, vending areas, and an apartment for a manager. The University proposes to finance the project through the sale of revenue bonds to be repaid from housing receipts. It is anticipated that room rates would increase by $145 per semester.

Housing for Students with Families (20 Units), $1,476,300
The project would provide for the construction of an apartment complex to accommodate the ever-growing number of students who have children and wish to live in campus housing. The complex would consist of five, four-plex, two bedroom apartment buildings. The University proposes to finance the project from borrowing to be repaid from rents charged to occupants of the housing units.

April 14, 1999

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 240 (Second Edition) REVISED II

SHORT TITLE: UNC Non-Appropriated Capital Projects

SPONSOR(S):

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
EXPENDITURES					
General Fund Operating Costs		$2,996,000	$3,123,420	$3,375,405	$3,478,324
POSITIONS:		Not Available			

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: The University of North Carolina – General Administration

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

BILL SUMMARY: The bill authorizes the construction and financing, without appropriations from the General Fund, of capital improvements projects of the constituent institutions of the University of North Carolina.

ASSUMPTIONS AND METHODOLOGY: The 32 projects listed in this bill are being constructed with funds other than the state General Fund (see attached chart). However, there are five projects that will require a General Fund appropriation for operating expenses. Operating expenses includes both salary and benefits for new personnel and non-personnel items such as utilities. The data provided by the UNC-General Administration includes a 3% increase per year for salaries and benefits and a 5% increase per years for non-personnel items and utilities.

House Bill 240: UNC Non-Appropriated Capital Project Authorizations

Campus	Project	Amount	Source of Funds	Effect of Debt on Students	Increase in Annual Operating Costs	Source of Operating Costs
Appalachian State	Athletic Facilities – indoor pools and athletic fields	$6,241,500	student fees	$25 fee increase for debt service	$126,000	
Appalachian State	Improvement to 8 Student Residence Facilities	$9,417,000	residence hall receipts	$55 increase in room charges	$25,000	
Appalachian State	Central Campus Parking Deck	$9,169,400	parking fees	$50 increase in annual parking registration fees	$54,000	
Appalachian State	Plemmons Student Union Interior/Exterior Renovations	$4,046,700	student fees	$15 fee increase for debt service	$83,600	
Appalachian State	Bookstore Renovations	$2,250,000	bookstore receipts		none	
East Carolina	Materials Warehouse	$2,900,300	overhead receipts and departmental charges		$72,900	
East Carolina	Jones Hall Renovations and College Hill Central Chiller Plant	$18,544,200	residence hall and food service receipts		$291,700	

Campus	Project	Amount	Source of Funds	Effect of Debt on Students	Increase in Annual Operating Costs	Source of Operating Costs
East Carolina	Strength and Conditioning Center	$8,587,000	East Carolina University Educational Foundation, Inc.		$125,100	
Elizabeth City State	Renovation of 6 Residence Halls	$2,050,000	residence hall receipts		none	
N C A & T	Williams Cafeteria Renovation and Expansion	$8,579,100	food service receipts		$142,300	
N C State	Central Stores Surplus Warehouse Expansion	$4,185,400	storage rental income		$172,000	
N C State	Academic and Practice Facility	$22,071,100	athletic department gifts		$654,000	
N C State	East Campus Dining Facility	$3,134,800	food service receipts		$53,000	
UNC – Asheville	New Residence Hall	$5,699,700	residence hall receipts		$84,200	
UNC – Asheville	North Carolina Center for Creative Retirement	$3,471,600	grants and gifts		$118,865	General Fund
UNC – Chapel Hill	Teaching Research Building - School of Public Health	$25,598,300	overhead receipts and departmental funds		$1,047,000	General Fund
UNC – Chapel Hill	Addition to Carrington Hall-School of Nursing	$7,904,000	overhead receipts and departmental funds		$460,000	General Fund

Campus	Project	Amount	Source of Funds	Effect of Debt on Students	Increase in Annual Operating Costs	Source of Operating Costs
UNC – Chapel Hill	Residence Halls for 1,000 Students	$42,067,500	residence hall receipts		$1,947,000	
UNC – Chapel Hill	Medical School Office Building	$33,677,000	overhead receipts and departmental funds		$1,043,000	General Fund
UNC – Chapel Hill	Acquisition of Chapel Hill North Office Building	$6,200,000	charges to building occupants / overhead receipts			
UNC – Chapel Hill	Airport Drive Office Building	$7,005,200	charges to building occupants		$446,000	General Fund
UNC – Charlotte	Bookstore	$4,099,200	bookstore receipts and funding in book store accounts		$119,000	
UNC – Charlotte	Cone Center Renovations	$4,473,400	balances available in institutional accounts and fee increase	$10 fee increase for debt service	none	
UNC – Charlotte	Parking Deck F	$8,223,400	parking fees and balances in parking system accounts	$5 increase in parking fee in 2000 and in 2001	none	
UNC – Greensboro	High-Rise Residence Hall Roof Replacements	$737,500	residence hall receipts		none	

Campus	Project	Amount	Source of Funds	Effect of Debt on Students	Increase in Annual Operating Costs	Source of Operating Costs
UNC – Greensboro	Residence Hall Data Wiring and Electrical Renovations	$4,525,000	housing and dining system revenues		none	
UNC – Greensboro	Elliot University Center Renewal and Bookstore/ Food Court addition	$22,000,000	bookstore revenue, dining revenue and student fees	$120 increase in student fees	$234,000	
UNC – Wilmington	Housing for 200 Students	$8,043,900	residence hall receipts		$280,000	
UNC – Wilmington	University Union Addition and Renovation	$7,615,000	student fees, dining and bookstore receipts		$75,000	
Western Carolina	Hinds University Center Addition	$4,904,200	student fees	$65 fee increase for debt service	$106,000	
Western Carolina	New Student Housing (300 beds)	$14,480,600	residence hall receipts	$145 per semester increase in room rates	$578,000	

Campus	Project	Amount	Source of Funds	Effect of Debt on Students	Increase in Annual Operating Costs	Source of Operating Costs
Western Carolina	Housing for Students with Families (20 units)	$1,476,300	housing unit rent		$34,800	
Total		$313,378,300			$3,114,865 (General Fund) $5,257,600 (Other Funds)	

Notes: The chart list the first year operating costs of each project.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic

APPROVED BY:

DATE:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 964
Committee Substitute Favorable 6/7/99
Committee Substitute #2 Favorable 6/14/99
Fourth Edition Engrossed 6/22/99

Short Title: Municipal Incorporation Process. (Public)

Sponsors:

Referred to:

April 12, 1999

A BILL TO BE ENTITLED

AN ACT TO REVISE THE MUNICIPAL INCORPORATION PROCESS SO AS TO PROVIDE MORE SCRUTINY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 120-163(c) reads as rewritten:

"(c) The petition must include a proposed name for the city, a map of the city, a list of proposed services to be provided by the proposed municipality, the names of three persons to serve as interim governing board, a proposed charter, a statement of the estimated population, assessed valuation, degree of development, population density, and recommendations as to the form of government and manner of election. The petition must contain a statement that the proposed municipality will have a budget ordinance with an ad valorem tax levy of at least five cents (5¢) on the one hundred dollar ($100.00) valuation upon all taxable property within its corporate limits. The petition must contain a statement that the proposed municipality will offer four of the following services no later than the first day of the third fiscal year following the effective date of the incorporation: (i) police protection; (ii) fire protection; (iii) solid waste collection or disposal; (iv) water distribution; (v) street maintenance; (vi) street construction or right-of-way acquisition; (vii) street lighting; and (viii) zoning. In order to qualify for providing police protection, the proposed municipality must propose either to provide police service or to have services provided by contract with a county or another municipality that proposes that the

other government be compensated for providing supplemental protection. The proposed municipality may not contain any noncontiguous areas."

Section 2. G.S. 120-167 reads as rewritten:

"**§ 120-167. Additional criteria; population.**

The Commission may not make a positive recommendation unless the proposed municipality has a permanent population of at least ~~100.~~ 100 and a population density (either permanent or seasonal) of at least 250 persons per square mile."

Section 3. G.S. 120-168 reads as rewritten:

"**§ 120-168. Additional criteria; development.**

~~Except when the entire proposed municipality is within two miles of the Atlantic Ocean, Albemarle Sound, or Pamlico Sound, the~~ The Commission may not make a positive recommendation unless forty percent (40%) of the area is developed for residential, commercial, industrial, institutional, or governmental uses, or is dedicated as open space under the provisions of a zoning ordinance, subdivision ordinance, conditional or special use permit, or recorded restrictive covenants."

Section 4. G.S. 120-169.1 reads as rewritten:

"**§ 120-169.1. Additional criteria; level of development, ~~services.~~ services; financial impact on other local governments.**

~~(a) Level of Development. -- The Commission may not make a positive recommendation unless the entire area proposed for incorporation meets the applicable criteria for development under G.S. 160A-36(c) or G.S. 160A-48(c).~~

(b) Services. -- The Commission may not make a positive recommendation unless the area to be incorporated submits a plan for providing a reasonable level of municipal services. This plan shall be based on the proposed services stated in the petition under G.S. 120-163(c). ~~To meet the requirements of this subsection, the persons submitting the plan for incorporation must propose to provide at least two of the following services:~~

~~(1) Police protection.~~
~~(2) Fire protection.~~
~~(3) Garbage and refuse collection or disposal.~~
~~(4) Water distribution.~~
~~(5) Sewer collection or disposal.~~
~~(6) Street maintenance, construction, or right-of-way acquisition.~~
~~(7) Street lighting.~~
~~(8) Adoption of citywide planning and zoning.~~

(c) The Commission in its report shall indicate the impact on other municipalities and counties of diversion of already levied local taxes or State-shared revenues from existing local governments to support services in the proposed municipality."

Section 5. G.S. 136-41.2 reads as rewritten:

"**§ 136-41.2. Eligibility for funds; municipalities incorporated since January 1, 1945.**

(a) No municipality shall be eligible to receive funds under G.S. 136-41.1 unless it has conducted the most recent election required by its charter or the general law, whichever is applicable, for the purpose of electing municipal officials. The literal

requirement that the most recent required election shall have been held may be waived only:

(1) Where the members of the present governing body were appointed by the General Assembly in the act of incorporation and the date for the first election of officials under the terms of that act has not arrived; or,

(2) Where validly appointed or elected officials have advertised notice of election in accordance with law, but have not actually conducted an election for the reason that no candidates offered themselves for office.

(b) No municipality shall be eligible to receive funds under G.S. 136-41.1 unless it has levied an ad valorem tax for the current fiscal year of at least five cents (5¢) on the one hundred dollars ($100.00) valuation upon all taxable property within its corporate limits, and unless it has actually collected at least fifty percent (50%) of the total ad valorem tax levied for the preceding fiscal year; provided, however, that, for failure to have collected the required percentage of its ad valorem tax levy for the preceding fiscal year:

(1) No municipality making in any year application for its first annual allocation shall be declared ineligible to receive such allocation; and

(2) No municipality shall be declared ineligible to receive its share of the annual allocation to be made in the year 1964.

(c) No municipality shall be eligible to receive funds under G.S. 136-41.1 unless it has formally adopted a budget ordinance in substantial compliance with G.S. 160-410.3, showing revenue received from all sources, and showing that funds have been appropriated for at least two of the following municipal ~~services.~~ services if the municipality was incorporated with an effective date prior to January 1, 2000, water distribution; sewage collection or disposal; garbage and refuse collection or disposal; fire protection; police protection; street maintenance, construction, or right-of-way acquisition; or street ~~lighting.~~ lighting, or at least four of the following municipal services if the municipality was incorporated with an effective date of on or after January 1, 2000: (i) police protection; (ii) fire protection; (iii) solid waste collection or disposal; (iv) water distribution; (v) street maintenance; (vi) street construction or right-of-way acquisition; (vii) street lighting; and (viii) zoning.

(d) The provisions of this section shall not apply to any municipality incorporated prior to January 1, 1945."

Section 6. G.S. 105-472 is amended by adding a new subsection to read:

"(d) No municipality may receive any funds under this section if it was incorporated with an effective date of on or after January 1, 2000, and is disqualified from receiving funds under G.S. 136-41.2. No municipality may receive any funds under this section, incorporated with an effective date on or after January 1, 2000, unless a majority of the mileage of its streets are open to the public. The previous sentence becomes effective with respect to distribution of funds on or after July 1, 1999."

Section 7. G.S. 105-486 is amended by adding a new subsection to read:

"(d) No municipality may receive any funds under this section if it was incorporated with an effective date of on or after January 1, 2000, and is disqualified from receiving funds under G.S. 136-41.2. No municipality may receive any funds under this section, incorporated with an effective date on or after January 1, 2000, unless a majority of the mileage of its streets are open to the public. The previous sentence becomes effective with respect to distribution of funds on or after July 1, 1999."

Section 8. Chapter 1096 of the 1967 Session Laws is amended by adding a new section to read:

"Section 10.2. No municipality may receive any funds under this act if it was incorporated with an effective date of on or after January 1, 2000, and is disqualified from receiving funds under G.S. 136-41.2. No municipality may receive any funds under this act, incorporated with an effective date on or after January 1, 2000, unless a majority of the mileage of its streets are open to the public. The previous sentence becomes effective with respect to distribution of funds on or after July 1, 1999."

Section 9. G.S. 105-501 reads as rewritten:

"**§ 105-501. Distribution of additional taxes.**

The Secretary shall, on a quarterly basis, allocate the net proceeds of the additional one-half percent (1/2%) sales and use taxes levied under this Article to the taxing counties on a per capita basis according to the most recent annual population estimates certified to the Secretary by the State Budget Officer. The Secretary shall then adjust the amount allocated to each county as provided in G.S. 105-486(b). The amount allocated to each taxing county shall then be divided among the county and the municipalities located in the county in accordance with the method by which the one percent (1%) sales and use taxes levied in that county pursuant to Article 39 of this Chapter or Chapter 1096 of the 1967 Session Laws are distributed. No municipality may receive any funds under this section if it was incorporated with an effective date of on or after January 1, 2000, and is disqualified from receiving funds under G.S. 136-41.2. No municipality may receive any funds under this section, incorporated with an effective date on or after January 1, 2000, unless a majority of the mileage of its streets are open to the public. The previous sentence becomes effective with respect to distribution of funds on or after July 1, 1999.

If any taxes levied under this Article by a county have not been collected in that county for a full quarter because of the levy or repeal of the taxes, the Secretary shall distribute a pro rata share to that county for that quarter based on the number of months the taxes were collected in that county during the quarter.

In determining the net proceeds of the tax to be distributed, the Secretary shall deduct from the collections to be allocated an amount equal to one-fourth of the costs during the preceding fiscal year of:

(1) The Department of Revenue in performing the duties imposed by G.S. 105-275.2 and by Article 15 of this Chapter.

(2) The Property Tax Commission.

(3) The Institute of Government in operating a training program in property tax appraisal and assessment.

(4) The personnel and operations provided by the Department of State Treasurer for the Local Government Commission."

Section 10. G.S. 105-113.82 is amended by adding a new subsection to read:

"(h) No municipality may receive any funds under this section if it was incorporated with an effective date of on or after January 1, 2000, and is disqualified from receiving funds under G.S. 136-41.2. No municipality may receive any funds under this section, incorporated with an effective date on or after January 1, 2000, unless a majority of the mileage of its streets are open to the public. The previous sentence becomes effective with respect to distribution of funds on or after July 1, 1999."

Section 11. G.S. 105-116.1 is amended by adding a new subsection to read:

"(e) No municipality may receive any funds under this section if it was incorporated with an effective date of on or after January 1, 2000, and is disqualified from receiving funds under G.S. 136-41.2. No municipality may receive any funds under this section, incorporated with an effective date on or after January 1, 2000, unless a majority of the mileage of its streets are open to the public. The previous sentence becomes effective with respect to distribution of funds on or after July 1, 1999."

Section 12. Section 1 of this act applies with respect to municipalities for which the Joint Legislative Commission on Municipal Incorporations makes recommendations on or after the date this act becomes law. Sections 1 through 11 of this act, other than the repeal of G.S. 120-169.1(a), do not apply to any community which filed a petition with the Joint Legislative Commission on Municipal Incorporations prior to June 1, 1999. The remainder of this act is effective when it becomes law.

Section 13. Sections 1 through 11 of this act shall not apply to the community of Gray's Creek in Cumberland County nor to the Community of Union Cross in Forsyth County if either of those communities file a petition with the Joint Legislative Commission on Municipal Incorporations before July 1, 2002.

VISITOR REGISTRATION SHEET

SENATE FINANCE — WEDNESDAY, JULY 14, 1999
1:30 A.M.

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
James Rumgus	NCDHA
Jim Blackburn	N.C. Association of County Commissioners
John Rust	NCFPC
Clifton B. Metcalf	UNC GA
Kevin MacNaughton	UNC-GA
Kate Carters	SCO
Greg Radford	NC DOR
Richard O'Brien	PHPNC
Andy Romanet	N.C.L.M.
Paul Gwin	OSBM
Walter Price	Charlotte Chamber

VISITOR REGISTRATION SHEET

SENATE FINANCE

WEDNESDAY, JULY 14, 1999
1:30 A.M.

Name of Committee **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sam Taylor	Womble Carlyle
Evelyn Hawthorne	UNC-CH

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Wednesday, July 14, 1999

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

FAVORABLE

H.B.(CS #1)**240** UNC Nonappropriated Capital Projects.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #2)**964** Municipal Incorporation Process.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #2)**1010** Cotton Gins, Warehouses, Merchants.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1)**1084** County Bonds for Landbanking.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1)**1466** Pension Tax Withholding.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 5

Committee Clerk Comment: HB 240 964 1010 1084 1466

SENATE FINANCE COMMITTEE

THURSDAY, JULY 15, 1999

SENATE CHAMBER FLOOR

The Senate Finance Committee me on Thursday, July 15, 1999 on the Senate Chamber Floor with Senator Hoyle presiding. The number of committee members present were the number that were present that day in the Senate Chamber.

HB 740 – Mount Airy Annexation Correction

Senator East was recognized to explain the bill and at the conclusion of his explanation, Senator Lee moved for a "Favorable Report", motion passed. Copy of Bill is included in the minutes.

SB 7 – Ag Tourism Signs

Senator Albertson was recognized to explain the bill and at the conclusion of his explanation, Senator Weinstein moved for a "Favorable Report", motion passed. Copy of Bill and supporting documents are included in the minutes.

Meeting adjourned.

David W. Hoyle, Co-Chair

John H. Kerr, III Co-Chair

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

Committee Report is Attachment #1

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 740
Committee Substitute Reported Without Prejudice 7/12/99

Short Title: Mount Airy Annexation Correction. (Local)

Sponsors:

Referred to:

March 30, 1999

A BILL TO BE ENTITLED

AN ACT CORRECTING AN ERROR IN A PROPERTY DESCRIPTION IN AN ACT REMOVING PROPERTY FROM THE CORPORATE LIMITS OF THE CITY OF MOUNT AIRY.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of S.L. 1999-232 is repealed and the property described therein is added to the corporate limits of the City of Mount Airy.

Section 2. The following described property is removed from the corporate limits of the City of Mount Airy:

Being a 56.997 Acre tract of land recorded in Plat Book 688 Page 645 of the Surry County Register of Deeds. Said plat being Tract #2 recorded on June 8, 1998, and surveyed by Bunn Engineering, RLS #2827. Property is shown as parcel 7807 on map 5919 of the Surry County Tax Maps.

Section 3. This act becomes effective June 30, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 3

SENATE BILL 7
Agriculture/Environment/Natural Resources Committee Substitute Adopted 7/15/99
Third Edition Engrossed 7/15/99

Short Title: Ag Tourism Signs. (Public)

Sponsors:

Referred to:

January 28, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE POSTING OF DIRECTIONAL SIGNS TO AGRICULTURAL MARKETING AND PROCESSING FACILITIES.

The General Assembly of North Carolina enacts:

Section 1. Article 1 of Chapter 106 of the General Statutes is amended by adding a new section to read:

"**§ 106-22.5. Agricultural tourism signs.**

(a) The Department of Agriculture and Consumer Services shall provide directional signs on major highways at or in reasonable proximity to the nearest interchange or within one mile leading to an agricultural facility that promotes tourism by providing tours and on-site sales or samples of North Carolina agricultural products to area tourists.

(b) An agricultural facility must be open for business at least four days a week, 10 months of the year in order to qualify for the directional signs provided for in this section. The Department shall assess the facility the actual reasonable costs of the sign and its installation."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 7
Proposed Committee Substitute S7-PCS6705-RF

Short Title: Ag Tourism Signs. (Public)

Sponsors:

Referred to:

January 28, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE POSTING OF DIRECTIONAL SIGNS TO AGRICULTURAL MARKETING AND PROCESSING FACILITIES.

The General Assembly of North Carolina enacts:

Section 1. Article 1 of Chapter 106 of the General Statutes is amended by adding a new section to read:

"**§ 106-22.5. Agricultural tourism signs.**

(a) The Department of Agriculture and Consumer Services shall provide directional signs on major highways at or in reasonable proximity to the nearest interchange or within one mile leading to any of the following types of agricultural facilities:

(1) Facilities marketing North Carolina farm commodities.

(2) Facilities processing and marketing agricultural products, at least fifty percent (50%) of which must be grown in North Carolina.

(3) Facilities that promote tourism by providing tours and on-site sales or samples of North Carolina agricultural products to area tourists.

(b) An agricultural facility must be open for business at least four days a week, 10 months of the year in order to qualify for the directional signs provided for in this section. The Department may assess the facility the actual reasonable costs of the sign and its installation."

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

(Attachment #1)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Thursday, July 15, 1999

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

FAVORABLE

H.B.(CS #1)740 Mount Airy Annexation Correction.
Sequential Referral: None
Recommended Referral: None

S.B.(CS #1)7 Ag Tourism Signs.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 2

Committee Clerk Comment: Committee met in Chamber on these 2 bills.

SENATE FINANCE COMMITTEE

TUESDAY, JULY 20, 1999

ON THE SENATE FLOOR – RECESS DURING SESSION

The Senate Finance Committee met at a recess called during session. Senator Kerr presided and all committee members present for session were present for the meeting.

HB 251 – Bakersville Delinquent Taxes.

Staff explained the Bill and on motion by Senator Allran, the Bill was given a Favorable Report. Copy of Bill included in the minutes..

Meeting adjourned.

David W. Hoyle, Co-Chair
Senate Finance Committee

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

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

Committee Report is Attachment # 1

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 251

Short Title: Bakersville Delinquent Taxes. (Local)

Sponsors: Representatives Thompson and Buchanan (Primary Sponsors).

Referred to: Local Government I.

March 4, 1999

A BILL TO BE ENTITLED

AN ACT TO REQUIRE PAYMENT OF DELINQUENT TAXES FOR THE TOWN OF BAKERSVILLE BEFORE RECORDING DEEDS CONVEYING PROPERTY SUBJECT TO THE DELINQUENT TAXES.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of Chapter 537 of the 1987 Session Laws, as amended by S.L. 1997-410, reads as rewritten:

"Section 1. The Register of Deeds of Mitchell County shall not receive for recordation any deed unless the following conditions are met:

(1) The deed is accompanied by a certificate from the Mitchell County Tax Collector to the effect that all delinquent county taxes and all delinquent taxes for municipalities for which the county collects taxes have been paid with respect to the property described in the deed.

(2) If the property described in the deed is located in whole or in part in the Town of Spruce ~~Pine,~~ Pine or the Town of Bakersville, the deed is accompanied by a certificate from the tax collector for ~~the town~~ each of these towns in which it is located to the effect that all delinquent municipal taxes have been paid with respect to the property."

Section 2. This act becomes effective June 1, 1999, and applies to deeds recorded on or after that date.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Tuesday, July 20, 1999

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

FAVORABLE
H.B. **251** Bakersville Delinquent Taxes.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comment: HB 251

2000

SENATE FINANCE COMMITTEE

MINUTES

NORTH CAROLINA GENERAL ASSEMBLY

SENATE FINANCE COMMITTEE

2000

JOHN H. KERR, III
CHAIRMAN

Evelyn S. Hartsell
Committee Clerk

DAVID W. HOYLE
CHAIRMAN

Penny N. Williams
Committee Clerk

Senate Finance Committee Members

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

Roy A. Cooper, III, Vice-Chair
Robert G. Shaw, Vice-Chair
R. C. Soles, Jr., Vice Chair
David F. Weinstein, Vice-Chair

Austin M. Allran, Ranking Minority Member

Charles W. Albertson
Patrick J. Ballantine
Daniel G. Clodfelter
Betsy Cochrane
Walter H. Dalton
Charlie S. Dannelly
Virginia Foxx
Wib Gulley
Fletcher L. Hartsell, Jr.
Oscar N. Harris
Howard N. Lee
Steve M. Metcalf
Brad Miller
Ken R. Moore
Beverly M. Perdue
Jim W. Phillips
William R. Purcell
Anthony E. Rand
Eric Miller Reeves
Robert A. Rucho
Larry Shaw
Hugh Webster
Allen H. Wellons

NORTH CAROLINA GENERAL ASSEMBLY

COMMITTEE SUMMARY REPORT

1999-2000 Biennium | SENATE: FINANCE | Valid Through 31-JUL-2000

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H 19	REDWINE	CASINO BOATS REGULATED	*S -RE-REF COM ON RULES &	06-22-99	07-08-99
H 19	REDWINE	CASINO BOATS REGULATED	*S -RE-REF COM ON RULES &	07-12-99	07-19-99
H 56=	HILL	ELIMINATE STAMPS FOR DEED TAX	*R -CH. SL 99-0028	03-30-99	04-07-99
H 62=	GRAY	EFT OF CORPORATE EST. INCOME TAX	*H -CONF COM APPOINTED	03-29-99	05-19-99
H 74	**BAKER**	**PHASE II FUNDS/IMMUNITY/TAX-EXEMPT**	***R -CH. SL 99-0333**	**06-29-99**	**07-05-99**
H 105	CRAWFORD	BUTNER COMMUNITY GOVERNANCE	*R -CH. SL 99-0140	04-19-99	05-13-99
H 112	BAREFOOT	SECURITIES TRANSFER ON DEATH	S -RE-REF COM ON FINANCE	04-06-99	
H 120	OWENS	TAX LIEN ADVERTISEMENT AND COLLECTIO	*R -CH. SL 99-0439	04-28-99	07-07-99
H 133	ROGERS	EXEMPT DISABLED VETERAN VEHICLES	*R -CH. SL 00-0018	07-07-99	00-06-06
H 136=	INSKO	EXEMPT CHILD CARE PROPERTY	*S -REF TO COM ON FINANCE	07-14-99	
H 143	WRIGHT	HANDICAPPED PARKING FINES	*R -CH. SL 99-0265	06-02-99	06-03-99
H 178=	BROWN	JONESVILLE ACCIDENT REPORTS/WEEDS	R -CH. SL 99-0129	04-01-99	05-26-99
H 221=	REDWINE	LONG BEACH/YAUPON BEACH	*R -CH. SL 99-0066	03-29-99	05-13-99
H 222	MITCHELL	STRENGTHEN LITTERING LAW	*R -CH. SL 99-0454	06-10-99	07-13-99
H 237	GULLEY J	BOAT AGENT FEES	R -CH. SL 99-0248	05-25-99	06-16-99
H 239	HAIRE	COMMUNITY COLLEGE PROPERTY TRANSFERS	*R -CH. SL 99-0115	04-21-99	05-13-99
H 240	INSKO	UNC NONAPPROPRIATED CAPITAL PROJECTS	*R -CH. SL 99-0376	07-12-99	07-14-99
H 251	THOMPSON	BAKERSVILLE DELINQUENT TAXES	*R -CH. SL 99-0326	04-26-99	07-20-99
H 259	JARRELL	HOME INSPECTOR AMENDMENTS	*R -CH. SL 99-0149	04-01-99	05-20-99
H 275	**REDWINE**	**ZERO ESC TAX/TRAINING CONTRIBUTION**	***R -CH. SL 99-0321**	**04-19-99**	**05-26-99**
H 278	REDWINE	TANF SEPARATION NONCHARGED	*R -CH. SL 99-0421	04-28-99	07-01-99
H 279	**REDWINE**	**TOWNSHIP HOSPITALS**	***R -CH. SL 99-0377**	**07-12-99**	**07-13-99**
H 280	COLE	MOTOR VEHICLE TECH. AMENDMENTS	*R -CH. SL 99-0452	06-15-99	07-08-99
H 283	ALLEN	STATE TREASURER'S INVESTMENT AUTHORI	*R -CH. SL 99-0251	04-22-99	06-16-99
H 293	BRIDGEMAN	PROPRIETARY SCH./CIVIL PENALTIES	*H -CONF COM APPOINTED	06-03-99	07-06-99
H 301	CULPEPPER	AUCTIONEER AMENDMENTS	*R -CH. SL 99-0142	04-15-99	05-13-99
H 315	WILSON C	MOTOR VEHICLE TAX VALUE/E&R BD.	*R -CH. SL 99-0353	06-24-99	07-07-99
H 419	BAKER	MOUNT AIRY SATELLITE ANNEXATION	*R -CH. SL 99-0232	05-11-99	06-23-99
H 449	NYE	FARM BALING EQUIPMENT TAX CHANGE	S -REF TO COM ON FINANCE	07-12-99	
H 462=	HILL	LOCAL UTILITY BILLS/DARE UTILITIES	R -CH. SL 99-0127	04-06-99	05-19-99

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

NORTH CAROLINA GENERAL ASSEMBLY

COMMITTEE SUMMARY REPORT

1999-2000 Biennium | SENATE: FINANCE | Valid Through 31-JUL-2000

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H 486	MOORE R	PARADE TRAILERS/PERM./RET.SHP PLATES	R -CH. SL 99-0220	04-07-99	05-13-99
H 486	MOORE R	PARADE TRAILERS/PERM./RET.SHP PLATES	R -CH. SL 99-0220	05-26-99	06-03-99
H 504	PRESTON	CARTERET PLANNING/ZONING CHANGES	*R -CH. SL 99-0154	04-26-99	06-01-99
H 507	SMITH	CAPE CARTERET/BOGUE ANNEXATIONS	*R -CH. SL 99-0287	07-06-99	07-07-99
H 519	JUSTUS	HENDERSON FIRE DISTRICTS	*R -CH. SL 00-0004	07-07-99	00-05-24
H 541	MITCHELL	PWC AMENDMENTS	*R -CH. SL 00-0052	07-15-99	00-06-05
H 623	BRUBAKER	PLEASANT GARDEN CHANGES	*R -CH. SL 99-0331	07-01-99	07-20-99
H 648=	DAUGHTRY	BENSON CHARTER REVISED	*R -CH. SL 99-0091	04-15-99	05-19-99
H 651	REDWINE	BRUNSWICK FIRE FEES	*R -CH. SL 99-0323	04-26-99	07-08-99
H 665	OWENS	MODIFY CURRITUCK ROOM TAX	*R -CH. SL 99-0155	05-24-99	06-01-99
H 667	CRAWFORD	ROANOKE RAPIDS ANNEXATION	*R -CH. SL 99-0324	07-12-99	07-13-99
H 677	HAIRE	CERTAIN COUNTIES DELINQUENT TAXES	S -CONF COM APPOINTED	04-29-99	00-07-11
H 708=	COX	AIRPORT AUTHORITY REFUNDS	*R -CH. SL 99-0104	05-12-99	05-25-99
H 723	INSKO	DARK WINDOW INSPECTION FEE	*R -CH. SL 00-0075	07-13-99	00-06-07
H 734	INSKO	CHAPEL HILL DEVELOPMENT AGREEMENTS	*S -REF TO COM ON FINANCE	06-10-99	
H 738	ROGERS	GREENVILLE/CATAWBA ANNEXATIONS	R -CH. SL 99-0283	05-11-99	07-01-99
H 740	ROGERS	MOUNT AIRY ANNEXATION CORRECTION	*R -CH. SL 99-0325	07-15-99	07-15-99
H 755	YONGUE	HIGHWAY LIGHTING SERVICE DISTRICTS	*R -CH. SL 99-0224	04-27-99	06-09-99
H 764	SETZER	RAISE MOORESVILLE ROOM TAX	*R -CH. SL 99-0258	06-08-99	07-01-99
H 765=	MELTON	WESLEY CHAPEL BOUNDARIES	R -CH. SL 99-0041	04-27-99	05-05-99
H 776	CRAWFORD	ROANOKE RAPIDS OVERGROWN LOTS	R -CH. SL 99-0058	04-26-99	05-13-99
H 781	SETZER	CATAWBA ANNEXATIONS	S -REF TO COM ON FINANCE	07-12-99	
H 782	BROWN	WILKES FIRE DISTRICT	*S -REF TO COM ON FINANCE	06-28-99	
H 794	WARREN EDITH	FARMVILLE ANNEXATION	R -CH. SL 99-0289	06-28-99	07-08-99
H 797=	MELTON	UNION COUNTY FIRE FEES	R -CH. SL 99-0039	04-21-99	05-05-99
H 812	THOMAS	REMOVE SUNSET/CRAVEN PROCEEDS USE	*R -CH. SL 99-0286	04-27-99	07-07-99
H 828	GILLESPIE	REVALUATION TAX RATE NOTICE	S -REF TO COM ON FINANCE	04-26-99	
H 830	WALEND	TRANSYLVANIA ROOM TAX PENALTIES	*R -CH. SL 99-0205	05-20-99	06-16-99
H 837	EDWARDS	CHOCOWINITY ETJ	*R -CH. SL 99-0042	04-26-99	05-05-99
H 845	MCLAWHORN	GREENVILLE UTILITIES COMMISSION	*R -CH. SL 99-0233	05-19-99	06-23-99

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BOLDED LINE INDICATES BILL INDEXED AS AFFECTING APPROPRIATIONS.

NORTH CAROLINA GENERAL ASSEMBLY

COMMITTEE SUMMARY REPORT

1999-2000 Biennium SENATE: FINANCE Valid Through 31-JUL-2000

BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H 846	WARREN EDITH	FARMVILLE ETJ	*R -CH. SL 99-0043	04-28-99	05-05-99
H 847	WARREN EDITH	PITT COUNTY INVESTMENTS	*R -CH. SL 99-0048	04-28-99	05-05-99
H 852	BUCHANAN	HICKORY/MOCKSVILLE ANNEXATIONS	R -CH. SL 99-0208	04-27-99	05-26-99
H 855	HORN	KINGS MOUNTAIN ETJ	R -CH. SL 99-0259	04-28-99	07-01-99
H 863	REDWINE	ST. JAMES INCORPORATION	R -CH. SL 99-0241	05-12-99	06-09-99
H 867	FITCH	WILSON ANNEXATIONS	*S -REF TO COM ON FINANCE	07-01-99	
H 899	BRIDGEMAN	REAL ESTATE SALESMAN/BROKER LICENSUR	*R -CH. SL 99-0200	05-11-99	06-01-99
H 900	HUNTER	GATES COUNTY FIRE PROTECTION	*R -CH. SL 99-0242	05-13-99	06-01-99
H 937	GRAY	REGIONAL TRANSPORTATION AUTH. AMD.	*R -CH. SL 99-0445	06-29-99	07-07-99
H 964	JARRELL	MUNICIPAL INCORPORATION PROCESS	*R -CH. SL 99-0458	06-24-99	07-14-99
H1009=	HILL	FUNDS FOR AGRICULTURAL RESEARCH	R -CH. SL 99-0172	05-17-99	05-25-99
H1010=	HILL	COTTON GINS, WAREHOUSES, MERCHANTS	*R -CH. SL 99-0412	07-13-99	07-14-99
H1069=	ALEXANDER	SOCIAL WORKER LICENSURE	*R -CH. SL 99-0313	06-23-99	07-01-99
H1082	SAUNDERS	LICENSING SELLING OF CARS	*S -REF TO COM ON FINANCE	00-06-07	
H1084=	MCMAHAN	COUNTY BONDS FOR LANDBANKING	*R -CH. SL 99-0378	07-13-99	07-14-99
H1090	MOORE R	I.A.F.F. REGISTRATION PLATE	*R -CH. SL 99-0314	06-08-99	07-01-99
H1095=	ALLEN	CLINICAL PHARMACIST PRACTITIONER	*R -CH. SL 99-0290	06-10-99	06-23-99
H1098=	HACKNEY	STRENGTHEN SEDIMENTATION ACT	*R -CH. SL 99-0379	07-07-99	07-13-99
H1120	WRIGHT	AUTHORIZE PUBLIC HOSPITAL DEBT	*R -CH. SL 99-0386	07-06-99	07-08-99
H1132=	INSKO	PRESERVE FARMLANDS/SMALL FARMS	*H -PRES. TO GOV. 07-10	07-15-99	00-06-27
H1134=	INSKO	UNC/HORACE WILLIAMS CAMPUS	R -CH. SL 99-0234	06-08-99	06-23-99
H1153	JUSTUS	RETIRED PHYSICIAN LICENSE	*R -CH. SL 00-0005	07-13-99	00-05-24
H1184=	WRIGHT	AMEND CERTIFICATE OF NEED	R -CH. SL 00-0135	07-01-99	00-07-13
H1186	MINER	UNEARNED PREMIUM RESERVES	*R -CH. SL 99-0383	06-02-99	07-14-99
H1190	SEXTON	DESERT STORM PLATES	S -REF TO COM ON FINANCE	06-28-99	
H1233=	HILL	STRUCTURAL PEST CONTROL AMENDMENTS	*R -CH. SL 99-0381	07-07-99	07-08-99
H1233=	HILL	STRUCTURAL PEST CONTROL AMENDMENTS	*R -CH. SL 99-0381	07-12-99	07-13-99
H1237	MCMAHAN	LANDSCAPE ARCHITECTS EXAM FEE	R -CH. SL 99-0315	04-29-99	07-01-99
H1246	CLARY	ANIMAL LOVERS SPECIAL PLATE	R -CH. SL 99-0450	07-01-99	07-12-99
H1289	LUEBKE	1999 FEE BILL	*R -CH. SL 99-0413	07-07-99	07-13-99

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BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
H1290=	LUEBKE	REVENUE LAWS CLARIFYING CHANGES	H -PRES. TO GOV. 07-12	00-07-05	00-07-06
H1290=	LUEBKE	REVENUE LAWS CLARIFYING CHANGES	H -PRES. TO GOV. 07-12	07-06-99	00-06-29
H1302	BONNER	CHARTER SCHOOL FUEL EXEMPTION	*R -CH. SL 00-0072	06-10-99	00-06-13
H1326=	GIBSON	DRY-CLEANING SOLVENT CLEANUP AMENDS.	*R -CH. SL 00-0019	07-12-99	00-05-30
H1340	TOLSON	RESPIRATORY CARE PRACTICE ACT	*H -PRES. TO GOV. 07-14	00-06-15	00-06-20
H1340	TOLSON	RESPIRATORY CARE PRACTICE ACT	*H -PRES. TO GOV. 07-14	00-06-28	00-06-29
H1397	COLE	EXPAND DEVELOPMENT ZONES	S -REF TO COM ON FINANCE	06-21-99	
H1433	MILLER G	USE TAX PAYMENT/OTHER CHANGES	*R -CH. SL 99-0341	07-01-99	07-07-99
H1466	CANSLER	PENSION TAX WITHHOLDING	*R -CH. SL 99-0414	07-13-99	07-14-99
H1470	ALLEN	IMPAIRED DENTAL HYGIENISTS/FEE	*R -CH. SL 99-0382	07-07-99	07-13-99
H1471	CRAWFORD	ADJUST HIGHWAY BOND MATURITY	R -CH. SL 99-0380	07-12-99	07-13-99
H1472	HACKNEY	SIMPLIFY RENEWABLE ENERGY CREDITS	*R -CH. SL 99-0342	06-21-99	07-06-99
H1473	HACKNEY	RENEWABLE ENERGY MFR. CREDIT	*R -CH. SL 00-0128	06-28-99	00-06-27
H1476	**MILLER G**	**CODE UPDATE/CRIM. DEADLINE/RESEARCH**	***R -CH. SL 99-0415**	**06-29-99**	**07-07-99**
H1479	MILLER G	NEWSPRINT TAX CREDIT CHANGE	*R -CH. SL 99-0346	06-30-99	07-08-99
H1494=	JUSTUS	TOWN OF LAUREL PARK CHARTER	R -CH. SL 00-0008	00-06-05	00-06-07
H1497=	GOODWIN	RICHMOND COUNTY SUBDIVISIONS	R -CH. SL 00-0011	00-05-25	00-06-14
H1508	MITCHELL	GUN PERMIT/DECREASE RENEWAL FEE	*H -PRES. TO GOV. 07-12	00-06-30	00-06-30
H1517=	BUCHANAN	FOOTHILLS REGIONAL AIRPORT AUTH	*R -CH. SL 00-0009	00-06-05	00-06-07
H1520=	INSKO	RESTRAINTS IN FACILITIES	R -CH. SL 00-0129	00-06-28	00-06-29
H1529=	NYE	HMO INSOLVENCY	*S -RE-REF COM ON FINANCE	00-07-06	
H1539=	ROGERS	QUALIFIED ZONE ACADEMY BOND ACT	*R -CH. SL 00-0069	00-06-22	00-06-27
H1541	OWENS	CAMDEN AMBULANCE FEES	R -CH. SL 00-0015	00-06-07	00-06-14
H1544	POPE	REFUND OVERPAYMENT OF DEED STAMP TAX	H -PRES. TO GOV. 07-11	00-06-01	00-06-07
H1545	POPE	EXCISE TAX ON TIMBER CONTRACTS	R -CH. SL 00-0016	00-06-05	00-06-07
H1551	MILLER G	TAX ENFORCEMENT	*R -CH. SL 00-0119	00-06-12	00-06-21
H1552=	YONGUE	LAURINBURG STREET ASSESSMENTS	R -CH. SL 00-0013	00-06-07	00-06-13
H1559	LUEBKE	CONFORM WITH FEDERAL LAW	R -CH. SL 00-0126	00-06-12	00-06-22
H1560=	ALLEN	MODIFY BILL LEE ACT	*R -CH. SL 00-0056	00-06-12	00-06-21
H1566	COLE	TEMP. MV LIEN FILING	*H -PRES. TO GOV. 07-12	00-07-07	00-07-11

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H1573=	JARRELL	HEALTH CARE FACILITY/CCRC TAX EXEMPT	*R -CH. SL 00-0020	00-06-12	00-06-14
H1579=	MELTON	MONROE CHARTER CONSOLIDATION	*R -CH. SL 00-0035	00-06-12	00-06-27
H1583=	GIBSON	NONHAZ. DRY-CLEANING INC/INVESTMENT	*H -PRES. TO GOV. 07-12	00-07-05	00-07-11
H1587	BRUBAKER	SEAGROVE ANNEXATION	*R -CH. SL 00-0032	00-06-12	00-06-27
H1602=	GIBSON	STORMWATER UTILITY FEES	*R -CH. SL 00-0070	00-06-22	00-06-27
H1604=	RAYFIELD	MOUNT HOLLY ANNEXATION	S -REF TO COM ON FINANCE	00-06-07	
H1624	MILLER G	STREAMLINED SALES TAX SYSTEM	R -CH. SL 00-0120	00-06-12	00-06-28
H1629	CRAWFORD	BUTNER WATER & SEWER BONDS	*R -CH. SL 00-0081	00-06-12	00-06-27
H1630=	CRAWFORD	TOLL ROADS	*H -PRES. TO GOV. 07-14	00-07-05	00-07-12
H1639=	MCCOMAS	BROWNFIELDS TAX INCENTIVE	*S -REF TO COM ON FINANCE	00-06-30	
H1647=	MCMAHAN	CHARLOTTE ECON. DEVEL. QUICKTAKE	*R -CH. SL 00-0089	00-06-29	00-06-30
H1656	KISER	LINCOLN COUNTY E&R BOARD	*R -CH. SL 00-0040	00-06-22	00-06-28
H1667=	ALEXANDER	CHARLOTTE CHARTER CONSOLIDATION	*R -CH. SL 00-0026	00-06-20	00-06-27
H1699=	HURLEY	INSURANCE LICENSE FEES/RECIPROCITY	*R -CH. SL 00-0122	00-06-22	00-06-28
H1728	THOMPSON	SPRUCE PINE DEANNEXATION	R -CH. SL 00-0090	00-06-19	00-06-29
H1730	THOMPSON	SUGAR MOUNTAIN CHARTER	R -CH. SL 00-0063	00-06-19	00-06-28
H1748	FOX	GRANVILLE/BANNER ELK TAX USE	*R -CH. SL 00-0103	00-06-28	00-06-30
H1768	INSKO	CARTERET/PENDER/ORANGE OMNIBUS ACT	*R -CH. SL 00-0107	00-07-07	00-07-11
H1803=	SAUNDERS	HUNTERSVILLE/MATTHEWS ANNEXATION	R -CH. SL 00-0100	00-06-19	00-06-27
H1803=	SAUNDERS	HUNTERSVILLE/MATTHEWS ANNEXATION	R -CH. SL 00-0100	00-06-29	00-06-29
H1819=	**TOLSON**	**RURAL REDEVELOPMENT AUTHORITY**	***H -PRES. TO GOV. 07-10**	**00-06-26**	**00-06-28**
H1853=	MILLER G	UNC NONAPPROPRIATED CAP/REV. BONDS	*H -PRES. TO GOV. 07-10	00-07-06	00-07-07
H1854=	MILLER G	2000 FEE BILL	*R -CH. SL 00-0109	00-06-12	00-06-20
H1854=	MILLER G	2000 FEE BILL	*R -CH. SL 00-0109	00-06-20	00-06-21
H1854=	MILLER G	2000 FEE BILL	*R -CH. SL 00-0109	00-06-22	00-06-22
S 7	**ODOM**	**AG TOURISM SIGNS**	***R -CH. SL 99-0356**	**07-15-99**	**07-15-99**
S 17	WEINSTEIN	STATEWIDE TOURISM RESORT PERMITS	*R -CH. SL 99-0461	02-02-99	02-10-99
S 18	LEE	CARTHAGE CHARTER CONSOL/ANNEX	R -CH. SL 99-0239	03-30-99	03-31-99
S 21=	RAND	1999 N.C. LOTTERY	S -REF TO COM ON FINANCE	02-02-99	
S 22=	RAND	CUMBERLAND SALES TAX FOR SCHOOLS	S -REF TO COM ON FINANCE	02-03-99	

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S 29	KERR	COSMETOLOGY FEES	*R -CH. SL 99-0348	02-04-99	02-17-99
S 33=	WELLONS	CLAYTON SATELLITE ANNEXATION	R -CH. SL 99-0010	02-04-99	02-17-99
S 43=	DALTON	FOREST CITY/ALEXANDER MILLS	R -CH. SL 99-0009	02-17-99	02-25-99
S 44	SOLES	LAKE WACCAMAW ANNEXATION	*R -CH. SL 99-0046	04-05-99	04-07-99
S 55	COCHRANE	REVENUE LAWS TECHNICAL CHANGES	*R -CH. SL 99-0337	02-09-99	06-02-99
S 56=	LEE	SUNSET/TERM OF ENERGY SAVINGS CTRCT	*R -CH. SL 99-0235	03-18-99	04-20-99
S 58	SHAW L	EXPAND INTERSTATE HIGHWAYS	S -REF TO COM ON FINANCE	02-09-99	
S 73=	HARTSELL	MAKE FARMLAND USE VALUE ACCURATE	S -REF TO COM ON FINANCE	02-15-99	
S 75=	HOYLE	EFT OF CORPORATE ESTIMATED INCOME TA	S -REF TO COM ON FINANCE	02-15-99	
S 115=	GARWOOD	EXTEND BOND MATCH DEADLINE	H -RE-REF COM ON FINANCE	02-17-99	03-10-99
S 116=	DALTON	ELIMINATE STAMPS FOR DEED TAX	S -REF TO COM ON FINANCE	02-17-99	
S 129	HARTSELL	REPEAL UCC ARTICLE ON BULK TRANSFERS	S -RE-REF COM ON FINANCE	04-29-99	
S 130=	WELLONS	REMOVE FLEXIBLE BENEFITS SUNSET	*H -REF TO COM ON APPROP	02-18-99	04-20-99
S 136=	SHAW L	ENTERPRISE ZONE DEVELOPMENT ACT	S -REF TO COM ON FINANCE	02-18-99	
S 149	MOORE K	SHP RETIREES LICENSE PLATES	*S -RE-REF COM ON FINANCE	05-12-99	
S 181	HOYLE	DALLAS/WHITEVILLE PROP. MAINTENANCE	*R -CH. SL 99-0062	03-01-99	03-31-99
S 184=	MARTIN R	REDUCE PITT CO. PISTOL PERMIT FEE	S -RE-REF COM ON FINANCE	03-17-99	
S 208=	KERR	REVIEW TAX CREDIT PERIODICALLY	S -REF TO COM ON FINANCE	03-02-99	
S 219=	SOLES	LONG BEACH/YAUPON BEACH	S -REF TO COM ON FINANCE	03-03-99	
S 222	REEVES	ELECTRONIC PAYMENT/INFO. TECH	*R -CH. SL 99-0434	03-04-99	05-20-99
S 223	MARTIN R	EXEMPT DISABLED VETERAN VEHICLES	S -REF TO COM ON FINANCE	03-04-99	
S 235	HAGAN	"KIDS FIRST" REGISTRATION PLATES	R -CH. SL 99-0277	03-04-99	04-27-99
S 244=	HARTSELL	UNCLAIMED PROPERTY ACT	*R -CH. SL 99-0460	05-26-99	06-09-99
S 244=	HARTSELL	UNCLAIMED PROPERTY ACT	*R -CH. SL 99-0460	06-14-99	06-15-99
S 251	HORTON	MODIFY HISTORIC REHAB CREDIT	R -CH. SL 99-0389	03-08-99	06-23-99
S 254=	GULLEY W	OUTDOOR ADVERTISING CONTROL ACT	R -CH. SL 99-0404	04-07-99	05-26-99
S 269=	ODOM	HUNTERSVILLE SATELLITE ANNEXATION	R -CH. SL 99-0024	03-08-99	03-10-99
S 270	ODOM	HUNTERSVILLE VOLUNTARY ANNEXATION	*R -CH. SL 99-0019	03-08-99	03-10-99
S 271=	ODOM	HUNTERSVILLE ANNEXATION	R -CH. SL 99-0236	03-08-99	03-11-99
S 285	WARREN E	UNIV. HEALTH SYS./JUDICIAL PLATES	*R -CH. SL 99-0403	03-08-99	05-26-99

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S 286	REEVES	LOCAL OPTION HOMESTEAD RELIEF	*HF-POSTPONED INDEFINITELY	03-08-99	04-07-99
S 290	MILLER B	LOBBYING LAW AMENDMENTS	*R -CH. SL 99-0338	03-15-99	04-21-99
S 313=	CLODFELTER	MECKLENBURG STORMWATER FEES	R -CH. SL 99-0050	03-11-99	04-14-99
S 314=	PLYLER	MINERAL SPRINGS INCORPORATED	R -CH. SL 99-0175	04-07-99	04-20-99
S 323	KERR	WATERFOWL LICENSE CHANGES	*R -CH. SL 99-0339	04-21-99	05-05-99
S 325=	HOYLE	CONTINUING CARE RETIREMENT HOMES	*R -CH. SL 99-0191	03-11-99	04-22-99
S 328	WELLONS	DOT RIGHT-OF-WAY PLAN FILING	*R -CH. SL 00-0068	03-11-99	05-19-99
S 330=	KINNAIRD	SPAY/NEUTER PROGRAM	*S -RE-REF COM ON RULES &	03-11-99	07-07-99
S 343=	GARWOOD	JONESVILLE ACCIDENT REPORTS/WEEDS	S -REF TO COM ON FINANCE	03-15-99	
S 353	ODOM	DAVIDSON SATELLITE ANNEXATION	*R -CH. SL 99-0085	03-15-99	04-27-99
S 366=	ALBERTSON	AGRICULTURAL FAIR REFUNDS	S -REF TO COM ON FINANCE	03-15-99	
S 371=	PLYLER	STANLY SALES TAX FOR SCHOOLS	S -REF TO COM ON FINANCE	03-15-99	
S 372=	PLYLER	UNION SALES TAX FOR SCHOOLS	S -REF TO COM ON FINANCE	03-15-99	
S 385=	LEE	USE OF SCHOOL BUSES/US OPEN	*R -CH. SL 99-0176	04-19-99	04-21-99
S 390	RUCHO	ELIMINATE FEE-HAM OPERATOR PLATES	S -REF TO COM ON FINANCE	03-16-99	
S 415=	KINNAIRD	EXEMPT CHILD CARE PROPERTY	S -REF TO COM ON FINANCE	03-18-99	
S 418=	SOLES	CHADBOURN UTILITY BILLS	S -REF TO COM ON FINANCE	03-18-99	
S 431	CARPENTER R	POLK/GRAHAM DELINQUENT TAXES	S -REF TO COM ON FINANCE	03-22-99	
S 433	LEE	PINEBLUFF ETJ	R -CH. SL 99-0035	03-22-99	04-27-99
S 436	PLYLER	VALIDATE CERTAIN BOND REFERENDA	R -CH. SL 99-0152	03-22-99	03-31-99
S 439	ODOM	MECKLENBURG SALES TAX FOR SCHOOLS	S -REF TO COM ON FINANCE	03-22-99	
S 440	BALLANTINE	NO FOOD TAX/FUNDS FOR LOCAL GOVTS	S -REF TO COM ON FINANCE	03-22-99	
S 447	MILLER B	INSURANCE REGULATORY CHARGE	S -REF TO COM ON FINANCE	03-22-99	
S 456	PHILLIPS	FIREMEN'S PENSION ELIGIBILITY	*S -RE-REF COM ON APPROPR	04-21-99	05-25-99
S 460=	ROBINSON	HAYWOOD LOCAL SALES TAX	S -REF TO COM ON FINANCE	03-22-99	
S 468	HORTON	WINSTON-SALEM/FORSYTH ASSESSMENTS	*R -CH. SL 99-0089	03-23-99	04-22-99
S 472	GARROU	FORSYTH LOCAL ACT-1	S -RE-REF COM ON FINANCE	06-15-99	
S 477	REEVES	LOCKSMITH LICENSURE	S -REF TO COM ON FINANCE	03-23-99	
S 484	CLODFELTER	RMV TAX BUDGETING	*R -CH. SL 99-0261	03-24-99	04-20-99
S 499	HOYLE	BOAT REGISTRATION FEES	*R -CH. SL 99-0392	03-25-99	06-03-99

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S 504=	PLYLER	WESLEY CHAPEL BOUNDARIES	S -REF TO COM ON FINANCE	03-25-99	
S 505	PURCELL	RICHMOND LOCAL SALES TAX	S -REF TO COM ON FINANCE	03-25-99	
S 514=	KERR	CHILD HEALTH INSURANCE INCENTIVE	S -RE-REF COM ON FINANCE	04-13-99	
S 515=	KERR	VOLUNTEER FIRE DEPT/RESCUE WORKERS	*R -CH. SL 99-0319	03-25-99	04-07-99
S 516=	KERR	EXTEND TRANSPARK INVESTMENT AUTH.	S -REF TO COM ON FINANCE	03-25-99	
S 523	HAGAN	MODIFY GREENSBORO ROOM TAX USE	*R -CH. SL 99-0302	06-08-99	06-23-99
S 528	ALLRAN	26TH SENATORIAL DISTRICT-1	S -RE-REF COM ON FINANCE	04-14-99	
S 534	ALBERTSON	KENANSVILLE SERVICES	R -CH. SL 99-0054	03-29-99	04-27-99
S 539	JORDAN	CONSTRUCTION WORKER TRAINING CREDIT	S -REF TO COM ON FINANCE	03-29-99	
S 542	HORTON	FORSYTH LOCAL ACT 3	S -RE-REF COM ON FINANCE	04-21-99	
S 547	HOYLE	TELECOMMUNICATIONS RELAY SERVICE	*R -CH. SL 99-0402	03-29-99	06-24-99
S 562	MILLER B	INS. FEE REPEALS AND INCREASES	*R -CH. SL 99-0435	03-29-99	07-08-99
S 570	HOYLE	UPDATE CONSUMER FINANCE ACT	*S -RE-REF COM ON FINANCE	05-25-99	05-26-99
S 570	HOYLE	UPDATE CONSUMER FINANCE ACT	*S -RE-REF COM ON FINANCE	06-02-99	
S 571=	HARRIS	SANFORD-LEE AIRPORT AUTH. REFUNDS	S -REF TO COM ON FINANCE	03-29-99	
S 572=	HARRIS	BENSON CHARTER REVISED	S -REF TO COM ON FINANCE	03-29-99	
S 588	HARTSELL	REVENUE SHARING FOR SCHOOLS	S -REF TO COM ON FINANCE	03-29-99	
S 589	HARTSELL	CABARRUS SALES TAX FOR SCHOOLS	S -REF TO COM ON FINANCE	03-29-99	
S 596=	ROBINSON	JACKSON TRANSFER TAX	S -REF TO COM ON FINANCE	03-29-99	
S 599	ROBINSON	HENDERSONVILLE CHARTER AMENDMENTS	S -REF TO COM ON FINANCE	03-29-99	
S 606	BALLANCE	TOURISM RESORT ABC PERMITS	*S -RE-REF COM ON FINANCE	04-20-99	
S 618=	CARPENTER R	MACON COUNTY AIRPORT AUTHORITY	R -CH. SL 99-0238	03-30-99	04-27-99
S 619	MILLER B	FUQUAY ANNEX./HILLSBOROUGH MEALS TAX	*R -CH. SL 99-0304	03-30-99	06-09-99
S 622	KERR	NURSING HOME ADMIN.BD./FEES	*R -CH. SL 99-0217	03-30-99	04-07-99
S 623	KERR	CLEAN BURNING FUEL RATE	S -REF TO COM ON FINANCE	03-30-99	
S 625	LUCAS	DURHAM PRIVILEGE LICENSE TECHNICAL	R -CH. SL 99-0256	04-15-99	04-21-99
S 640	ROBINSON	JACKSON, SWAIN SALES TAX	S -REF TO COM ON FINANCE	03-30-99	
S 645	MARTIN R	PARMELE/FAIR BLUFF ANNEXATION	*R -CH. SL 99-0124	03-30-99	04-21-99
S 653	GULLEY W	DURHAM CO. HEALTH FUND INVEST.	R -CH. SL 99-0101	03-30-99	04-28-99
S 675	PLYLER	UNIONVILLE CHARTER CORRECTIONS	R -CH. SL 99-0090	04-01-99	04-14-99

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S 689=	PLYLER	UNION COUNTY FIRE FEES	S -REF TO COM ON FINANCE	04-01-99	
S 691=	COCHRANE	BERMUDA RUN INCORPORATION	*R -CH. SL 99-0094	04-06-99	04-08-99
S 694	HARTSELL	RIMERTOWN INCORPORATION	*R -CH. SL 99-0284	04-14-99	04-21-99
S 696=	PLYLER	WAXHAW ANNEXATIONS	S -REF TO COM ON FINANCE	04-01-99	
S 697=	PLYLER	UNION COUNTY IMMMPACT FEES	S -REF TO COM ON FINANCE	04-01-99	
S 703	BALLANTINE	HAMPSTEAD INCORPORATION	*S -RE-REF COM ON STLOCGVT	04-07-99	04-20-99
S 712	ODOM	CORNELIUS SATELLITE ANNEXATION	R -CH. SL 99-0103	04-01-99	04-27-99
S 713	ODOM	LINCOLN SALES TAX FOR SCHOOLS	S -REF TO COM ON FINANCE	04-01-99	
S 715	MILLER B	WAKE SALES TAX FOR SCHOOLS	S -REF TO COM ON FINANCE	04-01-99	
S 716	MILLER B	WAKE COUNTY IMPACT FEES	S -REF TO COM ON FINANCE	04-01-99	
S 717=	MILLER B	GARNER TRANSP. IMPACT FEES	S -REF TO COM ON FINANCE	04-01-99	
S 718=	MILLER B	GARNER FACILITY FEE CHANGE	S -REF TO COM ON FINANCE	04-01-99	
S 725=	KINNAIRD	CHATHAM, ORANGE REVENUE OPTIONS	S -REF TO COM ON FINANCE	04-01-99	
S 729=	MOORE K	COMMUNITY COLLEGE SALES TAX REFUND	S -REF TO COM ON FINANCE	04-01-99	
S 731	CLODFELTER	CONSERVATION USE VALUE TAXATION	S -REF TO COM ON FINANCE	04-01-99	
S 772=	CLODFELTER	EXPAND MUNICIPAL SERVICE DISTRICTS	R -CH. SL 99-0388	04-07-99	04-21-99
S 776	RAND	AMEND PURCH./CONTRACT EXEMPTIONS	*R -CH. SL 99-0368	04-07-99	04-21-99
S 780=	REEVES	EARNED INCOME TAX CREDIT	S -REF TO COM ON FINANCE	04-07-99	
S 791	HOYLE	TEN YEAR DRIVERS LICENSE	*H -REF TO COM ON FINANCE	04-08-99	05-20-99
S 799	KERR	PHYSICAL THERAPY FEES	*R -CH. SL 99-0345	04-12-99	05-20-99
S 811	REEVES	ALTERNATIVE R&D CREDIT	S -REF TO COM ON FINANCE	04-12-99	
S 817	BALLANCE	REAL PROPERTY TAX PENALTY	*R -CH. SL 99-0297	04-12-99	05-19-99
S 828=	KINNAIRD	TRANSP. COSTS/INVOL. COMMITMENT	S -REF TO COM ON FINANCE	04-12-99	
S 843	WEINSTEIN	NURSES AIDES II REGISTRY FEES	*R -CH. SL 99-0254	04-13-99	04-27-99
S 844	ALLRAN	CHARTER SCHOOLS/LICENSE PLATES	S -RE-REF COM ON FINANCE	06-15-99	
S 855=	PERDUE	PORTS AUTHORITY TAX REFUNDS	S -REF TO COM ON FINANCE	04-13-99	
S 864=	GULLEY W	LAB TESTING FACILITY SALES TAX	*H -REF TO COM ON FINANCE	04-13-99	07-08-99
S 865	GULLEY W	TRANSIT AUTHORITY CORRECTION	S -RE-REF COM ON FINANCE	04-20-99	
S 868	PLYLER	INSPECTION PROGRAM ADJUSTMENTS	S -REF TO COM ON FINANCE	04-13-99	
S 876	KERR	CLARIFY NATURAL GAS FUNDS	*S -RE-REF COM ON FINANCE	04-13-99	07-06-99

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NORTH CAROLINA GENERAL ASSEMBLY

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BILL	INTRODUCER	SHORT TITLE	LATEST ACTION ON BILL	IN DATE	OUT DATE
S 876	KERR	CLARIFY NATURAL GAS FUNDS	*S -RE-REF COM ON FINANCE	07-19-99	
S 878	KERR	NONPROFIT WATER CORP. LOANS	*R -CH. SL 99-0213	04-13-99	04-21-99
S 883	GULLEY W	GAS TAX FOR TRANSPORTATION NEEDS	S -REF TO COM ON FINANCE	04-13-99	
S 884	COOPER	MEDICAL EQUIPMENT SALES TAX	S -REF TO COM ON FINANCE	04-13-99	
S 895	SOLES	GIFT CERTIFICATES-ESCHEAT	S -REF TO COM ON FINANCE	04-14-99	
S 897=	DALTON	SAFETY PROFESSIONALS	R -CH. SL 00-0110	06-29-99	07-07-99
S 899	SHAW R	MAKE FEES TAX DEDUCTIBLE	S -REF TO COM ON FINANCE	04-14-99	
S 912	RAND	BONDS FOR HIGHER EDUCATION	*R -CH. SL 00-0003	06-24-99	06-29-99
S 916	GULLEY W	ADJUST GAS TAX FORMULA	S -REF TO COM ON FINANCE	04-14-99	
S 941	WARREN E	MANUFACTURED HOMES LAW CHANGES	*R -CH. SL 99-0393	04-22-99	04-26-99
S 941	WARREN E	MANUFACTURED HOMES LAW CHANGES	*R -CH. SL 99-0393	04-27-99	06-16-99
S 948=	HARRIS	CONFORM TAX REFUND PERIOD	S -REF TO COM ON FINANCE	04-14-99	
S 957	WEBSTER	OPTIONAL SIMPLE INCOME TAX	S -REF TO COM ON FINANCE	04-15-99	
S 959	WEBSTER	EXTEND PROTEST PERIOD	S -REF TO COM ON FINANCE	04-15-99	
S 967	CLODFELTER	PROPERTY TAX HOMESTEAD EXCLUSION	S -REF TO COM ON FINANCE	04-15-99	
S 968	SHAW L	WAIVER OF COMPETITIVE BIDDING MODIFI	*R -CH. SL 99-0400	06-23-99	07-08-99
S 970	WELLONS	TRIANGLE REGIONAL SALES & DEED TAX	S -REF TO COM ON FINANCE	04-15-99	
S 984	MILLER B	ACCOUNTANT/CPA AUDITS	*S -RE-REF COM ON FINANCE	04-29-99	
S 996	ODOM	COUNTY BONDS FOR LANDBANKING-2	S -REF TO COM ON FINANCE	04-15-99	
S1000	ODOM	MOTOR OIL ADF/USED PROGRAM	S -REF TO COM ON FINANCE	04-15-99	
S1004	KINNAIRD	GEOLOGIST LICENSURE	*R -CH. SL 99-0355	04-15-99	04-28-99
S1006	HOYLE	DWI ASSESSMENTS	S -REF TO COM ON FINANCE	04-15-99	
S1030	REEVES	FRANCHISE TAX CREDIT FOR CIP	S -REF TO COM ON FINANCE	04-15-99	
S1042	RAND	AUTHORIZE PUBLIC HOSPITL DEBT	S -REF TO COM ON FINANCE	04-15-99	
S1049	ALBERTSON	NEUSE RIVER BUFFER AMENDS	*R -CH. SL 99-0448	04-27-99	05-20-99
S1054	HARTSELL	OWNERSHIP REQUIREMENTS FOR USE VALUE	S -REF TO COM ON FINANCE	04-15-99	
S1056	WELLONS	TAX RETURN DONATIONS FOR HABITAT	S -REF TO COM ON FINANCE	04-15-99	
S1064	HOYLE	AFFORDABLE HOUSING TAX CREDIT	S -REF TO COM ON FINANCE	04-15-99	
S1076	COOPER	REFORM LOCAL TAX ON RENTAL CARS	*R -CH. SL 00-0002	04-15-99	07-01-99
S1082=	ALBERTSON	PEST CONTROL COMMITTEE MEMBERS	*S -PRES. TO GOV. 07-14	04-15-99	05-13-99

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S1085=	ALBERTSON	WETLANDS REIMBURSE/LOCAL TAX BASE	S -REF TO COM ON FINANCE	04-15-99	
S1100	ODOM	PROPERTY TAX CLERICAL ERROR	S -REF TO COM ON FINANCE	04-15-99	
S1101	ODOM	INCREASE WATER QUALITY CIVIL PENALTY	S -REF TO COM ON FINANCE	04-15-99	
S1103	KINNAIRD	USE VALUE ROLLBACK MODIFIED-2	S -REF TO COM ON FINANCE	04-15-99	
S1105=	PLYLER	TURF GRADE FERTILIZER ASSESSMENT	S -REF TO COM ON FINANCE	04-15-99	
S1110	RAND	TECH. COMMERCIALIZATION CREDIT	*R -CH. SL 99-0305	04-15-99	06-15-99
S1112	KERR	NO SALES TAX FEE/OTHER CHANGES	*R -CH. SL 99-0438	04-15-99	06-14-99
S1115	KERR	WILLIAM S. LEE ACT/1999	*R -CH. SL 99-0360	04-15-99	05-20-99
S1128=	ROBINSON	AMEND SEDIMENTATION ACT	S -RE-REF COM ON FINANCE	07-01-99	
S1131=	PURCELL	POSTPONE PIPED GAS TAX CHANGE	S -REF TO COM ON FINANCE	04-15-99	
S1138	KERR	HMO TAX PARITY	S -REF TO COM ON FINANCE	04-15-99	
S1144	WARREN E	NO TAX ON CERTAIN DONATED VEHICLES	S -REF TO COM ON FINANCE	04-15-99	
S1148	ALLRAN	NEW REGISTRATION PLATES	S -REF TO COM ON FINANCE	04-15-99	
S1152	CLODFELTER	NONRESIDENTIAL ABANDONED STRUCTURES	*S -PRES. TO GOV. 07-12	04-15-99	04-28-99
S1157=	KERR	SOCIAL WORKER LICENSURE	S -REF TO COM ON FINANCE	04-15-99	
S1160	REEVES	AMUSEMENT DEVICE INSPECTIONS	S -REF TO COM ON FINANCE	04-15-99	
S1163=	CLODFELTER	DRY-CLEANING SOLVENT CLEANUP AMENDS	S -REF TO COM ON FINANCE	04-15-99	
S1165=	PURCELL	CLINICAL PHARMACIST PRACTITIONER	*S -RE-REF COM ON FINANCE	04-27-99	
S1181	RAND	REDUCE LEGION OF VALOR PLATE FEE	S -REF TO COM ON FINANCE	00-05-09	
S1184=	KINNAIRD	SPAY/NEUTER PROGRAM	*S -PRES. TO GOV. 07-12	00-05-09	00-05-25
S1187=	CARPENTER R	TOWN OF LAUREL PARK CHARTER	S -REF TO COM ON FINANCE	00-05-10	
S1188=	COCHRANE	REVISE CITY DISTRIBUTION FORMULA	S -REF TO COM ON FINANCE	00-05-10	
S1190	BALLANTINE	CAROLINA BEACH ANNEXATION/STREETS	R -CH. SL 00-0027	00-05-10	00-05-24
S1192=	RAND	CRIM. RECORD CHECKS/LONG-TERM CARE	*S -PRES. TO GOV. 07-13	00-06-28	00-07-06
S1193	GARWOOD	WILKES/ASHE FIRE DISTRICT BOUNDARIES	R -CH. SL 00-0076	00-05-10	00-06-20
S1197=	GULLEY W	TOLL ROADS	S -REF TO COM ON FINANCE	00-05-10	
S1200=	GULLEY W	MUNICIPAL PARTICIPATION	*S -PRES. TO GOV. 07-12	00-05-10	00-06-14
S1210	ODOM	SPECIAL REGISTRATION PLATES	S -PRES. TO GOV. 07-12	00-05-11	00-06-05
S1216=	PHILLIPS	DUCKS UNLIMITED PLATES	S -REF TO COM ON FINANCE	00-05-11	
S1222=	PURCELL	LAURINBURG STREET ASSESSMENTS	S -REF TO COM ON FINANCE	00-05-15	

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S1226	**PERDUE**	**OSTEOPOROSIS AWARENESS/EDUC FUNDS**	**S -RE-REF COM ON APPROPR**	**00-05-15**	**00-05-18**
S1227	**PLYLER**	**STATE PURCHASING SYSTEM ENHANCEMENT**	**S -RE-REF COM ON ED/HIED**	**00-05-15**	**00-05-18**
S1238=	PLYLER	MONROE CHARTER CONSOLIDATION	S -REF TO COM ON FINANCE	00-05-16	
S1241=	MOORE K	FOOTHILLS REGIONAL AIRPORT AUTH	S -REF TO COM ON FINANCE	00-05-16	
S1252=	ODOM	BROWNFIELDS TAX INCENTIVE	S -PRES. TO GOV. 07-11	00-05-30	00-06-27
S1262	DANNELLY	OMEGA PSI PHI SPECIAL PLATE	S -REF TO COM ON FINANCE	00-05-16	
S1264=	FORRESTER	MOUNT HOLLY ANNEXATION	R -CH. SL 00-0024	00-05-24	00-05-31
S1280=	HOYLE	HEALTH CARE FACILITY/CCRC TAX EXEMPT	H -REF TO COM ON FINANCE	00-05-17	00-05-24
S1285	ALBERTSON	LITTER PREVENTION SPECIAL PLATE	*HF-POSTPONED INDEFINITELY	00-06-20	00-06-21
S1293	PURCELL	TOWN OF BADIN/TAX RATE	R -CH. SL 00-0036	00-05-18	00-06-14
S1300=	HARTSELL	MIDLAND INCORPORATION	*R -CH. SL 00-0091	00-06-26	00-06-27
S1303=	ODOM	DRY-CLEANING SOLVENT CLEANUP AMENDS	S -REF TO COM ON FINANCE	00-05-18	
S1305=	HARTSELL	REVISE ARTICLE 9 OF UCC	S -PRES. TO GOV. 07-10	00-06-20	00-06-21
S1309	KERR	PENSION TAX WITHHOLDING	S -REF TO COM ON FINANCE	00-05-18	
S1312=	ALBERTSON	USE VALUE ROLLBACK MODIFIED	S -REF TO COM ON FINANCE	00-05-18	
S1314=	ALBERTSON	CREDIT FOR VALUE-ADDED AG BUSINESS	S -REF TO COM ON FINANCE	00-05-18	
S1318	DALTON	AMEND BILL LEE ACT TIER DESIGNATIONS	R -CH. SL 00-0073	00-05-18	00-06-07
S1319=	DALTON	MODIFY BILL LEE TAX CREDITS	S -REF TO COM ON FINANCE	00-05-18	
S1320	HOYLE	SIMPLIFY TAXES ON TELECOMMUNICATIONS	S -REF TO COM ON FINANCE	00-05-18	
S1330=	ODOM	NONHAZARDOUS DRY-CLEANING TECH.INCEN	*S -RE-REF COM ON FINANCE	00-05-18	00-05-25
S1330=	ODOM	NONHAZARDOUS DRY-CLEANING TECH.INCEN	*S -RE-REF COM ON FINANCE	00-06-22	
S1331=	ODOM	WHITE GOODS SUNSET REPEAL	H -REF TO COM ON FINANCE	00-05-18	00-06-21
S1334	SOLES	TABOR CITY ANNEXATION	*R -CH. SL 00-0025	00-05-31	00-06-06
S1336=	ODOM	STORMWATER UTILITY FEES	*S -RE-REF COM ON FINANCE	00-06-20	
S1363=	SOLES	EXTEND WHITEVILLE ETJ	R -CH. SL 00-0078	00-05-22	00-05-31
S1364	HARTSELL	EXTEND CABARRUS E&R BOARD	R -CH. SL 00-0092	00-05-22	00-06-29
S1371=	GARWOOD	LAND FOR CORR. FACILITY	S -REF TO COM ON FINANCE	00-05-23	
S1377=	HARRIS	LEE LOCAL SALES TAX	S -REF TO COM ON FINANCE	00-05-23	
S1378=	HARRIS	HARNETT LOCAL SALES TAX	S -REF TO COM ON FINANCE	00-05-23	
S1398=	WELLONS	INSURANCE LICENSE FEES/RECIPROCITY	*S -RE-REF COM ON FINANCE	00-06-12	

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S1419	HORTON	TAXPAYER PROTECTION ACT	S -REF TO COM ON FINANCE	00-05-25	
S1433	FOXX	SAVINGS RESERVE ACCT. INTEREST	S -REF TO COM ON FINANCE	00-05-25	
S1446	KINNAIRD	ORANGE OMNIBUS LOCAL ACT	S -REF TO COM ON FINANCE	00-05-25	
S1448	KINNAIRD	HILLSBOROUGH DEANNEXATION	*R -CH. SL 00-0098	00-05-25	00-06-27
S1451=	ODOM	CHARLOTTE ECON. DEVEL.QUICKTAKE	S -RE-REF COM ON FINANCE	00-06-07	
S1453=	ODOM	HUNTERSVILLE ANNEXATION AGREEMENT	S -REF TO COM ON FINANCE	00-05-25	
S1457=	HARRIS	RAISE AVERASBORO ROOM TAX	S -REF TO COM ON FINANCE	00-05-25	
S1460=	**LEE**	**FILM INDUSTRY INCENTIVES**	**S -PRES. TO GOV. 07-11**	**00-05-25**	**00-06-21**
S1463	HOYLE	DARE UTILITY UNDERGROUNDING AMEND.	*R -CH. SL 00-0106	00-05-25	00-06-12
S1463	HOYLE	DARE UTILITY UNDERGROUNDING AMEND.	*R -CH. SL 00-0106	00-06-14	00-06-22
S1466=	HOYLE	INCREASE FEE FOR EMERGENCY PLANNING	S -REF TO COM ON FINANCE	00-05-25	
S1472	RAND	CONDUIT AGENCY FINANCING	*S -PRES. TO GOV. 07-11	00-05-25	00-06-20
S1473=	METCALF	ASHEVILLE CHARTER AMENDMENTS	S -REF TO COM ON FINANCE	00-05-25	
S1474	METCALF	LEASE LAW EXEMPTION/BUNCOMBE TCC	*R -CH. SL 00-0099	00-05-25	00-06-22
S1476	KERR	INSURANCE REGULATORY CHARGE	S -REF TO COM ON FINANCE	00-05-25	
S1477	KERR	FINANCE NEW WILDLIFE CENTERS	S -PRES. TO GOV. 07-12	00-05-25	00-06-13
S1478=	REEVES	CONVENIENCE FEE FOR COURT RECORDS	S -REF TO COM ON FINANCE	00-05-25	
S1481	MILLER B	RESEARCH TRIANGLE PARK BOUNDARY	R -CH. SL 00-0093	00-06-22	00-06-22
S1484	HOYLE	LOCAL OPTION HOMESTEAD RELIEF	HF-POSTPONED INDEFINITELY	00-06-20	00-06-22
S1502	HARRIS	INCREASE FEES/INVESTMENT ADVISOR REV	H -REF TO COM ON FINANCE	00-05-30	00-06-21
S1507=	HOYLE	MODIFY BILL LEE ACT	S -REF TO COM ON FINANCE	00-05-30	
S1514	ALBERTSON	OVERWIDTH PERMITS	S -REF TO COM ON FINANCE	00-05-30	
S1528	ALBERTSON	TOBACCO HERITAGE PLATES	S -REF TO COM ON FINANCE	00-05-30	
S1529	DALTON	REGISTER OF DEEDS FEE ADJUSTMENTS	*S -PRES. TO GOV. 07-11	00-05-30	00-06-30
S1534=	KERR	UNC NONAPPROPRIATED CAPITAL/REV.BOND	S -REF TO COM ON FINANCE	00-05-30	
S1535	KERR	MODIFY DISABLED DWELLING CREDIT	S -REF TO COM ON FINANCE	00-05-30	
S1542	WELLONS	VIDEO POKER MACHINES ILLEGAL	*S -PRES. TO GOV. 07-14	00-05-30	00-06-27
S1544	**GARROU**	**TOURIST DIRECTIONAL SIGN PROGRAM**	***H -REF TO COM ON TRANSPOR**	**00-06-19**	**00-06-27**
S1549=	ODOM	UNC MILLENNIAL CAMPUSES	*HF-POSTPONED INDEFINITELY	00-06-07	00-06-21
S1552	HOYLE	ESTABLISH INVESTMENT ADVISORY COMM	S -REF TO COM ON FINANCE	00-05-30	

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S1554	HOYLE	PASS-THROUGH ENTITY/HOUSING TAX CRED	S -REF TO COM ON FINANCE	00-05-30	

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SENATE FINANCE COMMITTEE

WEDNESDAY, MAY 24, 2000

11 O'CLOCK A.M – ROOM 544

The Senate Finance Committee met on Wednesday, May 24, 2000, at 11 O'Clock A.M. in Room 544 with Senator John Kerr presiding. Senator Kerr and Senator Hoyle welcomed the committee members back and Eugene Son was introduced as a new member of the Fiscal Staff. There were 22 committee members present for the meeting.

SB 1241 – FOOTHILLS REGIONAL AIRPORT AUTH'ITY.

Senator Moore was recognized and asked that this bill not be heard today since the House version was already moving in the House.

SB 1184 – SPAY NEUTER PROGRAM.

Senator Kinnaird explained the Bill and Senator Purcell sent forth an Amendment. Senator Purcell's motion to adopt the Amendment passed. Copy of Amendment included in the Minutes. Jim Blackburn, representing the Association of County Commissioners, spoke on this bill. Stephen K. Vouch, Veterinarian, with the Department of Health and Human Services, also spoke in support of this Bill. Senator Foxx moved that the Bill be given a Favorable Report, as amended, and the motion was passed. The Bill will be sent to Appropriations. Copy of Original Bill, Explanation, Fiscal Note and Committee Sub included in the minutes.

HB 133 – EXEMPT DISABLED VETERAN VEHICLES.

Representative Rogers was recognized to explain his Bill. At the conclusion of Representative Rogers' explanation, he introduced Jeffrey Cooper from Martin County who is a disabled veteran. Mr. Cooper spoke in support of this Bill. On motion by Senator Soles, a Committee Substitute was adopted. After a general discussion on this Committee Sub., Senator Kerr announced that a Subcommittee would be appointed to work on this Bill. Copy of Original Bill, Committee Sub, Explanation and Fiscal Note included in the minutes. Also included in the minutes is a copy of memo from Senator Kerr and Senator Hoyle appointing members to this subcommittee.

HB 519 – HENDERSON FIRE DISTRICTS.

Representative Justus was recognized to explain his Bill and at the conclusion of his explanation, Senator Rand moved for a Favorable Report. The motion was passed.

Representative Justus introduced Ms. Evelyn Romeo, a former Clerk in the NC Legislature, from Hendersonville. Copy of Bill and Explanation included in the minutes.

SB 1280 – HEALTH CARE FACILITY AND CCRC TAX EXEMPT.

Senator Hoyle was recognized to explain SB 1280 and moved for the adoption of a Committee Sub. The motion was passed and Senator Hoyle explained the Bill. At the conclusion of his explanation, he moved for a Favorable Report for the Committee Sub and the motion was passed. Copy of the original Bill, Committee Sub, Explanation, and Fiscal Note included in the minutes.

SB 1190 – CAROLINA BEACH ANNEXATION/STREETS.

Senator Ballantine was recognized to explain his Bill. Senator Webster moved for a Favorable Report and the motion was passed. Copy of Bill included in the minutes.

HB 1326 – DRY CLEANING SOLVENT CLEANUP AMENDS.

Senator Clodfelter was recognized to explain this Bill and moved that a Committee Substitute be adopted. This motion passed. After Senator Clodfelter's explanation of the new Committee Sub, Senator R. Shaw moved for a Favorable Report for the Committee Sub. and the motion carried. Copy of Original Bill, Committee Sub, Explanation and Fiscal Note included in the minutes.

The meeting was adjourned at 12:05 P.M.

David W. Hoyle, Co-Chair
Senate Finance Committee

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

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

Visitors' Sign Up Sheet is Attachment # 1
Committee Report(s) are Attachment # 2

SENATE FINANCE COMMITTEE MEETING

WEDNESDAY, MAY 24, 2000

ROOM 544 - 11 O'CLOCK

SB 1184 – Spay/Neuter Program – Sen. Kinnaird

SB 1190 – Carolina Beach Annexation/Streets – Sen. Ballantine

SB 1241 – Foothills Regional Airport Authority – Sen. Moore

SB 1280 – Health Care Facility and CCRC Tax Exempt – Sen. Hoyle

HB 133 – Exempt Disabled Veteran Vehicles – Rep. Rogers

HB 519 – Henderson Fire Districts – Rep. Justus

HB 723 – Dark Windows Inspection Fee – Rep. Insko

HB 1153 – Retired Physician License – Rep. Justus

HB 1326 – Dry-Cleaning Solvent Cleanup – Rep. Gibson

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1184

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

S1184-ALA-001

Page 1 of __

Date_____,2000

Comm. Sub. [ ]
Amends Title [ ]

Senator Willis R. Purcell

1 moves to amend the bill on page 2, line 38,
2 by deleting the word "fund" and substituting the word "Program".
3

SIGNED Willis R. Purcell
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1184*

Short Title: Spay/Neuter Program. (Public)

Sponsors: Senators Kinnaird; Ballance, Carrington, Carter, Dalton, Foxx, Garrou, Hagan, Hartsell, Horton, Jordan, Lee, Lucas, Metcalf, Miller, Odom, Phillips, Purcell, Rand, Robinson, Shaw of Cumberland, Shaw of Guilford, Soles, Warren, and Weinstein.

Referred to: Finance.

May 9, 2000

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A VOLUNTARILY FUNDED STATEWIDE SPAY/NEUTER PROGRAM TO PROVIDE EDUCATION ON THE BENEFITS OF SPAYING AND NEUTERING PETS AND TO PROVIDE FINANCIAL ASSISTANCE TO COUNTIES AND CITIES OFFERING LOW-INCOME PERSONS REDUCED-COST SPAY/NEUTER SERVICES FOR DOGS AND CATS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 19A of the General Statutes is amended by adding a new Article to read:

"ARTICLE 5.

"Spay/Neuter Program.

"**§ 19A-50. Legislative findings.**

The General Assembly finds that the uncontrolled breeding of cats and dogs in the State has led to unacceptable numbers of unwanted dogs, puppies and cats and kittens. These unwanted animals become strays and constitute a public nuisance and a public health hazard. The animals themselves suffer privation and death, are impounded, and most are destroyed at great expense to local governments. It is the intention of the General Assembly to provide a voluntary means of funding a spay/neuter program to provide financial assistance to local governments offering low-

income persons reduced-cost spay/neuter services for their dogs and cats and to provide a statewide education program on the benefits of spaying and neutering pets.

"**§ 19A-51. Spay/Neuter Program established.**

There is established in the Department of Health and Human Services a statewide program to foster the spaying and neutering of dogs and cats for the purpose of reducing the population of unwanted animals in the State. The program shall consist of the following components:

(a) Education Program. -- The Department shall establish a statewide program to educate the public about the benefits of having cats and dogs spayed and neutered. The Department may work cooperatively on the program with the North Carolina School of Veterinary Medicine, other State agencies and departments, county and city health departments and animal control agencies, and statewide and local humane organizations. The Department may employ outside consultants to assist with the education program.

(b) Local Spay/Neuter Assistance Program. -- The Department shall administer the Spay/Neuter Account established in G.S. 19A-52. Monies deposited in the account shall be available to reimburse eligible counties and cities for the direct costs of spay/neuter surgeries for cats and dogs made available to low-income persons.

"**§ 19A-52. Spay/Neuter Account established.**

(a) Creation. -- The Spay/Neuter Account is established as a nonreverting special revenue account in the Department of Health and Human Services. The Account consists of the following:

(1) Fifty cents (50¢) of the fee imposed by G.S. 130A-190(c) on the costs of obtaining rabies vaccination tags from the Department of Health and Human Services.

(2) Ten dollars ($10.00) of the additional fee imposed by G.S. 20-79.7 for an Animal Lovers special license plate.

(3) Any other funds available from appropriations by the General Assembly or from contributions and grants from public or private sources.

(b) Use. -- The revenue in the Account shall be used by the Department of Health and Human Services as follows:

(1) Twenty percent (20%) shall be used to develop and implement the statewide education program component of the Spay/Neuter Program established in G.S. 19A-51(a).

(2) Up to twenty percent (20%) of the money in the Account may be used to defray the costs of administering the Spay/Neuter Program established in this Article. In the first year the fund is operational, the Department shall use lapsed salary dollars within the Department to fund a position to administer the Spay/Neuter Program. In subsequent years, lapsed salary monies shall be used to supplement funding of the administration of the program if revenue from the Spay/Neuter Account is insufficient.

(3) Funds remaining after deductions for the education program and administrative expenses shall be distributed quarterly to eligible counties and cities seeking reimbursement for reduced-cost spay/neuter surgeries performed during the previous year.

"**§ 19A-53. Eligibility for distributions from Spay/Neuter Account.**

(a) A county or city is eligible for reimbursement from the Spay/Neuter Account if it meets both of the following conditions:

(1) The county or city levies an animal tax on dogs and cats under either G.S. 153A-153 or G.S. 160A-212, and the amount of the tax levied on a dog or cat that has not been spayed or neutered is at least three times higher than the amount of the tax levied on a dog or cat that has been spayed or neutered. A county or city may exempt from the higher tax rate a person who owns five or more dogs or five or more cats and has registered with the county or city as a dog breeder or a cat breeder. Registration shall be on forms provided by the county or city and accompanied by a registration fee of twenty-five dollars ($25.00). Any tax owed by a registered dog breeder or registered cat breeder pursuant to G.S. 153A-153 or G.S. 160A-212 during the 12-month period following registration shall be calculated as if the dogs or cats owned by the registrant were spayed or neutered.

(2) The county or city offers one or more of the following programs to low-income persons on a year-round basis for the purpose of reducing the cost of spaying and neutering procedures for dogs and cats:

a. A spay/neuter clinic operated by the county or city.

b. A spay/neuter clinic operated by a private organization under contract or other arrangement with the county or city.

c. A contract or contracts with one or more veterinarians, whether or not located within the county, to provide reduced-cost spaying and neutering procedures.

d. Subvention of the spaying and neutering costs incurred by low-income pet owners through the use of vouchers or other procedure that provides a discount of the cost of the spaying or neutering procedure fixed by a participating veterinarian or other provider.

e. Subvention of the spaying and neutering costs incurred by persons who adopt a pet from an animal shelter operated by or under contract with the county or city.

(b) For purposes of this Article, the term "low-income person" shall mean an individual who qualifies for one or more of the programs of public assistance administered by the Department pursuant to Chapter 108A of the General Statutes.

"**§ 19A-54. Distributions to counties and cities from Spay/Neuter Account.**

(a) Reimbursable Costs. -- Counties and cities eligible for distributions from the Spay/Neuter Account may receive reimbursement for the direct costs of a spay/neuter surgical procedure for a dog or cat owned by a low-income person meeting the Department's eligibility requirements for spay/neuter services. Reimbursable costs shall include anesthesia medication, and veterinary services. Counties and cities shall not be reimbursed for the administrative costs of providing reduced-cost spay/neuter services or capital expenditures for facilities and equipment associated with the provision of such services.

(b) Application. -- A county or city eligible for reimbursement of spaying and neutering costs from the Spay/Neuter Account shall apply to the Department of Health and Human Services by the last day of January, April, July, and October of each year to receive a distribution from the Account for that quarter. The application shall be submitted in the form required by the Department and shall include an itemized listing of the costs for which reimbursement is sought.

(c) Distribution. -- The Department shall make payments from the Spay/Neuter Account to eligible counties and cities who have made timely application for reimbursement within 30 days of the closing date for receipt of applications for that quarter. In the event that total requests for reimbursement exceed the amounts available in the Spay/Neuter Account for distribution, the monies available will be distributed as follows:

(1) Fifty percent (50%) of the monies available in the Spay/Neuter Account shall be reserved for reimbursement for eligible applicants within enterprise tier one, two, and three areas as defined in G.S. 105-129.3. The remaining fifty percent (50%) of the funds shall be used to fund reimbursement requests from eligible applicants in enterprise tier four and five areas as defined in G.S. 105-129.3.

(2) Among the eligible counties and cities in enterprise tier one, two, and three areas, reimbursement shall be made to each eligible county or city in proportion to the number of dogs and cats that have received rabies vaccinations during the preceding fiscal year in that county or city as compared to the number of dogs and cats that have received rabies vaccinations during the preceding fiscal year by all of the eligible applicants in enterprise tier one, two, or three areas.

(3) Among the eligible counties and cities in enterprise tier four and five areas, reimbursement shall be made to each eligible county or city in proportion to the number of dogs and cats that have received rabies vaccinations during the preceding fiscal year in that county or city as compared to the number of dogs and cats that have received rabies vaccinations during the preceeding fiscal year by all of the eligible applicants in enterprise tier four and five areas.

(4) Should funds remain available from the fifty percent (50%) of the Spay/Neuter Account designated for enterprise tier one, two, or

three areas after reimbursement of all claims by eligible applicants in those areas, the remaining funds shall be made available to reimburse eligible applicants in enterprise tier four and five areas."

Section 2. G.S. 130A-190 reads as rewritten:

"**§ 130A-190. Rabies vaccination tags.**

(a) A licensed veterinarian or a certified rabies vaccinator who administers rabies vaccine to a dog or cat shall issue a rabies vaccination tag to the owner of the animal. The rabies vaccination tag shall show the year issued, a vaccination number, the words "North Carolina" or the initials "N.C." and the words "rabies vaccine." Dogs and cats shall wear rabies vaccination tags at all times. However, cats may be exempted from wearing the tags by local ordinance. ~~Rabies~~

(b) Rabies vaccination tags, links and rivets may be obtained from the Department. The Secretary is authorized to establish by rule a fee for the rabies tags, links and rivets. Except as otherwise authorized in this section, the fee shall not exceed the actual cost of the rabies tags, links and rivets, plus transportation costs. The Secretary may increase the fee beyond the actual cost plus transportation, by an amount not to exceed five cents ($.05) per tag, to fund rabies education and prevention programs.

(c) The Department shall make available a special edition rabies tag to be known as the "I Care" tag. This tag shall be different in shape from the standard tag and shall carry the inscription "I Care" in addition to the information required by subsection (a) of this section. The Secretary is authorized to establish a fee for the "I Care" rabies tag equal to the amount set forth in subsection (b) of this section plus an additional fifty cents ($.50). The additional fifty cents ($.50) shall be credited to the Spay/Neuter Account established in G.S. 19A-52."

Section 3. G.S. 20-81.12(b10) reads as rewritten:

"(b10) Animal Lovers Plates. -- The Division must receive 300 or more applications before an animal lovers plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of the animal lovers plate to the ~~Department of Health and Human Services to create a statewide program to promote spaying and neutering of dogs and cats.~~ Spay/Neuter Account established in G.S. 19A-50."

Section 4. G.S. 130A-197 reads as rewritten:

"**§ 130A-197. Infected dogs and cats to be destroyed; protection of vaccinated dogs and cats.**

~~A~~ When the local health director reasonably suspects that a dog or cat ~~bitten by~~ has been exposed to the saliva or nervous tissue of a proven rabid animal or animal reasonably suspected of having rabies that is not available for laboratory ~~diagnosis~~ diagnosis, the dog or cat shall be considered to have been exposed to rabies. A dog or cat exposed to rabies shall be destroyed immediately by its owner, the county Animal Control Officer or a peace officer unless the dog or cat has been vaccinated against rabies in accordance with this Part and the rules of the Commission more than three weeks prior to being ~~bitten,~~ exposed, and is given a booster dose of rabies vaccine within three days of the ~~bite.~~ exposure. As an alternative to destruction, the

dog or cat may be quarantined at a veterinary hospital or animal control facility for a period of six months at the discretion of, and under conditions imposed by, the local health director."

Section 5. Every county or city animal shelter, or animal shelter operated under contract with a county or city or otherwise in receipt of State or local funding shall prepare an annual report setting forth the numbers, by species, of animals received into the shelter, the number adopted out, the number returned to owner, and the number destroyed. The report shall also contain the total operating expenses of the shelter and the cost per animal handled. The report shall be filed with the Department of Health and Human Services by August 1 of each year.

Section 6. The Department of Health and Human Services shall establish a pilot program for animal control in one of the counties within the enterprise tier one area, as defined in G.S. 105-29.3, that does not have an existing animal control program and that meets the qualifications established in this section.

The Department shall select a county to participate from among those counties applying to the Department for consideration for the pilot program. Counties wishing to participate should submit a written application to the Department describing in detail the animal control problems in the county, the proposed animal control program to be implemented with the funding available through the pilot program, and the expected results from the program. The Department shall make its selection based on its determination of where the pilot program would most effectively reduce the population of unwanted cats and dogs and enhance public health and safety. The decision of the Department as to the county chosen to participate in the pilot program shall be final.

To qualify to participate in the program, a county shall establish a differentiated tax on dogs and cats and offer a reduced cost spay/neuter program to low-income persons as provided in G.S. 19A-53(a). The county selected shall be required to provide a fifty percent (50%) match to any State funds that are allocated for the local animal control program. The county shall keep records of the number of cats and dogs spayed and neutered under the reduced cost spay/neuter program and shall report the results of the pilot program on animal control problems in the county to the Department on a semiannual basis.

Funding for the program shall be from the Spay/Neuter Account established pursuant to G.S. 19A-52 from funds received from the sale of Animal Lovers special license plates pursuant to G.S. 20-79.7 and shall not exceed fifty percent (50%) of the funds available from the sale of the special license plate or fifty thousand dollars ($50,000), whichever is less.

Section 7. This act becomes effective January 1, 2001.

SENATE BILL 1184:
Spay/Neuter Program (study bill)

BILL ANALYSIS

Committee: Senate Finance
Date: May 17, 2000
Version: 1st Edition

Introduced by: Senator Kirnaird
Summary by: Martha K. Walston
Committee Counsel

SUMMARY: ***SB 1184 is the recommendation of the LRC Animal Treatment Procedures Committee. The bill establishes a voluntarily funded statewide spay/neuter program to provide education on the benefits of spaying and neutering pets and to provide financial assistance to counties and cities offering low-income persons reduced cost spay/neuter services for dogs and cats. The bill is effective January 1, 2001. During the 1999 Session, bills were introduced in the House and Senate that would have required dog and cat owners to pay a 50 cent fee when their pet received a rabies vaccination.***

BILL ANALYSIS: The bill creates a voluntarily funded statewide program to provide two services:

1. Financial assistance to local governments that offer low-income persons reduced cost spay/neuter services for their dogs and cats. A low-income person is one who qualifies for one or more of the programs of public assistance administered by the Department of Health and Human Services. These programs include Work First, State-County Special Assistance for Adults, Foster Care and Adoption Assistance Payments, Food Stamp Program, and Medical Assistance Program.
2. Statewide program to educate the public on the benefits of spaying and neutering.

Funding for statewide program

The bill establishes a non-reverting special revenue Spay/Neuter Account in the Department of Health and Human Services to fund the above two services. Revenue for the Account comes from the following:

- An additional 50 cent fee on the cost of obtaining a special rabies tag. This special tag is an alternative to the standard tag and is a different shape and carries the designation "I Care".
- $10 of the additional fee for the purchase of Animal Lovers special license plates.
- Any appropriations by the General Assembly or contributions and grants.

Use of revenues in Account

- 20% to develop and implement the statewide education program.
- Up to 20% to defray costs of administering the Spay/Neuter Program. In the first year the fund is operational, the Department will use lapsed salary dollars to fund a position to administer the Program. In subsequent years, lapsed salary dollars will be used to supplement funding for administration of the program if revenue from the Spay/Neuter Account is insufficient.
- Remaining funds distributed quarterly to counties and cities seeking reimbursement for reduced-cost spay/neuter surgeries performed the previous year.

Eligibility for distribution

A county or city must meet two eligibility requirements for reimbursement:

1. Levy an annual animal tax on dogs and cats. The tax on animals that are not spayed or neutered must be at least three times the tax levied for pets that have been spayed or neutered (The county or city may exempt from the higher tax rate a person who owns five or more dogs or five or more cats and has registered with the county or city as a dog breeder or cat breeder. The registration fee is $25.)
2. Offer to low-income persons a year round, reduced cost spay/neuter program. Eligible local programs include a spay-neuter clinic operated by the local government or under contract with the local government; contracts with one or more veterinarians to provide low cost spay neuter procedures; subsidization of spay/neuter costs for low income pet owners through the use of vouchers; or subsidies of the spay/neuter costs for pets adopted from the local animal shelter

Method of distribution when revenue in Account is insufficient to cover all requests for reimbursement

Distributions are to be made quarterly and will be distributed as follows when there is insufficient revenue to cover all requests:

1. 50% of the money available will be reserved for reimbursement of eligible counties in enterprise tier one, two, or three areas. The remaining 50% will be available to eligible counties in tier four and five areas.
2. Of the money available to enterprise tier one, two and three areas, the funds shall be distributed to each eligible county or city in proportion to the number of dogs and cats that have received a vaccination during the preceding fiscal year as compared to the number of vaccinations given throughout the enterprise tier one, two, and three areas. Of the money available for the remaining eligible counties and cities, the monies will also be distributed proportionally according to the numbers of vaccinations given in the previous fiscal year.

Section 4 of the bill amends G.S. 130A-197 to allow, as an alternative to destruction, a six months quarantine of unvaccinated animals that have been exposed to rabies. The section also deletes reference to "bitten by" a proven rabid animal and substitutes "exposed to the saliva or nervous tissue" of a proven rabid animal.

Section 5 of the bill requires city and county animal shelters to make annual reports to DHHS on the number of animals received, adopted out, returned to owners, and destroyed, along with total operating expenses.

Section 6 of the bill directs the Department to establish a pilot animal control program in an enterprise tier one county that does not currently have a program meeting the standards of the act. The selected county must provide a 50% match to State funds allocated for the pilot program. The State funds will come from money in the Spay/Neuter Account from the sale of the Animal Lovers license plates, but the amount cannot exceed the lesser of 50% of this money or $50,000.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 1184 (First Edition)

SHORT TITLE: Spay/Neuter Program

SPONSOR(S): Senator Kinnaird, et al

FISCAL IMPACT

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

	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05
REVENUES					
Spay/Neuter Account					
"I Care" Rabies Tags	see Assumptions and Methodology				
License Plates	Minimum of $5,920 each year				
Local Governments	No impact, but must levy animal tax to qualify for aid				
EXPENDITURES					
Dept. of HHS					
General Fund *	$26,499	$21,886	$22,577	$23,329	$24,162
Spay/Neuter Account	no estimate available				
POSITIONS					
Dept. of HHS	.5	.5	.5	.5	.5

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Health and Human Services (HHS) – Public Health Division; Local governments

EFFECTIVE DATE: This act becomes effective January 1, 2001.

* Reversions from lapsed salaries (General Fund) may be used if funds are insufficient in the Spay/Neuter Account to fund administrative expenses.

BILL SUMMARY: This bill establishes a spay/neuter program in the North Carolina Department of Health and Human Services (HHS) – Division of Public Health. HHS will develop a statewide program to educate the public about the benefits of spaying and neutering cats and dogs. HHS will also create a Local Spay/Neuter Assistance Program to reimburse cities and counties for costs of performing spaying and neutering of pets belonging to low income persons. These spay/neuter programs are funded by 1) a voluntarily paid 50 cents fee on rabies

vaccination tags, 2) $10 from the sale of each Animal Lovers license plate, and 3) any appropriations or contributions. All revenues are paid into a Spay/Neuter Account that is then allocated 20% to statewide education, 20% to administration, and 60% to aid local governments.

ASSUMPTIONS AND METHODOLOGY:

REVENUE

Staff for the Veterinary Public Health Program in the Department of Health and Human Services estimates that one million rabies tags are sold annually to veterinarians. These tags provide proof of a rabies vaccination. Although not all tags are used in a year, it is the best indicator available for rabies vaccinations. SB 1184 makes available a special edition "I Care" rabies tag for an additional 50 cents. This additional fee is deposited into a new Spay/Neuter Account. Given that the purchase of "I Care" tags is voluntary, it is unknown what the annual revenue will be. The maximum revenue that can be obtained from this voluntary fee is $500,000 per year. The minimum revenue is zero.

SB 1184 transfers the future proceeds of the Animal Lovers special license plates into the Spay/Neuter Account. Since HB 1246 was approved on July 21, 1999, 592 persons have purchased the "I Care" animal lovers plate. $10 of the $20 special plate fee has gone to the Department of Health and Human Services for the spay/neuter program. At a minimum, the Spay/Neuter account will receive $5,920 from the renewal of these plates each year. With less than one year of experience with this tag, there is no reasonable method to estimate growth in plate sales.

Although SB 1184 does not mandate a local animal tax on dogs and cats, it does require local governments to have enacted this tax in order to qualify for grants from the Spay/Neuter Account. This animal tax must be three times higher for cats and dogs that have not been spayed or neutered than for cats and dogs that have been spayed or neutered. Some local governments may adopt this tax or amend their existing animal tax to qualify for the grant program. Twenty three counties reported an animal tax ordinance in a 1997 survey conducted by the North Carolina Association of County Commissioners, but it is not known whether these counties meet the tax standard in SB 1184. No similar survey is available for municipalities, but 47 towns and cities did report revenue from an animal tax in their 1997 AFIR (Annual Financial Information Report).

EXPENDITURE

1. A ½ FTE position titled Vet Tech II is needed to develop educational activities and to administer grant funds to counties for the surgical procedures. The position is also needed to establish a procedure with each licensed veterinarian and licensed certified rabies vaccinator in the state's 760 veterinary facilities for collecting and submitting the "I Care" tag fee.

2. In addition to the position, $12,505 will be needed for supplies, postage announcing the program and office equipment for the first year and $7,222 for the second year.

3. It is assumed that the inflation factor for the salary of the position will increase as follows: FY2002 - 3.6%, FY2003 - 3.5%, FY2004 - 3.7%, and FY2005 - 4.0%.

4. It is assumed that the inflation factor for general supplies will increase as follows:

FY2003 - 2.5%, FY2004 - 2.6%, and FY2005 - 2.7%.

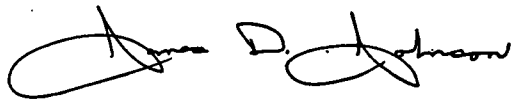
TECHNICAL CONSIDERATIONS:

1. The bill explicitly states that 20% of the Spay/Neuter Account revenues will be used for administration and the difference of the revenues and actual costs of administration is to be funded from lapsed salaries. Lapsed salaries are unspent salary funds created by a vacant position. Since positions are budgeted for 100% of the fiscal year, each day that a position is left vacant results in unspent wages and fringe benefits for that day. Typically, these funds revert at the end of the year or are used in an approved transfer during the year. Due to the uncertainty of rabies tag receipts in the first year of the program, earmarking of lapsed salaries is equal to an appropriation of General Fund reversions in FY 2000-01. Furthermore, there is no guarantee that funds will be available during the fiscal year to cover the administrative cost of the program.

2. Reference on page 2, lines 10 and 11 to the North Carolina School of Veterinary Medicine should be changed to the North Carolina State University College of Veterinary Medicine.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Lisa Hollowell & Richard Bostic

APPROVED BY: James D. Johnson



DATE: May 18, 2000

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 1184*
Proposed Committee Substitute S1184-PCS7767-LA001

Short Title: Spay/Neuter Program. (Public)

Sponsors:

Referred to:

May 9, 2000

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A VOLUNTARILY FUNDED STATEWIDE SPAY/NEUTER PROGRAM TO PROVIDE EDUCATION ON THE BENEFITS OF SPAYING AND NEUTERING PETS AND TO PROVIDE FINANCIAL ASSISTANCE TO COUNTIES AND CITIES OFFERING LOW-INCOME PERSONS REDUCED-COST SPAY/NEUTER SERVICES FOR DOGS AND CATS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 19A of the General Statutes is amended by adding a new Article to read:

"ARTICLE 5.

"Spay/Neuter Program.

"**§ 19A-50. Legislative findings.**

The General Assembly finds that the uncontrolled breeding of cats and dogs in the State has led to unacceptable numbers of unwanted dogs, puppies and cats and kittens. These unwanted animals become strays and constitute a public nuisance and a public health hazard. The animals themselves suffer privation and death, are impounded, and most are destroyed at great expense to local governments. It is the intention of the General Assembly to provide a voluntary means of funding a spay/neuter program to provide financial assistance to local governments offering low-income persons reduced-cost spay/neuter services for their dogs and cats and to provide a statewide education program on the benefits of spaying and neutering pets.

"**§ 19A-51. Spay/Neuter Program established.**

There is established in the Department of Health and Human Services a statewide program to foster the spaying and neutering of dogs and cats for the purpose of reducing the population of unwanted animals in the State. The program shall consist of the following components:

(a) Education Program. -- The Department shall establish a statewide program to educate the public about the benefits of having cats and dogs spayed and neutered. The Department may work cooperatively on the program with the North Carolina School of Veterinary Medicine, other State agencies and departments, county and city health departments and animal control agencies, and statewide and local humane organizations. The Department may employ outside consultants to assist with the education program.

(b) Local Spay/Neuter Assistance Program. -- The Department shall administer the Spay/Neuter Account established in G.S. 19A-52. Monies deposited in the account shall be available to reimburse eligible counties and cities for the direct costs of spay/neuter surgeries for cats and dogs made available to low-income persons.

"**§ 19A-52. Spay/Neuter Account established.**

(a) Creation. -- The Spay/Neuter Account is established as a nonreverting special revenue account in the Department of Health and Human Services. The Account consists of the following:

(1) Fifty cents (50¢) of the fee imposed by G.S. 130A-190(c) on the costs of obtaining rabies vaccination tags from the Department of Health and Human Services.

(2) Ten dollars ($10.00) of the additional fee imposed by G.S. 20-79.7 for an Animal Lovers special license plate.

(3) Any other funds available from appropriations by the General Assembly or from contributions and grants from public or private sources.

(b) Use. -- The revenue in the Account shall be used by the Department of Health and Human Services as follows:

(1) Twenty percent (20%) shall be used to develop and implement the statewide education program component of the Spay/Neuter Program established in G.S. 19A-51(a).

(2) Up to twenty percent (20%) of the money in the Account may be used to defray the costs of administering the Spay/Neuter Program established in this Article. In the first year the Program is operational, the Department shall use lapsed salary dollars within the Department to fund a position to administer the Spay/Neuter Program. In subsequent years, lapsed salary monies shall be used to supplement funding of the administration of the program if revenue from the Spay/Neuter Account is insufficient.

(3) Funds remaining after deductions for the education program and administrative expenses shall be distributed quarterly to eligible counties and cities seeking reimbursement for reduced-cost spay/neuter surgeries performed during the previous year.

"**§ 19A-53. Eligibility for distributions from Spay/Neuter Account.**

(a) A county or city is eligible for reimbursement from the Spay/Neuter Account if it meets both of the following conditions:

(1) The county or city levies an animal tax on dogs and cats under either G.S. 153A-153 or G.S. 160A-212, and the amount of the tax levied on a dog or cat that has not been spayed or neutered is at least three times higher than the amount of the tax levied on a dog or cat that has been spayed or neutered. A county or city may exempt from the higher tax rate a person who owns five or more dogs or five or more cats and has registered with the county or city as a dog breeder or a cat breeder. Registration shall be on forms provided by the county or city and accompanied by a registration fee of twenty-five dollars ($25.00). Any tax owed by a registered dog breeder or registered cat breeder pursuant to G.S. 153A-153 or G.S. 160A-212 during the 12-month period following registration shall be calculated as if the dogs or cats owned by the registrant were spayed or neutered.

(2) The county or city offers one or more of the following programs to low-income persons on a year-round basis for the purpose of reducing the cost of spaying and neutering procedures for dogs and cats:

a. A spay/neuter clinic operated by the county or city.

b. A spay/neuter clinic operated by a private organization under contract or other arrangement with the county or city.

c. A contract or contracts with one or more veterinarians, whether or not located within the county, to provide reduced-cost spaying and neutering procedures.

d. Subvention of the spaying and neutering costs incurred by low-income pet owners through the use of vouchers or other procedure that provides a discount of the cost of the spaying or neutering procedure fixed by a participating veterinarian or other provider.

e. Subvention of the spaying and neutering costs incurred by persons who adopt a pet from an animal shelter operated by or under contract with the county or city.

(b) For purposes of this Article, the term "low-income person" shall mean an individual who qualifies for one or more of the programs of public assistance administered by the Department pursuant to Chapter 108A of the General Statutes.

"**§ 19A-54. Distributions to counties and cities from Spay/Neuter Account.**

(a) Reimbursable Costs. -- Counties and cities eligible for distributions from the Spay/Neuter Account may receive reimbursement for the direct costs of a spay/neuter surgical procedure for a dog or cat owned by a low-income person meeting the Department's eligibility requirements for spay/neuter services. Reimbursable costs shall include anesthesia, medication, and veterinary services. Counties and cities

shall not be reimbursed for the administrative costs of providing reduced-cost spay/neuter services or capital expenditures for facilities and equipment associated with the provision of such services.

(b) Application. -- A county or city eligible for reimbursement of spaying and neutering costs from the Spay/Neuter Account shall apply to the Department of Health and Human Services by the last day of January, April, July, and October of each year to receive a distribution from the Account for that quarter. The application shall be submitted in the form required by the Department and shall include an itemized listing of the costs for which reimbursement is sought.

(c) Distribution. -- The Department shall make payments from the Spay/Neuter Account to eligible counties and cities who have made timely application for reimbursement within 30 days of the closing date for receipt of applications for that quarter. In the event that total requests for reimbursement exceed the amounts available in the Spay/Neuter Account for distribution, the monies available will be distributed as follows:

(1) Fifty percent (50%) of the monies available in the Spay/Neuter Account shall be reserved for reimbursement for eligible applicants within enterprise tier one, two, and three areas as defined in G.S. 105-129.3. The remaining fifty percent (50%) of the funds shall be used to fund reimbursement requests from eligible applicants in enterprise tier four and five areas as defined in G.S. 105-129.3.

(2) Among the eligible counties and cities in enterprise tier one, two, and three areas, reimbursement shall be made to each eligible county or city in proportion to the number of dogs and cats that have received rabies vaccinations during the preceding fiscal year in that county or city as compared to the number of dogs and cats that have received rabies vaccinations during the preceding fiscal year by all of the eligible applicants in enterprise tier one, two, or three areas.

(3) Among the eligible counties and cities in enterprise tier four and five areas, reimbursement shall be made to each eligible county or city in proportion to the number of dogs and cats that have received rabies vaccinations during the preceding fiscal year in that county or city as compared to the number of dogs and cats that have received rabies vaccinations during the preceeding fiscal year by all of the eligible applicants in enterprise tier four and five areas.

(4) Should funds remain available from the fifty percent (50%) of the Spay/Neuter Account designated for enterprise tier one, two, or three areas after reimbursement of all claims by eligible applicants in those areas, the remaining funds shall be made available to reimburse eligible applicants in enterprise tier four and five areas."

Section 2. G.S. 130A-190 reads as rewritten:

"**§ 130A-190. Rabies vaccination tags.**

(a) A licensed veterinarian or a certified rabies vaccinator who administers rabies vaccine to a dog or cat shall issue a rabies vaccination tag to the owner of the animal. The rabies vaccination tag shall show the year issued, a vaccination number, the words "North Carolina" or the initials "N.C." and the words "rabies vaccine." Dogs and cats shall wear rabies vaccination tags at all times. However, cats may be exempted from wearing the tags by local ordinance. ~~Rabies~~

(b) Rabies vaccination tags, links and rivets may be obtained from the Department. The Secretary is authorized to establish by rule a fee for the rabies tags, links and rivets. Except as otherwise authorized in this section, the fee shall not exceed the actual cost of the rabies tags, links and rivets, plus transportation costs. The Secretary may increase the fee beyond the actual cost plus transportation, by an amount not to exceed five cents ($.05) per tag, to fund rabies education and prevention programs.

(c) The Department shall make available a special edition rabies tag to be known as the "I Care" tag. This tag shall be different in shape from the standard tag and shall carry the inscription "I Care" in addition to the information required by subsection (a) of this section. The Secretary is authorized to establish a fee for the "I Care" rabies tag equal to the amount set forth in subsection (b) of this section plus an additional fifty cents ($.50). The additional fifty cents ($.50) shall be credited to the Spay/Neuter Account established in G.S. 19A-52."

Section 3. G.S. 20-81.12(b10) reads as rewritten:

"(b10) Animal Lovers Plates. -- The Division must receive 300 or more applications before an animal lovers plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of the animal lovers plate to the ~~Department of Health and Human Services to create a statewide program to promote spaying and neutering of dogs and cats.~~ Spay/Neuter Account established in G.S. 19A-50."

Section 4. G.S. 130A-197 reads as rewritten:

"**§ 130A-197. Infected dogs and cats to be destroyed; protection of vaccinated dogs and cats.**

~~A~~ When the local health director reasonably suspects that a dog or cat ~~bitten by~~ has been exposed to the saliva or nervous tissue of a proven rabid animal or animal reasonably suspected of having rabies that is not available for laboratory ~~diagnosis~~ diagnosis, the dog or cat shall be considered to have been exposed to rabies. A dog or cat exposed to rabies shall be destroyed immediately by its owner, the county Animal Control Officer or a peace officer unless the dog or cat has been vaccinated against rabies in accordance with this Part and the rules of the Commission more than three weeks prior to being ~~bitten,~~ exposed, and is given a booster dose of rabies vaccine within three days of the ~~bite.~~ exposure. As an alternative to destruction, the dog or cat may be quarantined at a veterinary hospital or animal control facility for a period of six months at the discretion of, and under conditions imposed by, the local health director."

Section 5. Every county or city animal shelter, or animal shelter operated under contract with a county or city or otherwise in receipt of State or local funding

shall prepare an annual report setting forth the numbers, by species, of animals received into the shelter, the number adopted out, the number returned to owner, and the number destroyed. The report shall also contain the total operating expenses of the shelter and the cost per animal handled. The report shall be filed with the Department of Health and Human Services by August 1 of each year.

Section 6. The Department of Health and Human Services shall establish a pilot program for animal control in one of the counties within the enterprise tier one area, as defined in G.S. 105-29.3, that does not have an existing animal control program and that meets the qualifications established in this section.

The Department shall select a county to participate from among those counties applying to the Department for consideration for the pilot program. Counties wishing to participate should submit a written application to the Department describing in detail the animal control problems in the county, the proposed animal control program to be implemented with the funding available through the pilot program, and the expected results from the program. The Department shall make its selection based on its determination of where the pilot program would most effectively reduce the population of unwanted cats and dogs and enhance public health and safety. The decision of the Department as to the county chosen to participate in the pilot program shall be final.

To qualify to participate in the program, a county shall establish a differentiated tax on dogs and cats and offer a reduced cost spay/neuter program to low-income persons as provided in G.S. 19A-53(a). The county selected shall be required to provide a fifty percent (50%) match to any State funds that are allocated for the local animal control program. The county shall keep records of the number of cats and dogs spayed and neutered under the reduced cost spay/neuter program and shall report the results of the pilot program on animal control problems in the county to the Department on a semiannual basis.

Funding for the program shall be from the Spay/Neuter Account established pursuant to G.S. 19A-52 from funds received from the sale of Animal Lovers special license plates pursuant to G.S. 20-79.7 and shall not exceed fifty percent (50%) of the funds available from the sale of the special license plate or fifty thousand dollars ($50,000), whichever is less.

Section 7. This act becomes effective January 1, 2001.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 133*
Committee Substitute Favorable 6/24/99

Short Title: Exempt Disabled Veteran Vehicles. (Public)

Sponsors:

Referred to:

February 23, 1999

A BILL TO BE ENTITLED

AN ACT TO EXEMPT FROM PROPERTY TAX MODIFIED MOTOR VEHICLES OWNED BY DISABLED VETERANS WHO ARE ELIGIBLE FOR FEDERAL SPECIAL EQUIPMENT ALLOWANCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-275 is amended by adding a new subdivision to read:

"(5a) A motor vehicle owned by a disabled veteran that is altered with special equipment to accommodate a service-connected disability. As used in this section, disabled veteran means a person as defined in 38 U.S.C. § 101(2) who is entitled to special automotive equipment for a service-connected disability, as provided in 38 U.S.C. § 3901."

Section 2. This act is effective for taxes imposed for taxable years beginning on or after July 1, 1999.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 133*
Committee Substitute Favorable 6/24/99
Proposed Senate Committee Substitute H133-PCS8178-LA

Short Title: Exempt Disabled Veteran Vehicles. (Public)

Sponsors:

Referred to:

February 23, 1999

A BILL TO BE ENTITLED

AN ACT TO EXEMPT FROM PROPERTY TAX MODIFIED MOTOR VEHICLES OWNED BY DISABLED VETERANS WHO ARE ELIGIBLE FOR FEDERAL SPECIAL EQUIPMENT ALLOWANCES.

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Section 2. This act is effective for taxes imposed for taxable years beginning on or after July 1, 2000.

HOUSE BILL 133
Exempt Disabled Veteran Vehicles

BILL ANALYSIS

Committee:	Senate Finance	**Sponsor:**	Rep. Rogers
Date:	May 23, 2000	**Analysis by:**	Martha K. Walston
Version:	Senate PCS		Staff Attorney

SUMMARY: ***HB 133 exempts from property tax motor vehicles (1) owned by veterans with certain service-related disabilities and (2) altered with special equipment to accommodate the service-related disability, effective for tax years beginning July 1, 2000. To receive the exemption, the vehicle owner must first file an application with the county assessor. The only difference between the proposed Senate Committee Substitute and the version that passed the House last year is the effective date.***

CURRENT LAW: G.S. 105-275(5) grants a property tax exemption to vehicles that the U.S. government gives to veterans on account of disabilities they suffered in WWII, the Korean Conflict, or the Vietnam Era.

BILL ANALYSIS: House Bill 133 also gives a property tax exemption to vehicles owned by veterans with certain service-related disabilities when the vehicles have been altered with special equipment to accommodate the disability.

Under federal law, veterans with certain service-related disabilities qualify for an allowance to adapt a vehicle to accommodate the disability. Vehicles owned by these veterans and so altered would be eligible for the proposed property tax exemption. To qualify for the exemption, the person must meet the following federal requirements

1. Veteran - Be a person who served in the active military, naval, or air service, and who was discharged or released under conditions other than dishonorable.
2. Service-related disability - Be disabled from an injury that incurred or disease contracted in or aggravated by active service. The disability must be loss of one or both hands or feet, permanent loss of use of one or both hands or feet, or permanent impairment of vision of both eyes.
3. Adaptive equipment – Have a vehicle that has been adapted for the disability. Adaptive equipment includes, but is not limited to, power steering, power brakes, power window lifts, power seats, and special equipment necessary to assist the veteran into and out of the automobile or other conveyance. The term also includes (a) air-conditioning equipment when the equipment is necessary to the health and safety of the veteran and to the safety of others, regardless of whether the vehicle is to be operated by the veteran or for the veteran by another person, and (b) any modification of the size of the interior space of the vehicle if needed because of the physical condition of the veteran in order for the veteran to enter or operate the vehicle.

The veteran must file an application to receive the exemption. Once an approved exemption is on file, it remains in effect and the vehicle is omitted from the tax rolls. The application need not be renewed each year.

The original bill exempted from property tax all motor vehicles owned by veterans with combat-related total disabilities, and provided for the State to reimburse counties for their resulting revenue losses. The

original bill was estimated to cost the State nearly $300,000 a year. The House Committee on Transportation changed the exemption to one that applies to vehicles altered to accommodate veterans with certain service-related disabilities, and removed the reimbursement provision. This change resulted in a smaller estimated loss of $120,000 a year, and shifted the impact of the loss from the State to local governments.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 133 (Proposed Senate Finance Committee Substitute)

SHORT TITLE: Exempt Disabled Veteran Vehicles

SPONSOR(S): Representative Rogers

FISCAL IMPACT

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

	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05
REVENUES					
Local Governments	($119,059)	($118,700)	($119,293)	($120,136)	($120,604)
EXPENDITURES					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue

EFFECTIVE DATE: Effective for taxable years beginning on or after July 1, 2000.

BILL SUMMARY:
The proposed bill exempts from property tax those motor vehicles owned by disabled veterans who are eligible for federal special equipment allowances.

BACKGROUND:
Veterans who have a service-connected loss of one or both hands or feet, a permanent loss of use of one or both hands or feet, or permanent impairment of vision of both eyes qualify for federal automobile assistance. The United States Department of Veterans Affairs (VA) offers a one-time payment of up to $8,000 toward the purchase of an automobile. The VA will also pay for adaptive equipment and for the repair, replacement, or reinstallation of adaptive equipment.

ASSUMPTIONS AND METHODOLOGY:
The North Carolina Division of Veterans Affairs in the Department of Administration reports that 1,560 veterans living in North Carolina are entitled to a federal automobile grant or adaptive equipment allowance for service-connected disabilities. For this fiscal note, it is assumed that each veteran will claim the property tax exemption for one vehicle. The average value of a vehicle in North Carolina was $7,632 in 1999. This vehicle value is the average of vehicle valuations taken from Cabarrus, Orange, Haywood, Surry, Halifax, and Sampson counties. A

company that provides vehicle tax values to county tax assessors statewide provided the data for 1999 vehicle values.

Since it is difficult to predict whether this veteran population will trade, buy, or retain their vehicles in the next five years, the average vehicle price is adjusted by a national inflation rate for light vehicles. A Standard & Poor's DRI national forecast for light vehicles (cars and trucks) in Spring 2000 predicted an increase in car values as follows:

2000 no increase
2001 -. 3%
2002 . 5%
2003 . 7%
2004 . 4%

Without a printout of addresses for disabled veterans, a statewide tax rate is used to estimate the fiscal impact of this bill. The unified property tax rate for all government jurisdictions in North Carolina has fluctuated from .994 per $100 of assessed valuation in 1993-94 to .958 per $100 in 1998-99. Due to pressures in many counties to build schools and provide other services, an estimated rate of $1.00 per $100 of assessed value is used in this note.

Using the variables mentioned above, the revenue impact is calculated as follows:

	Average Car Values	DRI Inflation est.	Disabled Veterans	Value of Exempted Property	Unified Property Tax Rate	Property Tax Exempted
1999-00	$7,632		1,560	$11,905,920	$1.00	$119,059
2000-01	$7,632	0	1,560	$11,905,920	$1.00	$119,059
2001-02	$7,609	-.3%	1,560	$11,870,040	$1.00	$118,700
2002-03	$7,647	.5%	1,560	$11,929,320	$1.00	$119,293
2003-04	$7,701	.7%	1,560	$12,013,560	$1.00	$120,136
2004-05	$7,731	.4%	1,560	$12,060,360	$1.00	$120,604

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic

APPROVED BY:

DATE:

North Carolina General Assembly
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May 24, 2000

COMMITTEES:

FINANCE - CHAIRMAN
WAYS AND MEANS - VICE CHAIRMAN
APPROPRIATIONS/HUMAN RESOURCES
CHILDREN AND HUMAN RESOURCES
COMMERCE
INFORMATION TECHNOLOGY
JUDICIARY II
SENATE SELECT COMMITTEE ON TOBACCO SETTLEMENT ISSUES

TO: Senator Clodfelter

FROM: John Kerr
David Hoyle

RE: HB 133 – Exempt Disabled Veteran Vehicles

Senator Hoyle and I respectfully request that you serve as Chairman of a subcommittee to work on the above named bill. The following Finance Committee members will serve as members of this committee:

Senater Dalton
Senator Harris
Senator Hartsell

Martha Walston will assist you in working on this bill and we appreciate your willingness to serve on this subcommittee. If you are unable to work on this bill, please let me know by contacting my legislative assistant, Evelyn Hartsell, at 733-5621. Thank you.

JHK,III:esh

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 519
Committee Substitute Reported Without Prejudice 4/23/99

Short Title: Henderson Fire Districts. (Local)

Sponsors:

Referred to:

March 22, 1999

A BILL TO BE ENTITLED

AN ACT TO ALLOW HENDERSON COUNTY TO ADJUST THE BOUNDARIES OF CHAPTER 69 FIRE TAX DISTRICTS.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding G.S. 69-25.11, the boundaries of any fire protection district in Henderson County established under Article 3A of Chapter 69 of the General Statutes may be changed by resolution of the Board of Commissioners of Henderson County to follow the boundaries shown on the map in Attachment A to a resolution adopted by that board on March 17, 1999.

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

HOUSE BILL 519:
Henderson Fire Districts

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Rep. Justus
Date:	May 22, 2000	**Summary by:**	Martha K. Walston
Version:	2nd Edition		Committee Counsel

SUMMARY: ***This local bill allows the Henderson County commissioners to change the boundaries of any fire protection district in the county to follow the boundaries shown on a map attached to a resolution adopted by the county commissioners on March 17, 1999. The bill was given a favorable report in House Finance on June 30, 1999.***

CURRENT LAW: Fire protection in areas outside cities is provided through the establishment of fire protection districts. The statutes provide for the creation of three types of rural fire districts:

- **Insurance districts.** G.S. 153A-233 authorizes counties to designate fire districts and prescribe their boundaries for insurance-grading purposes. To pay for this protection, the county is authorized to appropriate funds "not otherwise limited as to use by law."
- **Tax-supported fired districts.** Article 3A of Chapter 69 of the General Statutes authorizes tax-supported fire districts. They are created by a petition and an election. To pay for this protection, a special tax is levied and collected on all taxable property in the district at a rate not exceeding 15 cents on the $100 valuation of property.
- **County service districts for fire protection.** Article 16 of Chapter 153A of the General Statutes authorizes the county commissioners to define service districts for fire protection after a public hearing. To pay for this protection, a county may levy an additional property tax within the district for the purposes of financing fire protection services. The county may also use revenues whose use is not otherwise restricted by law and it may issue general obligation bonds.

Last session, the General Assembly established a fourth type of fire district for Brunswick County: a fee-supported fire district. The County was authorized to impose annual fees for the provision of fire protection within the district. Similar legislation was passed for Union County in 1992.

BILL ANALYSIS: The current version of House Bill 519 allows the Henderson County commissioners to change the boundaries of any fire district in the County established for tax-supported fire districts under Article 3A of Chapter 39, without having to meet the requirements in G.S. 69-25.11. These changes to the boundaries are pursuant to a resolution adopted by the commissioners on March 17, 1999. They will equalize the tax districts and add residents who currently are not in a fire district.

G.S. 69-25.11 sets out the only means to alter established boundaries. They are:

1. The area in a district may be **increased** by adding adjoining territory upon the application of the owner, or a 2/3 majority of the owners of the territory to be included, the unanimous recommendation of the fire protection commissioners, the approval of a majority of the members

of the board of directors of the corporation furnishing fire protection, and the approval of the county boards of commissioners in which the district is located.

2. The area of a district may be **decreased** upon the application of the owner of the territory to be removed, the unanimous recommendation in writing of the fire protection commissioners of the district, the approval of a majority of the members of the board of directors of the corporation furnishing fire protection to the district, and the approval of the boards of county commissioners in which the district is located.
3. In the case of adjoining fire districts having the same rate of tax for fire protection, the board of county commissioners, upon petition of the fire protection commissioners and the boards of directors of the corporations furnishing fire protection in the affected districts, shall have the authority to **relocate** the boundary lines between the fire districts.
4. In the case of adjoining fire districts having a different rate of tax for fire protection, the board of county commissioners, upon petition of 2/3 of the owners of the territory involved and after receiving a favorable recommendation of the fire protection commissioners the boards of directors of the corporations furnishing fire protection in the affected districts, may transfer the territory from one district to another. and therefore **relocate** the boundary lines between the fire districts
5. The area of a district may be **increased** by adding adjoining territory lying within the corporate limits of the city if the territory is not already included within a district. Both the city governing body and the county commissioners of the county in which the district is located must all agree by resolution to the inclusion.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1280

Short Title: Health Care Facility and CCRC Tax Exempt. (Public)

Sponsors: Senators Hoyle; and Purcell.

Referred to: Finance.

May 17, 2000

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE PROPERTY TAX TREATMENT OF A HEALTH CARE FACILITY UNDERTAKEN BY THE MEDICAL CARE COMMISSION PURSUANT TO THE HEALTH CARE FACILITIES FINANCE ACT, AND TO EXTEND THE SUNSET ON THE PROPERTY TAX EXEMPTION FOR CONTINUING CARE RETIREMENT CENTERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131A-21 reads as rewritten:

"**§ 131A-21. Tax exemption.**

The exercise of the powers granted by this Chapter will be in all respects for the benefit of the people of the State and will promote their health and ~~welfare, and no tax or assessment shall be levied upon any health care facilities undertaken by the Commission prior to the retirement or provision for the retirement of all bonds or notes issued and obligations incurred by the Commission in connection with such health care facilities.~~ welfare. If bonds or notes are issued by the Commission to provide or improve a health care facility, then until the bonds or notes are retired, the facility for which bonds or notes are issued is exempt from property taxes to the extent provided in this section. An exemption under this section shall not exceed the lesser of the principal amount of the bonds or notes or the assessed value for ad valorem tax purposes of the facility. In the case of an addition or expansion to a facility, then only the new part is exempt. In the case of renovation to a facility, then only the part being renovated is exempt. In the case of construction of a new facility or improvement to an existing facility that affects the entire facility, then the entire

facility is exempt. This section does not affect a health care facility's eligibility for a property tax exemption under Subchapter II of Chapter 105 of the General Statutes.

Any bonds or notes issued by the Commission under the provisions of this Chapter shall at all times be free from taxation by the State or any local unit or political subdivision or other instrumentality of the State, excepting ~~inheritance~~ inheritance, estate, or gift taxes, income taxes on the gain from the transfer of the bonds and notes, and franchise taxes. The interest on the bonds and notes is not subject to taxation as income."

Section 2. Subsection (e) of Section 29A.18 of Chapter 212 of the 1998 Session Laws reads as rewritten:

"(e) Subsection (a) of this section is effective for taxes imposed for taxable years beginning on or after July 1, 1998. Notwithstanding the provisions of G.S. 105-282.1(a), an application for the benefit provided in subsection (a) of this section for the 1998-99 tax year is timely if it is filed on or before November 15, 1998. ~~Subsection (a) of this section~~ G.S. 105-278.6A is repealed effective for taxes imposed for taxable years beginning on or after July 1, ~~2000.~~ 2001. The remainder of this section is effective when it becomes law."

Section 3. Section 1 of this act becomes effective October 1, 2000, and applies to bonds or notes issued on or after that date. Section 2 of this act becomes effective July 1, 2000. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 1280
Proposed Committee Substitute S1280-PCS2831-LA001

Short Title: CCRC Tax Exempt. (Public)

Sponsors:

Referred to:

May 17, 2000

A BILL TO BE ENTITLED

AN ACT TO EXTEND THE SUNSET ON THE PROPERTY TAX EXEMPTION FOR CONTINUING CARE RETIREMENT CENTERS.

The General Assembly of North Carolina enacts:

Section 1. Subsection (e) of Section 29A.18 of Chapter 212 of the 1998 Session Laws reads as rewritten:

"(e) Subsection (a) of this section is effective for taxes imposed for taxable years beginning on or after July 1, 1998. Notwithstanding the provisions of G.S. 105-282.1(a), an application for the benefit provided in subsection (a) of this section for the 1998-99 tax year is timely if it is filed on or before November 15, 1998. ~~Subsection (a) of this section~~ G.S. 105-278.6A is repealed effective for taxes imposed for taxable years beginning on or after July 1, ~~2000.~~ 2001. The remainder of this section is effective when it becomes law."

Section 2. Section 1 of this act becomes effective July 1, 2000. The remainder of this act is effective when it becomes law.

SENATE BILL 1280: CCRC Tax Exempt

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Sen. Hoyle
Date:	May 23, 2000	**Summary by:**	Martha K. Walston
Version:	Proposed Committee Substitute		Committee Counsel

SUMMARY: ***Senate Bill 1280 extends the sunset on the property tax exemption for continuing care retirement centers from July 1, 2000 to July 1, 2001. SB 1280 is a recommendation of the Revenue Laws Study Committee. The proposed committee substitute deletes the section of the original bill that clarified the tax exemption for health care facilities financed by Medical Care Commission bonds or notes.***

CURRENT LAW: G.S. 105-278.6A allows a continuing care retirement center (CCRC) that fails to qualify as charitable to receive a property tax exemption for its property if it meets all of the following requirements:

1. The center owns the property and uses it for a retirement community that includes a skilled nursing facility or an adult care facility and also includes independent living units. Its grounds and buildings must be on a single site and it must be designed for elderly residents.
2. The center must be nonprofit and exempt from income tax, and its assets upon dissolution must revert to a 501(c) (3) charitable organization.
3. The center must have an active fund-raising program to assist it in providing services to those who do not have the financial resources to pay the fees.
4. The governing body of the institution must be selected by a charitable nonprofit organization or fraternal association.
5. All of the center's revenues, less operating and capital expenses, must be applied to providing uncompensated goods and services to the elderly and to the local community, or applied to an endowment or reserve for these purposes.

The property tax exemption for these CCRCs is repealed for taxes imposed for taxable years beginning on or after July 1, 2000.

Bill Analysis. The proposal extends the sunset on the property tax exemption for CCRCs set out in G.S. 105-278.6A from July 1, 2000 to July 1, 2001. This will give interested parties more time to work out a compromise on the tax status of the non-charitable CCRCs.

Background. Prior to 1987, the General Assembly allowed a property tax exemption to homes for the aged, sick, or infirm if exclusively used for a charitable purpose. The owner of the property could not be organized for profit. A charitable purpose is defined as "one that has humane and philanthropic objectives; it is an activity that benefits humanity or a significant rather than limited segment of the community without expectation of pecuniary profit or reward." The General Assembly also exempted property owned by a charitable association or institution if it was used by the owner or gratuitously made available to a charitable entity and used by that entity.

In 1983 and 1984, the North Carolina courts ruled that two retirement homes, that had sought property tax exemption, were not eligible for the exemption. *Chapel Hill Residential Retirement Center,* 60 N.C. App. 294, rev. denied, 308 N.C. 386 (1983) and *Lutheran Retirement Ministries,* 70 N.C. App. 236, rev. denied, 312 N.C. 622 (1984). In concluding that these homes were not charitable, the courts noted the following facts about one or both institutions:

1. The institution refused to admit applicants with health problems rendering them physically unable to care for themselves.
2. Substantial entrance fees and monthly fees were required from all residents, and applicants had to demonstrate that they were financially capable of supporting themselves for the period of their life expectancy.
3. The operation of the institution was funded entirely or mainly from fees paid by residents, not by donations or endowments.
4. The costs were so high that only a small percentage of the elderly could afford the center.
5. The center retained the right to terminate a resident for nonpayment of fees unless nonpayment was beyond the resident's control.

In response to the courts' rulings, the General Assembly in 1987 enacted G.S. 105-275(32). This legislation classified and excluded from the property tax base certain homes for the "aged, sick, or infirm." To qualify, a continuing care retirement center did not have to be operated as a charity, but it did have to be owned and operated by a nonprofit organization that was a religious or Masonic organization. G.S. 105-275(32) also required that these homes provide residential and health facilities for the elderly. This legislation promoted residential communities for the elderly that did not qualify for tax exemption under the two prior statutes.

In 1998, Springmoor, Inc., a nonprofit corporation that manages and operates a self-contained residential community for the elderly, successfully challenged the constitutionality of the 1987 legislation. Springmoor alleged that its center met all the requirements of G.S. 105-275(32), except that it was not affiliated with a religious or Masonic organization as required by a subpart of the statute. The North Carolina Supreme Court agreed that the statute violated the First Amendment because it was an unconstitutional establishment of religion. Instead of severing the unconstitutional subpart from the statute, which would have given Springmoor exempt status, the Court ruled the entire statute unconstitutional. The Court explained that it was not the General Assembly's intent to provide a blanket exclusion for all nonprofit homes for the elderly.

After the *Springmoor* decision, the General Assembly enacted G.S. 105-278.6A. This statute temporarily revises the property tax exemption for retirement communities that was held unconstitutional in *Springmoor*. The exemption expires July 1, 2000. The Revenue Laws Study Committee appointed a subcommittee consisting of interested parties (including representatives of the CCRCs, the counties, and the tax assessors) to review the tax status of the CCRCs and to seek a compromise. During its six meetings, the subcommittee discussed numerous proposals and looked at other states' laws. Because the subcommittee did not reach a consensus, it recommended extension of the sunset on the property tax exemption for one year in order to give all interested parties more time to seek a compromise.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 1280 (Senate Finance Committee Substitute)

SHORT TITLE: CCRC Tax Exempt.

SPONSOR(S): Sen. Hoyle

DRAFT

FISCAL IMPACT

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

	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05
REVENUES					
EXPENDITURES					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Local Governments

EFFECTIVE DATE: July 1, 2000

BILL SUMMARY:
The bill extends the sunset on the property tax exemption for Continuing Care Retirement Communities to *July 1, 2001.* The bill would become effective *July 1, 2000.*

BACKGROUND:
G.S. 105-278.6A allows a Continuing Care Retirement Center (CCRC) that fails to qualify as charitable to receive a property tax exemption for its property if it meets all of the following requirements:

1. The center owns the property and uses it for a retirement community that includes a skilled nursing facility or an adult care facility, and also includes independent living units. Its ground and buildings must be on a single site and it must be designed for elderly residents.
2. The center must be nonprofit and exempt from income tax, and its assets upon dissolution must revert to a 501 (c) (3) charitable organization.
3. The center must have an active fund raising program to assist it in providing services to those who do not have the financial resources to pay the fees.
4. The governing body of the institution must be selected by a charitable nonprofit organization or fraternal organization.
5. All of the center's revenues, less operating and capital expenses, must be applied to providing uncompensated goods and services to the elderly and to the local community, or applied to an endowment or reserve for that purpose.

ASSUMPTIONS AND METHODOLOGY:

The property tax exemption for these CCRCs is repealed for taxes imposed for taxable years beginning on or after July 1, 2000. The proposal extends the sunset on the property tax exemption for CCRCs set out in G.S. 105-278.6A to *July 1, 2001.* This will give interested parties additional time to reach a compromise on the tax status of the non-charitable CCRCs.

Technically, extending the property tax sunset one year has no fiscal impact on local governments. Prior to 1998, the non-charitable CCRCs were exempt from property tax. Since July 1, 1998, non-charitable CCRCs have been exempt from property taxes under G.S. 105-278.6A. Even with the impending sunset in 2000, local governments have not included CCRC revenue in their budget availability for FY 2000-2001. However, if the sunset were to expire in 2000 and the non-charitable CCRCs became fully taxable, then county governments could assess taxes on the property and receive an estimated $2.8 million in property tax revenues. (No figure is available for city property taxes at this time.) There is no General Fund impact of the proposal.

TECHNICAL CONSIDERATIONS:

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic & Eugene Son (Research Assistant)

APPROVED BY:

DATE: 5/23/2000

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1190

Short Title: Carolina Beach Annexation/Streets. (Local)

Sponsors: Senator Ballantine.

Referred to: Finance.

May 10, 2000

A BILL TO BE ENTITLED

AN ACT TO ANNEX A TRACT TO THE TOWN OF CAROLINA BEACH AND TO ALLOW STREET ASSESSMENTS WITHOUT PETITION IN THAT TRACT.

The General Assembly of North Carolina enacts:

Section 1(a). The corporate limits of the Town of Carolina Beach are extended to include the following described tract:

(Wilmington Beach Tract), New Hanover County, North Carolina.

Beginning at an existing concrete monument in the dividing line between Carolina Beach and the now or formerly Wilmington Beach in the Sunny Point Military Ocean Terminal buffer zone line that has North Carolina grid coordinates North = 101,445.376, East = 2,331,597.568 (Nad 83) and is located North 73 degrees 15 minutes 23 seconds East -2062.38' from North Carolina geodetic survey monument "OCEAN" with North Carolina grid coordinates: North = 100,851.163, East = 2,329,622.414 (Nad 83). Said point of beginning also being the southwestern corner of Carolina Sands Subdivision as shown on maps of Section 1 and 2 recorded in Map Book 21 at Page 13 and 14 of the New Hanover County Registry. Running thence from said point of beginning with the dividing line between Carolina Beach and Wilmington Beach North 88 degrees 41 minutes 50 seconds East - 3299.99' to a point in the Mean Low Water Line of the Atlantic Ocean, passing through an in line iron pipe in the western right-of-way line of U.S. Highway # 421 at 2709.25'; thence with the Mean Low Water Line of the Atlantic Ocean in a southwesterly direction: South 19 degrees 01 minute 16 seconds West - 161.89' to a point; thence South 19 degrees 01 minute 16 seconds West -91.53' to a point; thence South 17 degrees 36 minutes 16

seconds West - 92.21' to a point; thence South 17 degrees 45 minutes 13 seconds West - 96.39' to a point; thence South 14 degrees 05 minutes 31 seconds West - 97.01' to a point; thence South 14 degrees 49 minutes 57 seconds West - 101.62' to a point; thence South 16 degrees 38 minutes 08 seconds West - 98.92' to a point; thence South 16 degrees 35 minutes 34 seconds West - 109.39' to a point; thence South 25 degrees 49 minutes 49 seconds West - 147.40' to a point; thence South 22 degrees 21 minutes 12 seconds West - 122.67' to a point; thence South 20 degrees 23 minutes 23 seconds West - 108.24' to a point; thence South 05 degrees 46 minutes 19 seconds West - 121.96' to a point; thence South 15 degrees 43 minutes 53 seconds West - 105.93' to a point; thence South 26 degrees 51 minutes 12 seconds West - 103.57' to a point; thence South 23 degrees 48 minutes 36 seconds West - 100.62' to a point; thence South 18 degrees 50 minutes 03 seconds West - 122.54' to a point; thence South 13 degrees 34 minutes 46 seconds West - 146.97' to a point; thence South 13 degrees 11 minutes 10 seconds West - 116.93' to a point; thence South 18 degrees 48 minutes 21 seconds West - 103.63' to a point; thence South 22 degrees 54 minutes 50 seconds West - 104.48' to a point; thence South 26 degrees 25 minutes 09 seconds West - 118.65' to a point; thence South 18 degrees 20 minutes 08 seconds West - 112.91' to a point; thence South 16 degrees 27 minutes 21 seconds West - 101.96' to a point; thence South 17 degrees 28 minutes 00 seconds West - 115.58' to a point; thence South 19 degrees 31 minutes 54 seconds West - 104.35' to a point; thence South 17 degrees 25 minutes 10 seconds West - 164.56' to a point; thence South 24 degrees 51 minutes 53 seconds West - 109.82' to a point; thence South 16 degrees 44 minutes 26 seconds West - 102.33' to a point; thence South 17 degrees 12 minutes 36 seconds West - 117.52' to a point; thence South 17 degrees 30 minutes 33 seconds West - 109.06' to a point; thence South 18 degrees 12 minutes 59 seconds West - 121.04' to a point; thence South 20 degrees 04 minutes 38 seconds West - 165.24' to a point; thence South 15 degrees 02 minutes 49 seconds West - 118.37' to a point; thence South 07 degrees 55 minutes 59 seconds West - 108.95' to a point; thence South 12 degrees 59 minutes 24 seconds West - 29.12' to a point; thence leaving the Mean Low Water Line of the Atlantic Ocean and running North 73 degrees 33 minutes 05 seconds West - 2485.74', with the center line of Alabama Avenue, (being the Kure Beach or Carolina Beach City Limit line) to an iron rod in the Sunny Point Military Ocean Terminal buffer zone line; thence with the Sunny Point Military Ocean Terminal buffer zone line, North 16 degrees 26 minutes 17 seconds East - 594.66' to a point; thence North 73 degrees 33 minutes 43 seconds West - 90.00' to an existing concrete monument; thence North 16 degrees 26 minutes 17 seconds East - 150.00' to an existing concrete monument; thence North 73 degrees 33 minutes 43 seconds West - 10.00' to an existing concrete monument; thence North 16 degrees 26 minutes 17 seconds East - 350.00' to an existing concrete monument; thence North 73 degrees 33 minutes 43 seconds West - 50.00' to an iron rod; thence North 16 degrees 26 minutes 17 seconds East - 300.00' to an existing concrete monument; thence North 73 degrees 33 minutes 43 seconds West - 140.00' to an iron rod; thence North 16 degrees 26 minutes 17 seconds East - 840.00' to an existing concrete monument; thence North 73 degrees 33 minutes 43 seconds West - 90.00' to an iron rod; thence North 16 degrees

26 minutes 17 seconds East - 100.00' to an existing concrete monument; thence North 73 degree 33 minutes 43 seconds West - 10.00' to an existing concrete monument; thence North 16 degrees 26 minutes 17 seconds East - 100.00' to an existing concrete monument; thence North 28 degrees 33 minutes 43 seconds West - 70.71' to an existing concrete monument; thence North 16 degrees 26 minutes 17 seconds East - 200.00' to an existing concrete monument; thence North 73 degrees 33 minutes 43 seconds West - 100.00' to an iron rod; thence North 16 degrees 23 minutes 53 seconds East - 248.59' to the point of beginning and containing 220.590 acres more or less.

Section 1(b). The provisions of G.S. 160A-217 do not apply to the Town of Carolina Beach as to special assessments for street improvements in the area annexed by this section. This subsection does not affect the applicability to the Town of Carolina Beach of other provisions of Article 10 of Chapter 160A of the General Statutes.

Section 2. This act becomes effective June 30, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 1326*
Committee Substitute Favorable 7/7/99

Short Title: Dry-Cleaning Solvent Cleanup Amends. (Public)

Sponsors:

Referred to:

April 23, 1999

A BILL TO BE ENTITLED

AN ACT TO EARMARK THE STATE SALES TAX REVENUE FROM DRY-CLEANING AND LAUNDRY SERVICES FOR THE DRY-CLEANING SOLVENT CLEANUP FUND, AND TO AMEND THE DRY-CLEANING SOLVENT CLEANUP ACT OF 1997 TO REPEAL THE REQUIREMENT OF FINANCIAL RESPONSIBILITY FOR DRY-CLEANING FACILITIES AND WHOLESALE DRY-CLEANING SOLVENT DISTRIBUTION FACILITIES, TO ALLOW THE ENVIRONMENTAL MANAGEMENT COMMISSION TO ENTER INTO CONTRACTS WITH PRIVATE CONTRACTORS FOR ASSESSMENT AND REMEDIATION ACTIVITIES AT DRY-CLEANING FACILITIES AND WHOLESALE DRY-CLEANING SOLVENT DISTRIBUTION FACILITIES, TO ESTABLISH A STATE GOAL FOR THE REDUCTION OF THE USE OF PERCHLOROETHYLENE F-1,1,3 BY DRY-CLEANING FACILITIES, TO REQUIRE THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO REPORT TO THE ENVIRONMENTAL REVIEW COMMISSION ON THE PROGRESS IN ATTAINING THIS GOAL AND THE COST AND EFFECTIVENESS OF DRY-CLEANING TECHNOLOGIES AND CHEMICALS THAT OFFER AN ALTERNATIVE TO THE USE OF PERCHLOROETHYLENE F-1,1,3, AND TO MAKE OTHER CHANGES IN THE DRY-CLEANING SOLVENT CLEANUP ACT OF 1997.

The General Assembly of North Carolina enacts:

Section 1. Chapter 105 of the General Statutes is amended to add a new section to read:

"**§ 105-164.44E. Transfer to the Dry-Cleaning Solvent Cleanup Fund.**

At the end of each quarter, the Secretary must transfer to the Dry-Cleaning Solvent Cleanup Fund established under G.S. 143-215.104C a percentage of the net amount of State sales and use taxes collected under G.S. 105-164.4(a)(4), as determined by the Secretary based on available data. The percentage amount to be transferred is as follows:

Quarters in Fiscal Year	Percentage
2001-2002	15%
2002-2003	30%
2003-2004	45%
2004-2005 and thereafter	60%."

Section 2. G.S. 143-215.104C(b) reads as rewritten:

"(b) Sources of Revenue. -- The following revenue is credited to the Fund:

(1) Dry-cleaning solvent taxes collected under Article 5D of Chapter 105 of the General Statutes.

(2) Recoveries made pursuant to G.S. 143-215.104N and G.S. 143-215.104O.

(3) Gifts and grants made to the Fund.

(4) Revenues credited to the Fund under G.S. 105-164.44E."

Section 3. G.S. 143-215.104B(b)(20), 143-215.104E, 143-215.104F(b)(3), 143-215.104F(d)(3), 143-215.104F(g), 143-215.104J(a)(5), 143-215.104P(a)(1), and Section 3 of S.L. 1997-392 are repealed.

Section 4. G.S. 143-215.104F(f) reads as rewritten:

"(f) Financial Responsibility Requirements. -- Each potentially responsible person who petitions the Commission to enter into a dry-cleaning solvent assessment agreement or dry-cleaning solvent remediation agreement shall accept written responsibility in the amount specified in this section for the assessment or remediation of the dry-cleaning solvent contamination identified in the petition. If two or more potentially responsible persons petition the Commission jointly, the requirements below shall be the aggregate requirements for the financial responsibility of all potentially responsible persons who are party to the petition. Unless an alternative arrangement is agreed to by co-petitioners, the financial responsibility requirements of this section shall be apportioned equally among the co-petitioners. ~~The requirements in this subsection shall be in addition to any insurance or other financial responsibility, including deductibles or retentions, established pursuant to G.S. 143-215.104E.~~

Facility or Abandoned Site Where Release Occurred	Costs
Dry-cleaning facilities owned by persons who employ fewer than five full-time employees, or the equivalent, in activities related to dry-cleaning operations during the preceding calendar year	~~$5,000~~ $10,000

Dry-cleaning facilities owned by persons who employ at least five but fewer than 10 full-time employees, or the equivalent, in activities related to dry-cleaning operations during the preceding calendar year	~~$10,000~~ $15,000
Dry-cleaning facilities owned by persons who employ 10 or more full-time employees, or the equivalent, in activities related to dry-cleaning operations during the preceding calendar year	~~$15,000~~ $20,000
Wholesale distribution facilities	~~$25,000~~ $30,000
Abandoned dry-cleaning facility sites	$50,000."

Section 5. G.S. 143-215.104C reads as rewritten:

"**§ 143-215.104C. (Repealed effective January 1, 2012) Dry-Cleaning Solvent Cleanup Fund.**

(a) Creation. -- The Dry-Cleaning Solvent Cleanup Fund is established as a special revenue fund to be administered by the Commission. Accordingly, revenue in the Fund at the end of a fiscal year does not revert and interest and other investment income earned by the Fund must be credited to it. The Fund is created to provide revenue to implement this Part.

(b) Sources of Revenue. -- The following revenue is credited to the Fund:

(1) Dry-cleaning solvent taxes collected under Article 5D of Chapter 105 of the General Statutes.

(2) Recoveries made pursuant to G.S. 143-215.104N and G.S. 143-215.104O.

(3) Gifts and grants made to the Fund.

(c) Disbursements. -- A claim filed against the Fund may be paid only from monies in the Fund and only in accordance with the provisions of this Part. Any obligation to pay or reimburse claims against the Fund shall be expressly contingent upon availability of monies in the Fund. Neither the State nor any of its agencies shall have any obligation to pay or reimburse any costs for which monies are not available in the Fund. The provisions of this Part shall not constitute a contract, either express or implied, to pay or reimburse costs in excess of the monies available in the Fund. In making disbursements from the Fund, the Commission shall ~~pay the claims with the highest priority before claims of lower priority, and claims of equal priority in the order in which the facility or abandoned site was certified~~ obligate monies to facilities or sites with higher priority before facilities or sites of lower priority, and facilities or sites with equal priority in the order in which the facilities or sites were prioritized until the revenue is exhausted. Consistent with the provisions of this Part, the Commission may disburse monies from the Fund to abate imminent hazards caused by dry-cleaning solvent contamination at abandoned dry-cleaning

facility sites that have not been certified. Up to twenty percent (20%) of the amount of revenue credited to the Fund in a year may be used to defray costs incurred by the Department and the Attorney General's Office in connection with administration of the program described in this Part, including oversight of response activities."

Section 6. G.S. 143-215.104D(a) reads as rewritten:

"(a) Administrative Functions. -- The Commission may delegate any or all of the powers enumerated in this subsection to the ~~Department or engage a private contractor or contractors to carry out the activities enumerated in this subsection. If the Commission engages a private contractor to carry out the functions enumerated in subdivisions (1) through (6) of this subsection, no action of the contractor shall be effective until ratified by the Commission.~~ Department. The Commission shall:

(1) Accept petitions for certification and petitions to enter into dry-cleaning solvent assessment agreements or remediation agreements under this Part.

(2) Prioritize certified dry-cleaning facilities, certified wholesale distribution facilities, or certified abandoned dry-cleaning facility sites for the initiation of assessment or remediation activities that are reimbursable from the Fund.

(3) Develop forms to be used by persons applying for reimbursement of assessment or remediation costs.

(4) Schedule funding of assessment and remediation activities.

(5) Determine whether assessment or remediation is necessary at a site at which dry-cleaning solvent contamination has occurred.

(5a) Enter into contracts with private contractors for assessment and remediation activities at certified dry-cleaning facilities, certified wholesale distribution facilities, or certified abandoned dry-cleaning facility sites.

(6) Determine that all necessary assessment and remediation has been completed at a contamination site.

(7) Make payments from the Fund to reimburse the costs of assessment and remediation. ~~Any payments made by a private contractor engaged by the Commission shall be authorized by the Commission prior to disbursement.~~"

Section 7. G.S. 143-215.104F, as amended by Sections 3 and 4 of this act, reads as rewritten:

"**§ 143-215.104F. (Repealed effective January 1, 2012) Requirements for certification, assessment agreements, and remediation agreements.**

(a) Any person petitioning for certification of a facility or abandoned site pursuant to G.S. 143-215.104G, for a dry-cleaning solvent assessment agreement pursuant to G.S. 143-215.104H, or for a dry-cleaning solvent remediation agreement pursuant to G.S. 143-215.104I, shall meet the requirements set out in this section and any other applicable requirements of this Part.

(b) Requirements for Potentially Responsible Persons Generally. -- Every petitioner shall provide the Commission with:

(1) ~~Information necessary for the Commission to determine the priority ranking of~~ Any information that the petitioner possesses relating to the contamination at the facility or abandoned site described in the petition.

(2) Information necessary to demonstrate the person's ability to incur the response costs specified in subsection (f) of this section.

(4) Information necessary to demonstrate that the petitioner, and any parent, subsidiary, or other affiliate of the petitioner has substantially complied with:

a. The terms of any dry-cleaning solvent assessment agreement, dry-cleaning solvent remediation agreement, brownfields agreement, or other similar agreement to which the petitioner or any parent, subsidiary, or other affiliate of the petitioner has been a party.

b. The requirements applicable to any remediation in which the petitioner has previously engaged.

c. Federal and State laws, regulations, and rules for the protection of the environment.

(5) Evidence demonstrating that a release of dry-cleaning solvent has occurred at the facility or abandoned site and that the release has resulted in dry-cleaning solvent contamination.

(c) Requirement for Property Owners. -- In addition to the information required by subsection (b) of this section, a petitioner who is the owner of the property on which the dry-cleaning solvent contamination identified in the petition is located shall provide the Commission a written agreement authorizing the Commission or its agent to have access to the property for purposes of conducting assessment or remediation activities or determining whether assessment or remediation activities are being conducted in compliance with this Part and any assessment agreement or remediation agreement.

(c1) Costs incurred by the petitioner for activities to obtain certification of a facility or site shall not be reimbursable from the Fund.

(d) The Commission shall reject any petition made pursuant to this Part in any of the following circumstances:

(1) The petitioner is an owner or operator of the facility described in the petition and the facility was not being operated in compliance with minimum management practices adopted by the Commission pursuant to G.S. 143-215.104D(b)(2) at the time the contamination was discovered.

(2) The petitioner is an owner or operator of the facility described in the petition and the petitioner owed delinquent taxes under Article 5D of Chapter 105 of the General Statutes at the time the dry-cleaning solvent contamination was discovered.

(e) The Commission may reject any petition made pursuant to this Part in any of the following circumstances:

(1) The petitioner fails to provide the information required by subsection (b) of this section.

(2) The petitioner falsified any information in its petition that was material to the determination of the priority ranking, the nature, scope and extent of contamination to be assessed or remediated, or the appropriate means to contain and remediate the contaminants.

(f) Financial Responsibility Requirements. -- Each potentially responsible person who petitions the Commission to ~~enter into a dry-cleaning solvent assessment agreement or dry-cleaning solvent remediation agreement~~ certify a facility or abandoned site shall accept written responsibility in the amount specified in this section for the assessment or remediation of the dry-cleaning solvent contamination identified in the petition. If two or more potentially responsible persons petition the Commission jointly, the requirements below shall be the aggregate requirements for the financial responsibility of all potentially responsible persons who are party to the petition. Unless an alternative arrangement is agreed to by co-petitioners, the financial responsibility requirements of this section shall be apportioned equally among the co-petitioners.

Facility or Abandoned Site Where Release Occurred	Costs
Dry-cleaning facilities owned by persons who employ fewer than five full-time employees, or the equivalent, in activities related to dry-cleaning operations during the preceding calendar year	$10,000
Dry-cleaning facilities owned by persons who employ at least five but fewer than 10 full-time employees, or the equivalent, in activities related to dry-cleaning operations during the preceding calendar year	$15,000
Dry-cleaning facilities owned by persons who employ 10 or more full-time employees, or the equivalent, in activities related to dry-cleaning operations during the preceding calendar year	$20,000
Wholesale distribution facilities	$30,000
Abandoned dry-cleaning facility sites	$50,000."

Section 8. G.S. 143-215.104G reads as rewritten:

"**§ 143-215.104G. (Effective January 1, 1999; repealed effective January 1, 2012) Certification of facilities and abandoned sites.**

(a) A potentially responsible party may petition the Commission to certify a facility or abandoned site where a release of dry-cleaning solvent ~~is believed to have~~ has occurred. The Commission shall certify the facility or abandoned site if the petitioner meets the applicable requirements of G.S. 143-215.104F. Upon its decision

to certify a facility or abandoned site, the Commission shall inform the petitioner of its decision and of the initial priority ranking of the facility or site.

~~(b) The Commission may change the initial priority rankings of any facility or abandoned site as additional facilities or abandoned sites are certified if the Commission, in its sole discretion, determines that additional facilities or sites pose a higher degree of harm or risk to public health and the environment. However, the Commission shall not change the priority ranking of a facility or an abandoned site that is set in a dry-cleaning solvent remediation agreement.~~

(c) A potentially responsible party who petitions for certification of a facility or abandoned site shall provide the Commission with either of the following:

(1) A ~~proposed dry-cleaning solvent assessment agreement or dry-cleaning solvent remediation agreement or an indication~~ written statement of the petitioner's intent to enter into an assessment agreement or remediation agreement.

(2) A written statement of the petitioner's intent to conduct assessment and remediation activities pursuant to subsection (d) of this section.

(d) A person who has access to property that is contaminated by dry-cleaning solvent and who has successfully petitioned for certification of the facility or abandoned site from which the contamination is believed to have resulted may undertake assessment or remediation of dry-cleaning solvent contamination located on the property consistent with the standards established by the Commission pursuant to G.S. 143-215.104D(b)(3) without first entering into a dry-cleaning solvent assessment agreement or a dry-cleaning solvent remediation agreement. No assessment or remediation activities undertaken pursuant to this subsection shall rely on standards that require the creation of land-use restrictions. A person who undertakes assessment or remediation activities pursuant to this subsection shall provide the Commission prior written notice of the activity. Costs associated with assessment or remediation activities undertaken pursuant to this subsection shall not be eligible for reimbursement from the Fund.

(e) The rejection of any petition filed pursuant to this section shall not affect the rights of any other petitioner, other than any parent, subsidiary, or other affiliate of the petitioner, under this Part. The rejection of a petition or the decertification of a facility or abandoned site may be the basis for rejection of a petition by any parent, subsidiary, or other affiliate of the petitioner for the facility or abandoned site."

Section 9. G.S. 143-215.104H reads as rewritten:

"**§ 143-215.104H. (Effective January 1, 1999; repealed effective January 1, 2012) Dry-Cleaning Solvent Assessment Agreements.**

(a) Assessment Agreements. -- One or more potentially responsible parties may petition the Commission to enter into a dry-cleaning solvent assessment agreement regarding a facility or abandoned site that has been certified pursuant to G.S. 143-215.104G. The Commission may, in its discretion, enter into an assessment agreement with any potentially responsible party who satisfies the requirements of this section and the applicable requirements of G.S. 143-215.104F. If more than one potentially

responsible party petitions the Commission, the Commission may enter into a single assessment agreement with one or more of the petitioners. The Commission shall not unreasonably refuse to enter into an assessment agreement pursuant to this section. ~~Petitioners shall~~ The Commission may require the petitioners to provide the Commission with any information necessary to ~~demonstrate that the:~~ demonstrate:

(1) ~~Priority~~ The priority ranking assigned to the facility or site is consistent with the rules adopted ~~by the Commission or the adjusted priority ranking that the petitioner agrees to accept is consistent with the rules adopted~~ by the Commission.

(2) ~~Projected~~ The projected schedule for funding of assessment ~~activities, including reimbursements from the Fund~~ activities is adequate.

(3) ~~Assessment~~ The assessment activities to be undertaken with respect to the dry-cleaning solvent contamination and any other contamination at the contamination site are adequate.

(4) ~~Person~~ The person who will be responsible for implementation of the activities is capable and qualified to conduct the assessment.

(4a) The amount of funds already expended by the petitioner for assessment or remediation of dry-cleaning solvent contamination at the facility or site.

(5) ~~Petitioner~~ The petitioner has and will continue to have available the financial resources necessary to pay the costs of assessment activities and the share of response costs imposed on the petitioner by G.S. 143-215.104F.

(6) ~~Permits~~ The permits or other authorizations required to conduct the assessment activities and to lawfully dispose of any hazardous substances or wastes generated by the assessment activities have been or can be obtained.

(7) ~~Assessment~~ The assessment activities will not increase the existing level of public exposure to health or environmental hazards at the contamination site.

(8) ~~Costs~~ The costs to be incurred in connection with the assessment activities contemplated by the assessment agreement are reasonable and necessary.

(9) ~~Petitioner~~ The petitioner has obtained the consent of other property owners to enter into their property for the purpose of conducting assessment activities specified in the assessment agreement.

(b) The terms and conditions of an assessment agreement regarding dry-cleaning solvent contamination shall be guided by and consistent with the rules adopted by the Commission pursuant to G.S. 143-215.104D and the reimbursement authorities and limitations set out in this Part. An assessment agreement shall, subject to the availability of monies from the Fund:

~~(1) Specify the date on which remediation will begin.~~

(1a) Require that the petitioner shall be liable to the Fund for an amount equal to the difference, if any, between the applicable amount of financial responsibility established by G.S. 143-215.104F and the amount reasonably paid by the petitioner for assessment or remediation activities of the type specified in G.S. 143-215.104N(a)(1) through (7) and otherwise consistent with the requirements of this Part.

(2) Provide for the prompt reimbursement of response costs incurred in assessment activities that are found by the Commission to be consistent with the assessment agreement and this Part.

(c) The Commission may refuse to enter into a dry-cleaning solvent assessment agreement with any petitioner if:

(1) The petitioner will not accept financial responsibility for the share of the response costs required by G.S. 143-215.104F.

(2) The petitioner will not accept responsibility for conducting, supervising, or otherwise undertaking assessment activities required by the Commission.

(3) The petitioner fails to provide any information required by subsection (a) of this section.

(d) The refusal of the Commission to enter into a dry-cleaning solvent assessment agreement with any petitioner shall not affect the rights of any other petitioner under this Part, except that the refusal may be the basis for rejection of a petition by any parent, subsidiary or other affiliate of the petitioner for the facility or abandoned site.

(e) If the Commission determines from an assessment prepared pursuant to this Part that the degree of risk to public health or the environment resulting from dry-cleaning solvent contamination otherwise subject to assessment or remediation under this Part and Article 9 of Chapter 130A is acceptable in light of the criteria established pursuant to G.S. 143-215.104D(b)(3) and Article 9 of Chapter 130A, the Commission shall issue a written statement of its determination and notify the owner or operator of the facility or abandoned site responsible for the contamination that no cleanup, no further cleanup, or no further action is required in connection with the contamination.

(f) If the Commission determines that no remediation or further action is required in connection with dry-cleaning solvent contamination otherwise subject to assessment or remediation pursuant to this Part and Article 9 of Chapter 130A, the Commission shall not pay or reimburse any response costs otherwise payable or reimbursable under this Part from the Fund other than costs reasonable and necessary to conduct the risk assessment pursuant to this section and in compliance with a dry-cleaning solvent assessment agreement."

Section 10. G.S. 143-215.104I(a) reads as rewritten:

"(a) Upon the completion of assessment activities required by a dry-cleaning solvent assessment agreement, one or more potentially responsible parties may petition the Commission to enter into a dry-cleaning solvent remediation agreement for any contamination requiring remediation. The Commission may, in its discretion,

enter into a remediation agreement with any petitioner who satisfies the requirements of this section and the applicable requirements of G.S. 143-215.104F. If more than one potentially responsible party petitions the Commission, the Commission may enter into a single remediation agreement with one or more of the petitioners. The Commission shall not unreasonably refuse to enter into a remediation agreement pursuant to this section. The Commission may, in its discretion, enter into a remediation agreement that includes the assessment described in G.S. 143-215.104H. Petitioners shall provide the Commission with any information necessary to demonstrate that:

~~(1) The petitioner, and any parent, subsidiary, or other affiliate of the petitioner has substantially complied with:~~

~~a. The terms of any dry-cleaning solvent assessment agreement, dry-cleaning solvent remediation agreement, brownfields agreement, or other similar agreement to which the petitioner or any parent, subsidiary, or other affiliate of the petitioner has been a party.~~

~~b. The requirements applicable to any remediation in which the petitioner has previously engaged.~~

~~c. Federal and State laws, regulations, and rules for the protection of the environment.~~

(2) As a result of the remediation agreement, the contamination site will be suitable for the uses specified in the remediation agreement while fully protecting public health and the environment from dry-cleaning solvent contamination and any other contaminants included in the remediation agreement.

(3) There is a public benefit commensurate with the liability protection provided under this Part.

(4) The petitioner has or can obtain the financial, managerial, and technical means to fully implement the remediation agreement and assure the safe use of the contamination site.

(5) The petitioner has complied with or will comply with all applicable procedural requirements.

(6) The remediation agreement will not cause the Department to violate the terms and conditions under which the Department operates and administers remedial programs, including the programs established or operated pursuant to Article 9 of Chapter 130A of the General Statutes, by delegation or similar authorization from the United States or its departments or agencies, including the United States Environmental Protection Agency.

(7) The priority ranking assigned to the facility or site is consistent with the rules adopted by the Commission or the ~~adjusted~~ priority ranking that the petitioner agrees to accept is consistent with the rules adopted by the Commission.

(8) The projected schedule for funding of remediation ~~activities, including reimbursements from the Fund.~~ activities.

(9) The petitioner will continue to have available the financial resources necessary to satisfy the share of response costs imposed on the petitioner by G.S. 143-215.104F.

(10) The expenditures eligible for reimbursement from the Fund and to be incurred in connection with the remediation agreement are reasonable and necessary.

(11) The consent of other property owners to enter into their property for purposes of conducting remediation activities specified in the remediation agreement."

Section 11. G.S. 143-215.104I(c)(6) reads as rewritten:

"(c) A dry-cleaning solvent remediation agreement shall contain a description of the contamination site that would be sufficient as a description of the property in an instrument of conveyance and, as applicable, a statement of:

. . .

(6) The ~~final~~ priority ranking of the facility or abandoned site."

Section 12. G.S. 143-215.104N(a) reads as rewritten:

"(a) Reimbursement. -- To the extent monies are available in the Fund for reimbursement of response costs, the Commission shall reimburse any ~~person~~ person, including a private contractor, responsible for implementing reasonable and necessary assessment and remediation activities at a contamination site associated with a certified facility or a certified abandoned site pursuant to a dry-cleaning solvent assessment agreement or dry-cleaning solvent remediation agreement for the following assessment and remediation response ~~costs.~~ costs, for which appropriate documentation is submitted:

(1) Costs of assessment with respect to dry-cleaning solvent contamination.

(2) Costs of treatment or replacement of potable water supplies affected by the contamination.

(3) Costs of remediation of affected soil, groundwater, surface waters, bedrock or other rock formations, or buildings.

(4) Monitoring of the contamination.

(5) Inspection and supervision of activities described in this subsection.

(6) Reasonable costs of restoring property as nearly as practicable to the conditions that existed prior to activities associated with assessment and remediation conducted pursuant to this Part.

(7) Other activities reasonably required to protect public health and the environment."

Section 13. G.S. 143-215.104I(g) reads as rewritten:

"(g) The terms and conditions of a dry-cleaning solvent remediation agreement concerned with dry-cleaning solvent contamination shall be guided by and consistent with the rules adopted by the Commission pursuant to G.S. 143-215.104D and the reimbursement authorities and limitations set out in this Part. A remediation

agreement shall provide, subject to availability of monies in the Fund, for prompt reimbursement of response costs incurred in assessment or remediation activities that are found by the Commission to be consistent with the remediation agreement and this Part. A remediation agreement may provide for the Commission to conduct assessment and remediation activities at the site."

Section 14. G.S. 143-215.104N(c) reads as rewritten:

"(c) The Commission shall not pay or reimburse any response costs arising from a dry-cleaning solvent assessment agreement or dry-cleaning solvent remediation agreement until the petitioners who are party to the agreement have exhausted the financial resources made available under the agreement pursuant to ~~G.S. 143-215.104E and~~ G.S. 143-215.104F."

Section 15. G.S. 143-215.104O reads as rewritten:

"**§ 143-215.104O. (Repealed effective January 1, 2012) Remediation of uncertified sites.**

(a) In the event the owner or operator of a facility or the current owner of an abandoned site cannot be identified or located, unreasonably refuses to enter into either an assessment agreement or remediation agreement or cannot be made to comply with the provisions of an assessment agreement or remediation agreement between the petitioner and the Commission, the Commission may direct the Department or a private contractor engaged by the Commission to use staff, equipment, or materials under the control of the Department or contractor or provided by other cooperating federal, State, or local agencies to develop and implement a plan for abatement of an imminent hazard, or to provide interim alternative sources of drinking water to third parties affected by dry-cleaning solvent contamination resulting from a release at the facility or abandoned site. The cost of any of these actions shall be paid from the Fund. The Department or private contractor shall keep a record of all expenses incurred for personnel and for the use of equipment and materials and all other expenses of developing and implementing the remediation plan.

(b) The Commission shall request the Attorney General to commence a civil action to secure reimbursement of costs incurred under this ~~subsection.~~ section.

(c) In the event a civil action is commenced pursuant to this Part to recover monies paid from the Fund, the Commission may recover, in addition to any amount due, the costs of the action, including reasonable attorneys' fees and investigation expenses. Any monies received or recovered as reimbursement shall be paid into the Fund or other source from which the expenditures were made."

Section 16. Section 5 of S.L. 1997-392 reads as rewritten:

"Section 5. This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The Environmental Management Commission may adopt temporary rules to implement this act until ~~1 January 1999.~~ 30 June 2000."

Section 17. Section 7 of S.L. 1997-392 reads as rewritten:

"Section 7. (a) Any person who undertakes assessment or remediation of dry-cleaning solvent contamination pursuant to ~~an~~ a notice of violation or enforcement action by the Department of ~~Environment, Health,~~ Environment and

Natural Resources during the period beginning 1 October 1997 and ~~1 January 1999~~ ending 30 June 2000 may, on or after ~~1 January 1999~~ 30 June 2000 seek reimbursement from the Dry-Cleaning Solvent Cleanup Fund for any costs exceeding fifty thousand dollars ($50,000). The Commission shall reimburse costs if it finds that the costs incurred were (i) appropriately documented and reasonably necessary to assess or remediate the dry-cleaning solvent contamination; (ii) for any of the activities described in subdivisions (1) through (7) of G.S. 143-215.104N(a); (iii) not subject to any of the limitations in subdivisions (4) ~~or (5)~~ through (9) of G.S. 143-215.104N(b); and (iv) not reimbursable from pollution and remediation legal liability insurance; and (v) required by a notice of violation or a specific order of the Department of ~~Environment, Health,~~ Environment and Natural Resources issued on or after 30 June 1996. No reimbursement may be paid pursuant to this section for dry-cleaning solvent contamination that did not result from operations at a dry-cleaning or wholesale distribution facility. Notwithstanding any other provision of this subsection, the Commission may by rule shorten the period during which costs subject to reimbursement pursuant to this subsection may be incurred.

(b) Any person who, as of ~~1 January 1999,~~ 30 June 2000, is undertaking assessment or remediation of dry-cleaning solvent contamination shall be eligible to petition the Commission to enter into a dry-cleaning solvent assessment agreement or dry-cleaning solvent remediation agreement with respect to the contamination. In calculating the required financial contribution of parties to any agreement, the Commission shall determine the reasonable cost of any necessary unreimbursed assessment or remediation activity undertaken by the parties with respect to the contamination site prior to ~~1 January 1999~~ 30 June 2000 and shall credit the amount toward any applicable financial responsibility limits established in G.S. 143-215.104F. Notwithstanding any other provision of this subsection, the Commission may by rule establish a different cutoff date for assessment and remediation activities covered by this subsection."

Section 18. If any section or provision of this act is declared unconstitutional or invalid by the courts, the unconstitutional or invalid section or provision does not affect the validity of this act as a whole or any part of this act other than the part declared to be unconstitutional or invalid.

Section 19. Article 21A of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-215.104V. Dry-cleaning solvent reduction goals.**

It shall be the goal of the State of North Carolina to reduce the use of Perchloroethylene F-1,1,3 (PERC) by dry-cleaning facilities in accordance with the following schedule:

Percent Reduction in PERC	Reduction Deadline
10%	1 July 2004
25%	1 July 2009
50%	1 July 2014
100%	1 July 2019."

Section 20. G.S. 143-215.104U reads as rewritten:

"**§ 143-215.104U. (Repealed effective January 1, 2012) Reporting requirements.**

(a) The Secretary shall present an annual report to the Environmental Review Commission that shall include at least the following:

(1) A list of all dry-cleaning solvent contamination reported to the Department.

(2) A list of all facilities and abandoned sites certified by the Commission and the status of contamination associated with each facility or abandoned site.

(3) An estimate of the cost of assessment and remediation required in connection with facilities or abandoned sites certified by the Commission and an estimate of assessment and remediation costs expected to be paid from the Fund.

(4) A statement of receipts and disbursements for the Fund.

(5) A statement of all claims against the Fund, including claims paid, claims denied, pending claims, anticipated claims, and any other obligations.

(6) The adequacy of the Fund to carry out the purposes of this Part together with any recommendations as to measures that may be necessary to assure the continued solvency of the Fund.

(7) The progress of the State in attaining the goals of reducing the use of Perchloroethylene F-1,1,3 (PERC) as established in G.S. 143-215.104T.

(8) The cost and effectiveness of dry-cleaning technologies and chemicals that offer an alternative to the use of Perchloroethylene F-1,1,3 (PERC).

(b) The Secretary shall make the annual report required by this section on or before 1 October of each year."

Section 21. Sections 1 and 2 of this act become effective July 1, 2001. G.S. 105-164.44E and G.S. 143-215.104C(b)(4), as enacted by this act, are repealed on July 1, 2010. The remainder of this act is effective when it becomes law, and Sections 3 and 4 of this act apply retroactively to April 1, 1998.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1326*
Committee Substitute Favorable 7/7/99
Proposed Senate Committee Substitute H1326-PCS7356-LAX002

Short Title: Dry-Cleaning Solvent Cleanup Amends. (Public)

Sponsors:

Referred to:

April 23, 1999

A BILL TO BE ENTITLED

AN ACT TO DESIGNATE THE STATE SALES TAX REVENUE FROM DRY-CLEANING AND LAUNDRY SERVICES TO THE DRY-CLEANING SOLVENT CLEANUP FUND; TO INCREASE THE STATE SALES TAX ON DRY-CLEANING SOLVENTS; TO AMEND THE DRY-CLEANING SOLVENT CLEANUP ACT OF 1997 TO REPEAL THE REQUIREMENT OF FINANCIAL RESPONSIBILITY FOR DRY-CLEANING FACILITIES AND WHOLESALE DRY-CLEANING SOLVENT DISTRIBUTION FACILITIES; TO ALLOW THE ENVIRONMENTAL MANAGEMENT COMMISSION TO ENTER INTO CONTRACTS WITH PRIVATE CONTRACTORS FOR ASSESSMENT AND REMEDIATION ACTIVITIES AT DRY-CLEANING FACILITIES AND WHOLESALE DRY-CLEANING SOLVENT DISTRIBUTION FACILITIES; TO DIRECT THE SECRETARY OF ENVIRONMENT AND NATURAL RESOURCES TO STUDY THE USE OF DRY-CLEANING SOLVENTS IN NORTH CAROLINA, AND TO MAKE OTHER CHANGES IN THE DRY-CLEANING SOLVENT CLEANUP ACT OF 1997.

The General Assembly of North Carolina enacts:

Section 1.1. Article 5 of Chapter 105 of the General Statutes is amended to add a new section to read:

"**§ 105-164.44E. Transfer to the Dry-Cleaning Solvent Cleanup Fund.**

At the end of each quarter, the Secretary must transfer to the Dry-Cleaning Solvent Cleanup Fund established under G.S. 143-215.104C an amount equal to

fifteen percent (15%) of the net State sales and use taxes collected under G.S. 105-164.4(a)(4) during the previous fiscal year, as determined by the Secretary based on available data."

Section 1.2. G.S. 105-187.31 reads as rewritten:

"**§ 105-187.31. (Repealed effective January 1, 2010.) Tax imposed.**

A privilege tax is imposed on a dry-cleaning solvent retailer at a flat rate for each gallon of dry-cleaning solvent sold by the retailer to a dry-cleaning facility. An excise tax is imposed on dry-cleaning solvent purchased outside the State for storage, use, or consumption by a dry-cleaning facility in this State. The rate of the privilege tax and the excise tax is ~~five dollars and eighty-five cents ($5.85)~~ ten dollars ($10.00) for each gallon of dry-cleaning solvent that is chlorine-based and ~~eighty cents (80¢)~~ one dollar and thirty-five cents ($1.35) for each gallon of dry-cleaning solvent that is hydrocarbon-based. These taxes are in addition to all other taxes."

Section 1.3. G.S. 105-164.7 reads as rewritten:

"**§ 105-164.7. Sales tax part of purchase price.**

Every retailer ~~engaged in the business of selling or delivering or taking orders for the sale or delivery of tangible personal property for storage, use or consumption in this State~~ subject to the tax levied in G.S. 105-164.4 shall at the time of selling or delivering or taking an order for the sale or delivery of ~~said~~ taxable tangible personal property or a taxable service, or collecting the sales ~~price thereof or any part thereof,~~ price, add to the sales price ~~of such tangible personal property~~ the amount of ~~the~~ tax due. ~~on the sale thereof and when so added said~~ The tax ~~shall constitute~~ constitutes a part of ~~such~~ the purchase price, ~~shall be~~ is a debt from the purchaser to the retailer until ~~paid~~ paid, and ~~shall be~~ is recoverable at law in the same manner as other debts. ~~Said~~ The tax ~~shall~~ must be stated and charged separately from the sales ~~price and~~ price, shown separately on the retailer's sales ~~records~~ records, and ~~shall be~~ paid by the purchaser to the retailer as trustee for and on account of the ~~State and the~~ State. The retailer ~~shall be~~ is liable for the collection ~~thereof~~ of the tax and for its payment to the ~~Secretary and the~~ Secretary. The retailer's failure to charge to or collect ~~said~~ the tax from the purchaser ~~shall~~ does not affect ~~such~~ this liability. It is the ~~purpose and~~ intent of this Article that the tax ~~herein levied and imposed shall~~ be added to the sales price of tangible personal property and services when sold at retail and ~~thereby~~ be borne and passed on to the customer, instead of being borne by the retailer."

Section 2. G.S. 143-215.104C(b) reads as rewritten:

"(b) Sources of Revenue. -- The following revenue is credited to the Fund:

(1) Dry-cleaning solvent taxes collected under Article 5D of Chapter 105 of the General Statutes.

(2) Recoveries made pursuant to G.S. 143-215.104N and G.S. 143-215.104O.

(3) Gifts and grants made to the Fund.

(4) Revenues credited to the Fund under G.S. 105-164.44E."

Section 3. G.S. 143-215.104B(b)(20), 143-215.104E, 143-215.104F(b)(3), 143-215.104F(d)(3), 143-215.104F(g), 143-215.104J(a)(5), 143-215.104P(a)(1), and Section 3 of S.L. 1997-392 are repealed.

Section 4. G.S. 143-215.104F(f) reads as rewritten:

"(f) Financial Responsibility Requirements. -- Each potentially responsible person who petitions the Commission to enter into a dry-cleaning solvent assessment agreement or dry-cleaning solvent remediation agreement shall accept written responsibility in the amount specified in this section for the assessment or remediation of the dry-cleaning solvent contamination identified in the petition. If two or more potentially responsible persons petition the Commission jointly, the requirements below shall be the aggregate requirements for the financial responsibility of all potentially responsible persons who are party to the petition. Unless an alternative arrangement is agreed to by co-petitioners, the financial responsibility requirements of this section shall be apportioned equally among the co-petitioners. ~~The requirements in this subsection shall be in addition to any insurance or other financial responsibility, including deductibles or retentions, established pursuant to G.S. 143-215.104E.~~ The financial responsibility required shall be as follows:

~~Facility or Abandoned Site Where Release Occurred Costs~~

~~Dry-cleaning facilities owned by persons who employ fewer than five full-time employees, or the equivalent, in activities related to dry-cleaning operations during the preceding calendar year $5,000~~

~~Dry-cleaning facilities owned by persons who employ at least five but fewer than 10 full-time employees, or the equivalent, in activities related to dry-cleaning operations during the preceding calendar year $10,000~~

~~Dry-cleaning facilities owned by persons who employ 10 or more full-time employees, or the equivalent, in activities related to dry-cleaning operations during the preceding calendar year $15,000~~

~~Wholesale distribution facilities $25,000~~

~~Abandoned dry-cleaning facility sites $50,000.~~

(1) For dry-cleaning facilities owned by persons who employ fewer than five full-time employees, or the equivalent, in activities related to dry-cleaning operations during the calendar year preceding the date of the petition, the first five thousand dollars ($5,000) of the costs of assessment or remediation and one percent (1%) of the costs of assessment or remediation in excess of two hundred thousand dollars ($200,000) but not exceeding one million dollars ($1,000,000).

(2) For dry-cleaning facilities owned by persons who employ at least five but fewer than 10 full-time employees, or the equivalent, in

activities related to dry-cleaning operations during the calendar year preceding the date of the petition, the first ten thousand dollars ($10,000) of the costs of assessment or remediation, two percent (2%) of the costs of assessment or remediation in excess of two hundred thousand dollars ($200,000) but not exceeding five hundred thousand dollars ($500,000), and one percent (1%) of the costs of assessment or remediation in excess of five hundred thousand dollars ($500,000) but not exceeding one million dollars ($1,000,000).

(3) For dry-cleaning facilities owned by persons who employ 10 or more full-time employees, or the equivalent, in activities related to dry-cleaning operations during the calendar year preceding the date of the petition, the first fifteen thousand dollars ($15,000) of the costs of assessment or remediation, three percent (3%) of the costs of assessment or remediation in excess of two hundred thousand dollars ($200,000) but not exceeding five hundred thousand dollars ($500,000), and one percent (1%) of the costs of assessment or remediation in excess of five hundred thousand dollars ($500,000) but not exceeding one million dollars ($1,000,000).

(4) For wholesale distribution facilities and abandoned dry-cleaning facility sites, the first twenty-five thousand dollars ($25,000) of the costs of assessment or remediation, three percent (3%) of the costs of assessment or remediation in excess of two hundred thousand dollars ($200,000) but not exceeding five hundred thousand dollars ($500,000), and one percent (1%) of the costs of assessment or remediation in excess of five hundred thousand dollars ($500,000) but not exceeding one million dollars ($1,000,000)."

Section 5. G.S. 143-215.104C(c) reads as rewritten:

"(c) Disbursements. -- A claim filed against the Fund may be paid only from monies in the Fund and only in accordance with the provisions of this Part. Any obligation to pay or reimburse claims against the Fund shall be expressly contingent upon availability of monies in the Fund. Neither the State nor any of its agencies shall have any obligation to pay or reimburse any costs for which monies are not available in the Fund. The provisions of this Part shall not constitute a contract, either express or implied, to pay or reimburse costs in excess of the monies available in the Fund. In making disbursements from the Fund, the Commission shall ~~pay the claims with the highest priority before claims of lower priority, and claims of equal priority in the order in which the facility or abandoned site was certified~~ obligate monies to facilities or abandoned sites with higher priority before facilities or abandoned sites of lower priority, and facilities or abandoned sites with equal priority in the order in which the facilities or abandoned sites were prioritized until the revenue is exhausted. Consistent with the provisions of this Part, the Commission may disburse monies from the Fund to abate imminent hazards caused by dry-cleaning

solvent contamination at abandoned dry-cleaning facility sites that have not been certified. Up to twenty percent (20%) of the amount of revenue credited to the Fund in a year may be used to defray costs incurred by the Department and the Attorney General's Office in connection with administration of the program described in this Part, including oversight of response activities."

Section 5.1. Effective July 1, 2001, G.S. 143-215.104(C)(c), as amended by Section 5 of this act, reads as rewritten:

"(c) Disbursements. -- A claim filed against the Fund may be paid only from monies in the Fund and only in accordance with the provisions of this Part. Any obligation to pay or reimburse claims against the Fund shall be expressly contingent upon availability of monies in the Fund. Neither the State nor any of its agencies shall have any obligation to pay or reimburse any costs for which monies are not available in the Fund. The provisions of this Part shall not constitute a contract, either express or implied, to pay or reimburse costs in excess of the monies available in the Fund. In making disbursements from the Fund, the Commission shall obligate monies to facilities or sites with higher priority before facilities or sites of lower priority, and facilities or sites with equal priority in the order in which the facilities or sites were prioritized until the revenue is exhausted. Consistent with the provisions of this Part, the Commission may disburse monies from the Fund to abate imminent hazards by dry-cleaning solvent contamination at abandoned dry-cleaning facility sites that have not been certified. Up to ~~twenty percent (20%)~~ forty percent (40%) of the amount of revenue credited to the Fund in a year may be used to defray costs incurred by the Department and the Attorney General's Office in connection with administration of the program described in this Part, including oversight of response activities."

Section 5.2. Effective July 1, 2002, G.S. 143-215.104C(c), as amended by Sections 5 and 5.1 of this act, reads as rewritten:

"(c) Disbursements. -- A claim filed against the Fund may be paid only from monies in the Fund and only in accordance with the provisions of this Part. Any obligation to pay or reimburse claims against the Fund shall be expressly contingent upon availability of monies in the Fund. Neither the State nor any of its agencies shall have any obligation to pay or reimburse any costs for which monies are not available in the Fund. The provisions of this Part shall not constitute a contract, either express or implied, to pay or reimburse costs in excess of the monies available in the Fund. In making disbursements from the Fund, the Commission shall obligate monies to facilities or sites with higher priority before facilities or sites of lower priority, and facilities or sites with equal priority in the order in which the facilities or sites were prioritized until the revenue is exhausted. Consistent with the provisions of this Part, the Commission may disburse monies from the Fund to abate imminent hazards by dry-cleaning solvent contamination at abandoned dry-cleaning facility sites that have not been certified. Up to ~~forty percent (40%)~~ forty-five percent (45%) of the amount of revenue credited to the Fund in a year may be used to defray costs incurred by the Department and the Attorney General's Office in connection

with administration of the program described in this Part, including oversight of response activities."

Section 5.3. Effective July 1, 2003, G.S. 143-215.104C(c), as amended by Sections 5, 5.1, and 5.2 of this act, reads as rewritten:

"(c) Disbursements. -- A claim filed against the Fund may be paid only from monies in the Fund and only in accordance with the provisions of this Part. Any obligation to pay or reimburse claims against the Fund shall be expressly contingent upon availability of monies in the Fund. Neither the State nor any of its agencies shall have any obligation to pay or reimburse any costs for which monies are not available in the Fund. The provisions of this Part shall not constitute a contract, either express or implied, to pay or reimburse costs in excess of the monies available in the Fund. In making disbursements from the Fund, the Commission shall obligate monies to facilities or sites with higher priority before facilities or sites of lower priority, and facilities or sites with equal priority in the order in which the facilities or sites were prioritized until the revenue is exhausted. Consistent with the provisions of this Part, the Commission may disburse monies from the Fund to abate imminent hazards by dry-cleaning solvent contamination at abandoned dry-cleaning facility sites that have not been certified. Up to ~~forty-five percent (45%)~~ twenty percent (20%) of the amount of revenue credited to the Fund in a year may be used to defray costs incurred by the Department and the Attorney General's Office in connection with administration of the program described in this Part, including oversight of response activities."

Section 6. G.S. 143-215.104D(a) reads as rewritten:

"(a) Administrative Functions. -- The Commission may delegate any or all of the powers enumerated in this subsection to the ~~Department or engage a private contractor or contractors to carry out the activities enumerated in this subsection. If the Commission engages a private contractor to carry out the functions enumerated in subdivisions (1) through (6) of this subsection, no action of the contractor shall be effective until ratified by the Commission.~~ Department. The Commission shall:

(1) Accept petitions for certification and petitions to enter into dry-cleaning solvent assessment agreements or remediation agreements under this Part.

(2) Prioritize certified dry-cleaning facilities, certified wholesale distribution facilities, or certified abandoned dry-cleaning facility sites for the initiation of assessment or remediation activities that are reimbursable from the Fund.

(3) Develop forms to be used by persons applying for reimbursement of assessment or remediation costs.

(4) Schedule funding of assessment and remediation activities.

(5) Determine whether assessment or remediation is necessary at a site at which dry-cleaning solvent contamination has occurred.

(5a) Enter into contracts with private contractors for assessment and remediation activities at certified dry-cleaning facilities, certified

wholesale distribution facilities, and certified abandoned dry-cleaning facility sites.

(6) Determine that all necessary assessment and remediation has been completed at a contamination site.

(7) Make payments from the Fund to reimburse the costs of assessment and remediation. ~~Any payments made by a private contractor engaged by the Commission shall be authorized by the Commission prior to disbursement.~~"

Section 7. G.S. 143-215.104F, as amended by Sections 3 and 4 of this act, reads as rewritten:

"**§ 143-215.104F. (Repealed effective January 1, 2012) Requirements for certification, assessment agreements, and remediation agreements.**

(a) Any person petitioning for certification of a facility or abandoned site pursuant to G.S. 143-215.104G, for a dry-cleaning solvent assessment agreement pursuant to G.S. 143-215.104H, or for a dry-cleaning solvent remediation agreement pursuant to G.S. 143-215.104I, shall meet the requirements set out in this section and any other applicable requirements of this Part.

(b) Requirements for Potentially Responsible Persons Generally. -- Every petitioner shall provide the Commission with:

(1) ~~Information necessary for the Commission to determine the priority ranking of~~ Any information that the petitioner possesses relating to the contamination at the facility or abandoned site described in the petition.

(2) Information necessary to demonstrate the person's ability to incur the response costs specified in subsection (f) of this section.

(4) Information necessary to demonstrate that the petitioner, and any parent, subsidiary, or other affiliate of the petitioner, has substantially complied with:

a. The terms of any dry-cleaning solvent assessment agreement, dry-cleaning solvent remediation agreement, brownfields agreement, or other similar agreement to which the petitioner or any parent, subsidiary, or other affiliate of the petitioner has been a party.

b. The requirements applicable to any remediation in which the petitioner has previously engaged.

c. Federal and State laws, regulations, and rules for the protection of the environment.

(5) Evidence demonstrating that a release of dry-cleaning solvent has occurred at the facility or abandoned site and that the release has resulted in dry-cleaning solvent contamination.

(c) Requirement for Property Owners. -- In addition to the information required by subsection (b) of this section, a petitioner who is the owner of the property on which the dry-cleaning solvent contamination identified in the petition is located shall provide the Commission a written agreement authorizing the Commission or its agent

to have access to the property for purposes of conducting assessment or remediation activities or determining whether assessment or remediation activities are being conducted in compliance with this Part and any assessment agreement or remediation agreement.

(c1) Costs incurred by the petitioner for activities to obtain certification of a facility or abandoned site shall not be reimbursable from the Fund.

(d) The Commission shall reject any petition made pursuant to this Part in any of the following circumstances:

(1) The petitioner is an owner or operator of the facility described in the petition and the facility was not being operated in compliance with minimum management practices adopted by the Commission pursuant to G.S. 143-215.104D(b)(2) at the time the contamination was discovered.

(2) The petitioner is an owner or operator of the facility described in the petition and the petitioner owed delinquent taxes under Article 5D of Chapter 105 of the General Statutes at the time the dry-cleaning solvent contamination was discovered.

(e) The Commission may reject any petition made pursuant to this Part in any of the following circumstances:

(1) The petitioner fails to provide the information required by subsection (b) of this section.

(2) The petitioner falsified any information in its petition that was material to the determination of the priority ranking, the nature, scope and extent of contamination to be assessed or remediated, or the appropriate means to contain and remediate the contaminants.

(f) Financial Responsibility Requirements. -- Each potentially responsible person who petitions the Commission to ~~enter into a dry-cleaning solvent assessment agreement or dry-cleaning solvent remediation agreement~~ certify a facility or abandoned site shall accept written responsibility in the amount specified in this section for the assessment or remediation of the dry-cleaning solvent contamination identified in the petition. If two or more potentially responsible persons petition the Commission jointly, the requirements below shall be the aggregate requirements for the financial responsibility of all potentially responsible persons who are party to the petition. Unless an alternative arrangement is agreed to by co-petitioners, the financial responsibility requirements of this section shall be apportioned equally among the co-petitioners. The financial responsibility required shall be as follows:

(1) For dry-cleaning facilities owned by persons who employ fewer than five full-time employees, or the equivalent, in activities related to dry-cleaning operations during the calendar year preceding the date of the petition, the first five thousand dollars ($5,000) of the costs of assessment or remediation and one percent (1%) of the costs of assessment or remediation in excess of two hundred thousand dollars ($200,000) but not exceeding one million dollars ($1,000,000).

(2) For dry-cleaning facilities owned by persons who employ at least five but fewer than 10 full-time employees, or the equivalent, in activities related to dry-cleaning operations during the calendar year preceding the date of the petition, the first ten thousand dollars ($10,000) of the costs of assessment or remediation, two percent (2%) of the costs of assessment or remediation in excess of two hundred thousand dollars ($200,000) but not exceeding five hundred thousand dollars ($500,000), and one percent (1%) of the costs of assessment or remediation in excess of five hundred thousand dollars ($500,000) but not exceeding one million dollars ($1,000,000).

(3) For dry-cleaning facilities owned by persons who employ 10 or more full-time employees, or the equivalent, in activities related to dry-cleaning operations during the calendar year preceding the date of the petition, the first fifteen thousand dollars ($15,000) of the costs of assessment or remediation, three percent (3%) of the costs of assessment or remediation in excess of two hundred thousand dollars ($200,000) but not exceeding five hundred thousand dollars ($500,000), and one percent (1%) of the costs of assessment or remediation in excess of five hundred thousand dollars ($500,000) but not exceeding one million dollars ($1,000,000).

(4) For wholesale distribution facilities and abandoned dry-cleaning facility sites, the first twenty-five thousands dollars ($25,000) of the costs of assessment or remediation, three percent (3%) of the costs of assessment or remediation in excess of two hundred thousand dollars ($200,000) but not exceeding five hundred thousand dollars ($500,000), and one percent (1%) of the costs of assessment or remediation in excess of five hundred thousand dollars ($500,000) but not exceeding one million dollars ($1,000,000)."

Section 8. G.S. 143-215.104G reads as rewritten:

"**§ 143-215.104G. (Effective January 1, 1999; repealed effective January 1, 2012) Certification of facilities and abandoned sites.**

(a) A potentially responsible party may petition the Commission to certify a facility or abandoned site where a release of dry-cleaning solvent ~~is believed to have~~ has occurred. The Commission shall certify the facility or abandoned site if the petitioner meets the applicable requirements of G.S. 143-215.104F. Upon its decision to certify a facility or abandoned site, the Commission shall inform the petitioner of its decision and of the initial priority ranking of the facility or site.

~~(b) The Commission may change the initial priority rankings of any facility or abandoned site as additional facilities or abandoned sites are certified if the Commission, in its sole discretion, determines that additional facilities or sites pose a higher degree of harm or risk to public health and the environment. However, the~~

~~Commission shall not change the priority ranking of a facility or an abandoned site that is set in a dry-cleaning solvent remediation agreement.~~

(c) A potentially responsible party who petitions for certification of a facility or abandoned site shall provide the Commission with either of the following:

(1) A ~~proposed dry-cleaning solvent assessment agreement or dry-cleaning solvent remediation agreement or an indication~~ written statement of the petitioner's intent to enter into an assessment agreement or remediation agreement.

(2) A written statement of the petitioner's intent to conduct assessment and remediation activities pursuant to subsection (d) of this section.

(d) A person who has access to property that is contaminated by dry-cleaning solvent and who has successfully petitioned for certification of the facility or abandoned site from which the contamination is believed to have resulted may undertake assessment or remediation of dry-cleaning solvent contamination located on the property consistent with the standards established by the Commission pursuant to G.S. 143-215.104D(b)(3) without first entering into a dry-cleaning solvent assessment agreement or a dry-cleaning solvent remediation agreement. No assessment or remediation activities undertaken pursuant to this subsection shall rely on standards that require the creation of land-use restrictions. A person who undertakes assessment or remediation activities pursuant to this subsection shall provide the Commission prior written notice of the activity. Costs associated with assessment or remediation activities undertaken pursuant to this subsection shall not be eligible for reimbursement from the Fund.

(e) The rejection of any petition filed pursuant to this section shall not affect the rights of any other petitioner, other than any parent, subsidiary, or other affiliate of the petitioner, under this Part. The rejection of a petition or the decertification of a facility or abandoned site may be the basis for rejection of a petition by any parent, subsidiary, or other affiliate of the petitioner for the facility or abandoned site."

Section 9. G.S. 143-215.104H reads as rewritten:

"**§ 143-215.104H. (Effective January 1, 1999; repealed effective January 1, 2012) Dry-Cleaning Solvent Assessment Agreements.**

(a) Assessment Agreements. -- One or more potentially responsible parties may petition the Commission to enter into a dry-cleaning solvent assessment agreement regarding a facility or abandoned site that has been certified pursuant to G.S. 143-215.104G. The Commission may, in its discretion, enter into an assessment agreement with any potentially responsible party who satisfies the requirements of this section and the applicable requirements of G.S. 143-215.104F. If more than one potentially responsible party petitions the Commission, the Commission may enter into a single assessment agreement with one or more of the petitioners. The Commission shall not unreasonably refuse to enter into an assessment agreement pursuant to this section. ~~Petitioners shall~~ The Commission may require the petitioners to provide the Commission with any information necessary to ~~demonstrate that the:~~ demonstrate:

(1) ~~Priority~~ The priority ranking assigned to the facility or site is consistent with the rules adopted ~~by the Commission or the adjusted priority ranking that the petitioner agrees to accept is consistent with the rules adopted~~ by the Commission.

(2) ~~Projected~~ The projected schedule for funding of assessment ~~activities, including reimbursements from the Fund~~ activities is adequate.

(3) ~~Assessment~~ The assessment activities to be undertaken with respect to the dry-cleaning solvent contamination and any other contamination at the contamination site are adequate.

(4) ~~Person~~ The person who will be responsible for implementation of the activities is capable and qualified to conduct the assessment.

(4a) The amount of funds already expended by the petitioner for assessment or remediation of dry-cleaning solvent contamination at the facility or abandoned site.

(5) ~~Petitioner~~ The petitioner has and will continue to have available the financial resources necessary to pay the costs of assessment activities and the share of response costs imposed on the petitioner by G.S. 143-215.104F.

(6) ~~Permits~~ The permits or other authorizations required to conduct the assessment activities and to lawfully dispose of any hazardous substances or wastes generated by the assessment activities have been or can be obtained.

(7) ~~Assessment~~ The assessment activities will not increase the existing level of public exposure to health or environmental hazards at the contamination site.

(8) ~~Costs~~ The costs to be incurred in connection with the assessment activities contemplated by the assessment agreement are reasonable and necessary.

(9) ~~Petitioner~~ The petitioner has obtained the consent of other property owners to enter into their property for the purpose of conducting assessment activities specified in the assessment agreement.

(b) The terms and conditions of an assessment agreement regarding dry-cleaning solvent contamination shall be guided by and consistent with the rules adopted by the Commission pursuant to G.S. 143-215.104D and the reimbursement authorities and limitations set out in this Part. An assessment agreement shall, subject to the availability of monies from the Fund:

~~(1) Specify the date on which remediation will begin.~~

(1a) Require that the petitioner shall be liable to the Fund for an amount equal to the difference, if any, between the applicable amount for which the petitioner is responsible under G.S. 143-215.104F and the amount reasonably paid by the petitioner for assessment or remediation activities of the type specified in G.S.

143-215.104N(a)(1) through (7) and that are otherwise consistent with the requirements of this Part.

(2) Provide for the prompt reimbursement of response costs incurred in assessment activities that are found by the Commission to be consistent with the assessment agreement and this Part.

(c) The Commission may refuse to enter into a dry-cleaning solvent assessment agreement with any petitioner if:

(1) The petitioner will not accept financial responsibility for the share of the response costs required by G.S. 143-215.104F.

(2) The petitioner will not accept responsibility for conducting, supervising, or otherwise undertaking assessment activities required by the Commission.

(3) The petitioner fails to provide any information required by subsection (a) of this section.

(d) The refusal of the Commission to enter into a dry-cleaning solvent assessment agreement with any petitioner shall not affect the rights of any other petitioner under this Part, except that the refusal may be the basis for rejection of a petition by any parent, subsidiary or other affiliate of the petitioner for the facility or abandoned site.

(e) If the Commission determines from an assessment prepared pursuant to this Part that the degree of risk to public health or the environment resulting from dry-cleaning solvent contamination otherwise subject to assessment or remediation under this Part and Article 9 of Chapter 130A is acceptable in light of the criteria established pursuant to G.S. 143-215.104D(b)(3) and Article 9 of Chapter 130A, the Commission shall issue a written statement of its determination and notify the owner or operator of the facility or abandoned site responsible for the contamination that no cleanup, no further cleanup, or no further action is required in connection with the contamination.

(f) If the Commission determines that no remediation or further action is required in connection with dry-cleaning solvent contamination otherwise subject to assessment or remediation pursuant to this Part and Article 9 of Chapter 130A, the Commission shall not pay or reimburse any response costs otherwise payable or reimbursable under this Part from the Fund other than costs reasonable and necessary to conduct the risk assessment pursuant to this section and in compliance with a dry-cleaning solvent assessment agreement."

Section 10. G.S. 143-215.104I(a) reads as rewritten:

"(a) Upon the completion of assessment activities required by a dry-cleaning solvent assessment agreement, one or more potentially responsible parties may petition the Commission to enter into a dry-cleaning solvent remediation agreement for any contamination requiring remediation. The Commission may, in its discretion, enter into a remediation agreement with any petitioner who satisfies the requirements of this section and the applicable requirements of G.S. 143-215.104F. If more than one potentially responsible party petitions the Commission, the Commission may enter into a single remediation agreement with one or more of the petitioners. The Commission shall not unreasonably refuse to enter into a remediation agreement

pursuant to this section. The Commission may, in its discretion, enter into a remediation agreement that includes the assessment described in G.S. 143-215.104H. Petitioners shall provide the Commission with any information necessary to ~~demonstrate that:~~ demonstrate:

~~(1) The petitioner, and any parent, subsidiary, or other affiliate of the petitioner has substantially complied with:~~

~~a. The terms of any dry-cleaning solvent assessment agreement, dry-cleaning solvent remediation agreement, brownfields agreement, or other similar agreement to which the petitioner or any parent, subsidiary, or other affiliate of the petitioner has been a party.~~

~~b. The requirements applicable to any remediation in which the petitioner has previously engaged.~~

~~c. Federal and State laws, regulations, and rules for the protection of the environment.~~

(2) As a result of the remediation agreement, the contamination site will be suitable for the uses specified in the remediation agreement while fully protecting public health and the environment from dry-cleaning solvent contamination and any other contaminants included in the remediation agreement.

(3) There is a public benefit commensurate with the liability protection provided under this Part.

(4) The petitioner has or can obtain the financial, managerial, and technical means to fully implement the remediation agreement and assure the safe use of the contamination site.

(5) The petitioner has complied with or will comply with all applicable procedural requirements.

(6) The remediation agreement will not cause the Department to violate the terms and conditions under which the Department operates and administers remedial programs, including the programs established or operated pursuant to Article 9 of Chapter 130A of the General Statutes, by delegation or similar authorization from the United States or its departments or agencies, including the United States Environmental Protection Agency.

(7) The priority ranking assigned to the facility or site is consistent with the rules adopted by the Commission or the ~~adjusted~~ priority ranking that the petitioner agrees to accept is consistent with the rules adopted by the Commission.

(8) The projected schedule for funding of remediation ~~activities, including reimbursements from the Fund.~~ activities.

(9) The petitioner will continue to have available the financial resources necessary to satisfy the share of response costs imposed on the petitioner by G.S. 143-215.104F.

(10) The expenditures eligible for reimbursement from the Fund and to be incurred in connection with the remediation agreement are reasonable and necessary.

(11) The consent of other property owners to enter into their property for purposes of conducting remediation activities specified in the remediation agreement."

Section 11. G.S. 143-215.104I(c)(6) reads as rewritten:

"(c) A dry-cleaning solvent remediation agreement shall contain a description of the contamination site that would be sufficient as a description of the property in an instrument of conveyance and, as applicable, a statement of:

. . .

(6) The ~~final~~ priority ranking of the facility or abandoned site."

Section 12. G.S. 143-215.104N(a) reads as rewritten:

"(a) Reimbursement. -- To the extent monies are available in the Fund for reimbursement of response costs, the Commission shall reimburse any ~~person~~ person, including a private contractor, responsible for implementing reasonable and necessary assessment and remediation activities at a contamination site associated with a certified facility or a certified abandoned site pursuant to a dry-cleaning solvent assessment agreement or dry-cleaning solvent remediation agreement for the following assessment and remediation response ~~costs:~~ costs, for which appropriate documentation is submitted:

(1) Costs of assessment with respect to dry-cleaning solvent contamination.

(2) Costs of treatment or replacement of potable water supplies affected by the contamination.

(3) Costs of remediation of affected soil, groundwater, surface waters, bedrock or other rock formations, or buildings.

(4) Monitoring of the contamination.

(5) Inspection and supervision of activities described in this subsection.

(6) Reasonable costs of restoring property as nearly as practicable to the conditions that existed prior to activities associated with assessment and remediation conducted pursuant to this Part.

(7) Other activities reasonably required to protect public health and the environment."

Section 13. G.S. 143-215.104I(g) reads as rewritten:

"(g) The terms and conditions of a dry-cleaning solvent remediation agreement concerned with dry-cleaning solvent contamination shall be guided by and consistent with the rules adopted by the Commission pursuant to G.S. 143-215.104D and the reimbursement authorities and limitations set out in this Part. A remediation agreement shall provide, subject to availability of monies in the Fund, for prompt reimbursement of response costs incurred in assessment or remediation activities that are found by the Commission to be consistent with the remediation agreement and this Part. A remediation agreement may provide that the Commission conduct assessment and remediation activities at the facility or abandoned site."

Section 14.(a) G.S. 143-215.104N(b)(3) reads as rewritten:

"(3) ~~For costs before funds available through the financial responsibility demonstrated by the owner or operator of the facility or abandoned site pursuant to G.S. 143-215.104E and~~ For costs incurred in connection with dry-cleaning solvent contamination from a facility or abandoned site for which funds obligated by petitioners pursuant to a dry-cleaning solvent assessment agreement or dry-cleaning solvent remediation agreement in accordance with G.S. 143-214.104F(f) are ~~exhausted.~~ overdue."

Section 14.(b) G.S. 143-215.104N(c) reads as rewritten:

"(c) The Commission shall not pay or reimburse any response costs arising from a dry-cleaning solvent assessment agreement or dry-cleaning solvent remediation agreement until the petitioners who are party to the agreement have ~~exhausted the financial resources made available under G.S. 143-215.104E and G.S. 143-215.104F.~~ paid all sums due under the agreement."

Section 15. G.S. 143-215.104O reads as rewritten:

"**§ 143-215.104O. (Repealed effective January 1, 2012) Remediation of uncertified sites.**

(a) In the event the owner or operator of a facility or the current owner of an abandoned site cannot be identified or located, unreasonably refuses to enter into either an assessment agreement or remediation agreement or cannot be made to comply with the provisions of an assessment agreement or remediation agreement between the petitioner and the Commission, the Commission may direct the Department or a private contractor engaged by the Commission to use staff, equipment, or materials under the control of the Department or contractor or provided by other cooperating federal, State, or local agencies to develop and implement a plan for abatement of an imminent hazard, or to provide interim alternative sources of drinking water to third parties affected by dry-cleaning solvent contamination resulting from a release at the facility or abandoned site. The cost of any of these actions shall be paid from the Fund. The Department or private contractor shall keep a record of all expenses incurred for personnel and for the use of equipment and materials and all other expenses of developing and implementing the remediation plan.

(b) The Commission shall request the Attorney General to commence a civil action to secure reimbursement of costs incurred under this ~~subsection.~~ section.

(c) In the event a civil action is commenced pursuant to this Part to recover monies paid from the Fund, the Commission may recover, in addition to any amount due, the costs of the action, including reasonable attorneys' fees and investigation expenses. Any monies received or recovered as reimbursement shall be paid into the Fund or other source from which the expenditures were made."

Section 16. G.S. 143-215.104S reads as rewritten:

"**§ 143-215.104S. (Repealed effective January 1, 2012) Appeals.**

Any person who is aggrieved by a decision of the Commission under G.S. 143-215.104E through G.S. 143-215.104O may commence a contested case by filing a

petition under G.S. 150B-23 within 60 days after the Commission's decision. If no contested case is initiated within the allotted time period, the Commission's decision shall be final and not subject to review. The Commission shall make the final agency decision in contested cases initiated pursuant to this section. Notwithstanding the provisions of G.S. 6-19.1, no party seeking to compel remediation of dry-cleaning solvent contamination in excess of that required by a dry-cleaning solvent remediation agreement approved by the Commission shall be eligible to recover attorneys' fees. The Commission shall not delegate its authority to make a final agency decision pursuant to this section."

Section 17. Section 5 of S.L. 1997-392 reads as rewritten:

"Section 5. This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The Environmental Management Commission may adopt temporary rules to implement this act until ~~1 January 1999.~~ 30 June 2001."

Section 18. Section 7 of S.L. 1997-392 reads as rewritten:

"Section 7. (a) Any person who undertakes assessment or remediation of dry-cleaning solvent contamination pursuant to ~~an~~ a notice of violation or enforcement action by the Department of ~~Environment, Health,~~ Environment and Natural Resources during the period beginning 1 October 1997 and ~~1 January 1999~~ ending 30 June 2001 may, on or after ~~1 January 1999~~ 30 June 2001 seek reimbursement from the Dry-Cleaning Solvent Cleanup Fund for any costs exceeding fifty thousand dollars ($50,000). The Commission shall reimburse costs if it finds that the costs incurred were (i) appropriately documented and reasonably necessary to assess or remediate the dry-cleaning solvent contamination; (ii) for any of the activities described in subdivisions (1) through (7) of G.S. 143-215.104N(a); (iii) not subject to any of the limitations in subdivisions (4) ~~or (5)~~ through (9) of G.S. 143-215.104N(b); (iv) not reimbursable from pollution and remediation legal liability insurance; and (v) required by a notice of violation or a specific order of the Department of ~~Environment, Health,~~ Environment and Natural Resources issued on or after 30 June 1996. No reimbursement may be paid pursuant to this section for dry-cleaning solvent contamination that did not result from operations at a dry-cleaning or wholesale distribution facility.

(b) Any person who, as of ~~1 January 1999,~~ 30 June 2001, is undertaking assessment or remediation of dry-cleaning solvent contamination shall be eligible to petition the Commission to enter into a dry-cleaning solvent assessment agreement or dry-cleaning solvent remediation agreement with respect to the contamination. In calculating the required financial contribution of parties to any agreement, the Commission shall determine the reasonable cost of any necessary unreimbursed assessment or remediation activity undertaken by the parties with respect to the contamination site prior to ~~1 January 1999~~ 30 June 2001 and shall credit the amount toward any applicable financial responsibility limits established in G.S. 143-215.104F.

(c) Notwithstanding any other provision of this section, the total of all payments made pursuant to this section in a single fiscal year shall not exceed ten percent (10%) of the revenues credited to the Dry-Cleaning Solvent Cleanup Fund in the

preceding fiscal year. The Commission may by rule establish a different cutoff date for assessment and remediation activities covered by this section."

Section 19. The Commission on Health Services shall adopt a rule that, notwithstanding any other rule, requires that a person who generates wastes at a dry-cleaning facility or wholesale distribution facility that contains the solvents perchloroethylene, F-1,1,3, or 1,1,1 trichloroethane to deliver the wastes to a facility that is legally authorized to manage or recycle hazardous wastes containing these solvents. The rule required by this section shall not apply to the disposal of wastewater generated from the dry-cleaning process, which shall be regulated as otherwise provided by law.

Section 20. If any section or provision of this act is declared unconstitutional or invalid by the courts, the unconstitutional or invalid section or provision does not affect the validity of this act as a whole or any part of this act other than the part declared to be unconstitutional or invalid.

Section 21. The Secretary of Environment and Natural Resources shall study dry-cleaning processes and equipment that are potential alternatives to the predominant dry-cleaning processes and equipment currently utilized. The Secretary shall be assisted in this study by a balanced working group of stakeholders that includes representatives of nonprofit conservation organizations, representatives of the dry-cleaning industry, manufacturers of dry-cleaning processes and equipment, manufacturers of dry-cleaning solvents, and researchers knowledgeable about garment cleaning and the dry-cleaning industry.

The study shall identify alternative dry-cleaning processes and equipment currently in use or under development, identify the historical trends in the use of these processes and equipment, and evaluate the benefits and costs of, and the feasibility of implementing and installing, these processes and equipment. In evaluating the alternative processes and equipment, the Secretary shall consider, at a minimum, the following factors:

(1) The environmental and public health impacts of the processes and equipment;

(2) The ability of the processes and equipment to clean a wide variety of natural and synthetic fabrics without damage;

(3) The ability of small business organizations to finance, own, and operate the processes and equipment; and

(4) The effect of widespread use of the processes and equipment on fire safety.

If the Secretary finds that there are significant potential obstacles to the implementation of beneficial alternative dry-cleaning processes and equipment, the Secretary shall recommend to the General Assembly specific regulatory and nonregulatory policy measures to promote the increased use of such alternative processes and equipment by the State's dry-cleaning industry. The Secretary shall submit an interim report no later than November 1, 2000, and a final report no later than September 1, 2001, to the Environmental Review Commission. These reports

shall include the Secretary's findings and recommendations, including any legislative proposals.

Section 22. This act constitutes a recent act of the General Assembly within the meaning of G.S. 150B-21.1. The Environmental Management Commission and the Commission on Health Services may adopt temporary rules to implement the provisions of this act until 1 July 2001.

Section 23. Section 1.1 of this act becomes effective April 1, 2003, and expires June 30, 2010. Section 1.2 of this act becomes effective October 1, 2001, and expires January 1, 2010. Sections 3 and 4 of this act are effective on and after April 1, 1998. Section 5.1 of this act becomes effective July 1, 2001. Section 5.2 of this act becomes effective July 1, 2002. Section 5.3 of this act becomes effective July 1, 2003. All other sections of this act are effective when this act becomes law.

HOUSE BILL 1326:
Dry-Cleaning Solvent Cleanup Amends.

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Rep. Gibson
Date:	May 24, 2000	**Summary by:**	Martha K. Walston and Rick Zechini
Version:	Senate Proposed Committee Substitute		Committee Counsel

SUMMARY: *House Bill 1326 earmarks a percentage of the State sales and use taxes collected on dry-cleaning and laundry services to the Dry-Cleaning Solvent Fund, increases the privilege tax on dry-cleaning solvent, amends the Dry-Cleaning Solvent Cleanup Act of 1997 by repealing the requirement of financial responsibility for dry-cleaning facilities, allows the Environmental Management Commission, and by delegation the Department of Environment and Natural Resources, to enter into contracts for the cleanup of contamination resulting from dry-cleaning facilities, requires an owner of a dry-cleaning facility to be responsible for co-payments upon accessing the Dry-Cleaning Solvent Fund, temporarily increases the amount of revenue from the Dry-Cleaning Solvent Fund that may be used for administrative costs, requires the Secretary of the Environment and Natural Resources to study alternative dry-cleaning processes and equipment, and makes other changes to the Dry-Cleaning Solvent Cleanup Act of 1997.*

CURRENT LAW AND BACKGROUND: The Dry-Cleaning Solvent Cleanup Act of 1997 (Act) is designed to facilitate the cleanup of contamination at dry-cleaning facilities. The Act employs two monetary tools to assist parties in cleaning up contaminated dry-cleaning facilities:

1. Pollution and remediation legal liability insurance; and
2. The Dry-Cleaning Solvent Cleanup Fund (Fund).

It was thought that all dry-cleaners would be able to purchase the type of insurance described above, and that the insurance would provide funds to assist in the cleanup of contaminated dry-cleaning facilities. There is an incentive to purchase this insurance because eligibility for reimbursement from the Fund is contingent on the owner of the dry-cleaning facility having satisfied the Act's financial responsibility requirement. The financial responsibility requirement is satisfied by establishing and maintaining financial responsibility for legal liability for dry-cleaning solvent contamination at the facility by either:

1. Obtaining pollution and remediation legal liability insurance for the facility with coverage limits not less than $1,000,000; or,
2. Depositing securities or an acceptable third-party bond in an amount not less than $1,000,000.

The type of insurance that the Act requires, while available at the time the Act was passed, is not available now and therefore the Fund is the sole source of financial assistance available for cleaning up contaminated dry-cleaning facilities. Under current law, the major source of revenue for the Fund is a dry-cleaning solvent tax on in-state retailers that sell solvent to dry-cleaning facilities, and on dry-cleaning facilities that purchase solvent outside the State. The solvent tax is a per gallon privilege tax equal to $5.85 per gallon of chorine-based solvents, and 80 cents per gallon of hydrocarbon-based solvents. The tax became effective October 1, 1997 and expires January 1, 2010. The Department of Revenue collects the tax in the same manner as a sales tax. Currently the Fund is receiving roughly $870,000 per year from the dry-cleaning solvent tax.

After an owner of a dry-cleaning facility meets the applicable deductibles, monies from the Fund may be used to reimburse the owner for the costs the owner expends for cleanup. Because of the limited amount of monies in the Fund and the fact that the Fund is also the source of funding for the administration of the Dry-Cleaning Program, no monies from the Fund have been disbursed for cleaning up contaminated dry-cleaning facilities.

BILL ANALYSIS: Section 1.1 adds a new section to Chapter 105 to require the Secretary of Revenue to make quarterly transfers from the State sales and use taxes collected on dry-cleaning and laundry businesses to the Dry-Cleaning Solvent Cleanup Fund. The amount transferred each quarter will equal 15% of the net State sales and use tax collected on these businesses in the previous fiscal year. The transfer becomes effective April 1, 2003 and expires June 30, 2010.

Under current law the 4% State sales and use tax is imposed on the gross receipts of the following retailers:

- Persons engaged in the business of operating a dry-cleaning, pressing, or hat-blocking establishment, a laundry, or any similar business.
- Persons engaged in the business of renting clean linen or towels or wearing apparel, or any similar business.
- Persons engaged in the business of soliciting cleaning, pressing, hat blocking, laundering, or linen rental business for any of these businesses.

The following receipts are exempt from the State sales and use tax: receipts derived from services performed for resale by a retailer that pays the tax on the total gross receipts derived from the services; and receipts derived from coin, token, or card-operated washing machines, extractors, and dryers.

Section 1.2 increases the tax rate imposed on the sale and use of dry-cleaning solvents as follows:.

- From $5.85 to $10.00 per gallon of dry-cleaning solvent that is chlorine-based.
- From 80 cents to $1.35 per gallon of dry-cleaning solvent that is hydrocarbon-based.

The increase becomes effective October 1, 2001 and expires January 1, 2010.

Section 1.3 amends G.S. 105-164.7 to clarify that the sales tax procedure is the same for services as for sales of tangible personal property.

House Bill 1326 also amends the required deductibles to be paid by an owner of a dry-cleaning facility to access the Fund by adding co-payment obligations as follows:

Type of Facility	Deductible	Co-pay
Fewer then 5 employees	$5,000	1% of the costs between $200,000 and $1,000,000
At least 5 but fewer than 10 employees	$10,000	2% of the costs between $200,00 and $500,000 and 1% of the costs between $500,000 and $1,000,000
10 or more employees	$15,000	3% of the costs between $200,000 and $500,000 and 1% of the costs between $500,000 and $1,000,000
Wholesale Distribution Facility	$25,000	3% of the costs between $200,000 and $500,000 and 1% of the costs between $500,000 and $1,000,000

House Bill 1326 also amends the Act in the following ways:

- Providing that of the revenue credited to the Fund, DENR and the Attorney General's Office may use up to 40% in FY 2001 and up to 45% in FY 2002 for the administration of the program. Prior to FY 2001, and starting in FY 2003 and thereafter, DENR and the Attorney General's Office may use up to 20% of the revenue credited to the Fund for the administration of the program.
- Repealing the requirement of financial responsibility for dry-cleaning facilities.
- Allowing the Dry-Cleaning Program to be a "State lead" program. This allows the Environmental Management Commission, and by delegation the Department of Environment and Natural Resources, to enter into contracts with environmental consultants for the cleanup of contaminated dry-cleaning facilities. Currently an owner of a dry-cleaning facility contracts with an environmental consultant to do the cleanup work and seeks reimbursement from the Fund.
- Directing the Secretary of Environment and Natural Resources, with the assistance of a balanced working group of stakeholders, to study alternative dry-cleaning processes and equipment. The Secretary is required to submit an interim report no later than November 1, 2000 and a final report no later than September 1, 2001.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

DRAFT

BILL NUMBER: HB 1326 (Proposed Finance Committee Substitute)

SHORT TITLE: Dry-Cleaning Solvent Cleanup Amends.

SPONSOR(S):

FISCAL IMPACT

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

($million)

	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05
REVENUES					
General Fund				($9.1)	($9.1)
Dry-Cleaning Solvent Cleanup Fund					
-Sales Tax Transfer				$9.1	$9.1
-Solvent Tax Increase	.4	.5	.5	.5	.5
EXPENDITURES					
Dry-Cleaning Solvent Cleanup Fund	.1	.4	.4	.1	.1

POSITIONS: Not yet determined

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue (DOR); Department of Environment & Natural Resources (DENR); Department of Justice; and Environmental Management Commission.

EFFECTIVE DATE: Section 1.1 (sales tax transfer) becomes effective April 1, 2003, and is repealed effective July 1, 2010. Section 1.2 (dry cleaning solvent tax increase) becomes effective October 1, 2000. Section 5.1 (40% admin.) is effective July 1, 2001. Section 5.2 (45% admin.) is effective July 1, 2002. Section 5.3 (20% admin.) is effective July 1,2003. The remaining sections become effective upon enactment of the bill. Sections 3 and 4 apply retroactively to April 1, 1998.

BILL SUMMARY: This bill amends the Dry Cleaning Solvent Cleanup Act of 1997 and increases tax revenues and tax distributions to fund the solvent cleanup effort. The tax changes include an increase in the dry cleaning solvent tax in October 2000 and the transfer of 60% of the state sales tax receipts on dry cleaning and laundry services from the General Fund to the Dry Cleaning Solvent Cleanup Fund beginning in 2003. The share of the Dry Cleaning Solvent Cleanup Fund that can be used for administrative expenses for DENR and the Department of Justice will be temporarily increased in 2001 and 2002. The amendments deal with the financial

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responsibility of dry cleaners for cleanup costs, the ability of the Department of Environment and Natural Resources (DENR) to contract for assessment and remediation, and technical and clarifying language changes.

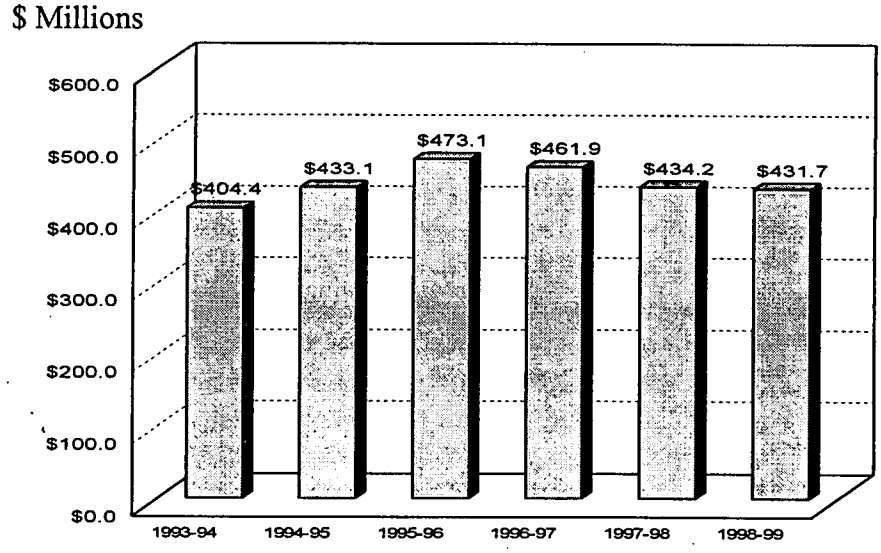
BACKGROUND: A state sales tax of 4% and local sales tax of 2% is imposed on the gross receipts of businesses "operating a dry-cleaning, pressing, or hat blocking establishment, a laundry, or any similar business, engaged in the business of renting clean linen or towels or wearing apparel, or any similar business, or engaged in the business of soliciting cleaning, pressing, hat blocking, laundering or linen rental business for any of these businesses." A 1% sales tax with a $80 maximum is applied to sales of dry-cleaning and laundering machinery. Items used in the dry-cleaning and laundering process such as starch, soap, cleaning fluids, hangers, and bags are exempted from sales and use tax.

ASSUMPTIONS AND METHODOLOGY:

SALES TAX RECEIPTS

The gross retail sales for laundries and dry cleaners have declined in recent years from a high of $473.1 million in 1995-96 to $431.7 million in 1998-99. Gross retail sales in the current fiscal year (FY 1999-00) are on pace to finish at $427.1 million. This fiscal note will assume a no growth scenario for the next five years and annual gross retail sales of $430 million.

GROSS RETAIL SALES FOR LAUNDRIES AND DRY CLEANERS



Gross retail sales include both taxable and nontaxable sales reported on monthly and semi-monthly sales and use tax returns. To estimate the impact of HB 1326, nontaxable sales must be removed from the equation. Dividing sales tax collection by 4%, then dividing that result by gross retail sales provides the percentage of taxable sales. From 1993 to 1999, the percentage of taxable sales ranged from 81.6% in FY 1996-97 to 90.3% in 1998-99 (see chart below). This fiscal note will assume the midpoint of this range or 87.9%.

	Sales Tax Collected	Gross Retail Sales	Percent (%) Taxable
FY 1998-99	$15,590,900	$431,689,610	90.3%
FY 1997-98	$15,225,715	$434,290,844	87.6%
FY 1996-97	$15,085,579	$461,954,623	81.6%
FY 1995-96	$16,091,521	$473,132,389	85.0%
FY 1994-95	$15,234,188	$433,121,056	87.9%
FY 1993-94	$14,426,870	$404,433,777	89.2%
FY 1992-93	$13,689,558	$383,399,394	89.3%

If there is $430 million in gross retail sales of laundry and dry-cleaning services each year, then 87.9% or $377,970,000 in sales are taxable. A 4% state sales tax on $378 million in dry-cleaning, laundry and linen rental services is equal to $15.12 million.

TRANSFER OF SALES TAX

Section 1.1 of HB 1326 transfers 60% of the 4% state sales tax on dry cleaning and laundry services from the General Fund to the Dry-Cleaning Solvent Cleanup Fund as of April 1, 2003. This section does not affect the 2% local sales tax on these services. As outlined above, annual sales of dry-cleaning, laundry and linen rental services will be $378 million in 2003 and the 4% sales tax will yield $15.12 million in revenue. The Dry-Cleaning Solvent Cleanup Fund will receive 60% of this amount or $9.07 million each year through 2010. The April 1 effective date ensures that four quarterly payments will be made in FY 2003-04.

SOLVENT TAX INCREASE - PERC

Section 1.2 increases the tax on chlorine based solvents from $5.85 per gallon to $10.00 per gallon. Before calculating the impact of this tax increase, the projected volume of solvent to be taxed must be determined. Two calendar years of consumption data show that the use of the chlorinated solvent perchloroethylene (perc) increased from 119,238 gallons in 1998 to 124,724 gallons in 1999 for an increase of 4.5%. However, when you compare the gallons purchased in the first ten months of FY 1999-00 to the gallons purchased in the first ten months of FY 1998-99, perc consumption is down 2.3%. However, there is insufficient state data to determine a trend.

When the Dry-Cleaning Solvent Cleanup Fund was established in 1997, representatives of the North Carolina dry cleaning industry estimated that perc use would decline 1% a year, but the Department of Environment and Natural Resources (DENR) estimated a 7% annual decline. According to the publisher of the *Chemical Market Reporter*, U.S. production of perchloroethylene (perc) fell 5% a year from 1987 to 1996. The European Chlorinated Solvent Association reported West European perc production fell 3.8% a year from 1995 to 1998. Due to the conversion of dry cleaning machines to alternative solvents and to the creation of newer generations of perc machines that use less solvent, it is reasonable to assume a decline of perc use over the next five years. This fiscal note will assume a 5% reduction in perc use each year based on perc sales in the US market.

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The chart below shows the difference in revenue from the current $5.85 per gallon of perc to $10.00 per gallon. FY 2000-01 revenues must be reduced by one-fourth to account for the October 1, 2000 effective date.

	Actual	Estimated					
	1998-99	1999-00	2000-01	2001-02	2002-03	2003-04	2004-05
Perc use (Gals)	125,085	121,445	115,373	109,604	104,124	98,918	93,972
Perc fee (Current law)	$5.85	$5.85	$5.85	$5.85	$5.85	$5.85	$5.85
Current Revenue	$731,747	$710,453	$674,931	$641,184	$609,125	$578,669	$549,735
Perc Fee (HB 1326)			$10.00	$10.00	$10.00	$10.00	$10.00
HB 1326 Revenue			$1,153,728	$1,096,041	$1,041,239	$989,177	$939,718
Revenue Change			$478,797	$454,857	$432,114	$410,509	$389,983

SOLVENT TAX INCREASE - HYDROCARBON

Section 1.2 also increases the tax on hydrocarbon or petroleum based solvents from 80 cents a gallon to $1.35 per gallon. Hydrocarbon solvent consumption dropped from 184,453 gallons in 1998 to 177,703 gallons in 1999 for a decline of 3.7%. If hydrocarbon solvent consumption in the first 10 months of FY 1999-00 is compared to the same period in FY 1998-99, a 14.4% decline in consumption is noted. As with perc, the state data is not sufficient to determine a trend. In 1997, the dry cleaning industry projected a 1% decline in use while DENR estimated that hydrocarbon solvent use would not change. A decline in hydrocarbon use is expected over the next five years due to the conversion of dry cleaning machines to less hazardous solvents. For example, one nonhazardous solvent that is silicon-based can be used in a hydrocarbon machine after a conversion costing less than $5,000. This fiscal note will assume a 4% decline in hydrocarbon use based on the decline in 1999.

The chart below shows the difference in revenue from the current $.80 per gallon of petroleum to $1.35 per gallon. FY 2000-01 revenues must be reduced by one-fourth to account for the October 1, 2000, effective date.

	Actual	Estimated					
	1998-99	1999-00	2000-01	2001-02	2002-03	2003-04	2004-05
Petroleum use (Gals)	182,227	154,187	148,020	142,099	136,415	130,958	125,720
Petroleum fee (Current law)	$0.80	$0.80	$0.80	$0.80	$0.80	$0.80	$0.80
Petroleum Revenue (Current)	$145,782	$123,350	$118,416	$113,679	$109,132	$104,767	$100,576
Petroleum Fee (HB 1326)			$1.35	$1.35	$1.35	$1.35	$1.35
Petroleum Revenue (HB 1326)			$199,826	$191,833	$184,160	$176,794	$169,722
Revenue Change			$81,411	$78,154	$75,028	$72,027	$69,146

EXPENDITURES

Section 5.1 of the bill increases the amount that DENR and the Department of Justice can spend on administering the cleanup program from 20% of the Fund to 40% for FY 2001-02. Section 5.2 increases the administrative cap to 45% for FY 2002-03 and section 5.3 returns the cap to 20% in FY 2003-04. The temporary increase will bring funding in line with the expenses originally projected by the two Departments in 1997. When the Dry Cleaning Solvent Cleanup Fund was proposed in 1997, DENR requested $403,401 to fund 10 positions to handle certifications, inspections, assessments, billing, etc. This estimate was based on the department's

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experience with the Underground Storage Tank Program. The Department of Justice also wanted $148,678 for one attorney and two paralegals. In the current fiscal year 1999-2000, DENR is budgeted $118,088 for Dry Cleaning Solvent Cleanup Fund administrative expenses. This budget funds two positions, a hydrogeologist and an environmental scientist, but does not include funding for the legal services provided by the Department of Justice. The increased revenue will allow DENR to reimburse the Department of Justice for attorney services, hire additional staff and contract out for site assessments and other program needs.

The increased revenue from the solvent tax and the sales tax transfer will boost the administrative budget based on the current 20% cap in the present law. The 40% and 45% administrative cap will more than double the allowable expenditures in 2002 and 2003.

	Current law		
	20%	HB 1326	Difference
FY 2000-01	$158,669	$270,711	$112,042
FY 2001-02	$150,973	$515,150	$364,177
FY 2002-03	$143,651	$551,430	$407,779
FY 2003-04	$136,687	$233,194	$96,507
FY 2004-05	$130,062	$221,888	$91,826

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

APPROVED BY:

DATE:

VISITOR REGISTRATION SHEET

SENATE FINANCE — Wednesday, May 24, 2000
Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Stacy Flannery	NCHCFA
Andy Romanet	NCCM.
Chris Edwards	N.C. Assoc. of Launderers & Cleaners
Sam Taylor	"
Tim Shaffer	"
Jenny Shaffer	"
Evelyn C. Romeo	Free clinic Groups 106 Glendale Ave - Hendersonville NC-28739
Arnette Johnson	DMV
Carolyn Treloar	DMV
Addie Avery	DMV
Conn Cover	BPM H/L

VISITOR REGISTRATION SHEET

SENATE FINANCE — Wednesday, May 24, 2000
Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
J Blackburn	County Commrs
Joyce Ridus	
LT B.M. Cross	NCDMV ENF
Catherine Davis	Electricities of NC
James P. Coates	intern Sen. Foxx
Elizabeth Bondurant	" " "
Bruce Nicholson	Div of Waste Mgmt
Lisa Taber	" " " "
Robert Prim	Jordan Price Wall Gray Jones
William L Spencer	NCDOR
Kirk Boone	NC DOR - Prop Tax Div

VISITOR REGISTRATION SHEET

SENATE FINANCE — Wednesday, May 24, 2000
Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Andy Sabol	DOR
Sharon Miller	C.U.C.A.
BRUCE THOMPSON	JUSTICE FOR ANIMALS
Henry Jones	Attorney – Raleigh
Phyllis Rasor	NCVMA
Sharon Williamson	NC Assoc of Non-Profit Homes for Aging
Mona Momeholder	Pozner Small
Mr and Mrs Jeffrey Cooper	Jamesville NC
Lily Fakel	DHHS
Chris Hoke	DHHS
Stephen K Vaughn	DHHS

VISITOR REGISTRATION SHEET

SENATE FINANCE — Wednesday, May 24, 2000
Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Glenn Wells	DHHS
Jan Sears	LA for Rep Snow

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Wednesday, May 24, 2000

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

FAVORABLE

H.B.(CS #1)**519** Henderson Fire Districts
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1)**1153** Retired Physician License
Sequential Referral: None
Recommended Referral: None

S.B. **1190** Carolina Beach Annexation/Streets
Sequential Referral: None
Recommended Referral: None

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

S.B. **1280** Health Care Facility and CCRC Tax Exempt
Draft Number: PCS2831
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 4

Committee Clerk Comment: SB 1190 1280 HB 519 1153

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Thursday, May 25, 2000

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

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

S.B. **1184** Spay/Neuter Program

Draft Number:	PCS7767
Sequential Referral:	None
Recommended Referral:	Appropriations
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment: SB 1184

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Tuesday, May 30, 2000

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

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

H.B.(CS #1)**1326** Dry-Cleaning Solvent Cleanup Amends.

Draft Number:	PCS7356
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment: HB 1326

SENATE FINANCE COMMITTEE

WEDNESDAY, MAY 31, 2000

1:30 PM – ROOM 544

The Senate Finance Committee met on Wednesday, May 31, 2000 at 1:30 PM in Room 544 with Senator Hoyle presiding. There were 24 committee members present. Sara Brown from Cherryville, North Carolina, Elizabeth Stallings from Gastonia, North Carolina and Haddon Mackie also from Gastonia, North Carolina, all sponsored by Senator Hoyle, were introduced as the pages for the Meeting.

HB 723 – Dark Window Inspection Fee

Representative Verla Insko was recognized to explain this bill. After a time of discussion, it was decided that bill would be pulled back and heard at a later time. Copy of Bill and supporting documents included in the minutes.

SB 1363 – Extend Whiteville ETJ

Senator Soles was recognized to explain the bill. After a brief discussion on the bill, Senator Tony Rand moved for a "Favorable Report", motion passed. Copy of the Bill and supporting documents included in the minutes.

SB 1264 – Mount Holly Annexation

Senator Forrester was recognized to explain the bill. After a brief discussion on the bill, Senator Rony Rand moved for a "Favorable Report", motion passed. Copy of the Bill and supporting documents included in the minutes.

SB 1210 – Support Public School Plates

Martha Walston, Committee Attorney, was recognized to explain the bill and the proposed committee substitute which includes SB 1181 – Reduce Legion of Valor Plage Fee, SB 1216-Ducks Unlimited Plates, SB 1262-Omega Psi Phi Special, and SB 1528-Tobacco Heritage Place. Senator Albertson moved for adoption of proposed committee substitute, motion passed. Senator Rand explained his amendment to the bill and moved for adoption of amendment, motion passed. Senator Clodfelter moved for "Favorable Report as Amended", motion passed and bill to be rolled into a new committee substitute. Copy of the Bill and supporting documents included in the minutes.

SB 1200 – Municipal Participation

Senator Gulley was recognized to explain the bill. After numerous questions and comments on the bill, it was decided that bill would be pulled back to be heard later. Senator Hartsell asked that an amendment to the bill be prepared by staff. Copy of Bill and supporting documents included in the minutes.

Meeting adjourned.

David W. Hoyle, Co-Chair

John H. Kerr, III, Co-Chair

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

Visitors' Sign Up Sheet is Attachment #1
Committee Reports are Attachment #2 and #3

AGENDA

SENATE FINANCE COMMITTEE MEETING

Wednesday, May 31, 2000

ROOM 544 – 1:30 PM

Meeting Called to Order – Senator David Hoyle, Presiding

Introduction of Pages

Bills for Consideration:

HB 723 - Dark Window Inspection Fee - Rep. Insko
SB 1197 - Toll Roads – Sen. Gulley
SB 1200 - Municipal Participation – Sen. Gulley
SB 1210 - Support Public School Plates – Sen. Odom
-SB 1216 - Ducks Unlimited Plates – Sens. Phillips, Purcell
-SB 1262 - Omega Psi Phi Special - Sen. Dannelly
-SB 1528 - Tobacco Heritage Plate – Sen. Albertson
-SB 1181 – Reduce Legion of Valor Plate Fee – Sen. Rand
SB 1264 - Mount Holly Annexation – Sen. Forrester
SB 1363 - Extend Whiteville ETJ – Sen. Soles

Adjournment of Meeting

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 5

HOUSE BILL 723
Committee Substitute Favorable 4/22/99
Committee Substitute #2 Favorable 6/24/99
Committee Substitute #3 Reported Without Prejudice 7/1/99
Committee Substitute #4 Favorable 7/8/99

Short Title: Dark Window Inspection Fee. (Public)

Sponsors:

Referred to:

March 30, 1999

A BILL TO BE ENTITLED

AN ACT TO ALLOW A PERSON WHO SUFFERS FROM A MEDICAL CONDITION THAT CAUSES THE PERSON TO BE PHOTOSENSITIVE TO VISIBLE LIGHT TO HAVE A DARKER VEHICLE WINDOW THAN IS ALLOWED UNDER THE WINDOW TINTING LAWS AND TO ELIMINATE THE AFTER-FACTORY WINDOW TINTING INSPECTION FEE FOR VEHICLES OWNED BY PERSONS ISSUED A MEDICAL EXCEPTION PERMIT BY THE DIVISION OF MOTOR VEHICLES ALLOWING THE WINDOW TINTING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-127 reads as rewritten:

"**§ 20-127. Windows and windshield wipers.**

(a) Windshield Wipers. -- A vehicle that is operated on a highway and has a windshield ~~must~~ shall have a windshield wiper to clear rain or other substances from the windshield in front of the driver of the vehicle and the windshield wiper ~~must~~ shall be in good working order. If a vehicle has more than one windshield wiper to clear substances from the windshield, all the windshield wipers ~~must~~ shall be in good working order.

(b) Window Tinting Restrictions. -- A window of a vehicle that is operated on a highway or a public vehicular area ~~must~~ shall comply with this subsection. The

windshield of the vehicle may be tinted only along the top of the windshield and the tinting may not extend more than five inches below the top of the windshield or below the AS1 line of the windshield, whichever measurement is longer. Provided, however, an untinted clear film, which does not obstruct vision but which reduces or eliminates ultraviolet radiation from entering a vehicle may be applied to the windshield. Any other window of the vehicle may be tinted in accordance with the following restrictions:

(1) The total light transmission of the tinted window ~~must~~ shall be at least thirty-five percent (35%). A vehicle window that, by use of a light meter approved by the Commissioner, measures a total light transmission of more than thirty-two percent (32%) is conclusively presumed to meet this restriction.

(2) The light reflectance of the tinted window ~~must~~ shall be twenty percent (20%) or less.

(3) Tinted film or another material used to tint the window ~~must~~ shall be nonreflective and ~~must~~ shall not be ~~a color other than~~ red, yellow, or amber.

(c) Tinting Exceptions. -- The window tinting restrictions in subsection (b) of this section apply without exception to the windshield of a vehicle. The window tinting restrictions in subdivisions (b)(1) and (b)(2) of this section do not apply to any of the following vehicle windows:

(1) A window of an excursion passenger vehicle, as defined in G.S. 20-4.01(27)a.

(2) A window of a for-hire passenger vehicle, as defined in G.S. 20-4.01(27)b.

(3) A window of a common carrier of passengers, as defined in G.S. 20-4.01(27)c.

(4) A window of a motor home, as defined in G.S. 20-4.01(27)d2.

(5) A window of an ambulance, as defined in G.S. 20-4.01(27)f.

(6) The rear window of a property-hauling vehicle, as defined in G.S. 20-4.01(31).

(7) A window of a limousine.

(8) A window of a law enforcement vehicle.

(9) A window of a multipurpose vehicle that is behind the driver of the vehicle. A multipurpose vehicle is a passenger vehicle that is designed to carry 10 or fewer passengers and either is constructed on a truck chassis or has special features designed for occasional off-road operation. A minivan and a pickup truck are multipurpose vehicles.

(10) A window of a vehicle that is registered in another state and meets the requirements of the state in which it is registered.

(11) A window of a vehicle for which the Division has issued a medical exception permit under subsection (f) of this section.

(d) Violations. -- A person who does any of the following commits a misdemeanor of the class set in G.S. 20-176:

(1) Applies tinting to the window of a vehicle that is subject to a safety inspection in this State and the resulting tinted window does not meet the window tinting restrictions set in this section.

(2) Drives on a highway or a public vehicular area a vehicle that has a window that does not meet the window tinting restrictions set in this section.

(e) Defense. -- It is a defense to a charge of driving a vehicle with an unlawfully tinted window that the tinting was removed within 15 days after the charge and the window now meets the window tinting restrictions. To assert this defense, the person charged ~~must~~ shall produce in court, or submit to the prosecuting attorney before trial, a certificate from the Division of Motor Vehicles or the Highway Patrol showing that the window complies with the restrictions.

(f) Medical Exception. -- A person who suffers from a medical condition that causes the person to be photosensitive to visible light may obtain a medical exception permit. To obtain a permit, an applicant shall apply in writing to the Drivers Medical Evaluation Program, have his or her doctor complete the required medical evaluation form provided by the Division, and pay the application fee. The application fee is five dollars ($5.00). The permit shall be valid for five years from the date of issue, unless a shorter time is directed by the Drivers Medical Evaluation Program. The renewal shall require a medical recertification that the person continues to suffer from a medical condition requiring tinting.

A person may receive no more than two medical exception permits that are valid at any one time. A permit issued under this subsection shall specify the vehicle to which it applies, the windows that may be tinted, and the permitted levels of tinting. The permit shall be carried in the vehicle to which it applies when the vehicle is driven on a highway."

Section 2. The Medical Review Branch of the Division of Motor Vehicles shall issue rules and create forms and permits necessary for this program. Until funds for this program are appropriated by the General Assembly, the Medical Review Branch shall manually issue all medical exception permits and shall manually maintain the records related specifically to these permits.

The Division of Motor Vehicles shall add the medical exception described in Section 1 of this act to the STARS program, to allow the computerized issuance of medical exception permits and to allow computerized maintenance of the records related specifically to these permits when it is modifying that computer program for some other purpose.

The Division of Motor Vehicles shall report to the Joint Legislative Transportation Oversight Committee six months after the first medical exception permit is issued on the number of permits issued and the projected additional costs, if any, of operating the program.

Section 3. G.S. 20-183.7(a) reads as rewritten:

"(a) Fee Amount. -- When a fee applies to an inspection of a vehicle or the issuance of an inspection sticker, the fee must be collected. The following fees apply to an inspection of a vehicle and the issuance of an inspection sticker:

Type	Inspection	Sticker
Safety ~~Only, Without After-Factory Tinted Window~~ Only	$ 8.25	$ 1.00
~~Safety Only, With After-Factory Tinted Window~~	~~18.25~~	~~1.00~~
Emissions and Safety ~~Without After-Factory Tinted Window~~	17.00	2.40
~~Emissions and Safety With After-Factory Tinted Window~~	~~27.00~~	~~2.40~~.

The fee for performing an inspection of a vehicle applies when an inspection is performed, regardless of whether the vehicle passes the inspection. The fee for an inspection sticker applies when an inspection sticker is put on a vehicle. The fee for ~~performing an inspection of a vehicle with a~~ inspecting after-factory tinted ~~window~~ windows shall be ten dollars ($10.00), and the fee applies only to an inspection performed with a light meter after a safety inspection mechanic determined that the window had after-factory tint. A safety inspection mechanic shall not inspect an after-factory tinted window of a vehicle for which the Division has issued a medical exception permit pursuant to G.S. 20-127(f).

A vehicle that is inspected at an inspection station and fails the inspection is entitled to be reinspected at the same station at any time within 30 days of the failed inspection without paying another inspection fee."

Section 4. This act becomes effective July 1, 2001.

HOUSE BILL 723:
Dark Window Inspection Fee

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Representative Insko
Date:	May 24, 2000	**Summary by:**	Karen Cochrane Brown
Version:	5th Edition		Committee Co-Counsel

SUMMARY: ***House Bill 723 allows a person who suffers from a medical condition that causes the person to be photosensitive to have a darker windshield than allowed by current law. The bill also eliminates the after-factory window tinting inspection fee for those persons.***

CURRENT LAW & BILL ANALYSIS:

Section 1. Windshield Tinting Restrictions. Under current law, windshields may only be tinted along the top of the windshield and the tinting may not extend more than five inches below the top of the windshield. There are no exceptions to this requirement. HB 723 would allow an untinted clear film that reduces or eliminates ultraviolet light but does not obstruct vision to be placed on the windshield.

Also under current law, windshields must have a total light transmission of at least 35% with a light reflectance of 20% or less. There are, however, exceptions to this requirement for limousines, motor homes, multipurpose vehicles, minivans, and pickup trucks. HB 723 would add to the exceptions those vehicles for which the DMV has issued a medical exception permit.

HB 723 also authorizes the DMV to issue "Medical Exception" permits to persons who suffer from a medical condition that causes the person to be photosensitive. In order to obtain a permit, the person must:

- Apply to the Drivers Medical Evaluation Program
- Have his or her doctor complete the required medical evaluation form.
- Pay an application fee of $5.00.

The permit is valid for five years from the date of issue, unless a shorter time is directed by the Program. In order to renew the permit, the applicant must provide medical recertification that he or she continues to suffer from the condition.

A person may receive no more than two medical exception permits at any one time. A Medical Exception Permit must

- Specify the vehicle to which it applies.
- Specify the windows that may be tinted, and the permitted levels of tinting.
- Be carried in the vehicle to which it applies, and the vehicle must display a medical exception permit sticker.

Section 2 of the bill requires the Medical Review Branch of DMV to implement the program through rule-making. In addition, until funds are appropriated by the General Assembly, the Medical Review Branch is required to manually issue all medical exception permits and to maintain records on those permits. This section also requires DMV to modify its computer system in order to allow for the

computerized issuance of permits when it is modifying that computer program for some other purpose. Finally, DMV is required to report to the Joint Legislative Transportation Oversight Committee six months after issuing the first medical exception permit on the number of permits issued and the additional cost of operating the program.

Section 3 deletes the separate fees for safety and emissions inspections for after-factory tinted windows and provides that the fee for inspecting an after-factory tinted window is $10.00, and the fee only applies to an inspection with a light meter after the inspector determines that the window has an after-factory tint. However, this section prohibits the inspection of an after-factory tinted window for a vehicle having a medical exception permit.

EFFECTIVE DATE: The act becomes effective July 1, 2001.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 723 (Fifth Edition)

SHORT TITLE: Dark Window Inspection Fee

SPONSOR(S): Representative Verla Insko

FISCAL IMPACT

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

	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05
REVENUES					
Highway Fund					
DMV – Medical Permit Fees		$500	$500	$500	$500
EXPENDITURES					
Highway Fund					
DMV	$17,200				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Transportation – Division of Motor Vehicles (DMV)
Department of Health and Human Services

EFFECTIVE DATE: This act is effective July 1, 2001.

BILL SUMMARY:
The act allows persons with photosensitive medical conditions, such as systemic lupus erythematosus, to obtain medical exceptions from the window tinting law. To receive a medical exception permit, a person must complete an application with the Division of Motor Vehicles, pay a $5 application fee, and obtain a doctor's written statement about the photosensitive medical condition that warrants darker window tinting. The medical exception permit is renewed every five years and must be accompanied by a medical recertification. A person may receive no more than two medical exception permits.

BACKGROUND:
Lupus is a chronic, autoimmune disease that causes inflammation of the joints, skin, blood, kidneys and other organ systems. (Autoimmune means the body's immune system mistakenly attacks healthy tissues.) Lupus patients are 90% female who began having symptoms of the disease in their early twenties and thirties. Forty to sixty percent of systemic lupus patients, the

most severe form of the disease, are photosensitive. The sun's UV rays cause the skin of a systemic lupus patient to become red, inflamed and develop a rash.

ASSUMPTIONS AND METHODOLOGY:

REVENUE

The Lupus Foundation of America estimates that 1 out of every 185 Americans has some form of Lupus. Using the North Carolina population age 18 and older of 5,720,050 in 1998, there are 30,919 Lupus sufferers of driving age in the state. Information from the Colorado HealthNet indicates that approximately 30 percent of Lupus sufferers have photosensitivity as a symptom. Based on this figure, there would be an estimated 9,300 persons in North Carolina eligible for the medical exception permit due to Lupus. No information is available on the potential number of persons suffering from other photosensitive medical conditions, but it is expected that Lupus is the most prevalent photosensitive medical condition in the State.

Although there are potentially 9,300 persons eligible for a medical exception permit, data from a 1998 survey conducted by Dr. Laurel Broadhurst in the Department of Health and Human Services suggest only a fraction of this population will apply for the permit. Dr. Broadhurst contacted window-tinting programs in several states, as well as local doctors and national organizations that treat Lupus and other photosensitive diseases. Georgia, a state with a population only 100,000 greater than NC, reported only 120 to 180 permits issued each year. In Pennsylvania, with population 60% larger than NC, Dr. Broadhurst found that only 634 drivers had applied for a medical exemption since 1991. Given this anecdotal data, the Division of Medical Evaluation in the Department of Health and Human Services estimated that only 100 persons per year would apply for this permit. At $5 per permit, this bill raises $500 in revenue for the Highway Fund each year.

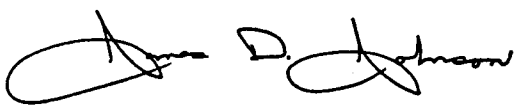
NOTE: Inspection stations will no longer inspect the window tinting of Lupus patients each year and will lose the $10 inspection fee they now receive on these vehicles.

EXPENDITURE

There will be a one-time cost to reprogram the State Title and Registration System (STARS) for the new medical exception permit. For other recently mandated changes in the STARS system, DMV requested $17,200 for 160 hours of software development. The Governor's Recommended Changes to the 2000-2001 State Budget includes a $3.3 million reserve for "continual maintenance and functional modifications" to the STARS system and other DMV computer programs. If the reserve is approved, the programming costs required for this bill could be funded from this source.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic

APPROVED BY: James D. Johnson



DATE: May 19, 2000

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1363

Short Title: Extend Whiteville ETJ. (Local)

Sponsors: Senator Soles.

Referred to: Finance.

May 22, 2000

A BILL TO BE ENTITLED

AN ACT ALLOWING THE CITY OF WHITEVILLE TO EXERCISE EXTRATERRITORIAL JURISDICTION OVER AN AREA EXTENDING TWO MILES FROM ITS LIMITS.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding G.S. 160A-360(a), the City of Whiteville may exercise the powers granted in Article 19 of Chapter 160A of the General Statutes over an area extending not more than two miles beyond its limits.

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

SENATE BILL 1363:
Extend Whiteville ETJ.

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Senator Soles
Date:	May 31, 2000	**Summary by:**	Karen Cochrane Brown
Version:	1st Edition		Committee Co-Counsel

SUMMARY:

Senate Bill 1363 would allow the City of Whiteville to exercise extraterritorial jurisdiction over an area extending two miles beyond its limits.

CURRENT LAW:

Under current law, planning and regulation of development (zoning) powers may be exercised by any city within its corporate limits and within a defined area extending up to one mile beyond its limits. If the city has a population between 10,000 and 25,000, it may exercise these powers over an area extending two miles beyond its limits, with the approval of the board or boards of county commissioners. If the city has a population of more than 25,000, it may exercise these powers over an area extending three miles beyond its limits, also with county approval.

BILL ANALYSIS:

Senate Bill 1363 would authorize the City of Whiteville, which has a population of less than 10,000, to exercise extraterritorial jurisdiction under Article 19 of Chapter 160A, over an area extending two miles beyond its limits.

This act becomes effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 2

SENATE BILL 1264*
State and Local Government Committee Substitute Adopted 5/24/00

Short Title: Mount Holly Annexation. (Local)

Sponsors:

Referred to:

May 17, 2000

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CITY OF MOUNT HOLLY TO ENTER INTO AN ANNEXATION AGREEMENT.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding any applicable provisions of the General Statutes or any other public or local law, the City of Mount Holly is granted certain contract powers as follows:

(1) The City of Mount Holly may, by agreement with the property owner, provide that certain property described in the agreement as the "Riverbend Steam Station Property" and as the "Mountain Island Power House and Dam" (excluding such portion of the dam as may lie in Mecklenburg County) may be voluntarily annexed by the City as set forth in the agreement, and the agreement may provide that, notwithstanding G.S. 160A-31(d) the effective date of such annexation is June 30, 2014. The City of Mount Holly shall not seek the repeal of this act.

(2) Any agreement entered into as provided in subdivision (1) of this section is deemed by this act to be proprietary and commercial in nature and is specifically determined to be consistent with the public policy of the State of North Carolina.

(3) Any agreement entered into as provided in subdivision (1) of this section is a continuing agreement and is binding on and enforceable against the current and future members of the City

Council of the City of Mount Holly during the full term of such agreement and any extension thereof.

(4) The parties to any agreement entered into as provided in subdivision (1) of this section may modify, amend, and extend such agreement on mutual written consent, without the approval of the General Assembly, provided that any such modification or amendment does not materially alter the concept of the agreement.

Section 2. The City of Mount Holly may accept, as consideration for such agreement, such monetary and nonmonetary consideration as may be set forth in said agreement.

Section 3. The agreement under Section 1 of this act allowing for the effective date of such annexation to be June 30, 2014, shall apply to the property as described as follows:

Tract One: Riverbend Steam Station Property. Commencing on NC grid station "45-EG-5", with NC values based on NAD 83 of North 179,784.43 (meters) and East 429,640.17 (meters), and runs thence North 82-13-49 East 1,017.26 feet to a #5 rebar found on the eastern margin of the right-of-way for NC Highway #16; thence North 62-21-20 East 88.42 feet to a #5 rebar found on the northern margin of the right-of-way for Horseshoe Bend Beach Road (S.R. 1912), thence with the northern margin of Horseshoe Bend Beach Road North 37-04-00 East 77.42 feet to an iron pin; thence, continuing with the northern margin of said road, North 40-00-27 East 174.20 feet to a mag. nail, on the north margin of S.R. 1911, thence North 40-01-19 East 39.92 fee. to the POINT OF BEGINNING OF THE FOLLOWING DESCRIBED TRACT O. LAND; and running thence with the center of Steam Station Road (S.R. 1911.), North 49-53-46 West 900.22 feet to a railroad spike; thence, leaving said road and running thence, North 26-18 West 900.5 feet to an iron pin; thence North 48-24 East passing through an iron pin at a distance of 1,062.2 feet and continuing for a total distance of 1,165.2 feet to an iron pin; thence North 16-38 East passing through an iron pipe at a distance of 538 feet and continuing for a total distance of 708 feet to a point in the Catawba River; thence South 82-22 East 827.1 feet to a point; thence North 38-52 East 1,362.6 feet to a point in the Catawba River; thence North 62-21 East 605.5 feet to a point in the Catawba River; thence North 42-38 East 896.8 feet to a point on the southern edge of the Catawba River; thence with the southern edge of Mountain Island Lake and the boundary of Duke Power Company's Riverbend Steam Station project at contour elevation 647.5 feet in a northeasterly and then a southeasterly direction as it meanders 6,200 feet more or less to an iron pin on the corner of Crescent Land and Timber Corp. (now or formerly); thence South 12-07 West 2,010.6 feet to a PK nail in the center of the right-of-way of Horseshoe Bend Beach Road (S. R. 1912); thence with the center of S. R. 1912 in a generally westerly direction the following bearings and distances: (1) North 67-12 West 100 feet; (2) North 70-35 West 180.4 feet; (3) North 71-53 West 217.8 feet; (4) North 74-40 West 100 feet; (5) North 81-40 West 100 feet; (6) North 86-20 West 109.5 feet; (7) North 87-08 West 364.4 feet; (8) North 87-37 West 820.5 feet; (9) South 86-57 west 201.4 feet; (10) South 79-42 West 322.8 feet to a point; thence leaving the center of said road

and running thence around the edge of Henderson Cemetery the following bearings and distances: (1) North 5-00 West 221.2 feet; (2) North 5-01 West 117 feet; (3) South 86-00 West 150 feet to an iron pin; (4) South 5-00 East passing through an iron at 192.5 feet and continuing for a total distance of 343.4 feet to a point in the center of the right-of-way of S. R. 1912; thence with the center of S. R. 1912 the following bearings and distances: (1) North 88-22 West 231.8 feet to a point; (2) with the centerline of said S. R. 1912 as it meanders in a westerly direction 1,950 feet to PK nail found being the corner of StoneWater Bay Properties, LLC(Deed Book 2920 at Page 296); thence leaving the centerline of said road North 59-38-41 East 38-86 feet to an iron pin set; thence with the northern edge of the right-of-way for Horseshoe Bend Beach Road (S. R. 1912) the following courses and distances: (1) North 80-17-32 West 177.48 feet to an iron pin set; (2) North 80-32-11 West 50.39 feet to an iron pin; (3) North 82-02-01 West 51.13 feet to an iron pin set; (4) North 86-02-08 West 52.3 feet to an iron pin set; (5) South 87-07-14 West 53.62 feet; (6) South 77-28-52 West 54.29 feet; (7) South 67-06-31 West 54.46 feet; (8) South 57-02-33 West 53.66 feet; (9) South 50-14-46 West 52.58 feet; (10) South 45-03-23 West 51.59 feet; (11) South 42-43-08 West 50.81 feet; (12) South 41-19-06 West 100.34 feet; (13) South 40-01-19 West 2,120.87 feet to the POINT OF BEGINNING. This description taken from a Duke Power Company plat of property entitled "Riverbend Steam Station" Gaston County, North Carolina, dated April 14, 1997, reference Mountain Island File No. 187. Further reference is made to the plat of StoneWater Bay Properties, LLC recorded in Plat Book 55 at Pages 51 and 52 of the Gaston County Registry and an unrecorded survey by CBS Surveying and Mapping dated April 26, 2000.

Tract Two: Mountain Island Power House and Dam (excluding such portion as may lie in Mecklenburg County)

That land upon which is located the Mountain Island Power House and the Mountain Island Dam Facility, excluding such portion of the same which may be located in Mecklenburg County further described as follows:

TO LOCATE THE POINT OF BEGINNING commence at NCGS Grid Coordinates N = 582154.3333 and E = 1409384.3310; said grid coordinates being also located on the easterly bank of the Catawba River in a southwest boundary of the property owned (now or formerly) by Crescent Resources, Inc. as described in Deed Book 1598 at Page 489 and Deed Book 3146 at Page 175 (Mecklenburg County Registry); thence crossing the River S. 71-19-34 W. 656.97 feet to a point on the westerly bank of the Catawba River at NCGS Grid Coordinates N = 581374.9684 and E = 1410492.3466; thence along the westerly bank of the Catawba River the following two (2) courses and distances: (1) N. 34-32-43 W. 476.50 feet to a point; and (2) N. 51-54-56 W. 533.39 feet to the POINT OR PLACE OF BEGINNING; thence from said point of Beginning N. 40-10-36 E. 356.33 feet to a point lying within the Catawba River in the Gaston-Mecklenburg County line; thence with the Gaston-Mecklenburg County line N. 61-29-02 W. 281.16 feet to a point in said County line; thence S. 65-19-02 W 1,577.62 feet to a point in the westerly boundary of Mountain Island Lake; thence S. 23-52-18 W. 360.47 feet to a concrete monument; thence S. 73-36-39 E. 547.44 feet to a point; thence N. 71-01-21 E. 534.95 feet to a concrete monument;

thence N. 79-46-34 E. 284.00 feet to a concrete monument; thence N. 25-31-06 E. 441.61 feet to a concrete monument; thence N. 40-10-36 E. 148.88 feet to the POINT OR PLACE OF BEGINNING containing 22.77 acres, more or less, as shown on that map entitled "Duke Power Company Addition to Mountain Island Steam Station" prepared by the Duke Power Real Estate Department and dated January 9, 1991, last revised June 10, 1993, reference to which survey is hereby made.

Section 4. No portion of the Riverbend Steam Station Property as described in Section 3 of this act and no portion of the Mountain Island Power House and Dam described in Section 3 of this act shall be subject to involuntary annexation, or designation as an urban tax district or otherwise subjected to the power of a municipal taxing authority by the City of Mount Holly or any other town or municipality or consolidated government, if provided under the terms of said agreement as referred to in Section 1 of this act.

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

SENATE BILL 1264:
Mount Holly Annexation

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Senator Forrester
Date:	May 31, 2000	**Summary by:**	Karen Cochrane Brown
Version:	2d Edition		Committee Co-Counsel

SUMMARY:

Senate Bill 1264 permits the City of Mount Holly to enter into a voluntary annexation agreement with the owner of Riverbend Steam Station and Mountain Island Power House and Dam, (excluding such portions as may lie in Mecklenburg County) under which those properties are annexed into the city effective June 30, 2014.

BILL ANALYSIS:

This bill grants the City of Mount Holly certain contract powers, allowing it to enter an agreement with owners of certain described property, whereby the property may be annexed by the city effective June 30, 2014. The City of Mount Holly shall not seek the repeal of this act.

The agreement is proprietary and commercial and is determined to be consistent with the public policy of the State. The agreement is also binding and enforceable against the current and future members of the City Council.

The parties, with mutual written consent, may modify, amend, r extend the agreement without the approval of the General Assembly as long as the changes do not materially alter the agreement's concept.

The City of Mount Holly may accept, as consideration for the agreement, such monetary and nonmonetary consideration as specified in the agreement.

No portion of the property described in the agreement shall be subject to involuntary annexation, or designation as an urban tax district or otherwise subjected to the power of a municipal taxing authority, if provided under the terms of the agreement.

This act becomes effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 1264 (Second Edition)

SHORT TITLE: Mount Holly Annexation

SPONSOR(S): Sen. Forrester

DRAFT

FISCAL IMPACT

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

	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05
REVENUES					
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:					

EFFECTIVE DATE: June 30, 2014

BILL SUMMARY: This bill authorizes the city of Mount Holly to enter into an annexation agreement with the owner of the property described as the "Riverbend Steam Station Property" and the "Mountain Island Power House and Dam"(excluding such portion of the dam as may lie in Mecklenburg County). These properties may be voluntarily annexed by the city as set forth in the Agreement, and the agreement may provide that, notwithstanding G.S. 160A-31 (d) the effective date of such annexation is June 30, 2014.

ASSUMPTIONS AND METHODOLOGY: This legislation authorizes the city of Mount Holly to annex the Riverbend Steam Station and Mountain Island Power House properties upon the agreement of the landowner. This legislation is not effective until June 30, 2014. Additionally, this bill is permissive, and merely grants Mount Holly the authority to annex the property. They may or may not choose to exercise this authority. Therefore, there is no fiscal impact within the next five year period.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic and Eugene Son (Research Assistant)

APPROVED BY:

DATE: May 30,2000

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1210

Short Title: Support Public School Plates. (Public)

Sponsors: Senator Odom.

Referred to: Finance.

May 11, 2000

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE "SUPPORT PUBLIC SCHOOLS" SPECIAL REGISTRATION PLATES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-79.4(b) reads as rewritten:

"(b) Types. -- The Division shall issue the following types of special registration plates:

. . .

(45a) Support Public Schools Plates. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear a picture representing an old-time one-room schoolhouse and shall bear the words: "Support Our Public Schools."

Section 2. G.S. 20-79.7(a) reads as rewritten:

"(a) Fees. -- Upon request, the Division shall provide and issue free of charge one registration plate to a recipient of the Congressional Medal of Honor, a 100% disabled veteran, and an ex-prisoner of war. All other special registration plates are subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

Special Plate	Additional Fee Amount
Historical Attraction	$30.00
State Attraction	$30.00
Collegiate Insignia	$25.00
Olympic Games	$25.00
Special Olympics	$25.00

March of Dimes	$20.00
Scenic Rivers	$20.00
School Technology	$20.00
Soil and Water Conservation	$20.00
Support Public Schools	$20.00
Wildlife Resources	$20.00
Personalized	$20.00
Active Member of the National Guard	None
Purple Heart Recipient	None
All Other Special Plates	$10.00."

Section 3. G.S. 20-79.7(b) reads as rewritten:

"(b) Distribution of Fees. -- The Special Registration Plate Account and the Collegiate and Cultural Attraction Plate Account are established within the Highway Fund. The Division must credit the additional fee imposed for the special registration plates listed in subsection (a) among the Special Registration Plate Account (SRPA), the Collegiate and Cultural Attraction Plate Account (CCAPA), and the Natural Heritage Trust Fund (NHTF), which is established under G.S. 113-77.7, as follows:

Special Plate	SRPA	CCAPA	NHTF
Historical Attraction	$10	$20	0
In-State Collegiate Insignia	$10	$15	0
Out-of-state Collegiate Insignia	$10	0	$15
Personalized	$10	0	$10
Special Olympics	$10	$15	0
Olympic Games	$10	$15	0
State Attraction	$10	$20	0
March of Dimes	$10	$10	0
Scenic Rivers	$10	$10	0
School Technology	$10	$10	0
Soil and Water Conservation	$10	$10	0
Support Public Schools	$10	$10	0
Wildlife Resources	$10	$10	0
All other Special Plates	$10	0	0."

Section 4. G.S. 20-81.12 is amended by adding a new subsection to read:

"(b9) Support Public Schools Plates. The Division must receive 300 or more applications for a Support Public School plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Support Public Schools plates to the Fund for the Reduction of Class Size in Public Schools created pursuant to G.S. 115C-472.10."

Section 5. Chapter 115C of the General Statutes is amended by adding a new Article to read:

"ARTICLE 32C.

"Fund for the Reduction of Class Size in Public Schools.

"**§ 115C-472.10. Establishment of the Fund for the Reduction of Class Size in Public Schools.**

(a) There is established under the control and direction of the State Board of Education the Fund for the Reduction of Class Size in Public Schools. This fund shall be a nonreverting special revenue fund consisting of moneys credited to it under G.S. 20-81.18(b9) from the sale of special registration plates to support the public schools.

(b) The State Board of Education shall allocate funds in the Fund for the Reduction of Class Size in Public Schools to local school administrative units to reduce class size in public schools."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 1210
Proposed Committee Substitute S1210-CSLA-001
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Special Registration Plates. (Public)

Sponsors:

Referred to: Finance.

May 11, 2000

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE "SUPPORT PUBLIC SCHOOLS" SPECIAL REGISTRATION PLATES, "DUCKS UNLIMITED" SPECIAL REGISTRATION PLATES, OMEGA PSI PHI FRATERNITY SPECIAL REGISTRATION PLATES, AND TOBACCO HERITAGE SPECIAL REGISTRATION PLATES; TO CREATE THE FUND FOR THE REDUCTION OF CLASS SIZE IN PUBLIC SCHOOLS; AND TO REMOVE THE SPECIAL REGISTRATION PLATE ACCOUNT FEE FROM THE LEGION OF VALOR SPECIAL REGISTRATION PLATE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-79.4(b)(13a) is recodified as G.S. 20-79.4(b)(13b).

Section 2. .S. 20-79.4(b) amended by adding the following new subdivisions to read:

"(b) Types. -- The Division shall issue the following types of special registration plates:

. . .

(13a) Ducks Unlimited. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the logo of Ducks Unlimited, Inc., and shall bear the words: 'Ducks Unlimited'.

. . .

(29a) Omega Psi Phi Fraternity. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the fraternity's symbol and name.

. . .

(45a) Support Public Schools. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear a picture representing an old-time one-room schoolhouse and shall bear the words: 'Support Our Public Schools'.

. . .

(45b) Tobacco Heritage. -- Issuable to the registered owner of a motor vehicle. The plate shall bear a picture of a tobacco leaf and plow. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate."

Section 3. G.S. 20-79.7(a) reads as rewritten:

"(a) Fees. -- Upon request, the Division shall provide and issue free of charge one registration plate to a recipient of the Congressional Medal of Honor, a 100% disabled veteran, and an ex-prisoner of war. All other special registration plates are subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

Special Plate	Additional Fee Amount
Historical Attraction	$30.00
State Attraction	$30.00
Collegiate Insignia	$25.00
Olympic Games	$25.00
Special Olympics	$25.00
Ducks Unlimited	$20.00
March of Dimes	$20.00
Omega Psi Phi Fraternity	$20.00
Scenic Rivers	$20.00
School Technology	$20.00
Soil and Water Conservation	$20.00
Support Public Schools	$20.00
Wildlife Resources	$20.00
Personalized	$20.00
Active Member of the National Guard	None
Legion of Valor	None

Purple Heart Recipient None
All Other Special Plates $10.00."

Section 4. G.S. 20-79.7(b) reads as rewritten:

"(b) Distribution of Fees. -- The Special Registration Plate Account and the Collegiate and Cultural Attraction Plate Account are established within the Highway Fund. The Division must credit the additional fee imposed for the special registration plates listed in subsection (a) among the Special Registration Plate Account (SRPA), the Collegiate and Cultural Attraction Plate Account (CCAPA), and the Natural Heritage Trust Fund (NHTF), which is established under G.S. 113-77.7, as follows:

Special Plate	SRPA	CCAPA	NHTF
Historical Attraction	$10	$20	0
In-State Collegiate Insignia	$10	$15	0
Out-of-state Collegiate Insignia	$10	0	$15
Personalized	$10	0	$10
Special Olympics	$10	$15	0
Olympic Games	$10	$15	0
State Attraction	$10	$20	0
Ducks Unlimited	$10	$10	0
March of Dimes	$10	$10	0
Omega Psi Phi Fraternity	$10	$10	0
Scenic Rivers	$10	$10	0
School Technology	$10	$10	0
Soil and Water Conservation	$10	$10	0
Support Public Schools	$10	$10	0
Wildlife Resources	$10	$10	0
All other Special Plates	$10	0	0."

Section 5. G.S. 20-81.12 is amended by adding the following new subsections to read:

"(b12) Support Public Schools Plates. -- The Division must receive 300 or more applications for a Support Public Schools plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Support Public Schools plates to the Fund for the Reduction of Class Size in Public Schools created pursuant to G.S. 115C-472.10.

(b13) Ducks Unlimited Plates. -- The Division must receive 300 or more applications for a Ducks Unlimited plate and receive any necessary licenses from Ducks Unlimited, Inc., for use of their logo before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Ducks Unlimited plates to the Wildlife Resources Commission to be used to support

the conservation programs of Ducks Unlimited, Inc., in this State.

(b14) Omega Psi Phi Fraternity Plates. -- The Division must receive 300 or more applications for an Omega Psi Phi Fraternity plate and receive any necessary licenses, without charge, from Omega Psi Phi Fraternity, Incorporated, before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Omega Psi Phi Fraternity plates to the United Negro College Fund, Inc. through the Winston-Salem Area Office for the benefit of UNCF colleges in this State."

Section 6. Chapter 115C of the General Statutes is amended by adding a new Article to read:

"ARTICLE 32C.

"Fund for the Reduction of Class Size in Public Schools.

"**§ 115C-472.10. Establishment of the Fund for the Reduction of Class Size in Public Schools.**

(a) There is established under the control and direction of the State Board of Education the Fund for the Reduction of Class Size in Public Schools. This fund shall be a nonreverting special revenue fund consisting of moneys credited to it under G.S. 20-81.12(b12) from the sale of special registration plates to support the public schools.

(b) The State Board of Education shall allocate funds in the Fund for the Reduction of Class Size in Public Schools to local school administrative units to reduce class size in public schools."

Section 7. This act is effective when it becomes law.

SENATE BILL 1210
SPECIAL REGISTRATION PLATES

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Sen. Odom
Date:	May 31, 2000	**Summary by:**	Martha K. Walston, Staff Attorney
Version:	Proposed Committee Substitute		

SUMMARY: ***The proposed committee substitute for Senate Bill 1210 is a combination of bills that have been introduced during the Short Session to authorize the Division of Motor Vehicles to issue special registration plates. Each plate may be issued to a registered owner of a motor vehicle who pays the regular registration fee plus an additional fee. The Division must receive at least 300 applications for each plate before it can issue the plate.***

The proposed committee substitute also removes the additional fee on a Legion of Valor special registration plate. This plate does not require 300 applications.

The bill is effective when it becomes law.

- ***SB 1181, introduced by Sen. Rand, removes the additional fee for a Legion of Valor Plate.***
- ***SB 1210, introduced by Sen. Odom, authorizes issuance of "Support Public Schools" Plates for an additional $20 fee.***
- ***SB 1216, introduced by Sen. Phillips and Purcell, authorizes issuance of "Ducks Unlimited" Plates for an additional $20 fee.***
- ***SB 1262, introduced by Sen. Dannelly, authorizes issuance of Omega Psi Phi Fraternity Plates for an additional $20 fee.***
- ***SB 1528, introduced by Sen. Albertson, authorizes issuance of Tobacco Heritage Plates for an additional $10 fee.***

CURRENT LAW: Upon request, the Division of Motor Vehicles may issue special registration plates. There are currently more than 54 special registration plates. These special plates include the following military plates: Bronze Star Recipient, Combat Veteran, Disabled Veteran, Distinguished Flying Cross, 82nd Airborne Division Association Member, Legion of Valor, Military Reservist, National Guard Member, Partially Disabled Veteran, Pearl Harbor Survivor, Prisoner of War, Purple Heart Recipient, Silver Star Recipient, Veterans of Foreign Wars, and Vietnam Veteran. During the 1999 Session the General Assembly also passed legislation authorizing special registration plates for Retired Highway Patrol, Kids First, International Association of Fire Fighters, University Health Systems of Eastern Carolina, and Animal Lovers.

The cost of a special registration plate is the regular registration fee plus an additional fee of at least $10. The first $10 of every additional fee amount is credited to the Special Registration Plate Account. The remainder of the additional fee, if any, is transferred quarterly to the appropriate organization named in the statute. After deducting the costs of the plates from the Special Registration Plate Account, the money in the Account is distributed as follows:

AMOUNT	PURPOSE
$525,000 distributed annually	Operating assistance for certain Visitor Centers
33% distributed quarterly	Dept. of Commerce for advertising the promotion of travel and industrial development in the State
50% distributed quarterly	Dept. of Transportation for beautification of highways
17% distributed quarterly	Dept. of Health and Human Services to promote travel accessibility for disabled persons.

This uniform system of fees has been in place since 1991 when a study commission recommended that the special registration plate system be simplified through a uniform fee schedule. The only exceptions to the general rule are for plates issued to a recipient of the Congressional Medal of Honor, a 100% disabled veteran, an ex-prisoner of war, an active member of the National Guard, and a recipient of the Purple Heart award. Recipients of the Congressional Medal of Honor, a 100% disabled veteran, and an ex-prisoner of war may receive, upon request, one free registration plate.

BILL ANALYSIS: The proposed committee substitute for Senate Bill 1210 authorizes the Division of Motor Vehicles to issue the following special plates:

- **Support Public Schools Plates** – to registered owner of a motor vehicle for a $20 additional fee. $10 of the fee goes to the Special Registration Plate Account. The remaining $10 is transferred from the Collegiate and Cultural Attraction Plate Account to the newly created Fund for the Reduction of Class Size in Public Schools. The State Board of Education will allocate the money in the new Fund to local school administrative units to reduce class size in public schools. The plate will bear a picture of an old-time one-room schoolhouse and the words "Support Our Public Schools".
- **Ducks Unlimited Plates** – to registered owner of a motor vehicle for a $20 additional fee. $10 of this fee will go to Special Registration Plate Account. The remaining $10 will go to the Wildlife Resources Commission to support conservation programs of Ducks Unlimited, Inc., in the State. The plate will bear Ducks Unlimited, Inc. logo and words "Ducks Unlimited".
- **Omega Psi Phi Fraternity Plates** – to registered owner of a motor vehicle for a $20 additional fee. $10 of the fee goes to the Special Registration Plate Account. The remaining $10 goes to the United Negro College Fund, Inc. through the Winston-Salem Area Office for benefit of UNCF colleges in this State. The plate will bear the fraternity's symbol and name.
- **Tobacco Heritage Plates** – to registered owner of a motor vehicle for a $10 additional fee. This fee will go to the Special Registration Plate Account. The plate will bear a picture of a tobacco leaf and plow.

The proposed committee substitute also removes the $10 additional fee required for Legion of Valor special registration plates. Under current law, this plate is issuable to a recipient of one of the following military decorations: the Congressional Medal of Honor, the Distinguished Service Cross, the Navy Cross, or the Air Force Cross. The plate bears the emblem and name of the recipient's decoration. Current law allows a recipient of the Congressional Medal of Honor to receive one free registration plate.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 1210 (Senate Finance Committee Substitute)

SHORT TITLE: Special Registration Plates

SPONSOR(S): Sen. Odom

FISCAL IMPACT

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

	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05
REVENUES					
Highway Fund Special Reg. Plate Account	$12,000	$12,000	$12,000	$12,000	$12,000
State Board of Education	$3,000	$3,000	$3,000	$3,000	$3,000
Wildlife Resources Commission	$3,000	$3,000	$3,000	$3,000	$3,000
United Negro College Fund	$3,000	$3,000	$3,000	$3,000	$3,000
EXPENDITURES	$4,672	$4,272	$4,272	$4,272	$4,272

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Transportation, Division of Motor Vehicles, State Board of Education, Wildlife Resources Commission, and United Negro College Fund

EFFECTIVE DATE: When it becomes law.

BILL SUMMARY: The legislation authorizes the Division of Motor Vehicles (DMV) to issue the following special registration plates:

- **"Support Public Schools"** plate to the registered owner of a motor vehicle for a $20 additional fee. $10 goes to the Special Registration Plate Account. The

remaining $10 is transferred from the Collegiate and Cultural Attraction Plate Account to the newly created Fund for the Reduction of Class Size in Public Schools. The State Board of Education will allocate the money in the new Fund to local school administrative units to reduce class size in public schools. The plate will bear a picture of an old-time one-room schoolhouse and the words "Support Our Public Schools".

- **"Ducks Unlimited"** plate to the registered owner of a motor vehicle for a $20 additional fee. $10 will go into the Special Registration Plate Account. The remaining $10 will go to the Wildlife Resources Commission to support conservation programs of Ducks Unlimited Inc. in North Carolina. The plate will bear the words "Ducks Unlimited" and the organization's logo.
- **"Omega Psi Phi Fraternity"** plate to the registered owner of a motor vehicle for an additional $20 fee. $10 goes to the Special Registration Plate Account. The remaining $10 goes to the United Negro College Fund, Inc. for the benefit of colleges within the state. The plate will bear the fraternity's name and symbol.
- **"Tobacco Heritage"** plate to the registered owner of a motor vehicle for an additional $10 fee. This fee will go to the Special Registration Plate Account. The plate will bear a picture of a tobacco leaf and plow.

Each plate may be issued to a registered owner of a motor vehicle who pays the regular registration fee plus the additional fee. The DMV must receive at least 300 applications for each plate before it becomes law. The bill is effective when it becomes law.

ASSUMPTIONS AND METHODOLOGY:

In addition to the normal $20 registration fee that every owner of a private passenger vehicle pays, there is a $20 additional fee for the "Support Public Schools", "Ducks Unlimited", and "Omega Psi Phi" special registration plates. There is an additional $10 fee for the "Tobacco Heritage" plates. Because there is no way to determine how many plates will be requested, this fiscal note assumes the issuance of the minimum 300 license plates in FY 2000-01. As a result, the bill raises a total of $21,000 [($20 x 900 plates) + ($10 x 300 plates)]. $12,000 of this amount goes to the Special Registration Plate Account. $3,000 is distributed to each of the organizations outlined in the statute. The note assumes that the plates that are issued in FY 2000-01 will be renewed in following years.

According to the Division of Motor Vehicles, there is a one-time cost of approximately $100 to design a new plate. There is also a production cost of approximately $3.56 per plate. The total production cost for 1,200 plates is $4,272. Including the design costs, the total cost for 1,200 plates in the first year is $4,672.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic and Eugene Son (Research Assistant)

APPROVED BY:

DATE: May 30, 2000

TYPE OF PLATE	ADDITIONAL FEE DUE	#ACTIVE PLATES 07/01/98	#ACTIVE PLATES 07/01/99	#ACTIVE PLATES 05/01/00
82nd Airborne	$10.00	0	337	624
Air Force Reserve	$10.00	133	140	150
Amateur Radio	$10.00	2,332	2,916	3,023
Antique	$10.00	1,786	2,093	2,310
American Legion	$10.00	0	371	381
Amran Temple	$10.00	377	376	362
Animal Lovers	$20.00			596
Army Reserve	$10.00	301	318	316
Appalachian State University	$25.00	672	766	885
A & T State University	$25.00			523
Bronze Star	$10.00			286
Civil Air Patrol	$10.00	74	73	75
Citizens Band Radio	$10.00	38	26	23
Coast Guard Auxiliary	$10.00	74	73	73
Coast Guard Reserve	$10.00	44	49	53
Clemson University	$25.00	583	634	696
Congressional Medal of Honor	Free	4	3	3
Clerk of Superior Court	$10.00	73	77	79
Consular Corps	$10.00	2	2	1
Court of Appeals	$10.00			18
Disabled Veteran	Free	3,725	3,833	4,003
[illegible]nguished Flying Cross	$10.00			113
[illegible]Dept of Transportation	$10.00	46	45	48
NC District Attorney	$10.00	23	22	23
Duke University	$25.00	645	638	659
East Carolina University	$25.00	675	700	750
Fireman	$10.00	1,383	1,560	1,741
Fraternal Order of Police	$10.00	705	1,033	1,273
Fireman/Rescue	$10.00	525	605	704
Friends of Great Smoky Mtns	$30.00			1,216
Horseless Carriage	$10.00	618	649	682
Historic Lighthouse	$30.00	937	1,405	1,732
NC House	$10.00	175	189	184
NC Judicial	$10.00	306	327	297
Knights of Columbus	$10.00	366	375	387
Legion of Valor	$10.00	20	22	23
NC Magistrate	$10.00	241	317	336
Marine Corps Reserve	$10.00	85	77	87
Masonic Temple	$10.00	642	918	1,111
Naval Reserve	$10.00	176	178	158
National Guard (assigned)	None	1,146	1,113	1,059
Native American	$10.00			874
NC State University	$25.00	2,105	2,255	2,442
National Guard (unassigned)	None	885	885	879
North Carolina Central Univ.	$25.00			245
[illegible]s Temple	$10.00	945	930	930

TYPE OF PLATE	ADDITIONAL FEE DUE	#ACTIVE PLATES 07/01/98	#ACTIVE PLATES 07/01/99	#ACTIVE PLATES 05/01/00
State Gov't Official	$10.00	91	87	80
Olympic Spirit	$25.00	205	175	153
Carolina Panthers	$10.00	708	1,056	1,205
Pembroke University	$25.00	207	202	200
Partially Disabled Veteran	$10.00	97	89	95
Pearl Harbour Survivor	$10.00	206	196	185
Purple Heart Veteran	None	2,813	3,186	3,340
Prisioner of War	Free	833	803	757
Retired Air Force	$10.00	1,193	1,241	1,303
Retired Army	$10.00	1,472	1,547	1,608
Retired Clerk of Court	$10.00	1	5	6
Retired Coast Guard	$10.00			77
Retired Highway Patrol	$10.00			654
Rescue Squad	$10.00	270	297	305
Retired Marine	$10.00	981	1,052	1,097
Retired Navy	$10.00	508	560	595
Retired National Guard	$10.00	353	396	422
Register of Deeds	$10.00	58	54	57
Retired Sheriff	$10.00	34	59	60
Sons of Confederate Veterans	$10.00	866	1,518	2,293
NC Senate	$10.00	73	72	65
Sheriff	$10.00	58	78	84
Silver Star	$10.00			128
Supreme Court Judge	$10.00			10
Square Dance Club	$10.00	549	528	500
Street Rod	$10.00	1	2	2
Sudan Temple	$10.00	1,097	1,100	1,105
UNC-Charlotte	$25.00	296	373	403
UNC-Chapel Hill	$25.00	3,276	3,507	3,689
UNC-Wilmington	$25.00	304	389	421
US District Attorney	$10.00	0	0	0
US House	$10.00	13	9	9
US Marshal	$10.00	0	0	1
US Supreme Court Judge	$10.00	1	1	1
US Senate	$10.00	1	3	3
Vietnam Veterans	$10.00	0	1,025	1,640
Van Pool	None	25	22	20
Wake Forest University	$25.00	633	672	695
Wildlife Resources	$20.00	0	950	1,057
Winston Salem State University	$25.00	0	294	334
		40,090	47,878	57,092

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1216

Short Title: Ducks Unlimited Plates. (Public)

Sponsors: Senators Phillips, Purcell; Albertson, Ballance, Carpenter, Cooper, Dalton, Dannelly, East, Foxx, Garrou, Garwood, Hagan, Horton, Hoyle, Jordan, Kerr, Kinnaird, Lucas, Martin of Pitt, Rand, Robinson, Shaw of Guilford, Warren, Weinstein, and Wellons.

Referred to: Finance.

May 11, 2000

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE "DUCKS UNLIMITED" SPECIAL REGISTRATION PLATES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-79.4(b)(13a) is recodified as G.S. 20-79.4(b)(13b).

Section 2. G.S. 20-79.4(b) is amended by adding a new subdivision to read:

"(13a) Ducks Unlimited Plates. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the logo of Ducks Unlimited, Inc., and shall bear the words: "Ducks Unlimited"."

Section 3. G.S. 20-79.7(a) reads as rewritten:

"(a) Fees. -- Upon request, the Division shall provide and issue free of charge one registration plate to a recipient of the Congressional Medal of Honor, a 100% disabled veteran, and an ex-prisoner of war. All other special registration plates are subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

Special Plate	Additional Fee Amount
Historical Attraction	$30.00
State Attraction	$30.00
Collegiate Insignia	$25.00

Olympic Games	$25.00
Special Olympics	$25.00
Ducks Unlimited	$20.00
March of Dimes	$20.00
Scenic Rivers	$20.00
School Technology	$20.00
Soil and Water Conservation	$20.00
Wildlife Resources	$20.00
Personalized	$20.00
Active Member of the National Guard	None
Purple Heart Recipient	None
All Other Special Plates	$10.00."

Section 4. G.S. 20-79.7(b) reads as rewritten:

"(b) Distribution of Fees. -- The Special Registration Plate Account and the Collegiate and Cultural Attraction Plate Account are established within the Highway Fund. The Division must credit the additional fee imposed for the special registration plates listed in subsection (a) among the Special Registration Plate Account (SRPA), the Collegiate and Cultural Attraction Plate Account (CCAPA), and the Natural Heritage Trust Fund (NHTF), which is established under G.S. 113-77.7, as follows:

Special Plate	SRPA	CCAPA	NHTF
Historical Attraction	$10	$20	0
In-State Collegiate Insignia	$10	$15	0
Out-of-state Collegiate Insignia	$10	0	$15
Personalized	$10	0	$10
Special Olympics	$10	$15	0
Olympic Games	$10	$15	0
State Attraction	$10	$20	0
Ducks Unlimited	$10	$10	0
March of Dimes	$10	$10	0
Scenic Rivers	$10	$10	0
School Technology	$10	$10	0
Soil and Water Conservation	$10	$10	0
Wildlife Resources	$10	$10	0
All other Special Plates	$10	0	0."

Section 5. G.S. 20-81.12 is amended by adding a new subsection to read:

"(b13) Ducks Unlimited Plates. -- The Division shall receive 300 or more applications for a Ducks Unlimited plate and receive any necessary licenses from Ducks Unlimited, Inc., for use of their logo before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Ducks Unlimited plates to the Wildlife Resources Commission to be used to support the conservation programs of Ducks Unlimited, Inc., in this State."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1262

Short Title: Omega Psi Phi Special Plate. (Public)

Sponsors: Senators Dannelly; Albertson, Ballance, Lee, Lucas, Martin of Guilford, Odom, Plyler, Soles, and Warren.

Referred to: Finance.

May 16, 2000

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE OMEGA PSI PHI FRATERNITY SPECIAL LICENSE PLATES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-81.12 is amended by adding a new subsection to read:

"(b12) Omega Psi Phi Fraternity Plates. -- The Division may not issue an Omega Psi Phi Fraternity special plate unless it receives 300 or more applications for the plate and Omega Psi Phi Fraternity, Incorporated licenses, without charge, the State to develop a plate bearing the fraternity's symbol and name."

Section 2. G.S. 20-79.7(a) reads as rewritten:

"(a) Fees. -- Upon request, the Division shall provide and issue free of charge one registration plate to a recipient of the Congressional Medal of Honor, a 100% disabled veteran, and an ex-prisoner of war. All other special registration plates are subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

Special Plate	Additional Fee Amount
Historical Attraction	$30.00
State Attraction	$30.00
Collegiate Insignia	$25.00
Kids First	$25.00
Olympic Games	$25.00
Special Olympics	$25.00
University Health Systems of	

Eastern Carolina	$25.00
Animal Lovers	$20.00
March of Dimes	$20.00
Scenic Rivers	$20.00
School Technology	$20.00
Soil and Water Conservation	$20.00
Wildlife Resources	$20.00
Personalized	$20.00
Omega Psi Phi Fraternity	$10.00
Active Member of the National Guard	None
Purple Heart Recipient	None
All Other Special Plates	$10.00."

Section 3. G.S. 20-79.7(b) reads as rewritten:

"(b) Distribution of Fees. -- The Special Registration Plate Account and the Collegiate and Cultural Attraction Plate Account are established within the Highway Fund. The Division must credit the additional fee imposed for the special registration plates listed in subsection (a) among the Special Registration Plate Account (SRPA), the Collegiate and Cultural Attraction Plate Account (CCAPA), and the Natural Heritage Trust Fund (NHTF), which is established under G.S. 113-77.7, as follows:

Special Plate	SRPA	CCAPA	NHTF
Animal Lovers	$10	$10	0
Historical Attraction	$10	$20	0
In-State Collegiate Insignia	$10	$15	0
Kids First	$10	$15	0
Out-of-state Collegiate Insignia	$10	0	$15
Personalized	$10	0	$10
Special Olympics	$10	$15	0
Olympic Games	$10	$15	0
State Attraction	$10	$20	0
March of Dimes	$10	$10	0
Scenic Rivers	$10	$10	0
School Technology	$10	$10	0
Soil and Water Conservation	$10	$10	0
University Health Systems of Eastern Carolina	$10	$15	0
Wildlife Resources	$10	$10	0
Omega Psi Phi Fraternity	$10	0	0
All other Special Plates	$10	0	0".

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

FILED - SENATE

S

S1 528

MAY 25 2000

D

SENATE DRS6783-LA008(5-15)

PRINCIPAL CLERK

Short Title: Tobacco Heritage Plates. (Public)

Sponsors: Senator Albertson.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE "TOBACCO HERITAGE" SPECIAL REGISTRATION PLATES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-79.4(b) reads as rewritten:

"(b) Types. -- The Division shall issue the following types of special registration plates:

. . .

(45a) Tobacco Heritage. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear a picture of a tobacco leaf and plow. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1181

Short Title: Reduce Legion of Valor Plate Fee. (Public)

Sponsors: Senators Rand; Cooper and Perdue.

Referred to: Finance.

May 9, 2000

A BILL TO BE ENTITLED

AN ACT TO REMOVE THE SPECIAL REGISTRATION PLATE ACCOUNT FEE FROM THE LEGION OF VALOR SPECIAL REGISTRATION PLATES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-79.7(a) reads as rewritten:

"(a) Fees. -- Upon request, the Division shall provide and issue free of charge one registration plate to a recipient of the Congressional Medal of Honor, a 100% disabled veteran, and an ex-prisoner of war. All other special registration plates are subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

Special Plate	Additional Fee Amount
Historical Attraction	$30.00
State Attraction	$30.00
Collegiate Insignia	$25.00
Kids First	$25.00
Olympic Games	$25.00
Special Olympics	$25.00
University Health Systems of Eastern Carolina	$25.00
Animal Lovers	$20.00
March of Dimes	$20.00
Scenic Rivers	$20.00
School Technology	$20.00
Soil and Water Conservation	$20.00

Wildlife Resources	$20.00
Personalized	$20.00
Active Member of the National Guard	None
Legion of Valor	None
Purple Heart Recipient	None
All Other Special Plates	$10.00."

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

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1210

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

S1210-ALA-001

Date May 31 ,2000

Comm. Sub. [YES]
Amends Title [YES]
Proposed Committee Substitute S1210-CSLA-001

Senator Rand

moves to amend the bill on page 1, line 9,
by rewriting the line to read:
"SPECIAL REGISTRATION PLATE, CONGRESSIONAL MEDAL OF HONER SPECIAL REGISTRATION PLATE, 100% DISABLED VETERAN SPECIAL REGISTRATION PLATE, AND EX-PRISONER OF WAR SPECIAL REGISTRATION PLATE.";

on page 2, line 25,
by rewriting the line to read:
"prisoner of war. All other special registration ~~plates~~ plates, including additional Congressional Medal of Honor, 100% disabled veteran, and ex-prisoner of war plates, are" ;

and on page 2, line 44 by adding the following after the line:
"Congressional Medal of Honor None
100% Disabled Veteran None
Ex-Prisoner of War None".

SIGNED Sen. Anthony Rand
Amendment Sponsor

SIGNED Sen Daniel Clodfelter
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1210

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

S1210-ALA-001 Page 1 of __

Date_____,2000

Comm. Sub. [YES]
Amends Title [YES]
Proposed Committee Substitute S1210-CSLA-001

Senator Rand

moves to amend the bill on page 1, line 9,
by rewriting the line to read:
"SPECIAL REGISTRATION PLATE, CONGRESSIONAL MEDAL OF HONER SPECIAL REGISTRATION PLATE, 100% DISABLED VETERAN SPECIAL REGISTRATION PLATE, AND EX-PRISONER OF WAR SPECIAL REGISTRATION PLATE.";

on page 2, line 25,
by rewriting the line to read:
"prisoner of war. All other special registration ~~plates~~ plates, including additional Congressional Medal of Honor, 100% disabled veteran, and ex-prisoner of war plates, are" ;

and on page 2, line 44 by adding the following after the line:
"Congressional Medal of Honor None
100% Disabled Veteran None
Ex-Prisoner of War None".

SIGNED Tony Rand
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 1210
Proposed Committee Substitute S1210-PCS2847-LA002

Short Title: Special Registration Plates. (Public)

Sponsors:

Referred to:

May 11, 2000

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE SUPPORT PUBLIC SCHOOLS SPECIAL REGISTRATION PLATES, DUCKS UNLIMITED SPECIAL REGISTRATION PLATES, OMEGA PSI PHI FRATERNITY SPECIAL REGISTRATION PLATES, AND TOBACCO HERITAGE SPECIAL REGISTRATION PLATES; TO CREATE THE FUND FOR THE REDUCTION OF CLASS SIZE IN PUBLIC SCHOOLS; AND TO REMOVE THE SPECIAL REGISTRATION PLATE ACCOUNT FEE FROM THE LEGION OF VALOR SPECIAL REGISTRATION PLATES, CONGRESSIONAL MEDAL OF HONOR SPECIAL REGISTRATION PLATES, 100% DISABLED VETERAN SPECIAL REGISTRATION PLATES, AND EX-PRISONER OF WAR SPECIAL REGISTRATION PLATES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-79.4(b)(13a) is recodified as G.S. 20-79.4(b)(13b).

Section 2. G.S. 20-79.4(b) is amended by adding the following new subdivisions to read:

"(b) Types. -- The Division shall issue the following types of special registration plates:

. . .

(13a) Ducks Unlimited. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the logo of Ducks Unlimited, Inc., and shall bear the words: 'Ducks Unlimited'.

. . .

(29a) Omega Psi Phi Fraternity. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear the fraternity's symbol and name.

. . .

(45a) Support Public Schools. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate shall bear a picture representing an old-time one-room schoolhouse and shall bear the words: 'Support Our Public Schools'.

(45b) Tobacco Heritage. -- Issuable to the registered owner of a motor vehicle. The plate shall bear a picture of a tobacco leaf and plow. The Division may not issue the plate authorized by this subdivision unless it receives at least 300 applications for the plate."

Section 3. G.S. 20-79.7(a) reads as rewritten:

"(a) Fees. -- Upon request, the Division shall provide and issue free of charge one registration plate to a recipient of the Congressional Medal of Honor, a 100% disabled veteran, and an ex-prisoner of war. All other special registration ~~plates~~ plates, including additional Congressional Medal of Honor, 100% Disabled Veteran, and Ex-Prisoner of War plates, are subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

Special Plate	Additional Fee Amount
Historical Attraction	$30.00
State Attraction	$30.00
Collegiate Insignia	$25.00
Kids First	$25.00
Olympic Games	$25.00
Special Olympics	$25.00
University Health Systems of Eastern Carolina	$25.00
Animal Lovers	$20.00
Ducks Unlimited	$20.00
March of Dimes	$20.00
Omega Psi Phi Fraternity	$20.00
Scenic Rivers	$20.00
School Technology	$20.00
Soil and Water Conservation	$20.00
Support Public Schools	$20.00
Wildlife Resources	$20.00
Personalized	$20.00
Active Member of the National Guard	None
Congressional Medal of Honor	None
100% Disabled Veteran	None
Ex-Prisoner of War	None
Legion of Valor	None

Purple Heart Recipient	None
All Other Special Plates	$10.00."

Section 4. G.S. 20-79.7(b) reads as rewritten:

"(b) Distribution of Fees. -- The Special Registration Plate Account and the Collegiate and Cultural Attraction Plate Account are established within the Highway Fund. The Division must credit the additional fee imposed for the special registration plates listed in subsection (a) among the Special Registration Plate Account (SRPA), the Collegiate and Cultural Attraction Plate Account (CCAPA), and the Natural Heritage Trust Fund (NHTF), which is established under G.S. 113-77.7, as follows:

Special Plate	SRPA	CCAPA	NHTF
Animal Lovers	$10	$10	0
Historical Attraction	$10	$20	0
In-State Collegiate Insignia	$10	$15	0
Kids First	$10	$15	0
Out-of-state Collegiate Insignia	$10	0	$15
Personalized	$10	0	$10
Special Olympics	$10	$15	0
Olympic Games	$10	$15	0
State Attraction	$10	$20	0
Ducks Unlimited	$10	$10	0
March of Dimes	$10	$10	0
Omega Psi Phi Fraternity	$10	$10	0
Scenic Rivers	$10	$10	0
School Technology	$10	$10	0
Soil and Water Conservation	$10	$10	0
Support Public Schools	$10	$10	0
University Health Systems of Eastern Carolina	$10	$15	0
Wildlife Resources	$10	$10	0
All other Special Plates	$10	0	0".

Section 5. G.S. 20-81.12 is amended by adding the following new subsections to read:

"(b12) Support Public Schools Plates. -- The Division must receive 300 or more applications for a Support Public Schools plate before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Support Public Schools plates to the Fund for the Reduction of Class Size in Public Schools created pursuant to G.S. 115C-472.10.

(b13) Ducks Unlimited Plates. -- The Division must receive 300 or more applications for a Ducks Unlimited plate and receive any necessary licenses from Ducks Unlimited, Inc., for use of their logo before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Ducks Unlimited plates to the Wildlife

Resources Commission to be used to support the conservation programs of Ducks Unlimited, Inc., in this State.

(b14) Omega Psi Phi Fraternity Plates. -- The Division must receive 300 or more applications for an Omega Psi Phi Fraternity plate and receive any necessary licenses, without charge, from Omega Psi Phi Fraternity, Incorporated, before the plate may be developed. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of Omega Psi Phi Fraternity plates to the United Negro College Fund, Inc., through the Winston-Salem Area Office for the benefit of UNCF colleges in this State."

Section 6. Chapter 115C of the General Statutes is amended by adding a new Article to read:

"ARTICLE 32C.

"Fund for the Reduction of Class Size in Public Schools.

"§ 115C-472.10. Establishment of the Fund for the Reduction of Class Size in Public Schools.

(a) There is established under the control and direction of the State Board of Education the Fund for the Reduction of Class Size in Public Schools. This fund shall be a nonreverting special revenue fund consisting of moneys credited to it under G.S. 20-81.12(b12) from the sale of special registration plates to support the public schools.

(b) The State Board of Education shall allocate funds in the Fund for the Reduction of Class Size in Public Schools to local school administrative units to reduce class size in public schools."

Section 7. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1200*

Short Title: Municipal Participation. (Public)

Sponsors: Senator Gulley.

Referred to: Finance.

May 10, 2000

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE ADDITIONAL VOLUNTARY MUNICIPAL PARTICIPATION IN ROAD CONSTRUCTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 136-66.3 reads as rewritten:

"**§ 136-66.3. Municipal participation in improvements to the State highway system.**

(a) ~~Except as otherwise authorized by this Article, no municipality shall participate in the cost of any State highway system improvement project approved by the Board of Transportation under G.S. 143B-350(f)(4). No municipality shall be required to contribute to the right-of-way and construction costs of any State highway system improvement approved by the Board of Transportation under G.S. 143B-350(f)(4), nor shall the Department of Transportation accept any participation, directly or indirectly, from a municipality except as authorized by this Article.~~

~~(b) The restrictions imposed by this section on participation by municipalities in the implementation of improvements on the State highway system shall not apply to those improvements approved by the Board of Transportation which are financed by funds allocated by the General Assembly for the "Small Urban Construction Program". The municipalities~~ When any one or more street construction or highway improvement projects are proposed on the State highway system in and around a municipality, the Department of Transportation and the municipal governing body shall reach agreement on their respective responsibilities for such project or projects. In reaching such agreement, the Department of Transportation and the municipality shall take into consideration:

(1) The relative importance of the project to a coordinated statewide system of highways.
(2) The relative benefit of the project to the municipality.
(3) The degree to which the cost of acquisition of rights-of-way can be reduced or minimized through action by the municipality and/or the Department of Transportation to acquire all or part of the rights-of-way for proposed projects well in advance of construction of such projects. Municipalities may, but shall not be required to, participate in the right-of-way and construction cost of ~~"Small Urban Construction Program"~~ State highway system improvements.

(c) A municipality is authorized and empowered to acquire land by dedication and acceptance, purchase, or eminent domain, and make improvements to portions of the State highway system lying within or outside the municipal corporate limits utilizing local funds that have been authorized for that ~~purpose by a vote of the citizens of the municipality. The governing body of the municipality may call a special referendum at any time to allow this use of funds.~~ purpose. The ~~total cost of the~~ improvements authorized by this subsection shall be the responsibility of the municipality and shall not ~~be participated in by the Department of Transportation, nor shall the construction of improvements~~ be a consideration for any other project by the Department of Transportation. All improvements to the State highway system shall be done in accordance with the specifications and requirements of the Department of Transportation and shall be set forth in an agreement entered into between the municipality and the Department. The Board of Transportation shall not give consideration to or credit for such locally financed improvements in the Transportation Improvement Program under G.S. 143B-350(f)(4).

(d) When in the review and approval by a municipality of plans for the development of property abutting the State highway system it is determined by the municipality that improvements to the State highway system are necessary to provide for the safe and orderly movement of traffic, the municipality is authorized to construct, or have constructed, said improvements to the State highway system in vicinity of the development. For purposes of this section, improvements include but are not limited to additional travel lanes, turn lanes, curb and gutter, and drainage facilities. All improvements to the State highway system shall be constructed in accordance with the specifications and requirements of the Department of Transportation and be approved by the Department of Transportation.

(e) A municipality may pursuant to an agreement with the Department of Transportation reimburse the Department of Transportation for the cost of all improvements, including ~~additional~~ right-of-way, for a street or highway improvement project approved by the Board of Transportation under ~~G.S. 143B-350(f)(4) that are in addition to those improvements that the Department of Transportation would normally include in the project.~~ G.S. 143B-350(f)(4). Funds expended by a municipality pursuant to an agreement with the Department of Transportation shall not be considered in calculating distribution of construction funds under G.S. 136-17.2A.

(f) Municipalities having a population of less than 10,000 according to the most recent annual estimates of population as certified to the Secretary of Revenue by the State Budget Officer shall not participate in the right-of-way and construction costs of any State highway system improvement project approved by the Board of Transportation under G.S. 143B-350(f)(4).

~~Municipalities having a population of 10,000 or more according to the most recent annual estimates of population as certified to the Secretary of Revenue by the State Budget Officer may, but shall not be required by the Department or Board of Transportation, participate up to a maximum percentage as shown below in the cost of rights-of-way of the portion of any transportation improvement project approved by the Board of Transportation under G.S. 143B-350(f)(4) that is located within the municipal corporate limits:~~

~~Municipal Population~~	~~Maximum Participation In Right-of-Way Costs~~
~~10,000 - 25,000~~	~~5%~~
~~25,001 - 50,000~~	~~10%~~
~~50,001 - 100,000~~	~~15%~~
~~over 100,000~~	~~25%~~

Any participation shall be set forth in an agreement between the municipality and the Department of Transportation. Upon request of the municipality, the Department of Transportation shall allow the municipality a period of not less than three years from the date construction of the project is initiated to reimburse the Department their agreed upon share of the costs ~~of rights-of-way~~ necessary for the project. The Department of Transportation shall not charge a municipality any interest ~~on its agreed upon share of rights-of-way costs.~~ during the initial three years. The ~~Secretary~~ Department shall report in writing, on a monthly basis, to the Joint Legislative Commission on Governmental Operations on all agreements entered into between municipalities and the Department of Transportation. The report shall state in summary form the contents of such agreements.

(g) In the acquisition of rights-of-way for any State highway system street or highway in or around a municipality, the municipality shall be vested with the same authority to acquire such rights-of-way as is granted to the Department of Transportation in this Chapter. In the acquisition of such rights-of-way, municipalities may use the procedures provided in Article 9 of this Chapter, and wherever the words "Department of Transportation" appear in Article 9 they shall be deemed to include "municipality" or "municipal governing body," and wherever the words "Administrator," "Administrator of Highways," "Administrator of the Department of Transportation," or "Chairman of the Department of Transportation" appear in Article 9 they shall be deemed to include "municipal clerk". It is the intention of this subsection that the powers herein granted to municipalities for the purpose of acquiring rights-of-way shall be in addition to and supplementary to those

powers granted in any local act or in any other general statute, and in any case in which the provisions of this subsection or Article 9 of this Chapter are in conflict with the provisions of any local act or any other provision of any general statute, then the governing body of the municipality may in its discretion proceed in accordance with the provisions of such local act or other general statute, or, as an alternative method of procedure, in accordance with the provisions of this subsection and Article 9 of this Chapter.

(h) In the absence of an agreement, the Department of Transportation shall retain authority to pay the full cost of acquiring rights-of-way where the proposed project is deemed important to a coordinated State highway system.

(i) Either the municipality or the Department of Transportation may at any time propose changes in the agreement setting forth their respective responsibilities ~~for right-of-way acquisition~~ by giving notice to the other party, but no change shall be effective until it is adopted by both the municipal governing body and the Department of Transportation.

(j) Any municipality that agrees to contribute any part of the cost of acquiring rights-of-way for any State highway system street or highway shall be a proper party in any proceeding in court relating to the acquisition of such rights-of-way."

Section 2. This act becomes effective July 1, 2000.

SENATE BILL 1200:
Municipal Participation

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Senator Gulley
Date:	May 31, 2000	**Summary by:**	Karen Cochrane Brown
Version:	1st Edition		Committee Co-Counsel

SUMMARY:

Senate Bill 1200 is a recommendation of the LRC Transportation Finance Committee. It authorizes additional voluntary municipal participation in State highway contruction projects by removing certain limitations contained in current law.

CURRENT LAW:

Under current law, municipalities may not participate in the costs of State highway construction projects except:

1. Projects funded by the Small Urban Construction Program;
2. Projects funded by the municipality, upon a favorable referendum of the voters of the municipality;
3. Development access projects (new travel lanes, turn lanes, curb and gutter, and drainage);
4. By agreement with the DOT to provide improvements to an existing project that DOT would not normally include;
5. For municipalities with a population over 10,000, a sliding-scale participation of between 5% and 25% of the cost of right-of-way construction.

Municipalities with a population of less than 10,000 can not participate in the right-of-way and construction costs of any State highway system project.

BILL ANALYSIS:

Senate Bill 1200 changes the law by authorizing municipalities to reach agreement with DOT about their level of participation after consideration of the following:

- The relative importance of the project to a coordinated statewide highway system.
- The relative benefit of the project to the municipality.
- The degree to which costs can be minimized by action of the municipality or DOT to acquire all or part of the right of way in advance of construction.

The bill also provides that municipalities may fund State hghway improvements without a referendum. Funds expended by a municipality under an agreement with DOT shall not be considered in calculating distribution of construction funds under the distribution formula set forth in G.S. 136-17.2A.

The bill also removes the percentage restrictions on participation for municipalities with a population over 10,000.

The bill becomes effective July 1, 2000.

FISCAL ANALYSIS MEMORANDUM

DATE: May 31, 2000

TO: Senate Finance Committee

FROM: Evan Rodewald E.R.
Fiscal Research Division

RE: Senate Bill 1200 (First Edition) – Municipal Participation

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FISCAL IMPACT

Yes ( ) **No ( )** **No Estimate Available (x)**

	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05
REVENUES					
EXPENDITURES					
POSITIONS:					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Transportation

EFFECTIVE DATE: July 1, 2000

BILL SUMMARY:

Under current law (G.S. 136-66.3) municipalities of 10,000 or more in population may participate in State highway system improvements, subject to specified limitations. Municipalities are now authorized to fund:

- 5% to 25% of the cost of right of way and construction, depending on municipal population;
- the full cost of right of way and construction, if approved in a municipal election;
- part of the right of way and construction costs for projects funded by the State small urban construction program;

- development access projects (new travel lanes, turn lanes, curb and gutter, and drainage).

Senate Bill 1200 would change the current system of municipal participation by:

- removing the percentage restrictions on municipal participation in the funding of State highway system improvements; and
- removing the requirement for a municipal election to approve any 100% municipally funded improvement to the State system.

House Bill 1556 also specifies that municipal participation in State highway construction will not be considered in calculating regional funding under the equity distribution formula.

ASSUMPTIONS AND METHODOLOGY:

By removing restrictions on municipal participation in the funding of State highway projects, this bill would make municipal participation easier and should therefore provide the State with additional municipal funding to meet construction demands. The bill would enable the State to construct more projects than it would be able to construct under the current municipal funding restrictions. If municipal funding led to a significant increase in the number of projects under construction, over time, more projects could lead to a larger State highway system and correspondingly higher costs to patrol and maintain this system. However, because of uncertainties over the level of local participation (which would be voluntary) and lack of knowledge about the number of projects that would be constructed with the assistance of municipal funds, we are unable to estimate the fiscal impact of this bill on the State or on municipalities.

TECHNICAL CONSIDERATIONS: None

Attachment # 1

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 5/31/2000

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
J Peters	PDC & Cities
Alice Garland	Electricities
Catherine Dairy	11
LT B. M. CROSS	NCDMV ENFORCEMENT
VL McBride	~~NCDA~~
Ballard Everett	Sanford Holshouser
R W Kaylor	Kaylor Law Firm
J M Pennington	Piedmont Natural Gas Co.
Jim Harrington	Transp Finance Study Commission
Natalie English	Charlotte Chamber
Doug Rogers	NCDOT

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

Name of Committee

5/31/2000

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ed Regan	N.C. Assoc of Co. Comm.
Amanda Abrams	Covenant w/ NC's Children
Paula A. Wolf	" " "
Jane Pinsky	AAA Carolinas
Craig Wall	DENR
LAURA DEVIVO	DENR
Jeff Merritt	Greater Raleigh Chamber of Commerce
Al Conset	NCSSA/AUTO PRO
BRUCE THOMPSON	CONSULTING ENGINEERS COUNCIL
Lance D. Margum	Leadership Caswell County
Geraldine N. Tuqua	Leadership Caswell Co- Yanceyville, N.C.

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

Name of Committee

5/31/2000

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Clarissa Pearce	Leadership Caswell 2000
Jeff Millan	Sen. Rand
[illegible]	Bank + Assoc -
Kathleen Kersey	Leadership Caswell 2000
Debra J. Seamster	Leadership Caswell County, 2000
Elizabeth A Bondurant	Intern - Sen. Foxx
Patricia A. Jones	Hospice / C.S.
Charlze Diehl	NC Trucking Association
Sharon Miller	C.U.C.A.
Rosia M. Freeman	Delta Sigma Theta Sorority, Inc. 1608 Edgecombe Ave, Fay. NC 28301
Judith P. Waddell	203 Villa Drive Fayetteville N.C. 28311 Delta Sigma Theta Sorority INC.

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

Name of Committee

5/31/2000

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Maxine A. Martin	Delta Sigma Theta Sorority Inc. 2023 Corrinna Street Fayetteville, NC 28301
Brenda S. Edge	Delta Sigma Theta Sorority P.O. Box 655 Rocky Mount, N.C. 27802
Cleopatra G. Collins	Delta Sigma Theta Sorority 705 East Hargett Street Raleigh, NC 27601-1521
[illegible]	112 Woodview Circle, Rocky Mt, NC 27801
Jessie M. Jones	Delta Sigma Theta Sorority, Inc. 1604 Chase Street Rocky Mount, NC 27801-3635
Glenn Troy	WRC
Calvin Leggett	DOT
Christie Barnes	CHP

Attachment #2

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Wednesday, May 31, 2000

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

FAVORABLE

S.B.(CS #1)**1264** Mount Holly Annexation
Sequential Referral: None
Recommended Referral: None

S.B. **1363** Extend Whiteville ETJ
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 2

Committee Clerk Comment:

Attachment #3

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Monday, June 05, 2000

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

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

S.B. - **1210** Support Public School Plates

Draft Number:	PCS2847
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment: SB 1210 incorporates SB 1210, SB 1216, SB 1262, SB 1528 and SB 1181-Bill was taken up in 5-31-00 Sen Finance Meeting

SENATE FINANCE COMMITTEE

TUESDAY, JUNE 06, 2000

1:30 PM – ROOM 544

The Senate Finance Committee met on Tuesday, June 6, 2000 at 1:30 PM in Room 544 of the LOB. There were 24 committee members present. Senator John H. Kerr, III, Co-Chairman of the Committee, called the meeting to order. Shea Setzer from Asheboro, North Carolina, sponsored by Senator David Hoyle, Chris Cantrell from Wilmington, North Carolina, sponsored by Senator Patrick Ballantine, Paul Saylors from Goldsboro, North Carolina and Rod Smith from Pink Hill, North Carolina, both sponsored by Senator John Kerr, were introduced as the pages for the Meeting.

HB 723 – Dark Window Inspection Fee

Representative Verla Insko was recognized to again come and explain this Bill. Senator Dannelly presented an amendment to this bill and made a motion for the adoption, motion passed. After further discussion, Senator Lee moved for a "Favorable Report" with notion to roll the amendment into a committee substitute, motion passed. Copy of the bill and supporting documents are included in the minutes.

HB 133 – Exempt Disabled Vehicles

Representative Rogers was recognized to explain the bill. Senator Moore moved for adoption of a proposed committee substitute, motion passed. After a time of discussion, Senator Moore moved to give the bill a "Favorable Report", motion passed. Copy of the bill and supporting documents are included in the minutes.

SB 1334 – Tabor City Annexation

Senator Soles was recognized to explain the bill. Senator Soles moved for adoption of a proposed committee substitute, motion passed. After a brief discussion, Senator Dannelly moved for a "Favorable Report", motion passed. Copy of bill and supporting documents are included in the minutes.

SB 1200 – Municipal Incorporations

Senator Gulley was recognized again to come and explain this bill. Senator Gulley moved for adoption of a proposed committee substitute, motion passed. After a length discussion on the bill, Senator Soles suggested that a new proposed committee substitute be prepared to include all counties. Bill will be held over to another meeting. Copy of bill and supporting documents are included in the minutes.

Meeting adjourned.

David W. Hoyle, Co-Chairman

John H. Kerr, III, Co-Chairman

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

Visitors' Sign Up Sheet is Attachment #1
Committee Reports are Attachment #2 and #3

AGENDA

SENATE FINANCE COMMITTEE MEETING

Tuesday, June 06, 2000

1:30 PM – ROOM 544 LOB

Meeting called to order

Introduction of Pages

BILLS TO BE HEARD:

HB 723 - Dark Window Inspection Fee - Rep. Insko
HB 133 - Exempt Disabled Vehicles - Rep. Rogers
SB 1197 - Toll Roads - Sen. Gulley
SB 1200 - Municipal Incorporations - Sen. Gulley
SB 1334 - Tabor City Annexation - Sen. Soles

Adjournment of Meeting

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 5

HOUSE BILL 723
Committee Substitute Favorable 4/22/99
Committee Substitute #2 Favorable 6/24/99
Committee Substitute #3 Reported Without Prejudice 7/1/99
Committee Substitute #4 Favorable 7/8/99

Short Title: Dark Window Inspection Fee. (Public)

Sponsors:

Referred to:

March 30, 1999

A BILL TO BE ENTITLED

AN ACT TO ALLOW A PERSON WHO SUFFERS FROM A MEDICAL CONDITION THAT CAUSES THE PERSON TO BE PHOTOSENSITIVE TO VISIBLE LIGHT TO HAVE A DARKER VEHICLE WINDOW THAN IS ALLOWED UNDER THE WINDOW TINTING LAWS AND TO ELIMINATE THE AFTER-FACTORY WINDOW TINTING INSPECTION FEE FOR VEHICLES OWNED BY PERSONS ISSUED A MEDICAL EXCEPTION PERMIT BY THE DIVISION OF MOTOR VEHICLES ALLOWING THE WINDOW TINTING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-127 reads as rewritten:

"**§ 20-127. Windows and windshield wipers.**

(a) Windshield Wipers. -- A vehicle that is operated on a highway and has a windshield ~~must~~ shall have a windshield wiper to clear rain or other substances from the windshield in front of the driver of the vehicle and the windshield wiper ~~must~~ shall be in good working order. If a vehicle has more than one windshield wiper to clear substances from the windshield, all the windshield wipers ~~must~~ shall be in good working order.

(b) Window Tinting Restrictions. -- A window of a vehicle that is operated on a highway or a public vehicular area ~~must~~ shall comply with this subsection. The

windshield of the vehicle may be tinted only along the top of the windshield and the tinting may not extend more than five inches below the top of the windshield or below the AS1 line of the windshield, whichever measurement is longer. Provided, however, an untinted clear film, which does not obstruct vision but which reduces or eliminates ultraviolet radiation from entering a vehicle may be applied to the windshield. Any other window of the vehicle may be tinted in accordance with the following restrictions:

(1) The total light transmission of the tinted window ~~must~~ shall be at least thirty-five percent (35%). A vehicle window that, by use of a light meter approved by the Commissioner, measures a total light transmission of more than thirty-two percent (32%) is conclusively presumed to meet this restriction.

(2) The light reflectance of the tinted window ~~must~~ shall be twenty percent (20%) or less.

(3) Tinted film or another material used to tint the window ~~must~~ shall be nonreflective and ~~must~~ shall not be ~~a color other than~~ red, yellow, or amber.

(c) Tinting Exceptions. -- The window tinting restrictions in subsection (b) of this section apply without exception to the windshield of a vehicle. The window tinting restrictions in subdivisions (b)(1) and (b)(2) of this section do not apply to any of the following vehicle windows:

(1) A window of an excursion passenger vehicle, as defined in G.S. 20-4.01(27)a.

(2) A window of a for-hire passenger vehicle, as defined in G.S. 20-4.01(27)b.

(3) A window of a common carrier of passengers, as defined in G.S. 20-4.01(27)c.

(4) A window of a motor home, as defined in G.S. 20-4.01(27)d2.

(5) A window of an ambulance, as defined in G.S. 20-4.01(27)f.

(6) The rear window of a property-hauling vehicle, as defined in G.S. 20-4.01(31).

(7) A window of a limousine.

(8) A window of a law enforcement vehicle.

(9) A window of a multipurpose vehicle that is behind the driver of the vehicle. A multipurpose vehicle is a passenger vehicle that is designed to carry 10 or fewer passengers and either is constructed on a truck chassis or has special features designed for occasional off-road operation. A minivan and a pickup truck are multipurpose vehicles.

(10) A window of a vehicle that is registered in another state and meets the requirements of the state in which it is registered.

(11) A window of a vehicle for which the Division has issued a medical exception permit under subsection (f) of this section.

(d) Violations. -- A person who does any of the following commits a misdemeanor of the class set in G.S. 20-176:

(1) Applies tinting to the window of a vehicle that is subject to a safety inspection in this State and the resulting tinted window does not meet the window tinting restrictions set in this section.

(2) Drives on a highway or a public vehicular area a vehicle that has a window that does not meet the window tinting restrictions set in this section.

(e) Defense. -- It is a defense to a charge of driving a vehicle with an unlawfully tinted window that the tinting was removed within 15 days after the charge and the window now meets the window tinting restrictions. To assert this defense, the person charged ~~must~~ shall produce in court, or submit to the prosecuting attorney before trial, a certificate from the Division of Motor Vehicles or the Highway Patrol showing that the window complies with the restrictions.

(f) Medical Exception. -- A person who suffers from a medical condition that causes the person to be photosensitive to visible light may obtain a medical exception permit. To obtain a permit, an applicant shall apply in writing to the Drivers Medical Evaluation Program, have his or her doctor complete the required medical evaluation form provided by the Division, and pay the application fee. The application fee is five dollars ($5.00). The permit shall be valid for five years from the date of issue, unless a shorter time is directed by the Drivers Medical Evaluation Program. The renewal shall require a medical recertification that the person continues to suffer from a medical condition requiring tinting.

A person may receive no more than two medical exception permits that are valid at any one time. A permit issued under this subsection shall specify the vehicle to which it applies, the windows that may be tinted, and the permitted levels of tinting. The permit shall be carried in the vehicle to which it applies when the vehicle is driven on a highway."

Section 2. The Medical Review Branch of the Division of Motor Vehicles shall issue rules and create forms and permits necessary for this program. Until funds for this program are appropriated by the General Assembly, the Medical Review Branch shall manually issue all medical exception permits and shall manually maintain the records related specifically to these permits.

The Division of Motor Vehicles shall add the medical exception described in Section 1 of this act to the STARS program, to allow the computerized issuance of medical exception permits and to allow computerized maintenance of the records related specifically to these permits when it is modifying that computer program for some other purpose.

The Division of Motor Vehicles shall report to the Joint Legislative Transportation Oversight Committee six months after the first medical exception permit is issued on the number of permits issued and the projected additional costs, if any, of operating the program.

Section 3. G.S. 20-183.7(a) reads as rewritten:

"(a) Fee Amount. -- When a fee applies to an inspection of a vehicle or the issuance of an inspection sticker, the fee must be collected. The following fees apply to an inspection of a vehicle and the issuance of an inspection sticker:

Type	Inspection	Sticker
Safety ~~Only, Without After-Factory Tinted Window~~ Only	$ 8.25	$ 1.00
~~Safety Only, With After-Factory Tinted Window~~	~~18.25~~	~~1.00~~
Emissions and Safety ~~Without After-Factory Tinted Window~~	17.00	2.40
~~Emissions and Safety With After-Factory Tinted Window~~	~~27.00~~	~~2.40~~.

The fee for performing an inspection of a vehicle applies when an inspection is performed, regardless of whether the vehicle passes the inspection. The fee for an inspection sticker applies when an inspection sticker is put on a vehicle. The fee for ~~performing an inspection of a vehicle with a~~ inspecting after-factory tinted ~~window~~ windows shall be ten dollars ($10.00), and the fee applies only to an inspection performed with a light meter after a safety inspection mechanic determined that the window had after-factory tint. A safety inspection mechanic shall not inspect an after-factory tinted window of a vehicle for which the Division has issued a medical exception permit pursuant to G.S. 20-127(f).

A vehicle that is inspected at an inspection station and fails the inspection is entitled to be reinspected at the same station at any time within 30 days of the failed inspection without paying another inspection fee."

Section 4. This act becomes effective July 1, 2001.

HOUSE BILL 723:
Dark Window Inspection Fee

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Representative Insko
Date:	May 24, 2000	**Summary by:**	Karen Cochrane Brown
Version:	5th Edition		Committee Co-Counsel

SUMMARY: ***House Bill 723 allows a person who suffers from a medical condition that causes the person to be photosensitive to have a darker windshield than allowed by current law. The bill also eliminates the after-factory window tinting inspection fee for those persons.***

CURRENT LAW & BILL ANALYSIS:

Section 1. Windshield Tinting Restrictions. Under current law, windshields may only be tinted along the top of the windshield and the tinting may not extend more than five inches below the top of the windshield. There are no exceptions to this requirement. HB 723 would allow an untinted clear film that reduces or eliminates ultraviolet light but does not obstruct vision to be placed on the windshield.

Also under current law, windshields must have a total light transmission of at least 35% with a light reflectance of 20% or less. There are, however, exceptions to this requirement for limousines, motor homes, multipurpose vehicles, minivans, and pickup trucks. HB 723 would add to the exceptions those vehicles for which the DMV has issued a medical exception permit.

HB 723 also authorizes the DMV to issue "Medical Exception" permits to persons who suffer from a medical condition that causes the person to be photosensitive. In order to obtain a permit, the person must:

- Apply to the Drivers Medical Evaluation Program
- Have his or her doctor complete the required medical evaluation form.
- Pay an application fee of $5.00.

The permit is valid for five years from the date of issue, unless a shorter time is directed by the Program. In order to renew the permit, the applicant must provide medical recertification that he or she continues to suffer from the condition.

A person may receive no more than two medical exception permits at any one time. A Medical Exception Permit must

- Specify the vehicle to which it applies.
- Specify the windows that may be tinted, and the permitted levels of tinting.
- Be carried in the vehicle to which it applies, and the vehicle must display a medical exception permit sticker.

Section 2 of the bill requires the Medical Review Branch of DMV to implement the program through rule-making. In addition, until funds are appropriated by the General Assembly, the Medical Review Branch is required to manually issue all medical exception permits and to maintain records on those permits. This section also requires DMV to modify its computer system in order to allow for the

computerized issuance of permits when it is modifying that computer program for some other purpose. Finally, DMV is required to report to the Joint Legislative Transportation Oversight Committee six months after issuing the first medical exception permit on the number of permits issued and the additional cost of operating the program.

Section 3 deletes the separate fees for safety and emissions inspections for after-factory tinted windows and provides that the fee for inspecting an after-factory tinted window is $10.00, and the fee only applies to an inspection with a light meter after the inspector determines that the window has an after-factory tint. However, this section prohibits the inspection of an after-factory tinted window for a vehicle having a medical exception permit.

EFFECTIVE DATE: The act becomes effective July 1, 2001.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 723 (Fifth Edition)

SHORT TITLE: Dark Window Inspection Fee

SPONSOR(S): Representative Verla Insko

FISCAL IMPACT

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

	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05
REVENUES					
Highway Fund					
DMV – Medical Permit Fees		$500	$500	$500	$500
EXPENDITURES					
Highway Fund					
DMV	$17,200				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Transportation – Division of Motor Vehicles (DMV)
Department of Health and Human Services

EFFECTIVE DATE: This act is effective July 1, 2001.

BILL SUMMARY:
The act allows persons with photosensitive medical conditions, such as systemic lupus erythematosus, to obtain medical exceptions from the window tinting law. To receive a medical exception permit, a person must complete an application with the Division of Motor Vehicles, pay a $5 application fee, and obtain a doctor's written statement about the photosensitive medical condition that warrants darker window tinting. The medical exception permit is renewed every five years and must be accompanied by a medical recertification. A person may receive no more than two medical exception permits.

BACKGROUND:
Lupus is a chronic, autoimmune disease that causes inflammation of the joints, skin, blood, kidneys and other organ systems. (Autoimmune means the body's immune system mistakenly attacks healthy tissues.) Lupus patients are 90% female who began having symptoms of the disease in their early twenties and thirties. Forty to sixty percent of systemic lupus patients, the

most severe form of the disease, are photosensitive. The sun's UV rays cause the skin of a systemic lupus patient to become red, inflamed and develop a rash.

ASSUMPTIONS AND METHODOLOGY:

REVENUE

The Lupus Foundation of America estimates that 1 out of every 185 Americans has some form of Lupus. Using the North Carolina population age 18 and older of 5,720,050 in 1998, there are 30,919 Lupus sufferers of driving age in the state. Information from the Colorado HealthNet indicates that approximately 30 percent of Lupus sufferers have photosensitivity as a symptom. Based on this figure, there would be an estimated 9,300 persons in North Carolina eligible for the medical exception permit due to Lupus. No information is available on the potential number of persons suffering from other photosensitive medical conditions, but it is expected that Lupus is the most prevalent photosensitive medical condition in the State.

Although there are potentially 9,300 persons eligible for a medical exception permit, data from a 1998 survey conducted by Dr. Laurel Broadhurst in the Department of Health and Human Services suggest only a fraction of this population will apply for the permit. Dr. Broadhurst contacted window-tinting programs in several states, as well as local doctors and national organizations that treat Lupus and other photosensitive diseases. Georgia, a state with a population only 100,000 greater than NC, reported only 120 to 180 permits issued each year. In Pennsylvania, with population 60% larger than NC, Dr. Broadhurst found that only 634 drivers had applied for a medical exemption since 1991. Given this anecdotal data, the Division of Medical Evaluation in the Department of Health and Human Services estimated that only 100 persons per year would apply for this permit. At $5 per permit, this bill raises $500 in revenue for the Highway Fund each year.

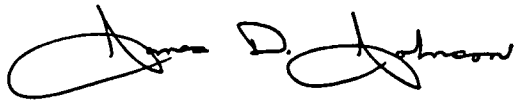
NOTE: Inspection stations will no longer inspect the window tinting of Lupus patients each year and will lose the $10 inspection fee they now receive on these vehicles.

EXPENDITURE

There will be a one-time cost to reprogram the State Title and Registration System (STARS) for the new medical exception permit. For other recently mandated changes in the STARS system, DMV requested $17,200 for 160 hours of software development. The Governor's Recommended Changes to the 2000-2001 State Budget includes a $3.3 million reserve for "continual maintenance and functional modifications" to the STARS system and other DMV computer programs. If the reserve is approved, the programming costs required for this bill could be funded from this source.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic

APPROVED BY: James D. Johnson



DATE: May 19, 2000

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 723

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

H723-ARO-001 Page 1 of __

Date_____,2000

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

Senator

moves to amend the bill on page 3, line 18, by inserting the word "and" between the words "Program," and "have";

and on page 3, lines 19-20, by rewriting the lines to read:

"evaluation form provided by the Division. The permit shall be valid for five years from".

SIGNED _____
Amendment Sponsor

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

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 723
Committee Substitute Favorable 4/22/99
Committee Substitute #2 Favorable 6/24/99
Committee Substitute #3 Reported Without Prejudice 7/1/99
Committee Substitute #4 Favorable 7/8/99
Proposed Senate Committee Substitute H723-PCSA252-RO001

Short Title: Dark Window Inspection Fee. (Public)

Sponsors:

Referred to:

March 30, 1999

A BILL TO BE ENTITLED

AN ACT TO ALLOW A PERSON WHO SUFFERS FROM A MEDICAL CONDITION THAT CAUSES THE PERSON TO BE PHOTOSENSITIVE TO VISIBLE LIGHT TO HAVE A DARKER VEHICLE WINDOW THAN IS ALLOWED UNDER THE WINDOW TINTING LAWS AND TO ELIMINATE THE AFTER-FACTORY WINDOW TINTING INSPECTION FEE FOR VEHICLES OWNED BY PERSONS ISSUED A MEDICAL EXCEPTION PERMIT BY THE DIVISION OF MOTOR VEHICLES ALLOWING THE WINDOW TINTING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-127 reads as rewritten:

"**§ 20-127. Windows and windshield wipers.**

(a) Windshield Wipers. -- A vehicle that is operated on a highway and has a windshield ~~must~~ shall have a windshield wiper to clear rain or other substances from the windshield in front of the driver of the vehicle and the windshield wiper ~~must~~ shall be in good working order. If a vehicle has more than one windshield wiper to clear substances from the windshield, all the windshield wipers ~~must~~ shall be in good working order.

(b) Window Tinting Restrictions. -- A window of a vehicle that is operated on a highway or a public vehicular area ~~must~~ shall comply with this subsection. The windshield of the vehicle may be tinted only along the top of the windshield and the tinting may not extend more than five inches below the top of the windshield or below the AS1 line of the windshield, whichever measurement is longer. Provided, however, an untinted clear film which does not obstruct vision but which reduces or eliminates ultraviolet radiation from entering a vehicle may be applied to the windshield. Any other window of the vehicle may be tinted in accordance with the following restrictions:

(1) The total light transmission of the tinted window ~~must~~ shall be at least thirty-five percent (35%). A vehicle window that, by use of a light meter approved by the Commissioner, measures a total light transmission of more than thirty-two percent (32%) is conclusively presumed to meet this restriction.

(2) The light reflectance of the tinted window ~~must~~ shall be twenty percent (20%) or less.

(3) Tinted film or another material used to tint the window ~~must~~ shall be nonreflective and ~~must~~ shall not be ~~a color other than~~ red, yellow, or amber.

(c) Tinting Exceptions. -- The window tinting restrictions in subsection (b) of this section apply without exception to the windshield of a vehicle. The window tinting restrictions in subdivisions (b)(1) and (b)(2) of this section do not apply to any of the following vehicle windows:

(1) A window of an excursion passenger vehicle, as defined in G.S. 20-4.01(27)a.

(2) A window of a for-hire passenger vehicle, as defined in G.S. 20-4.01(27)b.

(3) A window of a common carrier of passengers, as defined in G.S. 20-4.01(27)c.

(4) A window of a motor home, as defined in G.S. 20-4.01(27)d2.

(5) A window of an ambulance, as defined in G.S. 20-4.01(27)f.

(6) The rear window of a property-hauling vehicle, as defined in G.S. 20-4.01(31).

(7) A window of a limousine.

(8) A window of a law enforcement vehicle.

(9) A window of a multipurpose vehicle that is behind the driver of the vehicle. A multipurpose vehicle is a passenger vehicle that is designed to carry 10 or fewer passengers and either is constructed on a truck chassis or has special features designed for occasional off-road operation. A minivan and a pickup truck are multipurpose vehicles.

(10) A window of a vehicle that is registered in another state and meets the requirements of the state in which it is registered.

(11) A window of a vehicle for which the Division has issued a medical exception permit under subsection (f) of this section.

(d) Violations. -- A person who does any of the following commits a misdemeanor of the class set in G.S. 20-176:

(1) Applies tinting to the window of a vehicle that is subject to a safety inspection in this State and the resulting tinted window does not meet the window tinting restrictions set in this section.

(2) Drives on a highway or a public vehicular area a vehicle that has a window that does not meet the window tinting restrictions set in this section.

(e) Defense. -- It is a defense to a charge of driving a vehicle with an unlawfully tinted window that the tinting was removed within 15 days after the charge and the window now meets the window tinting restrictions. To assert this defense, the person charged ~~must~~ shall produce in court, or submit to the prosecuting attorney before trial, a certificate from the Division of Motor Vehicles or the Highway Patrol showing that the window complies with the restrictions.

(f) Medical Exception. -- A person who suffers from a medical condition that causes the person to be photosensitive to visible light may obtain a medical exception permit. To obtain a permit, an applicant shall apply in writing to the Drivers Medical Evaluation Program and have his or her doctor complete the required medical evaluation form provided by the Division. The permit shall be valid for five years from the date of issue, unless a shorter time is directed by the Drivers Medical Evaluation Program. The renewal shall require a medical recertification that the person continues to suffer from a medical condition requiring tinting.

A person may receive no more than two medical exception permits that are valid at any one time. A permit issued under this subsection shall specify the vehicle to which it applies, the windows that may be tinted, and the permitted levels of tinting. The permit shall be carried in the vehicle to which it applies when the vehicle is driven on a highway."

Section 2. The Medical Review Branch of the Division of Motor Vehicles shall issue rules and create forms and permits necessary for this program. Until funds for this program are appropriated by the General Assembly, the Medical Review Branch shall manually issue all medical exception permits and shall manually maintain the records related specifically to these permits.

The Division of Motor Vehicles shall add the medical exception described in Section 1 of this act to the STARS program, to allow the computerized issuance of medical exception permits and to allow computerized maintenance of the records related specifically to these permits when it is modifying that computer program for some other purpose.

The Division of Motor Vehicles shall report to the Joint Legislative Transportation Oversight Committee six months after the first medical exception permit is issued on the number of permits issued and the projected additional costs, if any, of operating the program.

Section 3. G.S. 20-183.7(a) reads as rewritten:

"(a) Fee Amount. -- When a fee applies to an inspection of a vehicle or the issuance of an inspection sticker, the fee must be collected. The following fees apply to an inspection of a vehicle and the issuance of an inspection sticker:

Type	Inspection	Sticker
Safety ~~Only, Without After-Factory Tinted Window~~ Only	$ 8.25	$ 1.00
~~Safety Only, With After-Factory Tinted Window~~	~~18.25~~	~~1.00~~
Emissions and Safety ~~Without After-Factory Tinted Window~~	17.00	2.40
~~Emissions and Safety With After-Factory Tinted Window~~	~~27.00~~	~~2.40~~.

The fee for performing an inspection of a vehicle applies when an inspection is performed, regardless of whether the vehicle passes the inspection. The fee for an inspection sticker applies when an inspection sticker is put on a vehicle. The fee for ~~performing an inspection of a vehicle with a~~ inspecting after-factory tinted ~~window~~ windows shall be ten dollars ($10.00), and the fee applies only to an inspection performed with a light meter after a safety inspection mechanic determined that the window had after-factory tint. A safety inspection mechanic shall not inspect an after-factory tinted window of a vehicle for which the Division has issued a medical exception permit pursuant to G.S. 20-127(f).

A vehicle that is inspected at an inspection station and fails the inspection is entitled to be reinspected at the same station at any time within 30 days of the failed inspection without paying another inspection fee."

Section 4. This act becomes effective July 1, 2001.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 133*
Committee Substitute Favorable 6/24/99

Short Title: Exempt Disabled Veteran Vehicles. (Public)

Sponsors:

Referred to:

February 23, 1999

A BILL TO BE ENTITLED

AN ACT TO EXEMPT FROM PROPERTY TAX MODIFIED MOTOR VEHICLES OWNED BY DISABLED VETERANS WHO ARE ELIGIBLE FOR FEDERAL SPECIAL EQUIPMENT ALLOWANCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-275 is amended by adding a new subdivision to read:

"(5a) A motor vehicle owned by a disabled veteran that is altered with special equipment to accommodate a service-connected disability. As used in this section, disabled veteran means a person as defined in 38 U.S.C. § 101(2) who is entitled to special automotive equipment for a service-connected disability, as provided in 38 U.S.C. § 3901."

Section 2. This act is effective for taxes imposed for taxable years beginning on or after July 1, 1999.

HOUSE BILL 133
Exempt Disabled Veteran Vehicles

BILL ANALYSIS

Committee:	Senate Finance	**Sponsor:**	Rep. Rogers
Date:	May 23, 2000	**Analysis by:**	Martha K. Walston
Version:	Senate PCS		Staff Attorney

SUMMARY: ***HB 133 exempts from property tax motor vehicles (1) owned by veterans with certain service-related disabilities and (2) altered with special equipment to accommodate the service-related disability, effective for tax years beginning July 1, 2000. To receive the exemption, the vehicle owner must first file an application with the county assessor. The only difference between the proposed Senate Committee Substitute and the version that passed the House last year is the effective date.***

CURRENT LAW: G.S. 105-275(5) grants a property tax exemption to vehicles that the U.S. government gives to veterans on account of disabilities they suffered in WWII, the Korean Conflict, or the Vietnam Era.

BILL ANALYSIS: House Bill 133 also gives a property tax exemption to vehicles owned by veterans with certain service-related disabilities when the vehicles have been altered with special equipment to accommodate the disability.

Under federal law, veterans with certain service-related disabilities qualify for an allowance to adapt a vehicle to accommodate the disability. Vehicles owned by these veterans and so altered would be eligible for the proposed property tax exemption. To qualify for the exemption, the person must meet the following federal requirements

1. Veteran - Be a person who served in the active military, naval, or air service, and who was discharged or released under conditions other than dishonorable.
2. Service-related disability - Be disabled from an injury that incurred or disease contracted in or aggravated by active service. The disability must be loss of one or both hands or feet, permanent loss of use of one or both hands or feet, or permanent impairment of vision of both eyes.
3. Adaptive equipment – Have a vehicle that has been adapted for the disability. Adaptive equipment includes, but is not limited to, power steering, power brakes, power window lifts, power seats, and special equipment necessary to assist the veteran into and out of the automobile or other conveyance. The term also includes (a) air-conditioning equipment when the equipment is necessary to the health and safety of the veteran and to the safety of others, regardless of whether the vehicle is to be operated by the veteran or for the veteran by another person, and (b) any modification of the size of the interior space of the vehicle if needed because of the physical condition of the veteran in order for the veteran to enter or operate the vehicle.

The veteran must file an application to receive the exemption. Once an approved exemption is on file, it remains in effect and the vehicle is omitted from the tax rolls. The application need not be renewed each year.

The original bill exempted from property tax all motor vehicles owned by veterans with combat-related total disabilities, and provided for the State to reimburse counties for their resulting revenue losses. The

original bill was estimated to cost the State nearly $300,000 a year. The House Committee on Transportation changed the exemption to one that applies to vehicles altered to accommodate veterans with certain service-related disabilities, and removed the reimbursement provision. This change resulted in a smaller estimated loss of $120,000 a year, and shifted the impact of the loss from the State to local governments.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 133 (Proposed Senate Finance Committee Substitute)

SHORT TITLE: Exempt Disabled Veteran Vehicles

SPONSOR(S): Representative Rogers

FISCAL IMPACT

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

	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05
REVENUES					
Local Governments	($119,059)	($118,700)	($119,293)	($120,136)	($120,604)
EXPENDITURES					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue

EFFECTIVE DATE: Effective for taxable years beginning on or after July 1, 2000.

BILL SUMMARY:
The proposed bill exempts from property tax those motor vehicles owned by disabled veterans who are eligible for federal special equipment allowances.

BACKGROUND:
Veterans who have a service-connected loss of one or both hands or feet, a permanent loss of use of one or both hands or feet, or permanent impairment of vision of both eyes qualify for federal automobile assistance. The United States Department of Veterans Affairs (VA) offers a one-time payment of up to $8,000 toward the purchase of an automobile. The VA will also pay for adaptive equipment and for the repair, replacement, or reinstallation of adaptive equipment.

ASSUMPTIONS AND METHODOLOGY:
The North Carolina Division of Veterans Affairs in the Department of Administration reports that 1,560 veterans living in North Carolina are entitled to a federal automobile grant or adaptive equipment allowance for service-connected disabilities. For this fiscal note, it is assumed that each veteran will claim the property tax exemption for one vehicle. The average value of a vehicle in North Carolina was $7,632 in 1999. This vehicle value is the average of vehicle valuations taken from Cabarrus, Orange, Haywood, Surry, Halifax, and Sampson counties. A

company that provides vehicle tax values to county tax assessors statewide provided the data for 1999 vehicle values.

Since it is difficult to predict whether this veteran population will trade, buy, or retain their vehicles in the next five years, the average vehicle price is adjusted by a national inflation rate for light vehicles. A Standard & Poor's DRI national forecast for light vehicles (cars and trucks) in Spring 2000 predicted an increase in car values as follows:

2000 no increase
2001 -. 3%
2002 . 5%
2003 . 7%
2004 . 4%

Without a printout of addresses for disabled veterans, a statewide tax rate is used to estimate the fiscal impact of this bill. The unified property tax rate for all government jurisdictions in North Carolina has fluctuated from .994 per $100 of assessed valuation in 1993-94 to .958 per $100 in 1998-99. Due to pressures in many counties to build schools and provide other services, an estimated rate of $1.00 per $100 of assessed value is used in this note.

Using the variables mentioned above, the revenue impact is calculated as follows:

	Average Car Values	DRI Inflation est.	Disabled Veterans	Value of Exempted Property	Unified Property Tax Rate	Property Tax Exempted
1999-00	$7,632		1,560	$11,905,920	$1.00	$119,059
2000-01	$7,632	0	1,560	$11,905,920	$1.00	$119,059
2001-02	$7,609	-.3%	1,560	$11,870,040	$1.00	$118,700
2002-03	$7,647	.5%	1,560	$11,929,320	$1.00	$119,293
2003-04	$7,701	.7%	1,560	$12,013,560	$1.00	$120,136
2004-05	$7,731	.4%	1,560	$12,060,360	$1.00	$120,604

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic

APPROVED BY:

DATE:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 133*
Committee Substitute Favorable 6/24/99
Proposed Senate Committee Substitute H133-PCS8178-LA

Short Title: Exempt Disabled Veteran Vehicles. (Public)

Sponsors:

Referred to:

February 23, 1999

A BILL TO BE ENTITLED

AN ACT TO EXEMPT FROM PROPERTY TAX MODIFIED MOTOR VEHICLES OWNED BY DISABLED VETERANS WHO ARE ELIGIBLE FOR FEDERAL SPECIAL EQUIPMENT ALLOWANCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-275 is amended by adding a new subdivision to read:

"(5a) A motor vehicle owned by a disabled veteran that is altered with special equipment to accommodate a service-connected disability. As used in this section, disabled veteran means a person as defined in 38 U.S.C. § 101(2) who is entitled to special automotive equipment for a service-connected disability, as provided in 38 U.S.C. § 3901."

Section 2. This act is effective for taxes imposed for taxable years beginning on or after July 1, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1334*

Short Title: Tabor City Annexation. (Local)

Sponsors: Senator Soles.

Referred to: State and Local Government.

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO ANNEX CERTAIN DESCRIBED PROPERTY TO THE CORPORATE LIMITS OF THE TOWN OF TABOR CITY.

The General Assembly of North Carolina enacts:

Section 1. The following described property is added to the corporate limits of the Town of Tabor City:

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 1334*
State and Local Government Committee Substitute Adopted 5/31/00
Proposed Committee Substitute S1334-PCS3965-LA

Short Title: Tabor City Annexation. (Local)

Sponsors:

Referred to:

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO ANNEX CERTAIN DESCRIBED PROPERTY TO THE CORPORATE LIMITS OF THE TOWN OF TABOR CITY.

The General Assembly of North Carolina enacts:

Section 1. The following described property is added to the corporate limits of the Town of Tabor City:

Being those tracts or parcels of land located in South Williams Township, Columbus County, North Carolina, and being contained within the following more particular description:

Beginning at a point in the existing northern city limits line near the Southeast corner of Myrtle Green Cemetery and being within the right-of-way of SR 1367, said point being further located South 82 degrees 49 minutes 50 seconds West 961.91 feet from the Northeast corner of the existing city limits. Proceeds from said beginning point with the existing city limit line South 82 degrees 49 minutes 50 seconds West 4600.97 feet to a point on the northern right-of-way (allowing 80 feet for right-of-way) of SR 1377, thence with said right-of-way North 71 degrees 15 minutes 30 seconds East 477.67 feet, thence with a northern line of lands of the Town of Tabor City North 69 degrees 54 minutes 30 seconds East 130.40 feet, thence with the West line of said Town tract North 13 degrees 07 minutes 50 seconds West 401.49 feet, thence with another line of said Town tract North 45 degrees 36 minutes 20 seconds East 213.69

feet, thence with the western lines of Joshua Soles (see DB 179, P 73) and Howard Soles, et ux (see DB 221, P 184 and DB 211, P 453) North 13 degrees 39 minutes 00 seconds East 763.50 feet, thence continuing with line of said Howard Soles, et ux North 4 degrees 19 minutes 30 seconds East 84.00 feet, thence with the western line of Anniebell S. Beck and Wilson Beck (see DB 179, P 71 and DB 201, P 578) North 3 degrees 28 minutes 30 seconds East 511.83 feet, thence with a western line of Joshua Soles (see DB 179, P 73) North 2 degrees 58 minutes 10 seconds East 462.88 feet, thence with the northern line of said Soles and beyond South 78 degrees 07 minutes 40 seconds East 1336.92 feet to the centerline of CSX Railroad, thence to and with the northern line of tract of H. B. Buffkin, Jr. South 78 degrees 07 minutes 40 seconds East 389.40 feet, thence continuing with said Buffkin line South 85 degrees 22 minutes 30 seconds East 82.03 feet, thence with the eastern line of said Buffkin tract South 3 degrees 47 minutes 00 seconds East 626.93 feet, thence with the northern lines of tract of Earl McDaniels, et al. (see DB 314, P 112) the following three (3) courses: North 81 degrees 21 minutes 00 seconds East 721.36 feet; North 3 degrees 25 minutes 20 seconds West 26.85 feet; North 84 degrees 25 minutes 50 seconds East 118.77 feet, thence with the northern line of Terry Lee Phipps (see DB 537, P 406) North 84 degrees 27 minutes 30 seconds East 439.50 feet to the centerline of SR 1300 thence with said centerline the following three (3) courses: South 17 degrees 51 minutes 30 seconds East 219.48 feet; South 16 degrees 39 minutes 50 seconds East 330.01 feet; South 8 degrees 48 minutes 50 seconds East 32.92 feet, thence to and with the northern boundary of Myrtle Green Cemetery tract North 81 degrees 06 minutes 20 seconds East 393.90 feet, thence with the eastern line of said cemetery South 4 degrees 23 minutes 20 seconds East 670.63 feet to the beginning and contains 143 acres, more or less.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

SENATE BILL 1200*

Short Title: Municipal Participation. (Public)

Sponsors: Senator Gulley.

Referred to: Finance.

May 10, 2000

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE ADDITIONAL VOLUNTARY MUNICIPAL PARTICIPATION IN ROAD CONSTRUCTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 136-66.3 reads as rewritten:

"**§ 136-66.3. Municipal participation in improvements to the State highway system.**

(a) ~~Except as otherwise authorized by this Article, no municipality shall participate in the cost of any State highway system improvement project approved by the Board of Transportation under G.S. 143B-350(f)(4). No municipality shall be required to contribute to the right-of-way and construction costs of any State highway system improvement approved by the Board of Transportation under G.S. 143B-350(f)(4), nor shall the Department of Transportation accept any participation, directly or indirectly, from a municipality except as authorized by this Article.~~

~~(b) The restrictions imposed by this section on participation by municipalities in the implementation of improvements on the State highway system shall not apply to those improvements approved by the Board of Transportation which are financed with funds allocated by the General Assembly for the "Small Urban Construction Program". The municipalities~~ When any one or more street construction or highway improvement projects are proposed on the State highway system in and adjacent to a municipality, the Department of Transportation and the municipal governing body shall reach agreement on their respective responsibilities for such project or projects. In reaching such agreement, the Department of Transportation and the municipality shall take into consideration:

(1) The relative importance of the project to a coordinated statewide system of highways.
(2) The relative benefit of the project to the municipality.
(3) The degree to which the cost of acquisition of rights-of-way can be reduced or minimized through action by the municipality and/or the Department of Transportation to acquire all or part of the rights-of-way for proposed projects well in advance of construction of such projects. Municipalities may, but shall not be required to, participate in the right-of-way and construction cost of ~~"Small Urban Construction Program"~~ State highway system improvements.

(c) A municipality is authorized and empowered to acquire land by dedication and acceptance, purchase, or eminent domain, and make improvements to portions of the State highway system lying within or outside the municipal corporate limits utilizing local funds that have been authorized for that ~~purpose by a vote of the citizens of the municipality. The governing body of the municipality may call a special referendum at any time to allow this use of funds.~~ purpose. The ~~total cost of the~~ improvements authorized by this subsection shall be the responsibility of the municipality and shall not ~~be participated in by the Department of Transportation, nor shall the construction of improvements~~ be a consideration for any other project by the Department of Transportation. All improvements to the State highway system shall be done in accordance with the specifications and requirements of the Department of Transportation and shall be set forth in an agreement entered into between the municipality and the Department. The Board of Transportation shall not give consideration to or credit for such locally financed improvements in the Transportation Improvement Program under G.S. 143B-350(f)(4).

(d) When in the review and approval by a municipality of plans for the development of property abutting the State highway system it is determined by the municipality that improvements to the State highway system are necessary to provide for the safe and orderly movement of traffic, the municipality is authorized to construct, or have constructed, said improvements to the State highway system in vicinity of the development. For purposes of this section, improvements include but are not limited to additional travel lanes, turn lanes, curb and gutter, and drainage facilities. All improvements to the State highway system shall be constructed in accordance with the specifications and requirements of the Department of Transportation and be approved by the Department of Transportation.

(e) A municipality may pursuant to an agreement with the Department of Transportation reimburse the Department of Transportation for the cost of all improvements, including ~~additional~~ right-of-way, for a street or highway improvement project approved by the Board of Transportation under ~~G.S. 143B-350(f)(4) that are in addition to those improvements that the Department of Transportation would normally include in the project.~~ G.S. 143B-350(f)(4). Funds expended by a municipality pursuant to an agreement with the Department of Transportation shall not be considered in calculating distribution of construction funds under G.S. 136-17.2A.

(f) Municipalities having a population of less than 10,000 according to the most recent annual estimates of population as certified to the Secretary of Revenue by the State Budget Officer shall not participate in the right-of-way and construction costs of any State highway system improvement project approved by the Board of Transportation under G.S. 143B-350(f)(4).

~~Municipalities having a population of 10,000 or more according to the most recent annual estimates of population as certified to the Secretary of Revenue by the State Budget Officer may, but shall not be required by the Department or Board of Transportation, participate up to a maximum percentage as shown below in the cost of rights-of-way of the portion of any transportation improvement project approved by the Board of Transportation under G.S. 143B-350(f)(4) that is located within the municipal corporate limits.~~

~~Municipal Population~~	~~Maximum Participation In Right-of-Way Costs~~
~~10,000 - 25,000~~	~~5%~~
~~25,001 - 50,000~~	~~10%~~
~~50,001 - 100,000~~	~~15%~~
~~over 100,000~~	~~25%~~

Any participation shall be set forth in an agreement between the municipality and the Department of Transportation. Upon request of the municipality, the Department of Transportation shall allow the municipality a period of not less than three years from the date construction of the project is initiated to reimburse the Department their agreed upon share of the costs ~~of rights-of-way~~ necessary for the project. The Department of Transportation shall not charge a municipality any interest ~~on its agreed upon share of rights-of-way costs.~~ during the initial three years. The ~~Secretary~~ Department shall report in writing, on a monthly basis, to the Joint Legislative Commission on Governmental Operations on all agreements entered into between municipalities and the Department of Transportation. The report shall state in summary form the contents of such agreements.

(g) In the acquisition of rights-of-way for any State highway system street or highway in or around a municipality, the municipality shall be vested with the same authority to acquire such rights-of-way as is granted to the Department of Transportation in this Chapter. In the acquisition of such rights-of-way, municipalities may use the procedures provided in Article 9 of this Chapter, and wherever the words "Department of Transportation" appear in Article 9 they shall be deemed to include "municipality" or "municipal governing body," and wherever the words "Administrator," "Administrator of Highways," "Administrator of the Department of Transportation," or "Chairman of the Department of Transportation" appear in Article 9 they shall be deemed to include "municipal clerk". It is the intention of this subsection that the powers herein granted to municipalities for the purpose of acquiring rights-of-way shall be in addition to and supplementary to those

powers granted in any local act or in any other general statute, and in any case in which the provisions of this subsection or Article 9 of this Chapter are in conflict with the provisions of any local act or any other provision of any general statute, then the governing body of the municipality may in its discretion proceed in accordance with the provisions of such local act or other general statute, or, as an alternative method of procedure, in accordance with the provisions of this subsection and Article 9 of this Chapter.

(h) In the absence of an agreement, the Department of Transportation shall retain authority to pay the full cost of acquiring rights-of-way where the proposed project is deemed important to a coordinated State highway system.

(i) Either the municipality or the Department of Transportation may at any time propose changes in the agreement setting forth their respective responsibilities ~~for right-of-way acquisition~~ by giving notice to the other party, but no change shall be effective until it is adopted by both the municipal governing body and the Department of Transportation.

(j) Any municipality that agrees to contribute any part of the cost of acquiring rights-of-way for any State highway system street or highway shall be a proper party in any proceeding in court relating to the acquisition of such rights-of-way."

Section 2. This act becomes effective July 1, 2000.

FISCAL ANALYSIS MEMORANDUM

DATE: May 31, 2000

TO: Senate Finance Committee

FROM: Evan Rodewald E.R.
Fiscal Research Division

RE: Senate Bill 1200 (First Edition) – Municipal Participation

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FISCAL IMPACT

Yes ( ) **No ( )** **No Estimate Available (x)**

	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05
REVENUES					
EXPENDITURES					
POSITIONS:					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Transportation

EFFECTIVE DATE: July 1, 2000

BILL SUMMARY:

Under current law (G.S. 136-66.3) municipalities of 10,000 or more in population may participate in State highway system improvements, subject to specified limitations. Municipalities are now authorized to fund:

- 5% to 25% of the cost of right of way and construction, depending on municipal population;
- the full cost of right of way and construction, if approved in a municipal election;
- part of the right of way and construction costs for projects funded by the State small urban construction program;

- development access projects (new travel lanes, turn lanes, curb and gutter, and drainage).

Senate Bill 1200 would change the current system of municipal participation by:

- removing the percentage restrictions on municipal participation in the funding of State highway system improvements; and
- removing the requirement for a municipal election to approve any 100% municipally funded improvement to the State system.

House Bill 1556 also specifies that municipal participation in State highway construction will not be considered in calculating regional funding under the equity distribution formula.

ASSUMPTIONS AND METHODOLOGY:

By removing restrictions on municipal participation in the funding of State highway projects, this bill would make municipal participation easier and should therefore provide the State with additional municipal funding to meet construction demands. The bill would enable the State to construct more projects than it would be able to construct under the current municipal funding restrictions. If municipal funding led to a significant increase in the number of projects under construction, over time, more projects could lead to a larger State highway system and correspondingly higher costs to patrol and maintain this system. However, because of uncertainties over the level of local participation (which would be voluntary) and lack of knowledge about the number of projects that would be constructed with the assistance of municipal funds, we are unable to estimate the fiscal impact of this bill on the State or on municipalities.

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 1200*
Proposed Committee Substitute S1200-PCS7784-RO003

Short Title: Municipal Participation. (Public)

Sponsors:

Referred to:

May 10, 2000

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE ADDITIONAL VOLUNTARY MUNICIPAL PARTICIPATION IN ROAD CONSTRUCTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 136-66.3 reads as rewritten:

"**§ 136-66.3. Municipal participation in improvements to the State highway system.**

~~(a) Except as otherwise authorized by this Article, no municipality shall participate in the cost of any State highway system improvement project approved by the Board of Transportation under G.S. 143B-350(f)(4). No municipality shall be required to contribute to the right-of-way and construction costs of any State highway system improvement approved by the Board of Transportation under G.S. 143B-350(f)(4), nor shall the Department of Transportation accept any participation, directly or indirectly, from a municipality except as authorized by this Article.~~

~~(b) The restrictions imposed by this section on participation by municipalities in the implementation of improvements on the State highway system shall not apply to those improvements approved by the Board of Transportation which are financed by funds allocated by the General Assembly for the "Small Urban Construction Program". The municipalities may, but shall not be required to, participate in the right-of-way and construction cost of "Small Urban Construction Program" highway improvements.~~

(a) Municipal Participation Authorized. -- A municipality may, but is not required to, participate in the right-of-way and construction cost of a State highway

improvement approved by the Board of Transportation under G.S. 143B-350(f)(4) that is located in the municipality or its extraterritorial jurisdiction.

(b) Process for Initiating Participation. -- A municipality interested in participating in the funding of a State highway improvement project may submit a proposal to the Department of Transportation. The Department and the municipality shall include their respective responsibilities for a proposed municipal participation project in any agreement reached concerning participation.

(c) Type of Participation Authorized. -- A municipality is authorized and empowered to acquire land by dedication and acceptance, purchase, or eminent domain, and make improvements to portions of the State highway system lying within or outside the municipal corporate limits utilizing local funds that have been authorized for that ~~purpose~~ purpose. ~~by a vote of the citizens of the municipality. The governing body of the municipality may call a special referendum at any time to allow this use of funds. The total cost of the improvements authorized by this subsection shall be the responsibility of the municipality and shall not be participated in by the Department of Transportation, nor shall the construction of improvements be a consideration for any other project by the Department of Transportation.~~ All improvements to the State highway system shall be done in accordance with the specifications and requirements of the Department of ~~Transportation and shall be set forth in an agreement entered into between the municipality and the Department. The Board of Transportation shall not give consideration to or credit for such locally financed improvements in the Transportation Improvement Program under G.S. 143B-350(f)(4).~~ Transportation.

(c1) No TIP Disadvantage for Participation. -- If a municipality participates in a State highway system improvement project, as authorized by this section, the Department shall ensure that the municipality's participation does not cause any disadvantage to any other project in the Transportation Improvement Program under G.S. 143B-350(f)(4) and located outside the municipality.

(c2) Distribution of State Funds Made Available by Municipal Participation. -- Any State or federal funds allocated to a project that are made available by municipal participation in a project contained in the Transportation Improvement Program under G.S. 143B-350(f)(4) shall remain in the same funding region that the funding was allocated to under the distribution formula contained in G.S. 136-17.2A.

(c3) Limitation on Agreements. -- The Department shall not enter into any agreement with a municipality to provide additional total funding for highway construction in the municipality in exchange for municipal participation in any project contained in the Transportation Improvement Program under G.S. 143B-350(f)(4).

(d) Authorization to Participate in Development-Related Improvements. -- When in the review and approval by a municipality of plans for the development of property abutting the State highway system it is determined by the municipality that improvements to the State highway system are necessary to provide for the safe and orderly movement of traffic, the municipality is authorized to construct, or have constructed, said improvements to the State highway system in vicinity of the

development. For purposes of this section, improvements include but are not limited to additional travel lanes, turn lanes, curb and gutter, and drainage facilities. All improvements to the State highway system shall be constructed in accordance with the specifications and requirements of the Department of Transportation and be approved by the Department of Transportation.

(e) Authorization to Participate in Project Additions. -- Pursuant to an agreement with the Department of Transportation, ~~A~~ a municipality may ~~pursuant to an agreement with the Department of Transportation~~ reimburse the Department of Transportation for the cost of all improvements, including additional right-of-way, for a street or highway improvement ~~project~~ projects approved by the Board of Transportation under ~~G.S. 143B-350(f)(4)~~ G.S. 143B-350(f)(4), that are in addition to those improvements that the Department of Transportation would normally include in the project.

~~(f) Municipalities having a population of less than 10,000 according to the most recent annual estimates of population as certified to the Secretary of Revenue by the State Budget Officer shall not participate in the right-of-way and construction costs of any State highway system improvement project approved by the Board of Transportation under G.S. 143B-350(f)(4).~~

~~Municipalities having a population of 10,000 or more according to the most recent annual estimates of population as certified to the Secretary of Revenue by the State Budget Officer may, but shall not be required by the Department or Board of Transportation, participate up to a maximum percentage as shown below in the cost of rights-of-way of the portion of any transportation improvement project approved by the Board of Transportation under G.S. 143B-350(f)(4) that is located within the municipal corporate limits:~~

~~Municipal Population~~	~~Maximum Participation In Right-of-Way Costs~~
~~10,000 - 25,000~~	~~5%~~
~~25,001 - 50,000~~	~~10%~~
~~50,001 - 100,000~~	~~15%~~
~~over 100,000~~	~~25%~~

(e1) Reimbursement Procedure. -- ~~Any participation shall be set forth in an agreement between the municipality and the Department of Transportation.~~ Upon request of the municipality, the Department of Transportation shall allow the municipality a period of not less than three years from the date construction of the project is initiated to reimburse the Department their agreed upon share of the costs ~~of rights-of-way~~ necessary for the project. The Department of Transportation shall not charge a municipality any interest ~~on its agreed upon share of rights-of-way costs.~~ during the initial three years.

(f) Report to General Assembly. -- The ~~Secretary~~ Department shall report in writing, on a monthly basis, to the Joint Legislative Commission on Governmental Operations on all agreements entered into between municipalities and the

Department of Transportation. The report shall state in summary form the contents of such agreements.

(g) Municipal Acquisition of Right-of-Way. -- In the acquisition of rights-of-way for any State highway system street or highway in or around a municipality, the municipality shall be vested with the same authority to acquire such rights-of-way as is granted to the Department of Transportation in this Chapter. In the acquisition of such rights-of-way, municipalities may use the procedures provided in Article 9 of this Chapter, and wherever the words "Department of Transportation" appear in Article 9 they shall be deemed to include "municipality" or "municipal governing body," and wherever the words "Administrator," "Administrator of Highways," "Administrator of the Department of Transportation," or "Chairman of the Department of Transportation" appear in Article 9 they shall be deemed to include "municipal clerk". It is the intention of this subsection that the powers herein granted to municipalities for the purpose of acquiring rights-of-way shall be in addition to and supplementary to those powers granted in any local act or in any other general statute, and in any case in which the provisions of this subsection or Article 9 of this Chapter are in conflict with the provisions of any local act or any other provision of any general statute, then the governing body of the municipality may in its discretion proceed in accordance with the provisions of such local act or other general statute, or, as an alternative method of procedure, in accordance with the provisions of this subsection and Article 9 of this Chapter.

(h) Department Authority Concerning Rights-of-Way. -- In the absence of an agreement, the Department of Transportation shall retain authority to pay the full cost of acquiring rights-of-way where the proposed project is deemed important to a coordinated State highway system.

(i) Changes to Municipal Participation Agreement. -- Either the municipality or the Department of Transportation may at any time propose changes in the agreement setting forth their respective responsibilities ~~for right-of-way acquisition~~ by giving notice to the other party, but no change shall be effective until it is adopted by both the municipal governing body and the Department of Transportation.

(j) Municipality Party to Right-of-Way Proceeding. -- Any municipality that agrees to contribute any part of the cost of acquiring rights-of-way for any State highway system street or highway shall be a proper party in any proceeding in court relating to the acquisition of such rights-of-way.

(k) Specified County Participation. -- In addition to the authority given to Burke, Cabarrus, and Mecklenburg Counties by Chapter 478 of the 1993 Session Laws, these counties are authorized to participate in State highway improvement projects located anywhere in each respective county in accordance with this section."

Section 2. This act becomes effective July 1, 2000.

(attachment #1)

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

Name of Committee

6/06/2000

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Glenn Lamm	UTU.
Richard Wickstead	UTU
Janet Shuis	Department of Revenue
John Long	Martin Marietta
Sharon Miller	C.U.C.A.
Charlie Smith	NCDVA
Brandon Poole	private citizen
Phil Conrad	Lt. Governor's Office
Travis Hill	Lt. Governor's Office
Jane Pinsky	AAA Carolinas
Addie M. Avery	NC DMV

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

Name of Committee

6/06/2000

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Carolyn Faulkner	DMV
Camille Warren	DMV
Vicki Hyma	N+O
Helen Lyon	Mecklenburg Co.
Ed Regan	N.C. Assoc. of Co. Comm.
Catherine Davis	ElectriCities
John Rist	NCFPC
Jim Blackburn	NC Association of County Commissioners
Mary Carmilia	REBIC
Elizabeth Bondurant	Sen Foxx Intern
Roy Rogers	NC DOT

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

Name of Committee

6/06/2000

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
BERRY JENKINS	CAROLINAS AGC
Jim Harrington	Transp. Finance Study Commission
VL McBride	NCTA
Ruth Sappie	NCDOT
Jeff Merritt	Greater Raleigh Chamber of Commerce
Natalie English	Charlotte Chamber
Christie Bartlett	CHPH
[illegible]	NCSR
Alice Garland	Electricities
[illegible]	Ben Dalton

Attachment #2

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

CORRECTED COPY

Tuesday, June 06, 2000

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE C.S. BILL

H.B.(CS #1)**133** Exempt Disabled Veteran Vehicles

Draft Number:	PCS8178
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

S.B.(CS #1)**1334** Tabor City Annexation

Draft Number:	PCS3965
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comment:

Attachment #3

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Wednesday, June 07, 2000

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

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 4,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #4)**723** Dark Window Inspection Fee

Draft Number:	PCSA252
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment: Bill heard in Senate Finance Committee Meeting on 6-06-00

SENATE FINANCE COMMITTEE

WEDNESDAY, JUNE 7, 2000

1:30 P.M. – ROOM 544

The Senate Finance Committee met on Wednesday, June 7, 2000, at 1:30 P.M. in Room 544 with Senator John Kerr presiding. There were 25 committee members present for the meeting. The Pages, Shea Setzer, sponsored by Senator Hoyle, Leigh Brown, sponsored by Senator Kerr, and Whitney Crump, were introduced to the committee.

HB 1302 – CHARTER SCHOOL FUEL EXEMPTION.

Representative Bonner was recognized to explain his Bill. On motion by Senator Purcell, a Committee Substitute was adopted. At the conclusion of Representative Bonner's explanation, Senator Allran moved for a Favorable Report for the Committee Sub and the motion carried. Copy of Bill, Explanation, Fiscal Note and Committee Sub included in the minutes.

Senator Hoyle presided over the meeting for Senator Kerr to present the following bill:

SB 1477 – FINANCE WILDLIFE CENTER.

Senator Kerr explained his Bill and Senator Hoyle sent forth a Technical Amendment which was adopted on his motion. Senator Rand moved for a Favorable Report as Amended and the motion carried. Copy of Original Bill, Amendment, Explanation, Fiscal Note and Committee Sub included in the minutes.

HB 1494 – TOWN OF LAUREL PARK CHARTER.

Representative Justus was recognized by Senator Kerr to explain his Bill. At the conclusion of Representative Justus' explanation, Senator Moore moved for a Favorable Report and the motion carried. Copy of Bill included in the minutes.

HB 1517 – FOOTHILLS REGIONAL AIRPORT AUTHORITY.

Representative Buchanan was recognized to explain his Bill and at the conclusion of his explanation, Senator Webster moved for a Favorable Report. The motion passed. Copy of Bill and Explanation included in the minutes.

SB 1318 – AMEND BILL LEE ACT TIER DESIGNATION.

Senator Dalton was recognized to explain his Bill. Senator Clodfelter moved for a Favorable Report and the motion passed. Copy of Bill, Explanation, Fiscal Note and additional information included in the minutes.

HB 1544 – REFUND OVERPAYMENT OF DEED STAMP TAX.

Representative Pope was recognized to explain his Bill and Senator Hartsell moved for a Favorable Report. The motion carried. Copy of Bill, Explanation and Fiscal Note included in the minutes.

HB 1545 – EXCISE TAX ON TIMBER CONTRACTS.

Representative Pope was recognized to explain this Bill. At the conclusion of his explanation, Senator Rand moved for a Favorable Report and the motion carried. Copy of Bill, Explanation and Fiscal Note included in the minutes.

David W. Hoyle, Co-Chair
Senate Finance Committee

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

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

Visitors' Sign Up Sheet is Attachment # 1
Committee Report(s) are Attachment # 2

AGENDA

SENATE FINANCE COMMITTEE MEETING

WEDNESDAY, JUNE 7, 2000

ROOM 544 - 1:30 P.M.

CALL MEETING TO ORDER

INTRODUCE PAGES

SB 1318 – Amend Bill Lee Act Tier Designation – Sen. Dalton

SB 1477 – Finance Wildlife Center – Sen. Kerr

HB 1132 – Preserve Farmlands/Small Farms - Rep. Insko

HB 1302 – Charter School Fuel Exemption – Rep. Bonner

HB 1494 – Town of Laurel Park Charter – Rep. Justus

HB 1517 – Foothills Regional Airport Authority – Rep. Buchanan

HB 1544 – Refund Overpayment of Deed Stamp Tax – Rep. Pope

HB 1545 – Excise Tax on Timber Contracts – Rep. Pope

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1302

Short Title: Charter School Fuel Exemption. (Public)

Sponsors: Representatives Bonner; Sutton and Yongue.

Referred to: Finance.

April 20, 1999

A BILL TO BE ENTITLED

AN ACT TO EXEMPT FROM TAX MOTOR FUEL SOLD TO CHARTER SCHOOLS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-228.90(b) reads as rewritten:

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

(1) Reserved.

(2) Charter school board. -- A nonprofit corporation that has a charter under G.S. 115C-238.29D to operate a charter school.

~~(1)~~ (3) City. -- A city as defined by G.S. 160A-1(2). The term also includes an urban service district defined by the governing board of a consolidated city-county, as defined by G.S. 160B-2(1).

~~(1a)~~ (4) Code. -- The Internal Revenue Code as enacted as of September 1, 1998, including any provisions enacted as of that date which become effective either before or after that date.

~~(1b)~~ (5) County. -- Any one of the counties listed in G.S. 153A-10. The term also includes a consolidated city-county as defined by G.S. 160B-2(1).

~~(2)~~ (6) Reserved.

~~(3)~~ (7) Electronic Funds Transfer. -- A transfer of funds initiated by using an electronic terminal, a telephone, a computer, or magnetic tape to instruct or authorize a financial institution or its agent to credit or debit an account.

~~(4)~~ (8) Reserved.

~~(5)~~ (9) Person. -- An individual, a fiduciary, a firm, an association, a partnership, a limited liability company, a corporation, a unit of government, or another group acting as a unit. The term includes an officer or employee of a corporation, a member, a manager, or an employee of a limited liability company, and a member or employee of a partnership who, as officer, employee, member, or manager, is under a duty to perform an act in meeting the requirements of Subchapter I, V, or VIII of this Chapter or of Article 3 of Chapter 119 of the General Statutes.

~~(6)~~ (10) Secretary. -- The Secretary of Revenue.

~~(7)~~ (11) Tax. -- A tax levied under Subchapter I, V, or VIII of this Chapter or an inspection tax levied under Article 3 of Chapter 119 of the General Statutes. Unless the context clearly requires otherwise, the terms "tax" and "additional tax" include penalties and interest as well as the principal amount.

~~(8)~~ (12) Taxpayer. -- A person subject to the tax or reporting requirements of Subchapter I, V, or VIII of this Chapter or of Article 3 of Chapter 119 of the General Statutes."

Section 2. G.S. 105-449.88 reads as rewritten:

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

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

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

(2) Motor fuel sold to the federal government for its use.

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

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

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

(6) Motor fuel sold to a charter school board for use for charter school purposes."

Section 3. This act becomes effective October 1, 1999.

HOUSE BILL 1302:
Charter School Fuel Exemption

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Rep. Bonner
Date:	June 6, 2000	**Summary by:**	Cindy Avrette and Martha Walston
Version:	Proposed Senate Committee Substitute		Committee Counsel

SUMMARY: ***House Bill 1302 exempts motor fuel sold to a charter school board for use for charter school purposes from the excise tax on motor fuel. The proposed senate committee substitute moves the effective date from October 1, 1999 to October 1, 2000, and updates the statutory language in Section 1 of the bill.***

CURRENT LAW: The motor fuel excise tax rate has two components: a flat rate plus a variable rate. The flat rate is 17.5¢ per gallon. The variable component may change every six months. It is added to the flat rate. The variable component is equal to the greater of 3.5¢ a gallon or 7% of the weighted average wholesale price of gasoline and No. 2 diesel fuel for the most recent six-month base period. The current motor fuel tax rate is 22¢ a gallon.

One-half cent a gallon of the motor fuel tax revenue is dedicated to the two underground storage tank funds and the water and air quality account. Seventy-five percent (75%) of the remainder of the revenue generated by this tax is allocated to the Highway Fund and the remaining 25% is credited to the Highway Trust Fund.

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

- Motor fuel removed in this State for transportation to another state if the supplier collects tax on the motor fuel at the rate of the motor fuel's destination state.
- Motor fuel sold to the federal government for its use.
- Motor fuel sold to the State for its use.
- Motor fuel sold to a local board of education for use in the public school system.
- Diesel that is kerosene and is sold to an airport.

BILL ANALYSIS: House Bill 1302 adds "motor fuel sold to a charter school for use for charter school purposes" to the list of motor fuel tax exemptions. A charter school is defined as a nonprofit corporation that has a charter under G.S. 115C-238.29D to operate a charter school. G.S. 115C-238.29D limits the number of charter schools to 100 schools statewide. Any person or nonprofit corporation may apply to the State Board of Education to establish a charter school. To be approved as a charter school, the applicant must meet the statutory requirements and the Board must find that the proposed school will provide or achieve improved student learning, increased learning opportunities for all students, the use of different and innovative teaching methods, new professional opportunities for teachers, and expanded educational choices for parents and students.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1302

SHORT TITLE: Charter School Fuel Exemption

SPONSOR(S): Representative Bonner

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
Highway Fund	($15,643)	($23,224)	($23,558)	($23,893)	($24,060)
Highway Trust Fund	($5,214)	($7,741)	($7,853)	($7,964)	($8,020)
Total Funds	($20,857)	($30,965)	($31,411)	($31,857)	($32,080)

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

EFFECTIVE DATE: This act becomes effective October 1, 1999.

BILL SUMMARY: The act exempts charter schools from paying the motor fuels tax.

ASSUMPTIONS AND METHODOLOGY: Based on data from the Department of Public Instruction accounting system, 22 out of 34 charter schools (65%) reported purchases of motor fuel in 1997-98. The average charter school spent $2,630 on motor fuel that year. Given the average gallon of gas sold for $1.15 per gallon in 1997-98, then those charter schools reporting fuel use consumed 2,287 gallons of motor fuel in a year.

The number of charter schools in North Carolina is capped at 100 in G.S. 115C-38.29D(6). If the current motor fuel usage rate of 65% is applied to the 100 charter schools, then 65 schools in the state will take advantage of the fuel tax exemption in future years. Future gas tax rates are projected by the Office of State Budget and Management (OSBM) using refined petroleum price and consumption data compiled by Standard & Poor's DRI. The chart below shows the estimated motor fuel tax that will be paid by charter schools in the next five years. The estimated revenue loss from a fuel tax exemption is divided between the Highway Fund (75%) and the Highway Trust Fund (25%). With an October 1, 1999 effective date, the first year revenue loss is 75% of the estimate for 1999-00.

	# using	Gallons per	Total	Tax rate	Total Tax	Highway	Trust
FY	motor fuel	school	Gallons	per gal.	Loss	Fund Loss	Fund Loss
1999-00	59	2,287	134,933	$0.2111	$ 28,484	$20,857	$6,952
2000-01	65	2,287	148,655	$0.2133	$ 31,708	$23,224	$7,741
2001-02	65	2,287	148,655	$0.2163	$ 32,154	$23,558	$7,853
2002-03	65	2,287	148,655	$0.2193	$ 32,600	$23,893	$7,964
2003-04	65	2,287	148,655	$0.2208	$ 32,823	$24,060	$8,020

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic & Robert Weiss

APPROVED BY: Tom Covington

DATE:
Wednesday, April 21, 1999

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1302
Proposed Senate Committee Substitute H1302-PCS5093-LA001

Short Title: Charter School Fuel Exemption. (Public)

Sponsors:

Referred to:

April 20, 1999

A BILL TO BE ENTITLED

AN ACT TO EXEMPT FROM TAX MOTOR FUEL SOLD TO CHARTER SCHOOLS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-228.90(b) reads as rewritten:

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

(1) Charter school board. -- A nonprofit corporation that has a charter under G.S. 115C-238.29D to operate a charter school.

~~(1)~~ (1a) City. -- A city as defined by G.S. 160A-1(2). The term also includes an urban service district defined by the governing board of a consolidated city-county, as defined by G.S. 160B-2(1).

~~(1a)~~ (1b) **(See Editor's note)** Code. -- The Internal Revenue Code as enacted as of June 1, 1999, including any provisions enacted as of that date which become effective either before or after that date.

~~(1b)~~ (1c) County. -- Any one of the counties listed in G.S. 153A-10. The term also includes a consolidated city-county as defined by G.S. 160B-2(1).

(2) Reserved.

(3) Electronic Funds Transfer. -- A transfer of funds initiated by using an electronic terminal, a telephone, a computer, or magnetic tape

to instruct or authorize a financial institution or its agent to credit or debit an account.

(4) Reserved.

(5) Person. -- An individual, a fiduciary, a firm, an association, a partnership, a limited liability company, a corporation, a unit of government, or another group acting as a unit. The term includes an officer or employee of a corporation, a member, a manager, or an employee of a limited liability company, and a member or employee of a partnership who, as officer, employee, member, or manager, is under a duty to perform an act in meeting the requirements of Subchapter I, V, or VIII of this Chapter or of Article 3 of Chapter 119 of the General Statutes.

(6) Secretary. -- The Secretary of Revenue.

(7) Tax. -- A tax levied under Subchapter I, V, or VIII of this Chapter or an inspection tax levied under Article 3 of Chapter 119 of the General Statutes. Unless the context clearly requires otherwise, the terms "tax" and "additional tax" include penalties and interest as well as the principal amount.

(8) Taxpayer. -- A person subject to the tax or reporting requirements of Subchapter I, V, or VIII of this Chapter or of Article 3 of Chapter 119 of the General Statutes."

Section 2. G.S. 105-449.88 reads as rewritten:

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

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

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

(2) Motor fuel sold to the federal government for its use.

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

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

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

(6) Motor fuel sold to a charter school board for use for charter school purposes."

Section 3. This act becomes effective October 1, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1477

Short Title: Finance New Wildlife Centers. (Public)

Sponsors: Senators Kerr; Albertson and Phillips.

Referred to: Finance.

May 25, 2000

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR A NEW, SUSTAINABLY DESIGNED, STATE OFFICE BUILDING AND WILDLIFE EDUCATION CENTER WITH RELATED PARKING FACILITIES, TO BE USED BY THE WILDLIFE RESOURCES COMMISSION, PURSUANT TO AN INSTALLMENT FINANCING CONTRACT IN A PRINCIPAL AMOUNT NOT TO EXCEED THIRTEEN MILLION FIVE HUNDRED THOUSAND DOLLARS, AND TO PROVIDE FOR A NEW EASTERN WILDLIFE EDUCATION CENTER WITH RELATED PARKING FACILITIES, TO BE ADMINISTERED BY THE WILDLIFE RESOURCES COMMISSION, PURSUANT TO AN INSTALLMENT FINANCING CONTRACT IN A PRINCIPAL AMOUNT NOT TO EXCEED FOUR MILLION DOLLARS.

The General Assembly of North Carolina enacts:

Section 1. Authorization of Projects. -- (a) Raleigh Wildlife Center. -- The Department of Administration is authorized to acquire, construct, and equip a new State administrative office building and wildlife education center, and related parking facilities, to be located on the Centennial Campus of North Carolina State University at Raleigh, in the City of Raleigh, North Carolina, to be used by the Wildlife Resources Commission. Title to these facilities shall be held in the name of the State. The cost of acquiring, constructing, and equipping these facilities shall be financed as provided in this act.

Section 1.(b) Eastern Wildlife Education Center. -- The Department of Administration is authorized to acquire, construct, and equip a new State wildlife education center, and related parking facilities, to be located in Currituck County

and to be administered by the Wildlife Resources Commission. Title to these facilities shall be held in the name of the State. The cost of acquiring, constructing, and equipping these facilities shall be financed as provided in this act.

Section 2. Definitions. -- Unless a different meaning is required by the context, the following definitions apply in this act:

(1) "Certificates of participation" means certificates or other instruments delivered by a special corporation as provided in this act evidencing the assignment of proportionate and undivided interests in the rights to receive installment payments to be made by the State pursuant to a financing contract.

(2) "Cost" includes all of the following, without limiting or restricting any proper definition of this term in financing the cost of a Project as authorized by this act:

a. The cost of acquiring, constructing, and equipping the Project, including the acquisition of rights-of-way, easements, franchises, equipment, furnishings, and other interests in real or personal property acquired or used in connection with the Project.

b. The cost of engineering, architectural, and other consulting services as may be required.

c. Finance charges, reserves for installment payments and interest prior to and during construction and, if considered advisable by the State Treasurer, for a period not exceeding two years after the estimated date of completion of construction.

d. Administrative expenses and charges.

e. The cost of bond insurance, credit and liquidity facilities, interest rate swap agreements, financial and legal consultants, and related costs of financing the Project or delivering and selling certificates of participation, to the extent and as determined by the State Treasurer.

f. The cost of reimbursing the State for any payments made for any cost described above.

g. Any other costs and expenses necessary or incidental to the purposes of this act.

(3) "Credit facility" means an agreement that:

a. Is entered into by the State with a bank, savings and loan association, or other banking institution, an insurance company, reinsurance company, surety company or other insurance institution, a corporation, investment banking firm or other investment institution, or any financial institution or other similar provider of a credit facility, which provider may be located within or without the United States of America; and

b. Provides for prompt payment of all or any part of the principal or purchase price (whether at maturity, presentment or tender for purchase, redemption, or acceleration), redemption premium, if any, and interest with respect to any financing contract or certificates of participation in consideration of the State agreeing to repay the provider of the credit facility in accordance with the terms and provisions of the agreement.

(4) "Department of Administration" means the North Carolina Department of Administration, created by Article 36 of Chapter 143 of the General Statutes, or should the Department of Administration be abolished or otherwise divested of its functions under this act, the public body succeeding it in its principal functions, or upon which are conferred by law the rights, powers, and duties given by this act to the Department of Administration.

(5) "Eastern Wildlife Education Center Project" means the (i) new State wildlife education center to be located in Currituck County, and related parking facilities, and (ii) equipment and furnishings related to the center and parking facilities.

(6) "Financing contract" means an installment financing contract entered into pursuant to the provisions of this act to finance the cost of a Project.

(7) "Office Project" means the (i) new State administrative office building and wildlife education center to be located in Raleigh, and related parking facilities, and (ii) equipment and furnishings related to the building, center, and parking facilities.

(8) "Project" means the Eastern Wildlife Education Center Project, the Office Project, or both.

(9) "Special corporation" means a nonprofit corporation created under Chapter 55A of the General Statutes for the purpose of delivering any certificates of participation provided by this act.

(10) "State" means the State of North Carolina.

(11) "Sustainably designed facility" means a building and surrounding environs designed using features that are energy efficient, incorporate reuseable and renewable resources, provide natural lighting, are nontoxic, require low maintenance, are congruent with the natural characteristics of the site, and cause minimum adverse impact to the environment.

(12) "Wildlife Resources Commission" means the North Carolina Wildlife Commission, created by Article 24 of Chapter 143 of the General Statutes, or should the North Carolina Wildlife Resources Commission be abolished or otherwise divested of its functions under this act, the public body succeeding it in its principal functions, or upon which are conferred by law the rights, powers,

and duties given by this act to the North Carolina Wildlife Resources Commission.

Section 3. Authorization of Financing Contracts. -- (a) The State, with the prior approval of the Council of State and the State Treasurer as provided in this act, is authorized to execute and deliver a financing contract in a principal amount not to exceed thirteen million five hundred thousand dollars ($13,500,000) in order to provide funds to the Department of Administration and the Wildlife Resources Commission to be used, together with any other available funds, to pay the cost of the Office Project.

Section 3.(b) The State, with the prior approval of the Council of State and the State Treasurer as provided in this act, is authorized to execute and deliver a financing contract in a principal amount not to exceed four million dollars ($4,000,000) in order to provide funds to the Department of Administration and the Wildlife Resources Commission to be used, together with any other available funds, to pay the cost of the Eastern Wildlife Education Center Project.

Section 3.(c) If the State determines that it is in its best interest to do so, the State may enter into one financing contract to finance both of the Projects described in subsections (a) and (b) of this section. The principal amount of the financing contract shall not, however, exceed seventeen million five hundred thousand dollars ($17,500,000).

Section 4. Approval Required. -- (a) A financing contract may not be entered into pursuant to this act unless prior to entering into the financing contract (1) the Council of State, by resolution, approves the execution and delivery of the financing contract, which resolution shall set forth (i) the not to exceed term or final maturity of the financing contract, (ii) the not to exceed interest rate or rates (or the equivalent thereof) with respect to the financing contract, and (iii) the appropriate officers of the State to execute and deliver the financing contract and all other documentation relating to it, and (2) the State Treasurer approves the financing contract and all other documentation related to it, including any deed of trust, security agreement, trust agreement, or credit facility. The resolution of the Council of State shall include any other matters as the Council of State may determine.

Section 4.(b) In determining whether to approve a financing contract, the State Treasurer may consider any factors the State Treasurer considers relevant in order to find and determine all of the following:

(1) The principal amount to be advanced to the State under the financing contract is adequate and not excessive for the purpose of paying the cost of the Project.

(2) The increase, if any, in State revenues necessary to pay the sums to become due under the financing contract is not excessive.

(3) The financing contract can be entered into on terms desirable to the State.

(4) In the case of delivery of certificates of participation, the sale of certificates of participation will not have an adverse effect upon

any scheduled or proposed sale of obligations of the State or any State agency or of any unit of local government in the State.

Section 5. Security. -- (a) In order to secure the performance by the State of its obligations under a financing contract, the State may grant a lien on, or security interest in, all or any part of the Project or the land upon which the Project is or will be located.

Section 5.(b) No deficiency judgment may be rendered against the State or any agency, department, or commission of the State in any action for breach of any obligation contained in a financing contract entered into under this act or contained in any other related documentation, and the taxing power of the State or any agency, department, or commission of the State is not and may not be pledged directly or indirectly to secure any moneys due under a financing contract authorized by this act. In the event that the General Assembly does not appropriate funds sufficient to make payments required under the financing contract, the net proceeds received from the sale, lease, or other disposition of the Project or the site, or a portion of the Project or the site, subject to a lien or security interest created pursuant to subsection (a) of this section shall be applied to satisfy the payment obligations in accordance with the deed of trust, security agreement, or other documentation creating the lien or security interest. These net proceeds are appropriated for the purpose of making these payments. Any net proceeds in excess of the amount required to satisfy the obligations of the State under a financing contract or any other related documentation shall be paid to the State Treasurer for deposit to the General Fund of the State.

Section 5.(c) A financing contract shall not contain a nonsubstitution clause that restricts the right of the State to replace or provide a substitute for the Project.

Section 5.(d) A financing contract may include provisions requesting the Governor to submit in the Governor's budget proposal, or any amendments or supplements to the budget proposal, appropriations necessary to make the payments required under the financing contract.

Section 5.(e) A financing contract may contain any provisions for protecting and enforcing the rights and remedies of the entity advancing moneys or providing funds under the financing contract as may be reasonable, proper, and not in violation of law, including covenants setting forth the duties of the State in respect of the purposes to which the funds advanced under the financing contract may be applied and the duties of the State with respect to the Project, including, without limitation, provisions relating to insuring and maintaining the Project and to the custody, safeguarding, investment, and application of moneys.

Section 5.(f) The interest component of the installment payments to be made under a financing contract may be calculated based upon a fixed or variable interest rate or rates as determined by the State Treasurer.

Section 5.(g) If the State Treasurer determines that it is in the best interest of the State, the State may enter into, or arrange for the delivery of, a credit facility to secure payment of the installment payments under a financing contract or

to secure payment of the purchase price of any certificates of participation delivered as provided in this act.

Section 5.(h) The entity entering into a financing contract with the State and any other professionals providing services relating to the financing contract, including, without limitation, the provider of any credit facility and the underwriter or placement agent for any certificates of participation, shall be selected by the State Treasurer pursuant to a competitive bidding process or negotiated process as determined by the State Treasurer.

Section 6. Source of Repayment. -- (a) The payment of amounts payable by the State under a financing contract and other related documentation during any fiscal biennium or fiscal year shall be limited to funds appropriated for that purpose by the General Assembly in its discretion. No provision of this act and no financing contract shall be construed or interpreted as creating a pledge of the faith and credit of the State or any agency, department, or commission of the State within the meaning of any constitutional debt limitation.

Section 6.(b) It is the intent of the General Assembly that the payments due under a financing contract and any other related documentation shall be made from amounts appropriated to and deposited in the Wildlife Resources Fund pursuant to G.S. 143-250 and from funds appropriated to and deposited in the Wildlife Endowment Fund pursuant to G.S. 143-250.1, including investment earnings on these amounts, in each case to the extent the funds may be lawfully applied for this purpose. In the event that funds appropriated to and deposited in the Wildlife Resources Fund and the Wildlife Endowment Fund, including investment earnings on such amounts, are not sufficient to make these payments, the General Assembly is not obligated to appropriate additional funds necessary to make these payments. The General Assembly may, however, in its discretion, appropriate the additional funds.

Section 6.(c) A financing contract entered into pursuant to this act shall incorporate a statement which sets forth a description of the provisions of subsections (a) and (b) of this section.

Section 6.(d) Expenditures during each fiscal biennium or fiscal year from the Wildlife Resources Fund and the Wildlife Endowment Fund shall be administered by the Wildlife Resources Commission in such a manner so as to assure that sufficient amounts shall be available in the Wildlife Resources Fund and the Wildlife Endowment Fund to make the required payments under a financing contract and any other related documentation.

Section 7. Certificates of Participation. -- (a) If certificates of participation are delivered pursuant to this act, a special corporation shall be created for the purpose of entering into a financing contract and executing and delivering certificates of participation. The special corporation shall furnish to the State Treasurer any information and documentation relating to the delivery and sale of the certificates of participation that the State Treasurer requests.

Section 7.(b) Certificates of participation may be sold by the State Treasurer in the manner, either at public or private sale, and for any price or prices that the State Treasurer determines to be in the best interest of the State and to effect

the purposes of this act, except that the sale must be approved by the special corporation. Interest payable with respect to certificates of participation shall accrue at the rate or rates determined by the State Treasurer with the approval of the special corporation.

Section 7.(c) Certificates of participation may be delivered pursuant to a trust agreement with a corporate trustee approved by the State Treasurer. The corporate trustee may be any trust company or bank having the powers of a trust company within or without the State. A trust agreement may (i) provide for security and pledges and assignments with respect to the security as may be permitted under this act and further provide for the enforcement of any lien or security interest created pursuant to Section 5(a) of this act, and (ii) contain any provisions for protecting and enforcing the rights and remedies of the owners of any certificates of participation as may be reasonable, proper, and not in violation of law, as determined by the State Treasurer.

Section 8. Insurance. -- The State Treasurer may authorize, execute, obtain, or otherwise provide for bond insurance, credit facilities, interest rate swap agreements, and any other related instruments that the State Treasurer considers desirable in connection with the financing of a Project as provided in this act.

Section 9. Tax Exemption. -- A financing contract entered into under this act and any certificates of participation relating to it are exempt from all State, county, and municipal taxation or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, except for inheritance and gift taxes, income taxes on the gain from the transfer of the financing contract or certificates of participation, and franchise taxes. The interest component of the installment payments made by the State under the financing contract, including the interest component of any certificates of participation, is not subject to taxation as income.

Section 10. Public Contracts. -- The provisions of Articles 3 (Purchase and Contracts), 3B (Energy Conservation in Public Facilities), 3C (Contracts to Obtain Consultant Services), 3D (Procurement of Architectural, Engineering, and Surveying Services), and 8 (Public Contracts) of Chapter 143 of the General Statutes and any other laws, rules, or regulations of the State as relate to the acquisition and construction of State property apply to a Project. It is the intent of the General Assembly that the Office Project should be a sustainably designed facility.

Section 11. Interpretation of Act. -- (a) The foregoing sections of this act provide an additional and alternative method for the doing of the things authorized by the act, are supplemental and additional to powers conferred by other laws, and do not derogate any powers now existing.

Section 11.(b) References in this act to specific sections or Chapters of the General Statutes are intended to be references to those sections or Chapters as amended and as they may be amended from time to time by the General Assembly.

Section 11.(c) This act, being necessary for the health and welfare of the people of the State, shall be liberally construed to effect its purposes.

Section 11.(d) If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

Section 12. Effective Date. -- This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1477

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

S1477-ALA-1

Date_____,2000

Comm. Sub. [ ]
Amends Title [ ]

Senator _____

moves to amend the bill on page 7, line 23,
by rewriting the line to read:
"inheritance, estate, and gift taxes, income taxes on the gain from the transfer of the financing".

SIGNED _____
Amendment Sponsor

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

ADOPTED _____ FAILED _____ TABLED _____

SENATE BILL 1477:
Finance New Wildlife Centers

BILL ANALYSIS

Committee:	Senate Finance	**Sponsor:**	Senator Kerr
Date:	June 5, 2000	**Analysis by:**	Martha H. Harris
Version:	First Edition		Staff Attorney

SUMMARY: ***Senate Bill 1477 authorizes the State to construct and finance two projects: a new, sustainably designed, office building and Wildlife Education Center for the Wildlife Resources Commission, to be located in Raleigh, and a new Eastern Wildlife Education Center, to be located in Currituck County. The projects would be financed with one or two installment purchase contracts under which the State would borrow up to $13.5 million for the Raleigh project and up to $4 million for the Currituck County project. Repayment of the debt would be secured by a lien on the building, land, or both.***

Senate Bill 1477 would authorize the construction of two projects: a new office building and Wildlife Education Center for the Wildlife Resources Commission in Raleigh and a new Eastern Wildlife Education Center in Currituck County. The Raleigh project would include the 63,000 square foot building, related furnishings and equipment, and parking facilities, and would be located on the Centennial Campus of North Carolina State University. The land would be leased from the Centennial Campus under a long-term lease.

The Eastern Wildlife Education Center project, which is being promoted in cooperation with the Whalehead Historic Preservation Trust and the Currituck Wildlife Guild, would be located on land that is adjacent to the Currituck Beach Lighthouse and the historic Whalehead Club and is available at no cost from Currituck County. The Eastern Wildlife Education Center would provide educational programs and teacher workshops, and would also include a museum to interpret the region's natural history and natural resources. The project would include the 19,800 square foot building, related furnishings and equipment, and parking lots.

These two projects would be financed with one or more installment purchase financing contracts. Under such a contract, the State would borrow up to $13.5 million for the Raleigh project and up to $4 million for the Eastern Wildlife Education Center. The amounts borrowed would be repaid with interest in installments over a period of 20 to 25 years. The debt would be tax-exempt. The repayments would be made not from the General Fund but with funds available to the Wildlife Resources Commission from the Wildlife Resources Fund[1] and the Wildlife Endowment Fund[2].

The debt would be secured by a security interest in the buildings, the land, or both. There would be no pledge of the State's taxing power or full faith and credit. Thus, voter approval is not necessary for the borrowing. If the Wildlife Resources Commission defaulted on its repayments, the buildings could be disposed of to generate funds to satisfy the debt. Under the bill, the funds could be borrowed either from a single entity or by the sale of certificates of participation. A certificate of participation represents the holder's undivided interest in the right to receive the installment payments to be made by the State. If certificates of participation are issued, a nonprofit corporation will have to be created to facilitate the financing.

Before a financing contract could be entered into, it would have to be approved by the Council of State. The Council of State would, by resolution, set the maximum interest rate and the maximum number of years over which the debt would be repaid. In addition, the State Treasurer must approve the financing, finding that the

[1] The Wildlife Resources Fund consists of revenues derived from hunting, fishing, and related license fees, other than commercial fishing license fees. The fund and its earnings are designated for the purposes of the Wildlife Resources Commission. G.S. 143-250.

[2] The Wildlife Endowment Fund consists of the proceeds from the sale of lifetime licenses as well as gifts and grants. The Fund is a special trust fund to support wildlife conservation programs. The earnings of the fund may be spent for this purpose, while the principle is to be preserved. G.S. 143-250.1.

amount to be borrowed is adequate and not excessive and will not require an excessive increase in any State revenues to provide for repayment.

It is intended that the Raleigh facility will be sustainably designed, i.e., the building and surrounding environ will be designed using features that are energy efficient, incorporate reusable and renewable resources, provide natural lighting, are nontoxic, require low maintenance, are congruent with the natural characteristics of the site, and cause minimum adverse impact to the environment.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: S.B. 1477 (First Edition)

SHORT TITLE: Finance New Wildlife Centers

SPONSOR(S): Senators Kerr; Albertson and Phillips

DRAFT

FISCAL IMPACT

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

	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05
REVENUES					
EXPENDITURES					
General Fund	No General Fund Impact				
Wildlife Fund	[See Assumptions and Methodology]				
Wildlife Endowment Fund					
POSITIONS:					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Wildlife Resources Commission

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

BILL SUMMARY: This bill authorizes the Wildlife Resources Commission (WRC) to enter into a financing contract for $13.5 million for the purposes of constructing a WRC administration building and resources center to be located on the Centennial Campus of North Carolina State University. The bill also authorizes the WRC to finance $4 million for the construction of a new eastern wildlife education center to be located in Currituck County.

ASSUMPTIONS AND METHODOLOGY: The construction financing costs authorized by this bill have no general fund impact, but rather are borne entirely by the Wildlife Resources Commission. The WRC expects to fund the construction of the new administration and education center and the eastern wildlife education center internally, with currently unbudgeted funds.

The anticipated yearly loan payment cost of the $13.5 million administration and education facility at 5.1% for 25 years is $956,495. The annual loan payment for the $4 million eastern wildlife center given the same loan term and interest rate is $283,406.

Loan Terms

Estimated Cost of Building	$13,500,000	$4,000,000
Loan Term	25 years	25 years
Current Variable Interest Rate for Tax-Exempt Loans	5.10%	5.10%
Estimated Yearly Loan Payment	$956,495	$283,406

Funding for the yearly estimated loan payment comes from four revenue sources within the WRC. These revenues are outlined in the following table:

Available Funding Sources	WRC Adm. & Educ. Ctr.	Eastern NC Educ. Ctr.
(1) Current Lease Expense	$375,000	
(2) Short Term Interest (STIF) Earned on Wildlife Fund	$470,000	
(3) Sales Tax	$111,495	
(4) Endowment Fund Interest		$283,406
Estimated Yearly Loan Payments	$956,495	$283,406

1) The current WRC lease expense is supported by receipts collected from the sale of hunting and fishing licenses. Monies that are currently allocated toward rent payments would be allocated toward loan payments for the WRC administration center upon the passing of this bill. Therefore, the cost of hunting and fishing licenses to NC residents would be unaffected by this legislation.
2) The Wildlife Fund earns interest in the short term investment fund (STIF) at the Office of the State Treasurer. The projected annual revenue from this fund is approximately $572,000. Of this projected revenue, $470,000 is currently unbudgeted and could be directed towards yearly loan payments on the WRC administration center.
3) Under G.S. 105-633.44B, the Wildlife Fund earns a percentage of the state sales and use tax each year. $111,495 of the Fund balance would be appropriated towards making yearly loan payments for the WRC administration center upon the passing of this bill.
4) The Wildlife Endowment Fund earns interest in the long term investment fund (LTIF) at the Office of the State Treasurer. The estimated monthly interest earned is approximately $259,000 or $3.1 million per year. Each year the commissioners approve one time expenditures from the fund for approved wildlife projects. Receipts from the interest earned on the endowment fund are not currently budgeted, and could be directed toward payment of the eastern wildlife education center yearly loan payment.

Estimates on the construction costs of the two facilities were made using the Office of State Construction guidelines so that the potential for additional construction expenditures were taken into account. But if the projects were to go over budget, WRC staff are confident that the Endowment Fund interest would cover extra costs, and no additonal appropriations would be requested.

TECHNICAL CONSIDERATIONS:

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic and Eugene Son (Research Assistant)

APPROVED BY:

DATE: June 6, 2000

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 1477
Proposed Committee Substitute S1477-PCSX3970-LA

Short Title: Finance New Wildlife Centers. (Public)

Sponsors:

Referred to:

May 25, 2000

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR A NEW, SUSTAINABLY DESIGNED, STATE OFFICE BUILDING AND WILDLIFE EDUCATION CENTER WITH RELATED PARKING FACILITIES, TO BE USED BY THE WILDLIFE RESOURCES COMMISSION, PURSUANT TO AN INSTALLMENT FINANCING CONTRACT IN A PRINCIPAL AMOUNT NOT TO EXCEED THIRTEEN MILLION FIVE HUNDRED THOUSAND DOLLARS, AND TO PROVIDE FOR A NEW EASTERN WILDLIFE EDUCATION CENTER WITH RELATED PARKING FACILITIES, TO BE ADMINISTERED BY THE WILDLIFE RESOURCES COMMISSION, PURSUANT TO AN INSTALLMENT FINANCING CONTRACT IN A PRINCIPAL AMOUNT NOT TO EXCEED FOUR MILLION DOLLARS.

The General Assembly of North Carolina enacts:

Section 1. Authorization of Projects. -- (a) Raleigh Wildlife Center. -- The Department of Administration is authorized to acquire, construct, and equip a new State administrative office building and wildlife education center, and related parking facilities, to be located on the Centennial Campus of North Carolina State University at Raleigh, in the City of Raleigh, North Carolina, to be used by the Wildlife Resources Commission. Title to these facilities shall be held in the name of the State. The cost of acquiring, constructing, and equipping these facilities shall be financed as provided in this act.

Section 1.(b) Eastern Wildlife Education Center. -- The Department of Administration is authorized to acquire, construct, and equip a new State wildlife

education center, and related parking facilities, to be located in Currituck County and to be administered by the Wildlife Resources Commission. Title to these facilities shall be held in the name of the State. The cost of acquiring, constructing, and equipping these facilities shall be financed as provided in this act.

Section 2. Definitions. -- Unless a different meaning is required by the context, the following definitions apply in this act:

(1) "Certificates of participation" means certificates or other instruments delivered by a special corporation as provided in this act evidencing the assignment of proportionate and undivided interests in the rights to receive installment payments to be made by the State pursuant to a financing contract.

(2) "Cost" includes all of the following, without limiting or restricting any proper definition of this term in financing the cost of a Project as authorized by this act:

a. The cost of acquiring, constructing, and equipping the Project, including the acquisition of rights-of-way, easements, franchises, equipment, furnishings, and other interests in real or personal property acquired or used in connection with the Project.

b. The cost of engineering, architectural, and other consulting services as may be required.

c. Finance charges, reserves for installment payments and interest prior to and during construction and, if considered advisable by the State Treasurer, for a period not exceeding two years after the estimated date of completion of construction.

d. Administrative expenses and charges.

e. The cost of bond insurance, credit and liquidity facilities, interest rate swap agreements, financial and legal consultants, and related costs of financing the Project or delivering and selling certificates of participation, to the extent and as determined by the State Treasurer.

f. The cost of reimbursing the State for any payments made for any cost described above.

g. Any other costs and expenses necessary or incidental to the purposes of this act.

(3) "Credit facility" means an agreement that:

a. Is entered into by the State with a bank, savings and loan association, or other banking institution, an insurance company, reinsurance company, surety company or other insurance institution, a corporation, investment banking firm or other investment institution, or any financial institution or other similar provider of a credit facility, which provider

may be located within or without the United States of America; and

b. Provides for prompt payment of all or any part of the principal or purchase price (whether at maturity, presentment or tender for purchase, redemption, or acceleration), redemption premium, if any, and interest with respect to any financing contract or certificates of participation in consideration of the State agreeing to repay the provider of the credit facility in accordance with the terms and provisions of the agreement.

(4) "Department of Administration" means the North Carolina Department of Administration, created by Article 36 of Chapter 143 of the General Statutes, or should the Department of Administration be abolished or otherwise divested of its functions under this act, the public body succeeding it in its principal functions, or upon which are conferred by law the rights, powers, and duties given by this act to the Department of Administration.

(5) "Eastern Wildlife Education Center Project" means the (i) new State wildlife education center to be located in Currituck County, and related parking facilities, and (ii) equipment and furnishings related to the center and parking facilities.

(6) "Financing contract" means an installment financing contract entered into pursuant to the provisions of this act to finance the cost of a Project.

(7) "Office Project" means the (i) new State administrative office building and wildlife education center to be located in Raleigh, and related parking facilities, and (ii) equipment and furnishings related to the building, center, and parking facilities.

(8) "Project" means the Eastern Wildlife Education Center Project, the Office Project, or both.

(9) "Special corporation" means a nonprofit corporation created under Chapter 55A of the General Statutes for the purpose of delivering any certificates of participation provided by this act.

(10) "State" means the State of North Carolina.

(11) "Sustainably designed facility" means a building and surrounding environs designed using features that are energy efficient, incorporate reuseable and renewable resources, provide natural lighting, are nontoxic, require low maintenance, are congruent with the natural characteristics of the site, and cause minimum adverse impact to the environment.

(12) "Wildlife Resources Commission" means the North Carolina Wildlife Commission, created by Article 24 of Chapter 143 of the General Statutes, or should the North Carolina Wildlife Resources Commission be abolished or otherwise divested of its functions

under this act, the public body succeeding it in its principal functions, or upon which are conferred by law the rights, powers, and duties given by this act to the North Carolina Wildlife Resources Commission.

Section 3. Authorization of Financing Contracts. -- (a) The State, with the prior approval of the Council of State and the State Treasurer as provided in this act, is authorized to execute and deliver a financing contract in a principal amount not to exceed thirteen million five hundred thousand dollars ($13,500,000) in order to provide funds to the Department of Administration and the Wildlife Resources Commission to be used, together with any other available funds, to pay the cost of the Office Project.

Section 3.(b) The State, with the prior approval of the Council of State and the State Treasurer as provided in this act, is authorized to execute and deliver a financing contract in a principal amount not to exceed four million dollars ($4,000,000) in order to provide funds to the Department of Administration and the Wildlife Resources Commission to be used, together with any other available funds, to pay the cost of the Eastern Wildlife Education Center Project.

Section 3.(c) If the State determines that it is in its best interest to do so, the State may enter into one financing contract to finance both of the Projects described in subsections (a) and (b) of this section. The principal amount of the financing contract shall not, however, exceed seventeen million five hundred thousand dollars ($17,500,000).

Section 4. Approval Required. -- (a) A financing contract may not be entered into pursuant to this act unless prior to entering into the financing contract (1) the Council of State, by resolution, approves the execution and delivery of the financing contract, which resolution shall set forth (i) the not to exceed term or final maturity of the financing contract, (ii) the not to exceed interest rate or rates (or the equivalent thereof) with respect to the financing contract, and (iii) the appropriate officers of the State to execute and deliver the financing contract and all other documentation relating to it, and (2) the State Treasurer approves the financing contract and all other documentation related to it, including any deed of trust, security agreement, trust agreement, or credit facility. The resolution of the Council of State shall include any other matters as the Council of State may determine.

Section 4.(b) In determining whether to approve a financing contract, the State Treasurer may consider any factors the State Treasurer considers relevant in order to find and determine all of the following:

(1) The principal amount to be advanced to the State under the financing contract is adequate and not excessive for the purpose of paying the cost of the Project.

(2) The increase, if any, in State revenues necessary to pay the sums to become due under the financing contract is not excessive.

(3) The financing contract can be entered into on terms desirable to the State.

(4) In the case of delivery of certificates of participation, the sale of certificates of participation will not have an adverse effect upon any scheduled or proposed sale of obligations of the State or any State agency or of any unit of local government in the State.

Section 5. Security. -- (a) In order to secure the performance by the State of its obligations under a financing contract, the State may grant a lien on, or security interest in, all or any part of the Project or the land upon which the Project is or will be located.

Section 5.(b) No deficiency judgment may be rendered against the State or any agency, department, or commission of the State in any action for breach of any obligation contained in a financing contract entered into under this act or contained in any other related documentation, and the taxing power of the State or any agency, department, or commission of the State is not and may not be pledged directly or indirectly to secure any moneys due under a financing contract authorized by this act. In the event that the General Assembly does not appropriate funds sufficient to make payments required under the financing contract, the net proceeds received from the sale, lease, or other disposition of the Project or the site, or a portion of the Project or the site, subject to a lien or security interest created pursuant to subsection (a) of this section shall be applied to satisfy the payment obligations in accordance with the deed of trust, security agreement, or other documentation creating the lien or security interest. These net proceeds are appropriated for the purpose of making these payments. Any net proceeds in excess of the amount required to satisfy the obligations of the State under a financing contract or any other related documentation shall be paid to the State Treasurer for deposit to the General Fund of the State.

Section 5.(c) A financing contract shall not contain a nonsubstitution clause that restricts the right of the State to replace or provide a substitute for the Project.

Section 5.(d) A financing contract may include provisions requesting the Governor to submit in the Governor's budget proposal, or any amendments or supplements to the budget proposal, appropriations necessary to make the payments required under the financing contract.

Section 5.(e) A financing contract may contain any provisions for protecting and enforcing the rights and remedies of the entity advancing moneys or providing funds under the financing contract as may be reasonable, proper, and not in violation of law, including covenants setting forth the duties of the State in respect of the purposes to which the funds advanced under the financing contract may be applied and the duties of the State with respect to the Project, including, without limitation, provisions relating to insuring and maintaining the Project and to the custody, safeguarding, investment, and application of moneys.

Section 5.(f) The interest component of the installment payments to be made under a financing contract may be calculated based upon a fixed or variable interest rate or rates as determined by the State Treasurer.

Section 5.(g) If the State Treasurer determines that it is in the best interest of the State, the State may enter into, or arrange for the delivery of, a credit facility to secure payment of the installment payments under a financing contract or to secure payment of the purchase price of any certificates of participation delivered as provided in this act.

Section 5.(h) The entity entering into a financing contract with the State and any other professionals providing services relating to the financing contract, including, without limitation, the provider of any credit facility and the underwriter or placement agent for any certificates of participation, shall be selected by the State Treasurer pursuant to a competitive bidding process or negotiated process as determined by the State Treasurer.

Section 6. Source of Repayment. -- (a) The payment of amounts payable by the State under a financing contract and other related documentation during any fiscal biennium or fiscal year shall be limited to funds appropriated for that purpose by the General Assembly in its discretion. No provision of this act and no financing contract shall be construed or interpreted as creating a pledge of the faith and credit of the State or any agency, department, or commission of the State within the meaning of any constitutional debt limitation.

Section 6.(b) It is the intent of the General Assembly that the payments due under a financing contract and any other related documentation shall be made from amounts appropriated to and deposited in the Wildlife Resources Fund pursuant to G.S. 143-250 and from funds appropriated to and deposited in the Wildlife Endowment Fund pursuant to G.S. 143-250.1, including investment earnings on these amounts, in each case to the extent the funds may be lawfully applied for this purpose. In the event that funds appropriated to and deposited in the Wildlife Resources Fund and the Wildlife Endowment Fund, including investment earnings on such amounts, are not sufficient to make these payments, the General Assembly is not obligated to appropriate additional funds necessary to make these payments. The General Assembly may, however, in its discretion, appropriate the additional funds.

Section 6.(c) A financing contract entered into pursuant to this act shall incorporate a statement which sets forth a description of the provisions of subsections (a) and (b) of this section.

Section 6.(d) Expenditures during each fiscal biennium or fiscal year from the Wildlife Resources Fund and the Wildlife Endowment Fund shall be administered by the Wildlife Resources Commission in such a manner so as to assure that sufficient amounts shall be available in the Wildlife Resources Fund and the Wildlife Endowment Fund to make the required payments under a financing contract and any other related documentation.

Section 7. Certificates of Participation. -- (a) If certificates of participation are delivered pursuant to this act, a special corporation shall be created for the purpose of entering into a financing contract and executing and delivering certificates of participation. The special corporation shall furnish to the State Treasurer any information and documentation relating to the delivery and sale of the certificates of participation that the State Treasurer requests.

Section 7.(b) Certificates of participation may be sold by the State Treasurer in the manner, either at public or private sale, and for any price or prices that the State Treasurer determines to be in the best interest of the State and to effect the purposes of this act, except that the sale must be approved by the special corporation. Interest payable with respect to certificates of participation shall accrue at the rate or rates determined by the State Treasurer with the approval of the special corporation.

Section 7.(c) Certificates of participation may be delivered pursuant to a trust agreement with a corporate trustee approved by the State Treasurer. The corporate trustee may be any trust company or bank having the powers of a trust company within or without the State. A trust agreement may (i) provide for security and pledges and assignments with respect to the security as may be permitted under this act and further provide for the enforcement of any lien or security interest created pursuant to Section 5(a) of this act, and (ii) contain any provisions for protecting and enforcing the rights and remedies of the owners of any certificates of participation as may be reasonable, proper, and not in violation of law, as determined by the State Treasurer.

Section 8. Insurance. -- The State Treasurer may authorize, execute, obtain, or otherwise provide for bond insurance, credit facilities, interest rate swap agreements, and any other related instruments that the State Treasurer considers desirable in connection with the financing of a Project as provided in this act.

Section 9. Tax Exemption. -- A financing contract entered into under this act and any certificates of participation relating to it are exempt from all State, county, and municipal taxation or assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, except for inheritance, estate, and gift taxes, income taxes on the gain from the transfer of the financing contract or certificates of participation, and franchise taxes. The interest component of the installment payments made by the State under the financing contract, including the interest component of any certificates of participation, is not subject to taxation as income.

Section 10. Public Contracts. -- The provisions of Articles 3 (Purchase and Contracts), 3B (Energy Conservation in Public Facilities), 3C (Contracts to Obtain Consultant Services), 3D (Procurement of Architectural, Engineering, and Surveying Services), and 8 (Public Contracts) of Chapter 143 of the General Statutes and any other laws, rules, or regulations of the State as relate to the acquisition and construction of State property apply to a Project. It is the intent of the General Assembly that the Office Project should be a sustainably designed facility.

Section 11. Interpretation of Act. -- (a) The foregoing sections of this act provide an additional and alternative method for the doing of the things authorized by the act, are supplemental and additional to powers conferred by other laws, and do not derogate any powers now existing.

Section 11.(b) References in this act to specific sections or Chapters of the General Statutes are intended to be references to those sections or Chapters as amended and as they may be amended from time to time by the General Assembly.

Section 11.(c) This act, being necessary for the health and welfare of the people of the State, shall be liberally construed to effect its purposes.

Section 11.(d) If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

Section 12. Effective Date. -- This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1494*

Short Title: Town of Laurel Park Charter. (Local)

Sponsors: Representative Justus.

Referred to: Finance.

May 9, 2000

A BILL TO BE ENTITLED

AN ACT TO REVISE AND CONSOLIDATE THE CHARTER OF THE TOWN OF LAUREL PARK.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the Town of Laurel Park is revised and consolidated to read as follows:

"THE CHARTER OF THE TOWN OF LAUREL PARK.

"ARTICLE I. INCORPORATION, CORPORATE POWERS, AND BOUNDARIES.

"Section 1.1. **Incorporation.** The Town of Laurel Park, North Carolina, in Henderson County and the inhabitants thereof shall continue to be a municipal body politic and corporate, under the name of the 'Town of Laurel Park', hereinafter at times referred to as the 'Town'.

"Section 1.2. **Powers.** The Town shall have and may exercise all of the powers, duties, rights, privileges, and immunities conferred upon the Town of Laurel Park specifically by this Charter or upon municipal corporations by general law. The term 'general law' is employed herein as defined in G.S. 160A-1.

"Section 1.3. **Corporate Limits.** The corporate limits shall be those existing at the time of ratification of this Charter, as set forth on the official map of the Town and as they may be altered from time to time in accordance with law. An official map of the Town, showing the current municipal boundaries, shall be maintained permanently in the office of the Town Clerk and shall be available for public inspection. Upon alteration of the corporate limits pursuant to law, the appropriate changes to the official map shall be made and copies shall be filed in the office of the

Secretary of State, the office of the Henderson County Register of Deeds, and the appropriate board of elections.

"ARTICLE II. GOVERNING BODY.

"Section 2.1. **Town Governing Body; Composition.** The Town Council hereinafter referred to as the 'Council', and the Mayor shall be the governing body of the Town.

"Section 2.2. **Town Council; Composition; Terms of Office.** The Council shall be composed of four members to be known as Commissioners, to be elected by all the qualified voters of the Town, for staggered terms of four years or until their successors are elected and qualified.

"Section 2.3. **Mayor; Term of Office Duties.** The Mayor shall be elected by all the qualified voters of the Town for a term of four years or until his or her successor is elected and qualified. The Mayor shall be the official head of the Town government and preside at meetings of the Council, shall have the right to vote only when there is an equal division on any question or matter before the Council, and shall exercise the powers and duties conferred by law or as directed by the Council.

"Section 2.4. **Mayor Pro Tempore.** The Council shall elect one of its members as Mayor Pro Tempore to perform the duties of the Mayor during his or her absence or disability, in accordance with general law. The Mayor Pro Tempore shall serve in such capacity at the pleasure of the Council.

"Section 2.5. **Meetings.** In accordance with general law, the Council shall establish a suitable time and place for its regular meetings. Special and emergency meetings may be held as provided by general law.

"Section 2.6. **Quorum; Voting.** Official actions of the Council and all votes shall be taken in accordance with the applicable provisions of general law, particularly G.S. 160A-75. The quorum provisions of G.S. 160A-74 shall apply.

"Section 2.7. **Compensation; Qualifications for Office; Vacancies.** The compensation and qualifications of the Mayor and Commissioners shall be in accordance with general law. Vacancies shall be filled as provided in G.S. 160A-63.

"ARTICLE III. ELECTIONS.

"Section 3.1. **Regular Municipal Elections.** Regular municipal elections shall be held in each odd-numbered year in accordance with the uniform municipal election laws of North Carolina. Elections shall be conducted on a nonpartisan basis and the results determined using the nonpartisan plurality method as provided in G.S. 163-292.

"Section 3.2. **Election of Mayor.** A Mayor shall be elected in the regular municipal election in 2003 and each four years thereafter.

"Section 3.3. **Election of Commissioners.** Except for the filing of vacancies as provided for in G.S. 160A-63, two Commissioners shall be elected at the regular municipal election in 2001 and every four years thereafter and two Commissioners shall be elected at the regular municipal election in 2003 and every four years thereafter. In the regular municipal election in 2001, and in each regular municipal election thereafter, persons shall be elected to serve four-year terms in those positions whose terms are then expiring.

"Section 3.4. **Special Elections and Referenda.** Special elections and referenda may be held only as provided by general law or applicable local acts of the General Assembly.

"ARTICLE IV. TOWN MANAGER.

"Section 4.1. **Form of Government.** The Town shall operate under the Council-Manager form of government, in accordance with Part 2 of Article 7 of Chapter 160A of the General Statutes.

"Section 4.2. **Town Manager; Appointment; Powers and Duties.** The Council shall appoint a Town Manager who shall be responsible for the administration of all departments of the Town government. The Town Manager shall have all the powers and duties conferred by general law, except as expressly limited by the provisions of this Charter, and the additional powers and duties conferred by the Council, so far as authorized by general law.

"ARTICLE V. ADMINISTRATIVE OFFICERS AND EMPLOYEES.

"Section 5.1. **Town Attorney.** The Town Council shall appoint a Town Attorney licensed to practice law in North Carolina. It shall be the duty of the Town Attorney to represent the Town, advise Town officials, and perform other duties required by law or as the Council may direct.

"Section 5.2. **Town Clerk.** The Town Manager shall appoint a Town Clerk to keep a journal of the proceedings of the Council, to maintain official records and documents, to give notice of meetings, and to perform such other duties required by law or as the Town Manager may direct. The Town Manager may appoint one or more Assistants and/or Deputy Town Clerks.

"Section 5.3. **Tax Collector.** The Town shall have a Tax Collector to collect all taxes owed to the Town and perform those duties specified in G.S. 105-350 and such other duties as prescribed by law or assigned by the Town Manager. Notwithstanding the contrary provisions of G.S 105-349, the Town Manager is authorized to appoint the Tax Collector and one or more Deputy Tax Collectors.

"Section 5.4. **Other Administrative Officers and Employees.** The Council may authorize other positions to be filled by appointment by the Town Manager and may organize the Town government as deemed appropriate, subject to the requirements of general law.

"Section 5.5. **Manager's Authority; Role of Elected Officials.** As chief administrator, the Town Manager shall have the power to appoint, suspend, and remove all nonelected officers, department heads, and employees of the Town, except the Town Attorney, who shall be appointed as provided in Section 5.1 of this Charter. Neither the Mayor nor the Town Council nor any of its committees or members shall take part in the appointment or removal of officers, department heads, and employees in the administrative service of the Town, except as provided by this Charter. Except for the purpose of inquiry, or for consultation with the Town Attorney, the Mayor and the Town Council and its members shall deal with officers and employees in the administrative service of the Town only through the Town Manager, Acting Manager, or Interim Manager, and neither the Mayor nor the

Council nor any of its members shall give orders or directions to any subordinate of the Town Manager, Acting Manager, or Interim Manager, either publicly or privately.

"ARTICLE VI. ANNEXATION AGREEMENTS.

"Section 6.1. **Annexation and Payment in Lieu of Tax Agreements.** The authority of the Town to enter into annexation and payment in lieu of tax agreements shall continue as authorized by Chapter 188, Session Laws of 1997, and any subsequent acts."

Section 2. The purpose of this act is to revise the Charter of the Town of Laurel Park and to consolidate certain acts concerning the property, affairs, and government of the Town. It is intended to continue without interruption those provisions of prior acts which are expressly consolidated into this act, so that all rights and liabilities which have accrued are preserved and may be enforced.

Section 3. This act does not repeal or affect any acts concerning the property, affairs, or government of public schools or any acts validating official actions, proceedings, contracts, or obligations of any kind.

Section 4. The following acts, having served the purposes for which they were enacted or having been consolidated into this act, are expressly repealed:

Chapter 100, Private Laws of 1925, except for Section 7
Chapter 108, Private Laws of 1925
Chapter 103, Private Laws of 1927
Chapter 174, Private Laws of 1933
Chapter 204, Private Laws of 1935
Chapter 262, Private Laws of 1935
Chapter 622, Session Laws of 1947
Chapter 95, Session Laws of 1961
Chapter 348, Session Laws of 1987
Chapter 336, Session Laws of 1989
Chapter 878, Session Laws of 1989
Chapter 559, Session Laws of 1991.

Section 5. The Mayor and Commissioners serving on the date of ratification of this act shall serve until the expiration of their terms or until their successors are elected and qualified. Thereafter those offices shall be filled as provided in Articles II and III of the Charter contained in Section 1 of this act.

Section 6. This act does not affect any rights or interests which arose under any provisions repealed by this act.

Section 7. All existing ordinances, resolutions, and other provisions of the Town of Laurel Park not inconsistent with the provisions of this act shall continue in effect until repealed or amended.

Section 8. No action or proceeding pending on the effective date of this act by or against the Town or any of its departments or agencies shall be abated or otherwise affected by this act.

Section 9. If any provision of this act or application thereof is held invalid, such invalidity shall not affect other provisions or applications of this act

which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Section 10. Whenever a reference is made in this act to a particular provision of the General Statutes, and such provision is later amended, superseded, or recodified, the reference shall be deemed amended to refer to the amended law, or to the law which most clearly corresponds to the statutory provision which is superseded or recodified.

Section 11. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 1517
Committee Substitute Favorable 5/24/00

Short Title: Foothills Regional Airport Auth'ity. (Local)

Sponsors:

Referred to:

May 11, 2000

A BILL TO BE ENTITLED

AN ACT TO ENABLE THE COUNTY OF CALDWELL, THE COUNTY OF BURKE, THE CITY OF LENOIR, AND THE CITY OF MORGANTON TO JOINTLY ESTABLISH AN AIRPORT AUTHORITY AND TO PROVIDE FOR THE JOINT MAINTENANCE AND CONTINUING OPERATION OF THE EXISTING AIRPORT NOW OPERATED BY THE MORGANTON-LENOIR AIRPORT AUTHORITY.

The General Assembly of North Carolina enacts:

Section 1. Creation. There is created the "Foothills Regional Airport Authority" (for brevity hereinafter referred to as the "Airport Authority") which, when duly established as provided for in this act, shall be both a body politic and corporate, having all of the following enumerated powers and jurisdiction as well as any other additional powers that may be conferred upon it by the general law and by act of the General Assembly.

Section 2. Joint Airport Established. The governing bodies of the County of Caldwell, the County of Burke, the City of Morganton, and the City of Lenoir, (jointly referred to as the "governing bodies") may jointly acquire, establish, construct, own, control, lease, equip, improve, maintain, operate, and regulate an airport or landing field for the use of airplanes and other aircraft and may use for these purposes any suitable property that is now or may at any time be jointly owned or controlled by those cities or counties or by the Airport Authority.

The Airport Authority authorized by this act shall be successor in interest to the Morganton-Lenoir Airport Authority and when it is established, the

Morganton-Lenoir Airport Authority shall cease to exist. As successor in interest, the Airport Authority shall be the beneficiary of, and shall be bound by all existing contracts, agreements, licenses, permits, loans, grants, appropriations, and gifts of any kind and shall be subject to all applicable rules and regulations issued by any regulatory body having jurisdiction over aeronautical activities.

Section 3. Authority Membership and Procedures.

(a) Membership. The Airport Authority shall consist of eight members who shall be residents of either Burke or Caldwell County and who shall be appointed for staggered terms as provided in this act. Each of the governing bodies shall appoint two members, one of which shall be an elected official.

(b) Term. The term for any member shall extend for a period of two years except that for the initial appointments to the Airport Authority, each governing body shall designate one appointment as a two-year term and one appointment as a one-year term. Thereafter all terms shall be for a full two years. Members may succeed themselves in office and may serve for more than one term.

All members of the Airport Authority shall continue to hold office until their successors have been appointed and are qualified by the taking of the oath of office.

(c) Oath. Each member shall take and subscribe to an oath of office before an official authorized to administer oaths before assuming duties.

(d) Vacancies. The governing body making the initial or any subsequent appointment of a member shall also have the right to fill any vacancy created by the resignation, removal, incapacity, or death of that member. A member appointed to fill a vacancy shall serve the unexpired term and shall be eligible for reappointment.

(e) Organizational Meeting. The Airport Authority shall hold an organizational meeting immediately after being established and each year thereafter. At the organizational meeting, the membership shall elect from its number a chairman and any other officers, may establish a regular meeting time and place, appoint standing committees and organize itself for the purpose of transacting business. An administrative secretary may be appointed for the purpose of maintaining records, keeping minutes and other administrative duties, and it shall not be required that such person be a member of the Airport Authority.

(f) Meetings. The Airport Authority shall hold regular meetings for the transaction of its business at a place and at times that the Authority determines appropriate. Special meetings may be held at any time when the chairman or any two members of the Airport Authority shall request a special meeting.

(g) Notice of Meetings. Proper notice for all meetings shall be given and the Airport Authority shall comply with all applicable requirements of Article 33C of Chapter 143 of the General Statutes commonly known as the "Open Meetings Law".

(h) Records. The Airport Authority shall keep a full record of its proceedings and minutes of its meetings showing the business transacted at each meeting.

(i) Quorum. A majority of the membership of the Airport Authority, excluding vacant seats, shall constitute a quorum for the transaction of business.

(j) Voting. No member shall be excused from voting except upon matters involving the consideration of his or her own financial interest or official conduct, and in all other cases a failure to vote by a member who is physically present or who has withdrawn without being excused by a majority vote of the remaining members present shall be recorded as an affirmative vote.

(k) Approval. An affirmative vote equal to a majority of all the members present at which a quorum of the Airport Authority is also present and not excused from voting on a matter shall be required to take action.

(l) Bylaws. The Airport Authority may adopt suitable bylaws for its management and may establish committees and advisory boards as it deems expedient.

(m) Removal. A member may be removed from the Airport Authority by the governing body making the original appointment, but no member shall be removed except for good cause.

Section 4. Liability. Members of the Airport Authority shall not be personally liable for their acts as members of the Airport Authority, except for acts resulting from misfeasance or malfeasance.

Section 5. Powers. (a) The Airport Authority shall be and constitute a body politic and corporate and as such shall have the following powers and authority:

(1) To purchase, acquire, establish, construct, own, control, lease, equip, improve, maintain, operate, and regulate airports and landing fields for the use of airplanes and other aircraft and to engage in other lawful aeronautical activities.

The Airport Authority may exercise these powers alone or in conjunction with its participating governing bodies.

(2) To purchase, improve, own, hold, lease (as lessor or lessee), mortgage, issue deeds of trust, grant security interests in, or operate real or personal property of every kind.

(3) To engage in economic development activities including the development, division and redivision of surplus property (property that is not necessary for the operation of the airport) as an industrial and/or commercial park or the sale of such property for industrial and/or commercial uses, but shall not be sold for investment and speculative purposes.

(4) To sue and to be sued in the name of the Airport Authority, to make contracts and to hold any personal property necessary for the exercise of the powers of the Airport Authority, and to acquire by purchase, lease, or otherwise any existing lease, leasehold right, or any other interest in any existing airport, specifically including the Morganton-Lenoir Airport.

(5) To charge and collect reasonable and adequate fees and rents for the use of airport property and for services rendered in the operation of the airport.

(6) To make all reasonable rules and regulations deemed necessary for the proper maintenance, use, operation and control of the airport, including public safety, and provide penalties for the violation of its rules and regulations; provided, the rules and regulations and the schedule of fees are not in conflict with the laws of the State of North Carolina and any rules or regulations lawfully issued by the Federal Aviation Administration. The Airport Authority may administer and enforce any airport zoning regulations adopted by Burke County and Caldwell County.

(7) To issue notes and bonds pursuant to Article 5 of Chapter 159 of the General Statutes and purchase and finance the purchase of real or personal property by installment contracts and other means of indebtedness authorized by G.S. 160A-20.

(8) To sell, lease, and otherwise dispose of any property, real or personal, belonging to the Airport Authority, according to the procedures described in Article 12 of Chapter 160A of the General Statutes.

(9) To purchase any insurance that the Federal Aviation Administration or the Airport Authority shall deem necessary or expedient, and the Airport Authority shall be responsible for any and all insurance claims or liabilities.

(10) To deposit, invest and reinvest any of its funds as provided by the Local Government Finance Act, as it may be amended or superseded from time to time, for the deposit or reinvestment of unit funds.

(11) To purchase any of its outstanding bonds or notes.

(12) To operate, own, lease, control, regulate, or to grant to others, for a period not to exceed 20 years, the right to operate on any airport premises restaurants, snack bars, vending machines, food and beverage dispensing outlets, rental car services, catering services, novelty shops, insurance sales, advertising media, merchandising outlets, hotels, motels, barbershops, automobile parking and storage facilities, automobile service establishments, and all other types of facilities as may be directly or indirectly related to aeronautical activities or to the maintenance and furnishing to the general public of a complete air terminal installation.

(13) To contract with persons, firms, or corporations for terms not to exceed 20 years, for the operation of airline scheduled passenger and freight flights, nonscheduled flights, and any other aeronautical activities, including a fixed-base operator, provided such activities are not inconsistent with grant agreements under which the airport property is held.

(14) To erect and construct buildings, hangars, shops, and other improvements and facilities and to lease those improvements and

facilities for term or terms not to exceed 20 years; to borrow money for the use in making and paying for these improvements and facilities, secured by and on the credit only of the lease agreements in respect to these improvements and facilities and to pledge and assign the lease and the lease agreement as security for the authorized loans.

(15) Notwithstanding anything in this act to the contrary, to have all the same power and authority granted to cities and counties pursuant to Chapter 63 of the General Statutes.

(16) To acquire property by the exercise of eminent domain pursuant to Chapter 40A of the General Statutes as a local public condemnor, including specifically the provisions of G.S. 40A-42.

(17) To have a corporate seal which may be altered at will.

Section 5.(b) The Airport Authority shall not have the power to pledge the credit of, or issue debt binding on, Caldwell County, Burke County, the City of Morganton, or the City of Lenoir, nor impose any obligations on those bodies except as may be specifically consented to by the respective governing body by the adoption of a resolution or ordinance. The governing bodies (either collectively or singularly) shall not be liable for the debt and other obligations of the Airport Authority.

Section 6. Exemption From Taxes. The Airport Authority shall possess and have the same exemptions in respect to the payment of taxes and license fees as provided for municipal corporations by the laws of the State of North Carolina. The Airport Authority is also allowed a refund of sales and use taxes as provided in G.S. 105-164.14(c).

Section 7. Real and Personal Property. The Airport Authority may acquire from any of the participating governmental bodies, and the participating governing bodies may grant and convey, either by gift or for such consideration as the governing body may deem expedient, any real or personal property which it now owns or may hereafter acquire, all without compliance with Article 12 of Chapter 160A of the General Statutes.

Section 8. Public Purpose. Any lands acquired, owned, controlled, or occupied by the Airport Authority shall be and are hereby declared to be acquired, owned, controlled, and occupied for a public purpose.

Section 9. Other Grants. The Airport Authority may apply for, contract with, accept and expend loans, grants, and other appropriations from the Federal Aviation Administration, the State of North Carolina, or any other public or private body or agency.

Section 10. Appropriations. The City of Lenoir, the City of Morganton, the County of Burke, and the County of Caldwell may appropriate funds derived from any source including ad valorem taxes to carry out the provisions of this act in any proportion or upon any basis as each may determine is appropriate, and the Airport Authority may expend such funds for airport purposes and may pledge the credit of the Airport Authority to the extent of the appropriated funds but only in compliance with the terms and conditions attached to any such appropriation.

Section 11. Withdrawal. Except with the unanimous consent of the other governing bodies, a governing body may only withdraw from the Airport Authority by giving written notice to the other governing bodies at least five years in advance of the effective date of the withdrawal. The failure to appropriate its pro rata share of the operating and capital needs of the Airport Authority or to participate in the affairs of the Airport Authority by the appointment of its members, shall be deemed to be a withdrawal from the Airport Authority.

The withdrawal by any governing body with the consent of the remaining governing bodies shall be upon the terms and conditions as may be agreed upon; however, any withdrawal without consent shall be a forfeiture of all rights and claims against the Airport Authority and its assets and property except for property interests that may be specifically and separately titled to the withdrawing governing body.

Section 12. Dissolution. The Airport Authority shall not be dissolved nor shall the operation of the airport be terminated or suspended except with the consent of a majority three of the governing bodies. The consent authorizing the dissolution of the Airport Authority or the suspension and termination of aeronautical activities shall be in the form of a joint resolution to be presented and acted on by each of the governing bodies, and the resolution shall set forth in full detail the plan for the dissolution of the Airport Authority and the suspension and termination of aeronautical activities, including any plan for the sale of any remaining property, the payment of all debts and obligations and the application of the fund remaining after the payment of all debts and obligations.

Section 13. Effective Date of Airport Authority. The powers granted to the Airport Authority shall not be effective and the Airport Authority authorized by this act shall not be officially established until the adoption of an ordinance or resolution by each of the governing bodies named above approving the creation of the joint airport and appointing its members. Thereafter, however, the governing bodies shall be bound by the provisions of this act.

Section 14. Effective Date. This act is effective when it becomes law.

HOUSE BILL 1517:
Foothills Regional Airport Authority

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Rep. Buchanan
Date:	June 6, 2000	**Summary by:**	Karen Cochrane Brown
Version:	Second Edition		Committee Counsel

SUMMARY: ***House Bill 1571 authorizes the creation of the Foothills Regional Airport Authority and sets forth its powers and jurisdiction. The Second Edition clarifies that the Authority is allowed a refund of sales and use taxes as provided in G.S. 105-164.14(c).***

BILL ANALYSIS:

House Bill 1517 authorizes the governing bodies of Caldwell County, Burke County, Morganton and Lenoir, jointly, to establish the Foothills Regional Airport Authority as the successor in interest to the Morganton-Lenoir Airport Authority. Among the several powers conferred on the Airport Authority by the bill are the powers:

- To charge and collect fees and rents for the use of airport property and services.
- To issue notes and bonds pursuant to the State and Local Government Revenue Bond Act.
- To deposit, invest, and reinvest funds as provided by the Local Government Finance Act.
- To purchase any of its outstanding bonds or notes.

However, the Airport Authority may not pledge the credit of or issue debt binding on the four local governing bodies and the governing bodies shall not be liable for the debt or other obligations of the Airport Authority.

The four governing bodies are authorized to appropriate funds for the creation and operation of the Airport Authority and to set terms and conditions on the Airport Authority's use of the funds.

The Airport Authority does not become effective until each of the governing bodies adopts an ordinance or resolution approving its creation and appointing its members.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1318

Short Title: Amend Bill Lee Act Tier Designations. (Public)

Sponsors: Senators Dalton; Carpenter, Hartsell, Hoyle, Robinson, and Weinstein.

Referred to: Finance.

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT AN ENTERPRISE TIER TWO AREA MAY NOT BE REDESIGNATED AS A HIGHER-NUMBERED TIER AREA UNTIL IT HAS BEEN AN ENTERPRISE TIER TWO AREA FOR TWO CONSECUTIVE YEARS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-129.3(c) reads as rewritten:

"(c) Exception for Enterprise Tier One and Two Areas. -- Notwithstanding the provisions of this section, a county designated as an enterprise tier one area or an enterprise tier two area may not be redesignated as a higher-numbered enterprise tier area until it has been ~~an~~ in its enterprise tier ~~one~~ area for at least two consecutive years."

Section 2. This act is effective when it becomes law and, notwithstanding G.S. 105-129.3(b), applies retroactively to designations for the 2000 and later calendar years.

FISCAL ANALYSIS MEMORANDUM

DATE: June 7, 2000

TO: Senate Finance Committee

FROM: Dave Crotts
Fiscal Research Division

RE: SB 1318-Amend Bill Lee Act Tier Designations

FISCAL IMPACT

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

	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05
REVENUES					
State General Fund	-	**-111,000**	**-233,000**	**-344,500**	**-456,000**

PRINCIPAL DEPARTMENTS AFFECTED: The tax credits are administered by the Department of Revenue. The Department of Commerce manages the credit application and verification process. The enactment of the bill will not affect the budget requirements of either department.

EFFECTIVE DATE: Applies to tier designations for the 2000 and later tax years.

ISSUE BACKGROUND: The Bill Lee Act is the package of state tax incentives that was first created in 1996 and has been modified in each subsequent year. For many of the credits the counties of the State are divided into five economic distress tiers based on the unemployment rate, per capita income, and population growth. In general, the lower the tier of a county, the more favorable the incentive.

BILL SUMMARY: The 1997 General Assembly modified the tier determination language to guarantee that a Tier 1 county must remain a Tier 1 county for a minimum of two years. **SB 1318 specifies that a Tier 2 county must remain a Tier 2 county for at least 2 years.**

ASSUMPTIONS AND METHODOLOGY: A review of the 1999 and 2000 tier listings indicates that for 2000 only one county (Rutherford) would be affected by the legislation. Since the tier determination process each fall uses the most recent available data for each of the three factors, it is impossible to know in advance how many counties will be affected in future years.

The calculation of the revenue impact started with the industrial recruitment "announcements" data by county from the Department of Commerce for 1993-98. For each announcement, it was assumed that 70% of the investment would be in machinery and equipment. The impact of the bill on the investment tax credit is to raise the threshold for eligible investments from $100,000 to $200,000. The threshold change eliminates a handful of investments and reduces the investment base for credit calculation purposes by $100,000 for the other investments.

The next step is to divide the 7% tax credit impact over the 7 year period required under the Bill Lee Act. The impact of the bill on the investment tax credit is relatively minor because most investments exceed the threshold amounts by a wide margin. Thus, the $100,000 increment is not a major factor.

For the jobs credit the industrial recruitment announcement data on jobs created was used. The data indicated an average of 420 new jobs per year during the test period. The impact of the bill on the jobs credit is to restore the $1,000 credit advantage of Tier 2 counties over Tier 3 ($4,000 credit versus $3,000). The credit change was then divided over a 4 year period as the Bill Lee Act requires.

The provisions have no impact on the 2000-01 fiscal year because the two credits are taken in the year after the investment and job creation activity take place.

DISTRESSED COUNTIES RANKING FOR 2000 CALENDAR YEAR

COUNTY	DISTRESSED COUNTY SUM 1998-1999	DISTRESSED COUNTY RANK 1998-1999	1990 POP.	1990 POVERTY RATE	INITIAL TIERS (10 TIER 1, 15 T2, 25 T3, 25 T4, 25 T5)	IF POP. <50,000 & POV.> 18% THEN ONE TIER LOWER	IF POP. <25,000 & TIER 4 OR 5, THEN DESIGNATED TIER 3	FINAL IF POP. <10,000 & POV.> 16%, THEN DESIGNATED TIER 1
Alamance	83	76	108,213	8.9	5	5	5	5
Alexander	95	73	27,544	9.8	4	4	4	4
Alleghany	189	33	9,590	20.1	3	2	2	1
Anson	229	19	23,474	17.6	2	2	2	2
Ashe	226	21	22,209	18.4	2	1	1	1
Avery	153	50	14,867	14.6	3	3	3	3
Beaufort	232	18	42,283	19.5	2	1	1	1
Bertie	262	7	20,388	25.9	1	1	1	1
Bladen	187	34	28,663	21.9	3	2	2	2
Brunswick	149	51	50,985	15.4	4	4	4	4
Buncombe	80	80	174,778	11.4	5	5	5	5
Burke	135	57	75,740	10.1	4	4	4	4
Cabarrus	40	94	98,935	8.1	5	5	5	5
Caldwell	145	53	70,709	10.8	4	4	4	4
Camden	163	44	5,904	16.1	3	3	3	1
Carteret	121	66	52,553	11.6	4	4	4	4
Caswell	173	40	20,693	16.2	3	3	3	3
Catawba	80	80	118,412	7.1	5	5	5	5
Chatham	40	94	38,759	9.7	5	5	5	5
Cherokee	216	24	20,170	20.4	2	1	1	1
Chowan	169	43	13,506	17.7	3	3	3	3
Clay	177	37	7,155	17.9	3	3	3	1

SOURCE: N.C. Department of Commerce

COUNTY	DISTRESSED COUNTY SUM 1998-1999	DISTRESSED COUNTY RANK 1998-1999	1990 POP.	1990 POVERTY RATE	INITIAL TIERS (10 TIER 1, 15 T2, 25 T3, 25 T4, 25 T5)	IF POP. <50,000 & POV.> 18% THEN ONE TIER LOWER	IF POP. <25,000 & TIER 4 OR 5, THEN DESIGNATED TIER 3	FINAL IF POP. <10,000 & POV.> 16%, THEN DESIGNATED TIER 1
Cleveland	179	35	84,713	11	3	3	3	3
Columbus	217	23	49,587	24	2	1	1	1
Craven	137	56	81,613	13.6	4	4	4	4
Cumberland	163	44	272,713	14.4	3	3	3	3
Currituck	68	86	13,736	10.1	5	5	3	3
Dare	106	71	22,746	8.3	4	4	3	3
Davidson	91	75	126,677	9.8	4	4	4	4
Davie	51	91	27,859	8.4	5	5	5	5
Duplin	135	57	39,995	19.1	4	3	3	3
Durham	66	88	181,854	11.9	5	5	5	5
Edgecombe	272	4	56,692	20.9	1	1	1	1
Forsyth	73	84	265,878	10	5	5	5	5
Franklin	117	70	36,414	14.5	4	4	4	4
Gaston	144	54	175,093	10.6	4	4	4	4
Gates	177	37	9,305	15.7	3	3	3	3
Graham	273	3	7,196	24.9	1	1	1	1
Granville	123	65	38,341	13.5	4	4	4	4
Greene	126	62	15,384	19.1	4	3	3	3
Guilford	69	85	347,420	10.1	5	5	5	5
Halifax	274	2	55,516	25.6	1	1	1	1
Harnett	131	59	67,833	17.5	4	4	4	4
Haywood	156	48	46,942	12.7	3	3	3	3
Henderson	47	93	69,326	10.5	5	5	5	5
Hertford	244	13	22,523	25	2	1	1	1
Hoke	175	39	22,856	21.1	3	2	2	2
Hyde	252	12	5,411	23	2	1	1	1
Iredell	55	90	92,935	9.4	5	5	5	5
Jackson	196	28	26,846	16.7	3	3	3	3
Johnston	40	94	81,306	14.3	5	5	5	5

COUNTY	DISTRESSED COUNTY SUM 1998-1999	DISTRESSED COUNTY RANK 1998-1999	1990 POP.	1990 POVERTY RATE	INITIAL TIERS (10 TIER 1, 15 T2, 25 T3, 25 T4, 25 T5)	IF POP. <50,000 & POV.> 18% THEN ONE TIER LOWER	IF POP. <25,000 & TIER 4 OR 5, THEN DESIGNATED TIER 3	FINAL IF POP. <10,000 & POV.> 16%, THEN DESIGNATED TIER 1
Jones	171	41	9,414	20.2	3	2	2	1
Lee	75	82	41,370	14.7	5	5	5	5
Lenoir	196	28	57,274	20	3	3	3	3
Lincoln	95	73	50,319	9.6	4	4	4	4
Macon	119	67	23,499	16.5	4	4	3	3
Madison	170	42	16,953	20.4	3	2	2	2
Martin	264	6	25,078	22.3	1	1	1	1
McDowell	160	46	35,681	11.4	3	3	3	3
Mecklenburg	23	99	511,481	9.6	5	5	5	5
Mitchell	242	14	14,433	16	2	2	2	2
Montgomery	219	22	23,352	14.4	2	2	2	2
Moore	67	87	59,000	11.1	5	5	5	5
Nash	128	61	76,677	13.6	4	4	4	4
New Hanover	64	89	120,284	14	5	5	5	5
Northampton	261	8	20,798	23.6	1	1	1	1
Onslow	228	20	149,838	12.1	2	2	2	2
Orange	30	98	93,851	13.9	5	5	5	5
Pamlico	190	31	11,368	18.9	3	2	2	2
Pasquotank	154	49	31,298	19.7	3	2	2	2
Pender	129	60	28,855	17.2	4	4	4	4
Perquimans	213	25	10,447	21.5	2	1	1	1
Person	146	52	30,180	12	4	4	4	4
Pitt	118	68	108,480	22.1	4	4	4	4
Polk	37	97	14,416	9.6	5	5	3	3
Randolph	74	83	106,546	8.3	5	5	5	5
Richmond	265	5	44,518	16.8	1	1	1	1
Robeson	242	14	105,170	24.1	2	2	2	2
Rockingham	190	31	86,064	12.2	3	3	3	3
Rowan	99	72	110,605	9.4	4	4	4	4

COUNTY	DISTRESSED COUNTY SUM 1998-1999	DISTRESSED COUNTY RANK 1998-1999	1990 POP.	1990 POVERTY RATE	INITIAL TIERS (10 TIER 1, 15 T2, 25 T3, 25 T4, 25 T5)	IF POP. <50,000 & POV.> 18% THEN ONE TIER LOWER	IF POP. <25,000 & TIER 4 OR 5, THEN DESIGNATED TIER 3	FINAL IF POP. <10,000 & POV.> 16%, THEN DESIGNATED TIER 1
Rutherford	209	27	56,919	12.3	3	3	3	3
Sampson	126	62	47,297	20.7	4	3	3	3
Scotland	233	17	33,763	18.6	2	1	1	1
Stanly	160	46	51,765	11	3	3	3	3
Stokes	81	79	37,223	9.8	5	5	5	5
Surry	124	64	61,704	11.4	4	4	4	4
Swain	256	10	11,268	27.6	1	1	1	1
Transylvania	82	78	25,520	13.5	5	5	5	5
Tyrrell	283	1	3,856	25	1	1	1	1
Union	50	92	84,210	8.4	5	5	5	5
Vance	212	26	38,892	19.6	3	2	2	2
Wake	5	100	426,301	8.4	5	5	5	5
Warren	257	9	17,265	28.2	1	1	1	1
Washington	253	11	13,997	20.4	2	1	1	1
Watauga	1118	68	36,952	21.5	4	3	3	3
Wayne	178	36	104,666	15.2	3	3	3	3
Wilkes	142	55	59,393	13.3	4	4	4	4
Wilson	194	30	66,061	19.7	3	3	3	3
Yadkin	83	76	30,488	12	5	5	5	5
Yancey	234	16	15,419	18.7	2	1	1	1

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1544

Short Title: Refund Overpayment of Deed Stamp Tax. (Public)

Sponsors: Representatives Pope, Luebke, Allen, Gray, Hill, Jarrell, Miller, and Tucker.

Referred to: Finance.

May 16, 2000

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT A TAXPAYER IS ENTITLED TO A REFUND OF AN OVERPAYMENT OF THE STATE EXCISE TAX ON CONVEYANCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-228.35 reads as rewritten:

"**§ 105-228.35. Administrative provisions.**

~~The~~ Except as otherwise provided in this Article, the provisions of Article 9 of this Chapter apply to this Article."

Section 2. Article 8E of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-228.37. Refund of overpayment of tax.**

(a) Refund Request. -- A taxpayer who pays more tax than is due under this Article may request a refund of the overpayment by filing a written request for a refund with the board of county commissioners of the county where the tax was paid. The request must be filed within six months after the date the tax was paid and must explain why the taxpayer believes a refund is due.

(b) Hearing by County. -- A board of county commissioners must review a request for refund and must follow the time limitations set in G.S. 105-266.1 for holding a hearing and making a decision. If the board decides that a refund is due, it must refund the overpayment, together with any applicable interest, to the taxpayer. If the board finds that no refund is due, the written decision of the board must inform the taxpayer that the taxpayer may ask the Secretary to review the decision. The board must send the Secretary a copy of a decision on a request for refund.

(c) Review by Secretary. -- A taxpayer whose request for a refund is denied by a board of county commissioners may obtain a review of the board's decision by the Secretary. The request must be made in writing and must be filed within 30 days after the taxpayer receives the board's decision denying the refund. The Secretary must send the board of county commissioners a copy of the Secretary's decision made on the request. If the Secretary determines that a refund is due, the board of county commissioners must refund the overpayment, together with any applicable interest, to the taxpayer. A decision of the Secretary is binding on a board of county commissioners.

(d) Judicial Review. -- A taxpayer who disagrees with a decision of the Secretary may bring an action against the county and the State to recover the disputed overpayment. The action may be brought in the Superior Court of Wake County or in the superior court of the county where the tax was paid.

(e) Recording Correct Deed. -- Before a tax is refunded, the taxpayer must record a new instrument reflecting the correct amount of tax due. If no tax is due because an instrument was recorded in the wrong county, then the taxpayer must record a document stating that no tax was owed because the instrument being corrected was recorded in the wrong county. The taxpayer must include in the document the names of the grantors and grantees and the deed book and page number of the instrument being corrected.

When a taxpayer records a corrected instrument, the taxpayer must inform the register of deeds that the instrument being recorded is a correcting instrument. The taxpayer must give the register of deeds a copy of the decision granting the refund that shows the correct amount of tax due. The correcting instrument must include the deed book and page number of the instrument being corrected. The register of deeds must notify the county finance officer and the Secretary when the correcting instrument has been recorded.

(f) Interest. -- An overpayment of tax bears interest at the rate established in G.S. 105-241.1(i) from the date that interest begins to accrue. Interest begins to accrue on an overpayment 90 days after the tax was paid."

Section 3. Notwithstanding G.S. 105-228.37, as enacted by this act, a refund request filed by a taxpayer who paid the tax imposed by Article 8E of Chapter 105 of the General Statutes on or after July 1, 1997, and whose time limit for requesting a refund expires on or before August 1, 2000, is considered timely if the request is filed with the board of county commissioners by October 1, 2000.

Section 4. This act is effective when it becomes law, and applies retroactively to taxes paid on or after July 1, 1997.

HOUSE BILL 1544:
Refund Overpayment of Deed Stamp Tax

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Rep. Pope
Date:	June 6, 2000	**Summary by:**	Cindy Avrette, Committee Counsel. Staff Attorneys
Version:	1st Edition		

SUMMARY: ***House Bill 1544 establishes a procedure through which a taxpayer may request a refund of an overpayment of the State excise tax on conveyances. The bill is effective when it becomes law, and applies retroactively to July 1, 1997. The bill is a recommendation of the Revenue Laws Study Committee, and has been given a favorable report in House Finance.***

CURRENT LAW: The excise tax on conveyances, known as the deed stamp tax, is a State tax on instruments transferring an interest in real property. The register of deeds of the county in which the property is located collects the tax when the deed transferring the property is recorded. The person presenting the instrument for recording is responsible for indicating on the instrument the amount of tax due. The register of deeds must collect the tax due and mark on the instrument to indicate payment of the tax and the amount paid. The tax rate is $1.00 for each $500.00 (0.2%) of the value of the property conveyed. The county retains one-half of the net proceeds of the tax and remits the remaining one-half to the State. Seventy-five percent (75%) of the funds remitted to the State is dedicated to the Parks and Recreation Trust Fund created in G.S. 113-44.15 and 25% is dedicated to the Natural Heritage Trust Fund created in G.S. 113-77.7. None of the State's share of the deed stamp tax goes to the General Fund.

The current law does not provide a mechanism for a taxpayer to receive a refund of an overpayment of the tax paid. The administrative provisions in Article 9 of Chapter 105 apply to this tax. Under Article 9, a taxpayer must apply to the Secretary of Revenue for a refund of an overpayment of tax. However, the State excise tax is administered at the county level, as opposed to the State level. Therefore, the refund procedure in Article 9 does not work well for the deed stamp tax.

BILL ANALYSIS: House Bill 1544 provides that a taxpayer who pays more tax than is due may request a refund of the overpayment by filing a written request for a refund with the board of county commissioners of the county where the tax was paid. The request must be filed within six months after the date the tax was paid and it must explain why the taxpayer believes a refund is due. (If a taxpayer paid the tax on or after July 1, 1997 and his time limit for requesting a refund expires on or before August 1, 2000, then his request for a refund is timely if the request is filed by October 1, 2000.) There will probably be few instances where a refund is requested, since the taxpayer is responsible for indicating the amount of tax due. However, there are instances when an instrument is recorded in the wrong county. In those cases, no tax would be due in the county where the instrument was recorded and the taxpayer should be entitled to a refund of the tax paid.

The board of county commissioners must review a request for a refund. The board must hold a hearing on the request within 90 days after receiving it. The board must make its decision on the request within 90 days after the hearing and it must send a copy of its decision to the Secretary of

Revenue. If the board determines that a refund is due, it must refund the overpayment with interest to the taxpayer. If the board determines that a refund is not due, it must inform the taxpayer that the taxpayer may request the Secretary of Revenue to review the decision.

To obtain a review of the decision by the Secretary, the taxpayer must request a hearing in writing. The request must be filed within 30 days after the taxpayer receives the board of county commissioners' decision denying the refund. Like the board, the Secretary must review the request for a refund within 90 days after the Secretary receives the request. The Secretary must send the board a copy of the Secretary's decision. The Secretary's decision is binding on the board. If the Secretary determines that a refund is due, the board must refund the overpayment with interest to the taxpayer.

A taxpayer that disagrees with the Secretary's decision may bring an action against the county and the State to recover the disputed amount. The action may be brought in the Superior Court of Wake County or in the superior court of the county where the tax was paid.

Before the taxpayer may receive a refund, the taxpayer must record a new instrument indicating the correct amount of tax due. If no tax is due because the instrument was recorded in the wrong county, the taxpayer must record an instrument stating that no tax was owed and the reason why. Once the correcting instrument has been recorded, the Register of Deeds must notify the county finance officer and the Secretary of Revenue so that the overpayment may be refunded to the taxpayer. Like other State taxes, the overpayment bears interest at the rate established in G.S. 105-241.1. The interest begins to accrue on the overpayment 90 days after the tax was paid.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 1544 (First Edition)

SHORT TITLE: Refund Overpayment of Deed Stamp Tax

SPONSOR(S): Rep. Pope, et al.

FISCAL IMPACT

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

	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05
REVENUES					
General Fund	No Impact				
Parks & Rec. Trust Fund	No Impact to Less than $2000 per Year				
Natural Heritage Trust Fund	No Impact to Less than $1000 per Year				
Local Government	Minimal Impact in Selected Counties				
EXPENDITURES					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Department of Revenue, N.C. Department of Environment and Natural Resources, County Registers of Deeds, and County Boards of Commissioners.

EFFECTIVE DATE: The bill is effective when it becomes law and applies retroactively to taxes paid on or after July 1, 1997.

BILL SUMMARY:
This bill clarifies that a taxpayer can receive a refund of an overpayment of the Deed Stamp Tax. The act lays out the procedures to apply for such a refund, provides for refunds for overpayments dating back to July 1, 1997, and requires that the taxpayer be paid interest if the money is held more than 90 days before a refund is given.

BACKGROUND:
Under current law, a tax is levied when an interest in real property is transferred. A County Register of Deeds collects the tax rate of $1.00 for every $500.00 of value transferred. The county retains approximately 51% of these funds (50% plus an administrative allowance) and forwards the balance to the state. Seventy-five percent (75%) of the state funds are deposited in the Parks and Recreation Trust Fund and twenty-five percent (25%) is given to the Natural Heritage Trust Fund. No revenue is retained for the General Fund.

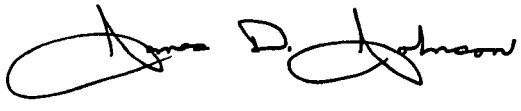
ASSUMPTIONS AND METHODOLOGY:

Taxpayers often file for a refund because either the deed is filed in the wrong county, or a taxpayer paid the tax on a transfer that was not subject to the tax. According to the Department of Revenue, Property Tax Division, some counties currently provide refunds when an error is made. Others do not.

The Department reports that in a typical year they see less than $2000 in requests for refunds. They have generally paid the taxpayer if they find that a refund is due. This year, however, one request was filed for a $160,000 refund ($80,000 state, $80,000 local). The state paid its portion of the refund, but the county continues to believe they do not have statutory authority to refund the balance. Some additional refunds may be issued as a result of the retroactive effective date. However, the fiscal impact on local governments is still expected to be very small. The retroactive date should have no fiscal impact on the state funds since the state generally offers the refund.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Linda Struyk Millsaps & Richard Bostic

APPROVED BY: James D. Johnson



DATE: May 19, 2000

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1545

Short Title: Excise Tax on Timber Contracts. (Public)

Sponsors: Representatives Pope, Luebke, Allen, Gray, Hill, Jarrell, Miller, and Tucker.

Referred to: Rules, Calendar, and Operations of the House.

May 16, 2000

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT THE EXCISE TAX ON CONVEYANCES APPLIES TO TIMBER DEEDS AND CONTRACTS FOR THE SALE OF STANDING TIMBER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-228.30 reads as rewritten:

"**§ 105-228.30. (Effective July 1, 2000) Imposition of excise tax; distribution of proceeds.**

(a) An excise tax is levied on each instrument by which any interest in real property is conveyed to another person. The tax rate is one dollar ($1.00) on each five hundred dollars ($500.00) or fractional part thereof of the consideration or value of the interest conveyed. The transferor must pay the tax to the register of deeds of the county in which the real estate is located before recording the instrument of conveyance. If the instrument transfers a parcel of real estate lying in two or more counties, however, the tax must be paid to the register of deeds of the county in which the greater part of the real estate with respect to value lies.

The excise tax on instruments imposed by this Article applies to timber deeds and contracts for the sale of standing timber to the same extent as if these deeds and contracts conveyed an interest in real property.

(b) The register of deeds of each county must remit the proceeds of the tax levied by this section to the county finance officer. The finance officer of each county must credit one-half of the proceeds to the county's general fund and remit the remaining one-half of the proceeds, less the county's allowance for administrative expenses, to

the Department of Revenue on a quarterly basis. A county may retain two percent (2%) of the amount of tax proceeds allocated for remittance to the Department of Revenue as compensation for the county's cost in collecting and remitting the State's share of the tax. Of the funds remitted to it pursuant to this section, the Department of Revenue must credit seventy-five percent (75%) to the Parks and Recreation Trust Fund established under G.S. 113-44.15 and twenty-five percent (25%) to the Natural Heritage Trust Fund established under G.S. 113-77.7."

Section 2. This act becomes effective July 1, 2000, and applies to timber deeds and contracts for the sale of standing timber executed on or after that date.

HOUSE BILL 1545:
Clarify Excise Tax on Timber Contracts

BILL ANALYSIS

Committee: Senate Finance
Date: June 6, 2000
Version: 1st Edition

Introduced by: Representative Pope
Summary by: Martha K. Walston
Committee Counsel

SUMMARY: ***House Bill 1545 clarifies that the excise tax on instruments conveying an interest in real property applies to timber deeds and contracts for the sale of standing timber, effective July 1, 2000. It is a recommendation of the Revenue Laws Study Committee, and has passed House Finance.***

CURRENT LAW: Article 8E of Chapter 105 of the General Statutes contains the provisions for imposing an excise tax on transfers of interests in real estate located in North Carolina. The excise tax is imposed at the rate of $1.00 on each $500.00 or fractional part of the consideration or value of the interest or property conveyed.

The Uniform Commercial Code (UCC) was adopted in Chapter 25 of the General Statutes in 1965. G.S. 25-2-107(2), as amended in 1975, provides that "(a) contract for the sale ... of timber to be cut is a contract for the sale of goods within this article whether the subject matter is to be severed by the buyer or by the seller even though it forms part of the realty at the time of contracting, and the parties can by identification effect a present sale before severance."

BACKGROUND: Historically, timber interests have been treated as an interest in real property, and the excise tax on conveyances has been applied to deeds conveying timber. With the adoption of the UCC, the sale of standing timber was deemed to be a sale of goods. There have been two North Carolina cases that have ruled on timber rights since the adoption of the UCC. In *Mills v. New River Wood Corp.*, 77 N.C. App. 576, 333 S.E.2d 759 (1985), the Court ruled that contracts for the sale of "timber to be cut" were governed by G.S. 25-2-107(2). In *Mills,* the cause of action was based on a timber deed, which the Court described as evidencing the underlying contract of sale. In a more recent case, the North Carolina Supreme Court concluded that when North Carolina adopted the UCC, it began classifying timber as goods when timber was the subject of a contract for sale. *Fordham v. Eason,* 521 S.E. 2d 701 (1999).

The recent court decisions have led to disagreement among legal scholars and registers of deeds as to whether contracts for the sale of standing timber and timber deeds constitute a sale of personal property or a sale of real property. The proponents of timber as real property claim that the above court decisions refer to timber as goods under the UCC only when the timber is subject to a contract for sale. The proponents of timber as personal property claim that both contracts and deeds for the sale of timber are governed by G.S. 25-2-107 and, therefore, do not convey an interest in real property. Under current law, the excise tax on conveyances applies only to conveyances of an interest in real property. Consequently, the excise tax should not be imposed on timber deeds or contracts for the sale of standing timber if they are deemed to be sales of personal property.

BILL ANALYSIS: House Bill 1544 clarifies that the excise tax on instruments conveying an interest in real property applies to timber deeds and contracts for the sale of standing timber. For purposes of Article 8E, Excise Tax on Conveyances, the timber will be treated as if it were real property. The bill remedies any confusion resulting from the court decisions regarding the treatment of timber deeds and contracts for the sale of standing timber. It is worth noting that the following subsection of G.S. 25-2-107 recognizes that a contract for the sale of standing timber can be treated as a conveyance of real property:

> (3) The provisions of this section are subject to any third-party rights provided by the law relating to realty records, **and the contract for sale may be executed and recorded as a document transferring an interest in land** and shall then constitute notice to third parties of the buyer's rights under the contract for sale. (Emphasis supplied.)

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 1545 (First Edition)

SHORT TITLE: Excise Tax on Timber Contracts

SPONSOR(S): Rep. Pope, et al.

FISCAL IMPACT

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

	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05
REVENUES					
EXPENDITURES					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Department of Revenue, County Registers of Deeds

EFFECTIVE DATE: Becomes effective July 1, 2000 and applies to timber deeds and contracts for the sale of standing timber executed on or after that date.

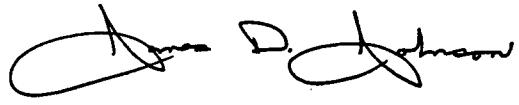
BILL SUMMARY: The bill clarifies that the excise tax on instruments conveying real property applies to timber deeds and contracts for the sale of standing timber.

ASSUMPTIONS AND METHODOLOGY: There is no fiscal impact of this bill because it continues the historical tax treatment of timber deeds and contracts as real property. Despite recent court cases that argue timber deeds are personal property, most Registers of Deeds have continued to impose an excise tax on transfers of interests in timber deeds and contracts. (The amount of tax generated from timber deeds cannot be ascertained because Registers of Deeds do not separate timber deeds from other records.)

TECHNICAL CONSIDERATIONS:

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic

APPROVED BY: James D. Johnson



DATE: May 18, 2000

VISITOR REGISTRATION SHEET

SENATE FINANCE — Wednesday, June 7, 2000
Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
David Simmons	Allen Associates, Inc.
Bob Hall	Dept of State Treas.
Sharon Miller	C.U.C.A.
Charles Comer	NCATL
Barbara Jolov	Indep. News weekly
Susan Markham	EGHS
Andy Romanet	NCLM
Dad Knight	NC Sierra Club
Nancy Thompson	UNC-I C.
Alice Garland	Electricities

VISITOR REGISTRATION SHEET

SENATE FINANCE — Wednesday, June 7, 2000
Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Patrice Roesler	NCACC
Lu-Ann Coe	NC Agribusiness Council Inc
Elizabeth A. Bondurant	Intern - Sen. Foxx
Phil Conrad	Lt. Governor's Office
Travis Hill	Lt. Governor's Office
Joan Troy	WRC
Cecilia Edgar	WRC
Andy Sabol	Dept. of Revenue
Glenn McNairy	Governor's Office
Greg Ralph	NC DOR
Tom McKittrick	Moore Van Allen

VISITOR REGISTRATION SHEET

SENATE FINANCE — Wednesday, June 7, 2000
Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dick Hamilton	WRC
Bill Scoggin	Kennedy Covington
Susan Harrison	WCPSS
Katherine Davis	Electricities of NC
Ann Belcher	SBE
Sandy Salstrom	SBE
Steve Woodson	NC Farm Bureau
Cliff Callaway	Doctor of the Day
Elizabeth Ouzts	NCPIRG
Bill Spencer	NCDOR
Lennie Collins	DOR

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Wednesday, June 07, 2000

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

FAVORABLE

H.B. **1494** Town of Laurel Park Charter.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1)**1517** Foothills Regional Airport Auth'ity.
Sequential Referral: None
Recommended Referral: None

H.B. **1544** Refund Overpayment of Deed Stamp Tax.
Sequential Referral: None
Recommended Referral: None

H.B. **1545** Excise Tax on Timber Contracts.
Sequential Referral: None
Recommended Referral: None

S.B. **1318** Amend Bill Lee Act Tier Designations.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 5

Committee Clerk Comment: SB 1318 HB 1494 1517 1544 1545

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Tuesday, June 13, 2000

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

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

S.B. **1477** Finance New Wildlife Centers.

Draft Number:	PCSX3970
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

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

H.B. **1302** Charter School Fuel Exemption.

Draft Number:	PCS5093
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comment: SB 1477 and HB 1302

SENATE FINANCE COMMITTEE MEETING

TUESDAY, JUNE 13, 2000

1:30 PM – ROOM 544

The Senate Finance Committee met on Tuesday, June 13, 2000 at 1:30 PM in room 544. There were 22 of the members of the committee present. Senator David Hoyle, Co-Chairman, called the meeting to order and introduced the following pages, who assisted with the meeting: Carla Early, sponsored by Senator Kerr, Ivy R. Anderson, sponsored by Senator Jordan and Robert Oliver, sponsored by Senator Basnight.

HB 1132 – Preserve Farmlands/Small Farms

Representative Verla Insko was recognized to come and explain this bill. Senator Dannelly moved for adoption of a proposed committee substitute, motion passed. After a length discussion and questions on the bill, Senator Hoyle announced that the bill would be Held over for another meeting so that questions could be answered that had been raised by the members of the committee. Copy of bill and supporting documents included in the minutes.

HB 1552 – Laurinburg Stret Assessments

Senator Purcell was recognized to come and explain the bill in the absence of the sponsor. Senator Clodfelter moved to give the bill a "Favorable Report", motion passed. Copy of bill and supporting documents included in the minutes.

SB 1200 – Minicipal Participation

Senator Gulley was recognized again to come and explain this bill. Senator Gulley moved for adoption of a new proposed committee substitute, motion passed. After a time of discussion, Senator Clodfelter moved to give the bill a "Favorable Report", motion passed. Copy of bill and supporting documents included in the minutes.

SB 1197 – Toll Roads

Senator Gulley was recognized to come and explain this bill. Senator Gulley moved for adoption of a proposed committee substitute, motion passed. After a time of discussion and questions, Senator Hoyle announced that the bill would be Held for a future meeting.

Meeting adjourned.

David W. Hoyle, Co-Chair

John H. Kerr, III, Co-Chair

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

Visitors' Sign Up Sheet is Attachment #1
Committee Reports are Attachments #2 and #3

AGENDA

SENATE FINANCE COMMITTEE MEETING

Tuesday, June 13, 2000

1:30 PM – ROOM 544 LOB

Meeting Called to Order- Senator Hoyle, Presiding

Introduction of Pages

Bills To Be Heard:

HB 1132 – Preserve Farmlands/Small Farms – Rep. Insko
HB 1541 – Camden Ambulance Fee – Rep. Owens
HB 1552 – Laurinburg Street Assessments – Rep. Yongue
SB 1197 – Toll Roads – Sen. Gulley
SB 1200 – Municipal Participation – Sen. Gulley

Adjournment of Meeting

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 4

HOUSE BILL 1132*
Second Edition Engrossed 4/28/99
Committee Substitute Favorable 7/8/99
Committee Substitute #2 Favorable 7/13/99

Short Title: Preserve Farmlands/Promote Small Farms. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO PROMOTE THE PRESERVATION OF FARMLAND AND TO PROMOTE SMALL, FAMILY-OWNED FARMS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 106-744(c) reads as rewritten:

"(c) There is established a 'North Carolina Farmland Preservation Trust Fund' to be administered by the Commissioner of Agriculture. The Trust Fund shall consist of all monies received for the purpose of purchasing agricultural conservation easements or transferred from counties or private sources. The Trust Fund shall be invested as provided in G.S. 147-69.2 and G.S. 147-69.3. The Commissioner shall use Trust Fund monies for the purchase of agricultural conservation easements, including transaction costs, and shall distribute Trust Fund monies ~~to counties and private nonprofit conservation organizations~~ for such purchases, including transaction ~~costs.~~ costs, as follows:

(1) To a private nonprofit conservation organization that matches thirty percent (30%) of the Trust Fund monies it receives with funds from sources other than the Trust Fund.

(2) To counties according to the match requirements under subsection (c1) of this section.

(c1) A county that is an enterprise tier four county or an enterprise tier five county, as these tiers are defined in G.S. 105-129.3(a), and that has prepared a

countywide farmland protection plan shall match fifteen percent (15%) of the Trust Fund monies it receives with county funds. A county that has not prepared a countywide farmland protection plan shall match thirty percent (30%) of the Trust Fund monies it receives with county funds. A county that is an enterprise tier one county, an enterprise tier two county, or an enterprise tier three county, as these counties are defined in G.S. 105-129.3(a), and that has prepared a countywide farmland protection plan shall not be required to match any of the Trust Fund monies it receives with county funds.

(c2) The Commissioner of Agriculture shall adopt rules ~~and regulations~~ governing the use, distribution, investment, and management of Trust Fund monies."

Section 2. G.S. 106-744 is amended by adding two new subsections to read:

"(e) As used in subsection (c1) of this section, a countywide farmland protection plan means a plan that satisfies all of the following requirements:

(1) The countywide farmland protection plan shall contain a list and description of existing agricultural activity in the county.

(2) The countywide farmland protection plan shall contain a list of existing challenges to continued family farming in the county.

(3) The countywide farmland protection plan shall contain a list of opportunities for maintaining or enhancing small, family-owned farms and the local agricultural economy.

(4) The countywide farmland protection plan shall describe how the county plans to maintain a viable agricultural community and shall address farmland preservation tools, such as agricultural economic development, including farm diversification and marketing assistance; other kinds of agricultural technical assistance, such as farm infrastructure financing, farmland purchasing, linking with younger farmers, and estate planning; the desirability and feasibility of donating agricultural conservation easements, and entering into voluntary agricultural districts.

(5) The countywide farmland protection plan shall contain a schedule for implementing the plan and an identification of possible funding sources for the long-term support of the plan.

(f) A countywide farmland protection plan that meets the requirements of subsection (e) of this section may be formulated with the assistance of an agricultural advisory board designated pursuant to G.S. 106-739."

Section 3. Part 2 of Article 18 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-335.1. Fees to support farmland protection.**

A county that has prepared and adopted a countywide farmland protection plan containing all the elements set forth in G.S. 106-744(e) may adopt an ordinance imposing a fee of no more than ten dollars ($10.00) for each subdivision plat required to be filed with the register of deeds for recordation. The monies collected pursuant

to this section shall be used to meet the county match requirements for obtaining funding from the North Carolina Farmland Preservation Trust Fund."

Section 4. This act becomes effective July 1, 2000.

HOUSE BILL 1132:
Preserve Farmlands/Promote Small Farms.

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Representative Insko
Date:	June 7, 2000	**Summary by:**	Karen Cochrane Brown
Version:	Fourth Edition		Committee Co-Counsel

SUMMARY: ***House Bill 1132 amends the Farmland Preservation Enabling Act to authorize distribution of Farmland Preservation Trust Fund monies to nonprofit conservation organizations on a 30% matching basis, and to counties on a 30%, 15% or 0% matching basis, depending on their tier status and whether the county has prepared a farmland protection plan. The bill also authorizes counties to impose a $10.00 fee for filing a subdivision plat with the register of deeds, to be used for the county match requirement for receiving funds from the trust fund.***

CURRENT LAW:

The Farmland Preservation Enabling Act was first enacted in 1986, to authorize counties to undertake farmland preservation programs. The Act also authorizes counties to purchase agricultural conservation easements over qualifying farmland and establishes the North Carolina Farmland Preservation Trust Fund to assist in the purchase of such easements. The Fund is administered by the Commissioner of Agriculture, who distributes trust fund monies to counties and private nonprofit conservation organizations for the purpose of purchasing agricultural conservation easements.

BILL ANALYSIS:

This bill amends the Farmland Preservation Enabling Act to make matching funds a requirement for receiving funds from the Farmland Preservation Trust Fund. Private nonprofit conservation organizations must match 30% of the money it receives from the Trust Fund with money from other sources. Counties must match on the following basis:

- 15% for a county that is an enterprise tier four or five county and that has prepared a countywide farmland protection plan.
- 30% for any county that has not prepared a countywide farmland protection plan.
- 0% for a county that is an enterprise tier one, two, or three county and that has prepared a countywide farmland protection plan.

Section 2 of the bill defines a farmland protection plan as a plan that contains: (1) a list and description of existing county agricultural activity; (2) a list of continuing challenges to continued family farming in the county; (3) a list of opportunities for maintaining or enhancing small family-owned farms and the local agricultural economy; (4) a description of county plans to maintain a viable agricultural community; and (5) a schedule for implementing the plan and identification of possible funding sources for the long term support of the plan. This section also provides that countywide farmland protection plans may be formulated with the assistance of an agricultural advisory board designated pursuant to the Farmland Preservation Enabling Act.

A county that has prepared and adopted a countywide farmland protection plan may impose a fee of no more than $10 for each subdivision plat required to be filed with the Register of Deeds for recordation. The money collected shall be used to meet the county match requirements for the Farmland Preservation Trust Fund.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: H.B. 1132 (Fourth Edition)

SHORT TITLE: Preserve Farmlands/Promote Small Farms

SPONSOR(S): Rep. Insko

DRAFT

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
General Fund	* No General Fund Impact *				
Local Governments	* See Assumptions and Methodology *				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Participating local governments.

EFFECTIVE DATE: July 1, 2000

BILL SUMMARY: The bill amends the Farmland Preservation Enabling Act. The bill makes county matching funds a requirement for receiving funds from the North Carolina Farmland Preservation Trust Fund. The county match requirements outlined in the legislation are as follows: 15% if the county has prepared a countywide farmland protection plan, 30% if the county has not created such a plan. Tier 1,2, and 3 counties (under the Bill Lee Act) are not required to provide any matching funds if they have prepared a countywide farmland protection plan. The bill requires that private non-profit organizations that draw Trust Fund monies must also provide a 30% match. The bill defines a Farmland Protection Plan, and authorizes counties that have prepared such a plan to impose a fee of no more than $10.00 for each subdivision plat filed with the Register of Deeds. This revenue must be used to meet the county match requirements. Finally, the legislation clarifies that countywide farmland protection plans may be formulated with the assistance of an agricultural advisory board designated by the Farmland Protection Enabling Act.

BACKGROUND INFORMATION: In 1985, the General Assembly enacted the Farmland Preservation Enabling Act, that authorized counties to undertake a series of programs to encourage the preservation of qualifying farmland. Qualifying farmland is defined as real property that:

1) Is participating in the farm present-use-value taxation program by G.S. 105-277.2 to 277.7;
2) Is certified by the Soil Conservation Service of the U.S. Department of Agriculture as being a farm on which at least two-thirds of the land is composed of soils that (a) are best suited for providing food, seed, fiber, forage, timber, and oil seed crops (b) have good soil qualities (c) are favorable for all major crops common to the county where the land is located (d) have a favorable growing season, and (e) receive the available moisture needed to produce high yields an average eight of ten years;
3) Is managed in accordance with the Soil Conservation Service erosion control practices that are addressed to highly erodable land; and
4) Is the subject of a conservation agreement as defined in G.S. 121-35, between the county and the owner of such land that prohibits nonfarm use or development of such land for a period of at least ten years.

The variety of programs authorized by the Farmland Preservation Enabling Act include:
1) The creation of Voluntary Agricultural Districts to encourage and foster agricultural communities, and to increase protection from nuisance suits and other negative impacts on properly managed farms.
2) The creation of an Agricultural Advisory Board to review and make recommendations concerning the agricultural districts, advise county commissioners on issues affecting the agricultural community, and perform other related tasks assigned by the board of county commissioners.
3) Hold public hearings on the condemnation of farmland.
4) Waive water and sewer assessments.
5) Adopt county ordinances.
6) Purchase agricultural conservation easements.

This bill addresses the sixth of the above listed authorities created by the Farmland Preservation Enabling Act, and will become effective on July 1, 2000.

ASSUMPTIONS AND METHODOLOGY: The two potential fiscal impacts of the bill relate to the $10.00 fee and the potential property tax loss.

According to the North Carolina Department of Agriculture and Consumer Services, the following thirteen counties have created programs and ordinances under the North Carolina Farmland Preservation Act:

-Avery
-Buncome
-Cherokee
-Clay
-Durham
-Forsyth
-Haywood
-Henderson
-Macon
-Madison
-Orange
-Rowan
-Wake

Grants from the Farmland Preservation Trust Fund were issued as follows:

	Farmland	County	Size(acres)
1	Daltonia Plantation	Iredell	198
2	Darrider farm	Rowan	81
3	Newlin-Hickory Grove Dairy	Alamance	122
4	Richardson Farm	Allegheny	298
5	Blackburn Farm	Forsyth	59
6	Preston Farm	Forsyth	207
7	Green Farm	Cabarrus	317
8	Prston Farm	Forsyth	66 of 200
9	Bovender Farm	Rutherford	304 of 935
10	Theys Farm	Wake	92 of 100
11	Liberty Farms	Randolph & Chatham	444 of 458
		Total	**2188 acres**

Under current law no county match is needed to participate in the program. Both the Department of Agriculture and representatives of the Sierra Club and Wildlife Federation believe that no county in the state currently has a program that would qualify under the proposed legislation, although some may be considering such a direction. Both the indicated interest groups and the Department agree that there is no reliable estimate of the number of counties that may choose to participate in the revised system. Therefore, no accurate fiscal estimate is available on the fee portion of the bill.

If a county chooses to participate there may be a potential property tax loss. If the county or a non-profit purchase the land using monies from the Trust, that land may become exempt from property tax. If monies are used to purchase an easement, the land value may decrease because the easement limits how the property can be used. However, the potential loss should be minimal for two reasons. First, because the land must be farmland in order to qualify under the rules of the Trust, the property is already listed at the reduced farm use value. Second, since most counties will only purchase easements, the land will still be taxable as farmland. Since the land is already listed as farmland, there would be no property tax loss.

TECHNICAL CONSIDERATIONS:

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Linda Struyk Millsaps, Richard Bostic, and Eugene Son (Research Assistant)

APPROVED BY:

DATE: June 5, 2000

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1552*

Short Title: Laurinburg Street Assessments. (Local)

Sponsors: Representatives Yongue, Bonner, and Goodwin.

Referred to: Local Government II.

May 17, 2000

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE CITY OF LAURINBURG TO LEVY SPECIAL ASSESSMENTS FOR STREET OR SIDEWALK IMPROVEMENTS WITHOUT PETITION.

The General Assembly of North Carolina enacts:

Section 1. The provisions of G.S. 160A-217(a) and (c) do not apply to the City of Laurinburg. The remaining provisions of Article 10 of Chapter 160A of the General Statutes shall apply to the City when making special assessments for street or sidewalk improvements.

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

HOUSE BILL 1552:
Laurinburg Street Assessments

BILL ANALYSIS

Committee:	Rep. Goodwin	**Introduced by:**	Rep. Goodwin
Date:	June 13, 2000	**Summary by:**	Cindy Avrette
Version:	1st Edition		Committee Counsel

SUMMARY: ***House Bill 1552 allows the city of Laurinburg to levy special assessments for street or sidewalk improvements without a petition. The bill was given a favorable report in House Local Government II and House Finance. Senate Bill 1222, introduced by Senator Purcell, is identical.***

CURRENT LAW: A city may make special assessments against benefited property within its corporate limits for streets, sidewalks, water systems, and sewage and drainage systems. G.S. 160A-217 requires a petition for street or sidewalk improvements:

(a) To levy a special assessment for street or sidewalk improvements, a city must receive a petition for the improvements signed by at least a majority of the owners to be assessed, and those owners must represent at least a majority of all the lineal feet of frontage of the lands abutting on the portion of the street or sidewalk to be improved. Unless the petition specifies a different percentage, not more than 50% of the cost of the improvement may be assessed.

(b) This subsection concerns how government land will be treated.

(c) No right of action asserting the invalidity of the assessments on grounds that the city did not comply with this section in securing a valid petition shall be asserted except in a action begun within 90 days after publication of the notice of adoption of the preliminary assessment resolution.

BILL ANALYSIS: House Bill 1552 provides that G.S. 160A-217(a) and (c) do not apply to the city of Laurinburg. The remaining provisions in Article 10 do apply: basis for making the assessments; preliminary resolution; notice and hearing on preliminary resolution; assessment resolution; publication of the preliminary assessment roll; hearing on preliminary assessment roll; publication of notice of confirmation of assessment roll; appeal of assessment; payment and enforcement of assessment; etc.

Exceptions to the petition requirements for street and sidewalk improvements have been given to the following cities and towns:

- Beech Mountain (Chapter 133 of the 1995 Session Laws) – G.S. 160A-217 does not apply.
- Oxford (Chapter 240 of the 1993 Session Laws) – May levy assessments for sidewalk improvements without petition.
- Ahoskie (Chapter 261 of the 1987 Session Laws; Chapter 962 of the 1988 Session Laws) – May levy assessments for streets and sidewalks without petition.
- Carrboro (Chapter 476 of the 1987 Session Laws) – May levy assessments for certain unpaved streets without a petition.
- Wake Forest (Chapter 347 of the 1989 Session Laws) – May levy assessments for downtown parking improvements without petition.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1200*

Short Title: Municipal Participation. (Public)

Sponsors: Senator Gulley.

Referred to: Finance.

May 10, 2000

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE ADDITIONAL VOLUNTARY MUNICIPAL PARTICIPATION IN ROAD CONSTRUCTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 136-66.3 reads as rewritten:

"**§ 136-66.3. Municipal participation in improvements to the State highway system.**

(a) ~~Except as otherwise authorized by this Article, no municipality shall participate in the cost of any State highway system improvement project approved by the Board of Transportation under G.S. 143B-350(f)(4). No municipality shall be required to contribute to the right-of-way and construction costs of any State highway system improvement approved by the Board of Transportation under G.S. 143B-350(f)(4), nor shall the Department of Transportation accept any participation, directly or indirectly, from a municipality except as authorized by this Article.~~

~~(b) The restrictions imposed by this section on participation by municipalities in the implementation of improvements on the State highway system shall not apply to those improvements approved by the Board of Transportation which are financed by funds allocated by the General Assembly for the "Small Urban Construction Program". The municipalities~~ When any one or more street construction or highway improvement projects are proposed on the State highway system in and around a municipality, the Department of Transportation and the municipal governing body shall reach agreement on their respective responsibilities for such project or projects. In reaching such agreement, the Department of Transportation and the municipality shall take into consideration:

(1) The relative importance of the project to a coordinated statewide system of highways.
(2) The relative benefit of the project to the municipality.
(3) The degree to which the cost of acquisition of rights-of-way can be reduced or minimized through action by the municipality and/or the Department of Transportation to acquire all or part of the rights-of-way for proposed projects well in advance of construction of such projects. Municipalities may, but shall not be required to, participate in the right-of-way and construction cost of ~~"Small Urban Construction Program"~~ State highway system improvements.

(c) A municipality is authorized and empowered to acquire land by dedication and acceptance, purchase, or eminent domain, and make improvements to portions of the State highway system lying within or outside the municipal corporate limits utilizing local funds that have been authorized for that ~~purpose by a vote of the citizens of the municipality. The governing body of the municipality may call a special referendum at any time to allow this use of funds.~~ purpose. The ~~total cost of the~~ improvements authorized by this subsection shall be the responsibility of the municipality and shall not ~~be participated in by the Department of Transportation, nor shall the construction of improvements~~ be a consideration for any other project by the Department of Transportation. All improvements to the State highway system shall be done in accordance with the specifications and requirements of the Department of Transportation and shall be set forth in an agreement entered into between the municipality and the Department. The Board of Transportation shall not give consideration to or credit for such locally financed improvements in the Transportation Improvement Program under G.S. 143B-350(f)(4).

(d) When in the review and approval by a municipality of plans for the development of property abutting the State highway system it is determined by the municipality that improvements to the State highway system are necessary to provide for the safe and orderly movement of traffic, the municipality is authorized to construct, or have constructed, said improvements to the State highway system in vicinity of the development. For purposes of this section, improvements include but are not limited to additional travel lanes, turn lanes, curb and gutter, and drainage facilities. All improvements to the State highway system shall be constructed in accordance with the specifications and requirements of the Department of Transportation and be approved by the Department of Transportation.

(e) A municipality may pursuant to an agreement with the Department of Transportation reimburse the Department of Transportation for the cost of all improvements, including ~~additional~~ right-of-way, for a street or highway improvement project approved by the Board of Transportation under ~~G.S. 143B-350(f)(4) that are in addition to those improvements that the Department of Transportation would normally include in the project.~~ G.S. 143B-350(f)(4). Funds expended by a municipality pursuant to an agreement with the Department of Transportation shall not be considered in calculating distribution of construction funds under G.S. 136-17.2A.

(f) Municipalities having a population of less than 10,000 according to the most recent annual estimates of population as certified to the Secretary of Revenue by the State Budget Officer shall not participate in the right-of-way and construction costs of any State highway system improvement project approved by the Board of Transportation under G.S. 143B-350(f)(4).

~~Municipalities having a population of 10,000 or more according to the most recent annual estimates of population as certified to the Secretary of Revenue by the State Budget Officer may, but shall not be required by the Department or Board of Transportation, participate up to a maximum percentage as shown below in the cost of rights-of-way of the portion of any transportation improvement project approved by the Board of Transportation under G.S. 143B-350(f)(4) that is located within the municipal corporate limits:~~

~~Municipal Population~~	~~Maximum Participation In Right-of-Way Costs~~
~~10,000 - 25,000~~	~~5%~~
~~25,001 - 50,000~~	~~10%~~
~~50,001 - 100,000~~	~~15%~~
~~over 100,000~~	~~25%~~

Any participation shall be set forth in an agreement between the municipality and the Department of Transportation. Upon request of the municipality, the Department of Transportation shall allow the municipality a period of not less than three years from the date construction of the project is initiated to reimburse the Department their agreed upon share of the costs ~~of rights-of-way~~ necessary for the project. The Department of Transportation shall not charge a municipality any interest ~~on its agreed upon share of rights-of-way costs.~~ during the initial three years. The ~~Secretary~~ Department shall report in writing, on a monthly basis, to the Joint Legislative Commission on Governmental Operations on all agreements entered into between municipalities and the Department of Transportation. The report shall state in summary form the contents of such agreements.

(g) In the acquisition of rights-of-way for any State highway system street or highway in or around a municipality, the municipality shall be vested with the same authority to acquire such rights-of-way as is granted to the Department of Transportation in this Chapter. In the acquisition of such rights-of-way, municipalities may use the procedures provided in Article 9 of this Chapter, and wherever the words "Department of Transportation" appear in Article 9 they shall be deemed to include "municipality" or "municipal governing body," and wherever the words "Administrator," "Administrator of Highways," "Administrator of the Department of Transportation," or "Chairman of the Department of Transportation" appear in Article 9 they shall be deemed to include "municipal clerk". It is the intention of this subsection that the powers herein granted to municipalities for the purpose of acquiring rights-of-way shall be in addition to and supplementary to those

powers granted in any local act or in any other general statute, and in any case in which the provisions of this subsection or Article 9 of this Chapter are in conflict with the provisions of any local act or any other provision of any general statute, then the governing body of the municipality may in its discretion proceed in accordance with the provisions of such local act or other general statute, or, as an alternative method of procedure, in accordance with the provisions of this subsection and Article 9 of this Chapter.

(h) In the absence of an agreement, the Department of Transportation shall retain authority to pay the full cost of acquiring rights-of-way where the proposed project is deemed important to a coordinated State highway system.

(i) Either the municipality or the Department of Transportation may at any time propose changes in the agreement setting forth their respective responsibilities ~~for right-of-way acquisition~~ by giving notice to the other party, but no change shall be effective until it is adopted by both the municipal governing body and the Department of Transportation.

(j) Any municipality that agrees to contribute any part of the cost of acquiring rights-of-way for any State highway system street or highway shall be a proper party in any proceeding in court relating to the acquisition of such rights-of-way."

Section 2. This act becomes effective July 1, 2000.

FISCAL ANALYSIS MEMORANDUM

DATE: May 31, 2000

TO: Senate Finance Committee

FROM: Evan Rodewald E.R.
Fiscal Research Division

RE: Senate Bill 1200 (First Edition) – Municipal Participation

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FISCAL IMPACT

Yes ( ) **No ( )** **No Estimate Available (x)**

	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05
REVENUES					
EXPENDITURES					
POSITIONS:					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Transportation

EFFECTIVE DATE: July 1, 2000

BILL SUMMARY:

Under current law (G.S. 136-66.3) municipalities of 10,000 or more in population may participate in State highway system improvements, subject to specified limitations. Municipalities are now authorized to fund:

- 5% to 25% of the cost of right of way and construction, depending on municipal population;
- the full cost of right of way and construction, if approved in a municipal election;
- part of the right of way and construction costs for projects funded by the State small urban construction program;

- development access projects (new travel lanes, turn lanes, curb and gutter, and drainage).

Senate Bill 1200 would change the current system of municipal participation by:

- removing the percentage restrictions on municipal participation in the funding of State highway system improvements; and
- removing the requirement for a municipal election to approve any 100% municipally funded improvement to the State system.

House Bill 1556 also specifies that municipal participation in State highway construction will not be considered in calculating regional funding under the equity distribution formula.

ASSUMPTIONS AND METHODOLOGY:

By removing restrictions on municipal participation in the funding of State highway projects, this bill would make municipal participation easier and should therefore provide the State with additional municipal funding to meet construction demands. The bill would enable the State to construct more projects than it would be able to construct under the current municipal funding restrictions. If municipal funding led to a significant increase in the number of projects under construction, over time, more projects could lead to a larger State highway system and correspondingly higher costs to patrol and maintain this system. However, because of uncertainties over the level of local participation (which would be voluntary) and lack of knowledge about the number of projects that would be constructed with the assistance of municipal funds, we are unable to estimate the fiscal impact of this bill on the State or on municipalities.

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 1200*
Proposed Committee Substitute S1200-PCS7784-RO003

Short Title: Municipal Participation. (Public)

Sponsors:

Referred to:

May 10, 2000

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE ADDITIONAL VOLUNTARY MUNICIPAL PARTICIPATION IN ROAD CONSTRUCTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 136-66.3 reads as rewritten:

"**§ 136-66.3. Municipal participation in improvements to the State highway system.**

~~(a) Except as otherwise authorized by this Article, no municipality shall participate in the cost of any State highway system improvement project approved by the Board of Transportation under G.S. 143B-350(f)(4). No municipality shall be required to contribute to the right-of-way and construction costs of any State highway system improvement approved by the Board of Transportation under G.S. 143B-350(f)(4), nor shall the Department of Transportation accept any participation, directly or indirectly, from a municipality except as authorized by this Article.~~

~~(b) The restrictions imposed by this section on participation by municipalities in the implementation of improvements on the State highway system shall not apply to those improvements approved by the Board of Transportation which are financed by funds allocated by the General Assembly for the "Small Urban Construction Program". The municipalities may, but shall not be required to, participate in the right-of-way and construction cost of "Small Urban Construction Program" highway improvements.~~

(a) Municipal Participation Authorized. -- A municipality may, but is not required to, participate in the right-of-way and construction cost of a State highway

improvement approved by the Board of Transportation under G.S. 143B-350(f)(4) that is located in the municipality or its extraterritorial jurisdiction.

(b) Process for Initiating Participation. -- A municipality interested in participating in the funding of a State highway improvement project may submit a proposal to the Department of Transportation. The Department and the municipality shall include their respective responsibilities for a proposed municipal participation project in any agreement reached concerning participation.

(c) Type of Participation Authorized. -- A municipality is authorized and empowered to acquire land by dedication and acceptance, purchase, or eminent domain, and make improvements to portions of the State highway system lying within or outside the municipal corporate limits utilizing local funds that have been authorized for that ~~purpose~~ purpose. ~~by a vote of the citizens of the municipality. The governing body of the municipality may call a special referendum at any time to allow this use of funds. The total cost of the improvements authorized by this subsection shall be the responsibility of the municipality and shall not be participated in by the Department of Transportation, nor shall the construction of improvements be a consideration for any other project by the Department of Transportation.~~ All improvements to the State highway system shall be done in accordance with the specifications and requirements of the Department of ~~Transportation and shall be set forth in an agreement entered into between the municipality and the Department. The Board of Transportation shall not give consideration to or credit for such locally financed improvements in the Transportation Improvement Program under G.S. 143B-350(f)(4).~~ Transportation.

(c1) No TIP Disadvantage for Participation. -- If a municipality participates in a State highway system improvement project, as authorized by this section, the Department shall ensure that the municipality's participation does not cause any disadvantage to any other project in the Transportation Improvement Program under G.S. 143B-350(f)(4) and located outside the municipality.

(c2) Distribution of State Funds Made Available by Municipal Participation. -- Any State or federal funds allocated to a project that are made available by municipal participation in a project contained in the Transportation Improvement Program under G.S. 143B-350(f)(4) shall remain in the same funding region that the funding was allocated to under the distribution formula contained in G.S. 136-17.2A.

(c3) Limitation on Agreements. -- The Department shall not enter into any agreement with a municipality to provide additional total funding for highway construction in the municipality in exchange for municipal participation in any project contained in the Transportation Improvement Program under G.S. 143B-350(f)(4).

(d) Authorization to Participate in Development-Related Improvements. -- When in the review and approval by a municipality of plans for the development of property abutting the State highway system it is determined by the municipality that improvements to the State highway system are necessary to provide for the safe and orderly movement of traffic, the municipality is authorized to construct, or have constructed, said improvements to the State highway system in vicinity of the

development. For purposes of this section, improvements include but are not limited to additional travel lanes, turn lanes, curb and gutter, and drainage facilities. All improvements to the State highway system shall be constructed in accordance with the specifications and requirements of the Department of Transportation and be approved by the Department of Transportation.

(e) Authorization to Participate in Project Additions. -- Pursuant to an agreement with the Department of Transportation, ~~A~~ a municipality may ~~pursuant to an agreement with the Department of Transportation~~ reimburse the Department of Transportation for the cost of all improvements, including additional right-of-way, for a street or highway improvement ~~project~~ projects approved by the Board of Transportation under ~~G.S. 143B-350(f)(4)~~ G.S. 143B-350(f)(4), that are in addition to those improvements that the Department of Transportation would normally include in the project.

~~(f) Municipalities having a population of less than 10,000 according to the most recent annual estimates of population as certified to the Secretary of Revenue by the State Budget Officer shall not participate in the right-of-way and construction costs of any State highway system improvement project approved by the Board of Transportation under G.S. 143B-350(f)(4).~~

~~Municipalities having a population of 10,000 or more according to the most recent annual estimates of population as certified to the Secretary of Revenue by the State Budget Officer may, but shall not be required by the Department or Board of Transportation, participate up to a maximum percentage as shown below in the cost of rights-of-way of the portion of any transportation improvement project approved by the Board of Transportation under G.S. 143B-350(f)(4) that is located within the municipal corporate limits:~~

~~Municipal Population~~	~~Maximum Participation In Right-of-Way Costs~~
~~10,000 - 25,000~~	~~5%~~
~~25,001 - 50,000~~	~~10%~~
~~50,001 - 100,000~~	~~15%~~
~~over 100,000~~	~~25%~~

(e1) Reimbursement Procedure. -- ~~Any participation shall be set forth in an agreement between the municipality and the Department of Transportation.~~ Upon request of the municipality, the Department of Transportation shall allow the municipality a period of not less than three years from the date construction of the project is initiated to reimburse the Department their agreed upon share of the costs ~~of rights-of-way~~ necessary for the project. The Department of Transportation shall not charge a municipality any interest ~~on its agreed upon share of rights-of-way costs.~~ during the initial three years.

(f) Report to General Assembly. -- The ~~Secretary~~ Department shall report in writing, on a monthly basis, to the Joint Legislative Commission on Governmental Operations on all agreements entered into between municipalities and the

Department of Transportation. The report shall state in summary form the contents of such agreements.

(g) Municipal Acquisition of Right-of-Way. -- In the acquisition of rights-of-way for any State highway system street or highway in or around a municipality, the municipality shall be vested with the same authority to acquire such rights-of-way as is granted to the Department of Transportation in this Chapter. In the acquisition of such rights-of-way, municipalities may use the procedures provided in Article 9 of this Chapter, and wherever the words "Department of Transportation" appear in Article 9 they shall be deemed to include "municipality" or "municipal governing body," and wherever the words "Administrator," "Administrator of Highways," "Administrator of the Department of Transportation," or "Chairman of the Department of Transportation" appear in Article 9 they shall be deemed to include "municipal clerk". It is the intention of this subsection that the powers herein granted to municipalities for the purpose of acquiring rights-of-way shall be in addition to and supplementary to those powers granted in any local act or in any other general statute, and in any case in which the provisions of this subsection or Article 9 of this Chapter are in conflict with the provisions of any local act or any other provision of any general statute, then the governing body of the municipality may in its discretion proceed in accordance with the provisions of such local act or other general statute, or, as an alternative method of procedure, in accordance with the provisions of this subsection and Article 9 of this Chapter.

(h) Department Authority Concerning Rights-of-Way. -- In the absence of an agreement, the Department of Transportation shall retain authority to pay the full cost of acquiring rights-of-way where the proposed project is deemed important to a coordinated State highway system.

(i) Changes to Municipal Participation Agreement. -- Either the municipality or the Department of Transportation may at any time propose changes in the agreement setting forth their respective responsibilities ~~for right-of-way acquisition~~ by giving notice to the other party, but no change shall be effective until it is adopted by both the municipal governing body and the Department of Transportation.

(j) Municipality Party to Right-of-Way Proceeding. -- Any municipality that agrees to contribute any part of the cost of acquiring rights-of-way for any State highway system street or highway shall be a proper party in any proceeding in court relating to the acquisition of such rights-of-way.

(k) Specified County Participation. -- In addition to the authority given to Burke, Cabarrus, and Mecklenburg Counties by Chapter 478 of the 1993 Session Laws, these counties are authorized to participate in State highway improvement projects located anywhere in each respective county in accordance with this section."

Section 2. This act becomes effective July 1, 2000.

SENATE BILL 1200:
Municipal Participation

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Senator Gulley
Date:	June 13, 2000	**Summary by:**	Karen Cochrane-Brown
Version:	Proposed Committee Subsititute (S1200-CSRW-003)		Committee Co-Counsel

SUMMARY:

The proposed committee substitute rewrites much of G.S. 136-66.3 and authorizes municipalities and the counties of Burke, Cabarrus, and Mecklenburg to participate in State highway construction projects on a voluntary basis.

CURRENT LAW:

Under current law, municipalities may not participate in the costs of State highway construction projects except:

1. Projects funded by the Small Urban Construction Program;
2. Projects funded by the municipality, upon a favorable referendum of the voters of the municipality;
3. Development access projects (new travel lanes, turn lanes, curb and gutter, and drainage);
4. By agreement with the DOT to provide improvements to an existing project that DOT would not normally include;
5. For municipalities with a population over 10,000, a sliding-scale participation of between 5% and 25% of the cost of right-of-way construction.

Municipalities with a population of less than 10,000 can not participate in the right-of-way and construction costs of any State highway system project.

BILL ANALYSIS:

The proposed committee substitute authorizes all municipalities to participate in the funding of State transportation improvement projects located in the municipality or its extraterritorial jurisdiction. The municipality may initiate participation by submitting a proposal to DOT, and DOT and the municipality shall include their respective responsibilities in an agreement.

The proposed committee substitute also provides as follows:

- (c) A municipality may fund State transportation system improvements without a referendum.
- (c1) If a municipality participates in a project, DOT must ensure that the municipality's participation does not cause any disadvantage to any other project in the Transportation Improvement Program and located outside the municipality.

- (c2) Any funds made available as a result of municipal participation in a project contained in the TIP shall remain in the same funding region that the funding was allocated to under the distribution formula contained in G.S. 136-17.2A.
- (c3) Prohibits the DOT from agreeing to provide any additional total funds to a municipality in exchange for municipal participation.

This bill removes the provision prohibiting municipalities with populations of less than 10,000 from participating in any State transportation project. It also removes the percentage restrictions, which presently limit participation by municipalities with populations over 10,000.

Finally, this proposal authorizes the counties of Burke, Cabarrus, and Mecklenburg to participate in transportation projects located anywhere in the respective county, to the same extent as municipalities. This authority is in addition to that granted by S.L. 1993-478, which authorized these counties assist thoroughfare plan implementation by purchasing, or acquiring property for road construction projects by eminent domain, donations and dedications, and entering agreements with municipalities.

This bill becomes effective July 1, 2000.

DRAFT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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S1200-CSRO-003
PROPOSED COMMITTEE SUBSTITUTE
Senate Bill 1200
THIS IS A DRAFT 13-JUN-00 12:02:47
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Municipal Participation. (Public)

Sponsors:

Referred to: Finance.

May 10, 2000

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE ADDITIONAL VOLUNTARY MUNICIPAL PARTICIPATION IN ROAD CONSTRUCTION.

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Section 1. G.S. 136-66.3 reads as rewritten:

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~~(a) Except as otherwise authorized by this Article, no municipality shall participate in the cost of any State highway system improvement project approved by the Board of Transportation under G.S. 143B-350(f)(4). No municipality shall be required to contribute to the right-of-way and construction costs of any State highway system improvement approved by the Board of Transportation under G.S. 143B-350(f)(4), nor shall the Department of Transportation accept any participation, directly or indirectly, from a municipality except as authorized by this Article.~~

~~(b) The restrictions imposed by this section on participation by municipalities in the implementation of improvements on the State highway system shall not apply to those improvements~~

~~approved by the Board of Transportation which are financed by funds allocated by the General Assembly for the "Small Urban Construction Program". The municipalities may, but shall not be required to, participate in the right-of-way and construction cost of "Small Urban Construction Program" highway improvements.~~

(a) Municipal participation authorized.-- A municipality may, but is not required to, participate in the right-of-way and construction cost of a State highway improvement approved by the Board of Transportation under G.S. 143B-350(f)(4) that is located in the municipality or its extraterritorial jurisdiction.

(b) Process for initiating participation.-- A municipality interested in participating in the funding of a State highway improvement project may submit a proposal to the Department of Transportation. The Department and the municipality shall include their respective responsibilities for a proposed municipal participation project in any agreement reached concerning participation.

(c) Type of participation authorized.-- A municipality is authorized and empowered to acquire land by dedication and acceptance, purchase, or eminent domain, and make improvements to portions of the State highway system lying within or outside the municipal corporate limits utilizing local funds that have been authorized for that ~~purpose~~ purpose. ~~by a vote of the citizens of the municipality. The governing body of the municipality may call a special referendum at any time to allow this use of funds. The total cost of the improvements authorized by this subsection shall be the responsibility of the municipality and shall not be participated in by the Department of Transportation, nor shall the construction of improvements be a consideration for any other project by the Department of Transportation.~~ All improvements to the State highway system shall be done in accordance with the specifications and requirements of the Department of ~~Transportation and shall be set forth in an agreement entered into between the municipality and the Department. The Board of Transportation shall not give consideration to or credit for such locally financed improvements in the Transportation Improvement Program under G.S. 143B-350(f)(4).~~ Transportation.

(c1) No TIP disadvantage for participation.-- If a municipality participates in a State highway system improvement project, as authorized by this section, the Department shall ensure that the municipality's participation does not cause any disadvantage to any other project in the Transportation Improvement Program under G.S. 143B-350(f)(4) and located outside the municipality.

(c2) Distribution of State funds made available by municipal participation.-- Any State or federal funds allocated to a project that are made available by municipal participation in a project contained in the Transportation Improvement Program under G.S. 143B-350(f)(4) shall remain in the same funding region that the funding was allocated to under the distribution formula contained in G.S. 136-17.2A.

(c3) Limitation on agreements.-- The Department shall not enter into any agreement with a municipality to provide additional total funding for highway construction in the municipality in exchange for municipal participation in any project contained in the Transportation Improvement program under G.S. 143B-350(f)(4).

(d) Authorization to participate in development-related improvements.-- When in the review and approval by a municipality of plans for the development of property abutting the State highway system it is determined by the municipality that improvements to the State highway system are necessary to provide for the safe and orderly movement of traffic, the municipality is authorized to construct, or have constructed, said improvements to the State highway system in vicinity of the development. For purposes of this section, improvements include but are not limited to additional travel lanes, turn lanes, curb and gutter, and drainage facilities. All improvements to the State highway system shall be constructed in accordance with the specifications and requirements of the Department of Transportation and be approved by the Department of Transportation.

(e) Authorization to participate in project additions.-- Pursuant to an agreement with the Department of Transportation, ~~A~~ a municipality may ~~pursuant to an agreement with the Department of Transportation~~ reimburse the Department of Transportation for the cost of all improvements, including additional right-of-way, for a street or highway improvement ~~project~~ projects approved by the Board of Transportation under ~~G.S. 143B-350(f)(4)~~ G.S. 143B-350(f)(4), that are in addition to those improvements that the Department of Transportation would normally include in the project.

~~(f) Municipalities having a population of less than 10,000 according to the most recent annual estimates of population as certified to the Secretary of Revenue by the State Budget Officer shall not participate in the right-of-way and construction costs of any State highway system improvement project approved by the Board of Transportation under G.S. 143B-350(f)(4).~~

~~Municipalities having a population of 10,000 or more according to the most recent annual estimates of population as certified to~~

~~the Secretary of Revenue by the State Budget Officer may, but shall not be required by the Department or Board of Transportation, participate up to a maximum percentage as shown below in the cost of rights-of-way of the portion of any transportation improvement project approved by the Board of Transportation under G.S. 143B-350(f)(4) that is located within the municipal corporate limits:~~

~~Municipal Population~~	~~Maximum Participation In Right-of-Way Costs~~
~~10,000 - 25,000~~	~~5%~~
~~25,001 - 50,000~~	~~10%~~
~~50,001 - 100,000~~	~~15%~~
~~over 100,000~~	~~25%~~

~~Any participation shall be set forth in an agreement between the municipality and the Department of Transportation.~~

(e1) Reimbursement procedure.-- Upon request of the municipality, the Department of Transportation shall allow the municipality a period of not less than three years from the date construction of the project is initiated to reimburse the Department their agreed upon share of the costs ~~of rights-of-way~~ necessary for the project. The Department of Transportation shall not charge a municipality any interest ~~on its agreed upon share of rights-of-way costs.~~ during the initial three years.

(f) Report to General Assembly.-- The ~~Secretary~~ Department shall report in writing, on a monthly basis, to the Joint Legislative Commission on Governmental Operations on all agreements entered into between municipalities and the Department of Transportation. The report shall state in summary form the contents of such agreements.

(g) Municipal acquisition of right-of-way.-- In the acquisition of rights-of-way for any State highway system street or highway in or around a municipality, the municipality shall be vested with the same authority to acquire such rights-of-way as is granted to the Department of Transportation in this Chapter. In the acquisition of such rights-of-way, municipalities may use the procedures provided in Article 9 of this Chapter, and wherever the words "Department of Transportation" appear in Article 9 they shall be deemed to include "municipality" or "municipal governing body," and wherever the words "Administrator," "Administrator of Highways," "Administrator of the Department of Transportation," or "Chairman of the Department

of Transportation" appear in Article 9 they shall be deemed to include "municipal clerk". It is the intention of this subsection that the powers herein granted to municipalities for the purpose of acquiring rights-of-way shall be in addition to and supplementary to those powers granted in any local act or in any other general statute, and in any case in which the provisions of this subsection or Article 9 of this Chapter are in conflict with the provisions of any local act or any other provision of any general statute, then the governing body of the municipality may in its discretion proceed in accordance with the provisions of such local act or other general statute, or, as an alternative method of procedure, in accordance with the provisions of this subsection and Article 9 of this Chapter.

(h) Department authority concerning right-of-way.-- In the absence of an agreement, the Department of Transportation shall retain authority to pay the full cost of acquiring rights-of-way where the proposed project is deemed important to a coordinated State highway system.

(i) Changes to municipal participation agreement.-- Either the municipality or the Department of Transportation may at any time propose changes in the agreement setting forth their respective responsibilities ~~for right-of-way acquisition~~ by giving notice to the other party, but no change shall be effective until it is adopted by both the municipal governing body and the Department of Transportation.

(j) Municipality party to right-of-way proceeding.-- Any municipality that agrees to contribute any part of the cost of acquiring rights-of-way for any State highway system street or highway shall be a proper party in any proceeding in court relating to the acquisition of such rights-of-way.

(k) Specified County Participation.-- In addition to the authority given to Burke, Cabarrus, and Mecklenburg Counties by Chapter 478 of the 1993 Session Laws, these counties are authorized to participate in State highway improvement projects located anywhere in their respective county in accordance with this section."

Section 2. This act becomes effective July 1, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1197*

Short Title: Toll Roads. (Public)

Sponsors: Senators Gulley; Hoyle and Kerr.

Referred to: Finance.

May 10, 2000

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CONSTRUCTION OF UP TO THREE PRIVATELY FUNDED AND THREE PUBLICALLY FUNDED TOLL ROAD OR BRIDGE PROJECTS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 136 of the General Statutes is amended by adding a new Article 6G to read:

"ARTICLE 6G.

"Private and Public Pilot Toll Projects.

"**§ 136-89.168. Private toll projects.**

(a) Authority to License. -- The Department of Transportation is authorized to issue up to three licenses to persons to finance, design, construct, maintain, improve, own, or operate, or any combination thereof, a transportation project within the State of North Carolina.

(b) Requirement for Finding of Need. -- Prior to the issuance of any license under this section, the Department shall make a written determination that the proposed project is necessary and in the public interest, and that it is unlikely to be constructed in the foreseeable future as a non-toll project.

(c) Submission of Financial Data. -- A person applying for a license to construct a project under this section shall submit detailed financial data to the Department concerning the ability of applicant to finance the proposed project and the projected time for the licensee to recover the cost of the licensee's investment and to make a reasonable rate of return. The Department shall independently analyze the data submitted for each project proposal and determine the appropriate license period.

(d) License Period. -- A license issued under this section shall not exceed 30 years in length.

(e) State Ownership at End of License Period. -- A license issued pursuant to this section shall include an agreement from the applicant to transfer all property rights to the project to the State at the end of the license period.

(f) State Use for Other Purposes. -- A license issued pursuant to this section shall authorize the State or its designee to enter and utilize the project right-of-way for other transportation or utility-related purposes, as long as those purposes do not interfere with the use by the licensee.

(g) Terms of License. -- Additional terms and conditions of any license issued pursuant to this section shall be within the discretion of the Department of Transportation, and may include, in addition to any other requirements:

(1) Provisions establishing minimum design and construction standards for the project;

(2) Provisions establishing minimum maintenance standards for the project;

(3) Provisions requiring that necessary traffic signs and other traffic control devices be erected and maintained in conformity with the Manual on Uniform Traffic Control Devices as defined in G.S. 136-30(d).

(4) Provisions establishing the rights and duties of the parties regarding infrastructure improvements and connections between the project and the State highway system;

(5) Provisions regarding any type of access control which may be required for the project;

(6) Provisions establishing the relative responsibilities of the licensee and the Department of Transportation to keep the completed project open and accessible to the public;

(7) Provisions requiring that the State of North Carolina, its agencies, officials and employees be indemnified and held harmless by the licensee for any liability incurred on the project in connection with project construction, maintenance, or operation;

(8) Provisions concerning the circumstances under which the Department will exercise its power of eminent domain; and

(9) Provisions concerning location of the project.

(h) Acquisition of Project Property. -- A person licensed to construct a project under this section shall, to the extent possible, acquire all right-of-way interests required for the project through private negotiation. The Department is authorized to exercise its power of eminent domain to acquire property rights necessary for construction and maintenance of the project only as to those property interests that cannot be acquired by the licensee at a reasonable price through private negotiation. A licensee requesting that the Department exercise its power of eminent domain shall be required to reimburse the Department in the full amount of its costs incurred in acquiring the necessary property interests, including any negotiated settlement or jury

verdict, and any attorney fees that may be awarded. The acquisition of property interests necessary for inclusion in a project licensed under this section is hereby declared to be for a public transportation purpose.

(i) Transfer of Department Property to Licensee. -- Notwithstanding the provisions of G.S. 136-19, should the Department determine that a licensed project requires property interests held by the Department, such interests as the Department determines to be necessary may be conveyed to the licensee for fair market value.

(j) Applicability of Other Laws. -- For the purpose of entering into contractual licensing agreements under this section, the Department of Transportation is exempted from any provision of the General Statutes that conflicts with the purposes of this section, specifically including G.S. 136-28.1 and G.S. 143-52. A project licensed under this section shall not be included in the distribution formula under G.S. G.S. 136-17.2A but shall require approval of the Board of Transportation under G.S. 143B-350(f)(4).

(k) Applicability of Motor Vehicle Laws. -- Any project licensed by the Department of Transportation under the authority granted in this section shall be considered a 'highway' as defined in G.S. 20-4.01(13) and a 'public vehicular area' as defined in G.S. 20-4.01(32). The State Highway Patrol and the Division of Motor Vehicles shall have the same powers and duties on such projects as on any other highway or public vehicular area.

(l) Resolution of Support Required. -- The Department shall not license any project under this section prior to receiving a resolution of support for the project approved by the county commissioners of each county in which the project will be located.

(m) Exclusive License. -- Upon the issuance of a license by the Department of Transportation, no further license of any type may be required by the State or local government body for the ownership, construction, or operation of the project.

(n) Definitions. -- The following definitions shall apply as used in this section:

(1) 'Person' shall mean any natural person, partnership, corporation, trust, association, sole proprietorship, or any other legal entity other than the State or its agencies, institutions, or political subdivisions.

(2) 'Project' shall mean a privately constructed, maintained, and operated toll highway, road, bridge, or other transportation-related facility.

(3) 'License' shall mean a person authorized through a contractual agreement with the Department of Transportation to finance, design, construct, maintain, improve, own, or operate, or any combination thereof, a project.

(o) Report. -- The Department shall report to the Joint Legislative Transportation Oversight Committee and to the Transportation Appropriations Subcommittee by February 1, 2001, and every year thereafter, on any toll project planning, construction, or operation commenced pursuant to the provisions of this Article.

"§ 136-89.169. State-owned and operated toll projects.

(a) Authority to Construct and Operate. -- The Department of Transportation is authorized to construct and operate up to three toll transportation projects within the State.

(b) Requirement for Finding of Need. -- Prior to the construction of any project authorized under this section, the Department shall make a written determination that the proposed project is necessary and in the public interest, and that it is unlikely to be constructed in the foreseeable future as a non-toll project.

(c) Report. -- The Department shall report to the Joint Legislative Transportation Oversight Committee and to the Transportation Appropriations Subcommittee by February 1, 2001, and every year thereafter, on any toll project planning, construction, or operation commenced pursuant to the provisions of this Article."

Section 2. This act is effective when it becomes law and expires July 1, 2003.

FISCAL ANALYSIS MEMORANDUM

DATE: May 31, 2000

TO: Senate Finance Committee

FROM: Evan Rodewald E.R.
Fiscal Research Division

RE: Senate Bill 1197 (First Edition) – Toll Roads

FISCAL IMPACT

Yes ( ) **No (x)** **No Estimate Available ( )**

	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05
REVENUES					
EXPENDITURES					
POSITIONS:					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Transportation

EFFECTIVE DATE: When bill becomes law

BILL SUMMARY:

TO AUTHORIZE CONSTRUCTION OF UP TO THREE PRIVATELY FUNDED AND THREE PUBLICLY FUNDED TOLL ROAD OR BRIDGE PROJECTS. Authorizes the Department of Transportation (DOT) to issue up to three licenses to construct projects after making a finding of need. Provides that the license period may not exceed 30 years at the conclusion of which the person must transfer all property rights to the project to the state. Authorizes the state or its designee to enter and use the project right-of-way for transportation and utility-related purposes. Allows DOT to establish other terms and conditions of any license issued. Requires the licensee, to the extent possible, to acquire all right-of-way interests through private negotiation. Provides

that if the licensee cannot acquire the property at a reasonable price through private negotiation, DOT may exercise its power of eminent domain. Allows DOT to convey property it holds to the licensee at fair market value if the property is needed for the project. Exempts DOT from conflicting laws for the purpose of entering into contractual licensing agreements. Provides that any project licensed will be considered a highway and a public vehicular area and as such, the State Highway Patrol and the Division of Motor Vehicles will have their usual powers and duties on any such project. Requires DOT to get a resolution of support for the project from the county commissioners of each county in which the project will be located before issuing any license and provides that no further license other than the one issued by DOT will be required. Authorizes DOT to operate up to three toll transportation projects within the state. Requires DOT to report to the Joint Legislative Transportation Oversight Committee and to the Transportation Appropriations Subcommittee. Expires July 1, 2003.

ASSUMPTIONS AND METHODOLOGY:

Private Toll Projects

A private toll road built under this law would be funded by private sources, and would not require construction funds from the State. Consequently, a private toll road would have no direct fiscal impact on the State. Over time, private toll roads could impact the State budget indirectly. For example, private toll roads could lead to more travelling from motorists, higher fuel consumption and increased gas tax revenues. Similarly, more roads could result in a need for more law enforcement personnel to patrol those roads. The indirect fiscal impact of private toll roads would be complex and would depend on the specifics of the roads built, such as their length and the amount of traffic they carried. However, we believe the provisions of this bill concerning private toll roads would have no fiscal impact; according to the Department of Transportation, these provisions are so restrictive that vendors would be discouraged from constructing private toll roads.

State-owned and Operated Toll Projects

The bill allows DOT to build and operate toll facilities, but it does not require that they do so. Consequently, whether State toll roads are constructed depends on DOT. The Department believes it would be unable to construct or plan any toll projects prior to the legislation expiring July 1, 2003. As a first step toward public toll roads, the Department would likely contract with a consultant to study how to plan, build and operate them. This study would include a review of different governance structures, a summary of methods of analyzing the financial viability of toll projects and the advantages and disadvantages of each, a history of the experiences with public toll roads in other states, and legal research relevant to establishing public toll roads. The Department of Transportation believes such a study would cost roughly $100,000, and that it could be handled within its current budget. However, the Department may choose not to pursue public toll roads at all.

TECHNICAL CONSIDERATIONS: None

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 1197*
Proposed Committee Substitute S1197-PCSRW-238
THIS IS A DRAFT: LINE NUMBERS MAY CHANGE AFTER ADOPTION
6-JUN-00 12:18:21

Short Title: Toll Roads. (Public)

Sponsors:

Referred to: Finance.

May 10, 2000

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CONSTRUCTION OF UP TO THREE PRIVATE AND THREE PUBLIC ROAD OR BRIDGE PROJECTS, FUNDED BY TOLLS OR OTHER ALTERNATE FINANCING METHODS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 136 of the General Statutes is amended by adding a new Article 6G to read:

"ARTICLE 6G.

"Private and Public Pilot Toll Projects with Alternative Financing.

"§ 136-89.168. Private road or bridge projects.

(a) Authority to License. -- The Department of Transportation is authorized to issue up to three licenses to persons to finance, design, construct, maintain, improve, own, or operate, or any combination thereof, either solely from private resources or using a combination of private and public resources, a transportation project within the State of North Carolina. Any license authorized by this section must be issued on or before July 1, 2003.

(b) Requirement for Finding of Need. -- Prior to the issuance of any license under this section, the Department shall make a

written determination that the proposed project is necessary and in the public interest, and that it is unlikely to be constructed in the foreseeable future as a project of the Department of Transportation through traditional means.

(c) Submission of Financial Data. -- A person applying for a license to construct a project under this section shall submit detailed financial data to the Department concerning the ability of applicant to finance or obtain financing for the proposed project, the need for any public funds, if any, and the projected time for the licensee to recover the cost of the licensee's investment and to make a reasonable rate of return. The Department shall independently analyze the data submitted for each project proposal and determine the appropriate license period.

(d) License Period. -- A license issued under this section shall not exceed 50 years from beginning of the operations of the road or bridge.

(e) State Ownership. -- Projects constructed pursuant to this Article shall, at all times, be owned by the State. The license shall provide that the licensee shall have the exclusive rights to operate, collect tolls, and receive any other authorized remuneration from the project during the license period.

(f) State Use for Other Purposes. -- A license issued pursuant to this section shall authorize the State or its designee to enter and utilize the project right-of-way for other transportation or utility-related purposes, as long as those purposes do not interfere with the use by the licensee.

(g) Terms of License. -- Additional terms and conditions of any license issued pursuant to this section shall be within the discretion of the Department of Transportation, and may include, in addition to any other requirements:

(1) Provisions establishing minimum design and construction standards for the project;

(2) Provisions establishing minimum maintenance standards for the projects and the responsibility for such maintenance:

(3) Provisions requiring that necessary traffic signs and other traffic control devices be erected and maintained in conformity with the Manual on Uniform Traffic Control Devices as defined in G.S. 136-30(d).

(4) Provisions establishing the rights and duties of the parties regarding infrastructure improvement

and connections between the project and the State highway system;

(5) Provisions regarding any type of access control, if any, that may be required for the project;

(6) Provisions establishing the relative responsibilities of the licensee and the Department of Transportation to keep the completed project open and accessible to the public;

(7) Provisions requiring that the State of North Carolina, its agencies, officials and employees be indemnified and held harmless by the licensee for any liability incurred on the project in connection with project construction, maintenance, or operation;

(8) Provisions concerning location of the project; and

(9) Provisions concerning reasonable restrictions that would prevent the State or the Department from constructing competitive transportation facilities during the term of the license.

(h) Department Powers. -- The Department may exercise any power possessed by it with respect to the development and construction of State transportation projects to facilitate the development and construction of transportations projects pursuant to this Article.

(i) Transfer of Department Property to Licensee. -- Notwithstanding the provisions of G.S. 136-19, should the Department determine that a licensed project requires property interests held by the Department, such interests as the Department determines to be necessary may be conveyed to the licensee for fair market value.

(j) Applicability of Other Laws. -- For the purpose of entering into contractual licensing agreements under this section, the Department of Transportation is exempted from any provision of the General Statutes that conflicts with the purposes of this section, specifically including G.S. 136-28.1 and G.S. 143-52. A project licensed under this section shall not be included in the distribution formula under G.S. 136-17.2A but shall require approval of the Board of Transportation under G.S. 143B-350(f)(4).

(k) Applicability of Motor Vehicle Laws. -- Any project licensed by the Department of Transportation under the authority granted in this section shall be considered a 'highway' as defined in G.S. 20-4.01(13) and a 'public vehicular area' as defined in G.S. 20-4.01(32). The State Highway Patrol and the

Division of Motor Vehicles shall have the same powers and duties on such projects as on any other highway or public vehicular area.

(l) Exclusive License. -- Upon the issuance of a license by the Department of Transportation, no further license of any type may be required by the State or local government body for the ownership, construction, or operation of the project.

(m) Definitions. -- The following definitions shall apply as used in this section:

(1) 'Person' shall mean any natural person, partnership, corporation, trust, association, sole proprietorship, or any other legal entity including the State or its agencies, institutions, or political subdivisions.

(2) 'Project' shall mean a constructed, maintained, and operated highway, road, bridge, or other transportation-related facility funded through tolls or other alternative financing methods.

(3) 'License' shall mean a person authorized through a contractual agreement with the Department of Transportation to finance, design, construct, maintain, improve, own, or operate, or any combination thereof, a project.

(n) Report. -- The Department shall report to the Joint Legislative Transportation Oversight Committee and to the Transportation Appropriations Subcommittee by February 1, 2001, and every year thereafter, on any project planning, construction, or operation commenced pursuant to the provisions of this Article.

"**§ 136-89.169. State-owned and operated projects.**

(a) Authority to Construct and Operate. -- The Department of Transportation is authorized to construct and operate up to three transportation projects within the State, using funding by tolls or other nontraditional funding methods. Any project authorized by this section must be approved by the Board of Transportation on or before July 1, 2003.

(b) Requirement for Finding of Need. -- Prior to the construction of any project authorized under this section, the Department shall make a written determination that the proposed project is necessary and in the public interest, and that it is unlikely to be constructed in the foreseeable future as a project of the Department through traditional means.

(c) Report. -- The Department shall report to the Joint Legislative Transportation Oversight Committee and to the

Transportation Appropriations Subcommittee by February 1, 2001, and every year thereafter, on any project planning, construction, or operation commenced pursuant to the provisions of this Article."

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

SENATE BILL 1197:
Toll Roads

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Senator Gulley
Date:	June 6, 2000	**Summary by:**	Martha K. Walston
Version:	Proposed Committee Substitute		Committee Counsel

SUMMARY: ***Senate Bill 1197 is a recommendation of the LRC Transportation Finance Committee. The bill authorizes the construction of up to three private and three public transportation projects, that are funded either by tolls or other alternative financing methods. The act is effective when it becomes law. Any license issued for a private project must be issued on or before July 1, 2003, and any State-owned and operated project must be approved by the Board of Transportation on or before July 1, 2003. House Bill 1630, introduced by Rep. Crawford is a companion bill and is in House Transportation.***

BILL ANALYSIS: Senate Bill 1197 adds a new Article to Chapter 136 (Roads and Highways). The new Article, entitled "Private and Public Pilot Projects with Alternative Financing", authorizes the construction and operation of three private transportation projects and three State-owned projects in the State.

Private Road or Bridge Projects

The Department of Transportation may issue up to three licenses to persons to finance, design, construct, maintain, improve, own, or operate a transportation project in the State. The project may be financed solely from private resources or a combination of private and public resources.

Requirements for Issuance of License

- DOT must make written determination that proposed project is necessary, in the public interest, and unlikely to be constructed in the foreseeable future as a project of DOT through traditional means.
- Applicant must submit detailed financial data to DOT showing ability to finance or obtain financing for the project, the need for any public funds, and the projected time for licensee to recover cost of his investment and to make a reasonable rate of return.

License period – The license period may not exceed 50 years from the beginning of the operation of the road or bridge.

State Ownership. –Private project constructed under the new Article will be owned by the State at all times.

Terms of License – The State or its designee is authorized to enter and use the project right-of-way for other transportation or utility-related purposes, if the use does not interfere with use by the licensee. The licensee has exclusive rights to operate, collect tolls, and receive any other authorized remuneration from the project during the license period. DOT has discretion to include additional terms and conditions in the license.

DOT Powers – DOT has the authority to exercise any of its powers to facilitate the development and construction of the projects.

Transfer of DOT Property to Licensee – DOT is authorized to convey property interests to the licensee for fair market value if DOT determines that the licensed project needs the property interests.

Exemptions -- DOT is exempted from conflicting laws (bidding requirements and advertisement) for the purpose of entering into contractual licensing agreements. A licensed project is also exempt from inclusion in the distribution formula for funds expended on the Intrastate System and the Transportation Improvement Program but does require that the Board of Transportation approve the schedule of a transportation improvement project and anticipated cost for seven years.

Highway Patrol and Division of Motor Vehicles have power and duties on project.

Reporting Requirements – DOT must report to Joint Legislative Transportation Oversight Committee and to the Transportation Appropriations Subcommittee by February 1, 2001 and every year thereafter on any project.

State-Owned and Operated Projects

DOT may construct and operate up to three state-owned transportation projects in the State if it determines that the proposed project is necessary and in the public interest, and that it is unlikely to be constructed in the foreseeable future as a project of DOT through traditional means. The project is to be funded by tolls or other non-traditional funding methods.

Reporting Requirements – same as for private projects.

(Attachment #1)

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 6/13/2000

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Doug Rogers	NCDOT
Burt Iaffaldano	NCDOT
Mary Ann Lis	NCBIC
Nancy English	Charlotte Chamber
R E McElwaine Jr	Georgia-Pacific Corp
Jeff Merritt	Raleigh Chamber
Paul Stock	NC Bankers Assn.

(Attachment #2)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Tuesday, June 13, 2000

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

FAVORABLE

H.B. **1552** Laurinburg Street Assessments
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comment:

(Attachment #3)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Wednesday, June 14, 2000

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

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

S.B. **1200** Municipal Participation

Draft Number:	PCS7784
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment: Bill was acted on in Sen Finance Meeting on 6-13-00

SENATE FINANCE COMMITTEE

WEDNESDAY, JUNE 14, 2000

1:30 P.M. – ROOM 544

The Senate Finance Committee met on Wednesday, June 14, 2000, at 1:30 P.M. in Room 544 with Senator John Kerr presiding. There were 20 committee members present for the meeting. The Pages, Keri Lovitt, Robert Oliver, Ashley Stanley, and Evan McMillian, were introduced to the committee.

HB 1573 – HEALTH CARE FACILITY AND CCRC TAX EXEMPT.

Senator Hoyle explained this Bill and at the conclusion of his explanation, Senator Rand moved for a Favorable Report. The motion carried. Copy of Bill, Explanation, and Fiscal Note included in the minutes.

SB 1293 – TOWN OF BADIN/TAX RATE.

Senator Purcell explained his Bill and Senator Dannelly moved for a Favorable Report. The motion carried. Copy of Bill included in the minutes.

HB 1497 – RICHMOND COUNTY SUBDIVISIONS.

Senator Purcell was recognized to explain this Bill. At the conclusion of his explanation, Senator Clodfelter moved for a Favorable Report and the motion carried. Copy of Bill included in the minutes.

HB 1541 – CAMDEN AMBULANCE FEES.

Senator Hoyle was recognized to explain this Bill and at the conclusion of his explanation, Senator Rand moved for a Favorable Report. The motion passed. Copy of Bill and Explanation included in the minutes.

HB 1551 – TAX ENFORCEMENT.

Staff was recognized to explain this Bill and a Technical Amendment was adopted on motion by Senator Hoyle. Martha Walston explained the Bill and the Technical Amendment. Thomas L Dickson, Jr., Director of the Criminal Investigations Division of the North Carolina Department of Revenue, gave a further explanation of this Bill. After a general discussion of this Bill, the Chairs directed that the Bill be held over and discussed at a later meeting. Copy of Bill, Amendment, Explanation and Fiscal Note included in the minutes.

David W. Hoyle, Co-Chair
Senate Finance Committee

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

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

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

AGENDA

SENATE FINANCE COMMITTEE MEETING

WEDNESDAY, JUNE 14, 2000

ROOM 544 - 1:30 P.M.

CALL MEETING TO ORDER

INTRODUCE PAGES

SB 1293 – Town of Badin/Tax Rate – Sen. Purcell

SB 1534 – UNC Nonappropriated Capital/Rev. Bonds – Sen. Kerr

HB 1497 – Richmond County Subdivisions – Rep. Goodwin

HB 1541 – Camden Ambulance Fees – Rep. Owens

HB 1551 – Tax Enforcement – Rep. Miller

HB 1573 – Health Care Facility and CCRC Tax Exempt – Rep. Jarrell

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 1573*
Committee Substitute Favorable 6/6/00

Short Title: Health Care Facility and CCRC Tax Exempt. (Public)

Sponsors:

Referred to:

May 17, 2000

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE PROPERTY TAX TREATMENT OF A HEALTH CARE FACILITY UNDERTAKEN BY THE MEDICAL CARE COMMISSION PURSUANT TO THE HEALTH CARE FACILITIES FINANCE ACT AND TO EXTEND THE SUNSET ON THE PROPERTY TAX EXEMPTION FOR CONTINUING CARE RETIREMENT CENTERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131A-21 reads as rewritten:

"**§ 131A-21. Tax exemption.**

The exercise of the powers granted by this Chapter will be in all respects for the benefit of the people of the State and will promote their health and ~~welfare, and no tax or assessment shall be levied upon any health care facilities undertaken by the Commission prior to the retirement or provision for the retirement of all bonds or notes issued and obligations incurred by the Commission in connection with such health care facilities.~~ welfare. If bonds or notes are issued by the Commission to provide or improve a health care facility, then until the bonds or notes are retired, the facility for which bonds or notes are issued is exempt from property taxes to the extent provided in this section. If refunding bonds or notes are issued to refund bonds or notes issued to provide or improve a health care facility, the facility will continue to be exempt from property taxes as provided in this section until such time as the refunding bonds or notes are retired, provided that the final maturity of the refunding bonds or notes does not extend beyond the final maturity of the original bonds or notes.

The property tax exemption under this section shall not exceed the lesser of the original principal amount of the bonds or notes or the assessed value for ad valorem tax purposes of the facility. If bonds or notes are issued to finance more than one health care facility, only that portion of the principal amount of the bonds or notes used to provide or improve the particular facility, including any allocable reserves and financing costs, may be considered for the purpose of determining the amount of the exemption allowable under this section. The exemption authorized by this section shall begin with the first full tax year of the taxpayer following the issuance of the bonds and notes. This section does not affect a health care facility's eligibility for a property tax exemption under Subchapter II of Chapter 105 of the General Statutes.

Any bonds or notes issued by the Commission under the provisions of this Chapter shall at all times be free from taxation by the State or any local unit or political subdivision or other instrumentality of the State, excepting ~~inheritance~~ inheritance, estate, or gift taxes, income taxes on the gain from the transfer of the bonds and notes, and franchise taxes. The interest on the bonds and notes is not subject to taxation as income."

Section 2. Subsection (e) of Section 29A.18 of Chapter 212 of the 1998 Session Laws reads as rewritten:

"(e) Subsection (a) of this section is effective for taxes imposed for taxable years beginning on or after July 1, 1998. Notwithstanding the provisions of G.S. 105-282.1(a), an application for the benefit provided in subsection (a) of this section for the 1998-99 tax year is timely if it is filed on or before November 15, 1998. ~~Subsection (a) of this section~~ G.S. 105-278.6A is repealed effective for taxes imposed for taxable years beginning on or after July 1, ~~2000.~~ 2001. The remainder of this section is effective when it becomes law."

Section 3. Section 1 of this act becomes effective October 1, 2000, and applies to bonds or notes issued on or after that date. Section 2 of this act becomes effective July 1, 2000. The remainder of this act is effective when it becomes law.

HOUSE BILL 1573:
Health Care Facility and CCRC Tax Exempt

BILL ANALYSIS

Committee: Senate Finance
Date: June 12, 2000
Version: Second Edition

Introduced by: Rep. Jarrell
Recommended by Revenue Laws
Summary by: Cindy Avrette and Martha Walston, Committee Counsel

SUMMARY: House Bill 1573 contains two recommendations of the Revenue Laws Study Committee:

- *It clarifies the property tax exemption of a health care facility financed by Medical Care Commission bonds or notes.*
- *It extends the sunset on the property tax exemption for continuing care retirement centers from July 1, 2000, to July 1, 2001.*

CLARIFY PROPERTY TAX EXEMPTION OF HEALTH CARE FACILITY FINANCED BY MEDICAL CARE COMMISSION BONDS OR NOTES (Section 1):

House Bill 1573 clarifies the property tax exemption for health care facilities financed with bonds or notes issued by the Medical Care Commission in two ways:

- The amount of the exemption cannot exceed the lesser of the principal amount of the bonds or notes or the assessed value of the facility.
- Only the part of a health care facility financed by bonds or notes issued by the Medical Care Commission is exempt from property tax. When bonds or notes are used to finance an expansion or a renovation of an existing facility, only the new part of the facility or the renovated part of the facility may be exempt from property tax, not the entire facility.

The **Second Edition** makes technical changes to this section of the bill, as requested by the bond attorney. The Department of Revenue and the Institute of Government requested the clarifications made in the bill.

In 1975, the General Assembly enacted the Health Care Facilities Finance Act to help and encourage the modernization and expansion of the State's health care facilities. Under the Act, the Medical Care Commission may issue bonds or notes to finance the cost of building or improving health care facilities for public or nonprofit agencies. The Medical Care Commission indicates that over the last 20 years, approximately $5 billion in bonds or notes have been issued. Approximately 90% of these bonds or notes have been issued to hospitals for expansion and renovation of hospital facilities and for purchasing hospital equipment.

The Act provides that a health care facility financed through bonds or notes issued by the Medical Care Commission is exempt from property tax until the bonds or notes are retired. At the time the Act was enacted, the Medical Care Commission actually owned most, if not all, of the facilities financed through bond revenues until the bonds or notes were retired. Ownership was given to a public or nonprofit agency after the bonds or notes were retired. Today, the Commission does not generally own the facilities being financed; ownership remains with the public and nonprofit health care facilities requesting the financing. Most of these facilities are exempt from property tax under G.S. 105-278.8. The exemption being amended by this bill was included in the law in 1975 because the Medical Care Commission did not fall within the tax exemption for charitable hospital purposes.

EXTEND THE SUNSET FOR CCRC (Section 2):

House Bill 1573 also provides that the current property tax exemption for continuing care retirement centers (CCRC) will remain in effect for one more year by extending the exemption's sunset from July 1, 2000, to July 1, 2001.

Background: North Carolina has long exempted from property tax homes for the aged, sick, and infirm if the homes are used exclusively for a charitable purpose and the owner of the property is not organized for profit. (G.S. 105-278.6) In 1983 and 1984, the North Carolina courts ruled that two retirement homes that had sought to claim this property tax exemption did not qualify because the homes were not charitable. In response to the courts' rulings, the General Assembly enacted a property tax exemption in 1987 for certain homes for the "aged, sick, or infirm". To qualify for the exemption, a CCRC did not have to be operated as a charity, but it did have to be owned and operated by a nonprofit organization that was a religious or Masonic organization. (G.S. 105-275(32))

In 1998, Springmoor, Inc., a nonprofit corporation that manages and operates a self-contained residential community for the elderly, successfully challenged the constitutionality of the 1987 legislation. Springmoor alleged that its center met all the requirements of G.S. 105-275(32), except that it was not affiliated with a religious or Masonic organization as required by a subpart of the statute. The North Carolina Supreme Court agreed that the statute violated the First Amendment because it was an unconstitutional establishment of religion. Instead of severing the unconstitutional subpart from the statute, which would have given Springmoor exempt status, the Court ruled the entire statute unconstitutional. The Court explained that it was not the General Assembly's intent to provide a blanket exclusion for all nonprofit homes for the elderly.

After the *Springmoor* decision, the General Assembly enacted G.S. 105-278.6A. This statute temporarily revises the property tax exemption for retirement communities that was held unconstitutional in *Springmoor*. The exemption expires July 1, 2000. The Revenue Laws Study Committee appointed a subcommittee consisting of interested parties (including representatives of the CCRCs, the counties, and the tax assessors) to review the tax status of the CCRCs and to seek a compromise. During its six meetings, the subcommittee discussed numerous proposals and looked at other states' laws. Because the subcommittee did not reach a consensus, it recommended extension of the sunset on the property tax exemption for one year in order to give all interested parties more time to seek a compromise.

Martha Walston, an attorney in the Fiscal Research Division, contributed to this summary.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 1573 (First Edition)

SHORT TITLE: Health Care Facility and CCRC Tax Exempt

SPONSOR(S): Rep. Jarrell, et al.

FISCAL IMPACT

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

	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05
REVENUES					
General Fund			**No General Fund Impact**		
Local Government			See Assumptions and Methodology		
EXPENDITURES					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: County and Municipal Governments

EFFECTIVE DATE: Section 1 becomes effective October 1, 2000, and applies to bonds or notes issued on or after that date. Section 2 becomes effective July 1, 2000. The remainder of the bill is effective when it becomes law.

BILL SUMMARY:
Under G.S. 131A-21, any health care facility funded through Medical Care Commission bonds or notes is exempt from property tax for the life of that bond or note. Section 1 of the bill clarifies that the exemption only applies to the portion of the facility funded by the Medical Care Commission bond or note, or the principal amount of that bond or note, whichever is smaller. Section 2 of the bill extends the sunset on the property tax exemption for Continuing Care Retirement Communities to July 1, 2001.

ASSUMPTIONS AND METHODOLOGY:
Section 1: Since its inception in 1975, the Medical Care Commission (MCC), has issued approximately $5 billion in bonds or notes to fund the creation and expansion of North Carolina health care facilities. According to the MCC staff, approximately 10% of these bonds or notes have been issued to CCRCs.

Until recently these bonds were issued almost exclusively to fund the creation of an entirely new facility. In the last five years the MCC has seen a significant increase in the number of applications for the renovation and expansion of existing facilities. The MCC anticipates this trend to continue and accelerate over time.

According to Department of Revenue officials and local county assessors, there has been some confusion as to whether the entire facility should be exempt from tax solely because MCC bonds or notes fund a portion of the facility. At this point, Fiscal Research is aware of at least two CCRCs that are requesting a property tax exemption for their entire facility based on partial Medical Care Commission bond funding.

Because the bill is prospective, the legislation will not impact facilities funded under existing bonds. MCC staff also believe that this will not impact the state's non-profit hospitals since these hospitals already receive a property tax exemption for most of their holdings under G.S. 105-278.8 (charitable hospital). As a result, most of these hospital facilities are exempt from property tax with or without MCC funding. The primary impact will occur in communities with Continuing Care Retirement Communities that will apply for MCC funding in the future, since many of these facilities are or could be subject to property tax. Since Fiscal Research cannot anticipate the amount of bonds to be issued in the future to these facilities, no fiscal estimate is possible.

Section 2: G.S. 105-278.6A allows a Continuing Care Retirement Center (CCRC) that fails to qualify as charitable to receive a property tax exemption for its property if it meets all of the following requirements:

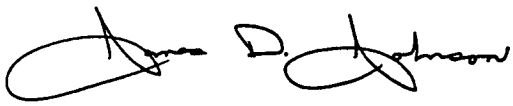
1. The center owns the property and uses it for a retirement community that includes a skilled nursing facility or an adult care facility, and also includes independent living units. Its ground and buildings must be on a single site and it must be designed for elderly residents.
2. The center must be nonprofit and exempt from income tax, and its assets upon dissolution must revert to a 501 (c) (3) charitable organization.
3. The center must have an active fund raising program to assist it in providing services to those who do not have the financial resources to pay the fees.
4. The governing body of the institution must be selected by a charitable nonprofit organization or fraternal organization.
5. All of the center's revenues, less operating and capital expenses, must be applied to providing uncompensated goods and services to the elderly and to the local community, or applied to an endowment or reserve for that purpose.

The property tax exemption for these CCRCs is repealed for taxes imposed for taxable years beginning on or after July 1, 2000. The proposal extends the sunset on the property tax exemption for CCRCs set out in G.S. 105-278.6A to *July 1, 2001*. Technically, extending the property tax sunset one year has no fiscal impact on local governments. Prior to 1998, the non-charitable CCRCs were exempt from property tax. Since July 1, 1998, non-charitable CCRCs

have been exempt from property taxes under G.S. 105-278.6A. Even with the impending sunset in 2000, local governments have not included CCRC revenue in their budget availability for FY 2000-2001. However, if the sunset were to expire in 2000 and the non-charitable CCRCs became fully taxable, then city and county governments could assess taxes on the property and receive an estimated $5.1 million in property tax revenues. There is no General Fund impact of the proposal.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic & Eugene Son (Research Assistant)

APPROVED BY: James D. Johnson



DATE: May 30, 2000

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1293

Short Title: Town of Badin/Tax Rate. (Local)

Sponsors: Senators Purcell and Plyler.

Referred to: Finance.

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE TAX LIMIT FOR THE TOWN OF BADIN.

The General Assembly of North Carolina enacts:

Section 1. Section 5.3 of the Charter of the Town of Badin, being Chapter 894, Session Laws of 1989, as rewritten by Section 1 of Chapter 827, Session Laws of 1991, reads as rewritten:

"Sec. 5.3. ~~The Town Council may set an ad valorem tax rate in excess of $.25 per $100 valuation only if the rate meets both of the following conditions:~~

~~(1) The percentage increase in the rate from the previous year's rate does not exceed the percentage increase in the Implicit GNP Price Deflator over the preceding year.~~

~~(2) The increase in the rate does not exceed ten percent (10%) of the rate that applied in the next preceding year.~~

The ad valorem tax rate set by the Town Council shall not exceed the previous year's rate by more than ten percent (10%)."

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

HOUSE BILL 1497

Short Title: Richmond County Subdivisions. (Local)

Sponsors: Representative Goodwin.

Referred to: Local Government I.

May 10, 2000

A BILL TO BE ENTITLED

AN ACT AMENDING THE STATUTORY DEFINITION OF "SUBDIVISION" FOR THE PURPOSE OF SUBDIVISION REGULATION IN RICHMOND COUNTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-335 reads as rewritten:

"**§ 153A-335. "Subdivision" defined.**

For purposes of this Part, "subdivision" means all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose of sale or building development (whether immediate or future) and includes all division of land involving the dedication of a new street or a change in existing streets; however, the following is not included within this definition and is not subject to any regulations enacted pursuant to this Part:

(1) The combination or recombination of portions of previously subdivided and recorded lots if the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the county as shown in its subdivision regulations;

(2) The division of land into parcels greater than ~~10~~ five acres if no street right-of-way dedication is involved;

(3) The public acquisition by purchase of strips of land for widening or opening streets; and

(4) The division of a tract in single ownership the entire area of which is no greater than two acres into not more than three lots, if no street right-of-way dedication is involved and if the resultant lots

are equal to or exceed the standards of the county as shown by its subdivision regulations."

Section 2. This act applies to Richmond County only.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1541

Short Title: Camden Ambulance Fees. (Local)

Sponsors: Representative Owens.

Referred to: Local Government II.

May 16, 2000

A BILL TO BE ENTITLED

AN ACT TO MAKE IT A CRIMINAL OFFENSE IN CAMDEN COUNTY TO OBTAIN AMBULANCE SERVICES WITH NO INTENT TO PAY FOR THOSE SERVICES OR TO MAKE AN UNNECESSARY AMBULANCE REQUEST AND TO AUTHORIZE CAMDEN COUNTY TO COLLECT AMBULANCE CHARGES THROUGH THE USE OF ATTACHMENT AND GARNISHMENT PROCEEDINGS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-111.2 reads as rewritten:

"**§ 14-111.2. Obtaining ambulance services without intending to pay therefor -- certain named counties.**

Any person who with intent to defraud shall obtain ambulance services without intending at the time of obtaining such services to pay, if financially able, any reasonable charges therefor shall be guilty of a Class 2 misdemeanor. A determination by the court that the recipient of such services has willfully failed to pay for the services rendered for a period of 90 days after request for payment, and that the recipient is financially able to do so, shall raise a presumption that the recipient at the time of obtaining the services intended to defraud the provider of the services and did not intend to pay for the services.

The section shall apply to Anson, Ashe, Beaufort, Caldwell, Camden, Caswell, Catawba, Chatham, Cherokee, Clay, Cleveland, Cumberland, Davie, Duplin, Durham, Forsyth, Gaston, Graham, Guilford, Haywood, Henderson, Hoke, Hyde, Iredell, Macon, Mecklenburg, Montgomery, Orange, Pasquotank, Person, Polk,

Randolph, Robeson, Rockingham, Scotland, Stanly, Surry, Transylvania, Union, Vance, Washington, Wilkes and Yadkin Counties only."

Section 2. G.S. 14-111.3 reads as rewritten:

"**§ 14-111.3. Making unneeded ambulance request in certain counties.**

It shall be unlawful for any person or persons to willfully obtain or attempt to obtain ambulance service that is not needed, or to make a false request or report that an ambulance is needed. Every person convicted of violating this section shall be guilty of a Class 3 misdemeanor.

This section shall apply only to the Counties of Ashe, Buncombe, Camden, Cherokee, Clay, Cleveland, Davie, Duplin, Durham, Graham, Greene, Haywood, Hoke, Macon, Madison, Polk, Robeson, Washington, Wilkes and Yadkin."

Section 3. G.S. 44-51.8 reads as rewritten:

"**§ 44-51.8. Counties to which Article applies.**

The provisions of this Article shall apply only to Alamance, Alexander, Alleghany, Anson, Ashe, Beaufort, Bladen, Brunswick, Buncombe, Burke, Cabarrus, Camden, Caldwell, Caswell, Catawba, Chatham, Cherokee, Chowan, Cleveland, Columbus, Craven, Cumberland, Dare, Davidson, Davie, Duplin, Durham, Edgecombe, Forsyth, Franklin, Gaston, Graham, Granville, Greene, Guilford, Halifax, Harnett, Haywood, Henderson, Hertford, Hoke, Hyde, Iredell, Johnston, Jones, Lee, Lenoir, Lincoln, McDowell, Macon, Madison, Mecklenburg, Mitchell, Montgomery, Moore, Nash, New Hanover, Onslow, Pasquotank, Person, Pitt, Polk, Randolph, Richmond, Robeson, Rockingham, Rowan, Rutherford, Sampson, Scotland, Stanly, Stokes, Surry, Swain, Transylvania, Tyrrell, Union, Vance, Wake, Warren, Washington, Watauga, Wilkes, Wilson, Yadkin and Yancey Counties."

Section 4. This act becomes effective December 1, 2000, and applies only to Camden County. Sections 1 and 2 of this act apply only to offenses committed on or after December 1, 2000.

HOUSE BILL 1541 (Local Bill): Camden Ambulance Fees

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Rep. Owens
Date:	June 12, 2000	**Summary by:**	Martha K. Walston
Version:	1st Edition		Committee Counsel

SUMMARY: ***House Bill 1541 makes it a criminal offense in Camden County to obtain ambulance services with no intent to pay or to willfully make an unnecessary ambulance request or false report that an ambulance is needed. House Bill 1541 also authorizes Camden County to collect ambulance charges through the use of attachment and garnishment proceeding or liens on real property. The act is effective December 1, 2000 and applies only to Camden County. Sections 1 and 2 (criminal statutes) apply only to offenses committed in Camden County on or after December 1, 2000. The bill was given a favorable report in House Local Government II and House Finance.***

CURRENT LAW: **Misdemeanor:** Forty-two counties make it a Class 2 misdemeanor if a person with intent to defraud obtains ambulance services without intending at the time of obtaining the services to pay, if financially able, any reasonable charges. If a county finds that a recipient has willfully failed to pay for the services after 90 days from a request for payment and that the recipient is financially able to pay, then a presumption is raised that the recipient intended to defraud the service provider. A Class 2 misdemeanor carries a maximum fine of $1,000 and/or community punishment of 1-30 days if no prior convictions. (The Counties of Buncombe, Haywood, and Madison make it a Class 2 misdemeanor if a person with intent to defraud obtains ambulance services for himself or other persons without intending at the time of obtaining the services to pay a reasonable charge. There is no requirement that the person be financially able to pay.)

Nineteen counties make it a Class 3 misdemeanor if a person willfully obtains or attempts to obtain ambulance service that is not needed, or makes a false request or report that an ambulance is needed. A Class 3 misdemeanor carries a maximum fine of $200 and/or community punishment of 1-10 days if no prior convictions.

Lien: Article 9B of Chapter 44 (Liens) authorizes eighty-six counties and the municipalities in those counties to collect ambulance charges through the use of attachment and garnishment proceedings when a recipient of ambulance service provided by the county or municipality or the person responsible for the support of the recipient fails to pay the amount due for a period of 90 days after service is rendered. The amount due is treated as if it were a tax due to the county or municipality.

Article 9B also authorizes the county or municipality to create a lien on the real property of the recipient of the service or on the real property of a person legally responsible for the support of the recipient. To be valid the lien must be filed with the clerk of superior court after 90 dates from the date of the ambulance service but before 180 days of the date of the service.

(Article 9A authorizes any county or municipal agency or government that has furnished ambulance service to create a lien on the real property of the recipient of the ambulance service.)

BILL ANALYSIS: House Bill 1541 adds Camden County to those counties that:

- make it a misdemeanor to obtain ambulance services with no intent to pay or to willfully make an unnecessary ambulance request or false report that an ambulance is needed,
- may collect ambulance charges through the use of attachment and garnishment proceedings, and
- may create a lien on the real property of the recipient of ambulance service or on the real property of the person legally responsible for the support of the recipient.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 3

HOUSE BILL 1551
Committee Substitute Favorable 5/31/00
Third Edition Engrossed 6/7/00

Short Title: Tax Enforcement. (Public)

Sponsors:

Referred to:

May 17, 2000

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE AUTHORITY OF DEPARTMENT OF REVENUE LAW ENFORCEMENT AGENTS, TO ALLOW THE SECRETARY OF REVENUE TO ADMINISTER THE OATH OF OFFICE TO DEPARTMENT OF REVENUE LAW ENFORCEMENT AGENTS, TO PROVIDE A CIVIL PENALTY FOR FILING A FRIVOLOUS INCOME TAX RETURN, AND TO CHANGE THE PROCEDURES FOR LAW ENFORCEMENT REPORTING ON NON-TAX-PAID UNAUTHORIZED SUBSTANCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-236.1 reads as rewritten:

"**§ 105-236.1. Enforcement of revenue laws by revenue law enforcement agents.**

(a) General. -- The Secretary may appoint employees of the Unauthorized Substances Tax Division to serve as revenue law enforcement officers having the responsibility and subject-matter jurisdiction to enforce the excise tax on unauthorized substances imposed by Article 2D of this Chapter. ~~The~~ The Secretary may appoint employees of the Criminal Investigations Division to serve as revenue law enforcement officers having the responsibility and subject-matter jurisdiction to enforce the following tax violations and criminal offenses:

(1) ~~the~~ The felony and misdemeanor tax violations in G.S. ~~105-236~~ 105-236.

(2) The misdemeanor tax violations in G.S. 105-449.117 and G.S. 105-449.120. ~~and to enforce any of the~~

(3) The following criminal offenses when they involve a tax imposed under Chapter 105 of the General Statutes: ~~G.S. 14-91~~

a. G.S. 14-91 (Embezzlement of State ~~Property),~~ Property).

b. G.S. 14-92 (Embezzlement of ~~Funds),~~ Funds).

c. G.S. 14-100 (Obtaining Property By False ~~Pretenses),~~ Pretenses).

d. G.S. 14-119 ~~(Forgery), and~~ (Forgery).

e. G.S. 14-120 (Uttering Forged ~~Paper).~~ Paper).

f. G.S. 14-401.18 (Sale of Certain Packages of Cigarettes).

~~The Secretary may appoint employees of the Unauthorized Substances Tax Division to serve as revenue law enforcement officers having the responsibility and subject-matter jurisdiction to enforce the excise tax on unauthorized substances imposed by Article 2D of this Chapter. To serve as a revenue law enforcement officer, an employee must be certified as a criminal justice officer under Chapter 17C of the General Statutes.~~

(b) Authority. -- A revenue law enforcement officer is a State officer with jurisdiction throughout the State within the officer's subject-matter jurisdiction. A revenue law enforcement officer may serve and execute notices, orders, warrants, or demands issued by the Secretary or the General Court of Justice in connection with the enforcement of the officer's subject-matter jurisdiction. A revenue law enforcement officer has the full powers of arrest as provided by G.S. 15A-401 while executing the notices, orders, warrants, or demands.

(c) Qualifications. -- To serve as a revenue law enforcement officer, an employee must be certified as a criminal justice officer under Chapter 17C of the General Statutes. The Secretary may administer the oath of office to revenue law enforcement officers appointed pursuant to this section."

Section 2. G.S. 105-236 is amended by adding a new subdivision to read:

"(10a) Filing a Frivolous Return. -- If a taxpayer files a frivolous return under Part 2 of Article 4 of this Chapter, the Secretary shall assess a penalty in the amount of five hundred dollars ($500.00). A frivolous return is a return that meets both of the following requirements:

a. Fails to include information on which the substantial correctness of the return may be judged or contains information that indicates the return is substantially incorrect.

b. Commits an act intended to delay or impede the revenue laws of this State or a reliance upon a position that is frivolous."

Section 3. G.S. 105-113.106(4c) is recodified as G.S. 105-113.106(4d).

Section 4. G.S. 105-113.106 is amended by adding the following two new subdivisions to read:

"The following definitions apply in this Article:

. . .

(4c) Local law enforcement agency. -- A municipal police department, a county police department, or a sheriff's office.

. . .

(8a) State law enforcement agency. -- Any State agency, force, department, or unit responsible for enforcing criminal laws."

Section 5. G.S. 105-113.108 reads as rewritten:

"**§ 105-113.108. Reports; revenue stamps.**

(a) Revenue Stamps. -- The Secretary shall issue stamps to affix to unauthorized substances to indicate payment of the tax required by this Article. Dealers shall report the taxes payable under this Article at the time and on the form prescribed by the Secretary. Dealers are not required to give their name, address, social security number, or other identifying information on the form. Upon payment of the tax, the Secretary shall issue stamps in an amount equal to the amount of the tax paid. Taxes may be paid and stamps may be issued either by mail or in person.

(b) Reports. -- Every local law enforcement agency and every State law enforcement agency must report to the Department within 48 hours after seizing an unauthorized substance, or making an arrest of an individual in possession of an unauthorized substance, listed in this subsection upon which a stamp has not been affixed. The report must be in the form prescribed by the Secretary and it must include the time and place of the arrest or seizure, the amount, location, and kind of substance, the identification of an individual in possession of the substance and that individual's social security number, and any other information prescribed by the Secretary. The report must be made when the arrest or seizure involves any of the following unauthorized substances upon which a stamp has not been affixed as required by this Article:

(1) More than 42.5 grams of marijuana.

(2) Seven or more grams of any other controlled substance that is sold by weight.

(3) Ten or more dosage units of any other controlled substance that is not sold by weight.

(4) Any illicit mixed beverage.

(5) Any illicit spirituous liquor.

(6) Mash."

Section 6. G.S. 114-18.1 is repealed.

Section 7. G.S. 114-19(b) is repealed.

Section 8. Section 2 of this act becomes effective October 1, 2000, and applies to returns filed on or after that date. Sections 3 through 7 of this act become effective December 1, 2000, and apply to arrests or seizures occurring on or after that date. The remainder of this act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1551

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

H1551-ALA-1 Page 1 of __

Date_____,2000

Comm. Sub. [yes]
Amends Title []
Third Edition

Senator _____

moves to amend the bill on page 2, line 38,
by rewriting the line to read:
"laws of this State or evidences a reliance upon a position that is".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

HOUSE BILL 1551:
Tax Enforcement

BILL ANALYSIS

Committee:	Senate Finance	**Sponsor:**	Rep. Miller
Date:	June 12, 2000	*Recommended by Revenue Laws*	
Version:	Third Edition	**Summary by:**	Cindy Avrette and Martha Walston, Committee Counsel

SUMMARY: ***House Bill 1551 is a recommendation of the Revenue Laws Study Committee. It makes three changes to current law to facilitate enforcement of the tax laws, as recommended to the Committee by the Department of Revenue. The original bill was changed in House Finance and ON the House Floor as follows: (1) added one other tax law change at the request of the Unauthorized Substances Tax Division of the Department of Revenue, and (2) amended the requirements of a frivolous return.***

Authority of Law Enforcement Agents: (Section 1)

Currently, revenue law enforcement officers have authority to enforce felony violations under G.S. 105-236 and to enforce numerous other offenses under State law when they involve a State tax. Section 1 expands the offenses revenue law enforcement officers may enforce to include the following misdemeanor offenses:

1. Willful failure to collect, withhold, or pay over tax. G.S. 105-236(8)
2. Willful failure to file a return, supply information, or pay tax. G.S. 105-236(9)
3. Use of dyed diesel or other non-tax-paid fuel. G.S. 105-449.117.
4. Miscellaneous fuel tax misdemeanors. G.S. 105-449.120.
5. Sale of certain packages of cigarettes. G.S. 14-401.18.

The proposed committee substitute rewrites G.S. 105-236.1(a) by setting forth the offenses a revenue law enforcement officer may enforce in a list.

Secretary to Administer Oath of Office: (Section 1)

Section 1 also authorizes the Secretary of Revenue to administer the oath of office to revenue law enforcement officers. The Secretary is not one of the individuals who has general authorization under G.S. 11-7.1 to administer oaths. The Secretary does, however, have authority under G.S. 105-261 to administer an oath to a person with respect to a tax return or report. The proposed committee substitute puts the qualifications for becoming a revenue law enforcement officer, including the oath of office, in a separate subsection.

Civil Penalty for Filing a Frivolous Income Tax Return: (Section 2)

Section 2 creates a civil penalty for filing a frivolous income tax return. In order for a return to be frivolous, it must meet both of the following conditions:

- The return does not include information on which the substantial correctness of the return may be judged or contains information that indicates that the return is substantially incorrect.
- The return commits an act intended to delay or impede the revenue laws of this State or a reliance upon a position that is frivolous. **ADDED ON THE HOUSE FLOOR** (was "Evidences a desire to delay or impede the revenue laws of this State or a reliance upon a position that is frivolous.")

The penalty for filing a frivolous return would be five hundred dollars ($500). As with other penalties assessed under Subchapter I of Chapter 105, this penalty would be assessed as an additional tax. This penalty is similar to a penalty imposed on the federal level under section 6702 of the Code.

The Criminal Investigations Division of the Department of Revenue requested this change in the law. In its work, the Division has investigated cases in which a taxpayer will knowingly file an incorrect return in order to inflate deductions and thus increase the amount of the taxpayer's refund. For example, a taxpayer may claim extra dependents or exaggerate the amount of charitable contributions. The current penalties do not provide a proper remedy because they are based upon failure to pay the amount of tax due. In most of these cases, there is no amount of tax due because the taxpayer is already due a refund. The offense is that the taxpayer is claiming a greater refund than the taxpayer is entitled to receive.

- The penalty for failing to pay the amount of tax due is equal to 5% of the amount of tax due.
- A taxpayer that willfully fails to pay the tax due is guilty of a Class 1 misdemeanor.
- A taxpayer who attempts to evade or defeat a tax is guilty of a Class H felony.

Streamline the Procedures for Reporting on Non-Tax-Paid Unauthorized Substances: (Sections 3 through 7) ADDED IN HOUSE FINANCE

Under current law, State and local law enforcement agencies must report to the SBI within 48 hours the arrest of any individual in possession of certain threshold amounts of drugs that do not bear unauthorized substances tax stamps. The SBI must then notify the Department of Revenue on a daily basis of the reports it receives. The SBI does not need this information. Sections 3 through 5 change the law so that State and law enforcement agencies will report these arrests directly to the Department of Revenue, as opposed to the SBI. They also move the reporting requirement from Chapter 114 to Article 2D of Chapter 105. Sections 6 and 7 makes conforming changes: Section 6 repeals the reporting requirement in Chapter 114 because it is moved to Chapter 105 and Section 7 repeals the requirement that the SBI notify the Department on the reports it receives.

Canaan Huie, an attorney in the Bill Drafting Division, contributed to this summary.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 1551 (House Finance Committee Substitute)

SHORT TITLE: Tax Enforcement

SPONSOR(S):

FISCAL IMPACT

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

	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05
REVENUES					
General Fund	See Assumptions and Methodology				
EXPENDITURES					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue, State Bureau of Investigations

EFFECTIVE DATE: Section 2 (frivolous returns) is effective October 1, 2000, and applies to returns filed on or after that date. Sections 3 through 7 (locals report to Revenue) become effective December 1, 2000, and apply to arrests or seizures occurring on or after that date. The remainder of the act is effective when it becomes law.

BILL SUMMARY:
This bill (1) allows the Secretary of Revenue to administer the oath of office to Department of Revenue Law Enforcement Agents, (2) allows Revenue Law Enforcement Agents to enforce misdemeanor tax laws, (3) creates a $500 civil penalty for filing frivolous income tax returns, and (4) permits local law enforcement agencies to report non tax paid unauthorized substance cases directly to the Department of Revenue.

ASSUMPTIONS AND METHODOLOGY:
Section one of the bill, granting Revenue Law Enforcement Agents arrest powers in selected misdemeanors, has no fiscal impact. These agents currently investigate all misdemeanor tax cases but depend on local law enforcement officials to make the arrests. There is no additional revenue from penalties.

Section two of the bill creates a $500 civil penalty for filing a frivolous tax return, thus adding North Carolina to a list of 18 states and the Internal Revenue Service that charge a fee for fraudulent taxpayer actions. This penalty applies to persons who knowingly use a tax preparer

that guarantees lucrative state and federal income tax refunds by using such schemes as exaggerating the number of dependents or inflating deductions such as medical or charitable contributions.

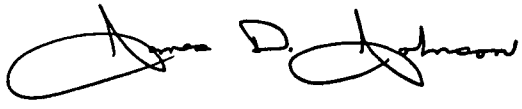
The Department of Revenue's Criminal Investigations nine person unit currently has six tax preparers under indictment and four tax preparers under investigations. The Director of the unit expects to investigate 6 to 10 cases a year over the next five years. In these cases, it is estimated that each tax preparer fraudulently prepares 100 to 200 income tax returns per year. In 951 civil audits conducted on fraudulent returns filed from 1996 to 1998, the average overpayment of refund was $1,463. While prosecution of these fraudulent returns recovered the overpayments, few penalties were assessed on the taxpayers. As few as 5% of the cases were charged with fraud because of the tremendous staff time needed to provide the evidence necessary for a conviction.

Based on the projected caseload of fraudulent tax preparers (6 to 10 per year) and the number of returns filed illegally by each preparer (100 to 200), the revenue from this $500 civil penalty could range between $300,000 to $1 million a year. (This revenue will be deposited into the General Fund.) This is a rough estimate because of the following factors. First, the revenue the Department now receives from fraud penalties should be netted against this new revenue. Unfortunately, the Department cannot provide the amount of penalty revenue currently received. Second, given the severity of the case, the Department of Revenue might not apply the penalty in every case, thus diminishing the revenue gain. Finally, the frequent application of this penalty to fraudulent taxpayers in the next few years and the publication of this new penalty and taxpayer prosecutions will serve as a deterrent for future tax fraud. Such deterrence of criminal action will reduce the amount of penalty revenue.

Sections 3 through 7 remove the State Bureau of Investigations (SBI) from the reporting of non tax paid unauthorized substances. This change will allow local law enforcement agencies to send reports directly to the Department of Revenue. SBI staff indicates that the agency does not review or use any of the information that is contained in the 4,000 to 6,000 cases that are forwarded each year to the Department of Revenue. The SBI estimates no fiscal impact from these sections.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic

APPROVED BY: James D. Johnson



DATE: May 30, 2000

VISITOR REGISTRATION SHEET

SENATE FINANCE — **Wednesday, June 14, 2000**

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sam Lee	OSBM
Ron Starling	Unauthorized Substances Tax Division NC Dept of Revenue
Tom Dixon	CRIMINAL INVESTIGATIONS DIV. NCDOR
Spencer Phillips	STATE AUDITOR
Jim Blackburn	County Commissioners Association
Mary Mumford	Poyner & Spruill
Jonathan Tart	NCDOR
Gregg Jones	OSBM
Allyson Duncan	Kilpatrick Stockton
Jonathan Waller	Midway Airlines.
John Baily	Dept. of Rev.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Wednesday, June 14, 2000

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

FAVORABLE

H.B. **1497** Richmond County Subdivisions.
Sequential Referral: None
Recommended Referral: None

H.B. **1541** Camden Ambulance Fees.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1)**1573** Health Care Facility and CCRC Tax Exempt.
Sequential Referral: None
Recommended Referral: None

S.B. **1293** Town of Badin/Tax Rate.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 4

Committee Clerk Comment: SB 1293 HB 1497 1541 1573

SENATE FINANCE COMMITTEE

TUESDAY, JUNE 20, 2000

1:00 PM – ROOM 544

The Senate Finance Committee met on Tuesday, June 20, 2000 at 1:00 PM in Room 544 with Senator David Hoyle presiding. There were 25 committee members present. Cassie Bryson, Mary Liz Billings and Ashley Johnson, all from Gastonia, North Carolina and all sponsored by Senator Hoyle were introduced as the pages for the meeting.

SB 1549 – UNC MILLENNIAL CAMPUSES

Senator Odom was recognized to come and explain the bill. After a time of discussion, Senator Hoyle stated that a technical amendment needed to be made to this bill and made a motion to amend the bill, motion passed. Senator Dannelly made a motion for a "Favorable Report" with an amendment with notation that bill be turned into a committee substitute, motion passed. Copy of bill and supporting documents included in the minutes.

HB 1551 – TAX ENFORCEMENT

Representative George Miller was recognized to explain the bill. Senator Hoyle announced that there was a committee substitute to this bill that had been adopted at a previous meeting. After a time of discussion, Senator Harris moved that bill be given a "Favorable Report" with notation that the amendment be added and the bill rolled into a committee substitute, motion passed. Copy of bill and supporting documents included in the minutes.

HB 1854 – 2000 FEE BILL

Representative George Miller was recognized to explain the bill. Senator Hoyle called on Richard Bostic, attorney with our Fiscal Staff, to speak on the fiscal note of the bill. Commissioner James Ervin with the North Carolina Utilities Commission spoke on the bill in particular on the need for an increase in fee. After a time of discussion, Senator Gulley moved to give the bill a "Favorable Report", motion passed. Copy of bill and supporting documents included in the minutes.

HB 1340 – RESPIRATORY CARE PRACTICE ACT

Representative Joe Tolson was recognized to explain the bill. After a time of discussion, Senator Purcell made a motion to give the bill a "Favorable Report", motion passed. Copy of bill and supporting documents included in the minutes.

SB 1193 – WILKES FIRE DISTRICT BOUNDARIES

Senator Moore was recognized to explain the bill on behalf of Senator Garwood. After a time of discussion, Senator Soles moved to give the bill a "Favorable Report", motion passed. Copy of bill and supporting documents included in the minutes.

SB 1472 –CONDUIT AGENCY FINANCING

Senator Rand was recognized to explain the bill. Senator Rand made a motion for the adoption for the purpose of discussion a proposed committee substitute to this bill. After a time of discussion, Senator Soles made a motion to give the committee substitute to this bill a "Favorable Report", motion passed. Copy of bill and supporting documents included in minutes.

Meeting adjourned.

David W. Hoyle, Co-Chairman

John H. Kerr, III, Co-Chairman

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

Visitors' Sign Up Sheet is Attachment #1
Committee Reports are Attachment #2 and #3

AGENDA

SENATE FINANCE COMMITTEE MEETING

TUESDAY, JUNE 20, 2000

1:00 PM – ROOM 544 LOB

MEETING CALLED TO ORDER – SENATOR HOYLE, PRESIDING

INTRODUCTION OF PAGES

BILL TO BE CONSIDERED:

SB 1193 – Wilkes Fire District Boundaries – Sen. Garwood
SB 1463 – Dare Utility Undergrounding Amend – Sen. Hoyle
SB 1474 – Lease Law Exemption – Sen. Metcalf
SB 1535 – Modify Disabled Dwelling Credit – Sen. Kerr
SB 1549 – UNC Millennial Campuses – Sen. Odom
SB 1554 – Pass-Through Entity/Housing Tax Credit –Sen. Hoyle
HB 1340 – Respiratory Care Practice Act – Rep. Tolson
HB 1551 – Tax Enforcement – Rep. Miller
HB 1854 – 2000 Fee Bill – Rep. Miller

MEETING ADJOURNED

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1549*

Short Title: UNC Millennial Campuses. (Public)

Sponsors: Senator Odom.

Referred to: Education/Higher Education.

May 30, 2000

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CREATION OF MILLENNIAL CAMPUSES AT THE CONSTITUENT INSTITUTIONS OF THE UNIVERSITY OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. The catch line of G.S. 116-36.5 reads as rewritten:

"**§ 116-36.5. Centennial Campus trust fund; Horace Williams Campus trust ~~fund.~~ fund; Millennial Campuses' trust funds.**"

Section 2. G.S. 116-36.5 is amended by adding a new subsection to read:

"(c) All moneys received through development of a Millennial Campus of a constituent institution of The University of North Carolina as defined by G.S. 116-198.33(4b), from whatever source, including the net proceeds from the lease or rental of real property on a Millennial Campus, shall be placed in a special, continuing, and nonreverting trust fund having the sole and exclusive use for further development of that Millennial Campus, including its operational development. This fund shall be treated in the manner of institutional trust funds as provided in G.S. 116-36.1. This fund shall be deemed an additional and alternative method of funding the Millennial Campus and not an exclusive one. To the extent that any general, special, or local law is inconsistent with this section, it is declared inapplicable to this section."

Section 3. The title of Article 21B of the General Statutes reads as rewritten:

"The Centennial ~~Campus and~~ Campus, the Horace Williams ~~Campus~~ Campus, and the Millennial Campuses Financing Act."

Section 4. G.S. 116-198.31 reads as rewritten:

"**§ 116-198.31. Purpose of Article.**

The purpose of this Article is to authorize the Board of Governors of The University of North Carolina to issue revenue bonds, payable from any leases, rentals, charges, fees, and other revenues but with no pledge of taxes or the faith and credit of the State or any agency or political subdivision thereof, to pay the cost, in whole or part, of buildings, structures, or other facilities for the Centennial Campus, located at North Carolina State University at ~~Raleigh and~~ Raleigh, for the Horace Williams Campus located at the University of North Carolina at Chapel ~~Hill.~~ Hill, and for any Millennial Campus as defined by G.S. 116-198.33(4b)."

Section 5. G.S. 116-198.33 reads as rewritten:

"**§ 116-198.33. Definitions.**

As used in this Article, the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

(1) The word 'Board' shall mean the Board of Governors of The University of North Carolina.

(2) The word 'cost' as applied to any project, shall include the cost of acquisition or construction; the cost of acquisition of all property, both real and personal, or interests therein; the cost of demolishing, removing, or relocating any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be removed or relocated; the cost of all labor, materials, equipment and furnishings, financing charges, interest prior to and during construction and, if deemed advisable by the Board, for a period not exceeding one year after completion of such construction; provisions for working capital, reserves for debt service and for extensions, enlargements, additions, and improvements; cost of engineering, financial, and legal services, plans, specifications, studies, surveys, and estimates of cost and of revenues; administrative expenses; expenses necessary or incident to determining the feasibility or practicability of constructing the project; and such other expenses as may be necessary or incident to acquisition or construction with respect to the project or to the placing of the project in operation. Any obligation or expense incurred by the Board prior to the issuance of bonds under the provisions of this Article in connection with any of the foregoing items of cost may be regarded as a part of such cost.

(3) The word 'Institution' shall mean North Carolina State University at Raleigh and the University of North Carolina at Chapel ~~Hill.~~ Hill, or a constituent institution of The University of North Carolina with a Millennial Campus as defined by G.S. 116-198.33(4b).

(4) The term 'Centennial Campus' means all of the following properties:

a. The real property and appurtenant facilities bounded by Blue Ridge Road, Hillsborough Street, Wade Avenue, and Interstate 440 that are the sites of the College of Veterinary Medicine, the University Club, and the Agricultural Turf Grass Management Program.

b. The real property and appurtenant facilities that are the former Dix Hospital properties and other contiguous parcels of property that are adjacent to Centennial Boulevard.

c. All other real property and appurtenant facilities designated by the Board of Governors as part of the Centennial Campus. The properties designated by the Board of Governors do not have to be contiguous with the Centennial Campus to be designated as part of that Campus.

(4a) The term 'Horace Williams Campus' means all of the following properties:

a. The real property and appurtenant facilities left to the University of North Carolina at Chapel Hill by the Will of Henry Horace Williams.

b. All other real property and appurtenant facilities designated by the Board of Governors as part of the Horace Williams Campus. The properties designated by the Board of Governors do not have to be contiguous with the Horace Williams Campus to be designated as part of that Campus.

(4b) The term 'Millennial Campus' means all real property and appurtenant facilities designated by the Board of Governors as part of a Millennial Campus of a constituent institution of The University of North Carolina other than North Carolina State University or the University of North Carolina at Chapel Hill. The properties designated by the Board of Governors do not have to be contiguous with the constituent institution to be designated as part of the institution's Millennial Campus.

(5) The term 'existing facilities' shall mean buildings and facilities, then existing, any part of the revenues of which are pledged under the provisions of any resolution authorizing the issuance of revenue bonds hereunder to the payment of such bonds.

(6) The word 'project' shall mean and shall include any one or more buildings, structures, administration buildings, libraries, research or instructional facilities, housing maintenance, storage, or utility facilities, and any facilities related thereto or required or useful for conducting of research or the operation of the Centennial ~~Campus or~~ Campus, the Horace Williams Campus, or of a Millennial Campus as defined by G.S. 116-198.33(4b), including roads, water, sewer, power, gas, greenways, parking, or any other support facilities essential or convenient for the orderly conduct of the

Centennial ~~Campus or~~ Campus, the Horace Williams ~~Campus~~ Campus, or a Millennial Campus, respectively.

(7) The word 'revenues' shall mean all or any part of the rents, leases, charges, fees, and other income revenues derived from or in connection with any project or projects and existing facilities."

Section 6. G.S. 116-198.34 reads as rewritten:

"**§ 116-198.34. General powers of Board of Governors.**

The Board may exercise any one or more of the following powers:

(1) To determine the location and character of any project or projects, and to acquire, construct, and provide the same, and to maintain, repair, and operate, and to enter into contracts for the management, lease, use, or operation of all or any portion of any project or projects and any existing facilities.

(2) To issue revenue bonds as hereinafter provided to pay all or any part of the cost of any project or projects, and to fund or refund the same.

(3) To fix and revise from time to time and charge and collect rates, fees, rents, and charges for the use of, and for the services furnished by, all or any portion of any project or projects.

(4) To establish and enforce, and to agree through any resolution or trust agreement authorizing or securing bonds under this Article to make and enforce, rules and regulations for the use of and services rendered by any project or projects and any existing facilities, to provide for the maximum use of any project or projects and any existing facilities.

(5) To acquire, hold, lease, and dispose of real and personal property in the exercise of its powers and the performance of its duties hereunder and to lease all or any part of any project or projects and any existing facilities upon such terms and conditions as the Board determines, subject to the provisions of G.S. 143-341 and Chapter 146 of the General Statutes.

Notwithstanding G.S. 143-341 and Chapter 146 of the General Statutes, a disposition by easement, lease, or rental agreement of space in any building on the Centennial ~~Campus or~~ Campus, on the Horace Williams ~~Campus~~ Campus, or on a Millennial Campus made for a period of 10 years or less shall not require the approval of the Governor and the Council of State. All other acquisitions and dispositions made under this subdivision are subject to the provisions of G.S. 143-341 and Chapter 146 of the General Statutes.

(6) To employ consulting engineers, architects, attorneys, accountants, construction and financial experts, superintendents, managers, and such other employees and agents as may be necessary in its

judgment in connection with any project or projects and existing facilities, and to fix their compensation.

(7) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this Article.

(8) To receive and accept from any federal, State, or other public agency and any private agency, person or other entity donations, loans, grants, aid, or contributions of any money, property, labor, or other things of value for any project or projects, and to agree to apply and use the same in accordance with the terms and conditions under which the same are provided.

(8a) To designate the real property and appurtenant facilities to be included as part of the Centennial ~~Campus or~~ Campus, the Horace Williams ~~Campus.~~ Campus, or a Millennial Campus.

(8b) Acting on recommendation made by the President of The University of North Carolina after consultation by the President with the Chancellor and the Board of Trustees of a constituent institution, to designate real property held by, or to be acquired by, a constituent institution as a 'Millennial Campus' of the institution. That designation shall be based on an express finding by the Board of Governors that the institution desiring to create a 'Millennial Campus' has the administrative and fiscal capability to create and maintain such a campus and provided further, that the Board of Governors has found that the creation of the constituent institution's 'Millennial Campus' will enhance the institution's research, teaching, and service missions as well as enhance the economic development of the region served by the institution. Additionally, the Board of Governors may authorize two or more constituent institutions which meet the requirements of this section to create a joint Millennial Campus.

(9) To do all acts and things necessary or convenient to carry out the powers granted by this Article."

Section 7. G.S. 116-198.35 reads as rewritten:

"**§ 116-198.35. Issuance of bonds and bond anticipation notes.**

The Board is hereby authorized to issue, subject to the approval of the Director of the Budget, at one time or from time to time, revenue bonds of the Board for the purpose of paying all or any part of the cost of acquiring, constructing, or providing any project or projects on the Centennial ~~Campus or~~ Campus, on the Horace Williams ~~Campus.~~ Campus, or on a Millennial Campus. The bonds of each issue shall be dated, shall mature at such time or times not exceeding 40 years from their date or dates, shall bear interest at such rate or rates as may be determined by the Board, and may be redeemable before maturity, at the option of the Board, at such price or prices and under such terms and conditions as may be fixed by the Board prior to the issuance of the bonds. The Board shall determine the form and manner of execution

of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Notwithstanding any of the other provisions of this Article or any recitals in any bonds issued under the provisions of this Article, all such bonds shall be deemed to be negotiable instruments under the laws of this State, subject only to the provisions for registration in any resolution authorizing the issuance of such bonds or any trust agreement securing the same. The bonds may be issued in coupon or registered form or both or as book-entry bonds, as the Board may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The Board may sell such bonds in such manner, at public or private sale, and for such price, as it may determine to be for the best interests of the Board.

The proceeds of the bonds of each issue shall be used solely for the purpose for which such bonds shall have been authorized and shall be disbursed in such manner and under such restrictions, if any, as the Board may provide in the resolution authorizing the issuance of such bonds or in the trust agreement hereinafter mentioned securing the same. Unless otherwise provided in the authorizing resolution or in the trust agreement securing such bonds, if the proceeds of such bonds, by error of estimates or otherwise, shall be less than such cost, additional bonds may in like manner be issued to provide the amount of such deficit and shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose.

The resolution providing for the issuance of revenue bonds, and any trust agreement securing such bonds, may also contain such limitations upon the issuance of additional revenue bonds as the Board may deem proper, and such additional bonds shall be issued under such restrictions and limitations as may be prescribed by such resolution or trust agreement.

Prior to the preparation of definitive bonds, the Board may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The Board may also provide for the replacement of any bonds which shall become mutilated or be destroyed or lost.

Except as herein otherwise provided, bonds may be issued under this Article and other powers vested in the Board under this Article may be exercised by the Board without obtaining the consent of any department, division, commission, board, bureau, or agency of the State and without any other proceedings or the happening of any other conditions or things than those proceedings, conditions, or things which are specifically required by this Article.

The Board may enter into or negotiate a note with an acceptable bank or trust company in lieu of issuing bonds for the financing of projects covered under this section. The terms and conditions of any note of this nature shall be in accordance with the terms and conditions surrounding issuance of bonds.

The Board is hereby authorized to issue, subject to the approval of the Director of the Budget, at one time or from time to time, revenue bond anticipation notes of the Board in anticipation of the issuance of bonds authorized pursuant to the provisions of this Article. The principal of and the interest on such notes shall be payable solely from the proceeds of bonds or renewal notes, or, in the event bond or renewal note proceeds are not available, any available revenues of the project or projects for which such bonds shall have been authorized. The notes of each issue shall be dated, shall mature at such time or times not exceeding two years from their date or dates, shall bear interest at such rate or rates as may be determined by the Board, and may be redeemable before maturity, at the option of the Board, at such price or prices and under such terms and conditions as may be fixed by the Board prior to the issuance of the notes. The Board shall determine the form and the manner of execution of the notes, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the notes and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any notes or coupons shall cease to be such officer before the delivery of such notes, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Notwithstanding any of the other provisions of this Article or any recitals in any notes issued under the provisions of this Article, all such notes shall be deemed to be negotiable instruments under the laws of this State, subject only to the provisions for registration in any resolution authorizing the issuance of such notes or any trust agreement securing the bonds in anticipation of which such notes are being issued. The notes may be issued in coupon or registered form or both or as book entry notes, as the Board may determine, and provision may be made for the registration of any coupon notes as to principal alone and also as to both principal and interest, and for the reconversion into coupon notes of any notes registered as to both principal and interest. The Board may sell such notes in such manner, at public or private sale, and for such price, as it may determine to be for the best interests of the Board.

The proceeds of the notes of each issue shall be used solely for the purpose for which the bonds in anticipation of which such notes are being issued shall have been authorized, and such note proceeds shall be disbursed in such manner and under such restrictions, if any, as the Board may provide in the resolution authorizing the issuance of such notes or bonds or in the trust agreement securing such bonds.

The resolution providing for the issuance of notes, and any trust agreement securing the bonds in anticipation of which such notes are being authorized, may also contain such limitations upon the issuance of additional notes as the Board may deem proper, and such additional notes shall be issued under such restrictions and limitations as may be prescribed by such resolution or trust agreement. The Board

may also provide for the replacement of any notes which shall become mutilated or be destroyed or lost.

Except as herein otherwise provided, notes may be issued under this Article and other powers vested in the Board under this Article may be exercised by the Board without obtaining the consent of any department, division, commission, board, bureau, or agency of the State and without any other proceedings or the happening of any other conditions or things than those proceedings, conditions, or things which are specifically required by this Article.

Unless the context shall otherwise indicate, the word 'bonds' wherever used in this Article, shall be deemed and construed to include the words 'bond anticipation notes.'"

Section 8. G.S. 116-198.37 reads as rewritten:

"**§ 116-198.37. Fixing fees, rents, and charges; sinking fund.**

For the purpose of aiding in the acquisition, construction, or provision of any project and the maintenance, repair, and operation of any project or any existing facilities, the Board is authorized to fix, revise from time to time, charge, and collect such fee or fees for such privileges and services and in such amount or amounts as the Board shall determine, and to fix, revise from time to time, charge, and collect other fees, rents, and charges for the use of and for the services furnished or to be furnished by any project or projects and any existing facilities, or any portion thereof, and to contract with any person, partnership, association, or corporation for the lease, use, occupancy, or operation of any project or projects and any existing facilities, or any part thereof, and to fix the terms, conditions, fees, rents, and charges for any such lease, use, occupancy, or operation. So long as bonds issued hereunder and payable therefrom are outstanding, such fees, rents, and charges shall be so fixed and adjusted, with relation to other revenues available therefor, as to provide funds pursuant to the requirements of the resolution or trust agreement authorizing or securing such bonds at least sufficient with such other revenues, if any, (i) to pay the cost of maintaining, repairing, and operating any project or projects and any existing facilities any part of the revenues of which are pledged to the payment of the bonds issued for such project or projects, (ii) to pay the principal of and the interest on such bonds as the same shall become due and payable, and (iii) to create and maintain reserves for such purposes. Any surplus funds remaining after application to the purposes mentioned in (i), (ii), and (iii), above, shall be held in trust and applied by the Board to the development of the Centennial ~~Campus or~~ Campus, the Horace Williams ~~Campus~~ Campus, or a Millennial Campus, as applicable. Such fees, rents, and charges shall not be subject to supervision or regulation by any other commission, board, bureau, or agency of the State. A sufficient amount of the revenues, except such part thereof as may be necessary to pay such cost of maintenance, repair, and operation and to provide such reserves therefor and for renewals, replacements, extensions, enlargements, and improvements as may be provided for in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same, shall be set aside at such regular intervals as may be provided in such resolution or such trust agreement in a sinking fund which is hereby

pledged to and charged with the payment of the principal of and the interest on such bonds as the same shall become due and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made; the fees, rents, and charges and other revenues or other moneys so pledged and thereafter received by the Board shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act; and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the Board, irrespective of whether such parties have notice thereof. Neither the resolution nor any trust agreement by which a pledge is created need be filed or recorded except in the records of the Board. The use and disposition of moneys to the credit of such sinking fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds or of the trust agreement securing the same."

Section 9. G.S. 146-30(b1) reads as rewritten:

"(b1) Notwithstanding the other provisions of this section, no service charge into the State Land Fund shall be deducted from or levied against the proceeds of any disposition by lease, rental, or easement of State lands that are designated as part of the Centennial Campus as defined by ~~G.S. 116-198.33(4) or~~ G.S. 116-198.33(4), that are designated as part of the Horace Williams Campus as defined by ~~G.S. 116-198.33(4a).~~ G.S. 116-198.33(4a), or that are designated as part of a Millennial Campus as defined by G.S. 116-198.33(4b). All net proceeds of those dispositions are governed by G.S. 116-36.5."

Section 10. G.S. 66-58(b) reads as rewritten:

"(b) The provisions of subsection (a) of this section shall not apply to:

(1) Counties and municipalities.

(2) The Department of Health and Human Services or the Department of Agriculture and Consumer Services for the sale of serums, vaccines, and other like products.

(3) The Department of Administration, except that the agency shall not exceed the authority granted in the act creating the agency.

(4) The State hospitals for the mentally ill.

(5) The Department of Health and Human Services.

(6) The North Carolina School for the Blind at Raleigh.

(6a) The Office of Juvenile Justice.

(7) The North Carolina Schools for the Deaf.

(8) The Greater University of North Carolina with regard to its utilities and other services now operated by it nor to the sale of articles produced incident to the operation of instructional departments, articles incident to educational research, articles of merchandise incident to classroom work, meals, books, or to articles of merchandise not exceeding twenty-five cents (25¢) in value when sold to members of the educational staff or staff auxiliary to education or to duly enrolled students or occasionally to immediate members of the families of members of the

educational staff or of duly enrolled students nor to the sale of meals or merchandise to persons attending meetings or conventions as invited guests nor to the operation by the University of North Carolina of an inn or hotel and dining and other facilities usually connected with a hotel or inn, nor to the hospital and Medical School of the University of North Carolina, nor to the Coliseum of North Carolina State University at Raleigh, and the other schools and colleges for higher education maintained or supported by the State, nor to the Centennial Campus of North Carolina State University at Raleigh, nor to the Horace Williams Campus of the University of North Carolina at Chapel Hill, nor to a Millennial Campus of a constituent institution of The University of North Carolina, nor to the comprehensive student health services or the comprehensive student infirmaries maintained by the constituent institutions of the University of North Carolina.

(9) The Department of Environment and Natural Resources, except that the Department shall not construct, maintain, operate or lease a hotel or tourist inn in any park over which it has jurisdiction. The North Carolina Wildlife Resources Commission may sell wildlife memorabilia as a service to members of the public interested in wildlife conservation.

(10) Child-caring institutions or orphanages receiving State aid.

(11) Highlands School in Macon County.

(12) The North Carolina State Fair.

(13) Rural electric memberships corporations.

(13a) State Farm Operations Commission.

(13b) The Department of Agriculture and Consumer Services with regard to its lessees at farmers' markets operated by the Department.

(13c) The Western North Carolina Agricultural Center.

(13d) Agricultural centers or livestock facilities operated by the Department of Agriculture and Consumer Services.

(14) Nothing herein contained shall be construed to prohibit the engagement in any of the activities described in subsection (a) hereof by a firm, corporation or person who or which is a lessee of space only of the State of North Carolina or any of its departments or agencies; provided the leases shall be awarded by the Department of Administration to the highest bidder, as provided by law in the case of State contracts and which lease shall be for a term of not less than one year and not more than five years.

(15) The State Department of Correction is authorized to purchase and install automobile license tag plant equipment for the purpose of manufacturing license tags for the State and local governments and for such other purposes as the Department may direct.

The Commissioner of Motor Vehicles, or such other authority as may exercise the authority to purchase automobile license tags is hereby directed to purchase from, and to contract with, the State Department of Correction for the State automobile license tag requirements from year to year.

The price to be paid to the State Department of Correction for the tags shall be fixed and agreed upon by the Governor, the State Department of Correction, and the Motor Vehicle Commissioner, or such authority as may be authorized to purchase the supplies.

(16) Laundry services performed by the Department of Correction may be provided only for agencies and instrumentalities of the State which are supported by State funds and for county or municipally controlled and supported hospitals presently being served by the Department of Correction, or for which services have been contracted or applied for in writing, as of May 22, 1973. In addition to the prior sentence, laundry services performed by the Department of Correction may be provided for the Governor Morehead School and the North Carolina School for the Deaf.

The services shall be limited to wet-washing, drying and ironing of flatwear or flat goods such as towels, sheets and bedding, linens and those uniforms prescribed for wear by the institutions and further limited to only flat goods or apparel owned, distributed or controlled entirely by the institutions and shall not include processing by any dry-cleaning methods; provided, however, those garments and items presently being serviced by wet-washing, drying and ironing may in the future, at the election of the Department of Correction, be processed by a dry-cleaning method.

(17) The North Carolina Global TransPark Authority or a lessee of the Authority.

(18) The activities and products of private enterprise carried on or manufactured within a State prison facility pursuant to G.S. 148-70.

(19) The North Carolina Justice Academy.

(20) The Department of Transportation, or any nonprofit lessee of the Department, for the sale of books, crafts, gifts, and other tourism-related items at visitor centers owned by the Department."

Section 11. This act is effective when it becomes law.

SENATE BILL 1549:
UNC Millennial Campuses.

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Sen. Odom
Date:	June 20, 2000	**Summary by:**	Robin Johnson, Staff Attorney, Karen Cochrane Brown Committee Co-Counsel
Version:	1st Edition		

SUMMARY: ***Senate Bill 1549 would authorize the Board of Governors (Board) to designate real property and appurtenant facilities to be part of a Millennial Campus and to issue revenue bonds to pay the cost of buildings, structures or other facilities on a Millennial Campus. A Millennial Campus would be associated with one or more constituent institutions of The University of North Carolina other than North Carolina State University (NCSU) or the University of North Carolina at Chapel Hill (UNC-CH). A Millennial Campus would have the same purpose as the Centennial Campus located at NCSU and the Horace Williams Campus located at UNC-CH. These campuses, authorized in 1987 and 1999 respectively, are intended to bring together business, industry, and academia. The act would take effect when it becomes law.***

BILL ANALYSIS:

Designation of a Millennial Campus. The Board would be authorized to designate real property and appurtenant facilities to be held by or acquired by a constituent institution as a Millennial Campus. This designation would be based on a recommendation of the President after she has consulted with the institution's Chancellor and Board of Trustees. The Board would be required to make an express finding that the institution has the administrative and fiscal capability to create and maintain a Millennial Campus. It also must find that the creation of a Millennial Campus would enhance the institution's research, teaching, and service missions and the region's economic development. The Board would be able to authorize two or more institutions that meet these other requirements to create a joint Millennial Campus.

Leases. The Board would be authorized to approve and enter into leases of land and buildings on or for a Millennial Campus. Rental agreements made for 10 years or less would not require the approval of the Governor and Council of State. No service charge would be deducted for the State Land Fund from the proceeds of any lease of State lands designated as part of a Millennial Campus. These provisions are identical to those applicable to the Centennial and Horace Williams Campuses.

Revenue Bonds. The Board would be allowed to issue revenue bonds to pay all or part of the cost of any project on a Millennial Campus. These projects may include administration buildings, libraries, research or instructional facilities, roads, water, sewer, parking, and other facilities related to the operation of the Campus. The bonds are payable from revenues derived from leases, rentals, charges, and fees set by the Board of Governors. Currently, the Board may issue revenue bonds to pay the cost of these projects on the Centennial Campus and the Horace Williams Campus.

Umstead Act Exemption. Much of the revenue generated from a Millennial Campus will come from the lease of office space to private industry. As a general rule, it is unlawful under the Umstead Act for the State to lease space in a State-owned building for the purpose of operating a business. A Millennial Campus would be treated the same as the Centennial and Horace Williams Campuses, which are exempted from these provisions of the Umstead Act.

Trust Fund. The proceeds from all monies received through the development of a Millennial Campus would be credited to a special, nonreverting trust fund. The money in each fund may be used only for the development of that Campus. These trust funds would be identical to those created for the Centennial and Horace Williams Campuses. The Board would manage and administer each trust fund; however, the Board may delegate these responsibilities to the chancellors.

Effective Date. The bill would take effect when it becomes law.

This summary was prepared by Robin Johnson, Committee Counsel to the Senate Education/Higher Education Committee.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 1549

SHORT TITLE: UNC Millennial Campuses

SPONSOR(S): **Sen. Odom**

FISCAL IMPACT

Yes ( ) **No (x)** **No Estimate Available ( )**

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
EXPENDITURES					
POSITIONS:					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: UNC System

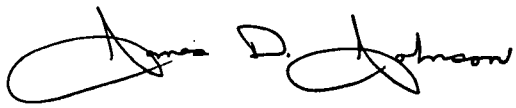
EFFECTIVE DATE: Upon becoming law

BILL SUMMARY: Amends Art. 21B of GS Ch. 116 (Centennial and Horace Williams Campus Financing Act) to authorize UNC Board of Governors to issue revenue bonds for cost of buildings and other facilities at millennial campuses. Amends GS 116-198.33(4b) and 116-198.34(8b) to authorize Board to designate as millennial campus real property of constituent institutions of UNC other than NC State or UNC-CH. Adds GS 116-36.5(c) establishing special trust fund for monies received for development of millennial campus. Makes conforming changes to GS 116-198.35 (issuance of bonds), 116-198.37 (fees, rents, and charges), 146-30(b1) (net proceeds of dispositions), and 66-58(b) (sale of merchandise or services)

ASSUMPTIONS AND METHODOLOGY: Projects would come back to the General Assembly for approval through the self-liquidating bill process. The only minor potential fiscal impact is section 9, exempting the proceeds of any disposition of land from a service charge into the State Land Fund. Since the intent of the Millennial Campus is to acquire land rather than dispose of it, losses, if any, would be very minimal.

TECHNICAL CONSIDERATIONS:

FISCAL RESEARCH DIVISION
733-4910
PREPARED BY: Charlotte Todd
APPROVED BY: James D. Johnson



DATE: June 6, 2000

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 1549*
Proposed Committee Substitute S1549-PCS8670-RO

Short Title: UNC Millennial Campuses. (Public)

Sponsors:

Referred to:

May 30, 2000

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CREATION OF MILLENNIAL CAMPUSES AT THE CONSTITUENT INSTITUTIONS OF THE UNIVERSITY OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. The catch line of G.S. 116-36.5 reads as rewritten:

"**§ 116-36.5. Centennial Campus trust fund; Horace Williams Campus trust ~~fund.~~ fund; Millennial Campuses' trust funds.**"

Section 2. G.S. 116-36.5 is amended by adding a new subsection to read:

"(c) All moneys received through development of a Millennial Campus of a constituent institution of The University of North Carolina as defined by G.S. 116-198.33(4b), from whatever source, including the net proceeds from the lease or rental of real property on a Millennial Campus, shall be placed in a special, continuing, and nonreverting trust fund having the sole and exclusive use for further development of that Millennial Campus, including its operational development. This fund shall be treated in the manner of institutional trust funds as provided in G.S. 116-36.1. This fund shall be deemed an additional and alternative method of funding the Millennial Campus and not an exclusive one. To the extent that any general, special, or local law is inconsistent with this section, it is declared inapplicable to this section."

Section 3. The title of Article 21B of Chapter 116 of the General Statutes reads as rewritten:

"The Centennial ~~Campus and~~ Campus, the Horace Williams ~~Campus~~ Campus, and the Millennial Campuses Financing Act."

Section 4. G.S. 116-198.31 reads as rewritten:

"**§ 116-198.31. Purpose of Article.**

The purpose of this Article is to authorize the Board of Governors of The University of North Carolina to issue revenue bonds, payable from any leases, rentals, charges, fees, and other revenues but with no pledge of taxes or the faith and credit of the State or any agency or political subdivision thereof, to pay the cost, in whole or part, of buildings, structures, or other facilities for the Centennial Campus, located at North Carolina State University at ~~Raleigh and~~ Raleigh, for the Horace Williams Campus located at the University of North Carolina at Chapel ~~Hill.~~ Hill, and for any Millennial Campus as defined by G.S. 116-198.33(4b)."

Section 5. G.S. 116-198.33 reads as rewritten:

"**§ 116-198.33. Definitions.**

As used in this Article, the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

(1) The word 'Board' shall mean the Board of Governors of The University of North Carolina.

(2) The word 'cost' as applied to any project, shall include the cost of acquisition or construction; the cost of acquisition of all property, both real and personal, or interests therein; the cost of demolishing, removing, or relocating any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be removed or relocated; the cost of all labor, materials, equipment and furnishings, financing charges, interest prior to and during construction and, if deemed advisable by the Board, for a period not exceeding one year after completion of such construction; provisions for working capital, reserves for debt service and for extensions, enlargements, additions, and improvements; cost of engineering, financial, and legal services, plans, specifications, studies, surveys, and estimates of cost and of revenues; administrative expenses; expenses necessary or incident to determining the feasibility or practicability of constructing the project; and such other expenses as may be necessary or incident to acquisition or construction with respect to the project or to the placing of the project in operation. Any obligation or expense incurred by the Board prior to the issuance of bonds under the provisions of this Article in connection with any of the foregoing items of cost may be regarded as a part of such cost.

(3) The word 'Institution' shall mean North Carolina State University at Raleigh and the University of North Carolina at Chapel ~~Hill.~~ Hill, or a constituent institution of The University of North Carolina with a Millennial Campus as defined by G.S. 116-198.33(4b).

(4) The term 'Centennial Campus' means all of the following properties:

a. The real property and appurtenant facilities bounded by Blue Ridge Road, Hillsborough Street, Wade Avenue, and Interstate 440 that are the sites of the College of Veterinary Medicine, the University Club, and the Agricultural Turf Grass Management Program.

b. The real property and appurtenant facilities that are the former Dix Hospital properties and other contiguous parcels of property that are adjacent to Centennial Boulevard.

c. All other real property and appurtenant facilities designated by the Board of Governors as part of the Centennial Campus. The properties designated by the Board of Governors do not have to be contiguous with the Centennial Campus to be designated as part of that Campus.

(4a) The term 'Horace Williams Campus' means all of the following properties:

a. The real property and appurtenant facilities left to the University of North Carolina at Chapel Hill by the Will of Henry Horace Williams.

b. All other real property and appurtenant facilities designated by the Board of Governors as part of the Horace Williams Campus. The properties designated by the Board of Governors do not have to be contiguous with the Horace Williams Campus to be designated as part of that Campus.

(4b) The term 'Millennial Campus' means all real property and appurtenant facilities designated by the Board of Governors as part of a Millennial Campus of a constituent institution of The University of North Carolina other than North Carolina State University or the University of North Carolina at Chapel Hill. The properties designated by the Board of Governors do not have to be contiguous with the constituent institution to be designated as part of the institution's Millennial Campus.

(5) The term 'existing facilities' shall mean buildings and facilities, then existing, any part of the revenues of which are pledged under the provisions of any resolution authorizing the issuance of revenue bonds hereunder to the payment of such bonds.

(6) The word 'project' shall mean and shall include any one or more buildings, structures, administration buildings, libraries, research or instructional facilities, housing maintenance, storage, or utility facilities, and any facilities related thereto or required or useful for conducting of research or the operation of the Centennial ~~Campus or~~ Campus, the Horace Williams Campus, or of a Millennial Campus as defined by G.S. 116-198.33(4b), including roads, water,

sewer, power, gas, greenways, parking, or any other support facilities essential or convenient for the orderly conduct of the Centennial ~~Campus or~~ Campus, the Horace Williams ~~Campus~~ Campus, or a Millennial Campus, respectively.

(7) The word 'revenues' shall mean all or any part of the rents, leases, charges, fees, and other income revenues derived from or in connection with any project or projects and existing facilities."

Section 6. G.S. 116-198.34 reads as rewritten:

"**§ 116-198.34. General powers of Board of Governors.**

The Board may exercise any one or more of the following powers:

(1) To determine the location and character of any project or projects, and to acquire, construct, and provide the same, and to maintain, repair, and operate, and to enter into contracts for the management, lease, use, or operation of all or any portion of any project or projects and any existing facilities.

(2) To issue revenue bonds as hereinafter provided to pay all or any part of the cost of any project or projects, and to fund or refund the same.

(3) To fix and revise from time to time and charge and collect rates, fees, rents, and charges for the use of, and for the services furnished by, all or any portion of any project or projects.

(4) To establish and enforce, and to agree through any resolution or trust agreement authorizing or securing bonds under this Article to make and enforce, rules and regulations for the use of and services rendered by any project or projects and any existing facilities, to provide for the maximum use of any project or projects and any existing facilities.

(5) To acquire, hold, lease, and dispose of real and personal property in the exercise of its powers and the performance of its duties hereunder and to lease all or any part of any project or projects and any existing facilities upon such terms and conditions as the Board determines, subject to the provisions of G.S. 143-341 and Chapter 146 of the General Statutes.

Notwithstanding G.S. 143-341 and Chapter 146 of the General Statutes, a disposition by easement, lease, or rental agreement of space in any building on the Centennial ~~Campus or~~ Campus, on the Horace Williams ~~Campus~~ Campus, or on a Millennial Campus made for a period of 10 years or less shall not require the approval of the Governor and the Council of State. All other acquisitions and dispositions made under this subdivision are subject to the provisions of G.S. 143-341 and Chapter 146 of the General Statutes.

(6) To employ consulting engineers, architects, attorneys, accountants, construction and financial experts, superintendents, managers, and

such other employees and agents as may be necessary in its judgment in connection with any project or projects and existing facilities, and to fix their compensation.

(7) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this Article.

(8) To receive and accept from any federal, State, or other public agency and any private agency, person or other entity donations, loans, grants, aid, or contributions of any money, property, labor, or other things of value for any project or projects, and to agree to apply and use the same in accordance with the terms and conditions under which the same are provided.

(8a) To designate the real property and appurtenant facilities to be included as part of the Centennial ~~Campus or~~ Campus, the Horace Williams ~~Campus.~~ Campus, or a Millennial Campus.

(8b) Acting on recommendation made by the President of The University of North Carolina after consultation by the President with the Chancellor and the Board of Trustees of a constituent institution, to designate real property held by, or to be acquired by, a constituent institution as a 'Millennial Campus' of the institution. That designation shall be based on an express finding by the Board of Governors that the institution desiring to create a 'Millennial Campus' has the administrative and fiscal capability to create and maintain such a campus and provided further, that the Board of Governors has found that the creation of the constituent institution's 'Millennial Campus' will enhance the institution's research, teaching, and service missions as well as enhance the economic development of the region served by the institution. Additionally, the Board of Governors may authorize two or more constituent institutions which meet the requirements of this section to create a joint Millennial Campus.

(9) To do all acts and things necessary or convenient to carry out the powers granted by this Article."

Section 7. G.S. 116-198.35 reads as rewritten:

"§ 116-198.35. Issuance of bonds and bond anticipation notes.

The Board is hereby authorized to issue, subject to the approval of the Director of the Budget, at one time or from time to time, revenue bonds of the Board for the purpose of paying all or any part of the cost of acquiring, constructing, or providing any project or projects on the Centennial ~~Campus or~~ Campus, on the Horace Williams ~~Campus.~~ Campus, or on a Millennial Campus. The bonds of each issue shall be dated, shall mature at such time or times not exceeding 40 years from their date or dates, shall bear interest at such rate or rates as may be determined by the Board, and may be redeemable before maturity, at the option of the Board, at such price or prices and under such terms and conditions as may be fixed by the Board prior to the

issuance of the bonds. The Board shall determine the form and manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Notwithstanding any of the other provisions of this Article or any recitals in any bonds issued under the provisions of this Article, all such bonds shall be deemed to be negotiable instruments under the laws of this State, subject only to the provisions for registration in any resolution authorizing the issuance of such bonds or any trust agreement securing the same. The bonds may be issued in coupon or registered form or both or as book-entry bonds, as the Board may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The Board may sell such bonds in such manner, at public or private sale, and for such price, as it may determine to be for the best interests of the Board.

The proceeds of the bonds of each issue shall be used solely for the purpose for which such bonds shall have been authorized and shall be disbursed in such manner and under such restrictions, if any, as the Board may provide in the resolution authorizing the issuance of such bonds or in the trust agreement hereinafter mentioned securing the same. Unless otherwise provided in the authorizing resolution or in the trust agreement securing such bonds, if the proceeds of such bonds, by error of estimates or otherwise, shall be less than such cost, additional bonds may in like manner be issued to provide the amount of such deficit and shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose.

The resolution providing for the issuance of revenue bonds, and any trust agreement securing such bonds, may also contain such limitations upon the issuance of additional revenue bonds as the Board may deem proper, and such additional bonds shall be issued under such restrictions and limitations as may be prescribed by such resolution or trust agreement.

Prior to the preparation of definitive bonds, the Board may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The Board may also provide for the replacement of any bonds which shall become mutilated or be destroyed or lost.

Except as herein otherwise provided, bonds may be issued under this Article and other powers vested in the Board under this Article may be exercised by the Board without obtaining the consent of any department, division, commission, board, bureau, or agency of the State and without any other proceedings or the happening of

any other conditions or things than those proceedings, conditions, or things which are specifically required by this Article.

The Board may enter into or negotiate a note with an acceptable bank or trust company in lieu of issuing bonds for the financing of projects covered under this section. The terms and conditions of any note of this nature shall be in accordance with the terms and conditions surrounding issuance of bonds.

The Board is hereby authorized to issue, subject to the approval of the Director of the Budget, at one time or from time to time, revenue bond anticipation notes of the Board in anticipation of the issuance of bonds authorized pursuant to the provisions of this Article. The principal of and the interest on such notes shall be payable solely from the proceeds of bonds or renewal notes, or, in the event bond or renewal note proceeds are not available, any available revenues of the project or projects for which such bonds shall have been authorized. The notes of each issue shall be dated, shall mature at such time or times not exceeding two years from their date or dates, shall bear interest at such rate or rates as may be determined by the Board, and may be redeemable before maturity, at the option of the Board, at such price or prices and under such terms and conditions as may be fixed by the Board prior to the issuance of the notes. The Board shall determine the form and the manner of execution of the notes, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the notes and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any notes or coupons shall cease to be such officer before the delivery of such notes, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Notwithstanding any of the other provisions of this Article or any recitals in any notes issued under the provisions of this Article, all such notes shall be deemed to be negotiable instruments under the laws of this State, subject only to the provisions for registration in any resolution authorizing the issuance of such notes or any trust agreement securing the bonds in anticipation of which such notes are being issued. The notes may be issued in coupon or registered form or both or as book entry notes, as the Board may determine, and provision may be made for the registration of any coupon notes as to principal alone and also as to both principal and interest, and for the reconversion into coupon notes of any notes registered as to both principal and interest. The Board may sell such notes in such manner, at public or private sale, and for such price, as it may determine to be for the best interests of the Board.

The proceeds of the notes of each issue shall be used solely for the purpose for which the bonds in anticipation of which such notes are being issued shall have been authorized, and such note proceeds shall be disbursed in such manner and under such restrictions, if any, as the Board may provide in the resolution authorizing the issuance of such notes or bonds or in the trust agreement securing such bonds.

The resolution providing for the issuance of notes, and any trust agreement securing the bonds in anticipation of which such notes are being authorized, may also contain such limitations upon the issuance of additional notes as the Board may deem

proper, and such additional notes shall be issued under such restrictions and limitations as may be prescribed by such resolution or trust agreement. The Board may also provide for the replacement of any notes which shall become mutilated or be destroyed or lost.

Except as herein otherwise provided, notes may be issued under this Article and other powers vested in the Board under this Article may be exercised by the Board without obtaining the consent of any department, division, commission, board, bureau, or agency of the State and without any other proceedings or the happening of any other conditions or things than those proceedings, conditions, or things which are specifically required by this Article.

Unless the context shall otherwise indicate, the word 'bonds' wherever used in this Article, shall be deemed and construed to include the words 'bond anticipation notes.'"

Section 8. G.S. 116-198.37 reads as rewritten:

"**§ 116-198.37. Fixing fees, rents, and charges; sinking fund.**

For the purpose of aiding in the acquisition, construction, or provision of any project and the maintenance, repair, and operation of any project or any existing facilities, the Board is authorized to fix, revise from time to time, charge, and collect such fee or fees for such privileges and services and in such amount or amounts as the Board shall determine, and to fix, revise from time to time, charge, and collect other fees, rents, and charges for the use of and for the services furnished or to be furnished by any project or projects and any existing facilities, or any portion thereof, and to contract with any person, partnership, association, or corporation for the lease, use, occupancy, or operation of any project or projects and any existing facilities, or any part thereof, and to fix the terms, conditions, fees, rents, and charges for any such lease, use, occupancy, or operation. So long as bonds issued hereunder and payable therefrom are outstanding, such fees, rents, and charges shall be so fixed and adjusted, with relation to other revenues available therefor, as to provide funds pursuant to the requirements of the resolution or trust agreement authorizing or securing such bonds at least sufficient with such other revenues, if any, (i) to pay the cost of maintaining, repairing, and operating any project or projects and any existing facilities any part of the revenues of which are pledged to the payment of the bonds issued for such project or projects, (ii) to pay the principal of and the interest on such bonds as the same shall become due and payable, and (iii) to create and maintain reserves for such purposes. Any surplus funds remaining after application to the purposes mentioned in (i), (ii), and (iii), above, shall be held in trust and applied by the Board to the development of the Centennial ~~Campus or~~ Campus, the Horace Williams ~~Campus~~ Campus, or a Millennial Campus, as applicable. Such fees, rents, and charges shall not be subject to supervision or regulation by any other commission, board, bureau, or agency of the State. A sufficient amount of the revenues, except such part thereof as may be necessary to pay such cost of maintenance, repair, and operation and to provide such reserves therefor and for renewals, replacements, extensions, enlargements, and improvements as may be provided for in the resolution authorizing the issuance of such bonds or in the trust

agreement securing the same, shall be set aside at such regular intervals as may be provided in such resolution or such trust agreement in a sinking fund which is hereby pledged to and charged with the payment of the principal of and the interest on such bonds as the same shall become due and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made; the fees, rents, and charges and other revenues or other moneys so pledged and thereafter received by the Board shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act; and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the Board, irrespective of whether such parties have notice thereof. Neither the resolution nor any trust agreement by which a pledge is created need be filed or recorded except in the records of the Board. The use and disposition of moneys to the credit of such sinking fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds or of the trust agreement securing the same."

Section 9. G.S. 146-30(b1) reads as rewritten:

"(b1) Notwithstanding the other provisions of this section, no service charge into the State Land Fund shall be deducted from or levied against the proceeds of any disposition by lease, rental, or easement of State lands that are designated as part of the Centennial Campus as defined by ~~G.S. 116-198.33(4) or~~ G.S. 116-198.33(4), that are designated as part of the Horace Williams Campus as defined by ~~G.S. 116-198.33(4a).~~ G.S. 116-198.33(4a), or that are designated as part of a Millennial Campus as defined by G.S. 116-198.33(4b). All net proceeds of those dispositions are governed by G.S. 116-36.5."

Section 10. G.S. 66-58(b) reads as rewritten:

"(b) The provisions of subsection (a) of this section shall not apply to:

(1) Counties and municipalities.

(2) The Department of Health and Human Services or the Department of Agriculture and Consumer Services for the sale of serums, vaccines, and other like products.

(3) The Department of Administration, except that the agency shall not exceed the authority granted in the act creating the agency.

(4) The State hospitals for the mentally ill.

(5) The Department of Health and Human Services.

(6) The North Carolina School for the Blind at Raleigh.

(6a) The Office of Juvenile Justice.

(7) The North Carolina Schools for the Deaf.

(8) The Greater University of North Carolina with regard to its utilities and other services now operated by it nor to the sale of articles produced incident to the operation of instructional departments, articles incident to educational research, articles of merchandise incident to classroom work, meals, books, or to articles of merchandise not exceeding twenty-five cents (25¢) in value when sold to members of the educational staff or staff

auxiliary to education or to duly enrolled students or occasionally to immediate members of the families of members of the educational staff or of duly enrolled students nor to the sale of meals or merchandise to persons attending meetings or conventions as invited guests nor to the operation by the University of North Carolina of an inn or hotel and dining and other facilities usually connected with a hotel or inn, nor to the hospital and Medical School of the University of North Carolina, nor to the Coliseum of North Carolina State University at Raleigh, and the other schools and colleges for higher education maintained or supported by the State, nor to the Centennial Campus of North Carolina State University at Raleigh, nor to the Horace Williams Campus of the University of North Carolina at Chapel Hill, nor to a Millennial Campus of a constituent institution of The University of North Carolina, nor to the comprehensive student health services or the comprehensive student infirmaries maintained by the constituent institutions of the University of North Carolina.

(9) The Department of Environment and Natural Resources, except that the Department shall not construct, maintain, operate or lease a hotel or tourist inn in any park over which it has jurisdiction. The North Carolina Wildlife Resources Commission may sell wildlife memorabilia as a service to members of the public interested in wildlife conservation.

(10) Child-caring institutions or orphanages receiving State aid.

(11) Highlands School in Macon County.

(12) The North Carolina State Fair.

(13) Rural electric memberships corporations.

(13a) State Farm Operations Commission.

(13b) The Department of Agriculture and Consumer Services with regard to its lessees at farmers' markets operated by the Department.

(13c) The Western North Carolina Agricultural Center.

(13d) Agricultural centers or livestock facilities operated by the Department of Agriculture and Consumer Services.

(14) Nothing herein contained shall be construed to prohibit the engagement in any of the activities described in subsection (a) hereof by a firm, corporation or person who or which is a lessee of space only of the State of North Carolina or any of its departments or agencies; provided the leases shall be awarded by the Department of Administration to the highest bidder, as provided by law in the case of State contracts and which lease shall be for a term of not less than one year and not more than five years.

(15) The State Department of Correction is authorized to purchase and install automobile license tag plant equipment for the purpose of

manufacturing license tags for the State and local governments and for such other purposes as the Department may direct.

The Commissioner of Motor Vehicles, or such other authority as may exercise the authority to purchase automobile license tags is hereby directed to purchase from, and to contract with, the State Department of Correction for the State automobile license tag requirements from year to year.

The price to be paid to the State Department of Correction for the tags shall be fixed and agreed upon by the Governor, the State Department of Correction, and the Motor Vehicle Commissioner, or such authority as may be authorized to purchase the supplies.

(16) Laundry services performed by the Department of Correction may be provided only for agencies and instrumentalities of the State which are supported by State funds and for county or municipally controlled and supported hospitals presently being served by the Department of Correction, or for which services have been contracted or applied for in writing, as of May 22, 1973. In addition to the prior sentence, laundry services performed by the Department of Correction may be provided for the Governor Morehead School and the North Carolina School for the Deaf.

The services shall be limited to wet-washing, drying and ironing of flatwear or flat goods such as towels, sheets and bedding, linens and those uniforms prescribed for wear by the institutions and further limited to only flat goods or apparel owned, distributed or controlled entirely by the institutions and shall not include processing by any dry-cleaning methods; provided, however, those garments and items presently being serviced by wet-washing, drying and ironing may in the future, at the election of the Department of Correction, be processed by a dry-cleaning method.

(17) The North Carolina Global TransPark Authority or a lessee of the Authority.

(18) The activities and products of private enterprise carried on or manufactured within a State prison facility pursuant to G.S. 148-70.

(19) The North Carolina Justice Academy.

(20) The Department of Transportation, or any nonprofit lessee of the Department, for the sale of books, crafts, gifts, and other tourism-related items at visitor centers owned by the Department."

Section 11. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 3

HOUSE BILL 1551
Committee Substitute Favorable 5/31/00
Third Edition Engrossed 6/7/00

Short Title: Tax Enforcement. (Public)

Sponsors:

Referred to:

May 17, 2000

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE AUTHORITY OF DEPARTMENT OF REVENUE LAW ENFORCEMENT AGENTS, TO ALLOW THE SECRETARY OF REVENUE TO ADMINISTER THE OATH OF OFFICE TO DEPARTMENT OF REVENUE LAW ENFORCEMENT AGENTS, TO PROVIDE A CIVIL PENALTY FOR FILING A FRIVOLOUS INCOME TAX RETURN, AND TO CHANGE THE PROCEDURES FOR LAW ENFORCEMENT REPORTING ON NON-TAX-PAID UNAUTHORIZED SUBSTANCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-236.1 reads as rewritten:

"**§ 105-236.1. Enforcement of revenue laws by revenue law enforcement agents.**

(a) General. -- The Secretary may appoint employees of the Unauthorized Substances Tax Division to serve as revenue law enforcement officers having the responsibility and subject-matter jurisdiction to enforce the excise tax on unauthorized substances imposed by Article 2D of this Chapter. ~~The~~ The Secretary may appoint employees of the Criminal Investigations Division to serve as revenue law enforcement officers having the responsibility and subject-matter jurisdiction to enforce the following tax violations and criminal offenses:

(1) ~~the~~ The felony and misdemeanor tax violations in G.S. ~~105-236~~ 105-236.

(2) The misdemeanor tax violations in G.S. 105-449.117 and G.S. 105-449.120. ~~and to enforce any of the~~

(3) The following criminal offenses when they involve a tax imposed under Chapter 105 of the General Statutes: ~~G.S. 14-91~~
a. G.S. 14-91 (Embezzlement of State ~~Property),~~ Property).
b. G.S. 14-92 (Embezzlement of ~~Funds),~~ Funds).
c. G.S. 14-100 (Obtaining Property By False ~~Pretenses),~~ Pretenses).
d. G.S. 14-119 ~~(Forgery), and~~ (Forgery).
e. G.S. 14-120 (Uttering Forged ~~Paper).~~ Paper).
f. G.S. 14-401.18 (Sale of Certain Packages of Cigarettes).

~~The Secretary may appoint employees of the Unauthorized Substances Tax Division to serve as revenue law enforcement officers having the responsibility and subject-matter jurisdiction to enforce the excise tax on unauthorized substances imposed by Article 2D of this Chapter. To serve as a revenue law enforcement officer, an employee must be certified as a criminal justice officer under Chapter 17C of the General Statutes.~~

(b) Authority. -- A revenue law enforcement officer is a State officer with jurisdiction throughout the State within the officer's subject-matter jurisdiction. A revenue law enforcement officer may serve and execute notices, orders, warrants, or demands issued by the Secretary or the General Court of Justice in connection with the enforcement of the officer's subject-matter jurisdiction. A revenue law enforcement officer has the full powers of arrest as provided by G.S. 15A-401 while executing the notices, orders, warrants, or demands.

(c) Qualifications. -- To serve as a revenue law enforcement officer, an employee must be certified as a criminal justice officer under Chapter 17C of the General Statutes. The Secretary may administer the oath of office to revenue law enforcement officers appointed pursuant to this section."

Section 2. G.S. 105-236 is amended by adding a new subdivision to read:

"(10a) Filing a Frivolous Return. -- If a taxpayer files a frivolous return under Part 2 of Article 4 of this Chapter, the Secretary shall assess a penalty in the amount of five hundred dollars ($500.00). A frivolous return is a return that meets both of the following requirements:
a. Fails to include information on which the substantial correctness of the return may be judged or contains information that indicates the return is substantially incorrect.
b. Commits an act intended to delay or impede the revenue laws of this State or a reliance upon a position that is frivolous."

Section 3. G.S. 105-113.106(4c) is recodified as G.S. 105-113.106(4d).

Section 4. G.S. 105-113.106 is amended by adding the following two new subdivisions to read:

"The following definitions apply in this Article:

. . .

(4c) Local law enforcement agency. -- A municipal police department, a county police department, or a sheriff's office.

. . .

(8a) State law enforcement agency. -- Any State agency, force, department, or unit responsible for enforcing criminal laws."

Section 5. G.S. 105-113.108 reads as rewritten:

"**§ 105-113.108. Reports; revenue stamps.**

(a) Revenue Stamps. -- The Secretary shall issue stamps to affix to unauthorized substances to indicate payment of the tax required by this Article. Dealers shall report the taxes payable under this Article at the time and on the form prescribed by the Secretary. Dealers are not required to give their name, address, social security number, or other identifying information on the form. Upon payment of the tax, the Secretary shall issue stamps in an amount equal to the amount of the tax paid. Taxes may be paid and stamps may be issued either by mail or in person.

(b) Reports. -- Every local law enforcement agency and every State law enforcement agency must report to the Department within 48 hours after seizing an unauthorized substance, or making an arrest of an individual in possession of an unauthorized substance, listed in this subsection upon which a stamp has not been affixed. The report must be in the form prescribed by the Secretary and it must include the time and place of the arrest or seizure, the amount, location, and kind of substance, the identification of an individual in possession of the substance and that individual's social security number, and any other information prescribed by the Secretary. The report must be made when the arrest or seizure involves any of the following unauthorized substances upon which a stamp has not been affixed as required by this Article:

(1) More than 42.5 grams of marijuana.

(2) Seven or more grams of any other controlled substance that is sold by weight.

(3) Ten or more dosage units of any other controlled substance that is not sold by weight.

(4) Any illicit mixed beverage.

(5) Any illicit spirituous liquor.

(6) Mash."

Section 6. G.S. 114-18.1 is repealed.

Section 7. G.S. 114-19(b) is repealed.

Section 8. Section 2 of this act becomes effective October 1, 2000, and applies to returns filed on or after that date. Sections 3 through 7 of this act become effective December 1, 2000, and apply to arrests or seizures occurring on or after that date. The remainder of this act is effective when it becomes law.

HOUSE BILL 1551:
Tax Enforcement

BILL ANALYSIS

Committee:	Senate Finance	**Sponsor:**	Rep. Miller
Date:	June 12, 2000	***Recommended by Revenue Laws***	
Version:	Third Edition	**Summary by:**	Cindy Avrette and Martha Walston, Committee Counsel

SUMMARY: ***House Bill 1551 is a recommendation of the Revenue Laws Study Committee. It makes three changes to current law to facilitate enforcement of the tax laws, as recommended to the Committee by the Department of Revenue. The original bill was changed in House Finance and ON the House Floor as follows: (1) added one other tax law change at the request of the Unauthorized Substances Tax Division of the Department of Revenue, and (2) amended the requirements of a frivolous return.***

Authority of Law Enforcement Agents: (Section 1)

Currently, revenue law enforcement officers have authority to enforce felony violations under G.S. 105-236 and to enforce numerous other offenses under State law when they involve a State tax. Section 1 expands the offenses revenue law enforcement officers may enforce to include the following misdemeanor offenses:

1. Willful failure to collect, withhold, or pay over tax. G.S. 105-236(8)
2. Willful failure to file a return, supply information, or pay tax. G.S. 105-236(9)
3. Use of dyed diesel or other non-tax-paid fuel. G.S. 105-449.117.
4. Miscellaneous fuel tax misdemeanors. G.S. 105-449.120.
5. Sale of certain packages of cigarettes. G.S. 14-401.18.

The proposed committee substitute rewrites G.S. 105-236.1(a) by setting forth the offenses a revenue law enforcement officer may enforce in a list.

Secretary to Administer Oath of Office: (Section 1)

Section 1 also authorizes the Secretary of Revenue to administer the oath of office to revenue law enforcement officers. The Secretary is not one of the individuals who has general authorization under G.S. 11-7.1 to administer oaths. The Secretary does, however, have authority under G.S. 105-261 to administer an oath to a person with respect to a tax return or report. The proposed committee substitute puts the qualifications for becoming a revenue law enforcement officer, including the oath of office, in a separate subsection.

Civil Penalty for Filing a Frivolous Income Tax Return: (Section 2)

Section 2 creates a civil penalty for filing a frivolous income tax return. In order for a return to be frivolous, it must meet both of the following conditions:

- The return does not include information on which the substantial correctness of the return may be judged or contains information that indicates that the return is substantially incorrect.
- The return commits an act intended to delay or impede the revenue laws of this State or a reliance upon a position that is frivolous. **ADDED ON THE HOUSE FLOOR** (was "Evidences a desire to delay or impede the revenue laws of this State or a reliance upon a position that is frivolous.")

The penalty for filing a frivolous return would be five hundred dollars ($500). As with other penalties assessed under Subchapter I of Chapter 105, this penalty would be assessed as an additional tax. This penalty is similar to a penalty imposed on the federal level under section 6702 of the Code.

The Criminal Investigations Division of the Department of Revenue requested this change in the law. In its work, the Division has investigated cases in which a taxpayer will knowingly file an incorrect return in order to inflate deductions and thus increase the amount of the taxpayer's refund. For example, a taxpayer may claim extra dependents or exaggerate the amount of charitable contributions. The current penalties do not provide a proper remedy because they are based upon failure to pay the amount of tax due. In most of these cases, there is no amount of tax due because the taxpayer is already due a refund. The offense is that the taxpayer is claiming a greater refund than the taxpayer is entitled to receive.

- The penalty for failing to pay the amount of tax due is equal to 5% of the amount of tax due.
- A taxpayer that willfully fails to pay the tax due is guilty of a Class 1 misdemeanor.
- A taxpayer who attempts to evade or defeat a tax is guilty of a Class H felony.

Streamline the Procedures for Reporting on Non-Tax-Paid Unauthorized Substances: (Sections 3 through 7) ADDED IN HOUSE FINANCE

Under current law, State and local law enforcement agencies must report to the SBI within 48 hours the arrest of any individual in possession of certain threshold amounts of drugs that do not bear unauthorized substances tax stamps. The SBI must then notify the Department of Revenue on a daily basis of the reports it receives. The SBI does not need this information. Sections 3 through 5 change the law so that State and law enforcement agencies will report these arrests directly to the Department of Revenue, as opposed to the SBI. They also move the reporting requirement from Chapter 114 to Article 2D of Chapter 105. Sections 6 and 7 makes conforming changes: Section 6 repeals the reporting requirement in Chapter 114 because it is moved to Chapter 105 and Section 7 repeals the requirement that the SBI notify the Department on the reports it receives.

Canaan Huie, an attorney in the Bill Drafting Division, contributed to this summary.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 1551 (House Finance Committee Substitute)

SHORT TITLE: Tax Enforcement

SPONSOR(S):

FISCAL IMPACT

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

	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05
REVENUES					
General Fund	See Assumptions and Methodology				
EXPENDITURES					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue, State Bureau of Investigations

EFFECTIVE DATE: Section 2 (frivolous returns) is effective October 1, 2000, and applies to returns filed on or after that date. Sections 3 through 7 (locals report to Revenue) become effective December 1, 2000, and apply to arrests or seizures occurring on or after that date. The remainder of the act is effective when it becomes law.

BILL SUMMARY:
This bill (1) allows the Secretary of Revenue to administer the oath of office to Department of Revenue Law Enforcement Agents, (2) allows Revenue Law Enforcement Agents to enforce misdemeanor tax laws, (3) creates a $500 civil penalty for filing frivolous income tax returns, and (4) permits local law enforcement agencies to report non tax paid unauthorized substance cases directly to the Department of Revenue.

ASSUMPTIONS AND METHODOLOGY:
Section one of the bill, granting Revenue Law Enforcement Agents arrest powers in selected misdemeanors, has no fiscal impact. These agents currently investigate all misdemeanor tax cases but depend on local law enforcement officials to make the arrests. There is no additional revenue from penalties.

Section two of the bill creates a $500 civil penalty for filing a frivolous tax return, thus adding North Carolina to a list of 18 states and the Internal Revenue Service that charge a fee for fraudulent taxpayer actions. This penalty applies to persons who knowingly use a tax preparer

that guarantees lucrative state and federal income tax refunds by using such schemes as exaggerating the number of dependents or inflating deductions such as medical or charitable contributions.

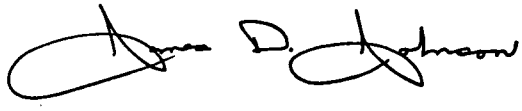
The Department of Revenue's Criminal Investigations nine person unit currently has six tax preparers under indictment and four tax preparers under investigations. The Director of the unit expects to investigate 6 to 10 cases a year over the next five years. In these cases, it is estimated that each tax preparer fraudulently prepares 100 to 200 income tax returns per year. In 951 civil audits conducted on fraudulent returns filed from 1996 to 1998, the average overpayment of refund was $1,463. While prosecution of these fraudulent returns recovered the overpayments, few penalties were assessed on the taxpayers. As few as 5% of the cases were charged with fraud because of the tremendous staff time needed to provide the evidence necessary for a conviction.

Based on the projected caseload of fraudulent tax preparers (6 to 10 per year) and the number of returns filed illegally by each preparer (100 to 200), the revenue from this $500 civil penalty could range between $300,000 to $1 million a year. (This revenue will be deposited into the General Fund.) This is a rough estimate because of the following factors. First, the revenue the Department now receives from fraud penalties should be netted against this new revenue. Unfortunately, the Department cannot provide the amount of penalty revenue currently received. Second, given the severity of the case, the Department of Revenue might not apply the penalty in every case, thus diminishing the revenue gain. Finally, the frequent application of this penalty to fraudulent taxpayers in the next few years and the publication of this new penalty and taxpayer prosecutions will serve as a deterrent for future tax fraud. Such deterrence of criminal action will reduce the amount of penalty revenue.

Sections 3 through 7 remove the State Bureau of Investigations (SBI) from the reporting of non tax paid unauthorized substances. This change will allow local law enforcement agencies to send reports directly to the Department of Revenue. SBI staff indicates that the agency does not review or use any of the information that is contained in the 4,000 to 6,000 cases that are forwarded each year to the Department of Revenue. The SBI estimates no fiscal impact from these sections.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic

APPROVED BY: James D. Johnson



DATE: May 30, 2000

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1551

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

H1551-ALA-1 Page 1 of __

Date_____,2000

Comm. Sub. [yes]
Amends Title []
Third Edition

Senator_____

moves to amend the bill on page 2, line 38,
by rewriting the line to read:
"laws of this State or evidences a reliance upon a position that is".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1551
Committee Substitute Favorable 5/31/00
Third Edition Engrossed 6/7/00
Proposed Committee Substitute H1551-PCS7374-LA1

Short Title: Tax Enforcement. (Public)

Sponsors:

Referred to:

May 17, 2000

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE AUTHORITY OF DEPARTMENT OF REVENUE LAW ENFORCEMENT AGENTS, TO ALLOW THE SECRETARY OF REVENUE TO ADMINISTER THE OATH OF OFFICE TO DEPARTMENT OF REVENUE LAW ENFORCEMENT AGENTS, TO PROVIDE A CIVIL PENALTY FOR FILING A FRIVOLOUS INCOME TAX RETURN, AND TO CHANGE THE PROCEDURES FOR LAW ENFORCEMENT REPORTING ON NON-TAX-PAID UNAUTHORIZED SUBSTANCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-236.1 reads as rewritten:

"**§ 105-236.1. Enforcement of revenue laws by revenue law enforcement agents.**

(a) General. -- The Secretary may appoint employees of the Unauthorized Substances Tax Division to serve as revenue law enforcement officers having the responsibility and subject-matter jurisdiction to enforce the excise tax on unauthorized substances imposed by Article 2D of this Chapter. ~~The~~

The Secretary may appoint employees of the Criminal Investigations Division to serve as revenue law enforcement officers having the responsibility and subject-matter jurisdiction to enforce the following tax violations and criminal offenses:

(1) ~~the~~ The felony and misdemeanor tax violations in G.S. ~~105-236~~ 105-236.

(2) The misdemeanor tax violations in G.S. 105-449.117 and G.S. 105-449.120. ~~and to enforce any of the~~

(3) The following criminal offenses when they involve a tax imposed under Chapter 105 of the General Statutes: ~~G.S. 14-91~~

a. G.S. 14-91 (Embezzlement of State ~~Property),~~ Property).

b. G.S. 14-92 (Embezzlement of ~~Funds),~~ Funds).

c. G.S. 14-100 (Obtaining Property By False ~~Pretenses),~~ Pretenses).

d. G.S. 14-119 ~~(Forgery), and~~ (Forgery).

e. G.S. 14-120 (Uttering Forged ~~Paper).~~ Paper).

f. G.S. 14-401.18 (Sale of Certain Packages of Cigarettes).

~~The Secretary may appoint employees of the Unauthorized Substances Tax Division to serve as revenue law enforcement officers having the responsibility and subject-matter jurisdiction to enforce the excise tax on unauthorized substances imposed by Article 2D of this Chapter. To serve as a revenue law enforcement officer, an employee must be certified as a criminal justice officer under Chapter 17C of the General Statutes.~~

(b) Authority. -- A revenue law enforcement officer is a State officer with jurisdiction throughout the State within the officer's subject-matter jurisdiction. A revenue law enforcement officer may serve and execute notices, orders, warrants, or demands issued by the Secretary or the General Court of Justice in connection with the enforcement of the officer's subject-matter jurisdiction. A revenue law enforcement officer has the full powers of arrest as provided by G.S. 15A-401 while executing the notices, orders, warrants, or demands.

(c) Qualifications. -- To serve as a revenue law enforcement officer, an employee must be certified as a criminal justice officer under Chapter 17C of the General Statutes. The Secretary may administer the oath of office to revenue law enforcement officers appointed pursuant to this section."

Section 2. G.S. 105-236 is amended by adding a new subdivision to read:

"(10a) Filing a Frivolous Return. -- If a taxpayer files a frivolous return under Part 2 of Article 4 of this Chapter, the Secretary shall assess a penalty in the amount of five hundred dollars ($500.00). A frivolous return is a return that meets both of the following requirements:

a. Fails to include information on which the substantial correctness of the return may be judged or contains information that indicates the return is substantially incorrect.

b. Commits an act intended to delay or impede the revenue laws of this State or evidences a reliance upon a position that is frivolous."

Section 3. G.S. 105-113.106(4c) is recodified as G.S. 105-113.106(4d).

Section 4. G.S. 105-113.106 is amended by adding the following two new subdivisions to read:

"The following definitions apply in this Article:

. . .

(4c) Local law enforcement agency. -- A municipal police department, a county police department, or a sheriff's office.

. . .

(8a) State law enforcement agency. -- Any State agency, force, department, or unit responsible for enforcing criminal laws."

Section 5. G.S. 105-113.108 reads as rewritten:

"**§ 105-113.108. Reports; revenue stamps.**

(a) Revenue Stamps. -- The Secretary shall issue stamps to affix to unauthorized substances to indicate payment of the tax required by this Article. Dealers shall report the taxes payable under this Article at the time and on the form prescribed by the Secretary. Dealers are not required to give their name, address, social security number, or other identifying information on the form. Upon payment of the tax, the Secretary shall issue stamps in an amount equal to the amount of the tax paid. Taxes may be paid and stamps may be issued either by mail or in person.

(b) Reports. -- Every local law enforcement agency and every State law enforcement agency must report to the Department within 48 hours after seizing an unauthorized substance, or making an arrest of an individual in possession of an unauthorized substance, listed in this subsection upon which a stamp has not been affixed. The report must be in the form prescribed by the Secretary and it must include the time and place of the arrest or seizure, the amount, location, and kind of substance, the identification of an individual in possession of the substance and that individual's social security number, and any other information prescribed by the Secretary. The report must be made when the arrest or seizure involves any of the following unauthorized substances upon which a stamp has not been affixed as required by this Article:

(1) More than 42.5 grams of marijuana.

(2) Seven or more grams of any other controlled substance that is sold by weight.

(3) Ten or more dosage units of any other controlled substance that is not sold by weight.

(4) Any illicit mixed beverage.

(5) Any illicit spirituous liquor.

(6) Mash."

Section 6. G.S. 114-18.1 is repealed.

Section 7. G.S. 114-19(b) is repealed.

Section 8. Section 2 of this act becomes effective October 1, 2000, and applies to returns filed on or after that date. Sections 3 through 7 of this act become effective December 1, 2000, and apply to arrests or seizures occurring on or after that date. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 1854*
Committee Substitute Favorable 6/7/00

Short Title: 2000 Fee Bill. (Public)

Sponsors:

Referred to:

May 30, 2000

A BILL TO BE ENTITLED

AN ACT TO SET THE PUBLIC UTILITY REGULATORY FEES AND THE INSURANCE REGULATORY CHARGE, TO INCREASE COURT COSTS, TO INCREASE JAIL FEES FOR PERSONS PAYING JAIL FEES PURSUANT TO PROBATIONARY SENTENCES, AND TO INCREASE THE FEE IMPOSED FOR EMERGENCY PLANNING.

The General Assembly of North Carolina enacts:

TABLE OF CONTENTS:

PART I. PUBLIC UTILITY REGULATORY FEE
PART II. NORTH CAROLINA ELECTRIC MEMBERSHIP CORPORATION REGULATORY FEE
PART III. INSURANCE REGULATORY CHARGE
PART IV. INCREASE COURT COSTS
PART V. JAIL FEES FOR LOCAL GOVERNMENTS
PART VI. INCREASE FEE FOR EMERGENCY PLANNING
PART VII. EFFECTIVE DATES

PART I. PUBLIC UTILITY REGULATORY FEE

Section 1. The percentage rate to be used in calculating the public utility regulatory fee under G.S. 62-302(b)(2) is nine-hundredths percent (0.09%) for each public utility's North Carolina jurisdictional revenues earned during each quarter that begins on or after July 1, 2000.

PART II. NORTH CAROLINA ELECTRIC MEMBERSHIP CORPORATION REGULATORY FEE

Section 2. The annual fee imposed on The North Carolina Electric Membership Corporation under G.S. 62-302(b1) for the 2000-2001 fiscal year is two hundred thousand dollars ($200,000).

PART III. INSURANCE REGULATORY CHARGE

Section 3. The percentage rate to be used in calculating the insurance regulatory charge under G.S. 58-6-25 is seven percent (7%) for the 2000 calendar year.

PART IV. COURT COSTS FOR TECHNOLOGY

Section 4.(a) G.S. 7A-304(a)(4) reads as rewritten:

"(a) In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the prosecuting witness, the following costs shall be assessed and collected, except that when the judgment imposes an active prison sentence, costs shall be assessed and collected only when the judgment specifically so provides, and that no costs may be assessed when a case is dismissed.

. . .

(4) For support of the General Court of Justice, the sum of ~~sixty-one dollars ($61.00)~~ sixty-five dollars ($65.00) in the district court, including cases before a magistrate, and the sum of ~~sixty-eight dollars ($68.00)~~ seventy-two dollars ($72.00) in the superior court, to be remitted to the State Treasurer.

. . . ."

Section 4.(b) G.S. 7A-305(a)(2) reads as rewritten:

"(a) In every civil action in the superior or district court the following costs shall be assessed:

. . .

(2) For support of the General Court of Justice, the sum of ~~fifty-five dollars ($55.00)~~ fifty-nine dollars ($59.00) in the superior court, and the sum of ~~forty dollars ($40.00)~~ forty-four dollars ($44.00) in the district court except that if the case is assigned to a magistrate the sum shall be ~~twenty-eight dollars ($28.00).~~ thirty-three dollars ($33.00). Sums collected under this subsection shall be remitted to the State Treasurer.

. . . ."

Section 4.(c) G.S. 7A-306(a) and (b) read as rewritten:

"**§ 7A-306. Costs in special proceedings.**

(a) In every special proceeding in the superior court, the following costs shall be assessed:

(1) For the use of the courtroom and related judicial facilities, the sum of ten dollars ($10.00) to be remitted to the county. Funds derived

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. . .

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(1) For the use of the courtroom and related judicial facilities, the sum of ten dollars ($10.00) to be remitted to the county. Funds derived

from the facilities fees shall be used in the same manner, for the same purposes, and subject to the same restrictions, as facilities fees assessed in criminal actions.

(2) For support of the General Court of Justice the sum of ~~twenty-six dollars ($26.00).~~ thirty dollars ($30.00). In addition, in proceedings involving land, except boundary disputes, if the fair market value of the land involved is over one hundred dollars ($100.00), there shall be an additional sum of thirty cents (30¢) per one hundred dollars ($100.00) of value, or major fraction thereof, not to exceed a maximum additional sum of two hundred dollars ($200.00). Fair market value is determined by the sale price if there is a sale, the appraiser's valuation if there is no sale, or the appraised value from the property tax records if there is neither a sale nor an appraiser's valuation. Sums collected under this subsection shall be remitted to the State Treasurer.

(b) The facilities fee and ~~twenty-six dollars ($26.00)~~ thirty dollars ($30.00) of the General Court of Justice fee are payable at the time the proceeding is initiated.

. . . ."

Section 4.(d) G.S. 7A-307(a) and (b) read as rewritten:

"(a) In the administration of the estates of decedents, minors, incompetents, of missing persons, and of trusts under wills and under powers of attorney, and in collections of personal property by affidavit, the following costs shall be assessed:

(1) For the use of the courtroom and related judicial facilities, the sum of ten dollars ($10.00), to be remitted to the county. Funds derived from the facilities fees shall be used in the same manner, for the same purposes, and subject to the same restrictions, as facilities fees assessed in criminal actions.

(2) For support of the General Court of Justice, the sum of ~~twenty-six dollars ($26.00),~~ thirty dollars ($30.00), plus an additional forty cents (40¢) per one hundred dollars ($100.00), or major fraction thereof, of the gross estate, not to exceed three thousand dollars ($3,000). Gross estate shall include the fair market value of all personalty when received, and all proceeds from the sale of realty coming into the hands of the fiduciary, but shall not include the value of realty. In collections of personal property by affidavit, the fee based on the gross estate shall be computed from the information in the final affidavit of collection made pursuant to G.S. 28A-25-3 and shall be paid when that affidavit is filed. In all other cases, this fee shall be computed from the information reported in the inventory and shall be paid when the inventory is filed with the clerk. If additional gross estate, including income, comes into the hands of the fiduciary after the filing of the inventory, the fee for such additional value shall be assessed and paid upon the filing of any account or report disclosing such

additional value. For each filing the minimum fee shall be ~~ten dollars ($10.00).~~ fifteen dollars ($15.00). Sums collected under this subsection shall be remitted to the State Treasurer.

(2a) Notwithstanding subdivision (2) of this subsection, the fee of forty cents (40¢) per one hundred dollars ($100.00), or major fraction, of the gross estate, not to exceed three thousand dollars ($3,000), shall not be assessed on personalty received by a trust under a will when the estate of the decedent was administered under Chapters 28 or 28A of the General Statutes. Instead, a fee of ~~fifteen dollars ($15.00)~~ twenty dollars ($20.00) shall be assessed on the filing of each annual and final account.

(2b) Notwithstanding subdivisions (1) and (2) of this subsection, no costs shall be assessed when the estate is administered or settled pursuant to G.S. 28A-25-6.

(3) For probate of a will without qualification of a personal representative, the clerk shall assess a facilities fee as provided in subdivision (1) of this subsection and shall assess for support of the General Court of Justice, the sum of ~~seventeen dollars ($17.00).~~ twenty dollars ($20.00).

(b) In collections of personal property by affidavit, the facilities fee and ~~twenty-six dollars ($26.00)~~ thirty dollars ($30.00) of the General Court of Justice fee shall be paid at the time of filing the qualifying affidavit pursuant to G.S. 28A-25-1. In all other cases, these fees shall be paid at the time of filing of the first inventory. If the sole asset of the estate is a cause of action, ~~the thirty dollars ($30.00)~~ these fees shall be paid at the time of the qualification of the fiduciary.

. . . ."

Section 4.(e) G.S. 7A-308(a)(1) reads as rewritten:

"(a) The following miscellaneous fees and commissions shall be collected by the clerk of superior court and remitted to the State for the support of the General Court of Justice:

(1) Foreclosure under power of sale in deed of trust or mortgage ..... ~~$30.00~~ $40.00

If the property is sold under the power of sale, an additional amount will be charged, determined by the following formula: thirty cents (30¢) per one hundred dollars ($100.00), or major fraction thereof, of the final sale price. If the amount determined by the formula is less than ten dollars ($10.00), a minimum ten dollar ($10.00) fee will be collected. If the amount determined by the formula is more than two hundred dollars ($200.00), a maximum two hundred dollar ($200.00) fee will be collected."

PART V. JAIL FEE FOR LOCAL GOVERNMENTS

Section 5. G.S. 7A-313 reads as rewritten:

"**§ 7A-313. Uniform jail fees.**

additional value. For each filing the minimum fee shall be ~~ten dollars ($10.00).~~ fifteen dollars ($15.00). Sums collected under this subsection shall be remitted to the State Treasurer.

(2a) Notwithstanding subdivision (2) of this subsection, the fee of forty cents (40¢) per one hundred dollars ($100.00), or major fraction, of the gross estate, not to exceed three thousand dollars ($3,000), shall not be assessed on personalty received by a trust under a will when the estate of the decedent was administered under Chapters 28 or 28A of the General Statutes. Instead, a fee of ~~fifteen dollars ($15.00)~~ twenty dollars ($20.00) shall be assessed on the filing of each annual and final account.

(2b) Notwithstanding subdivisions (1) and (2) of this subsection, no costs shall be assessed when the estate is administered or settled pursuant to G.S. 28A-25-6.

(3) For probate of a will without qualification of a personal representative, the clerk shall assess a facilities fee as provided in subdivision (1) of this subsection and shall assess for support of the General Court of Justice, the sum of ~~seventeen dollars ($17.00).~~ twenty dollars ($20.00).

(b) In collections of personal property by affidavit, the facilities fee and ~~twenty-six dollars ($26.00)~~ thirty dollars ($30.00) of the General Court of Justice fee shall be paid at the time of filing the qualifying affidavit pursuant to G.S. 28A-25-1. In all other cases, these fees shall be paid at the time of filing of the first inventory. If the sole asset of the estate is a cause of action, ~~the thirty dollars ($30.00)~~ these fees shall be paid at the time of the qualification of the fiduciary.

. . . ."

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PART V. JAIL FEE FOR LOCAL GOVERNMENTS

Section 5. G.S. 7A-313 reads as rewritten:

"**§ 7A-313. Uniform jail fees.**

~~Only persons~~ Persons who are lawfully confined in jail awaiting ~~trial, or who are ordered to pay jail fees pursuant to a probationary sentence,~~ trial shall be liable to the county or municipality maintaining the jail in the sum of five dollars ($5.00) for each 24 hours' confinement, or fraction thereof, except that a person so confined shall not be liable for this fee if the case or proceeding against him is dismissed, or if acquitted, or if judgment is arrested, or if probable cause is not found, or if the grand jury fails to return a true bill.

Persons who are ordered to pay jail fees pursuant to a probationary sentence shall be liable to the county or municipality maintaining the jail at the same per diem rate paid by the Department of Correction to local jails for maintaining a prisoner, as set by the General Assembly in its appropriations acts."

PART VI. INCREASE FEE FOR EMERGENCY PLANNING

Section 6. G.S. 166A-6.1(b) reads as rewritten:

"(b) Every person, firm, corporation or municipality who is licensed to construct or who is operating a fixed nuclear facility for the production of electricity shall pay to the Department of Crime Control and Public Safety, for the use of the Division of Radiation Protection ~~Division~~ of the Department of Environment and Natural Resources, an annual fee of ~~eighteen thousand dollars ($18,000)~~ thirty-six thousand dollars ($36,000) for each fixed nuclear facility ~~which~~ that is located within this State or has a Plume Exposure Pathway Emergency Planning Zone of which any part is located within this State. This fee shall be applied to the costs of planning and implementing emergency response activities as are required by the Federal Emergency Management Agency for the operation of nuclear facilities. ~~Said~~ This fee is to be paid no later than July 31 of each year."

PART VII. EFFECTIVE DATES

Section 7.(a) Public Utility Regulatory Fee. -- Section 1 of this act becomes effective July 1, 2000.

Section 7.(b) North Carolina Electric Membership Corporation Regulatory Fee. -- Section 2 of this act becomes effective July 1, 2000.

Section 7.(c) Insurance Regulatory Charge. -- Section 3 of this act is effective when it becomes law.

Section 7.(d) Increase Court Costs. -- Section 4 of this act becomes effective July 15, 2000, and applies to all costs assessed or collected on and after that date.

Section 7.(e) Jail Fees for Local Governments. -- Section 5 of this act becomes effective July 1, 2000, and applies to sentences or portions of sentences being served on or after that date.

Section 7.(f) Increase Fee for Emergency Planning. -- Section 6 of this act becomes effective July 1, 2000.

Section 7.(g) Remainder. -- The remainder of this act is effective when it becomes law.

HOUSE BILL 1854:
2000 Fee Bill

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Rep. Miller
Date:	June 19, 2000	**Summary by:**	Cindy Avrette
Version:	Second Edition		Committee Counsel

SUMMARY: House Bill 1854 sets the following fee amounts:

- *It maintains the public utility regulatory fee at 0.09%.*
- *It sets the North Carolina Electric Membership Corporation regulatory fee at $200,000.*
- *It sets the insurance regulatory charge at 7%.*
- *It increases costs in criminal and civil proceedings in various amounts.*
- *It provides that a person who is ordered to pay jail fees pursuant to a probationary sentence must pay the same per diem rate the Department of Correction pays to local jails for maintaining a prisoner. This rate is set in the appropriations act each year. The reimbursement amount for fiscal year 1999-2000 is $18 a day.*
- *It increases the annual fee imposed for nuclear facilities from $18,000 to $36,000. The fee revenue is applied to the costs of planning and implementing emergency response activities.*

PART I. PUBLIC UTILITY REGULATORY FEE – Effective July 1, 2000

Part I of the bill maintains the public utility regulatory fee for fiscal year 2000-2001 at 0.09%. The rate must be set by statute each year. The fee rate has not increased since fiscal year 1997-98. The agency has requested a fee increase this year of 0.12% to help it stabilize the amount in the reserve from decreasing due to increases in salary and personnel, the financing of the Study Commission on the Future of Electric Service in North Carolina, Year 2000 computer compliance upgrades, and building facilities assessments. If an increase is not passed this year, it will be needed for fiscal year 2001-2002.

The utility regulatory fee was imposed in 1989. Its purpose is to defray the State's cost in regulating public utilities. The regulatory fee is imposed on all utilities that are subject to regulation by the North Carolina Utilities Commission. The fee is a percentage of the utility's North Carolina jurisdictional revenues. In general, jurisdictional revenue is revenue derived from providing utility service in North Carolina.

PART II. NC ELECTRIC MEMBERSHIP CORPORATION REGULATORY FEE – Effective July 1, 2000

Part II sets the public utility regulatory fee to be paid by The North Carolina Electric Membership Corporation for the 2000-2001 fiscal year at $200,000. This fee amount must be set by statute each year. The fee was first imposed last year. The amount of the fee remains the same.

Effective in 1999, the General Assembly authorized electric membership corporations to form subsidiary corporations that may provide energy services and products, telecommunications services and products, and water and wastewater collection and treatment. The subsidiaries must fully compensate the electric membership corporation for its use of the corporation's personnel, services, equipment, and property. The Utilities Commission is charged with regulating this aspect of the subsidiary's business. The purpose of this fee is to pay for the cost of this regulation

PART III. INSURANCE REGULATORY CHARGE – Effective when it becomes law

Part III maintains the insurance regulatory charge at its current 7% rate for the calendar year 2000. The charge is paid at the same times insurers pay their premium taxes. The charge was first imposed in 1991. Its purpose is to make the Department of Insurance receipt-supported and thereby eliminate General Fund support of the Department. Effective for the 2000 calendar year, the regulatory fee will be imposed not only on insurance companies that pay the gross premiums tax but also on service corporations, such as Blue Cross Blue Shield and Delta Dental Corporation, and health maintenance organizations. For insurance companies that pay the gross premiums tax, the fee is a percentage of the premiums tax owed the State. For HMOs and medical corporations, the fee will be levied on an imaginary amount of dollars the HMOs and medical corporations would owe if they paid the gross premiums tax at the 1.9% rate like other insurers. HMOs do not pay the gross premiums tax. Medical corporations pay the gross premiums tax at a rate of one-half of one percent (0.5%).

PART IV. INCREASE COURT COSTS – Effective July 15, 2000

Part IV increases criminal and civil court costs as indicated in the chart below. The revenues generated by these fees are credited to the General Fund.

Court Cost	Current Amount	Proposed Amount	Last Increased
Criminal actions – district court and magistrate	$61.00	$65.00	1997
Criminal actions – superior court	$68.00	$72.00	1997
Civil actions – magistrate	$28.00	$33.00	1991
Civil actions – district court	$40.00	$44.00	1991
Civil actions – superior court	$55.00	$59.00	1991
Special proceedings in superior court	$26.00	$30.00	1991
Administration of estates	$26.00	$30.00	1991
Administration of estates – minimum fee	$10.00	$15.00	1991

Court Cost	Current Amount	Proposed Amount	Last Increased
Administration of estates – annual and final accounts	$15.00	$20.00	1991
Administration of estates – probate will without qualification of a personal representative	$17.00	$20.00	1991
Foreclosures	$30.00	$40.00	1997

PART V. JAIL FEES FOR LOCAL GOVERNMENTS – Effective July 1, 2000

Part V increases the amount a person who is ordered to pay jail fees pursuant to a probationary sentence must pay the county or municipality from $5.00 a day to the amount the Department of Correction must pay to local jails for the cost of maintaining a prisoner who committed a misdemeanor for 30 to 90 days. The per diem rate the Department of Correction must reimburse local jails is set each year by the General Assembly in its appropriations acts. The per diem rate for fiscal year 1999-2000 is $18 a day. The increased fee amount becomes effective July 1, 2000, and applies to sentences or portions of sentences being served on or after that date.

PART VI. INCREASE FEE FOR EMERGENCY PLANNING – Effective July 1, 2000

Part VI increases the annual fee that a person who is licensed to construct or who is operating a fixed nuclear facility for the production of electricity must pay from $18,000 to $36,000. The fee is payable for each fixed nuclear facility that is located within the State or has Plume Exposure Pathway Emergency Planning Zone of which any part is located in this State. The fee is payable to the Department of Crime Control and Public Safety for the use of the Division of Radiation Protection of the Department of Environment and Natural Resources. The fee is applied to the costs of planning and implementing the emergency response activities required by the Federal Emergency Management Agency for the operation of nuclear facilities. The current fee generates one-half of the program's costs. The increased fee will generate enough revenue to fully fund the program. The fee must be paid by July 31 of each year.

PART I. PUBLIC UTILITY REGULATORY FEE

Purpose	Applies to	Effective	Current Rate	Proposed Rate
To defray the State's cost in regulating public utilities.	All utilities that are subject to regulation by the Utilities Commission.	July 1, 2000	.09%	.09%* **Rate must be set by statute each year.**

PART II. NC ELECTRIC MEMBERSHIP CORPORATION REGULATORY FEE

Purpose	Applies to	Effective	Current Rate	Proposed Rate
This fee pays for the cost of regulation of subsidiary corporations established by electric corporations. These subsidiary corporations provide energy services and products, telecommunications services and products, and water and wastewater collection and treatment.	All electric membership corporations that have formed subsidiaries.	July 1, 2000	$200,000	$200,000 **Rate must be set by statute each year.**

PART III. INSURANCE REGULATORY CHARGE

Purpose	Applies to	Effective	Current Rate	Proposed Rate
eimburses the General Fund for monies appropriated to the Department of Insurance.	Insurance companies paying gross premiums tax; and service corporations, e.g., BCBS and Delta Dental, HMO's (beginning for the 2000 calendar year)	When it becomes law.	7%	7%

PART IV. INCREASE COURT COSTS

Purpose: Increases criminal and civil court costs
Effective: July 15, 2000

Court Cost	Current Amount	Proposed Amount
Criminal actions – district court and magistrate	$61.00	$65.00
Criminal actions – superior court	$68.00	$72.00
Civil actions – magistrate	$28.00	$33.00
Civil actions – district court	$40.00	$44.00
Civil actions – superior court	$55.00	$59.00
Special proceedings in superior court	$26.00	$30.00
Administration of estates	$26.00	$30.00
Administration of estates – minimum fee	$10.00	$15.00

PART V. JAIL FEES FOR LOCAL GOVERNMENTS

Purpose	Applies to	Effective	Current Rate	Proposed Rate
Increases amt. a person ordered to pay jail fees pursuant to a probationary sentence must pay to the amt. Dept. of Corrections must pay local jails for cost of maintaining misdemeanants		July 1, 2000	$5.00/day	$18.00/day

PART VI. INCREASE FEE FOR EMERGENCY PLANNING

Purpose	Applies to	Effective	Current Rate	Proposed Rate
Fee increase will generate enough revenue to fully fund the cost of planning and implementing the emergency response activities required by FEMA for nuclear facilities.	Person licensed to construct or who are operating a fixed nuclear facility for the production of electricity.	July 1, 2000	$18,000 (funds ½ of the programs costs)	$36,000 (will fully fund the program's costs)

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 1854 (Amended House Finance Committee Substitute)

SHORT TITLE: 2000 Fee Bill

SPONSOR(S):

FISCAL IMPACT

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

($million)

	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05
REVENUES					
Utilities Special Fund	$8.75	(No increase over FY 1999-00)			
(Regulatory Fee Revenue = $8.55)					
(NC EMC Fee = $0.2)					
Insurance Regulatory Fund	$25.65	($3.95 million increase over 1999)			
General Fund					
Emergency Planning	$.07	$.07	$.07	$.07	$.07
Court of Justice Fees	6.11	6.35	6.35	6.35	6.35
TOTAL	$6.18	$6.42	$6.42	$6.42	$6.42

Local Governments
-Jail Fees estimate unavailable—upper bound is $5.04 million/year

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Utilities Commission, Department of Insurance, Administrative Office of the Courts, County Governments

EFFECTIVE DATE: Sections 1 (public utility regulatory fee), 2 (NC Electric Membership Corporation fee), and 6 (nuclear facility emergency planning fee) are effective July 1, 2000. Section 5 (jail fees for local governments) is effective July 1, 2000 and applies to sentences or portions of sentences being served on or after that date. Sections 4 (increase court costs) is effective on July 15, 2000. The remainder of the bill is effective when it becomes law.

BILL SUMMARY: Section 1 of the bill sets the utilities regulatory fee at 0.09% for FY 2000-01. Section 2 sets the FY 2000-01 EMC Regulatory Fee at $200,000. Section 3 sets the insurance regulatory charge effective for calendar year 2000 at 7.0%. Section 4 increases all categories of General Court of Justice Fees. Section 5 increases the jail fees paid by probationers from $5/ day

to the amount counties are reimbursed for misdemeanants held in local jails (currently $18/day). Section 6 increases the fee charged nuclear facilities from $18,000 to $36,000.

ASSUMPTIONS AND METHODOLOGY:

Public Utility Regulatory Fee

Section 1 of the bill sets the utilities regulatory fee at 0.09% of each public utility's North Carolina jurisdictional revenues earned during each quarter that begins on or after July 1, 1999. **(This is the same rate as fiscal year 1999-2000.)** The revenue generated from this fee supports the operations of the North Carolina Utilities Commission and Public Staff.

G.S. 62-302(b)(2) states that the percentage rate established by the General Assembly and assessed by the Commission "may not exceed the amount necessary to generate funds sufficient to defray the estimated cost of the operations of the Commission and Public Staff for the upcoming fiscal year, including a reasonable margin for a reserve fund." The Utilities Commission estimates that combined operations of the Commission and the Public Staff in FY 2000-2001 will require expenditures of not less than $11,498,329. Revenues generated by the proposed utilities regulatory fee are estimated to be $8,550,000. The $2.95 million difference between fee revenue and the proposed budget will be funded by other revenues generated by Commission fees and charges ($655,000) and by withdrawals from the Accumulated Fee Margin Reserve Account ($2.3 million). The balance in the reserve account as of June 30, 2000 is projected to be $5,352,736.

The Utilities Commission indicates that the status of the Accumulated Fee Margin Reserve Account is as follows:

Balance as of 6/30/2000	$ 5,352,736
Add: Estimated Collections and Interest for FY 2000-2001 using 0.09%	$ 9,215,000
Total Funds Available	$14,567,736
Less: Estimated FY 2000-2001 Expenditures Reimbursable from Fees	$(11,498,329)
Estimated Margin Reserve for Period Ending 6/30/2001	$ 3,069,407 *

** The Utilities Commission requested to increase the regulatory fee from .09% in FY 1999-00 to .12% for FY 2000-01 in order to stabilize the amount in the Reserve from further decrease due to anticipated and unanticipated expenses of the Commission. Anticipated costs include salary increases and additional personnel. Unanticipated expenses include the Legislative Study Commission on the Future of Electric Service in North Carolina, Y2K computer compliance upgrades, and building facilities assessment.*

North Carolina Electric Membership Corporation (EMC) Regulatory Fee:

G.S. 62-302(b1) states that the fee proposed by the Utilities Commission to regulate electric membership corporations "may not exceed the amount necessary to defray the estimated costs of the operations of the Commission and the Public Staff for the regulation of the electric membership corporations in the upcoming fiscal year".

The General Assembly set the FY 1999-2000 EMC Regulatory Fee at $200,000. Based upon the expenses incurred the first year this fee was implemented, the Utilities Commission believes that the $200,000 in section 2 of the bill is a reasonable amount to cover anticipated expenses in FY 2000-2001.

Insurance Regulatory Charge

Section 3 of the bill sets the insurance regulatory charge effective for calendar year 2000 at 7.0%. (This is the same as the rate for the previous year.) The charge is a percentage of a company's premiums tax liability for the taxable year for every insurance company subject to the premiums tax levied under G.S. 105-228.5. For companies that do not pay premiums tax, namely HMOs and Article 65 companies (Blue Cross Blue Shield HMO and Delta Dental), the charge is a percentage of the company's presumed premiums tax. The presumed premiums tax is what a company's premiums tax would be if they were liable for the tax.

G.S. 58-6-25(b) states that the percentage rate, set annually, cannot exceed the rate necessary to generate funds sufficient to defray the estimated cost of operating the Department of Insurance for the upcoming year including a reasonable margin for a reserve fund. The reserve fund should not exceed one-third of the estimated operating cost. The revenue collected from the charge is deposited into the Insurance Regulatory Fund invested with the State Treasurer and managed by the Office of State Budget and Management. Funds generated by the regulatory charge are used to reimburse the General Fund for the amount appropriated to the Department of Insurance.

The actual premium tax collections for 1999-2000 is estimated to be $289.5 million. The premiums tax collections for 2000-2001 is estimated to be $303.98 million. This includes a 5% growth increase over the 1999-2000 collections.

The HMOs and the Article 65 companies do not pay a premiums tax. However, effective January 1, 2000, these companies must pay a regulatory charge based on their calendar year 2000 premiums. Their surcharge will be based on their presumed premiums tax. The presumed premium tax for the HMOs and Article 65 companies is estimated to be $62.50 million.

With the premiums tax collections of $303.98 million and the presumed premiums tax of $62.5 million from the HMOs and Article 65 companies, the total base against which the insurance regulatory charge will be assessed is estimated to be $366.48 million. Applying the 7.0% regulatory fee to the $366.48 million bases would generate $25.65 million in regulatory fee revenue.

The Department estimates that the operating expenses will be $22.9 million for 2000-2001 and that the reserve will have a balance of $6.37 million at the beginning of 2000-2001. The total available from the reserve fund ($6.37 million) and the estimated collections of $25.65 million will be $32.02 million. The total available less the estimated operating expenditures of $22.9 million will leave a year-end reserve balance of $9.1 million. This reserve is above one-third of the estimated operating expenditures.

Based on the above, the regulatory surcharge rate of 7.0%, assessed against companies that pay a premiums tax as well as HMOs and Article 65 companies, is sufficient to defray the estimated cost of the operations of the Department including a reasonable reserve fund.

Increase Court Costs

Section 4 of the bill increases all the categories of fees classified as "General Court of Justice". Current fees and the proposed increase are detailed below:

CATEGORY	CURRENT COJ FEE	PROPOSED INCREASE	NEW COJ FEE	NEW TOTAL FEE
District Ct—Criminal	$61	$4	$65	$90
District Ct-Civil	$40	$4	$44	$65
Superior Ct—Criminal	$68	$4	$72	$115
Superior Ct-Civil	$55	$4	$59	$80
Magistrate—Civil	$28	$5	$33	$50
Special Proceedings— Nonforeclosures	$26	$4	$30	$45
Foreclosures	$30	$10	$40	$55
Estates (fixed portion of fee)	$26	$4	$30	$40
Minimum Charge for Other filings	$10	$ 5	$15	$25
Trust under Will	$15	$ 5	$20	$30
Probate	$17	$ 3	$20	$30

Court Costs include General Court of Justice Fees, Facilities Fees, Service Fees and a contribution to Law Enforcement Officer Retirement Benefits. Court Costs were last increased in 1998 when the facilities fee, a portion of court costs that is returned to counties or municipalities to defray the costs of providing court facilities, were increased $6. The last increases in General Court of Justice fees were a $15 increase in 1997 and a $5 increase in 1996 for Criminal Courts. Civil fees were last increased in 1992 when they were raised by $4.

Based on collections by categories in 1998-99, the Administrative Office of the Courts projects these fee increases will generate an additional $6,353,961 in Court of Justice Fee receipts. Total receipts in 1998-99 were $94,301,168 with 64% of these receipts from District-Criminal, 12.2% from Estates, 8.5% from Magistrates and 4.8% from District Court-Civil. The amount of increase by category is listed below:

Superior Court –Criminal	$ 69,616
Superior Court—Civil	$ 91,908
District—Criminal	$3,981,328
District—Civil	$ 450,432
Magistrates	$1,391,555
Estates	$ 223,456
Special Proceedings	$ 145,666

This estimate may be conservative because (1) foreclosures can not be separated out from other special proceedings so the estimate is based on $5 increase in this category rather than the actual $10 increase; and (2) collections on estates are lumped together so the estimate is based on the

$4 increase in the basic fee only. Because the fee increases will be effective July 15th, 2000, the first year yields are reduced by 3.8%.

Jail Fees for Local Governments

Section 5 of HB 1854 increases the fees charged to probationers held in local jails. Currently, the maximum fee for probationers or for other offenders held prior to trial is $5 per day. HB 1854 would instead tie the amount to the amount paid by the Department of Correction for 30-90 day misdemeanants held in local jails. This amount is currently $18 but subject to change in each year's budget. It was last changed in 1998.

These funds are collected by the AOC but returned to local governments (99.9% to counties) . In 1998-99, $1,939,224 was collected, suggesting billing for about 387,845 days of jail. At $18/day, this would increase to $6,981,206. Unfortunately, AOC can not determine what portion of these funds came from probationers. **If all the fees came from probationers (highly unlikely), the increase from $5 to $18 would generate an additional $5,041,982 for local governments. This is an upper bound—no better estimate is available at this time.**

Increase Fee for Emergency Planning

The fee for emergency planning is doubled from $18,000 to $36,000 per year in section 6 of the bill. The Division of Radiation Protection in the Department of Environment and Natural Resources uses the funds paid by the state's four nuclear facilities to provide off-site radiological emergency response to the facilities. The current fee generates $72,000 per year and pays for half of the program costs. The fee increase will boost revenues to $144,000 in FY 2000-01 and pay for 100% of program cost.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Marilyn Chism , Jennifer Willis, Elisa Wolper & Richard Bostic

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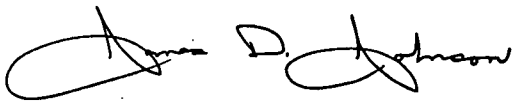


DATE: June 7, 2000

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 1340
Committee Substitute Favorable 6/23/99

Short Title: Respiratory Care Practice Act. (Public)

Sponsors:

Referred to:

April 26, 1999

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE RESPIRATORY CARE PRACTICE ACT.

The General Assembly of North Carolina enacts:

Section 1. Chapter 90 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 37.

"Respiratory Care Practice Act.

"**§ 90-646. Short title.**

This Article may be cited as the 'Respiratory Care Practice Act'.

"**§ 90-647. Purpose.**

The General Assembly finds that the practice of respiratory care in the State of North Carolina affects the public health, safety, and welfare and that the mandatory licensure of persons who engage in respiratory care is necessary to ensure a minimum standard of competency. It is the purpose and intent of this Article to protect the public from the unqualified practice of respiratory care and from unprofessional conduct by persons licensed pursuant to this Article.

"**§ 90-648. Definitions.**

The following definitions apply in this Article:

(1) Board. -- The North Carolina Respiratory Care Board.

(2) Diagnostic testing. -- Cardiopulmonary procedures and tests performed on the written order of a physician licensed under Article 1 of this Chapter that provide information to the physician to formulate a diagnosis of the patient's condition. The tests and

procedures may include pulmonary function testing, electrocardiograph testing, cardiac stress testing, and sleep related testing.

(3) Direct supervision. -- The authority and responsibility to direct the performance of activities as established by policies and procedures for safe and appropriate completion of services.

(4) Individual. -- A human being.

(5) License. -- A certificate issued by the Board recognizing the person named therein as having met the requirements to practice respiratory care as defined in this Article.

(6) Licensee. -- A person who has been issued a license under this Article.

(7) Medical director. -- An appointed physician who is licensed under Article 1 of this Chapter and a member of the entity's medical staff, and who is granted the authority and responsibility for assuring and establishing policies and procedures and that the provision of such is provided to the quality, safety, and appropriateness standards as recognized within the defined scope of practice for the entity.

(8) Person. -- An individual, corporation, partnership, association, unit of government, or other legal entity.

(9) Physician. -- A doctor of medicine licensed by the State of North Carolina in accordance with Article 1 of this Chapter.

(10) Practice of respiratory care. -- As defined by the written order of a physician licensed under Article 1 of this Chapter, the observing and monitoring of signs and symptoms, general behavior, and general physical response to respiratory care treatment and diagnostic testing, including the determination of whether such signs, symptoms, reactions, behavior, or general response exhibit abnormal characteristics, and the performance of diagnostic testing and therapeutic application of:

a. Medical gases, humidity, and aerosols including the maintenance of associated apparatus, except for the purpose of anesthesia.

b. Pharmacologic agents related to respiratory care procedures, including those agents necessary to perform hemodynamic monitoring.

c. Mechanical or physiological ventilatory support.

d. Cardiopulmonary resuscitation and maintenance of natural airways, the insertion and maintenance of artificial airways under the direct supervision of a recognized medical director in a health care environment which identifies these services within the scope of practice by the facility's governing board.

e. Hyperbaric oxygen therapy.
f. Nontraditional cardiopulmonary support techniques in appropriately identified environments and under the training and practice guidelines established by the appropriate professional associations.

The term also means the interpretation and implementation of a physician's written or verbal order pertaining to the acts described in this subdivision.

(11) Respiratory care. -- As defined by the written order of a physician licensed under Article 1 of Chapter 90, the treatment, management, diagnostic testing, and care of patients with deficiencies and abnormalities associated with the cardiopulmonary system.

(12) Respiratory care practitioner. -- A person who has been licensed by the Board to engage in the practice of respiratory care.

(13) Support activities. -- Procedures that do not require formal academic training, including the delivery, setup, and maintenance of apparatus. The term also includes giving instructions on the use, fitting, and application of apparatus, but does not include therapeutic evaluation and assessment.

"§ 90-649. North Carolina Respiratory Care Board; creation.

(a) The North Carolina Respiratory Care Board is created. The Board shall consist of nine members as follows:

(1) Two members shall be respiratory care practitioners.
(2) Three members shall be physicians licensed to practice in North Carolina, and whose primary practice is Pulmonology, Anesthesiology, Critical Care Medicine, or whose specialty is Cardiothoracic Disorders.
(3) One member shall represent the NCHA.
(4) One member shall represent the North Carolina Association of Medical Equipment Services.
(5) Two members shall represent the public at large.

(b) Members of the Board shall be citizens of the United States and residents of this State. The respiratory care practitioner members shall have practiced respiratory care for at least five years and shall be licensed under this Article. The public members shall not be: (i) a respiratory care practitioner, (ii) an agent or employee of a person engaged in the profession of respiratory care, (iii) a health care professional licensed under this Chapter or a person enrolled in a program to become a licensed health care professional, (iv) an agent or employee of a health care institution, a health care insurer, or a health care professional school, (v) a member of an allied health profession or a person enrolled in a program to become a member of an allied health profession, or (vi) a spouse of an individual who may not serve as a public member of the Board.

"§ 90-650. Appointments and removal of Board members; terms and compensation.

(a) The members of the Board shall be appointed as follows:

(1) The Governor shall appoint the public members described in G.S. 90-649(a)(5).

(2) The General Assembly, upon the recommendation of the Speaker of the House of Representatives, shall appoint one of the respiratory care practitioner members described in G.S. 90-649(a)(1) and one of the physician members described in G.S. 90-649(a)(2) in accordance with G.S. 120-121.

(3) The General Assembly, upon the recommendation of the President Pro Tempore of the Senate, shall appoint one of the respiratory care practitioner members described in G.S. 90-649(a)(1) and one of the physician members described in G.S. 90-649(a)(2) in accordance with G.S. 120-121.

(4) The North Carolina Medical Society shall appoint one of the physician members described in G.S. 90-649(a)(2).

(5) The North Carolina Hospital Association shall appoint the member described in G.S. 90-649(a)(3).

(6) The North Carolina Association of Medical Equipment Services shall appoint the member described in G.S. 90-649(a)(4).

(b) Members of the Board shall take office on the first day of July immediately following the expired term of that office and shall serve for a term of three years and until their successors are appointed and qualified. No member shall serve on the Board for more than two consecutive terms.

(c) The Governor may remove members of the Board, after notice and an opportunity for hearing, for incompetence, neglect of duty, unprofessional conduct, conviction of any felony, failure to meet the qualifications of this Article, or committing any act prohibited by this Article.

(d) Any vacancy shall be filled by the authority originally filling that position, except that any vacancy in appointments by the General Assembly shall be filled in accordance with G.S. 120-122. Appointees to fill vacancies shall serve the remainder of the unexpired term and until their successors have been duly appointed and qualified.

(e) Members of the Board shall receive no compensation for their services but shall be entitled to travel, per diem, and other expenses authorized by G.S. 93B-5.

(f) Individual members shall be immune from civil liability arising from activities performed within the scope of their official duties.

"**§ 90-651. Election of officers; meetings of the Board.**

(a) The Board shall elect a chair and a vice-chair who shall hold office according to rules adopted pursuant to this Article, except that all officers shall be elected annually by the Board for one-year terms and shall serve until their successors are elected and qualified.

(b) The Board shall hold at least two regular meetings each year as provided by rules adopted pursuant to this Article. The Board may hold additional meetings

upon the call of the chair or any two Board members. A majority of the Board membership shall constitute a quorum.

"**§ 90-652. Powers and duties of the Board.**

The Board shall have the power and duty to:

(1) Determine the qualifications and fitness of applicants for licensure, renewal of licensure, and reciprocal licensure.

(2) Establish and adopt rules necessary to conduct its business, carry out its duties, and administer this Article.

(3) Adopt and publish a code of ethics.

(4) Deny, issue, suspend, revoke, and renew licenses in accordance with this Article.

(5) Conduct investigations, subpoena individuals and records, and do all other things necessary and proper to discipline persons licensed under this Article and to enforce this Article.

(6) Employ professional, clerical, investigative, or special personnel necessary to carry out the provisions of this Article and purchase or rent office space, equipment, and supplies.

(7) Adopt a seal by which it shall authenticate its proceedings, official records, and licenses.

(8) Conduct administrative hearings in accordance with Article 3A of Chapter 150B of the General Statutes.

(9) Establish certain reasonable fees as authorized by this Article for applications for examination, licensure, provisional licensure, renewal of licensure, and other services provided by the Board.

(10) Submit an annual report to the North Carolina Medical Board, the North Carolina Hospital Association, the North Carolina Society of Respiratory Care, the Governor, and the General Assembly of all the Board's official actions during the preceding year, together with any recommendations and findings regarding improvements of the practice of respiratory care.

(11) Publish and make available upon request the licensure standards prescribed under this Article and all rules adopted pursuant to this Article.

(12) Request and receive the assistance of State educational institutions or other State agencies.

(13) Establish and approve continuing education requirements for persons seeking licensure under this Article.

"**§ 90-653. Licensure requirements; examination.**

(a) Each applicant for licensure under this Article shall meet the following requirements:

(1) Submit a completed application as required by the Board.

(2) Submit any fees required by the Board.

(3) Submit to the Board written evidence, verified by oath, that the applicant has successfully completed the minimal requirements of a

respiratory care education program as approved by the Commission for Accreditation of Allied Health Educational Programs.

(4) Submit to the Board written evidence, verified by oath, that the applicant has successfully completed the minimal requirements for Basic Cardiac Life Support as recognized by the American Heart Association.

(5) Pass the entry-level examination given by the National Board for Respiratory Care, Inc.

(b) At least three times each year, the Board shall cause the examination required in subdivision (5) of subsection (a) of this section to be given to applicants at a time and place to be announced by the Board. Any applicant who fails to pass the first examination may take additional examinations in accordance with rules adopted pursuant to this Article.

"**§ 90-654. Exemption from certain requirements.**

(a) The Board may issue a license to an applicant who, as of October 1, 1999, has passed the entry-level examination given by the National Board for Respiratory Care, Inc. An applicant applying for licensure under this subsection shall submit his or her application to the Board before October 1, 2001.

(b) The Board may grant a temporary license to an applicant who, as of October 1, 1999, does not meet the qualifications of G.S. 90-653 but, through written evidence verified by oath, demonstrates that he or she is performing the duties of a respiratory care practitioner within the State. The temporary license is valid until October 1, 2000, within which time the applicant shall be required to complete the requirements of G.S. 90-653(a)(5). A license granted under this subsection shall contain an endorsement indicating that the license is temporary and shall state the date the license was granted and the date it expires.

"**§ 90-655. Licensure by reciprocity.**

The Board may grant, upon application and the payment of proper fees, a license to a person who, at the time of application holds a valid license, certificate, or registration as a respiratory care practitioner issued by another state or a political territory or jurisdiction acceptable to the Board if, in the Board's determination, the requirements for that license, certificate, or registration are substantially the same as the requirements for licensure under this Article.

"**§ 90-656. Provisional license.**

The Board may grant a provisional license for a period not exceeding 12 months to any applicant who has successfully completed the education requirements under G.S. 90-653(a)(3) and has made application to take the examination required under G.S. 90-653(a)(5). A provisional license allows the individual to practice respiratory care under the supervision of a respiratory care practitioner and in accordance with rules adopted pursuant to this Article. A license granted under this section shall contain an endorsement indicating that the license is provisional and stating the terms and conditions of its use by the licensee and shall state the date the license was granted and the date it expires.

"**§ 90-657. Notification of applicant following evaluation of application.**

After evaluation of the application and of any other evidence required from the applicant by the Board, the Board shall notify each applicant that the application and evidence submitted are satisfactory and accepted or unsatisfactory and rejected. If the application and evidence is rejected, the notice shall state the reasons for the rejection.

"**§ 90-658. License as property of the Board; display requirement; renewal; inactive status.**

(a) A license issued by the Board is the property of the Board and shall be surrendered by the licensee to the Board on demand.

(b) The licensee shall display the license in the manner prescribed by the Board.

(c) The licensee shall inform the Board of any change of the licensee's address.

(d) The license shall be renewed by the Board annually upon the payment of a renewal fee if, at the time of application for renewal, the applicant is not in violation of this Article and has fulfilled the current requirements regarding continuing education as established by rules adopted pursuant to this Article.

(e) The Board shall notify a licensee at least 30 days in advance of the expiration of his or her license. Each licensee is responsible for renewing his or her license before the expiration date. Licenses that are not renewed automatically lapse.

(f) The Board may provide for the late renewal of an automatically lapsed license upon the payment of a late fee. No late fee renewal may be granted more than five years after a license expires.

(g) In accordance with rules adopted pursuant to this Article, a licensee may request that his or her license be declared inactive and may thereafter apply for active status.

"**§ 90-659. Suspension, revocation, and refusal to renew a license.**

(a) The Board shall take the necessary actions to deny or refuse to renew a license, suspend or revoke a license, or to impose probationary conditions on a licensee or applicant if the licensee or applicant:

(1) Has engaged in any of the following conduct:
   a. Employed fraud, deceit, or misrepresentation in obtaining or attempting to obtain a license or the renewal of a license.
   b. Committed an act of malpractice, gross negligence, or incompetence in the practice of respiratory care.
   c. Practiced respiratory care without a license.
   d. Engaged in health care practices that are determined to be hazardous to public health, safety, or welfare.

(2) Was convicted of or entered a plea of guilty or nolo contendere to any crime involving moral turpitude.

(3) Was adjudicated insane or incompetent, until proof of recovery from the condition can be established.

(4) Engaged in any act or practice that violates any of the provisions of this Article or any rule adopted pursuant to this Article, or aided, abetted, or assisted any person in such a violation.

(b) Denial, refusal to renew, suspension, or revocation of a license, or imposition of probationary conditions upon a licensee may be ordered by the Board after a hearing held in accordance with Article 3A of Chapter 150B of the General Statutes and rules adopted pursuant to this Article. An application may be made to the Board for reinstatement of a revoked license if the revocation has been in effect for at least one year.

"§ 90-660. Expenses; fees.

(a) All salaries, compensation, and expenses incurred or allowed for carrying out the purposes of this Article shall be paid by the Board exclusively out of the fees received by the Board as authorized by this Article or funds received from other sources. In no case shall any salary, expense, or other obligations of the Board be charged against the State.

(b) All monies received by the Board pursuant to this Article shall be deposited in an account for the Board and shall be used for the administration and implementation of this Article. The Board shall establish fees in amounts to cover the cost of services rendered for the following purposes:

(1) For an initial application, a fee not to exceed twenty-five dollars ($25.00).

(2) For examination or reexamination, a fee not to exceed one hundred fifty dollars ($150.00).

(3) For issuance of any license, a fee not to exceed one hundred dollars ($100.00).

(4) For the renewal of any license, a fee not to exceed fifty dollars ($50.00).

(5) For the late renewal of any license, an additional late fee not to exceed fifty dollars ($50.00).

(6) For a license with a provisional or temporary endorsement, a fee not to exceed thirty-five dollars ($35.00).

(7) For copies of rules adopted pursuant to this Article and licensure standards, charges not exceeding the actual cost of printing and mailing.

"§ 90-661. Requirement of license.

After October 1, 2000, it shall be unlawful for any person who is not currently licensed under this Article to:

(1) Engage in the practice of respiratory care.

(2) Use the title 'respiratory care practitioner'.

(3) Use the letters 'RCP', 'RTT', 'RT', or any facsimile or combination in any words, letters, abbreviations, or insignia.

(4) Imply orally or in writing or indicate in any way that the person is a respiratory care practitioner or is otherwise licensed under this Article.

(5) Employ or solicit for employment unlicensed persons to practice respiratory care.

"§ 90-662. Violation a misdemeanor.

Any person who violates any provision of this Article shall be guilty of a Class 1 misdemeanor.

"**§ 90-663. Injunctions.**

The Board may apply to the superior court for an order enjoining violations of this Article, and upon a showing by the Board that any person has violated or is about to violate this Article, the court may grant an injunction or restraining order or take other appropriate action.

"**§ 90-664. Persons and practices not affected.**

The requirements of this Article shall not apply to:

(1) Any person registered, certified, credentialed, or licensed to engage in another profession or occupation or any person working under the supervision of a person registered, certified, credentialed, or licensed to engage in another profession or occupation in this State who is performing work incidental to the practice of that profession or occupation and does not represent himself or herself as a respiratory care practitioner.

(2) A student or trainee working under the direct supervision of a respiratory care practitioner while fulfilling an experience requirement or pursuing a course of study to meet requirements for licensure in accordance with rules adopted pursuant to this Article.

(3) A respiratory care practitioner serving in the armed forces or the Public Health Service of the United States or employed by the Veterans Administration when performing duties associated with that service or employment.

(4) A person aiding in the practice of respiratory care, in accordance with rules adopted pursuant to this Article, if the person works under the direct supervision of a respiratory care practitioner or on the order of or under the direct supervision of a physician licensed under Article 1 of this Chapter and performs only support activities as defined in G.S. 90-648(12).

"**§ 90-665. Third-party reimbursement.**

Nothing in this Article shall be construed to require direct third-party reimbursements to persons licensed under this Article."

Section 2. G.S. 120-123 is amended by adding a new subdivision to read:

"(70) The North Carolina Respiratory Care Board as created by Article 37 of Chapter 90 of the General Statutes."

Section 3. The initial appointments to the North Carolina Respiratory Care Board, created in G.S. 90-649, as enacted in Section 1 of this act, shall be appointed no later than October 1, 1999. Notwithstanding the provisions of G.S. 90-649(b), as enacted in Section 1 of this act, the initial members of the North Carolina Respiratory Care Board who are appointed pursuant to G.S. 90-649(a)(1) shall be licensed under Article 37 of Chapter 90 of the General Statutes, as enacted in Section 1 of this act, no later than June 30, 2000, and, until October 1, 2004, must have

passed the entry-level examination administered by the National Board for Respiratory Care, Inc. Notwithstanding the provisions of G.S. 90-650(b), as enacted in Section 1 of this act, of the initial appointments to the North Carolina Respiratory Care Board, one of the members appointed by the General Assembly, upon the recommendation of the Speaker of the House of Representatives, and one of the members appointed by the General Assembly, upon the recommendation of the President Pro Tempore of the Senate, shall be appointed for three-year terms; one of the members appointed by the General Assembly, upon the recommendation of the Speaker of the House of Representatives, and one of the members appointed by the General Assembly, upon the recommendation of the President Pro Tempore of the Senate, shall be appointed for two-year terms; the public member appointed by the Governor shall be appointed for a one-year term; the physician member appointed by the North Carolina Medical Society shall be appointed for a one-year term; and the members appointed by the North Carolina Hospital Association and the North Carolina Association of Medical Equipment Services shall be appointed for one-year terms.

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

HOUSE BILL 1340:
Respiratory Care Practice Act

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Representative Tolson
Date:	June 19, 2000	**Summary by:**	Mary Shuping
Version:	3rd Edition		Research Assistant

SUMMARY: ***House Bill 1340 establishes the Respiratory Care Practice Act for the purpose of licensing respiratory care practitioners. The bill sets up the Respiratory Care Board, establishes licensure requirements, provides for the denial, suspension, and revocation of licenses, establishes fees, provides that a violation is a Class 1 misdemeanor, and exempts certain persons and practices from licensure.***

House Bill 1340 was given a favorable assessment report by the Legislative Committee on New Licensing Boards, and was later amended in House Committee on Health and Senate Committee on Health. The bill has also been to House Finance.

CURRENT LAW: Under current law, respiratory care practitioners are not regulated. The North Carolina Society for Respiratory Care (NCSRC) promotes a voluntary certification and registration of respiratory care practitioners by the National Board of Respiratory Care. The *Respiratory Care Questionnaire for the Legislative Committee on New Licensing Boards,* May 1999, indicated there were approximately 2,800 respiratory care practitioners in North Carolina.

BILL ANALYSIS: Following is a summary of the Respiratory Care Practice Act.

G.S. 90-648. Definitions. ***(page 1, line 17 – page 3, line 22)*** Sets forth the definitions applicable in the Article, including the "practice of respiratory care" *(p. 2, line 25)* which are procedures that may be performed by a licensed respiratory care practitioner, and "support activities" *(p. 3, line 18)* which are procedures that do not require licensure.

G.S. 90-649 – G.S. 90-652. Respiratory Care Board. ***(page 3, line 23 – page 5, line 41)*** These sections establish the North Carolina Respiratory Care Board.

Membership. *(page 3, lines 23 – page 4, line 2)* The Board will consist of ten members, as follows:

- 2 respiratory care practitioners – 1 appointed by the President Pro Tempore of the Senate, and 1 appointed by the Speaker of the House.
- 4 physicians whose primary practice is Pulmonology, Anesthesiology, Critical Care Medicine, or Cardiothoracic Disorders – 1 appointed by the President Pro Tempore of the Senate, 1 appointed by the Speaker of the House, 1 appointed by the NC Medical Society, and 1 appointed by the Old North State Medical Society.
- 1 member of the Hospital Association, appointed by the Association.
- 1 member of the North Carolina Association of Medical Equipment Services, appointed by the Association.
- 2 members of the public who are not health care professionals, appointed by the Governor.

This section also provides for terms, removals, vacancies, meetings, and elections of officers, and that members are immune from civil liability arising from activities performed within the scope of their official duties. Members only receive travel, per diem, and other approved expenses.

Powers and Duties. *(page 5, lines 7 – 41)* This section authorizes the Board to:

- Determine the qualifications and fitness of applicants for licensure.
- Deny, suspend, revoke, and renew licenses.
- Conduct investigations, subpoena individuals and records in conducting disciplinary proceedings.
- Establish fees, in accordance with G.S. 90-660.
- Submit an annual report to the NC Medical Board, the NC Hospital Association, the NC Society of Respiratory Care, the Governor, and the General Assembly.
- Establish and approve continuing education requirements.

G.S. 90-653 to G.S. 90-658. Licensure. ***(page 5, line 42 – page 7, line 29)*** These sections set forth licensure requirements, certain exemptions, and reciprocity and provisional licensure requirements.

Licensure Requirements. *(page 5, line 42 – page 6, line 18)*. Applicants for licensure as respiratory care practitioners must:

- Submit a completed application.
- Pay the required fees.
- Submit written evidence, verified by oath, that the applicant has successfully completed the minimal requirements for
  1. A respiratory care education program approved by the Commission for Accreditation of Allied Health Educational Programs; and
  2. Basic Cardiac Life Support as recognized by the American Heart Association.
- Pass the entry-level exam given by the National Board for Respiratory Care, Inc.

Exemption from Certain Requirements. *(page 6, lines 19 – 31)* The Board may issue a license to an applicant who, as of October 1, 2000, has passed the entry-level exam. The applicant must submit the application for licensure before October 1, 2002.

The board may grant a temporary license to an applicant who, as of October 1, 2000, does not meet the qualifications for licensure, but has demonstrated through written evidence, verified by oath, that the applicant is performing the duties of a respiratory care practitioner. The temporary license is valid until October 1, 2002, and the applicant must pass the entry-level exam by that date.

Reciprocity. *(page 6, lines 32 – 38)* This section provides that a person licensed in another state may obtain licensure in North Carolina provided that the requirements for licensure in the other state are substantially the same as in North Carolina.

Provisional License. *(page 6, lines 39 – page 7, line 4)* An applicant may receive a provisional license for up to 12 months if the applicant has successfully completed the respiratory care education program approved by the Commission for Accreditation of Allied Health Educational Programs, and has applied to

take the entry-level exam given by the National Board for Respiratory Care. A provisional license allows the person to practice only under the supervision of a licensed respiratory care practitioner.

G.S. 90-659. Disciplinary Procedures. ***(page 7, line 30 – page 8, line 11)*** The Board may deny, refuse to renew, revoke, or suspend a license, or impose probationary conditions if the person:

- Engaged in fraud, deceit, misrepresentation in obtaining a license.
- Committed an act of malpractice, gross negligence, or incompetence.
- Practiced without a license.
- Engaged in health care practices that are determined to be hazardous to the public.
- Was convicted or pleaded no contest to a crime involving moral turpitude.
- Was adjudicated insane or incompetent, until proof of recovery can be established.
- Violated any of the provisions of the Respiratory Care Practice Act.

G.S. 90-660. Fees. ***(page 8, lines 12 – 36)*** This section establishes the following maximum fees.

TYPE OF FEE	MAXIMUM FEE AMOUNT
Initial application	$25.00
Examination or Reexamination	$150.00
Issuance of License	$100.00
Renewal of License (annually)	$50.00
Late Renewal (additional fee)	$50.00
Provisional or Temporary License	$35.00
Copies of Board Rules, etc	Actual Cost

G.S. 90-661. License Required. ***(page 8, lines 37 – page 9, line 5)*** After October 1, 2002, it will be unlawful for anyone to practice respiratory care, use the title of "respiratory care practitioner", or employ unlicensed persons to practice respiratory care.

G.S. 90-662. Violation. ***(page 9, lines 6 - 8)*** Violation of the Respiratory Care Practice Act is a Class 1 misdemeanor.

G.S. 90-664. Exemptions from Licensure. ***(page 9, lines 14 – 33)*** Licensure requirements do *not* apply to the following:

- Any person who is registered, certified, credentialed, or licensed to engage in another profession or occupation, or any person working under the supervision of that person who is performing work incidental to the practice of respiratory care and does not represent himself or herself as a respiratory care practitioner.
- A student or trainee working under the direct supervision of a respiratory care practitioner while fulfilling requirements of the course of study.

- A person serving in the armed forces or the Public Health Service of the United States or employed by the Veterans Administration when performing duties associated with that service or employment.

- A person aiding in the practice of respiratory care, working under the supervision of a respiratory care practitioner, or physician, and who performs only support activities (procedures that do not require formal academic training, including the delivery, setup and maintenance of equipment.)

G.S. 90-665. Third Party Reimbursement. ***(page 9, lines 34 – 36)*** This section provides that nothing in the Respiratory Care Practice Act requires respiratory care practitioners to bill directly for third-party reimbursement.

Section 2 ***(page 9, lines 37 – 39)*** provides that no member of the General Assembly may serve on the Board.

Section 3 ***(page 9, line 40 – page 10, line 17)*** sets up the initial terms of appointment to the Board.

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

Linda Attarian, Counsel, House Health Committee, contributed to this summary; and Martha Walston, Committee Counsel to Senate Finance, updated the sumary.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1340 (Second Edition)

SHORT TITLE: Respiratory Care Practice Act

SPONSOR(S):

FISCAL IMPACT

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

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
Special Fund	$307,625	$125,750	$128,250	$130,750	$133,250
EXPENDITURES					
Special Fund	To be determined by Board				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Respiratory Care Board

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

BILL SUMMARY:
This bill establishes the Respiratory Care Practice Act. It creates an eight member NC Respiratory Care Board with powers and duties that include determining qualifications and fitness of applicants for licensure, renewal of licensure, reciprocal licensure, and suspension, revocation, and refusal to renew license. Provides that after Oct. 1, 2000, it is unlawful for person to engage in practice of respiratory care without license. The bill sets the following maximum fees: (1) initial application, $25; (2) examination or reexamination, $150; (3) issuance of license, $100; (4) renewal of license, $50; (5) late renewal of license, $50; and (6) license with provisional or temporary endorsement, $35. Violation of any provision of Article is a Class 1 misdemeanor.

ASSUMPTIONS AND METHODOLOGY:
The North Carolina Society for Respiratory Care identified approximately 2,100 respiratory care practitioners in North Carolina in 1995. This number has grown to 2,300 in 1999 based on 1) the state's Community College System graduates approximately 110 respiratory care students each year, and 2) it is estimated that 60 respiratory care professionals retire or leave the profession each year. This net gain of 50 respiratory care professionals is expected to continue into the near future.

The chart below estimates the number of applications, licenses, license endorsements, and license renewals handled by the new North Carolina Respiratory Care Board each fiscal year.

	FY 99-00	FY 00-01	FY 01-02	FY 02-03	FY 03-04
Applications	2,300	110	110	110	110
Initial Licenses	2,300	110	110	110	110
Temporary Endorsements	575				
License Renewal		2,240	2,290	2,340	2,390

This fiscal note assumes that the Board will be appointed during FY 1999-00 and that Board staff will be hired in time to receive applications and issue licenses to 2300 current respiratory care practitioners in the state in FY 1999-00. Approximately 75% of the current professionals have passed an exam given by the National Board for Respiratory Care (NBRC) and will be issued a license. The remaining 25% of existing professionals will receive a license with a temporary endorsement until they complete the NBRC exam. Since the NBRC exam is given in March, July and November, it is assumed that this group will take the exam in July 2000 to meet the October 2000 deadline. Future year license renewal assumes an attrition rate of 60 professionals each year and increase of 110 new applicants from the Community Colleges.

The next chart shows the anticipated revenue from the proposed fees. Respiratory care practitioners will pay a $25 application fee and a $100 license fee in their first year in the program. The annual license renewal fee is $50. A respiratory care practitioner that has not passed the NBRC exam must pay $25 application fee, a $100 license fee, and a $35 temporary endorsement fee. The fee for the NBRC exam is $150 and goes directly to the national board and is not kept by the state board. This exam is already given to all those graduating from Community College respiratory care programs.

	FY 99-00	FY 00-01	FY 01-02	FY 02-03	FY 03-04
Applications ($25)	$57,500	$2,750	$2,750	$2,750	$2,750
Initial Licenses ($100)	$230,000	$11,000	$11,000	$11,000	$11,000
Temporary Endorsement ($35)	$20,125				
License Renewal ($50)		$112,000	$114,500	$117,000	$119,500
Total Fee Revenue	$307,625	$125,750	$128,250	$130,750	$133,250

TECHNICAL CONSIDERATIONS:
GS 90-660(b) (2) does not identify the $150 exam fee as the cost of the exam given by the National Board for Respiratory Care (NBRC).

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic

APPROVED BY: Tom Covington

DATE: Tuesday, July 06, 1999

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1193

Short Title: Wilkes Fire District Boundaries. (Local)

Sponsors: Senator Garwood.

Referred to: Finance.

May 10, 2000

A BILL TO BE ENTITLED

AN ACT TO RESOLVE A BOUNDARY OVERLAP BETWEEN THE RONDA AND ROARING RIVER VOLUNTEER FIRE TAX DISTRICTS IN WILKES COUNTY AND TO VALIDATE CERTAIN ACTIONS.

The General Assembly of North Carolina enacts:

Section 1(a). The newly agreed boundary line for the Roaring River Fire Tax District in the area from the intersection of Poplar Springs Road and North Ridge Road south to Old U.S. Highway 421 shall be as follows:

BEGINNING at the intersection of S.R. 1924 (Poplar Springs Road) and S.R. 2015 (North Ridge Road), thence in a southeasterly direction with S.R. 2015 to the intersection of S.R. 2015 and N.C. Highway 268, including all property with primary access from S.R. 2015 between this and the preceding point; thence in a southerly direction in a straight line to a point on S.R. 2321 (Old 60) .2 miles west of Gray's Creek Bridge; thence in a southerly direction in a straight line to the intersection of S.R. 2318 (Mathis Mill Road), S.R. 2319 (South Plum Ridge Road), and S.R. 2320 (North Plum Ridge Road); thence in a southerly direction with S.R. 2319 to the intersection of S.R. 2319 and U.S. Highway 421, including all property adjacent to or accessed from S.R. 2319 between this and the preceding point; thence in an easterly direction following the centerline of U.S. Highway 421 to the intersection of U.S. 421 and S.R. 2346 (Old U.S. Highway 421); thence in a westerly direction with S.R. 2346 to a point 1.1 miles west of said intersection, including all property on both sides of S.R. 2346 adjacent to or accessed from S.R. 2346. The foregoing description for said boundary line shall not be affected or altered in any way by the widening, relocation, or four-laning of U.S. Highway 421.

Section 1(b). The newly agreed boundary line for the Ronda Fire Tax District in the area from the intersection of Poplar Springs Road and North Ridge Road south to Old U.S. Highway 421 shall be as follows:
BEGINNING at the intersection of S.R. 1924 (Poplar Springs Road) and S.R. 2015 (North Ridge Road), thence in a southeasterly direction with S.R. 2015 to the intersection of S.R. 2015 and N.C. Highway 268, excluding all property with primary access from S.R. 2015 between this and the preceding point; thence in a southerly direction in a straight line to a point on S.R. 2321 (Old 60) .2 miles west of Gray's Creek Bridge; thence in a southerly direction in a straight line to the intersection of S.R. 2318 (Mathis Mill Road), S.R. 2319 (South Plum Ridge Road), and S.R. 2320 (North Plum Ridge Road); thence in a southerly direction with S.R. 2319 to the intersection of S.R. 2319 and U.S. Highway 421, excluding all property adjacent to or accessed from S.R. 2319 between this and the preceding point; thence in an easterly direction following the centerline of U.S. Highway 421 to the intersection of U.S. 421 and S.R. 2346 (Old U.S. Highway 421); thence in a westerly direction with S.R. 2346 to a point 1.1 miles west of said intersection, excluding all property on both sides of S.R. 2346 adjacent to or accessed from S.R. 2346. The foregoing description for said boundary line shall not be affected or altered in any way by the widening, relocation, or four-laning of U.S. Highway 421.

Section 2. Subject to the new boundary line as provided in this act, the 1985 extensions of the Ronda and Roaring River Fire Tax districts in Wilkes County are valid and lawful. All collections of fire tax revenues by Wilkes County since 1985 in the areas subject to the extensions are valid and lawful, without regard to which fire tax district (and corresponding fire tax rate) those revenues were collected from, and without regard to which volunteer fire department those revenues were allocated to.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 1193
Proposed Committee Substitute S1193-PCSX6793-LA-001

Short Title: Wilkes and Glendale Springs Fire District. (Local)

Sponsors:

Referred to:

May 10, 2000

A BILL TO BE ENTITLED

AN ACT TO RESOLVE A BOUNDARY OVERLAP BETWEEN THE RONDA AND ROARING RIVER VOLUNTEER FIRE TAX DISTRICTS IN WILKES COUNTY AND TO VALIDATE CERTAIN ACTIONS, AND TO EXPAND THE GLENDALE SPRINGS FIRE PROTECTION DISTRICT IN ASHE COUNTY.

The General Assembly of North Carolina enacts:

Section 1.(a) The newly agreed boundary line for the Roaring River Fire Tax District in the area from the intersection of Poplar Springs Road and North Ridge Road south to Old U.S. Highway 421 shall be as follows:

BEGINNING at the intersection of S.R. 1924 (Poplar Springs Road) and S.R. 2015 (North Ridge Road), thence in a southeasterly direction with S.R. 2015 to the intersection of S.R. 2015 and N.C. Highway 268, including all property with primary access from S.R. 2015 between this and the preceding point; thence in a southerly direction in a straight line to a point on S.R. 2321 (Old 60) .2 miles west of Gray's Creek Bridge; thence in a southerly direction in a straight line to the intersection of S.R. 2318 (Mathis Mill Road), S.R. 2319 (South Plum Ridge Road), and S.R. 2320 (North Plum Ridge Road); thence in a southerly direction with S.R. 2319 to the intersection of S.R. 2319 and U.S. Highway 421, including all property adjacent to or accessed from S.R. 2319 between this and the preceding point; thence in an easterly direction following the centerline of U.S. Highway 421 to the intersection of U.S. 421 and S.R. 2346 (Old U.S. Highway 421); thence in a westerly direction with S.R. 2346 to a point 1.1 miles west of said intersection, including all property on both sides of

S.R. 2346 adjacent to or accessed from S.R. 2346. The foregoing description for said boundary line shall not be affected or altered in any way by the widening, relocation, or four-laning of U.S. Highway 421.

Section 1.(b) The newly agreed boundary line for the Ronda Fire Tax District in the area from the intersection of Poplar Springs Road and North Ridge Road south to Old U.S. Highway 421 shall be as follows:

BEGINNING at the intersection of S.R. 1924 (Poplar Springs Road) and S.R. 2015 (North Ridge Road), thence in a southeasterly direction with S.R. 2015 to the intersection of S.R. 2015 and N.C. Highway 268, excluding all property with primary access from S.R. 2015 between this and the preceding point; thence in a southerly direction in a straight line to a point on S.R. 2321 (Old 60) .2 miles west of Gray's Creek Bridge; thence in a southerly direction in a straight line to the intersection of S.R. 2318 (Mathis Mill Road), S.R. 2319 (South Plum Ridge Road), and S.R. 2320 (North Plum Ridge Road); thence in a southerly direction with S.R. 2319 to the intersection of S.R. 2319 and U.S. Highway 421, excluding all property adjacent to or accessed from S.R. 2319 between this and the preceding point; thence in an easterly direction following the centerline of U.S. Highway 421 to the intersection of U.S. 421 and S.R. 2346 (Old U.S. Highway 421); thence in a westerly direction with S.R. 2346 to a point 1.1 miles west of said intersection, excluding all property on both sides of S.R. 2346 adjacent to or accessed from S.R. 2346. The foregoing description for said boundary line shall not be affected or altered in any way by the widening, relocation, or four-laning of U.S. Highway 421.

Section 2. Subject to the new boundary line as provided in this act, the 1985 extensions of the Ronda and Roaring River Fire Tax districts in Wilkes County are valid and lawful. All collections of fire tax revenues by Wilkes County since 1985 in the areas subject to the extensions are valid and lawful, without regard to which fire tax district (and corresponding fire tax rate) those revenues were collected from, and without regard to which volunteer fire department those revenues were allocated to.

Section 3. The boundaries of the Glendale Springs Fire Protection District established under Article 3A of Chapter 69 of the General Statutes are as follows:

Beginning at the intersection of NC 88 and Low Gap Road running west to where NC 88 intersects with Ebenezer Road, labeled as point 2 on the exhibit. From there the line goes south - southeast along Ebenezer and taking an overland route to the east of and encompassing all of Roe Hunt Road to a point on the Blue Ridge Parkway labeled as point 3 on the exhibit. From there the line runs southwest - south along the county boundary line to a point east of the Blue Ridge Parkway labeled as point 4 on the exhibit. From there the line runs in a westerly direction along the county boundary line to a point on the Blue Ridge Parkway just west of its intersection with Park Vista Road, labeled as point 5 on the exhibit. From there the boundary line travels northwesterly for a short distance, encompassing both sides of Park Vista Road, before turning northward in an overland line to the intersection of Canoe Gap and Idlewild Road, labeled as point 6 on the exhibit. The boundary line

continues northward to the intersection of Canoe Gap Road and Hartsog Ford Road, labeled as point 7 on the exhibit. From there the line runs slightly northeast to a point where the river bridge crosses NC 163, labeled as point 8 on the exhibit. From there the boundary line takes a meandering path along the east side of the New River to a point where the river runs beside Boggs Road, labeled as point 9 on the exhibit. From there the boundary line runs slightly northeast to a point where Cox Road runs beside the New River, labeled as point 10 on the exhibit. From there, the line runs along the New River to a point where NC 16 intersects with NC 88, labeled as point 11 on the exhibit. From there, the line runs along NC 88, encompassing the southern portion of the road, until it intersects with Low Gap, labeled as point 1.

Section 4. Section 3 becomes effective June 30, 2000. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

SENATE
COMMITTEE SUBSTITUTE
JUN 20 2000
ADOPTED

S

SENATE BILL 1472
Proposed Committee Substitute S1472-PCS4788-LCX

Short Title: Conduit Agency Financing. (Public)

Sponsors:

Referred to:

May 25, 2000

A BILL TO BE ENTITLED

AN ACT TO PROVIDE REVENUE BOND FINANCING OF CERTAIN PRIVATE PROJECTS THAT PERFORM A PUBLIC PURPOSE AND TO REORGANIZE THE INDUSTRIAL FACILITIES AND POLLUTION CONTROL FINANCING AUTHORITY.

The General Assembly of North Carolina enacts:

Section 1. Chapter 115E of the General Statutes is recodified as Article 2 of Chapter 159D of the General Statutes.

Section 2. Chapter 159D of the General Statutes, as amended by this act, reads as rewritten:

"Chapter 159D.

"The North Carolina ~~Industrial and Pollution Control~~ Capital Facilities ~~Pool Program~~ Financing Act.

"ARTICLE 1.

"Industrial and Pollution Control Facilities Financing.

"§ 159D-1. Short title.

This ~~chapter~~ Article may be referred to as "The North Carolina Industrial and Pollution Control Facilities ~~Pool Program~~ Financing Act."

"§ 159D-2. Legislative findings and purposes.

(a) The General Assembly finds and determines that there exists in the State a critical condition of unemployment and a scarcity of employment opportunities; that the economic insecurity which results from such unemployment and scarcity of employment opportunities constitutes a serious menace to the safety, morals and

general welfare of the entire State; that such unemployment and scarcity of employment opportunities have caused many workers and their families, including young adults upon whom future economic prosperity is dependent, to migrate elsewhere to find employment and establish homes; that such emigration has resulted in a reduced rate of growth in the tax base of the counties and other local governmental units of the State which impairs the financial ability of such counties and other local governmental units to support education and other local governmental services; that such unemployment results in obligations to grant public assistance and to pay unemployment compensation; that the aforesaid conditions can best be remedied by the attraction, stimulation, expansion and rehabilitation and revitalization of industrial and manufacturing facilities for industry in the State; and that there is a need to stimulate a larger flow of private investment funds into industrial building programs ~~into [in]~~ in the State.

(b) The General Assembly further finds and determines that the development and expansion of industry within the State, which are essential to the economic growth of the State, and to the full employment and prosperity of its people, are accompanied by the increased production and discharge of gaseous, liquid, and solid pollution and wastes which threaten and endanger the health, welfare and safety of the inhabitants of the State by polluting the air, land and waters of the State; that in order to reduce, control, and prevent such environmental pollution, it is imperative that action be taken at various levels of government to require the provision of devices, equipment and facilities for the collection, reduction, treatment, and disposal of such pollution and wastes; that the assistance provided in this ~~Chapter,~~ Article, especially with respect to financing, is therefore in the public interest and serves a public purpose of the State in promoting the health, welfare and safety of the inhabitants of the State not only physically by collecting, reducing, treating and preventing environmental pollution but also economically by securing and retaining private industry thereby maintaining a higher level of employment and economic activity and stability.

~~(c) The General Assembly further finds that the federal government and its agencies have established, and may in the future establish, programs to promote gainful employment opportunity and the prevention and control of the pollution of air, land and waters of the United States through assistance in the financing of industrial and manufacturing facilities and pollution control facilities for industry and that the economical implementation of such programs in the State of North Carolina may require the financing of such facilities through a uniform statewide program.~~

~~(c1) The General Assembly further finds that certain provisions of federal tax law, economies of scale and credit market conditions make it advantageous for counties in North Carolina to be authorized to create a single authority with the legal capacity to combine separate financings into one or more pools that may be offered for sale on more favorable terms than any single financing standing alone.~~

~~(d) It is therefore declared to be the policy of the State to promote the right to gainful employment opportunity, private industry, the prevention and control of the pollution of the air, land and waters of the State, and the safety, morals and health of the people of the State, and thereby promote general welfare of the people of the~~

~~State, by authorizing counties to create an authority which shall be a political subdivision and body corporate and politic of the State. This body is to be formed (i) to aid in the financing of industrial and manufacturing facilities for the purpose of alleviating unemployment or raising below average manufacturing wages by financing industrial and manufacturing facilities which provide job opportunities or pay better wages than those prevalent in the area and (ii) to aid in financing pollution control facilities for industry in connection with manufacturing and industrial facilities, in each case in connection with pool programs to effect such purposes; provided, however, that it is the policy of the State to finance only those facilities where there is a direct or indirect favorable impact on employment or an improvement in the degree of prevention or control of pollution commensurate with the size and cost of the facilities.~~

"§ 159D-3. Definitions.

The following terms, whenever used or referred to in this ~~Chapter,~~ Article, shall have the following respective meanings, unless a different meaning clearly appears from the context:

(1) ~~"Agency" shall include any agency, bureau, commission, department or instrumentality.~~
'Agency' means the North Carolina Capital Facilities Finance Agency, an agency of the State created pursuant to G.S. 159D-38 of the North Carolina Capital Facilities Finance Act, codified as Article 2 of this Chapter.

(2) 'Air pollution control facility' shall mean any structure, equipment or other facility for, including any increment in the cost of any structure, equipment or facility attributable to, the purpose of treating, neutralizing or reducing gaseous industrial waste and other air pollutants, including recovery, treatment, neutralizing or stabilizing plants and equipment and their appurtenances, which shall have been certified by the agency having jurisdiction to be in furtherance of the purpose of abating or controlling atmospheric pollutants or contaminants.

(3) 'Authority' shall mean The North Carolina Industrial and Pollution Control Facilities Financing Authority, a political subdivision and body politic of the State, ~~which may be~~ created pursuant to the provisions of this ~~Chapter and which shall have the powers and authority specified in and by this Chapter.~~ Article.

(4) 'Bonds' shall mean revenue bonds ~~of an authority~~ issued under the provisions of this ~~Chapter.~~ Article.

(5) 'Cost' as applied to any project shall embrace all capital costs thereof, including the cost of construction, the cost of acquisition of all property, including rights in land and other property, both real and personal and improved and unimproved, the cost of demolishing, removing or relocating any buildings or structures on lands so acquired, including the cost of acquiring any lands to

which such buildings or structures may be moved or relocated, the cost of all machinery and equipment, installation, start-up expenses, financing charges, interest prior to, during and for a period not exceeding one year after completion of construction, the cost of engineering and architectural surveys, plans and specifications, the cost of consultants' and legal services, other expenses necessary or incident to determining the feasibility or practicability of such project, administrative and other expenses necessary or incident to the acquisition or construction of such project and the financing of the acquisition and construction thereof, including a reserve for debt services.

~~(6) 'Pool program" shall mean a program of the authority whereby separate financings for obligors are combined into one or more pools for purposes of sale. The credit of such financings or the pool may be enhanced by participation in a federal program, by a guaranty such as a surety bond, insurance or a letter of credit, by additional collateral or by any other device, fund or guaranty by any person other than the authority, agency, under which payment of bonds or the obligations of an obligor under a financing agreement shall be guaranteed, in whole or in part, by such person or persons.~~

(7) 'Financing agreement' shall mean a written instrument establishing the rights and responsibilities of the ~~authority~~ agency and the operator with respect to a project financed by the issue of bonds.

(8) 'Governing body' shall mean the board, commission, council or other body in which the general legislative powers of any county or other political subdivision are vested.

(9) 'Obligor' shall mean collectively the operator and any others (including, but not by way of limitation, any other person, collateral device or fund that shall be obligated to pay) who or which shall be obligated under a financing agreement or guaranty agreement or other contract or agreement to make payments to, or for the benefit of, the holders of bonds of the ~~authority.~~ agency. Any requirement of an obligor may be satisfied by any one or more persons who are defined collectively by this ~~Chapter~~ Article as the obligor.

(10) 'Operator' shall mean the person entitled to the use or occupancy of a project.

(11) 'Political subdivision' shall mean any county, city, town, other unit of local government or any other governmental corporation, ~~agency,~~ entity, authority or instrumentality of the State now or hereafter existing.

(12) 'Pollution and pollutants' shall mean any noxious or deleterious substances in any air or waters of or adjacent to the State of North

Carolina or affecting the physical, chemical or biological properties of any air or waters of or adjacent to the State of North Carolina in a manner and to an extent which renders or is likely to render such air or waters harmful or inimical to the public health, safety or welfare, or to animal, bird or aquatic life, or to the use of such air or waters for domestic, industrial or agricultural purposes or recreation.

(13) 'Project' shall mean any land, equipment or any one or more buildings or other structures, whether or not on the same site or sites, and any rehabilitation, improvement, renovation or enlargement of, or any addition to, any building or structure for use as or in connection with (i) any industrial project for industry which project may be any industrial or manufacturing factory, mill, assembly plant or fabricating plant, or freight terminal, or industrial research, development or laboratory facility or industrial processing facility for industrial or manufactured products, or (ii) any pollution control project for industry which project may be any air pollution control facility, water pollution control facility, or solid waste disposal facility in connection with any factory, mill, plant, terminal or facility described in clause (i) of this subdivision, or (iii) any combination of projects mentioned in clauses (i) and (ii) of this subdivision. Any project may include all appurtenances and incidental facilities such as land, headquarters or office facilities, warehouses, distribution centers, access roads, sidewalks, utilities, railway sidings, trucking and similar facilities, parking facilities, landing strips and other facilities for aircraft, waterways, docks, wharves and other improvements necessary or convenient for the construction, maintenance and operation of any building or structure, or addition thereto.

(14) 'Revenues' shall mean, with respect to any project, the rents, fees, charges, payments, proceeds and other income or profit derived therefrom or from the financing agreement or security document in connection therewith.

(15) 'Security document' shall mean a written instrument or instruments establishing the rights and responsibilities of the ~~authority~~ agency and the holders of bonds issued to finance a project, and may provide for, or be in the form of an agreement with, a trustee for the benefit of such bondholders. A security document may contain an assignment, pledge, mortgage or other encumbrance of all or part of the ~~authority's~~ agency's interest in, or right to receive revenues with respect to, a project and any other property provided by the operator or other obligor under a financing agreement and may bear any appropriate title. A

financing agreement and a security document may be combined as one instrument.

(16) 'Solid waste' shall mean solid waste materials resulting from any industrial or manufacturing activities or from any pollution control facility.

(17) 'Solid waste disposal facility' shall mean a facility for the purpose of treating, burning, compacting, composting, storing or disposing of solid waste.

(18) 'Water pollution control facility' shall mean any structure, equipment or other facility for, including any increment in the cost of any structure, equipment or facility attributable to, the purpose of treating, neutralizing or reducing liquid industrial waste and other water pollution, including collecting, treating, neutralizing, stabilizing, cooling, segregating, holding, recycling, or disposing of liquid industrial waste and other water pollution, including necessary collector, interceptor, and outfall lines and pumping stations, which ~~shall have~~ has been certified by the ~~agency~~ entity exercising jurisdiction to be in furtherance of the purpose of abating or controlling water pollution.

~~"§ 159D-4. Creation of the authority.~~

~~(a) The governing bodies of two or more counties are hereby authorized to create by resolution a political subdivision and body corporate and politic of the State known as "The North Carolina Industrial Facilities and Pollution Control Financing Authority", in order to effectuate in the most economical manner the acquisition, construction and financing of projects through pool programs.~~

~~If each governing body shall determine that it is in the best interest of the county to cause to be created and to become a member of the authority, each governing body shall adopt a resolution so finding and setting forth the names of the counties which are proposed to be initial members of the authority. The governing body of the county shall thereupon by ordinance or resolution appoint one commissioner of the authority.~~

~~Any two or more commissioners so named may file with the Secretary of State an application signed by them setting forth (i) the names of all the proposed member counties; (ii) the name and official residence of each of the commissioners so far as known to them; (iii) a certified copy of the appointment evidencing their right to office; (iv) a statement that each governing body of each respective county appointing a commissioner has made the aforesaid determination; and (v) the desire that an authority be organized as a political subdivision and a body corporate and politic under this Chapter.~~

~~The application shall be subscribed and sworn to by such commissioners before an officer or officers authorized by the laws of the State to administer and certify oaths.~~

~~The Secretary of State shall examine the application and, if he finds that the name proposed for the authority is not identical with that of any other corporation of this State or of any agency or instrumentality thereof, or so nearly similar as to lead to~~

~~confusion and uncertainty, he shall receive and file it and shall record it in an appropriate book of record in his office.~~

~~When the application has been made, filed and recorded as herein provided, the authority shall constitute a political subdivision and a body corporate and politic under the name proposed in the application. The Secretary of State shall make and issue to the commissioners executing the application a certificate of incorporation pursuant to this Chapter under the seal of the State, and shall record the same with the application. The certificate shall set forth the names of the member counties.~~

~~In any suit, action or proceeding involving the validity or enforcement of, or relating to, any contract of the authority, the authority, in the absence of establishing fraud in the premises, shall be conclusively deemed to have been established in accordance with the provisions of this Chapter upon proof of the issuance of the aforesaid certificate by the Secretary of State. A copy of such certificate, duly certified by the Secretary of State, shall be admissible in evidence in any such suit, action or proceeding, and shall be conclusive proof of the filing and contents thereof.~~

~~Notice of the issuance of such certificate shall be given to all of the proposed member counties by the Secretary of State. If a commissioner of any such county has not signed the application to the Secretary of State and such county does not notify the Secretary of State of the appointment of a commissioner within 40 days after receipt of such notice, such county shall be deemed to have elected not to be a member of the authority. As soon as practicable after the expiration of such 40-day period, the Secretary of State shall issue a new certificate of incorporation, if necessary, setting forth the names of those counties which have elected to become members of the authority. The failure of any proposed member to become a member shall not affect the validity of the corporate existence of the authority.~~

~~(b) After the creation of the authority, any county may become a member thereof upon application to the authority after adoption of a resolution or ordinance by the governing body of the county setting forth the determination and finding prescribed in paragraph (a) of this G.S. 159D-4, and authorizing said county to participate. Any county may withdraw from membership in the authority, provided, however, that all contractual rights acquired and obligations incurred while a county was a member shall remain in full force and effect.~~

~~(c) The authority shall consist of a board of commissioners appointed by the respective governing bodies of the counties which are members of the authority. Each commissioner shall have one vote. Each commissioner shall serve at the pleasure of the governing body by which he was appointed. Each appointed commissioner before entering upon his duties shall take and subscribe to an oath before some person authorized by law to administer oaths to execute the duties of his office faithfully and impartially, and a record of such oath shall be filed with the governing body of the appointing municipality and spread upon its minutes.~~

~~(d) The board of commissioners of the authority shall annually elect from its membership a chairman and a vice-chairman and another person or persons, who may but need not be commissioners, as treasurer, secretary and, if desired, assistant secretary. The position of secretary and treasurer or assistant secretary and treasurer~~

~~may be held by the same person. The secretary of the authority shall keep a record of the proceedings of the authority and shall be the custodian of all books, documents and papers filed with the authority, the minute book or journal of the authority and its official seal. Either the secretary or the assistant secretary of the authority may cause copies to be made of all minutes and other records and documents of the authority and may give certificates under the official seal of the authority to the effect that such copies are true copies, and all persons dealing with the authority may rely upon such certificates.~~

~~(e) A majority of the commissioners of the authority then in office shall constitute a quorum. Except as provided in subsection (f) of this G.S. 159D-4, the affirmative vote of a majority of all the commissioners of the authority shall be necessary for any action of the board. A vacancy in the board of commissioners of the authority shall not impair the right of a quorum to exercise all the rights and perform all the duties of the authority. Any action taken by the authority under the provisions of this Chapter may be authorized by resolution at any regular or special meeting, and each resolution shall take effect immediately and need not be published or posted. No bonds shall be issued under the provisions of this Chapter unless the issuance thereof shall have been approved by the governing body of the county in which the project with respect to which the bonds were issued is located.~~

~~(f) If at any time there shall be more than seven counties which are members of the authority, the board of commissioners of the authority may create an executive committee of the board of commissioners. The board may provide for the composition of the executive committee so as to afford, in its judgment, fair representation of the member counties. Any power of the authority under the provisions of this Chapter may be exercised by the executive committee of the authority between meetings of the authority, except that the executive committee may not overrule, reverse or disregard any action of the board of commissioners of the authority. The membership of the executive committee, terms of office of members thereof and the method of filling vacancies therein shall be fixed by the rules or bylaws of the board of commissioners.~~

~~(g) No commissioner of an authority shall receive any compensation for the performance of his duties under this Chapter; provided, however, that each commissioner shall be reimbursed for his necessary expenses incurred while engaged in the performance of duties but only from moneys provided by obligors.~~

~~(h) Within 30 days of the date of creation of the authority, the authority shall advise the Department of Commerce and the Local Government Commission that an authority has been formed. The authority shall also furnish such Department and such Commission with (i) a list of its commissioners and its officers and (ii) a description of any projects that are under consideration by the authority. The authority shall, from time to time, notify the Department of Commerce and the Local Government Commission of changes in the commissioners and officers, of counties which have become members of the authority and of new projects under consideration by the authority.~~

"§ 159D-4.1. Jurisdiction of the agency.

All actions taken by counties, local officials, the Secretary of State, the State Treasurer, and other interested parties to create and organize The North Carolina Industrial Facilities and Pollution Control Financing Authority are ratified and confirmed. All duties, powers, jurisdiction, and responsibilities vested by statute or by contract in the authority are transferred to and vested in the North Carolina Capital Facilities Finance Agency, subject to the provisions of this Article. Upon this transfer, the agency is responsible for all duties and obligations of the authority entered into or incurred, by contract or otherwise, before the transfer. Particularly, the agency is responsible for all matters relating to any outstanding bonds of the authority to the same extent that the authority was responsible for them before the date of transfer. The agency for all purposes assumes the role and is the legal successor of the authority. Upon this transfer, the authority is dissolved.

"§ 159D-5. General powers.

The ~~authority~~ agency shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this ~~Chapter,~~ Article, ~~including, but without limiting the generality of the foregoing, the powers:~~ including all of the following:

(1) To adopt bylaws for the regulation of its affairs and the conduct of its business and to prescribe rules, regulations and policies in connection with the performance of its functions and duties;

(2) To adopt an official seal and alter the same at pleasure;

(3) To maintain an office at such place or places as it may determine;

(4) To sue and be sued in its own name, plead and be impleaded;

(5) To receive, administer and comply with the conditions and requirements respecting any gift, grant or donation of any property or money;

(6) To make and execute financing agreements, security documents and other contracts and instruments necessary or convenient in the exercise of the powers and functions of the ~~authority~~ agency under this ~~Chapter;~~ Article;

(7) To acquire by purchase, lease, gift or otherwise, but not by eminent domain, or to obtain options for the acquisition of any property, real or personal, improved or unimproved, and interests in land less than the fee thereof, for the construction, operation or maintenance of any project;

(8) To sell, lease, exchange, transfer or otherwise dispose of, or to grant options for any such purposes with respect to, any real or personal property or interest therein;

(9) To pledge or assign revenues of the ~~authority;~~ agency;

(10) To construct, acquire, own, repair, maintain, extend, improve, rehabilitate, renovate, furnish and equip one or more projects and to pay all or any part of the costs thereof from the proceeds of bonds of the ~~authority~~ agency or from any contribution, gift or

donation or other funds made available to the ~~authority~~ agency for such purpose;

(11) To fix, charge and collect revenues with respect to any project;

(12) To employ consulting engineers, architects, attorneys, real estate counselors, appraisers and such other consultants and employees as may be required in the judgment of the ~~authority~~ agency and to fix and pay their compensation from funds available to the ~~authority~~ agency therefor and to select and retain subject to approval of the Local Government Commission the financial consultants, underwriters and bond attorneys to be associated with the issuance of any bonds and to pay for services rendered by underwriters, financial consultants or bond attorneys out of the proceeds of any such issue with regard to which the services were performed; and

(13) To do all acts and things necessary, convenient or desirable to carry out the purposes, and to exercise the powers ~~herein granted.~~ granted in this Article.

"**§ 159D-6. Bonds.**

(a) The ~~authority~~ agency is ~~hereby~~ authorized to provide for the issuance, at one time or from time to time, of bonds of the ~~authority~~ agency for the purpose of paying all or any part of the cost of any project. The principal of, the interest on and any premium payable under the redemption of such bonds shall be payable solely from the funds herein authorized for such payment. The bonds of each issue shall bear interest as may be determined by the Local Government Commission of North Carolina with the approval of the ~~authority~~ agency and the obligor irrespective of the limitations of G.S. 24-1.1, as amended, and successor provisions. The bonds of each issue shall be dated, shall mature at such time or times not exceeding 30 years from the date of their issuance, and may be made redeemable before maturity at such price or prices and under such terms and conditions, as may be fixed by the ~~authority~~ agency prior to the issuance of the bonds. The ~~authority~~ agency shall determine the form and the manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest. In case any officer whose signature or a facsimile of whose signature ~~shall appear~~ appears on any bonds or coupons ~~shall cease~~ ceases to be ~~such~~ that officer before the delivery of ~~such~~ the bonds, ~~such~~ the signature or ~~such~~ the facsimile shall nevertheless be valid and sufficient for all purposes the same as if ~~he~~ the officer had remained in office until such delivery. The ~~authority~~ agency may also provide for the authentication of the bonds by a trustee or fiscal agent. ~~The bonds may be issued in coupon or in fully registered form, or both, as the authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds.~~

(b) The proceeds of the bonds of each issue shall be used solely for the payment of the cost of the project or projects, or a portion thereof, for which ~~such~~ the bonds ~~shall have been~~ were issued, and shall be disbursed in such manner and under such restrictions, if any, as the ~~authority~~ agency may provide in the financing agreement and the security document. If the proceeds of the bonds of any issue, by reason of increased construction costs or error in estimates or otherwise, ~~shall be~~ are less than such cost, additional bonds may in like manner be issued to provide the amount of such deficiency.

(c) The proceeds of bonds issued pursuant to this Article shall not be used to refinance the cost of a project. For the purposes of this section, a cost of a project is considered refinanced if both of the following conditions are met:

(1) The cost is initially paid from sources other than bond proceeds, and the original expenditure is to be reimbursed from bond proceeds.

(2) The original expenditure was paid more than 60 days before the agency took some action indicating its intent that the expenditure would be financed or reimbursed from bond proceeds.

(d) Notwithstanding subsection (c) of this section, preliminary expenditures that are incurred prior to the commencement of the acquisition, construction, or rehabilitation of a project, such as architectural costs, engineering costs, surveying costs, soil testing costs, bond issuance costs, and other similar costs, may be reimbursed from bond proceeds even if these costs are incurred or paid more than 60 days prior to the agency's action. This exception that allows preliminary expenditures to be reimbursed from bond proceeds, whether or not they are incurred or paid within 60 days of the agency's action, does not include costs that are incurred incident to the commencement of the construction of a project, such as expenditures for land acquisition and site preparation. In any event, an expenditure originally paid before the agency took some action indicating its intent that the expenditures would be financed or reimbursed from bond proceeds may be reimbursed from bond proceeds only if the agency finds that reimbursing those costs from bond proceeds will promote the purposes of this Article.

~~The authority may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds have been executed and are available for delivery. The authority may also provide for the replacement of any bonds which shall become mutilated or shall be destroyed or lost.~~

(e) Bonds may be issued under the provisions of this ~~Chapter~~ Article without obtaining, except as otherwise expressly provided in this ~~Chapter,~~ Article, the consent of the ~~State or of any political subdivision or of any agency of either thereof,~~ State or of any political subdivision and without any other proceedings or the happening of any conditions or things other than those proceedings, conditions or things ~~which are~~ specifically required by this ~~Chapter~~ Article and the provisions of the financing agreement and security document authorizing the issuance of such bonds and securing the same.

"§ 159D-7. Approval of ~~project.~~ project by Secretary of Commerce.

(a) Approval Required. -- No bonds may be issued by the ~~authority~~ agency pursuant to this Article unless the project for which ~~the~~ their issuance ~~thereof~~ is proposed is first approved by the Secretary of Commerce. The ~~authority~~ agency shall file an application for approval of its proposed project with the Secretary of Commerce, and shall notify the Local Government Commission of such filing.

(b) Findings. -- The Secretary shall not approve any proposed project unless ~~he shall make~~ the Secretary makes all of the following, applicable findings:

(1) In the case of a proposed industrial project,

a. That the operator of the proposed project pays, or has agreed to pay thereafter, an average weekly manufacturing wage that (i) ~~which~~ is above the average weekly manufacturing wage paid in the county in which the project is to be located or (ii) ~~which~~ is not less than ten percent (10%) above the average weekly manufacturing wage paid in the State; and

b. That the proposed project will not have a materially adverse effect on the ~~environment;~~ environment.

(2) In the case of a proposed pollution control project, that such project will have a materially favorable impact on the environment or will prevent or diminish materially the impact of pollution which would otherwise ~~occur; and~~ occur.

(2a) In the case of a hazardous waste facility or low-level radioactive waste facility ~~which~~ that is used as a reduction, recovery or recycling facility, that such project will further the waste management goals of North Carolina and will not have an adverse effect upon public health or a significant adverse effect on the ~~environment; and~~ environment.

(3) In any case (whether the proposed project is an industrial or a pollution control project),

a. That the jobs to be generated or saved, directly or indirectly, by the proposed project will be large enough in number to have a measurable impact on the area immediately surrounding the proposed project and will be commensurate with the size and cost of the proposed project,

b. That the proposed operator of the proposed project has demonstrated or can demonstrate the capability to operate such project, and

c. That the financing of such project by the ~~authority~~ agency will not cause or result in the abandonment of an existing industrial or manufacturing facility of the proposed operator or an affiliate elsewhere within the State unless the facility is to be abandoned because of obsolescence, lack of available labor in the area, or site limitations.

(c) Initial Operator. -- ~~In no case shall the Secretary of Commerce~~ If the initial proposed operator of a project is not expected to be the operator for the term of the bonds proposed to be issued, the Secretary may make the findings required pursuant to subdivisions (b)(1)a. and (3)b. of this section only with respect to the initial operator. The initial operator shall be identified in the application for approval of the proposed project.

(d) Public Hearing. -- The Secretary of Commerce shall not approve any proposed project pursuant to this section unless the governing body of the county in which the project is located has first conducted a public hearing and, at or after the public hearing, approved in principle the issuance of bonds under this Article for the purpose of paying all or part of the cost of the proposed project. Notice of the public hearing shall be published at least once in at least one newspaper of general circulation in the county not less than 14 days before the public hearing. The notice shall describe generally the bonds proposed to be issued and the proposed project, including its general location, and any other information the governing body considers appropriate or the Secretary of Commerce prescribes for the purpose of providing the Secretary with the views of the community. The notice shall also state that following the public hearing the agency intends to file an application for approval of the proposed project with the Secretary of Commerce.

(e) Certificate of Department of Environment and Natural Resources. -- The Secretary of Commerce shall not make the findings required by subdivisions (b)(1)b and (2) of this section unless ~~he shall have~~ the Secretary has first received a certification from the Department of Environment and Natural Resources that, in the case of a proposed industrial project, the proposed project will not have a materially adverse effect on the environment and that, in the case of a proposed pollution control project, the proposed project will have a materially favorable impact on the environment or will prevent or diminish materially the impact of pollution which would otherwise occur. ~~In no case shall the~~ The Secretary ~~of Commerce~~ shall not make the findings required by subdivision (b)(2a) of this section unless ~~he shall have~~ the Secretary has first received a certification from the Department of Environment and Natural Resources that the proposed project is environmentally sound, will not have an adverse effect on public health and will further the waste management goals of North Carolina. ~~In any case where the Secretary shall make~~ The Secretary of Commerce shall deliver a copy of the application to the Department of Environment and Natural Resources. The Department of Environment and Natural Resources shall provide each certification to the Secretary of Commerce within seven days after the applicant satisfactorily demonstrates to it that all permits, including environmental permits, necessary for the construction of the proposed project have been obtained, unless the agency consents to a longer period of time.

(f) Waiver of Wage Requirement. -- If the Secretary of Commerce has made all of the required findings respecting a proposed industrial project, except that prescribed in subdivision (b)(1)a of this section, the Secretary may, in ~~his~~ the Secretary's discretion, approve the proposed project if ~~he shall have~~ the Secretary has received (i) a resolution of the governing body of the county in which the proposed project is

to be located requesting that the proposed project be approved notwithstanding that the operator will not pay an average weekly manufacturing wage above the average weekly manufacturing wage in the county and (ii) a letter from an appropriate State official, selected by the Secretary, to the effect that unemployment in the county is especially severe.

(g) Rules. -- To facilitate ~~his~~ the Secretary's review of each proposed project, the Secretary may require the ~~authority~~ agency to obtain and submit such data and information about such project as the Secretary may prescribe. ~~In addition, the Secretary may, in his discretion, request the authority to hold a public hearing on the proposed project for the purpose of providing the Secretary directly with the views of the community to be affected.~~ The Secretary may also prescribe such forms and such rules ~~and regulations~~ as ~~he shall deem~~ the Secretary considers reasonably necessary to implement the provisions of this section.

(h) Certificate of Approval. -- If the Secretary approves the proposed project, ~~he~~ the Secretary shall prepare a certificate of approval evidencing such approval and setting forth ~~his~~ the findings and shall cause ~~said~~ the certificate of approval to be published in a newspaper of general circulation within the county in which the proposed project is to be located. Any such approval shall be reviewable as provided in Article 4 of Chapter 150B of the General Statutes ~~of North Carolina~~ only by an action filed, within 30 days after notice of such findings and approval shall have been so published, in the Superior Court of Wake County. ~~Such~~ The superior court is hereby vested with jurisdiction to hear such action, but if no such action is filed within the 30 days herein prescribed, the validity of such approval shall be conclusively presumed, and no court shall have authority to inquire into such approval. Copies of the certificate of approval of the proposed project will be given to the ~~authority,~~ agency, the governing body of the county in which the proposed project is to be located and the secretary of the Local Government Commission.

~~Such~~ The certificate of approval shall become effective immediately following the expiration of ~~such~~ the 30-day period or the expiration of any appeal period after a final determination by any court of any action timely filed pursuant to this section. ~~Such~~ The certificate shall expire one year after its date unless extended by the Secretary who shall not extend ~~such~~ the certificate unless ~~he shall~~ the Secretary again ~~approve~~ approves the proposed project as provided in this section. If bonds are issued within that year pursuant to the authorization of this Article or Chapter 159C of the General Statutes to pay all or part of the costs of the project, however, the certificate expires three years after the date of the first issuance of the bonds.

(i) Certificate Issued Under Chapter 159C Effective. -- Any certificate of approval with respect to a project which has become effective pursuant to G.S. 159C-7 ~~shall be deemed to satisfy~~ satisfies the requirements of this section to the extent that the findings made by the Secretary pursuant to G.S. 159C-7 are consistent with the findings required to be made by the Secretary pursuant ~~hereto.~~ to this section.

"**§ 159D-8. Approval of bonds.**

(a) No bonds may be issued by the ~~authority~~ agency pursuant to this Article unless the issuance ~~thereof~~ is first approved by the Local Government Commission.

The ~~authority~~ agency shall file an application for approval of its proposed bond issue with the secretary of the Local Government Commission, and shall notify the Secretary of the Department of Commerce of such filing.

(b) In determining whether a proposed bond issue should be approved, the Local Government Commission may consider, without limitation, the following:

(1) Whether the proposed operator and obligor have demonstrated or can demonstrate the financial responsibility and capability to fulfill their obligations with respect to the financing agreement. In making such determination, the commission may consider the operator's experience and the obligor's ratio of current assets to current liabilities, net worth, earnings trends and coverage of fixed charges, the nature of the industry or business involved and its stability and any additional security such as insurance, guaranties or property to be pledged or secure such bonds.

(2) Whether the political subdivisions in or near which the proposed project is to be located have the ability to cope satisfactorily with the impact of such project and to provide, or cause to be provided, the public facilities and services, including utilities, that will be necessary for such project and on account of any increase in population which are expected to result therefrom.

(3) Whether the proposed date and manner of sale will have an adverse effect upon any scheduled or anticipated sale of obligations by the State or any political subdivision or any agency of either of them.

(c) To facilitate the review of the proposed bond issue by the commission, the Secretary may require the ~~authority~~ agency to obtain and submit such financial data and information about the proposed bond issue and the security therefor, including the proposed prospectus or offering circular, the proposed financing agreement and security document and annual and other financial reports and statements of the obligor, as the Secretary may prescribe. The Secretary may also prescribe ~~such~~ forms and ~~such~~ rules ~~and regulations as he shall deem~~ that the Secretary considers reasonably necessary to implement the provisions of this section.

"§ 159D-9. Sale of bonds.

Bonds issued under this Article may be sold in such manner, either at public or private sale, and for such price as the Local Government Commission ~~shall determine~~ determines to be for the best interests of the ~~authority~~ agency and effectuate best the purposes of this ~~Chapter~~ Article irrespective of the interest limitations set forth in G.S. 24-1.1, as amended, and successor ~~provisions provided that such sale shall be~~ provisions, as long as the sale is approved by the ~~authority~~ agency and the obligor.

"§ 159D-10. Location of projects.

~~Except as provided in this section, any~~ Any project of the ~~authority~~ agency shall be located within the boundaries of ~~a county which is a member of the authority. A portion or portions of any project including, but not limited to, any real or personal property or improvements necessary or convenient for the construction, maintenance,~~

~~and operation of the project, may be located in a county or counties other than the county in which the principal part of the project is located so long as the additional portion or portions constitute functionally appurtenant or incidental facilities and the governing body of each other county in which the additional portion or portions of the project is or are located approves the project.~~ the State. Bonds may not be issued to finance any project or group of projects in any county of the State unless the board of commissioners for the county in which the project is located has consented to the location of the project within the county.

"§ 159D-11. Financing agreements.

(a) Every financing agreement shall provide that:

(1) Repealed by Session Laws 1987, c. 517, s. 7.

(2) The amounts payable under the financing agreement shall be sufficient to pay all of the principal of and interest and redemption premium, if any, and interest on the bonds ~~that shall be~~ issued by the ~~authority~~ agency to pay the cost of the project as ~~the same shall~~ they respectively become due;

(3) The obligor shall pay all costs incurred by the ~~authority~~ agency in connection with the financing and administration of the project, except as may be paid out of the proceeds of bonds or otherwise, including, but without limitation, insurance costs, the cost of administering the financing agreement and the security document and the fees and expenses of the fiscal agent or trustee, paying agents, attorneys, consultants and others;

(4) The obligor shall pay all the costs and expenses of operation, maintenance and upkeep of the project; and

(5) The obligor's obligation to provide for the payment of the bonds in full shall not be subject to cancellation, termination or abatement until ~~such~~ payment of the bonds or provision for payment has been ~~therefor shall be~~ made.

(b) The financing agreement may be in the nature of:

(1) A sale and leaseback,

(2) A lease purchase,

(3) A conditional sale,

(4) An installment sale,

(5) A secured or unsecured loan,

(6) A loan and mortgage, or

(7) Another ~~Other~~ similar transaction.

(c) The financing agreement, if in the nature of a lease agreement, shall either provide that the obligor ~~shall have~~ has an option to purchase, or require that the obligor purchase, the project upon the expiration or termination of the financing agreement subject to the condition that payment in full of the principal of, and the interest and any redemption premium on, the bonds, or provision for payment has ~~therefor, shall have~~ been made.

(d) The financing agreement may provide the ~~authority~~ agency with rights and remedies in the event of a default by the obligor ~~thereunder~~ under it including, without limitation, any one or more of the following:

(1) Acceleration of all amounts payable under the financing agreement;

(2) Reentry and repossession of the project;

(3) Termination of the financing agreement;

(4) Leasing or sale or ~~fore-closure [sic]~~ foreclosure of the project to others; and

(5) Taking whatever actions at law or in equity may appear necessary or desirable to collect the amounts payable under, and to enforce covenants made in, the financing agreement.

(e) The ~~authority's~~ agency's interest in a project under a financing agreement may be that of owner, lessor, lessee, conditional or installment vendor, mortgagor, mortgagee, secured party or otherwise, but the ~~authority~~ agency need not have any ownership or possessory interest in the project.

(f) The ~~authority~~ agency may assign all or any of its rights and remedies under the financing agreement to the trustee or bondholders under the security document.

(g) ~~Any such~~ The financing agreement may contain ~~such~~ any additional provisions ~~as in the determination of the authority~~ the agency considers ~~are~~ necessary or convenient to effectuate the purposes of this ~~Chapter.~~ Article.

"§ 159D-12. Security documents.

(a) Bonds issued under the provisions of this ~~Chapter~~ Article may be secured by a security document which may be a trust instrument between the ~~authority~~ agency and a bank or trust company or individual within the State, or a bank or a trust company without the State, as trustee. Such security document may pledge and assign the revenues provided for the security of the bonds, including proceeds from the sale of any project, or part thereof, insurance proceeds and condemnation awards, and may convey or mortgage the project and other property to secure a bond issue.

The revenues and other funds derived from the project, except ~~such part thereof as may be necessary to provide reserves therefor, if any,~~ any part necessary to provide reserves shall be set aside at such regular intervals as may be provided in such security document in a sinking fund which may be ~~thereby~~ pledged to, and charged with, the payment of the principal of and the interest on such bonds as ~~the same shall~~ they become due and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made. The revenues so pledged and thereafter received by the ~~authority~~ agency shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the ~~authority,~~ agency, irrespective of whether such parties have notice thereof. The use and disposition of money to the credit of such sinking fund shall be subject to the provisions of the security document. Such security document may contain such provisions for protecting and enforcing the rights and remedies of

the bondholders as may be reasonable and proper and not in violation of law, including, without limitation, any one or more of the following:

(1) Acceleration of all amounts payable under the security document;

(2) Appointment of a receiver to manage the project and any other property mortgaged or assigned as security for the bonds;

(3) Foreclosure and sale of the project and any other property mortgaged or assigned as security for the bonds; and

(4) Rights to bring and maintain such other actions at law or in equity as may appear necessary or desirable to collect the amounts payable under, or to enforce the covenants made in, the security document.

(b) It ~~shall be~~ is lawful for any bank or trust company incorporated under the laws of this State which may act as depositary of the proceeds of bonds, revenues or other funds provided under this ~~Chapter~~ Article to furnish such indemnifying bonds or to pledge such securities as may be required by the ~~authority.~~ agency. All expenses incurred in carrying out the provisions of such security document may be treated as a part of the cost of the project in connection with which bonds are issued or as an expense of administration of such project.

The ~~authority~~ agency may subordinate the bonds or its rights under the financing agreement or otherwise to any prior, contemporaneous or future securities or obligations or lien, mortgage or other security interest.

Any such security document may contain such additional provisions as in the determination of the ~~authority~~ agency are necessary or convenient or effectuate the purposes of this ~~Chapter.~~ Article.

"§ 159D-13. Trust funds.

Notwithstanding any other provisions of law to the contrary, all money received pursuant to the authority of this ~~Chapter,~~ Article, whether as proceeds from the sale of bonds or as revenues, ~~shall be deemed to be~~ are trust funds to be held and applied solely as provided in this ~~Chapter.~~ Article. The security document may provide that any of ~~such moneys~~ the money may be temporarily invested and reinvested pending ~~the~~ its disbursement ~~thereof~~ in ~~such~~ any securities and other investments as ~~shall be~~ provided in such security document, and shall provide that any officer with whom, or any bank or trust company with which, ~~such moneys shall be~~ the money is deposited shall act as trustee ~~of such moneys~~ and shall hold and apply ~~the same~~ it for the purpose ~~hereof,~~ of this Article, subject to ~~such~~ any regulations ~~as~~ this ~~Chapter~~ Article and ~~such~~ the security document ~~may~~ provide.

"§ 159D-14. Tax exemption.

The ~~authority~~ agency ~~shall not be~~ is not required to pay any taxes on any project or on any other property owned by the ~~authority~~ agency under the provisions of this ~~Chapter~~ Article or upon the income ~~therefrom.~~ from the property.

The interest on bonds issued by the ~~authority~~ agency ~~shall be~~ is exempt from all income taxes within the State.

All projects and all transactions ~~therefor shall be~~ for them are subject to taxation to the extent ~~such projects and transactions~~ they would be subject to taxation if no public body were involved ~~therewith.~~ with them.

"§ 159D-15. Construction contracts.

The ~~authority~~ agency may agree with the prospective operator that all contracts relating to the acquisition, construction, installation and equipping of a project shall be solicited, negotiated, awarded and executed by the prospective operator and its agents subject only to such approval by the ~~authority~~ agency as the ~~authority~~ agency may require in such agreement. Such agreement may provide that the ~~authority~~ agency may, out of the proceeds of bonds, make advances to or reimburse the operator for all or a portion of its costs incurred in connection with such contracts.

"§ 159D-16. Conflict of interest.

If any officer, commissioner or employee of the ~~authority~~ agency ~~shall be~~ is interested either directly or indirectly in any contract with the ~~authority,~~ agency, such interest shall be disclosed to the ~~authority~~ agency and shall be set forth in the minutes of the ~~authority,~~ agency, and the officer, commissioner, employee or member having such interest ~~therein~~ shall not participate on behalf of the ~~authority~~ agency in the authorization of ~~any such contract; provided, however, that this section shall~~ the project. This section does not apply to the ownership of less than one ~~per centum~~ percent (1%) of the stock of any operator or obligor. Failure to take any or all actions necessary to carry out the purposes of this section ~~shall~~ does not affect the validity of bonds issued pursuant to the provisions of this ~~Chapter.~~ Article.

"§ 159D-17. Credit of State not pledged.

Bonds issued under the provisions of this ~~Chapter~~ Article ~~shall~~ do not ~~not be deemed to~~ constitute a debt of the State or any political subdivision ~~or any agency thereof~~ or a pledge of the faith and credit of the State or any political ~~subdivision or any such agency,~~ subdivisions, but shall be payable solely from the revenues and other funds provided ~~therefor.~~ for payment. Each bond issued under this Chapter shall contain on ~~the face thereof~~ its face a statement to the effect that the ~~authority~~ agency shall not be obligated to pay the ~~same~~ bonds or the interest ~~thereon~~ on it except from the revenues and other funds pledged ~~therefor~~ for payment and that neither the faith and credit nor the taxing power of the State or any political subdivision ~~or any agency thereof~~ is pledged to the payment of the principal of or the interest on ~~such~~ the bonds.

"§ 159D-18. Bonds eligible for investment.

Bonds issued by ~~an authority~~ the agency under the provisions of this ~~Chapter~~ Article are ~~hereby made~~ securities in which all public officers and agencies of the State and all political subdivisions, and all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them.

"§ 159D-19. Revenue refunding bonds.

(a) The ~~authority~~ agency is ~~hereby~~ authorized to provide by resolution for the issuance of refunding bonds of the ~~authority~~ agency for the purpose of refunding any

bonds then outstanding ~~which~~ that ~~shall~~ have been issued under the provisions of this ~~Chapter,~~ Article, or under the provisions of Chapter 159C of the General Statutes, including the payment of any redemption premium ~~thereon~~ and any interest accrued or to accrue to the date of redemption of such bonds, and, if ~~deemed~~ considered advisable by the ~~authority,~~ agency, for either or both of the following additional purposes:

(1) Constructing improvements, additions, extensions or enlargements of the project or projects in connection with which the bonds to be refunded shall have been issued; and

(2) Paying all or any part of the cost of any additional project or projects.

(a1) The issuance of ~~such~~ bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the ~~authority~~ agency in respect to the ~~same shall be~~ bonds are governed by the provisions of this ~~Chapter which~~ Article that relate to the issuance of ~~bonds, insofar as such provisions may be appropriate therefor.~~ bonds.

The approvals required by G.S. 159D-7 and G.S. 159D-8 shall be obtained prior to the issuance of any refunding ~~bonds; provided, however,~~ bonds, except that in the case where the refunding bonds of all or a portion of an issue are to be issued solely for the purpose of refunding outstanding bonds issued under this ~~Chapter,~~ Article, the approval required by G.S. 159D-7 ~~shall not be~~ is not required as to the project financed with the bonds to be refunded.

(b) Refunding bonds issued under this section may be sold or exchanged for outstanding bonds issued under this ~~Chapter~~ Article and, if sold, the proceeds ~~thereof~~ may be applied, in addition to any other authorized purposes, to the purchase, redemption or payment of such outstanding bonds. Refunding bonds may be issued, in the determination of the ~~authority,~~ agency, at any time not more than five years prior to the date of maturity or maturities or the date selected for the redemption of the bonds being refunded thereby. Pending the application of the proceeds of such refunding bonds, with any other available funds, to the payment of the principal of and accrued interest and any redemption premium on the bonds being refunded, and, if so provided or permitted in the security document securing the ~~same,~~ bonds to the payment of any interest on such refunding bonds, such proceeds may be invested in direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by, the United States of America ~~which shall~~ if these obligations mature or ~~which shall be~~ are subject to redemption by the ~~holder thereof, at the option of such holder,~~ holder, at the holder's option not later than the respective dates when the proceeds, together with the interest accruing ~~thereon~~ on them will be required for the purposes intended.

"**§ 159D-20. No power of eminent domain.**

The ~~authority~~ agency shall not have any right or power to acquire any property through the exercise of eminent domain or any proceedings in the nature of eminent domain.

~~"§ 159D-21. Dissolution of the authority.~~

~~Whenever the board of commissioners of the authority and the governing bodies of two-thirds of the counties which are then members of the authority shall by joint resolution determine that the purposes for which the authority was formed have been substantially fulfilled and that all bonds theretofore issued and all other obligations theretofore incurred by the authority have been fully paid or satisfied, such board of commissioners and governing bodies may declare the authority to be dissolved. On the effective date of such joint resolution, the title to all funds and other property owned by the authority at the time of such dissolution shall vest as provided in said joint resolution, and possession of such funds and other property shall forthwith be delivered as provided in said joint resolution.~~

~~"§ 159D-22. Annual reports; application of Article 3, Subchapter III of Chapter 159.~~

~~The authority shall, promptly following the close of each calendar year, submit an annual report of its activities for the preceding year to the governing bodies of the counties which are then members of the authority. Each such report shall set forth a complete operating and financial statement covering the operations of the authority during such year.~~

~~The provisions of Article 3, Subchapter III of Chapter 159 of the General Statutes of North Carolina entitled 'The Local Government Budget and Fiscal Control Act' shall have no application to the authority.~~

"§ 159D-23. Application of Article 9 of Chapter 25.

The provisions of G.S. 25-9-104(e) and G.S. 25-9-302(6) to the contrary notwithstanding, the provisions of Article 9 of North Carolina Uniform Commercial ~~Code, being G.S. 25-9-101 to 25-9-607, inclusive, shall apply [to]~~ Code apply to transactions under this ~~Chapter 159D~~ Article to the same extent ~~the provisions of such Article 9 would apply were~~ as if G.S. 25-9-104(e) and G.S. 25-9-302(6) ~~hereby~~ were repealed.

"§ 159D-24. Officers not liable.

No ~~commissioner of any authority~~ member of the Board of Directors of the agency shall be subject to any personal liability or accountability by reason of ~~his~~ the issuance or execution of any ~~bonds or the issuance thereof.~~ bonds.

"§ 159D-25. Additional method.

The foregoing sections of this ~~Chapter~~ Article ~~shall be deemed to~~ provide an additional and alternative method for the doing of the things authorized ~~thereby~~ and ~~shall be regarded as~~ are supplemental and additional to powers conferred by other ~~laws, and shall not be regarded as in derogation of any powers now existing; provided, however, that the~~ laws. They do not derogate any other powers. The issuance of bonds or refunding bonds under the provisions of this ~~Chapter~~ Article need not comply with the requirements of any other law applicable to the issuance of bonds.

"§ 159D-26. Liberal construction.

This ~~Chapter,~~ Article, being necessary for the prosperity and welfare of the State and its inhabitants, shall be liberally construed to effect ~~the purposes hereof.~~ its purposes.

"§ 159D-27. Inconsistent laws inapplicable.

Insofar as the provisions of this ~~Chapter~~ Article are inconsistent with the provisions of any general, special or local laws, or parts thereof, the provisions of this ~~Chapter~~ Article shall be controlling.

"ARTICLE 2.

"Private ~~Educational~~ Capital Facilities Finance Act.

"§ 159D-35. Short title.

This ~~Chapter~~ Article shall be known, and may be cited, as the 'Private ~~Educational~~ Capital Facilities Finance Act.'

"§ 159D-36. Legislative findings.

It is ~~hereby~~ declared that for the benefit of the people of the State of North Carolina, the increase of their commerce, welfare and prosperity and the improvement of their health and living conditions it is essential that they be given the fullest opportunity to learn and to develop their intellectual capacities; that it is essential for institutions for higher education and institutions for elementary and secondary education within the State to be able to construct and renovate facilities to assist its citizens in achieving the fullest development of their intellectual capacities; and that it is the purpose of this ~~Chapter~~ Article to provide a measure of assistance and an alternative method to enable private institutions for higher education and institutions for elementary and secondary education in the State to provide the facilities and the structures that are needed to accomplish the purposes of this ~~Chapter,~~ Article, all to the public benefit and good, to the extent and in the manner provided ~~herein.~~ in this Article.

It is ~~hereby~~ further declared that this purpose will benefit the people as a way to improve student learning, increase learning opportunities for all students, encourage the use of different and innovative teaching methods, create new professional opportunities for teachers, provide parents and students with expanded choices in the types of educational opportunities that are available, and lower the overall cost of education to the State and to parents and students.

The General Assembly also finds that the private sector often provides services and opportunities to the people of the State of North Carolina in activities that constitute a public purpose, and that these activities by the private sector are to be fostered and encouraged. The people of the State of North Carolina will benefit from the enactment of laws and creation of programs that assist the private sector in obtaining financing for capital improvements of facilities that will be used in conducting these activities.

"§ 159D-37. Definitions.

As used or referred to in this ~~Chapter,~~ Article, the following words and terms ~~shall~~ have the following meanings, unless the context clearly indicates otherwise:

(1) 'Agency' means the North Carolina ~~Educational~~ Capital Facilities Finance Agency ~~created by this Chapter,~~ or, should ~~said~~ this agency be abolished or otherwise divested of its functions under this ~~Chapter,~~ Article, the public body succeeding it in its principal functions, or upon which are conferred by law the rights, powers and duties given by this ~~Chapter~~ Article to the agency.

(1a) 'Bonds' or 'notes' means the revenue bonds or bond anticipation notes, respectively, authorized to be issued by the agency under this Article, including revenue refunding bonds, notwithstanding that they may be secured by a deed of trust or the full faith and credit of a participating institution or any other lawfully pledged security of a participating institution.

(2) 'Cost', as applied to any project or any portion ~~thereof~~ of a project financed under the provisions of this ~~Chapter,~~ Article, means all or any part of the cost of construction, acquisition, alteration, enlargement, reconstruction and remodeling of a project, including all lands, structures, real or personal property, rights, rights-of-way, franchises, easements and interests acquired or used for or in connection with a project, the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved, the cost of all machinery and equipment, financing charges, interest prior to and during construction and, if deemed advisable by the agency, for a period not exceeding two years after the estimated date of completion of construction, the cost of engineering and architectural surveys, plans and specifications, the cost of consulting and legal services and other expenses necessary or incident to determining the feasibility or practicability of constructing or equipping a project, the cost of administrative and other expenses necessary or incident to the construction or acquisition of a project and the financing of the construction or acquisition thereof, including reasonable provision for working capital and a reserve for debt service, and the cost of reimbursing any participating institution for any payments made for any cost described above or the refinancing of any cost described above, including any evidence of indebtedness incurred to finance such cost; provided, however, that no payment shall be reimbursed or any cost or indebtedness be refinanced if such payment was made or such cost or indebtedness was incurred before November 25, 1981.

~~(3) "Project" means any one or more buildings, structures, improvements, additions, extensions, enlargements or other facilities for use primarily as a dormitory or other housing facility, including housing facilities for student nurses, a dining hall and other food preparation and food service facilities, student union, administration building, academic building, library, laboratory, research facility, classroom, athletic facility, health care facility, laundry facility, and maintenance, storage or utility facility and other structures or facilities related thereto or required or useful for the instruction of students or the conducting of research or the~~

~~operation of an institution for higher education or an institution for elementary and secondary education, including parking and other facilities or structures essential or convenient for the orderly conduct of such an institution, or any combination of the foregoing, and shall also include landscaping, site preparation, furniture, equipment and machinery and other similar items necessary or convenient for the operation of an institution for higher education or an institution for elementary and secondary education or a particular facility, building or structure thereof in the manner for which its use is intended but shall not include such items as books, fuel, supplies or other items the costs of which are customarily deemed to result in a current operating charge, and shall not include any facility used or to be used for sectarian instruction or as a place of religious worship nor any facility that is used or to be used primarily in connection with any part of the program of a school or department of divinity for any religious denomination.~~

~~(4) 'Bonds' or 'notes' means the revenue bonds or bond anticipation notes, respectively, authorized to be issued by the agency under this Chapter, including revenue refunding bonds, notwithstanding that the same may be secured by a deed of trust or the full faith and credit of a participating institution or any other lawfully pledged security of a participating institution.~~

(4a) 'Institution for elementary and secondary education' means a nonprofit institution within the State of North Carolina authorized by law and engaged or to be engaged in the providing of kindergarten, elementary, or secondary education, or any combination ~~thereof.~~ of these.

(5) 'Institution for higher education' means a nonprofit private educational institution within the State of North Carolina authorized by law to provide a program of education beyond the high school level.

(6) 'Participating institution' means an institution for higher ~~education or~~ education, an institution for elementary and secondary ~~education~~ education, or a special purpose institution that, pursuant to the provisions of this ~~Chapter,~~ Article, undertakes the financing, refinancing, acquiring, constructing, equipping, providing, owning, repairing, maintaining, extending, improving, rehabilitating, ~~renovating~~ renovating, or furnishing of a project or undertakes the refunding or refinancing of obligations or of a deed of trust or a mortgage or of advances as provided in this ~~Chapter.~~ Article.

(6a) 'Project' means any one or more buildings, structures, equipment, improvements, additions, extensions, enlargements, or other facilities comprising any of the following:

a. Educational facilities used by an institution for higher education or an institution for elementary and secondary education, including dormitories and other housing facilities, housing facilities for student nurses, dining halls and other food preparation and food service facilities, student unions, administration buildings, academic buildings, libraries, laboratories, research facilities, classrooms, athletic facilities, health care facilities, laundry facilities, and other structures or facilities related to these facilities or required or useful for the instruction of students, the conducting of research, or the operation of the institution.

b. Student housing facilities to be owned or operated by an owner or operator other than an institution for higher education or an institution for elementary and secondary education.

c. A special purpose project as defined in G.S. 159C-3.

The term 'project' also includes landscaping, site preparation, furniture, equipment and machinery, and other similar items necessary or convenient for operation of a particular facility, building, or structure in the manner for which its use is intended, and maintenance, storage, or utility facilities and other structures or facilities related to, required, or useful for the operation of the facilities, including parking and other facilities or structures essential or convenient for the orderly conduct of the facility. The term 'project' does not include such items as books, fuel, or supplies or other items the costs of which customarily result in a current operating charge. The term does not include any facility used or to be used for sectarian instruction or as a place of religious worship nor any facility that is used or to be used primarily in connection with any part of the program of a school or department of divinity for any religious denomination.

(6b) 'Special purpose institution' means a for-profit or not-for-profit corporation or similar entity that undertakes any of the activities set forth in sub-subdivisions (6a)b. and (6a)c. of this section.

(7) 'State' means the State of North Carolina.

"**§ 159D-38. ~~Educational~~ Capital facilities finance agency.**

(a) There is ~~hereby~~ created a body politic and corporate to be known as 'North Carolina ~~Educational~~ Capital Facilities Finance Agency' which shall be constituted a public agency and an instrumentality of the State for the performance of essential public functions. The agency shall be governed by a board of directors composed of seven members. Two of the members of ~~said~~ the board shall be the State Treasurer and the State Auditor, both of whom shall serve ex officio. The remaining directors of the agency shall be residents of the State and shall not hold other public office. The General Assembly upon the recommendation of the President Pro Tempore of

the Senate shall appoint one director in accordance with G.S. 120-121, the General Assembly upon the recommendation of the Speaker of the House of Representatives shall appoint one director in accordance with G.S. 120-121, and the Governor shall appoint three ~~of the~~ directors of the agency. The five appointive directors of the agency shall be appointed for staggered four-year terms, two being appointed initially for one year by the President of the Senate and the Speaker of the House, respectively, and one for two years, one for three years and one for four years, respectively, as designated by the Governor. Each ~~Governor, and each~~ director shall continue in office until ~~his~~ a successor ~~shall be~~ is duly appointed and qualified, except that any person appointed to fill a vacancy shall serve only for the unexpired term. Any vacancy in a position held by an appointive member shall be filled by a new appointment made by the officer who originally made ~~such~~ the appointment. Any member of the board of directors ~~shall be~~ is eligible for reappointment. Each appointive member of the board of directors may be removed by the Governor for misfeasance, malfeasance or neglect of duty after reasonable notice and a public hearing, unless the ~~same~~ notice and hearing are in writing expressly waived. Each appointive member of the board of directors ~~before entering upon his duties~~ shall take an oath of office to administer the duties of ~~his~~ office faithfully and impartially and a record of ~~such~~ the oath shall be filed in the office of the Secretary of State. The Governor shall designate from among the members of the board of directors a ~~chairman and a vice-chairman. The terms of the chairman and vice-chairman shall~~ chair and a vice-chair, whose terms extend to the earlier of either two years or the date of expiration of their then current terms as members of the board of directors of the agency. The board of directors shall elect and appoint and prescribe the duties of a secretary-treasurer and ~~such~~ any other officers ~~as it shall deem~~ it considers necessary or advisable, which officers need not be members of the board of directors.

(b) No part of the revenues or assets of the agency shall inure to the benefit of or be distributable to its members or officers or other private persons. The members of the agency shall receive no compensation for their services but shall be entitled to receive, for attendance at meetings of the agency or any committee thereof and for other services for the agency, reimbursement for such actual expenses as may be incurred for travel and subsistence in the performance of official duties and such per diem as is allowed by law for members of other State boards, commissions and committees.

(c) The secretary-treasurer of the agency shall keep a record of the proceedings of the agency and shall be custodian of all books, documents and papers filed with the agency, the minute book or journal of the agency and its official seal. ~~He~~ The secretary-treasurer shall have authority to cause copies to be made of all minutes and other records and documents of the agency and to give certificates under the official seal of the agency to the effect that such copies are true copies, and all persons dealing with the agency may rely upon such certificates.

(d) Four members of the board of directors of the agency shall constitute a quorum and the affirmative vote of a majority of the members present at a meeting of the board of directors duly called and held shall be necessary for any action taken by

the board of directors of the ~~agency; provided, however, that the~~ agency. The board of directors ~~may~~ may, however, appoint an executive committee to act on behalf of ~~said~~ the board during the period between regular meetings of said board, and said committee shall have full power to act upon the vote of a majority of its members. No vacancy in the membership of the agency ~~shall impair~~ impairs the rights of a quorum to exercise all the rights and to perform all the duties of the agency.

(e) The North Carolina ~~Educational~~ Capital Facilities Finance Agency shall be contained within the Department of State Treasurer as if it had been transferred to that department by a Type II transfer as defined in G.S. 143A-6(b).

"**§ 159D-39. General powers.**

The agency shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this ~~Chapter,~~ Article, ~~including, but without limiting the generality of the foregoing, the power:~~ including all of the following:

(1) To make and execute contracts and agreements necessary or incidental to the exercise of its powers and duties under this ~~Chapter,~~ Article, including loan agreements and agreements of sale or leases with, mortgages and deeds of trust and conveyances to participating institutions, persons, firms, corporations, governmental agencies and others and including credit enhancement ~~agreements;~~ agreements.

(2) To acquire by purchase, lease, gift or otherwise, or to obtain options for the acquisition of any property, real or personal, improved or unimproved, including interests in land in fee or less than fee for any project, upon such terms and at such cost as shall be agreed upon by the owner and the ~~agency;~~ agency.

(3) To arrange or contract with any county, city, town or other political subdivision or instrumentality of the State for the opening or closing of streets or for the furnishing of utility or other services to any ~~project;~~ project.

(4) To sell, convey, lease as lessor, mortgage, exchange, transfer, grant a deed of trust in, or otherwise dispose of, or to grant options for ~~any such~~ these purposes with respect to, any real or personal property or interest ~~therein;~~ in property.

(5) To pledge or assign any money, purchase price payments, rents, loan repayments, charges, fees or other revenues, including any federally guaranteed securities and moneys received ~~therefrom~~ from them whether ~~such~~ the securities are initially acquired by the agency or a participating institution, and any proceeds derived by the agency from sales of property, insurance, condemnation awards or other ~~sources;~~ sources.

(6) To pledge or assign the revenues and receipts from any project and from any loan agreement, agreement of ~~sale~~ sale, or ~~lease of the~~ lease, including any loan repayments, purchase price payments,

~~rent and~~ rent, or other income received ~~thereunder;~~ under a loan agreement, agreement of sale, or lease.

(7) To borrow money as ~~herein~~ provided in this Article to carry out and effectuate its corporate purposes and to issue ~~in evidence thereof~~ bonds and notes for the purpose of providing funds to pay all or any part of the cost of any project, to lend money to any participating institution for the acquisition of any federally guaranteed ~~securities~~ securities, and to issue revenue refunding ~~bonds;~~ bonds.

(8) To finance, refinance, acquire, construct, equip, provide, operate, own, repair, maintain, extend, improve, rehabilitate, renovate and furnish any project and to pay all or any part of the cost thereof from the proceeds of bonds or notes or from any contribution, gift or donation or other funds available to the agency for ~~such purpose;~~ this purpose.

(9) To fix, revise, charge and collect or cause to be fixed, revised, charged and collected purchase price payments, rents, loan repayments, fees, rates and charges for the use of, or services rendered by, any ~~project;~~ project.

(10) To employ fiscal consultants, consulting engineers, architects, attorneys, feasibility consultants, appraisers and ~~such~~ any other consultants and employees as may be required in the judgment of the agency and to fix and pay their compensation from funds available to the ~~agency therefor;~~ agency.

(11) To conduct studies and surveys respecting the need for projects and their location, financing and ~~construction;~~ construction.

(12) To apply for, accept, receive and agree to and comply with the terms and conditions governing grants, loans, advances, contributions, interest subsidies and other aid with respect to any project from federal and State agencies or ~~instrumentalities;~~ instrumentalities.

(13) To sue and be sued in its own name, plead and be ~~impleaded;~~ impleaded.

(14) To acquire and enter into commitments to acquire any federally guaranteed security or federally insured mortgage note and to pledge or otherwise use ~~any such~~ the federally guaranteed security or federally insured mortgage note ~~in such manner as the agency deems~~ as the agency considers in its best interest to secure or otherwise provide a source of repayment on any of its bonds or notes issued on behalf of any participating institution to finance or refinance the cost of any ~~project;~~ project.

(15) To make loans to any participating institution for the cost of a project in accordance with an agreement between the agency and the participating ~~institution;~~ institution.

(16) To make loans to a participating institution to refund outstanding loans, obligations, deeds of trust or advances issued, made or given by ~~such~~ the participating institutions for the cost of a ~~project;~~ project.

(17) To charge and to apportion among participating institutions its administrative costs and expenses incurred in the exercise of its powers and duties conferred by this ~~Chapter;~~ Article.

(18) To adopt an official seal and alter ~~the same at pleasure; and~~ it at pleasure.

(19) To do all other things necessary or convenient to carry out the purposes of this ~~Chapter.~~ Article.

"§ 159D-40. Criteria and requirements.

(a) In undertaking any project pursuant to this ~~Chapter,~~ Article, the agency shall be guided by and shall observe the following criteria and ~~requirements; provided that the~~ requirements listed below. The determination of the agency as to its compliance with ~~such~~ these criteria and requirements ~~shall be final and conclusive:~~ is conclusive.

(1) No project shall be sold or leased nor any loan made to any participating institution ~~for higher education or any institution for elementary and secondary education~~ that is not financially responsible and capable of fulfilling its obligations, including its obligations under an agreement of sale or lease or a loan agreement to make purchase price payments, to pay rent, to make loan repayments, to operate, repair and maintain at its own expense the project and to discharge ~~such~~ any other responsibilities ~~as may be~~ imposed under the agreement of sale or lease or loan ~~agreement;~~ agreement.

(2) Adequate provision shall be made for the payment of the principal of and the interest on the bonds and any necessary reserves ~~therefor~~ for payment and for the operation, repair and maintenance of the project at the expense of the participating ~~institution;~~ institution.

(3) The public facilities, including utilities, and public services necessary for the project will be made ~~available; and~~ available.

(4) The projects shall be operated to serve and benefit the public and there shall be no discrimination against any person based on race, creed, ~~color~~ color, or national origin.

(b) In making these determinations, the agency may consider the participating institution's experience and ratio of current assets to current liabilities; the participating institution's net worth, earnings trends, and coverage of fixed charges; the nature of the project involved; and any additional security for payment of the bonds and performance of the participating institution's obligations under the agreement of sale or lease or loan agreement, such as credit enhancement, insurance, guaranties, or property pledged to secure the payment and performance.

"§ 159D-41. Procedural requirements.

Any participating institution ~~for higher education or any institution for elementary and secondary education~~ may submit to the agency, and the agency may consider, a proposal for financing a project using ~~such~~ forms and following ~~such~~ instructions ~~as may be~~ prescribed by the agency. ~~Such~~ The proposal shall set forth the type and location of the project and may include other information and data ~~available to the institution for higher education or the institution for elementary and secondary education~~ respecting the project and the extent to which ~~such~~ the project conforms to the criteria and requirements set forth in this ~~Chapter.~~ Article. The agency may request the ~~institution for higher education or the institution for elementary and secondary education~~ applicant to provide additional information and data respecting the project. The agency is authorized to make or cause to be made ~~such~~ any investigation, surveys, studies, reports and reviews as in its judgment are necessary and desirable to determine the feasibility and desirability of the project, the extent to which the project will contribute to the health and welfare of the area in which it will be located, the powers, experience, background, financial condition, record of service and capability of the management of the ~~institution for higher education or the institution for elementary and secondary education,~~ applicant, the extent to which the project otherwise conforms to the criteria and requirements of this ~~Chapter,~~ Article, and ~~such~~ any other factors ~~as may be deemed~~ the agency considers relevant or convenient in carrying out the purposes of this ~~Chapter.~~ Article.

"§ 159D-42. Operations of projects; agreements of sale on leases; conveyance of interest in projects.

(a) The agency may sell or lease any project to a participating institution for operation and maintenance or lend money to any participating institution ~~in such manner as shall~~ to effectuate the purposes of this ~~Chapter,~~ Article, under a loan agreement or an agreement of sale or lease in form and substance not inconsistent ~~herewith. Any such~~ with this Article. The loan agreement or agreement of sale or lease may include provisions that:

(1) The participating institution shall, at its own expense, operate, repair and maintain the project covered by ~~such agreement;~~ the agreement.

(2) The purchase price payments to be made under the agreement of sale, the rent payable under the agreement of lease or the loan repayments under the loan agreement shall in the aggregate be not less than an amount sufficient to pay all of the interest, principal and any redemption premium on the bonds or notes issued by the agency to pay the cost of the project sold or leased ~~thereunder~~ or with respect to which the loan was ~~made;~~ made.

(3) The participating institution shall pay all other costs incurred by the agency in connection with the providing of the project covered by any ~~such~~ agreement, except ~~such~~ costs ~~as may be~~ paid out of the proceeds of bonds or notes or otherwise, ~~including, but without limitation,~~ including insurance costs, the cost of administering the resolution authorizing the issuance of, or any trust agreement

securing, ~~such~~ the bonds or notes and the fees and expenses of trustees, paying agents, attorneys, ~~consultants and others;~~ consultants, and others.

(4) The loan agreement or the agreement of sale or lease shall terminate not earlier than the date on which all ~~such~~ bonds and all other obligations incurred by the agency in connection with the project covered by ~~any such~~ the agreement are retired or provision for ~~such~~ their retirement is ~~made; and~~ made.

(5) The obligation of the participating institution to make loan repayments or purchase price payments or to pay rent shall not be subject to cancellation, termination or abatement by the participating institution until the bonds have been retired or provision has been made for ~~such~~ their retirement.

(b) If the agency has acquired a possessory or ownership interest in any project it has undertaken on behalf of a participating institution, it shall promptly convey, without the payment of any consideration, all its right, title and interest in ~~such~~ the project to ~~such~~ that participating institution upon the retirement or provision for the retirement of all bonds or notes issued and obligations incurred by the agency in connection with ~~such~~ that project.

"§ 159D-43. Construction contracts.

If the agency determines that the purposes of this ~~Chapter~~ Article will be more effectively served, the agency in its discretion may award or cause to be awarded contracts for the construction of any project on behalf of a participating institution upon a negotiated basis as determined by the agency. The agency shall prescribe ~~such~~ any bid security requirements and other procedures in connection with the award of ~~such~~ the contracts as in its judgment ~~shall~~ will protect the public interest. The agency may by written contract engage the services of the participating institution in the construction of ~~such~~ the project and may provide in ~~any such~~ the contract that ~~such~~ the participating institution, subject to ~~such~~ any conditions and requirements consistent with the provisions of this ~~Chapter~~ Article ~~as shall be~~ prescribed in ~~such~~ the contract, may act as an agent of, or an independent contractor for, the agency for the performance of the functions described ~~therein,~~ in the contract including the acquisition of the site and other real property for ~~such~~ the project, the preparation of plans, specifications and contract documents, the award of construction and other contracts upon a competitive or negotiated basis, the construction of ~~such~~ the project directly by ~~such~~ the participating institution, the inspection and supervision of construction, the employment of engineers, architects, builders and other contractors and the provision of money to pay the cost ~~thereof~~ of these functions pending reimbursement by the agency. ~~Any such~~ The contract may provide that the agency may, out of proceeds of bonds or notes, make advances to or reimburse the participating institution for its costs incurred in the performance of ~~such~~ these functions, and shall set forth the supporting documents required to be submitted to the agency and the reviews, examinations and audits that ~~shall be~~ are required in

connection ~~therewith~~ to assure compliance with the provisions of this ~~Chapter~~ Article and ~~such~~ the contract.

"§ 159D-44. Credit of State not pledged.

Bonds or notes issued under the provisions of this ~~Chapter~~ Article shall not be secured by a pledge of the faith and credit of the State or of any political subdivision ~~thereof or be deemed to~~ of the State, or create an indebtedness of the State, or of any ~~such~~ political subdivision ~~thereof,~~ of the State requiring any voter approval, but shall be payable solely from the revenues and other funds provided ~~therefor.~~ for payment. Each bond or note issued under this ~~Chapter~~ Article shall contain on ~~the face thereof~~ its face a statement to the effect that the agency ~~shall not be~~ is not obligated to pay ~~the same~~ it nor the interest ~~thereon~~ on it except from the revenues and other funds pledged ~~therefor~~ for its payment and that neither the faith and credit nor the taxing power of the State or of any political subdivision ~~thereof~~ of the State is pledged as security for the payment of the principal of or the interest on ~~such~~ the bond or note.

Expenses incurred by the agency in carrying out the provisions of this ~~Chapter~~ Article may be made payable from funds provided pursuant to, or made available for use under, this ~~Chapter~~ Article and no liability shall be incurred by the agency ~~hereunder~~ under this Article beyond the extent to which moneys ~~shall~~ have been so provided.

"§ 159D-45. Bonds and notes.

(a) The agency is ~~hereby~~ authorized to provide for the issuance, at one time or from time to time, of bonds, or notes in anticipation of the issuance of bonds, of the agency to carry out and effectuate its corporate purposes. The principal of and the interest on such bonds or notes shall be payable solely from funds provided under this ~~Chapter~~ Article for such payment. Any such notes may be made payable from the proceeds of bonds or renewal notes or, in the event bond or renewal note proceeds are not available, such notes may be paid from any available revenues or other funds provided therefor. The bonds or notes of each issue shall be dated and may be made redeemable before maturity at the option of the agency at such price or prices and upon such terms and conditions as may be determined by the agency. The bonds may also be made payable from time to time on demand or tender for purchase by the owner upon such terms and conditions as may be determined by the agency. Any such bonds or notes shall bear interest at such rate or rates (including variable rates) as may be determined by the Local Government Commission ~~of North Carolina~~ with the approval of the agency. Notes shall mature at such time or times not exceeding 10 years from their date or dates and bonds shall mature at such time or times not exceeding 40 years from their date or dates, as may be determined by the agency. The agency shall determine the form and manner of execution of the bonds or notes, including any interest coupons to be attached thereto, and shall fix the denomination or denominations and the place or places of payment of principal and interest, which may be any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature ~~shall appear~~ appears on any bonds or notes or coupons attached ~~thereto shall cease to be such~~ to them ceases to be that officer before ~~the delivery thereof, such~~ their delivery, the

signature or ~~such~~ facsimile shall nevertheless be valid and sufficient for all purposes the same as if ~~he~~ the officer had remained in office until ~~such~~ delivery. The agency may also provide for the authentication of the bonds or notes by a trustee or fiscal agent. The bonds or notes may be issued in coupon or in registered form, or both, as the agency may determine, and provision may be made for the registration of any coupon bonds or notes as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds or notes of any bonds or notes registered as to both principal and interest, and for the interchange of registered and coupon bonds or notes. No bonds or notes may be issued by the agency under this ~~Chapter~~ Article unless the issuance thereof is approved by the Local Government ~~Commission of North Carolina.~~ Commission.

(b) The agency shall file with the Secretary of the Local Government Commission an application requesting approval of the issuance of ~~such~~ the bonds or ~~notes which shall contain such~~ notes. The application must include any information and ~~have attached to it such~~ documents concerning the proposed financing and prospective borrower, vendee or lessee ~~as the Secretary may require.~~ required by the Secretary.

In determining whether a proposed bond or note issue should be approved, the Local Government Commission may consider, in addition to the criteria and requirements ~~mentioned~~ in this ~~Chapter,~~ Article, the effect of the proposed financing upon any scheduled or proposed sale of tax-exempt obligations by the State or any of its agencies or departments or by any unit of local government in the State.

The Local Government Commission shall approve the issuance of ~~such~~ the bonds or notes if, upon the information and evidence it receives, it finds ~~and determines~~ that the proposed financing will effectuate the purposes of this ~~Chapter.~~ Article.

Upon the filing with the Local Government Commission of a resolution of the agency requesting that its bonds or notes be sold, ~~such~~ the bonds or notes may be sold in such manner, either at public or private sale, and for such price as the Local Government Commission ~~shall determine~~ determines to be for the best interests of the agency and to effectuate best the purposes of this ~~Chapter,~~ Article, ~~provided that such sale shall be~~ as long as the sale is approved by the agency.

(c) The proceeds of any bonds or notes shall be used solely for the purposes for which issued and shall be disbursed in such manner and under such restrictions, if any, as the agency may provide in the resolution authorizing the issuance of, or any trust agreement securing, ~~such~~ the bonds or notes.

(d) Prior to the preparation of definitive bonds, the agency may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds, when ~~such bonds shall~~ the bonds have been executed and are available for delivery. The agency may also provide for the replacement of any bonds or notes which ~~shall~~ become mutilated or ~~shall be~~ are destroyed or lost.

(e) Bonds or notes may be issued under the provisions of this ~~Chapter~~ Article without obtaining, except as otherwise expressly provided in this ~~Chapter,~~ Article, the consent of any department, division, commission, board, body, bureau or agency of the State, and without any other proceedings or the happening of any conditions or

things other than those proceedings, conditions or things ~~which are~~ specifically required by this ~~Chapter~~ Article and the provisions of the resolution authorizing the issuance of, or any trust agreement securing, ~~such~~ the bonds or notes.

"§ 159D-46. Trust agreement or resolution.

In the discretion of the agency any bonds or notes issued under the provisions of this ~~Chapter~~ Article may be secured by a trust agreement by and between the agency and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the State. Such trust agreement or the resolution authorizing the issuance of such bonds or notes may pledge or assign all or any part of the revenues of the agency received pursuant to this ~~Chapter,~~ Article, including, without limitation, fees, loan repayments, purchase price payments, rents, charges, insurance proceeds, condemnation awards and any other revenues and funds received in connection with any project and may grant a deed of trust or a mortgage on any project. Such trust agreement or resolution may contain such provisions for protecting and enforcing the rights and remedies of the holders of any such bonds or notes as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the agency in relation to the purposes to which bond or note proceeds may be applied, the disposition or pledging of the revenues of the agency, including any payments in respect of any federally guaranteed security or any federally insured mortgage note, the duties of the agency with respect to the acquisition, construction, maintenance, repair and operation of any project, the fees, loan repayments, purchase price payments, rents and charges to be fixed and collected in connection therewith, the terms and conditions for the issuance of additional bonds or notes, and the custody, safeguarding and application of all moneys. All bonds issued under this ~~Chapter~~ Article shall be equally and ratably secured by a pledge, charge, and lien upon revenues provided for in such trust agreement or resolution, without priority by reason of number, or of dates of bonds, execution, or delivery, in accordance with the provisions of this ~~Chapter~~ Article and of such trust agreement or resolution; except that the agency may provide in such trust agreement or resolution that bonds issued pursuant thereto shall to the extent and in the manner prescribed in such trust agreement or resolution be subordinated and junior in standing, with respect to the payment of principal and interest and the security thereof, to any other bonds. It shall be lawful for any bank or trust company incorporated under the laws of the State which may act as depositary of the proceeds of bonds or notes, revenues or other money hereunder to furnish such indemnifying bonds or to pledge such securities as may be required by the agency. Any such trust agreement or resolution may set off the rights and remedies, including foreclosure of any deed of trust or mortgage, of the holders of any bonds or notes and of the trustee, and may restrict the individual right of action by any such holders. In addition to the foregoing, any such trust agreement or resolution may contain such other provisions as the agency ~~may deem~~ considers reasonable and proper for the security of the holders of any bonds or notes. Expenses incurred in carrying out the provisions of such trust agreement or resolution may be treated as a part of the cost of any project

or paid from the revenues pledged or assigned to the payment of the principal of and the interest on bonds or notes or from any other funds available to the agency.

"**§ 159D-47. Revenues; pledges of revenues.**

(a) The agency is ~~hereby~~ authorized to fix and to collect fees, loan repayments, purchase price payments, rents and charges for the use of any project, and any part or section ~~thereof,~~ of the project and to contract with any participating institution for ~~the use thereof.~~ its use. The agency may require that the participating institution ~~shall~~ operate, repair or maintain such project and ~~shall~~ bear the cost ~~thereof~~ and other costs of the agency in connection ~~therewith,~~ with the project all as may be provided in the agreement of sale or lease, loan agreement or other contract with the agency, in addition to other obligations imposed under ~~such~~ the agreement or contract.

(b) The fees, loan repayments, purchase price payments, rents and charges shall be fixed so as to provide a fund sufficient, with any other available funds, ~~such other funds as may be made available therefor,~~ (i) to pay the costs of operating, repairing and maintaining the project to the extent that adequate provision for the payment of such costs has not otherwise been provided for, (ii) to pay the principal of and the interest on all bonds or notes as ~~the same shall~~ they become due and payable and (iii) to create and maintain any reserves provided for in the resolution authorizing the issuance of, or any trust agreement securing, ~~such bonds; and such~~ the bonds. The fees, loan repayments, purchase price payments, rents and charges may be applied or pledged to the payment of debt service on the bonds prior to the payment of the costs of operating, repairing and maintaining the project.

(c) All pledges of fees, loan repayments, purchase price payments, rents, charges and other revenues under the provisions of this ~~Chapter~~ Article ~~shall be~~ are valid and binding from the time when ~~such pledges~~ they are made. All ~~such~~ revenues so pledged and thereafter received by the agency ~~shall~~ are immediately ~~be~~ subject to the lien of ~~such~~ the pledge without any physical delivery ~~thereof~~ or further act, and the lien of ~~any such~~ the pledge ~~shall be~~ is valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the agency, irrespective of whether ~~such~~ the parties have notice ~~thereof.~~ of it. The resolution or any trust agreement by which a pledge is created or any loan agreement, agreement of sale or lease need not be filed or recorded except in the records of the agency.

(d) The State of North Carolina ~~does pledge to and agree~~ pledges to and agrees with the holders of any bonds or notes issued by the agency that so long as any of ~~such~~ the bonds or notes are outstanding and unpaid the State will not limit or alter the rights vested in the agency at the time of issuance of the bonds or notes to fix, revise, charge, and collect or cause to be fixed, revised, charged and collected loan repayments, purchase price payments, rents, fees and charges for the use of or services rendered by any project in connection with which the bonds or notes were issued, so as to provide a fund sufficient, with ~~such other funds as may be made available therefor,~~ any other available funds to pay the costs of operating, repairing and maintaining the project, to pay the principal of and the interest on all bonds and notes as ~~the same shall~~ they become due and ~~payable and~~ payable, to create and maintain any reserves provided ~~therefor~~ for their payment, and to fulfill the terms of

any agreements made with the bondholders or ~~noteholders, nor will the State~~ noteholders. The State will not in any way impair the rights and remedies of the bondholders or noteholders until the bonds or notes and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders or noteholders, are fully paid, met and discharged.

"§ 159D-48. Trust funds.

Notwithstanding any other provisions of law to the contrary, all moneys received pursuant to the authority of this ~~Chapter,~~ Article, ~~including, without limitation,~~ including fees, loan repayments, purchase price payments, rents, charges, insurance proceeds, condemnation awards and any other revenues and funds received in connection with any project, ~~shall be deemed to be~~ are trust funds to be held and applied solely as provided in this ~~Chapter.~~ Article. The resolution authorizing the issuance of, or any trust agreement securing, any bonds or notes may provide that any of ~~such~~ these moneys may be temporarily invested pending ~~the~~ their disbursement ~~thereof~~ and shall provide that any officer with whom, or any bank or trust company with which, such moneys ~~shall be~~ are deposited shall act as trustee of such moneys and shall hold and apply ~~the same~~ them for the purposes of this ~~Chapter,~~ Article, subject to ~~such~~ any limitations ~~as~~ provided in this ~~Chapter~~ Article and ~~such~~ in the resolution or trust ~~agreement may provide. Any such~~ agreement. The moneys may be invested as provided in G.S. 159-30, as it may from time to time be amended.

"§ 159D-49. Remedies.

Any holder of bonds or notes issued under the provisions of this ~~Chapter~~ Article or any coupons appertaining thereto, and the trustee under any trust agreement or resolution authorizing the issuance of such bonds or notes, except to the extent the rights herein given may be restricted by such trust agreement or resolution, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the State or granted hereunder or under such trust agreement or resolution, or under any other contract executed by the agency pursuant to this ~~Chapter,~~ Article, and may enforce and compel the performance of all duties required by this ~~Chapter~~ Article or by such trust agreement or resolution to be performed by the agency or by any officer ~~thereof.~~ of the agency.

"§ 159D-50. Investment securities.

All bonds, notes and interest coupons ~~appertaining thereto~~ issued under this ~~Chapter~~ Article are ~~hereby made~~ investment securities within the meaning of and for all the purposes of Article 8 of the Uniform Commercial Code as enacted in this State, whether or not they are of such form and character as to be investment securities under ~~said Article 8,~~ that Article, subject only to the provisions of the bonds and notes pertaining to registration.

"§ 159D-51. Bonds or notes eligible for investment.

Bonds or notes issued under the provisions of this ~~Chapter~~ Article are ~~hereby made~~ securities in which all public officers and public bodies of the State and its political subdivisions, and all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or

belonging to them. ~~Such~~ These bonds or notes are ~~hereby made~~ securities which may properly and legally be deposited with and received by any State or municipal officer or any agency or political subdivision of the State for any purpose for which the deposit of bonds, notes or obligations of this State is ~~now or may hereafter be~~ authorized by law.

"§ 159D-52. Refunding bonds or notes.

(a) The agency is ~~hereby~~ authorized to provide for the issuance of refunding bonds or notes for the purpose of refunding any bonds or notes then outstanding which ~~shall~~ have been issued under the provisions of this ~~Chapter,~~ Article, including the payment of any redemption premium ~~thereon~~ and any interest accrued or to accrue to the date of redemption of ~~such~~ the bonds or notes and, if ~~deemed~~ considered advisable by the agency, for any corporate purpose of the agency, including, without limitation:

(1) Constructing improvements, additions, extensions or enlargements of the project in connection with which the bonds or notes to be refunded shall have been issued, and

(2) Paying all or any part of the cost of any additional project.

(b) The issuance of ~~such~~ refunding bonds or notes, ~~the~~ their maturities and other ~~details thereof,~~ details the rights of ~~the holders thereof,~~ their holders, and the rights, duties and obligations of the agency ~~in respect of the same shall be~~ are governed by the provisions of this ~~Chapter~~ Article which relate to the issuance of bonds or notes, ~~insofar as such provisions may be appropriate therefor.~~ as appropriate.

Refunding bonds ~~or notes~~ may be sold or exchanged for outstanding bonds ~~or notes~~ issued under this ~~Chapter~~ Article and, if sold, ~~the proceeds thereof~~ their proceeds, and investment earnings on them, may be applied, ~~in addition to any other authorized purposes,~~ with any other available funds, to the purchase, ~~redemption~~ redemption, or payment of ~~such~~ the bonds ~~or notes, with any other available funds,~~ being refunded, to the payment of ~~the principal, accrued interest and any redemption premium on the bonds or notes being refunded, and, if so provided or permitted in the resolution authorizing the issuance of, or in the trust agreement securing, such bonds or notes, to the payment of~~ any interest on ~~such~~ the refunding ~~bonds or notes~~ bonds, and to the payment of any expenses in connection with ~~such~~ the refunding. ~~Such~~ The proceeds may be invested in direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by, the United States of America ~~which shall~~ if the obligations mature or ~~which shall be~~ are subject to redemption by ~~the holders thereof, at the option of such holders,~~ the holders, at their option not later than the respective dates when the proceeds, together with the interest accrued thereon, will be required for the purposes intended.

"§ 159D-53. Annual report.

The agency shall, promptly following the close of each fiscal year, submit an annual report of its activities under this ~~Chapter~~ Article for the preceding year to the Governor, the State Auditor, the General Assembly, the Advisory Budget Commission and the Local Government Commission. The agency shall cause an audit of its books and accounts relating to its activities under this ~~Chapter~~ Article to

be made at least once in each year by an independent certified public accountant and the cost ~~thereof~~ of the audit may be paid from any available moneys of the agency.

"§ 159D-54. Officers not liable.

No member or officer of the agency shall be subject to any personal liability or accountability by reason of ~~his~~ the issuance or execution of any bonds or ~~notes or the issuance thereof.~~ notes.

"§ 159D-55. Tax exemption.

The exercise of the powers granted by this ~~Chapter~~ Article will be in all respects for the benefit of the people of the State and will promote their health and ~~welfare, and no tax or assessment shall be levied upon any project undertaken by the agency prior to the retirement or provision for the retirement of all bonds or notes issued and obligations incurred by the agency in connection with such project.~~ welfare.

Any bonds or notes issued by the agency under the provisions of this ~~Chapter~~ Article ~~shall~~ are at all times be free from taxation by the State or any local unit or political subdivision or other instrumentality of the State, excepting inheritance or gift taxes, income taxes on the gain from the transfer of the bonds and notes, and franchise taxes. The interest on the bonds and notes is not subject to taxation as income.

"§ 159D-56. Conflict of interest.

If any member, officer or employee of the agency ~~shall be~~ is interested either directly or indirectly, or ~~shall be~~ is an officer or employee of or ~~have~~ has an ownership interest in any firm or corporation interested directly or indirectly, in any contract with the agency, ~~such~~ this interest shall be disclosed to the agency and shall be set forth in the minutes of the agency, and the member, officer or employee having ~~such~~ an interest ~~therein~~ in a contract shall not participate on behalf of the agency in the authorization of ~~any such~~ the contract.

"§ 159D-57. Additional method.

The foregoing sections of this ~~Chapter~~ Article ~~shall be deemed to~~ provide an additional and alternative method for the doing of the things authorized ~~thereby and shall be regarded as~~ and are supplemental and additional to powers conferred by other ~~laws,~~ laws. ~~and shall not be regarded as in derogation of any powers now existing; provided, however, that the~~ This Article does not derogate any existing powers. The issuance of bonds or notes under the provisions of this ~~Chapter~~ Article need not comply with the requirements of any other law applicable to the issuance of bonds or notes."

Section 3. G.S. 159C-3 reads as rewritten:

"§ 159C-3. Definitions.

The following ~~terms, whenever used or referred to in this Chapter, shall have the following respective meanings, unless a different meaning clearly appears from the context:~~ definitions apply in this Chapter:

(1) ~~"Agency" shall include any~~ Agency. -- Any agency, bureau, commission, ~~department~~ department, or instrumentality.

(2) ~~"Air pollution control facility" shall mean any~~ Air pollution control facility. -- Any structure, ~~equipment~~ equipment, or other

facility for, including any increment in the cost of any structure, ~~equipment~~ equipment, or facility attributable to, the purpose of treating, ~~neutralizing~~ neutralizing, or reducing gaseous industrial waste and other air pollutants, including recovery, treatment, ~~neutralizing~~ neutralizing, or stabilizing plants and equipment and their appurtenances, which ~~shall~~ have been certified by the ~~agency~~ government entity having jurisdiction to be in furtherance of the purpose of abating or controlling atmospheric pollutants or contaminants.

(3) ~~"Bonds" shall mean revenue~~ Bonds. -- Revenue bonds of an authority issued under the provisions of this Chapter.

(4) ~~"Cost"~~ Cost. -- This term as applied to any project ~~shall embrace~~ embraces all capital costs ~~thereof,~~ of the project, including ~~the~~ all of the following:

a. The cost of ~~construction, the~~ construction.

b. The cost of acquisition of all property, including rights in land and other property, ~~both~~ real and personal and improved and ~~unimproved, the~~ unimproved.

c. The cost of demolishing, removing or relocating any buildings or structures on lands so acquired, including the cost of acquiring any lands to which ~~such~~ those buildings or structures may be moved or ~~relocated, the~~ relocated.

d. The cost of all machinery and equipment, installation, start-up expenses, financing charges, and interest prior to, during and for a period not exceeding one year after completion of ~~construction, the~~ construction.

e. The cost of engineering and architectural surveys, plans and ~~specifications, the~~ specifications.

f. The cost of consultants' and legal services, other expenses necessary or incident to determining the feasibility or practicability of ~~such~~ the project, administrative and other expenses necessary or incident to the acquisition or construction of ~~such~~ the project and the financing of the acquisition and construction ~~thereof.~~ of the project.

~~(5) "Governing body" shall mean the board, commission, council or other body in which the general legislative powers of any county or other political subdivision are vested.~~

(6) ~~"Financing agreement" shall mean a~~ Financing agreement. -- A written instrument establishing the rights and responsibilities of the authority, operator, and obligor with respect to a project financed by the issuance of bonds. A financing agreement may be in the nature of a lease, a lease and leaseback, a sale and leaseback, a lease purchase, an installment sale and purchase agreement, a conditional sales agreement, a secured or unsecured loan

agreement or other similar contract and may involve property in addition to the property financed with the bonds.

(6a) Governing body. -- The board, commission, council, or other body in which the general legislative powers of any county or other political subdivision are vested.

(6b) Industrial project. -- Any industrial or manufacturing factory, mill, assembly plant, or fabricating plant; freight terminal; industrial research, development, or laboratory facility; industrial processing facility; or distribution facility for industrial or manufactured products.

(7) ~~"Obligor" shall mean any person or persons,~~ Obligor. -- Any person, which may include the operator, who ~~shall be~~ is obligated under a financing agreement or guaranty agreement or other contract or agreement to make payments to, or for the benefit of, the holders of bonds of the authority. Any requirement of an obligor may be satisfied by any one or more persons who are defined collectively by this Chapter as the obligor.

(8) ~~"Operator" shall mean the~~ Operator. -- The person entitled to the use or occupancy of a project.

(9) ~~"Political subdivision" shall mean any~~ Political subdivision. -- Any county, city, town, other unit of local government or any other governmental corporation, ~~agency, authority~~ authority, or instrumentality of the State now or hereafter existing.

(10) ~~"Pollution" and "pollutants" shall mean any~~ Pollution or pollutants. -- Any noxious or deleterious substances in any air or waters of or adjacent to the State of North Carolina or affecting the physical, chemical or biological properties of any air or waters of or adjacent to the State of North Carolina in a manner and to an extent which renders or is likely to render ~~such~~ the air or waters harmful or inimical to the public health, safety or welfare, or to animal, bird or aquatic life, or to the use of such air or waters for domestic, industrial or agricultural purposes or recreation.

(10a) Pollution control project. -- Any air pollution control facility, water pollution control facility, or solid waste disposal facility if the facility is in connection with either an industrial project or a public utility plant.

(11) ~~"Project" shall mean any land, equipment or any~~ Project. -- Any land or equipment or one or more buildings or other structures, whether or not on the same site or sites, and any rehabilitation, improvement, renovation or enlargement of, or any addition to, any building or structure for use as or in connection with (i) any industrial ~~project for industry which project may be any industrial or manufacturing factory, mill, assembly plant or fabricating plant, or freight terminal, or industrial research, development or~~

~~laboratory facility, or industrial processing facility or distribution facility for industrial or manufactured products, or~~ project, (ii) any pollution control project for industry or for public ~~utilities which project may be any air pollution control facility, water pollution control facility, or solid waste disposal facility in connection with any factory, mill or plant described in clause (i) of this subdivision or in connection with a public utility plant, or (iii)~~ utilities, (iii) any special purpose project, or (iv) any combination of projects mentioned in clauses ~~(i) and (ii)~~ (i) through (iii) of this subdivision. Any project may include all appurtenances and incidental facilities such as land, headquarters or office facilities, warehouses, distribution centers, access roads, sidewalks, utilities, railway sidings, trucking and similar facilities, parking facilities, landing strips and other facilities for aircraft, waterways, docks, wharves and other improvements necessary or convenient for the construction, maintenance and operation of any building or structure, or addition ~~thereto.~~ to it.

(12) ~~"Revenues" shall mean, with~~ Revenues. -- With respect to any project, the rents, fees, charges, payments, proceeds and other income or profit derived ~~therefrom~~ from the project or from the financing agreement or security document in connection ~~therewith.~~ with the project.

(13) ~~"Security document" shall mean a~~ Security document. -- A written instrument ~~or instruments~~ establishing the rights and responsibilities of the authority and the holders of bonds issued to finance a project, ~~and~~ which may provide for, or be in the form of an agreement with, a trustee for the benefit of ~~such~~ the bondholders. A security document may contain an assignment, pledge, mortgage or other encumbrance of all or part of the authority's interest in, or right to receive revenues with respect to, a project and any other property provided by the operator or other obligor under a financing agreement and may bear any appropriate title. A financing agreement and a security document may be combined as one instrument.

(14) ~~"Solid waste" shall mean solid~~ Solid waste. -- Solid waste materials resulting from any industrial or manufacturing activities or from any pollution control facility.

(15) ~~"Solid waste disposal facility" shall mean a~~ Solid waste disposal facility. -- A facility for the purpose of treating, burning, compacting, composting, storing or disposing of solid waste.

(15a) Special purpose project. -- Any structure, equipment, or other facility for any one or more of the following purposes:

a. Water systems or facilities, including all plants, works, instrumentalities, and properties used or useful in obtaining,

conserving, treating, and distributing water for domestic or industrial use, irrigation, sanitation, fire protection, or any other public or private use.

b. Sewage disposal systems or facilities, including all plants, works, instrumentalities, and properties used or useful in the collection, treatment, purification, or disposal of sewage, other than facilities constituting a water pollution control facility.

c. Public transportation systems, facilities, or equipment, including bus, truck, ferry, and railroad terminals, depots, trackages, vehicles, and ferries, and mass transit systems.

d. Public parking lots, areas, garages, and other public vehicular parking structures and facilities.

e. Public auditoriums, gymnasiums, stadiums, and convention centers.

f. Recreational facilities.

g. Land, equipment, and facilities for the disposal, treatment, or recycling of solid waste that are described in G.S. 159I-8.

h. Facilities for the provision of rehabilitation services, education, training, and employment opportunities for persons with disabilities and the disadvantaged.

(16) ~~"Water pollution control facility" shall mean any~~ Water pollution control facility. -- Any structure, equipment or other facility for, including any increment in the cost of any structure, equipment or facility attributable to, the purpose of treating, neutralizing or reducing liquid industrial waste and other water pollution, including collecting, treating, neutralizing, stabilizing, cooling, segregating, holding, recycling, or disposing of liquid industrial waste and other water pollution, including necessary collector, interceptor, and outfall lines and pumping stations, which ~~shall~~ have been certified by the agency exercising jurisdiction to be in furtherance of the purpose of abating or controlling water pollution."

Section 4. G.S. 159C-5 is amended by adding a new subdivision to read:

"**§ 159C-5. General powers.**

Each authority shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this Chapter, including, but without limiting the generality of the foregoing, the powers:

. . .

(7a) To acquire by purchase, lease, gift, or otherwise, but not by eminent domain, or to obtain options for the acquisition of, any property, real or personal, improved or unimproved, and interests in land less than the fee interest, for the construction, operation, or maintenance of any project;

. . . ."

Section 5. G.S. 159C-6 reads as rewritten:

"**§ 159C-6. Bonds.**

(a) Each authority is authorized to provide for the issuance, at one time or from time to time, of bonds of the authority for the purpose of paying all or any part of the cost of any project. The principal of, the interest on and any premium payable upon the redemption of ~~such~~ the bonds shall be payable solely from the funds ~~herein authorized for such~~ authorized in this Article for their payment. The bonds of each issue shall bear interest as may be determined by the Local Government Commission ~~of North Carolina~~ with the approval of the authority and the obligor irrespective of the limitations of G.S. 24-1.1, as amended, and successor provisions. The bonds of each issue shall be dated, shall mature at ~~such~~ any time or times not exceeding 35 years after the date of their issuance, and may be made redeemable before maturity at ~~such~~ any price or prices and under ~~such~~ any terms and conditions, as may be fixed by the authority ~~prior to~~ before the issuance of the bonds. The authority shall determine the form and the manner of execution of the bonds, including any interest coupons to be attached ~~thereto,~~ to them, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest. In case any officer whose signature ~~or a facsimile of whose signature appears on any bonds or coupons ceases to be that officer before the delivery of the bonds, the signature or the facsimile shall nevertheless be valid and sufficient for all purposes the same as if the person had remained in office until such delivery.~~ or a facsimile of whose signature appears on any bonds or coupons ceases to be that officer before the delivery of the bonds, the signature or the facsimile shall nevertheless be valid and sufficient for all purposes the same as if the officer had remained in office until the delivery. The authority may also provide for the authentication of the bonds by a trustee or fiscal agent. The bonds may be issued in coupon or in fully registered form, or both, as the authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds.

(b) The proceeds of the bonds of each issue shall be used solely for the payment of the cost of ~~the project or projects, or a portion thereof,~~ all or part of the project for which the bonds were issued, and shall be disbursed in ~~such~~ any manner and under ~~such~~ any restrictions, ~~if any,~~ as the authority may provide in the financing agreement and the security document. If the proceeds of the bonds of any issue, by reason of increased construction costs or error in estimates or otherwise, are less than ~~such~~ this cost, additional bonds may in like manner be issued to provide the amount of the deficiency.

(c) The proceeds of bonds shall not be used to refinance the cost of ~~a~~ an industrial project or a pollution control project. For the purposes of this section, a cost of ~~a~~ an industrial project or a pollution control project is considered refinanced if both of the following conditions are met:

(1) The cost is initially paid from sources other than bond proceeds, and the original expenditure is to be reimbursed from bond proceeds.

(2) The original expenditure was paid more than 60 days before the authority took some action indicating its intent that the expenditure would be financed or reimbursed from bond proceeds.

(d) ~~However,~~ Notwithstanding subsection (c) of this section, preliminary expenditures that are incurred prior to the commencement of the acquisition, construction, or rehabilitation of ~~a~~ an industrial project or a pollution control project, such as architectural costs, engineering costs, surveying costs, soil testing costs, bond issuance costs, and other similar costs, may be reimbursed from bond proceeds even if these costs are incurred or paid more than 60 days prior to the authority's action. This exception that allows preliminary expenditures to be reimbursed from bond proceeds, regardless of whether or not they are incurred or paid within 60 days of the authority's action, does not include costs that are incurred incident to the commencement of the construction of ~~a~~ an industrial project or a pollution control project, such as expenditures for land acquisition and site preparation. In any event, an expenditure in connection with an industrial project or a pollution control project originally paid before the authority took some action indicating its intent that the expenditures would be financed or reimbursed from bond proceeds may ~~only~~ be reimbursed from bond proceeds only if the authority finds that reimbursing those costs from bond proceeds will promote the purposes of this Chapter.

(e) An authority may make loans to an obligor to refund outstanding loans, obligations, deeds of trust, or advances issued, made, or given by the obligor for the cost of a special purpose project.

(f) The authority may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when ~~such~~ the bonds have been executed and are available for delivery. The authority may also provide for the replacement of any bonds that become mutilated or are destroyed or lost.

(g) Bonds may be issued under the provisions of this Chapter without obtaining, except as otherwise expressly provided in this Chapter, the consent of the State or of any political subdivision or of any agency of either, and without any other proceedings or the happening of any conditions or things other than those proceedings, ~~conditions~~ conditions, or things ~~which~~ that are specifically required by this Chapter and the provisions of the financing agreement and security document authorizing the issuance of ~~such bonds and securing the same.~~ the bonds and securing the bonds."

Section 6. G.S. 159C-7 reads as rewritten:

"§ 159C-7. Approval of ~~project~~ industrial projects and pollution control projects by Secretary of Commerce.

(a) Approval Required. -- No bonds may be issued by an authority to finance an industrial project or a pollution control project unless the project for which their issuance is proposed is first approved by the Secretary of Commerce. The authority shall file an application for approval of its proposed industrial project or pollution

control project with the Secretary of Commerce, and shall notify the Local Government Commission of ~~such~~ the filing.

(b) Findings. -- The Secretary shall not approve any proposed industrial project or pollution control project unless the Secretary makes all of the following, applicable findings:

(1) In the case of a proposed industrial project,

a. That the operator of the proposed project pays, or has agreed to pay thereafter, an average weekly manufacturing wage that (i) is above the average weekly manufacturing wage paid in the county, or (ii) is not less than ten percent (10%) above the average weekly manufacturing wage paid in the State, and

b. That the proposed project will not have a materially adverse effect on the environment.

(2) In the case of a proposed pollution control project, that ~~such~~ the project will have a materially favorable impact on the environment or will prevent or diminish materially the impact of pollution which would otherwise occur.

(2a) In the case of a hazardous waste facility or low-level radioactive waste facility that is used as a reduction, recovery or recycling facility, that such project will further the waste management goals of North Carolina and will not have an adverse effect upon public health or a significant adverse effect on the environment.

(3) In ~~any case (whether the proposed project is~~ the case of an industrial project or a pollution control ~~project),~~ project, except a pollution control project for a public utility,

a. That the jobs to be generated or saved, directly or indirectly, by the proposed project will be large enough in number to have a measurable impact on the area immediately surrounding the proposed project and will be commensurate with the size and cost of the proposed project,

b. That the proposed operator of the proposed project has demonstrated or can demonstrate the capability to operate ~~such~~ the project, and

c. That the financing of ~~such~~ the project by the authority will not cause or result in the abandonment of an existing industrial or manufacturing facility of the proposed operator or an affiliate elsewhere within the State unless the facility is to be abandoned because of obsolescence, lack of available labor in the area, or site limitations.

(b1) Initial Operator. -- If the initial proposed operator of ~~a~~ an industrial project or a pollution control project is not expected to be the operator for the term of the bonds proposed to be issued, the Secretary may make the findings required pursuant to subdivisions ~~(1)a.~~ (b)(1)a. and (3)b. of this section only with respect to the initial

operator. The initial operator shall be identified in the application for approval of the proposed project.

(c) Public Hearing. -- The Secretary of Commerce shall not approve any proposed industrial project or pollution control project pursuant to this section unless the governing body of the county in which the project is located has first conducted a public hearing and, at or after the public hearing, approved in principle the issuance of bonds under this Chapter for the purpose of paying all or part of the cost of the proposed project. Notice of the public hearing shall be published at least once in at least one newspaper of general circulation in the county not less than 14 days before the public hearing. The notice shall describe generally the bonds proposed to be issued and the proposed project, including its general location, and any other information the governing body considers appropriate or the Secretary of Commerce prescribes for the purpose of providing the Secretary with the views of the community. The notice shall also state that following the public hearing the authority intends to file an application for approval of the proposed project with the Secretary of Commerce.

(d) Certificate of Department of Environment and Natural Resources. -- The Secretary of Commerce shall not make the findings required by subdivisions (b)(1)b and (2) of this section unless the Secretary has first received a certification from the Department of Environment and Natural Resources that, in the case of a proposed industrial project, the proposed project will not have a materially adverse effect on the environment and that, in the case of a proposed pollution control project, the proposed project will have a materially favorable impact on the environment or will prevent or diminish materially the impact of pollution which would otherwise occur. The Secretary of Commerce shall not make the findings required by subdivision (2a) unless the Secretary has first received a certification from the Department of Environment and Natural Resources that the proposed project is environmentally sound, will not have an adverse effect on public health and will further the waste management goals of North Carolina. The Secretary of Commerce shall deliver a copy of the application to the Department of Environment and Natural Resources. The Department of Environment and Natural Resources shall provide each certification to the Secretary of Commerce within seven days after the applicant satisfactorily demonstrates to it that all permits, including environmental permits, necessary for the construction of the proposed project have been obtained, unless the authority consents to a longer period of time.

(e) Waiver of Wage Requirement. -- If the Secretary of Commerce has made all of the required findings respecting a proposed industrial project except that prescribed in ~~subparagraph~~ subdivision (b)(1)a of this section, the Secretary may, in the Secretary's discretion, approve the proposed industrial project if the Secretary has received (i) a resolution of the governing body of the county requesting that the proposed industrial project be approved notwithstanding that the operator will not pay an average weekly manufacturing wage above the average weekly manufacturing wage in the county and (ii) a letter from an appropriate State official, selected by the Secretary, to the effect that unemployment in the county is especially severe.

(f) Rules. -- To facilitate review of each proposed industrial project or pollution control project, the Secretary may require the authority to obtain and submit ~~such~~ any data and information about ~~such~~ the project ~~as~~ the Secretary may prescribe. The Secretary may also prescribe ~~such~~ forms and ~~such~~ rules ~~as~~ the Secretary considers reasonably necessary to implement the provisions of this section.

(g) Certificate of Approval. -- If the Secretary approves the proposed industrial project or pollution control project, the Secretary shall prepare a certificate of approval evidencing ~~such~~ the approval and setting forth the findings and shall cause the certificate of approval to be published in a newspaper of general circulation within the county. ~~Any such~~ This approval shall be reviewable as provided in Article 4 of Chapter 150B of the General Statutes ~~of North Carolina~~ only by an action filed, within 30 days after notice of ~~such~~ the findings and approval ~~shall~~ have been so published, in the Superior Court of Wake County. The superior court is ~~hereby~~ vested with jurisdiction to hear ~~such~~ the action, but if no ~~such~~ action is filed within the 30 days ~~herein~~ prescribed, the validity of ~~such~~ the approval ~~shall be~~ is conclusively presumed, and no court ~~shall have~~ has authority to inquire into ~~such~~ the approval. Copies of the certificate of approval of the proposed industrial project or pollution control project will be given to the authority, the ~~governing body of the county~~ board of county commissioners, and the Secretary of the Local Government Commission.

The certificate of approval ~~shall become~~ becomes effective immediately following the expiration of the 30-day period or the expiration of any appeal period after a final determination by any court of any action timely filed pursuant to this section. The certificate ~~shall expire~~ expires one year after its date unless extended by the Secretary who shall not extend the certificate unless the Secretary again approves the proposed industrial project or pollution control project as provided in this section. If bonds are issued within that year pursuant to the authorization of this Chapter to pay all or part of the costs of the industrial project or pollution control project, however, the certificate ~~shall expire~~ expires three years after the date of the first issuance of the bonds."

Section 7. G.S. 159C-8 reads as rewritten:

"**§ 159C-8. Approval of bonds.**

(a) No bonds may be issued by an authority unless the issuance ~~thereof~~ of the bonds is first approved by the Local Government Commission.

The authority shall file an application for approval of its proposed bond issue with the Secretary of the Local Government Commission, and shall notify the Secretary of ~~the Department of~~ Commerce of ~~such filing.~~ the filing if the project is an industrial project or pollution control project.

(b) In determining whether a proposed bond issue should be approved, the Local Government Commission may ~~consider, without limitation,~~ consider any of the following:

(1) Whether the proposed operator and obligor have demonstrated or can demonstrate the financial responsibility and capability to fulfill their obligations with respect to the financing agreement. In

making such determination, the Commission may consider the operator's experience and the obligor's ratio of current assets to current liabilities, net worth, earnings trends and coverage of fixed charges, the nature of the industry or business involved and its stability and any additional security such as credit enhancement, insurance, guaranties or property to be pledged to secure such bonds.

(2) Whether the political subdivisions in or near which the proposed project is to be located have the ability to cope satisfactorily with the impact of ~~such~~ the project and to provide, or cause to be provided, the public facilities and services, including utilities, that will be necessary for ~~such~~ the project and on account of any increase in population which are expected to result ~~therefrom.~~ from the project.

(3) Whether the proposed date and manner of sale will have an adverse effect upon any scheduled or anticipated sale of obligations by the State or any political subdivision or any agency of either of them.

(4) Any other factors the Commission considers relevant.

(c) The Local Government Commission shall not approve the issuance of bonds for a special purpose project unless the governing body of the county in which the special purpose project is located has conducted a public hearing and, at or after the public hearing, approved in principle the issuance of bonds under this Chapter for the purposes of paying all or a part of the proposed special purpose project. Notice of the public hearing must be published at least once in at least one newspaper of general circulation in the county not less than 14 days before the public hearing. The notice must describe generally the bonds proposed to be issued and the proposed special purpose project, including its general location, and any other information the governing body considers appropriate.

(d) If the initial proposed operator of the project is not expected to be the operator for the term of the bonds proposed to be issued, the Local Government Commission may consider the matters required under subdivision ~~(1)~~ (b)(1) of this section only with respect to the initial operator. The obligor shall be obligated to perform all of the duties of the obligor required hereunder during the term the bonds are outstanding. The Local Government Commission shall evaluate the obligor's ability to perform these duties without regard to whether the initial proposed operator of the project is expected to be the operator for the term of the bonds proposed to be issued. To facilitate the review of the proposed bond issue by the Commission, the Secretary may require the authority to obtain and submit ~~such~~ any financial data and information about the proposed bond issue and the security ~~therefor,~~ for it, including the proposed prospectus or offering circular, the proposed financing agreement and security document and annual and other financial reports and statements of the obligor, as the Secretary may prescribe. The Secretary may also prescribe ~~such forms~~

~~and such rules and regulations as he shall deem~~ any forms and rules the Secretary considers reasonably necessary to implement the provisions of this section. "

Section 8. G.S. 159C-11 reads as rewritten:

"**§ 159C-11. Financing agreements.**

(a) Every financing agreement shall provide that:

(1) The amounts payable under the financing agreement shall be sufficient to pay all of the principal of and redemption premium, if any, and interest on the bonds ~~that shall be~~ issued by the authority to pay the cost of the project as ~~the same shall~~ they respectively become ~~due;~~ due.

(2) The obligor shall pay all costs incurred by the authority in connection with the financing and administration of the project, except as may be paid out of the proceeds of bonds or otherwise, ~~including, but without limitation,~~ including insurance costs, the cost of administering the financing agreement and the security document and the fees and expenses of the fiscal agent or trustee, paying agents, attorneys, consultants and ~~others;~~ others.

(3) The obligor shall pay all the costs and expenses of operation, maintenance and upkeep of the ~~project; and~~ project.

(4) The obligor's obligation to provide for the payment of the bonds in full ~~shall not be~~ is not subject to cancellation, termination or abatement until ~~such~~ payment of the bonds or provision for their payment has been ~~therefor shall be~~ made.

(5) If the proposed initial operator of the project is not expected to be the operator for the term of the bonds proposed to be issued, the financing agreement shall require that the obligor attempt to arrange for a new operator when the current operator discontinues serving as operator. The new operator is subject to the approval of the Secretary under subdivisions (b)(1)a. and (3)b. of G.S. 159C-7 ~~and~~ if the project is an industrial project or a pollution control project, and is subject in any event to the approval of the Local Government Commission under G.S. 159C-8.

(b) The financing agreement, if in the nature of a lease agreement, shall either provide that the obligor ~~shall have~~ has an option to purchase, or require that the obligor purchase, the project upon the expiration or termination of the financing agreement subject to the condition that payment in full of the principal of, and the interest and any redemption premium on, the bonds, or provision ~~therefor, shall have~~ for payment, has been made.

The financing agreement may provide the authority with rights and remedies in the event of a default by the obligor ~~thereunder including, without limitation,~~ under the agreement, including any one or more of the following:

(1) Acceleration of all amounts payable under the financing agreement;

(2) Reentry and repossession of the project;

(3) Termination of the financing agreement;
(4) Leasing or sale or foreclosure of the project to others; and
(5) Taking whatever actions at law or in equity may appear necessary or desirable to collect the amounts payable under, and to enforce covenants made in, the financing agreement.

(c) The authority's interest in a project under a financing agreement may be that of owner, lessor, lessee, conditional or installment vendor, mortgagor, mortgagee, secured party or otherwise, but the authority need not have any ownership or possessory interest in the project.

The authority may assign all or any of its rights and remedies under the financing agreement to the trustee or the bondholders under a security document.

~~Any such~~ The financing agreement may contain ~~such~~ any additional provisions ~~as in the determination of~~ the authority ~~are~~ considers necessary or convenient to effectuate the purposes of this Chapter."

Section 9. G.S. 159C-19 reads as rewritten:

"**§ 159C-19. Revenue refunding bonds.**

(a) Each authority is ~~hereby~~ authorized to provide by resolution for the issuance of refunding bonds of the authority for the purpose of refunding any bonds then outstanding that have been issued under the provisions of this Chapter, including the payment of any redemption premium ~~thereon~~ on them and any interest accrued or to accrue to the date of redemption of ~~such~~ the bonds, and, if deemed advisable by the authority, for either or both of the following additional purposes:

(1) Constructing improvements, additions, extensions or enlargements of the project or projects in connection with which the bonds to be refunded have been issued, and
(2) Paying all or any part of the cost of any additional project or projects.

(a1) The issuance of ~~such~~ these bonds, ~~the~~ their maturities and other ~~details thereof,~~ details, the rights of ~~the holders thereof,~~ their holders, and the rights, ~~duties~~ duties, and obligations of the authority in respect to ~~the same~~ them shall be governed by the provisions of this Chapter that relate to the issuance of bonds, ~~insofar as such provisions may be appropriate therefor,~~ to the extent appropriate, including that ~~any such~~ the bonds may have a single maturity within the limit prescribed by G.S. 159C-6.

The approvals required by G.S. 159C-7 and 159C-8 shall be obtained prior to the issuance of any refunding ~~bonds; provided, however, that in the case where~~ bonds, except that if the refunding bonds of all or a portion of an issue are to be issued solely for the purpose of refunding outstanding bonds issued under this Chapter, the approval required by G.S. 159C-7 ~~shall not be~~ is not required as to the project financed with the bonds to be refunded.

(b) Refunding bonds issued under this section may be sold or exchanged for outstanding bonds issued under this Chapter and, if sold, ~~the proceeds thereof~~ their proceeds may be applied, in addition to any other authorized purposes, to the purchase, ~~redemption~~ redemption, or payment of ~~such~~ the outstanding bonds.

Refunding bonds may be issued, in the determination of the authority, at any time ~~not more than five years prior to~~ before the date of maturity or maturities or the date selected for the redemption of the bonds being refunded ~~thereby.~~ by them. Pending the application of the proceeds of ~~such~~ the refunding bonds, with any other available funds, to the payment of the principal of and accrued interest and any redemption premium on the bonds being refunded, and, if so provided or permitted in the security document securing ~~the same,~~ them, to the payment of any interest on ~~such~~ the refunding bonds and any expenses in connection with ~~such~~ the refunding, ~~such~~ the proceeds may be invested in direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by, the United States of America ~~which shall mature or which shall be~~ that mature or are subject to redemption by the ~~holder thereof,~~ holder, at the option of such holder, not later than the respective dates when the proceeds, together with the interest accruing ~~thereon,~~ on them, will be required for the purposes intended."

Section 10. The amendments to G.S. 159D-55, as recodified by this act, become effective with respect to obligations issued on or after August 1, 2000. The remainder of this act becomes effective July 1, 2000.

SENATE BILL 1472:
Conduit Agency Financing

BILL ANALYSIS

Committee:	Senate Finance	Sponsor:	Senator Rand
Date:	June 20, 2000	Analysis by:	Martha H. Harris*
Version:	Proposed Comm. Substitute		Staff Attorney

SUMMARY: Senate Bill 1472 makes the following changes regarding revenue bonds issued on behalf of private entities:

- *Expands the NC Educational Facilities Finance Agency to become the NC Capital Facilities Finance Agency, and authorizes the agency to issue bonds on behalf of private entities for various projects that have a public purpose ("special purpose projects"). (Section 1; Section 2, pages 22 through 38)*
- *Authorizes County Industrial Facilities and Pollution Control Financing Authorities to issue bonds on behalf of private entities for various projects that have a public purpose. (Sections 3 through 6, pages 38 to end)*
- *Dissolves the NC Industrial Facilities and Pollution Control Financing Authority and transfers its powers and duties to the NC Capital Facilities Finance Agency. (Section 2, pages 1 through 21)*

Changes in PCS: The proposed committee substitute makes technical changes as well as several minor substantive changes. These changes are listed at the end of this summary.

Background. In a conduit financing, a governmental entity issues its bonds to finance facilities for a private party, then receives payments from the private party to service the bonds. If the federal tax law permits tax-exempt bond issues for the type of facility financed, the private party is able to borrow at tax-exempt rates. Under current law, conduit financing is authorized for private industrial and pollution facilities through county authorities (Chapter 159C of the General Statutes) and through a State authority (Chapter 159D of the General Statutes) and for private educational facilities through a State agency (Chapter 115E of the General Statutes). Counties and cities may also provide conduit financing directly.

Federal law allows tax-exempt conduit financing for a variety of projects beyond the industrial, pollution control, and educational projects currently authorized in Chapters 159C, 159D, and 115E of the General Statutes. Recent financings have been proposed and entered into for new types of projects, such as recreational facilities to be leased to or operated by a YMCA. The Treasurer's Office had two concerns about the expansion of the type of projects being financed under current law. First, although the projects have a public purpose and satisfy federal requirements, the current North Carolina statutes do not clearly authorize conduit financing for these types of projects. Second, to the extent the conduit financing is conducted directly by a

*G. Thomas Lee of Poyner and Spruill contributed background information for this analysis.

local government, rather than a special purpose authority, the local government's credit rating is at risk if the private entity were to go into default.

Senate Bill 1472 would address these concerns by providing specific statutory authority for conduit financing of "special purpose projects," a variety of private, public purpose projects, through the following limited purpose agencies: County Industrial Facilities and Pollution Control Financing Authorities and the North Carolina Educational Facilities Finance Agency, which would be renamed the North Carolina Capital Facilities Finance Agency to reflect its broader financing authority. The types of projects that the bill would give these entities the power to finance are:

- water systems and facilities
- sewage disposal systems or facilities
- public transportation systems, facilities, or equipment
- public parking facilities
- public auditoriums and similar facilities
- recreational facilities
- solid waste facilities
- facilities for persons with disabilities and for the disadvantaged

Student housing facilities owned by entities other than educational institutions would also be authorized for the Capital Facilities Financing Agency. The Treasurer's office has identified these types of projects as those for which the private sector currently seeks conduit financing, or is expected to seek conduit financing in the foreseeable future.

Multi-County Projects. County Industrial Facilities and Pollution Control Financing Authorities are created by county governments and thus have limited ability to finance multi-county projects. Authorizing the North Carolina Educational Facilities Finance Agency to provide conduit financing would allow financing of multi-county projects, such as a proposed multi-county recreational facility to be operated by a YMCA near Winston-Salem. As part of expanding and renaming the Agency, its statutes are recodified from Chapter 115E of the General Statutes to Article 2 of Chapter 159D of the General Statutes.

Private Student Housing. By authorizing the North Carolina Educational Facilities Finance Agency to provide conduit financing for student housing that is not owned or operated by an educational institution, the bill would address current proposals to finance private, nonprofit housing for students at various universities, including Appalachian State University, Fayetteville State University, and North Carolina Agricultural and Technical State University.

Clean-up Amendments. This bill also makes "clean-up" amendments concerning the North Carolina Industrial Facilities and Pollution Control Financing Authority, created in Chapter 159D of the General Statutes. This authority is a State entity that issued bonds in the late 1980s and early 1990s for purposes similar to those provided for County Industrial Facilities and Pollution Control Financing Authorities in Chapter 159C. The State authority is moribund at this time due to loss of records regarding its creation and membership. From time to time, administrative duties arise regarding its outstanding bonds. This bill would authorize the

North Carolina Educational Facilities Finance Agency to take over the remaining responsibilities of the Industrial Facilities and Pollution Control Financing Authority, which would be dissolved. Although additional bonds are not expected to be issued under Chapter 159D for industrial or pollution control projects, the bill makes a few changes to conform the provisions to those governing County Industrial Facilities and Pollution Control Financing Authorities in Chapter 159C, and to delete obsolete provisions.

Conduit Financing Procedure. Under the bill, a private entity (either nonprofit or for-profit) could obtain financing from a County Industrial Facilities and Pollution Control Financing Authority or from the North Carolina Capital Facilities Finance Agency in order to acquire, construct, and improve a public purpose project. The financing would usually be tax-exempt under federal law and could include revenue bonds or other forms of debt, but would not include any financing that pledges the faith or credit of the State, a local government, or any political subdivision. The advantage to private entities of tax-exempt financing is that interest rates on tax-exempt financing are significantly lower than on taxable financing. The private entity must pay for the entire cost of the financing and of the facility being financed.

The bill makes tax-exempt financing available for capital facilities for the following public purpose projects: water systems, sewage disposal systems, public transportation systems, public parking facilities, public auditoriums and convention centers, and recreational facilities; in the case of the Capital Facilities Finance Agency, student housing may also be financed. Under current law, the Agency may finance facilities related to educational institutions, including student housing, but only on behalf of an educational institution and not on behalf of other entities.

In addition to a building, the financing could cover land acquisition, landscaping, site preparation, furniture, and machinery and equipment, as well as engineering and architectural services and other administrative expenses related to construction or acquisition of a project. Financing from the Capital Facilities Finance Agency is not available for projects that discriminate based on race, creed, color, or national origin. The law governing County Industrial Facilities and Pollution Control Financing Authorities does not contain a similar restriction.

Conduit financing through the State would be administered by the Capital Facilities Finance Agency (currently called the Educational Facilities Finance Agency), which is located in the Department of State Treasurer. The Agency has seven members: the State Treasurer, the State Auditor, one member appointed upon the recommendation of the President Pro Tempore of the Senate, one member appointed upon the recommendation of the Speaker of the House of Representatives, and three members appointed by the Governor. The appointive members must be residents of North Carolina and cannot hold other public office. The Agency is audited annually and submits an annual report to the Governor and the General Assembly.

A private entity could qualify for financing only if the Agency found it to be financially responsible and capable of fulfilling its obligations. Before financing is approved, the Agency must find that the entity has provided adequately for the payment of principal and interest on the bonds and for the operation, repair, and maintenance of the facility to be financed.

The Agency may issue bonds only if they are approved by the Local Government Commission. The Local Government Commission sets the interest rates on the bonds and administers the sale. The bonds may be secured by a trust agreement with a corporate trustee, such as a bank. The Agency will require the private entity to pay fees, loan repayments, rents, or other charges sufficient to cover the payment of principal and interest on the bonds and the operation, repair, and maintenance of the facility to be financed, and the bonds will be secured by the pledge of these revenues.

CHANGES MADE BY PROPOSED COMMITTEE SUBSTITUTE:

- *Removes a reference in the title to tax-exempt financing. The reason for the bond financing in 99+% of the cases will be because of the federal tax exemption. There may be times, however, where there are reasons to do a taxable bond issue. The current title implies that financing under the bill would be available only if it results in federal tax exemption.*
- *Expands the definition of special purpose projects to include solid waste facilities and facilities for the disabled and disadvantaged. Facilities for the disabled and disadvantage would include a Goodwill facility, a sheltered workshop, or a similar facility.*
- *Removes a prohibition on issuing refunding bonds earlier than five years before the call date of the bonds. This limitation supports no apparent policy and is not consistent with the federal law that will apply to special purpose projects.*
- *Expands the factors that the NC Capital Facilities Finance Agency and the Local Government Commission may take into account when considering bonds, to include whether the private entity on behalf of whom the bonds will be issued has arranged for delivery of a letter of credit or for any other credit enhancement to secure the obligations. Similar provisions are found in the current law governing County Industrial Facilities and Pollution Control Financing Authorities.*
- *Authorizes County Industrial Facilities and Pollution Control Financing Authorities to refinance pre-existing debt with respect to special purpose projects. Similar provisions are found in the current law governing the NC Educational Facilities Finance Agency.*

(Attachment #1)

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 6/20/2000

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ralph Dawes Hill	North Carolina Society for Respiratory Care
Diana Wilkins	Mercer & Ass.
Linwood Mercer	Mercer & Ass.
Melissa Suarez	SLF
Butch Gunnells	NC Soft Drink Assn
Deborah Johnson	NCSPA
LENNIE COLLINS	NC DOR
NANCY POMERANZ	NC DOR
Patty Seawell	"
RW Lwith	ACC
Thom Rus	ACC

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 6/20/2000

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
L'Tonya Slade	DENR
Margaret Westbrook	NCBA
Deborah Bryan	AIAgNC
[illegible]	CSPC
Sara Standing	CSPC
Dave Mosley	Discovery Place
Sabra Faires	Dept. of Revenue
Tom Dixon	—
Ron Standing	—
Phil Albano	NC Community College System
Kennon Briggs	" " " "

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 6/20/2000

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ann Wall	NC Center for Public Policy Research
Hal Miller	NCACCT
Debbie Holden	NC Utilities Commission
Robert A. MATHIA	" "
Robert Bennink	" "
Bob Gillam	NCUC - Public Staff
Don Hoover	NCUC - STAFF
Sam J. Ervin, IV	NCVL
Buck Trott	Mayor Town of Highlands
Erin Spry	Senator Garrou
Amy Powell	Sen. Perdue

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 6/20/2000

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Ilona McKillop	Moore & Van Allen
Steve Culver	NC Housing Finance Agency
Willie Riddick	DOR
[illegible]	NCAHP
Ken Wells	BCBSNC
John Kast	NCFPC
Gayle Sands	NCFPC
Leslie Reid	NCCBT
Evelyn Hawthorne	UNCCH
John Bowdish	Alley Associates
Andy Ellen	NCRMA

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 6/20/2000

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Hugh Tilson	NCHA
Stacy Flannery	NCHCFA
Robert Paschal	Young, Moore & Henderson
Bill Hale	NCDOI
Charlie Diehl	NC Trucking Association
Lisa Pierce	YMCAs of NC
Laura DeVivo	DENR
Mel Fry	DENR - DRP
Jessica Rat-Landers	NC Saeurkraut Assn
Bob Price	Jordan Price
Brian Francis	Meck. Cnty.

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE

Name of Committee

6/20/2000

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Mary Carinder	REBIC
Alex Reeves	Senator Gorton's office

(Attachment #2)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Tuesday, June 20, 2000

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

FAVORABLE

H.B.(SCS #1)**1340** Respiratory Care Practice Act
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1)**1854** 2000 Fee Bill
Sequential Referral: None
Recommended Referral: None

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

S.B. **1193** Wilkes Fire District Boundaries
Draft Number: PCSX6793
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

S.B. **1472** Conduit Agency Financing
Draft Number: PCS4788
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 4

Committee Clerk Comment:

(Attachment #3)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

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

Wednesday, June 21, 2000

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

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

S.B. **1549** UNC Millennial Campuses

Draft Number:	PCS8670
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS)**1551** Tax Enforcement

Draft Number:	PCS7374
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comment: Bills acted on in Senate Finance Meeting-6-20-00

SENATE FINANCE COMMITTEE

WEDNESDAY, JUNE 21, 2000

1:00 P.M. – ROOM 544

The Senate Finance Committee met on Wednesday, June 21, 2000, at 1:00 P.M. in Room 544 with Senator John Kerr presiding. There were 26 committee members present for the meeting. The Pages, Ashley Johnson and Mary Liz Billings, sponsored by Senator Hoyle, Emily Williford and Timothy Brunch, were introduced to the committee.

SB 1285 – LITTER PREVENTION SPECIAL PLATE.

Senator Albertson explained this Bill which was added to the Agenda at his request. At the conclusion of Senator Albertson's explanation, Senator Clodfelter moved for a Favorable Report. The motion carried. Copy of Bill and Explanation included in the minutes.

SB 1331 – WHITE GOODS SUNSET REPEAL

Senator Odom explained his Bill and Senator Allran moved for a Favorable Report. The motion carried. Copy of Bill, Explanation and Fiscal Note included in the minutes.

HB 1474 – LEASE LAW EXEMPTION.

Senator Metcalf was recognized to explain this Bill and moved for the adoption of a Committee Sub. At the conclusion of his explanation, Senator Albertson moved for a Favorable Report and the motion carried. Copy of Bill, Committee Sub, Explanation and Fiscal Note included in the minutes.

HB 1559 – CONFORM WITH FEDERAL LAW.

Representative Luebke was recognized to explain his Bill. Senator Albertson moved to adopt proposed Committee Sub and the motion carried. At the conclusion of Representative Luebke's explanation, Senator Albertson moved for a Favorable Report for the Committee Sub. The motion passed. Copy of Bill, Committee Sub, Explanation and Fiscal Note included in the minutes.

HB 677 – CERTAIN COUNTIES DELINQUENT.

Representative Haire was recognized to explain his Bill. After a general discussion of this Bill, Senator Rand moved for a Favorable Report. Motion carried. Copy of Bill and Explanation included in the minutes. (This Bill was not reported out of the Committee on directions from the Chairs.)

SB 1460 – FILM INDUSTRY INCENTIVES.

Senator Lee was recognized to explain this Bill and on his motion, a Committee Sub was adopted. Senator Purdue was recognized for a further explanation. There was a general discussion among the committee members on this Bill. Ms. Vicky Hunt, representing the NC Film Association, was recognized and spoke in strong support of this Bill. Senator Lee moved that the Committee Sub be given a Favorable Report by the Committee and this motion was seconded by Senator Ballantine. The motion carried. Copy of Bill, Committee Sub, and Explanation included in the minutes.

SB 1529 – REGISTER OF DEEDS FEE ADJUSTMENT.

Senator Dalton explained his Bill and Senator Rand offered an Amendment, which was adopted by the committee on his motion. At the conclusion of Senator Dalton's explanation of the Bill and the Amendment, Senator Gulley moved for a Favorable Report as Amended. The motion carried. Copy of Bill, Amendment, Explanation and Fiscal Note included in the minutes. (This Bill was held at the direction of the Chairs and was not reported out as amended.)

HB 1624 – STREAMLINED SALES TAX SYSTEM.

Representative Miller explained this Bill and after a general discussion with staff answering questions and Sabra Faires, NC Department of Revenue, speaking on the Bill, the Chairs directed that this Bill be pulled and discussed further at a later date. Copy of Bill, Explanation and Fiscal Note included in the minutes.

HB 1854 – 2000 FEE BILL.

Senator Kerr was recognized to explain this Bill and sent forth a proposed Committee Sub. On motion by Senator Soles, the committee adopted the committee sub. David King, Department of Transportation addressed the committee and explained the changes as they pertained to DOT. Mr. King also answered questions from the committee members. Senator Clodfelter sent forth an Amendment that was adopted on his motion. Senator Gulley moved for a Favorable Report for the Committee Sub, as Amended, and the motion carried. Copy of Senate Committee Sub (#1), Amendment, and Senate Committee Sub (#2, which is the correct version) is included in the minutes. (This bill was incorrectly reported out on Wednesday, June 21, 2000, as Unfavorable as to Committee Substitute Bill No. 1, but Favorable as to Senate Committee Substitute Bill when it should have been reported out as Favorable to Senate Committee Sub Bill, as

amended. It was pulled from the calendar on Thursday, June 22, 2000, and at a Finance meeting held during a session recess on the floor, was reconsidered. A new Committee Sub was adopted on motion by Senator Kerr and was given a Favorable Report on motion by Senator Kerr.

SB 1560 – MODIFY BILL LEE TAX CREDITS.

Senator Hoyle was recognized to explain this Bill. After his explanation, Senator Hoyle moved for a Favorable Report and the motion carried. Copy of Bill, Explanation and Fiscal Note included in the minutes.

SB 1305 – REVISE ARTICLE 9 OF THE UCC.

Senator Hartsell explained this Bill and on motion by Senator Lee, the Bill was given a Favorable Report. Copy of Bill, Explanation and Fiscal Note included in the minutes.

David W. Hoyle, Co-Chair
Senate Finance Committee

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

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

Visitors' Sign Up Sheet is Attachment # 1
Committee Report(s) are Attachment # 2

AGENDA

SENATE FINANCE COMMITTEE MEETING

WEDNESDAY, JUNE 21, 2000

ROOM 544 - 1:00 P.M.

CALL MEETING TO ORDER

INTRODUCE PAGES

SB 1305 – Revise Article 9 of the UCC – Sen. Hartsell

SB 1331 – White Goods Sunset Repeal – Sen. Odom

SB 1460 – Film Industry Incentives – Sen. Lee

SB 1474 – Lease Law Exemption – Sen. Metcalf

SB 1502 – Increase Fees/Investment Advisor Relations – Sen. Harris

SB 1529 – Register of Deeds Fee Adjustment – Sen. Dalton

SB 1552 – Establish Investment Advisory Commission – Sen. Hoyle

HB 677 – Certain Counties Delinquent – Rep. Haire

HB 1132 – Preserve Farmland/Protect Small Farms – Rep. Insko

HB 1559 – Conform with Federal Law – Rep. Luebke

HB 1560 – Modify Bill Lee Tax Credits – Rep. Allen

HB 1624 – Streamlined Sales Tax System – Rep. Miller

HB 1854 – 2000 Fee Bill – Rep. Miller

ADJOURN MEETING

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 2

SENATE BILL 1285*
Agriculture/Environment/Natural Resources Committee Substitute Adopted 6/20/00

Short Title: Litter Prevention Special Plate. (Public)

Sponsors:

Referred to:

May 17, 2000

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DIVISION OF MOTOR VEHICLES TO ISSUE LITTER PREVENTION SPECIAL REGISTRATION PLATES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-79.4(b) is amended by adding a new subdivision to read:

"(b) Types. -- The Division shall issue the following types of special registration plates:

. . .

(22a) Litter Prevention. -- Issuable to the registered owner of a motor vehicle in accordance with G.S. 20-81.12. The plate may bear a phrase and picture appropriate to the subject of litter prevention in North Carolina."

Section 2. G.S. 20-79.7(a) reads as rewritten:

"(a) Fees. -- Upon request, the Division shall provide and issue free of charge one registration plate to a recipient of the Congressional Medal of Honor, a 100% disabled veteran, and an ex-prisoner of war. All other special registration plates are subject to the regular motor vehicle registration fee in G.S. 20-87 or G.S. 20-88 plus an additional fee in the following amount:

Special Plate	Additional Fee Amount
Historical Attraction	$30.00
State Attraction	$30.00
Collegiate Insignia	$25.00

Kids First	$25.00
Olympic Games	$25.00
Special Olympics	$25.00
University Health Systems of Eastern Carolina	$25.00
Animal Lovers	$20.00
Litter Prevention	$15.00
March of Dimes	$20.00
Scenic Rivers	$20.00
School Technology	$20.00
Soil and Water Conservation	$20.00
Wildlife Resources	$20.00
Personalized	$20.00
Active Member of the National Guard	None
Purple Heart Recipient	None
All Other Special Plates	$10.00.

(b) Distribution of Fees. -- The Special Registration Plate Account and the Collegiate and Cultural Attraction Plate Account are established within the Highway Fund. The Division must credit the additional fee imposed for the special registration plates listed in subsection (a) among the Special Registration Plate Account (SRPA), the Collegiate and Cultural Attraction Plate Account (CCAPA), and the Natural Heritage Trust Fund (NHTF), which is established under G.S. 113-77.7, as follows:

Special Plate	SRPA	CCAPA	NHTF
Animal Lovers	$10	$10	0
Litter Prevention	$ 5	$10	0
Historical Attraction	$10	$20	0
In-State Collegiate Insignia	$10	$15	0
Kids First	$10	$15	0
Out-of-state Collegiate Insignia	$10	0	$15
Personalized	$10	0	$10
Special Olympics	$10	$15	0
Olympic Games	$10	$15	0
State Attraction	$10	$20	0
March of Dimes	$10	$10	0
Scenic Rivers	$10	$10	0
School Technology	$10	$10	0
Soil and Water Conservation	$10	$10	0
University Health Systems of Eastern Carolina	$10	$15	0
Wildlife Resources	$10	$10	0
All other Special Plates	$10	0	0"

Section 3. G.S. 20-81.12 is amended by adding a new subsection to read:

"(b12) Litter Prevention Plates. -- The Division shall develop a litter prevention plate regardless of the number of applications for the plate that the Division receives. The Division shall transfer quarterly the money in the Collegiate and Cultural Attraction Plate Account derived from the sale of litter prevention plates to the Litter Prevention Account created pursuant to G.S. 136-125.1."

Section 4. Chapter 136 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 10A.

"Litter Prevention Account.

"**§ 136-125.1. Litter Prevention Account.**

There is established under the control and direction of the Department of Transportation the Litter Prevention Account. The Account shall be a nonreverting special revenue account within the Highway Fund and shall consist of moneys credited to the Account under G.S. 20-81.12(b12) from the sale of litter prevention special registration plates. The Department of Transportation shall allocate the funds in the Account to reduce litter in the State.

"**§ 136-125.2. Report.**

The Department of Transportation shall report no later than 1 October of each year to the Joint Legislative Transportation Oversight Committee and the Environmental Review Commission regarding the allocation of funds from the Litter Prevention Account. The report shall include all receipts to and allocations from the Account made during the previous fiscal year and shall explain how each allocation serves to reduce litter in the State."

Section 5. The first report required by G.S. 136-125.2, as enacted by Section 4 of this act, is due no later than 1 October 2002.

Section 6. The Department of Transportation, the Department of Environment and Natural Resources, and the Department of Public Instruction shall cooperatively develop the phrase and picture to be used on the litter prevention special registration plate authorized by G.S. 20-79.6(b)(22a), as enacted by Section 1 of this act.

Section 7. The Legislative Research Commission shall study issues related to the prevention and removal of litter. The Commission shall make a final report of its recommendations regarding the prevention and removal of litter, including any proposed legislation, to the 2001 General Assembly.

Section 8. This act is effective when it becomes law.

SENATE BILL 1285:
Litter Prevention Special Plate

BILL ANALYSIS

Committee:	Senate Agriculture, Environment, and Natural Resources	**Introduced by:**	Senator Albertson
		Summary by:	Jeff Hudson, Committee Counsel
Date:	June 20, 2000		
Version:	Proposed Committee Substitute for Senate Bill 1285		

SUMMARY: ***The Proposed Committee Substitute for Senate Bill 1285 establishes a special registration plate (license plate) for the prevention of litter in North Carolina. The fee for the plate is $35.00. $10.00 of this fee will be deposited in the Litter Prevention Account to be used to reduce litter in North Carolina.***

CURRENT LAW: Under current law, there are approximately 50 special registration plates. These include the Scenic Rivers plate, the Soil and Water Conservation plate, and the Wildlife Resources plate. Except for certain military special registration plates, all special registration plates are subject to the $20.00 fee for regular registration plates. Special registration plates also have additional fees ranging from $10.00 to $30.00.

BILL ANALYSIS:

The Proposed Committee Substitute for Senate Bill 1285 establishes a special registration plate (license plate) for the prevention of litter in North Carolina. The fee for the plate is $35.00 ($20.00 fee for all registration plates and additional fee of $15.00). $5.00 of the additional fee will be deposited in the Special Registration Plate Account. $10.00 of the additional fee will be deposited in the Litter Prevention Account to be used to reduce litter in North Carolina.

The Proposed Committee Substitute also:

- Directs the Department of Transportation to report annually to the Joint Legislative Transportation Oversight Committee and the Environmental Review Commission on the receipts to and expenditures from the Litter Prevention Account.
- Directs the Department of Transportation, the Department of Environment and Natural Resources, and the Department of Public Instruction to develop a phrase and picture to be used on the litter prevention special registration plate.
- Directs the Legislative Research Commission to study issues related to the prevention and removal of litter and to report its recommendations, including any proposed legislation, to the 2001 General Assembly.

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

SENATE BILL 1285 (FIRST EDITION): Senate Bill 1285, as introduced, changed the date by which the holders of the Standard Commercial Fishing License could participate in the crab fishery from October 1, 2000 to July 1, 2000. The companion bill to Senate Bill 1285, House Bill 1562, received a favorable report from this Committee, has passed Second and Third reading in the Senate, and has been returned to the House of Representatives for concurrence.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1331*

Short Title: White Goods Sunset Repeal. (Public)

Sponsors: Senators Odom; Albertson, Clodfelter, Dannelly, Horton, Kinnaird, Martin of Guilford, Martin of Pitt, and Weinstein.

Referred to: Finance.

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO REPEAL THE SUNSET OF THE WHITE GOODS TAX AND TO DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO STUDY ISSUES RELATED TO THE SCRAP TIRE DISPOSAL TAX AND THE WHITE GOODS DISPOSAL TAX, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Section 11 of Chapter 471 of the 1993 Session Laws, as amended by Section 15.1(b) of Chapter 769 of the 1993 Session Laws and Section 7 of S.L. 1998-24, reads as rewritten:

"Sec. 11. Sections 1 through 5 of this act and this section become effective January 1, 1994. ~~Section 3 of this act expires July 1, 2001. Section 6 of this act becomes effective July 1, 2001. Sections 7, 8, and 9 of this act become effective July 1, 2002.~~

~~The repeal of the tax imposed by Section 3 of this act does not affect the rights or liabilities of the State, a taxpayer, or another person that arose during the time the tax was in effect.~~ The first report submitted by the Department to the Environmental Review Commission under G.S. 130A-309.85, as enacted by this act, shall cover the period from January 1, 1994, to June 30, 1994."

Section 2. The Department of Environment and Natural Resources shall study issues related to the scrap tire disposal tax and the white goods disposal tax. This study shall include an evaluation of whether the amount of the scrap tire disposal tax and the amount of the white goods disposal tax should be altered and

whether the distribution of the proceeds of these taxes should be reapportioned. The Department shall report its findings and recommendations, including any legislative proposals, to the Environmental Review Commission no later than October 1, 2000.

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

SENATE BILL 1331:
White Goods Sunset Repeal

BILL ANALYSIS

Committee: Senate Finance
Date: June 20, 2000
Version: First Edition

Introduced by: Senator Odom
Summary by: Martha K. Walston
Committee Counsel

SUMMARY: ***Senate Bill 1331 repeals the sunset on the white goods tax and directs the Department of Environment and Natural Resources to study issues related to the scrap tire disposal tax and the white goods disposal tax. Senate Bill 1331 is a recommendation of the Environmental Review Commission. The bill is identical to House Bill 1613, introduced by Representative Hackney. The bill is effective when it becomes law.***

CURRENT LAW: The white goods tax was imposed effective January 1, 1994 and expires July 1, 2001. With the expiration of the tax, units of local governments or a contracting party may charge a disposal fee for the disposal of white goods. The purpose of the white goods tax is to provide a source of revenue for the proper disposal of discarded white goods. A white good is a domestic or commercial large appliance, such as a refrigerator, a water heater, an air conditioner unit, or a dishwasher. The tax rate is $3.00 per white good.

Distribution of white goods tax.

- 8% to the Solid Waste Management Trust Fund. The money in this Fund is used to fund activities of DER to promote waste reduction and recycling, to fund research on the solid waste stream in North Carolina, to fund activities related to the development of secondary materials markets, to fund demonstration projects, and to fund research by in-State colleges and universities.
- 72% to the counties to be used only for the management of discarded white goods. Counties receive their distribution of white goods tax proceeds on a quarterly basis. If at the end of a fiscal year, the county has a surplus of white goods tax proceeds that equals or exceeds 25% of the amount it was eligible to receive for the fiscal year, it may not receive additional distributions until its surplus falls below that level. The amount that would have been distributed to a county will instead be credited to the White Goods Management Account.
- 20% to the White Goods Management Account. The revenues in this Account are used to make grants to units of local government to assist them in managing discarded white goods.

Reporting Requirements. Counties must submit an annual financial information report to the Local Government Commission that includes information about their management of white goods and the receipt and expenditures of white goods tax proceeds.

The Department of Environment and Natural Resources must report annually to the Environmental Review Commission and the Revenue Laws Study Committee on the management of white goods

BILL ANALYSIS: Senate Bill 1331 repeals the July 1, 2001 sunset on the white goods tax and directs the Department of Environment and Natural Resources to study issues related to the scrap tire disposal tax

and the white goods disposal tax. This study must include an evaluation of whether the amount of both taxes should be altered and whether the distribution of the proceeds of these taxes should be reapportioned. The Department must report its findings to the Environmental Review Commission no later than October 1, 2000.

(The scrap tire disposal tax is imposed at a percentage rate of the sales price of each new tire sold. The rate is 2% for a new tire sold or purchased with a bead diameter of less than 20 inches, and 1% with a bead diameter of at least 20 inches. Effective July 1, 2002, the tax is 1% of the sales price of the new tire.)

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: Senate Bill 1331 (First Edition)

SHORT TITLE: White Goods Sunset Repeal

SPONSOR(S): Senator Odom

FISCAL IMPACT

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

	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05
REVENUES:	**$0**	**$4,179,020**	**$4,421,403**	**$4,677,844**	**$4,949,159**
SWMTF	**$0**	**$ 334,320**	**$ 353,710**	**$ 374,225**	**$ 395,930**
WGMA	**$0**	**$ 835,803**	**$ 884,280**	**$ 935,568**	**$ 989,831**
Counties	**$0**	**$3,008,897**	**$3,183,413**	**$3,368,051**	**$3,563,398**

EXPENDITURES:

POSITIONS:

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Environment and Natural Resources
Solid Waste Management Trust Fund (SWMTF)
White Goods Management Account (WGMA)
County Governments

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

BILL SUMMARY: This bill repeals the sunset of the white goods tax and directs the Department of Natural Resources to study issues related to the scrap tire disposal tax and the white goods environmental and disposal tax, as recommended by the Environmental Review Commission.

BACKGROUND INFORMATION: White goods as defined in G.S. 130A-290 (a) are residential and commercial appliances including refrigerators, ranges, water heaters, freezers, unit air conditioners, washing machines, clothes dryers, dishwashers, and other similar large appliances. In 1993, G.S. 105-87.21 was amended to establish a privilege tax on white goods at a flat rate for each new white good that is sold. This white goods disposal tax is a point of origin tax imposed on retailers of white goods in addition to state sales tax. From 1993 to 1996, the rate of the privilege tax was $5 for new white goods that did not contain cholrofluorocarbon (CFC) refrigerants and $10 for those containing CFCs. Each quarter, 5% of the tax proceeds

were credited to the Solid Waste Management Trust Fund (SWMTF), 20% credited to the White Goods Management Account (WGMA), and 75% distributed to counties on a per capita basis.

In 1996, the EPA banned the use of CFCs in any new appliances. In the same year, the General Assembly amended the white goods legislation by implementing a flat $3 fee regardless of the refrigerant within the appliance for a period of three years. Additionally, the redistribution schedule of tax proceeds was altered. It directed 8%, rather than 5%, be directed to the Solid Waste Management Trust Fund, and 72%, rather than 75%, be directed to the counties. The White Goods Management Account continued to receive 20% of the tax proceeds. The 1998 General Assembly extended the sunset on the white goods tax program from July 1, 1998 until July 1, 2001.

The most current estimate of the balance of the White Goods Management Account is approximately $5,062,000. The balance of the Solid Waste Management Trust Fund is approximately $1,601,786, of which $1,300,000 has been already been allocated for this years contracts and grants.

ASSUMPTIONS AND METHODOLOGY: Currently, a $3 point of origin disposal tax is placed on white goods upon sale, regardless of whether the good contains CFCs. The legislation authorizing a flat rate of $3 per white good expires July 1, 2001. Upon the sunset of the current legislation, the white goods disposal tax would be lifted, and the White Goods Management Account closed on July 1 of the following year. As the current legislation does not expire until July 1, 2001, upon the passing of the bill there would be no fiscal impact during FY 2000-01. It would, however, result in tax revenues for subsequent years.

Revenues from the White Goods Disposal Tax were $1,023,300 for the first quarter of 2000. Of this $1.02 million, approximately $987,500 was available for distribution after collection and administration costs. Assuming similar patterns in the collection of this tax for subsequent quarters, the yearly distribution of these revenues is as follows:

Current Distribution of White Goods Tax Proceeds

Solid Waste Management Trust Fund (8%)	$ 315,992
White Goods Management Account (20%)	$ 789,984
Available for Distribution to Counties (72%)	$2,843,948
Total	$3,949,924

The annual growth in appliance sales is estimated at 5.8% nationally, and is a growth trend that is generally applicable to North Carolina appliance sales. Therefore, the White Goods Disposal Tax revenue will increase at the same yearly rate.

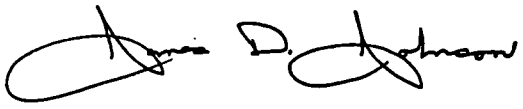
Future Distribution of White Goods Tax Proceeds

	2000-01	2001-02	2002-03	2003-04	2004-05
SWMTF	$ 315,992	$ 334,320	$ 353,710	$ 374,225	$ 395,930
WGMA	$ 789,984	$ 835,803	$ 884,280	$ 935,568	$ 989,831
Counties	$2,843,948	$3,008,897	$3,183,413	$3,368,051	$3,563,398
Total	$3,949,924	$4,179,020	$4,421,403	$4,677,844	$4,949,159

TECHNICAL CONSIDERATIONS: Tax data used in this fiscal note is provided by the Department of Revenue Sales and Use Tax Division, the Budget Development Department, and the Division of Pollution Prevention of the Department of Environment and Natural Resources. State product and sales information are provided by the Association of Home Appliance Manufacturers.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic and Eugene Son (Research Assistant)

APPROVED BY: James D. Johnson



DATE: June 15, 2000

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1474

Short Title: Lease Law Exemption/Buncombe T.C.C. (Local)

Sponsors: Senators Metcalf, Carter; and Carpenter.

Referred to: Finance.

May 25, 2000

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE ASHEVILLE-BUNCOMBE TECHNICAL COMMUNITY COLLEGE TO LEASE CERTAIN PROPERTY BY PRIVATE NEGOTIATION AND TO ALLOW FLEXIBLE USE OF LEASE PROCEEDS.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding the provisions of G.S. 115D-15, G.S. 115C-518, Article 12 of Chapter 160A of the General Statutes, or any other provisions of law, the Board of Trustees of Asheville-Buncombe Technical Community College may lease any or all portions or interest in the Enka Center of the College by private negotiation. The terms and conditions of any such lease shall be set by the Board and may include rental at less than fair market value. The duration of any such lease shall not exceed five years. Any such lease shall not require the prior approval of the State Board of Community Colleges.

The Enka Center property was donated to the College by BASF Corporation. It is located in Buncombe County at the intersection of the southern margin of U.S. Highways 19 and 23 and the western margin of Sand Hill Road.

Section 2. Notwithstanding G.S. 115D-15 or any other provision of law, Asheville-Buncombe Technical Community College may use the proceeds of leases of property pursuant to this act for Plant Fund and Current Expenses budget items at the Enka Center and for the operating costs of programs at the Enka Center.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 1474
Proposed Committee Substitute S1474-PCS7792-RO001

Short Title: Lease Law Exemption/Buncombe T.C.C. (Local)

Sponsors:

Referred to:

May 25, 2000

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE ASHEVILLE-BUNCOMBE TECHNICAL COMMUNITY COLLEGE TO LEASE CERTAIN PROPERTY BY PRIVATE NEGOTIATION AND TO ALLOW FLEXIBLE USE OF LEASE PROCEEDS.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding the provisions of G.S. 115D-15, G.S. 115C-518, Article 12 of Chapter 160A of the General Statutes, or any other provisions of law, the Board of Trustees of Asheville-Buncombe Technical Community College may lease any or all portions or interest in the Enka Center of the College by private negotiation. The terms and conditions of any such lease shall be set by the Board and may include rental at less than fair market value. The duration of any such lease shall not exceed five years. Any such lease shall not require the prior approval of the State Board of Community Colleges. The Board shall report annually to the State Board of Community Colleges on any leases entered into pursuant to this act.

The Enka Center property was donated to the College by BASF Corporation. It is located in Buncombe County at the intersection of the southern margin of U.S. Highways 19 and 23 and the western margin of Sand Hill Road.

Section 2. Notwithstanding G.S. 115D-15 or any other provision of law, Asheville-Buncombe Technical Community College may use the proceeds of leases of property pursuant to this act for Plant Fund and Current Expenses budget items at the Enka Center and for the operating costs of programs at the Enka Center.

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

SENATE BILL 1474:
Lease Law Exemption/Buncombe T.C.C.

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Senators Metcalf , Carter
Date:	June 20, 2000	**Summary by:**	Karen Cochrane Brown
Version:	1st Edition		Committee Co-Counsel

SUMMARY:

Senate Bill 1474 authorizes the Board of Trustees of Asheville-Buncombe Technical Community College to lease any or all of the Enka Center by private negotiation and to use the proceeds of the lease for Plant Fund and Current Expenses and for operating costs of programs at the Enka Center.

CURRENT LAW:

Under current law, a community college may only sell or lease real property with the prior approval of the State Board of Community Colleges and in accordance with the procedures set forth in Article 12 of Chapter 160A, which, among other things, prohibits disposition of property by private negotiation.

BILL ANALYSIS:

This bill overcomes all inconsistent provisions of law, to authorize the Board of Trustees of Asheville-Buncombe Technical Community College to lease any or all of the Enka Center by private negotiations. The terms and conditions of the lease may include rental at less than fair market value and the duration of the lease shall not exceed five years. Any lease entered into under this provision shall not require prior approval by the State Board of Community Colleges.

The bill also authorizes the Board to use the proceeds of leases pursuant to this act for Plant Fund and Current Expenses budget items and for operating costs of programs at the Enka Center.

This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: Senate Bill 1474 (First Edition)

SHORT TITLE: Lease Law Exemption/ Buncombe T.C.C.

SPONSOR(S): Senators Metcalf, Carter, and Carpenter

FISCAL IMPACT

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

	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05
REVENUES					
EXPENDITURES					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: State Board of Community Colleges, Buncombe County, Asheville-Buncombe Technical Community College

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

BILL SUMMARY:
The bill authorizes Asheville - Buncombe Technical Community College to lease certain property by private negotiation and allows the flexible use of lease proceeds.

BACKGROUND:
The Asheville - Buncombe Technical Community College Enka Center is the former corporate headquarters for BASF. The Enka Center includes 36.64 acres of land and three buildings with 220,000 square feet of space. The college plans to lease one building to BASF for its research and development program. A second building will be used to begin a Small Business Incubator program in cooperation with the Asheville Area Chamber of Commerce and the Buncombe County Economic Development Commission. The third building may be used as a Corporate Technology Training and Conference Center in conjunction with Western Carolina University.

ASSUMPTIONS AND METHODOLOGY:
The College estimates that it will take $5.1 million to renovate and equip the Enka Center for operation. These funds will come from a combination of state, federal and local grants as well as funding from the proposed higher education bond that is before the voters this fall. As for annual maintenance and operating costs of these facilities, no estimate is currently available. G.S. 115D-

32 requires counties to pay for the plant operation and maintenance and support services of community college facilities. This includes such costs as janitorial services, utilities, grounds maintenance, building repairs, and insurance. By authorizing lease payments for the Enka Center, SB 1474 will produce annual revenue for the College for these operating expenses. The more revenue the College raises from lease income, the less dependent it will be on appropriations from Buncombe County. Greater dependence on leases or user fees reduces the pressure on Buncombe County Commissioners to raise property taxes to fund annual operating needs.

TECHNICAL CONSIDERATIONS:
G.S. 115D-15 gives the State Board of Community Colleges the power to approve the sale, exchange or lease of property. This bill denies the State Board the right to prior approval for leases at the Enka Center at Asheville - Buncombe Technical Community College. The bill might be amended to at least require Asheville - Buncombe Technical Community College to annually report to the State Board a list of leases agreed to in the previous year.

G.S. 115D-15 also directs community colleges to use the proceeds of a property transaction for capital outlay purposes, but this bill allows the funds to be used for current operating expenses at the Enka Center. While not the norm in operating procedure for the community college system, it does give Asheville - Buncombe Technical Community College operating funds to maintain a large physical plant at the Enka Center.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic

APPROVED BY:

DATE:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1559

Short Title: Conform with Federal Law. (Public)

Sponsors: Representatives Luebke, Allen, Gray, Hill, Jarrell, Miller, Pope, and Tucker.

Referred to: Finance.

May 17, 2000

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE USED IN DEFINING AND DETERMINING CERTAIN STATE TAX PROVISIONS, TO CONFORM TO FEDERAL LAW REGARDING DEADLINES FOR PAYMENTS OF CERTAIN ESTIMATED INCOME TAXES, AND TO CLARIFY THE SALES FACTOR FOR DETERMINATION OF STATE CORPORATE INCOME AND FRANCHISE TAX.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-228.90(b)(1a) reads as rewritten:

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

. . .

(1a) Code. -- The Internal Revenue Code as enacted as of ~~June 1, 1999~~, January 1, 2000, including any provisions enacted as of that date which become effective either before or after that date."

Section 2. G.S. 105-163.15(i) reads as rewritten:

"(i) Notwithstanding ~~the other provisions~~ subsections (c), (d), (e), and (h) of this section, an individual who is a farmer or fisherman for a taxable year is subject to the provisions of this subsection.

(1) One installment. -- The individual is required to make only one installment payment of tax for that taxable year. This installment is due on or before January 15 of the following taxable ~~year but may be paid without penalty or interest on or~~

~~before March 1 of that~~ year. The amount of the installment payment ~~shall~~ must be the lesser of:

~~(1)~~ a. Sixty-six and two-thirds percent (66 2/3%) of the tax shown on the return for the taxable year, or, if no return is filed, sixty-six and two-thirds percent (66 2/3%) of the tax for that year; or

~~(2)~~ b. One hundred percent (100%) of the tax shown on the return of the individual for the preceding taxable year, if the preceding taxable year was a taxable year of 12 months and the individual filed a return for that year.

(2) Exception. -- If, on or before March 1 of the following taxable year, the taxpayer files a return for the taxable year and pays in full the amount computed on the return as payable, no addition to tax is imposed under subsection (a) of this section with respect to any underpayment of the required installment for the taxable year.

(3) Eligibility. -- An individual is a farmer or fisherman for any taxable year if the individual's gross income from farming or fishing, including oyster farming, for the taxable year is at least sixty-six and two-thirds percent (66 2/3%) of the total gross income from all sources for the taxable year, or the individual's gross income from farming or fishing, including oyster farming, shown on the return of the individual for the preceding taxable year is at least sixty-six and two-thirds percent (66 2/3%) of the total gross income from all sources shown on the return."

Section 3. G.S. 105-130.4(a)(7) reads as rewritten:

"(a) As used in this section, unless the context otherwise requires:

...

(7) "Sales" means all gross receipts of the corporation except ~~receipts~~ for the following receipts:

a. Receipts from ~~any~~ a casual sale of ~~property and except receipts~~ property.

b. Receipts allocated under subsections (c) through (h) of this section.

c. Receipts exempt from taxation.

d. The portion of receipts realized from the sale or maturity of securities or other obligations that represents a return of principal."

Section 4. Notwithstanding Section 1 of this bill, any amendments to the Internal Revenue Code enacted in 1999 that increase North Carolina taxable income for the 1999 taxable year become effective for taxable years beginning on or after January 1, 2000.

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

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1559
Proposed Committee Substitute H1559-PCS8205-RBX

Short Title: Conform with Federal Law. (Public)

Sponsors:

Referred to:

May 17, 2000

A BILL TO BE ENTITLED

AN ACT TO UPDATE THE REFERENCE TO THE INTERNAL REVENUE CODE USED IN DEFINING AND DETERMINING CERTAIN STATE TAX PROVISIONS, TO CONFORM TO FEDERAL LAW REGARDING PENSION TAX WITHHOLDING AND DEADLINES FOR PAYMENTS OF CERTAIN ESTIMATED INCOME TAXES, TO CLARIFY THE SALES FACTOR FOR DETERMINATION OF STATE CORPORATE INCOME AND FRANCHISE TAX, AND TO ENABLE THE COLLECTION OF TAX DEBT OWED TO NORTH CAROLINA THROUGH THE FEDERAL TREASURY OFFSET PROGRAM.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-228.90(b)(1a) reads as rewritten:

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

. . .

(1a) Code. -- The Internal Revenue Code as enacted as of ~~June 1, 1999~~, January 1, 2000, including any provisions enacted as of that date which become effective either before or after that date."

Section 2. G.S. 105-163.1(11b) reads as rewritten:

"(11b) **(Effective January 1, 2001)** Pension payment. -- A periodic payment or a nonperiodic distribution ~~that is not an eligible rollover distribution,~~ as those terms are defined in section 3405 of the Code."

Section 3. G.S. 105-163.2A(d) reads as rewritten:

"(d) Election of No Withholding. -- The recipient may elect not to have taxes withheld under this ~~section.~~ section to the extent permitted by section 3405 of the Code. The election must be in the form required by the Secretary. In the case of periodic payments, the election remains in effect until revoked by the recipient. In the case of a nonperiodic distribution, the election applies on a distribution-by-distribution basis unless it meets conditions prescribed by the Secretary for it to apply to subsequent nonperiodic distributions by the pension payer.

A pension payer must notify each recipient of the right to elect not to have taxes withheld under this section. The notice must comply with the requirements of section 3405 of the Code and any additional requirements prescribed by the Secretary.

A recipient's election not to have taxes withheld under this section is void if the recipient fails to furnish the recipient's tax identification number to the pension payer, or the Secretary has notified the pension payer that the tax identification number furnished by the recipient is incorrect."

Section 4. G.S. 105-163.15(i) reads as rewritten:

"(i) Notwithstanding ~~the other provisions~~ subsections (c), (d), (e), and (h) of this section, an individual who is a farmer or fisherman for a taxable year is subject to the provisions of this subsection.

(1) One installment. -- The individual is required to make only one installment payment of tax for that taxable year. This installment is due on or before January 15 of the following taxable ~~year but may be paid without penalty or interest on or before March 1 of that~~ year. The amount of the installment payment ~~shall~~ must be the lesser of:

~~(1)~~ a. Sixty-six and two-thirds percent (66 2/3%) of the tax shown on the return for the taxable year, or, if no return is filed, sixty-six and two-thirds percent (66 2/3%) of the tax for that year; or

~~(2)~~ b. One hundred percent (100%) of the tax shown on the return of the individual for the preceding taxable year, if the preceding taxable year was a taxable year of 12 months and the individual filed a return for that year.

(2) Exception. -- If, on or before March 1 of the following taxable year, the taxpayer files a return for the taxable year and pays in full the amount computed on the return as payable, no addition to tax is imposed under subsection (a) of this section with respect to any underpayment of the required installment for the taxable year.

(3) Eligibility. -- An individual is a farmer or fisherman for any taxable year if the individual's gross income from farming or fishing, including oyster farming, for the taxable year is at least sixty-six and two-thirds percent (66 2/3%) of the total gross

income from all sources for the taxable year, or the individual's gross income from farming or fishing, including oyster farming, shown on the return of the individual for the preceding taxable year is at least sixty-six and two-thirds percent (66 2/3%) of the total gross income from all sources shown on the return."

Section 5. G.S. 105-130.4(a)(7) reads as rewritten:

"(a) As used in this section, unless the context otherwise requires:

. . .

(7) "Sales" means all gross receipts of the corporation except ~~receipts~~ for the following receipts:

a. Receipts from ~~any~~ a casual sale of ~~property and except receipts~~ property.

b. Receipts allocated under subsections (c) through (h) of this section.

c. Receipts exempt from taxation.

d. The portion of receipts realized from the sale or maturity of securities or other obligations that represents a return of principal."

Section 6. G.S. 105A-13 reads as rewritten:

"**§ 105A-13. Collection assistance fees.**

(a) State Setoff. -- To recover the costs incurred by the Department in collecting debts under this Chapter, a collection assistance fee of no more than fifteen dollars ($15.00) is imposed on each debt collected through setoff. The Department must collect this fee as part of the debt and retain it. The Department must set the amount of the collection assistance fee based on its actual cost of collection under this Chapter for the immediately preceding year. If the Department is able to collect only part of a debt through setoff, the collection assistance fee has priority over the remainder of the debt. The collection assistance fee shall not be added to child support debts or collected as part of child support debts. Instead, the Department shall retain from collections under Division II of Article 4 of Chapter 105 of the General Statutes the cost of collecting child support debts under this Chapter.

(b) Federal Setoff. -- A collection assistance fee of fifteen dollars ($15.00) applies to a setoff made by the United States Department of the Treasury to recover tax owed to North Carolina. The Department of Revenue must add the fee to the amount of the tax liability submitted to the United States Department of the Treasury for setoff. If a federal setoff covers only part of the tax due, the collection assistance fee has priority over the tax due."

Section 7. Notwithstanding Section 1 of this bill, any amendments to the Internal Revenue Code enacted in 1999 that increase North Carolina taxable income for the 1999 taxable year become effective for taxable years beginning on or after January 1, 2000.

Section 8. Sections 2 and 3 of this act become effective January 1, 2001. The remainder of this act is effective when it becomes law.

HOUSE BILL 1559:
Conform with Federal Law

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Rep. Luebke
Date:	June 21, 2000	***Recommended by Revenue Laws***	
Version:	PCS for 1st Edition	**Summary by:**	Cindy Avrette Committee Counsel

SUMMARY: ***House Bill 1559 is a recommendation of the Revenue Laws Study Commission. It makes three tax law changes:***

- ***It rewrites the definition of the Internal Revenue Code used in the State tax statutes to change the reference date from June 1, 1999, to January 1, 2000. Updating the Internal Revenue Code reference makes recent amendments to the Code applicable to the State to the extent that State tax law previously tracked federal law. (Sections 1 and 7)***
- ***It returns the withholding law for farmers and fishers to conformity with federal law, correcting an inadvertent change made in 1985. Federal law forgives the penalty for farmers' and fishers' late payment of estimated taxes if the final return is filed, with taxes paid in full, by March 1 following the end of the taxable year. (Section 4)***
- ***It amends the definition of "sales" for purposes of the apportionment formula to clarify that the receipts of a multi-state corporation should only include the net gain realized from the sale or maturity of securities, not the rolled over capital or return of principal and not receipts otherwise exempt from tax. (Section 5)***

The proposed committee substitute adds two provisions to the bill:

- ***It incorporates the provisions of Senate Bill 1309, Pension Tax Withholding, which was also recommended by the Revenue Laws Study Committee. It requires withholding of State income taxes on an eligible rollover distribution to the extent permitted under federal law. This section would become effective January 1, 2001. (Sections 2 and 3)***
- ***It enables the Department of Revenue to collect delinquent tax debts owed to the State through the Treasury Offset Program by providing for the imposition of a collection assistance fee. (Section 6)***

UPDATE IRC REFERENCE: Since the General Assembly updated the State's reference to the Internal Revenue Code to June 1, 1999, Congress has enacted Public Law 106-107, the Tax Relief Extension Act of 1999. The Act extends several expired and expiring tax provisions, some of which affect federal taxable income. Since the computation of State taxable income begins with federal taxable income, any changes to federal taxable income affect State taxable income.

Section 1 of **House Bill 1559** rewrites the definition of the Internal Revenue Code to change the reference date from June 1, 1999, to January 1, 2000. Section 7 of **House Bill 1559** provides that the federal tax law changes that could increase an individual's or a corporation's North Carolina taxable income for the 1999 tax year will not become effective for the 1999 tax year but will instead apply only to taxable years beginning on or after January 1, 2000. Under Section 16 of Article 1 of the North Carolina Constitution, the legislature cannot pass a law that will retroactively increase the tax liability of any taxpayer. There are a few provisions in the federal tax law changes that could increase taxable income for the 1999 tax

year. Because this act could not be ratified until after the 2000 Session of the 1999 General Assembly convened, these changes were given a delayed effective date. A summary of the provisions of th Tax Relief Extension Act that may affect State taxable income is attached to this explanation.

Since the State corporate income tax was changed to a percentage of federal taxable income in 1967, the reference date to the Internal Revenue Code has been updated periodically. In discussing bills to update the Code reference, the question frequently arises as to why the statutes refer to the Code on a particular date instead of referring to the Code and any future amendments to it, thereby eliminating the necessity of bills like this one. The answer to the question lies in both a policy decision and a potential legal restraint.

First, the policy reason for specifying a particular date is that, in light of the many changes made in federal tax law from year to year, the State may not want to adopt automatically federal changes, particularly when these changes result in large revenue losses. By pinning references to the Code to a certain date, the State ensures that it can examine any federal changes before making the changes effective for the State.

Secondly, and more importantly, however, the North Carolina Constitution imposes an obstacle to a statute that automatically adopts any changes in federal tax law. Article V, Section 2(1) of the Constitution provides in pertinent part that the "power of taxation ... shall never be surrendered, suspended, or contracted away." Relying on this provision, the North Carolina court decisions on delegation of legislative power to administrative agencies, and an analysis of the few federal cases on this issue, the Attorney General's Office concluded in a memorandum issued in 1977 to the Director of the Tax Research Division of the Department of Revenue that a "statute which adopts by reference future amendments to the Internal Revenue Code would ... be invalidated as an unconstitutional delegation of legislative power.

In 1997, the Revenue Laws Study Committee explored the possibility of legislation that would automatically adopt federal changes to the Code each year, with legislative review and approval required in the succeeding legislative session. It was hoped that this approach would avoid the practical difficulties that occur when Code changes go into effect many months before the General Assembly has a chance to pass legislation adopting the changes. The Attorney General's Office reviewed the relevant case law in this State and other states before concluding that this approach would be unlikely to withstand a constitutional challenge.

CONFORM PENSION TAX WITHHOLDING: Under federal law, withholding is required on pensions, annuities, and certain deferred income, including IRAs, unless the taxpayer makes an election not to have the tax withheld. There is one exception to this rule: withholding is required on an eligible rollover distribution[1], and a taxpayer may not elect not to have the tax withheld.

In 1999, the General Assembly passed House Bill 1466 (S.L. 1999-414) which tracks part of the federal law. Under current State tax law, a pension payer must withhold State income tax on a pension payment, other than an eligible rollover distribution, if the pension payer was withholding federal income tax on the payment. As under federal law, a recipient of a pension payment that is not an eligible rollover distribution may elect not to have tax withheld from the pension payment. Unlike federal law, S.L. 1999-414 does not require that tax be withheld from an eligible rollover distribution.

[1] For practical purposes, an eligible rollover distribution is a distribution from a pension plan before retirement that is includable in gross income and that is not a payment required under federal law (such as a death benefit). The payment must be eligible for rollover into another 401(k) or IRA. Generally, an eligible rollover distribution occurs when an individual changes jobs.

Sections 2 and 3 of this bill would require that North Carolina tax be withheld on eligible rollover distributions to the same extent as required under federal law. The effect of this change would be to conform North Carolina law to federal law in this regard.

CONFORM ESTIMATED TAX DEADLINE: Section 2 corrects an inadvertent change made in 1985 by conforming the State's estimated tax deadline for farmers and fishers with the federal deadline. Federal law forgives the penalty for farmers and fishers late payment of estimated taxes if the final return is filed, with taxes paid in full, by March 1 following the end of the taxable year. Current law erroneously bases the forgiveness on March 1 payment of estimated tax.

Prior to 1985, the federal and State tax law requirements to pay estimated tax and the imposition of the underpayment penalty were contained in different statutes. In 1984, federal law was rewritten to consolidate several Code sections regarding the payment of estimated tax into one Code section. In 1985, North Carolina enacted similar legislation consolidating the State statutes into one statute. The bill was entitled "AN ACT TO CONFORM PAYMENTS OF NORTH CAROLINA ESTIMATED TAX PENALTIES FOR INDIVIUDUALS TO FEDERAL ESTIMATED TAX PAYMENT PENALTIES." The exceptions were intended to remain the same and the Department of Revenue has administered those exceptions in that manner since the legislation was enacted

CLARIFY SALES FACTOR: A multi-state corporation that has income from business activity which is taxable in more than one state must allocate and apportion a percentage of its income to this State for purposes of the State's corporate income and franchise tax law. An excluded corporation apportions its income to the State by multiplying its income by the sales factor. An excluded corporation is a corporation engaged in business as a building or construction contractor, a securities dealer, a loan company or a corporation which receives more than 50% of its ordinary gross income from investments or dealings in intangible property. The sales factor is a fraction, the numerator of which is the total sales of the corporation in this State during the income year and the denominator of which is the total sales of the corporation everywhere during the income year.

The definition of "sales" is the gross receipts of the corporation except for receipts from a casual sale of property and receipts otherwise allocated by statute, such as rents, royalties, sales of real property, interest, and net dividends. Section 3 further clarifies the definition of "sales" by excluding from gross receipts the following:

- Receipts exempt from taxation.
- The portion of receipts realized from the sale or maturity of securities or other obligations that represents a return of principal.

To include these receipts in the gross amount would distort the sales fraction. For example, it is not unusual for working capital to be turned over repeatedly by investing in short term securities. When the receipts include both principal and interest, the principal may be included in the denominator several times. When the denominator is inflated, the fraction is diluted and it can not accurately reflect the true net earnings of the corporation in North Carolina. This part of **House Bill 1559** clarifies that only the net gain from the sale or maturity of securities should be included in the sales factor, not the rolled over capital or return of principal and not receipts otherwise exempt from taxation.

TREASURY OFFSET PROGRAM: The Department of Revenue may collect delinquent tax debts owed to the State through the Treasury Offset Program. To participate in the program, the State must pay a fee of $9.65 to the Treasury Offset Program, send a certified letter to the taxpayer at a cost of $3.01, plus incur other incidental expenses. Section 7 enables the Department to impose a $15.00 collection assistance fee on each tax debt collected through the Treasury Offset Program. The State also imposes a collection assistance fee on debts collected through the State debt setoff collection act. The amount of that fee cannot exceed $15.00. The collection assistance fee is added to the amount of the tax liability submitted to the United State Department of the Treasury for setoff. As under the State setoff debt collection act, the collection assistance fee has priority over the debt setoff. Therefore, if the federal setoff covers only part of the tax due, the collection assistance fee has priority over the tax due.

Provisions of Federal Tax Relief Extension Act That may affect State Taxable Income

Individual Income Tax

- **Extend Exclusion for Employer-Provided Educational Assistance.** Section 127 of the Code provides an exclusion from gross income of up to $5,250 annually for employer-provided educational assistance for undergraduate courses. The exclusion would have expired with respect to courses beginning or after June 1, 2000. Public Law 106-107 extends the exclusion with respect to courses beginning before January 1, 2002.
- **Denial of Charitable Contribution Deduction for Transfers Associated with Split-Dollar Insurance Arrangements.** Clarifies that no charitable contribution deduction is allowed for a transfer to or for the benefit of a charitable organization if, in connection with the transfer, the organization directly or indirectly pays any premium on any personal benefit contract with respect to the transferor. A personal benefit contract is a life insurance, annuity, or endowment contract. The clarification of this provision does not infer that a charitable split-dollar insurance arrangement was allowed under prior law. It does not apply to a person that benefits exclusively under a bona fide charitable gift annuity within the meaning of the Code.

Individual and Corporate Income Tax

- **Extension of the Work Opportunity Tax Credit and the Welfare-to-Work Tax Credit.** Public Law 106-107 provides a 30-month extension of these two credits. They would have expired for wages paid or incurred to a qualified individual who began work for an employer before July 1, 1999. To the extent an employer claims the federal credit, the employer must reduce its federal deduction for wages by the amount of the credit. Since North Carolina does not have comparable credits, it allows a taxpayer who claims the federal credits to claim a deduction from federal taxable income for the amount by which the employer's deduction for wages was reduced.
- **Extend Expensing of Environmental Remediation Expenditures.** Taxpayers may elect to treat certain environmental remediation expenditures that would otherwise be chargeable to capital account as deductible in the year paid or incurred. Eligible expenditures are those paid or incurred before January 1, 2002, as opposed to January 1, 2001.
- **Federal Production Payments to Farmers.** A taxpayer generally is required to include an item in income no later than the time of its actual or constructive receipt. If a taxpayer has an unrestricted right to demand the payment of an amount, the taxpayer is in constructive receipt of that amount whether or not the taxpayer makes the demand and actually receives the payment. Public Law 106-107 provides that an option to accelerate the receipt of a payment under a production flexibility contract will not accelerate the recognition of income. The contract payments are to be included in gross income in the year they are actually received. A production flexibility contract is between the Secretary of Agriculture and farmers. The contracts generally cover crop years 1996 through 2002.

- **Prohibition on Use of the Installment Method by Accrual Method Taxpayers.** An accrual method taxpayer is generally required to recognize income when all the events have occurred that fix the right to the receipt of the income and the amount of the income can be determined with reasonable accuracy. Prior to the enactment of Public Law 106-107, the installment method of accounting provided an exception to this general principle of income recognition. The installment method of accounting allows a taxpayer to defer the recognition of income from the disposition of certain property until payment is received, regardless of whether the taxpayer uses the cash method or accrual method of accounting. Public Law 106-107 generally prohibits the use of the installment method of accounting for dispositions of property that would otherwise be reported for Federal income tax purposes using an accrual method of accounting. It retains the present law regarding the availability of the installment method for dispositions of property used or produced in the trade or business of farming and for dispositions of timeshares or residential lots if the taxpayer elects to pay interest under section 453(l). It does not change the ability of a cash method taxpayer to use the installment method.
- **Clarify the Tax Treatment of Income and Losses on Derivatives.** Three categories have been added to the list of assets the gain or loss on which is treated as ordinary income, as opposed to a capital gain or loss. The new categories are: commodities derivatives held by commodities derivatives dealers; hedging transactions; and supplies of a type regularly consumed by the taxpayer in the ordinary course of the taxpayer's trade or business.
- **Limit Conversion of Character of Income from Constructive Ownership Transactions.** Public Law 106-107 limits the amount of long-term capital gains a taxpayer can recognize from derivative transactions with respect to certain pass-through entities to the amount of gain the taxpayer would have had if the taxpayer owned a direct interest in the pass-through entity during the term of the derivative contract.
- **Treatment of Excess Pension Assets used for Retiree Health Benefits.** The period of time permitting qualified transfers of excess defined benefit pension plan assets to retiree health benefits accounts under section 401(h) has been extended to include transfers that take place prior to January 1, 2006. It would have expired on December 31, 2000.

Corporate Income Tax

- **Distributions by a Partnership to a Corporate Partner of Stock in Another Corporation.** Public Law 106-107 allows a basis reduction to assets of a corporation if stock in that corporation is distributed by a partnership to a corporate partner. The reduction applies if, after the distribution, the corporate partner controls the distributed corporation.
- **Extend Exceptions under Subpart F for Active Financing Income.** A foreign corporation is a "Controlled Foreign Corporation" if more than 50% of its outstanding voting stock, or more than 50% of the value of all its outstanding stock, is owned by US shareholders. A "US shareholder" is a US person who owns 10% or more of the foreign corporation's total combined voting stock.

  In general, the foreign-source income of a foreign corporation is not taxable to its US shareholders until it is distributed to them. Recognizing that income could be accumulated in a CFC, thus deferring US tax on this income indefinitely, Congress enacted the subpart F provisions of the Code in 1962. These provisions require certain items of income to be treated as deemed paid to US shareholders and, therefore, subject to US taxation. The income subject to current inclusion under the subpart F rules includes foreign personal holding company income, insurance income, and foreign

base company services income. Examples of foreign personal holding company income include dividends, rents, royalties, annuities, net gains from commodity transactions, net gains from foreign currency transactions, and payments in lieu of dividends. Insurance income subject to inclusion under the subpart F rules includes any income of a CFC attributable to the issuing or reinsuring of any insurance or annuity contract in connection with risks located in a country other than the CFC's country of organization. Foreign base company services income is income derived from services performed for a related person outside the country in which the CFC is organized.

Temporary exceptions from foreign personal holding company income, foreign base company services income, and insurance income apply for subpart F purposes for certain income that is derived in the active conduct of a banking, financing, or similar business, or in the conduct of an insurance business. These exceptions were set to expire on December 31, 1999. Public Law 106-107 extended these exceptions for two years.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 1559 (First Edition)

SHORT TITLE: Conform with Federal Law

SPONSOR(S): Representative Luebke, et al.

FISCAL IMPACT

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

($ million)

	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05
REVENUES					
General Fund					
Conform Tax Deadline			No fiscal impact		
Clarify Sales Factor			No fiscal impact		
IRC Update *	-2.03	-4.35	.65	.85	.60

* Due to the timing of estimated payments of corporations and high-income individuals, the $1.37 million revenue gain anticipated in FY 1999-00 may carry forward to FY 2000-01.

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue

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

BILL SUMMARY: Section one of the bill updates the reference to the Internal Revenue Code used in state tax provisions from June 1, 1999, to January 1, 2000. Section two conforms state statutes with federal law regarding deadlines for payments of certain estimated income taxes. Section three clarifies in the corporate apportionment formula that receipts of a multistate corporation should only include the net gain realized from the sale or maturity of securities, not the rolled over capital or return of principal.

ASSUMPTIONS AND METHODOLOGY:

Conform Estimated Tax Deadline

There is no fiscal impact of this section because it codifies the administrative practice of the Department of Revenue. This section recognizes the federal forgiveness of penalties for late

payment of estimated taxes by farmers and fishermen if the final return is filed, with taxes paid in full, by March 1 following the end of the taxable year. Even though the state law has been out of conformity with the federal law since 1985, state administrators and tax preparers have been following the federal law.

Clarify Sales Factor

There is no fiscal impact of this section because it codifies the administrative practice of the Department of Revenue. The Department believes that "gross receipts for the purpose of computing the sales factor should only include net gain, and not the rolled over capital or return of principal, realized from the sale or maturity of securities." A New York securities firm has filed a protest of this departmental interpretation. The North Carolina Attorney General ruled in favor of the Department on a similar issue in 1983, but has not issued an official opinion on this exact topic. While passage of this section has no fiscal impact, failure to approve this measure and clarify the sales factor in the statute, puts the state at risk of losing a minimum of $3 million a year. This estimate is based on a limited review of audit cases and protests by the Department of Revenue's Corporate, Excise and Insurance Tax Division.

IRC Update

Since North Carolina individual and corporate income tax tracks the federal income tax law, it is necessary each year to update state statutory references to the Internal Revenue Code (I.R.C.). President Clinton signed the Tax Relief Extension Act of 1999 into law on December 17, 1999. Department of Revenue officials and legislative staff have determined that some of the provisions in this act have an impact on the state's tax laws. The attached chart shows the fiscal impact of the bill based on estimates by the Congressional Joint Committee on Taxation. The North Carolina percentage of the national estimate is based on actual tax collections. The national estimates are further adjusted for the state fiscal year. Section 4 clarifies that any changes that increase North Carolina taxable income for 1999 taxable year become effective for taxable years beginning on or after January 1, 2000.

Tax Relief Extension Act of 1999 - Impact on General Fund

	Effective Date	Fiscal Year ($ Millions) 2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Individual Income Tax											
Extend exclusion for employer-provided education assistance through 12/31/01	05/31/2000		-1.15	-2.30	-0.95						
Deny charitable contribution deduction for transfers associated with split-dollar insurance arrangements	02/08/1999	Negligible Revenue Effect									
Individual and Corporate Income Tax											
Extend the work opportunity and the welfare to work tax credits through 12/31/01	06/30/1999	-0.30	-0.43	-0.40	-0.21	-0.08	-0.03	-0.01			
Extend expensing of environmental remediation expenditures through 12/31/01	12/17/1999		-0.23	-0.32	-0.11	-0.01	-0.01	0.01	0.03	0.03	0.04
Provide that Federal Farm Production Payments are taxable in the year of receipt	12/17/1999	Negligible Revenue Effect									
Prohibit the use of the installment method by accrual method taxpayers	iso/a 12/17/1999	2.59	3.67	2.20	1.39	0.39	0.04	0.11	0.19	0.26	0.34
Clarify the tax treatment of income and losses on derivatives	12/17/1999	0.00	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01
Limit conversion of character of income from constructive ownership transactions	teio/a 7/12/1999	0.08	0.24	0.25	0.27	0.28	0.29	0.31	0.34	0.36	0.38
Allow employers to transfer excess pension assets used for retiree health benefits through 12/31/05	tmi tyba 12/31/2000		0.10	0.21	0.21	0.22	0.23	0.12			
Corporate Income Tax											
Reduce basis in assets for distributions by a partnership to a corporate partner of stock in another corporation	07/14/1999	0.01	0.02	0.04	0.05	0.05	0.05	0.05	0.05	0.05	0.05
Extend exceptions under subpart F for active financing income through 12/31/01	tyba 12/31/1999	-1.01	-4.26	-4.03							
Total General Fund Impact		1.37	-2.03	-4.35	0.65	0.85	0.60	0.62	0.61	0.71	0.82

NOTES:

1) North Carolina estimates are based on a percentage of the federal estimate calculated by the Congressional Joint Committee on Taxation. The percentage used is N.C. actual tax collections divided by national tax collections. (Individual = .723% Corporate = .542%)

iso/a = installment sales on or after

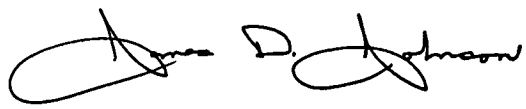
teio/a = transactions entered into on or after

tmi = transfers made in

tyba = taxable year beginning in

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic

APPROVED BY: James D. Johnson



DATE: May 29, 2000

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 3

HOUSE BILL 677
Committee Substitute Favorable 4/23/99
Third Edition Engrossed 4/28/99

Short Title: Certain Counties Delinquent Taxes. (Local)

Sponsors:

Referred to:

March 29, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CHEROKEE, GRAHAM, HAYWOOD, JACKSON, MADISON, POLK, AND SWAIN COUNTIES TO REQUIRE THE PAYMENT OF DELINQUENT PROPERTY TAXES BEFORE RECORDING DEEDS CONVEYING PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. Article 2 of Chapter 161 of the General Statutes is amended by adding a new section to read:

"**§ 161-31. Tax certification.**

The board of commissioners of a county may, by resolution, require the register of deeds not to accept any deed for registration unless the county tax collector has certified that no delinquent ad valorem county taxes, ad valorem municipal taxes, or taxes with which the collector is charged are a lien on the property described in the deed."

Section 2. This act applies only to Cherokee, Graham, Haywood, Jackson, Madison, Polk, and Swain Counties.

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

HOUSE BILL 677:
Certain Counties Delinquent Taxes

BILL ANALYSIS

Committee: Senate Finance
Date: June 19, 2000
Version: 3rd Edition

Introduced by: Rep. Haire
Summary by: Martha K. Walston
Committee Counsel

SUMMARY: ***House Bill 677 is a local bill that authorizes the Counties of Cherokee, Graham, Haywood, Jackson, Polk, and Swain to require the payment of delinquent property taxes before a deed conveying property can be recorded. The bill has been reviewed in House Local Government II and House Rules. The bill was received from the House on April 29, 1999. House Bill 677 is effective when it becomes law.***

BILL ANALYSIS: House Bill 677 authorizes the boards of commissioners of the Counties of Cherokee, Graham, Haywood, Jackson, Madison, Polk, and Swain to pass a resolution requiring the register of deeds in each of these counties to refuse to accept any deed for registration if there are delinquent property taxes owing on the property described in the deed or if there are any taxes that are a lien on the property. The county tax collector must first certify that there are no delinquent taxes.

BACKGROUND: S.L. 1993-657 requires payment of delinquent taxes in Ashe County before recording deeds.

S.L 1987-537 authorizes Mitchell County to direct its register of deeds not to record any deed unless the county tax collector certifies that all delinquent county and municipal taxes have been paid with respect to the property described in the deed. If the deed describes property located in the Town of Spruce Pine, then the deed must be accompanied by a certificate from the tax collector of that Town stating that all municipal taxes with respect to the property have been paid.

S.L. 1999-326 adds the Town of Bakersville to the certification requirement.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1460

Short Title: Film Industry Incentives. (Public)

Sponsors: Senators Lee; Ballantine, Carter, Garrou, Jordan, and Metcalf.

Referred to: Finance.

May 25, 2000

A BILL TO BE ENTITLED

AN ACT TO PROVIDE INCENTIVES FOR DEVELOPMENT OF THE FILM INDUSTRY IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. Part 2 of Article 10 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-434.3. Film Industry Development Account.**

(a) Creation and Purpose of Account. -- There is created in the Department of Commerce, Division of Travel and Tourism, the Film Industry Development Account to provide annual grants as incentives to production companies that engage in production activities in this State. The Division of Travel and Tourism shall administer this program in accordance with the following provisions:

(1) To be eligible for a grant, a production company must engage in production activities in this State.

(2) A grant may not exceed fifteen percent (15%) of the amount the production company spends for goods and services in this State during the calendar year.

(3) A grant may not exceed two hundred thousand dollars ($200,000) per production.

(b) Production Company Defined. -- As used in this section, the term 'production company' has the meaning provided in G.S. 105-164.3.

(c) Reports. -- The Department of Commerce shall report annually to the General Assembly concerning the applications made to the account, the payments made from the account, and the effect of the payments on job creation in the State. The

Department of Commerce shall also report quarterly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the use of the moneys in the account, including information regarding to whom payments were made and in what amounts."

Section 2. There is appropriated from the General Fund to the Department of Commerce, Division of Travel and Tourism, the sum of five million dollars ($5,000,000) for the 2000-2001 fiscal year, for the Film Industry Development Account created in this act. It is the intent of the General Assembly to appropriate to the Film Industry Development Account the sum of five million dollars ($5,000,000) in each fiscal year of the 2001-2003 fiscal biennium.

Section 3. G.S. 143-341(4) is amended by adding a new sub-subdivision to read:

"**§ 143-341. Powers and duties of Department.**

The Department of Administration has the following powers and duties:

. . .

(4) Real Property Control:

. . .

o. To provide that no fee, other than reimbursement of actual costs incurred and actual revenues lost by the State, shall be charged when State buildings are made available to a production company for a production. As used in this subdivision, the term 'production company' has the meaning provided in G.S. 105-164.3.

. . . ."

Section 4. Article 10 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-162.2. Use of public property by production companies.**

If a State agency makes real property available to a production company for a production, it shall not charge any fee other than reimbursement of actual costs incurred and actual revenues lost by the agency. As used in this subdivision, the term 'production company' has the meaning provided in G.S. 105-164.3. This section does not require a State agency to make real property available to a production company for a production."

Section 5. G.S. 105-164.3 is amended by adding a new subdivision to read:

"(11c) 'Production company' means a person engaged in the business of making original motion picture, television, or radio images for theatrical, commercial, advertising, or educational purposes."

Section 6. G.S. 105-164.13(22a) reads as rewritten:

"(22a) Sales of audiovisual masters made or used by a production company in making visual and audio images for first generation reproduction. For the purpose of this subdivision, an "audiovisual master" is an audio or video film, tape, or disk or another audio or video storage device from which all other

copies are made. ~~For the purpose of this subdivision, a production company is a person engaged in the business of making motion picture, television, or radio images for theatrical, commercial, advertising, or educational purposes.~~"

Section 7. G.S. 105-164.14 is amended by adding a new subsection to read:

"(j) Production Companies. -- A production company is allowed an annual refund of part of the State sales tax it pays under G.S. 105-164.4(a)(3) on the rental of transient accommodations for occupancy by its employees. If an employee of the production company occupies a transient accommodation for a continuous period of more than 30 days but less than 90 days, the production company is allowed a refund of the State sales tax it paid on the rental for the entire rental period. Notwithstanding any other provision of law, the refund allowed in this subsection does not apply to general local sales and use taxes levied under Subchapter VIII of this Chapter, Chapter 1069 of the 1967 Session Laws, or any other local act.

A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the State's fiscal year. Refunds applied for after the due date are barred."

Section 8. Sections 1 and 2 of this act become effective July 1, 2000. Section 7 of this act becomes effective October 1, 2000, and applies to taxes paid on or after that date. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 1460
Proposed Committee Substitute S1460-PCS7789-LA001

Short Title: Film Industry Incentives. (Public)

Sponsors:

Referred to:

May 25, 2000

A BILL TO BE ENTITLED

AN ACT TO PROVIDE INCENTIVES FOR DEVELOPMENT OF THE FILM INDUSTRY IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. Part 2 of Article 10 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-434.3. Film Industry Development Account.**

(a) Creation and Purpose of Account. -- There is created in the Department of Commerce, Division of Travel and Tourism, the Film Industry Development Account to provide annual grants as incentives to production companies that engage in production activities in this State. The Division of Travel and Tourism shall administer this program in accordance with the following provisions:

(1) To be eligible for a grant, a production company must engage in production activities in this State.

(2) A grant may not exceed fifteen percent (15%) of the amount the production company spends for goods and services in this State during the calendar year.

(3) A grant may not exceed two hundred thousand dollars ($200,000) per production.

(b) Production Company Defined. -- As used in this section, the term 'production company' has the meaning provided in G.S. 105-164.3.

(c) Reports. -- The Department of Commerce shall report annually to the General Assembly concerning the applications made to the account, the payments made from

the account, and the effect of the payments on job creation in the State. The Department of Commerce shall also report quarterly to the Joint Legislative Commission on Governmental Operations and the Fiscal Research Division on the use of the moneys in the account, including information regarding to whom payments were made and in what amounts."

Section 2. G.S. 143-341(4) is amended by adding a new sub-subdivision to read:

"**§ 143-341. Powers and duties of Department.**

The Department of Administration has the following powers and duties:

. . .

(4) Real Property Control:

. . .

o. To provide that no fee, other than reimbursement of actual costs incurred and actual revenues lost by the State, shall be charged when State buildings are made available to a production company for a production. As used in this subdivision, the term 'production company' has the meaning provided in G.S. 105-164.3.

. . . ."

Section 3. Article 10 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-162.2. Use of public property by production companies.**

If a State agency makes real property available to a production company for a production, it shall not charge any fee other than reimbursement of actual costs incurred and actual revenues lost by the agency. As used in this subdivision, the term 'production company' has the meaning provided in G.S. 105-164.3. This section does not require a State agency to make real property available to a production company for a production."

Section 4. G.S. 105-164.3 is amended by adding a new subdivision to read:

"(11c 'Production company' means a person engaged in the business of making original motion picture, television, or radio images for theatrical, commercial, advertising, or educational purposes."

Section 5. G.S. 105-164.13(22a) reads as rewritten:

"(22a) Sales of audiovisual masters made or used by a production company in making visual and audio images for first generation reproduction. For the purpose of this subdivision, an "audiovisual master" is an audio or video film, tape, or disk or another audio or video storage device from which all other copies are made. ~~For the purpose of this subdivision, a production company is a person engaged in the business of making motion picture, television, or radio images for theatrical, commercial, advertising, or educational purposes.~~"

Section 6. G.S. 105-164.14 is amended by adding a new subsection to read:

"(j) Production Companies. -- A production company is allowed an annual refund of part of the State sales tax it pays under G.S. 105-164.4(a)(3) on the rental of transient accommodations for occupancy by its employees. If an employee of the production company occupies a transient accommodation for a continuous period of more than 30 days but less than 90 days, the production company is allowed a refund of the State sales tax it paid on the rental for the entire rental period. Notwithstanding any other provision of law, the refund allowed in this subsection does not apply to general local sales and use taxes levied under Subchapter VIII of this Chapter, Chapter 1096 of the 1967 Session Laws, or any other local act.

A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the State's fiscal year. Refunds applied for after the due date are barred."

Section 7. Section 1 of this act becomes effective July 1, 2000. Section 6 of this act becomes effective October 1, 2000, and applies to taxes paid on or after that date. The remainder of this act is effective when it becomes law.

SENATE BILL 1460:
Film Industry Incentives

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Senator Lee
Date:	June 17, 2000	**Summary by:**	Martha K. Walston
Version:	Proposed Committee Substitute		Committee Counsel

SUMMARY: ***Senate Bill 1460 creates the Film Industry Development Account within the Department of Commerce, Division of Travel and Tourism to provide annual grants as incentives to production companies that engage in production activities in the State. The grant may not exceed 15% of the amount the production company spends for goods and services in the State during a calendar year. The bill provides other economic and tax incentives to production companies. The proposed committee substitute differs from the original bill in that it removes the appropriation to the Department of Commerce, Division of Travel and Tourism, for the Film Industry Development Account. SB 1460 is similar to House Bill 1535 sponsored by Representative Owens.***

BILL ANALYSIS: Senate Bill 1460 provides the following economic and tax incentives to the film industry in the State:

- Creates the Film Industry Development Account within the Department of Commerce, Division of Travel and Tourism. This Account will provide annual grants to production companies that engage in production activities in the State. The grant may not exceed 15% of the amount the production company spends for goods and services in the State during a calendar year, and the grant may not exceed $200,000 per production. This part of the bill becomes effective July 1, 2000.
- Defines "production company" as a person engaged in the business of making original motion picture, television, or radio images for theatrical, commercial, advertising, or educational purposes. This part of the bill is effective when it becomes law.
- Requires the Department of Commerce to make annual reports to the General Assembly regarding the activities of the Film Industry Development Account, and to make quarterly reports to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division on the use of the moneys in the Account. This part of the bill becomes effective July 1, 2000.
- Authorizes the Department of Administration to provide that a production company will only be charged reimbursement of actual costs incurred and actual revenues lost by the State, when State buildings are made available to a production company for a production. If any State agency makes real property available to a production company for production, the same limitations on fees apply. This part of the bill is effective when it becomes law.
- Allows a production company an annual refund of the State sales tax it pays on the rental of transient accommodations for occupancy of its employees. The refund of the State sales tax paid on the rental for the entire rental period is allowed if the employee occupies a transient accommodation for a continuous period of more than 30 days but less than 90 days. The request for refund must be in writing and is barred if applied for later than six months after the end of the State's fiscal year. This part of the bill becomes effective October 1, 2000, and applies to taxes paid on or after that date.

Bill Analysis
Senate Bill 1460: Film Industry Incentives

To: Finance Committee Chairs and Bill Sponsor
From: Muriel K. Offerman, Secretary of Revenue MKO
Date: June 21, 2000

Bill Summary

This bill establishes the Film Industry Development Account within the Department of Commerce, appropriates money to this new Account, limits the amount a State agency can charge a production company for use of State property, and adds another sales tax preference for production companies. The new sales tax preference is a refund of the State sales tax, but not the local sales tax, paid by a production company on accommodations rented to its employees for more than 30 but less than 90 days. The refund is effective for taxes paid on or after October 1, 2000.

Under current law, transient accommodations, such as hotel and motel accommodations, are not subject to sales tax if they are supplied to the same person for a period of 90 or more continuous days. The new refund proposed in this bill effectively shortens the 90-day requirement to 30 days for production companies.

Department Comments and Concerns

The Department has the following comments and concerns about the tax provisions of the bill:

(1) The sales tax refund proposed in this bill continues the trend begun in 1998 of allowing for-profit entities a refund of sales and use taxes. In 1998, the General Assembly enacted a sales tax refund for Nucor on building materials used in its facility. In 1999, the General Assembly enacted a sales tax refund for businesses that are eligible for Bill Lee Act credits and are located in Tier One or Tier Two counties. Generally, only certain nonprofit entities and governmental entities are allowed a sales and use tax refund.

(2) If enacted, this refund will be the only sales and use tax refund that applies to State taxes but not does apply to local taxes. This breaks new ground in both policy and administration. Since the enactment of local sales and use taxes, the policy has been to have the State refunds apply to the local taxes. This policy is set out in G.S. 105-467, which states that the State refund provisions contained in G.S. 105-164.14 apply to the local sales and use taxes.

The Department's administrative system is designed to provide a local refund when a State refund is allowed. This system would have to be changed to reflect this new State-only refund. In addition, the Department will need to develop new forms for implementing the refund provisions of this bill.

(3) The bill specifies that the tax must be paid by the production company. Therefore, the refund will not apply to taxes paid by the employees of production companies, even if the production company reimburses the employees. Under current law, an expense paid by an employee that is subsequently reimbursed by the employer is not considered to have been paid by the employer for purposes of sales and use tax refunds.

(4) It is not clear if an employee has to occupy the same transient accommodation for the required continuous period. If, for example, an employee stays at the Holiday Inn for 14 days and then switches to the Hampton Inn for the next 16 days, does this qualify? The Department requests direction in the legislation on this issue.

(5) The Department anticipates that taxpayers will be confused about the amount of refund they can claim and that, as a result, there will be errors on the refund claims that must be corrected. The errors will occur because the refund does not apply to local taxes or to local occupancy taxes. State and local sales taxes are not separately stated on invoices. A calculation must be made to separate the State tax from the local.

(6) The 1997 General Assembly enacted a sales tax preference for production companies. That preference is a State and local sales tax exemption for audiovisual masters made or used by a production company.

(7) On line 15 of page 3 of the bill draft, the Chapter number needs to be changed from 1069 to 1096.

Distribution:
Senator John H. Kerr, III
Senator David W. Hoyle
Representative Gordon P. Allen
Representative Paul Luebke
Representative George W. Miller, Jr.
Senator Howard Nathaniel Lee

Cc: Michael S. Hodges
Bernice W. Thomas
Sabra J. Faires

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1529

Short Title: Register of Deeds Fee Adjustments. (Public)

Sponsors: Senator Dalton.

Referred to: Finance.

May 30, 2000

A BILL TO BE ENTITLED

AN ACT TO ADJUST AND ADD FEES CHARGED BY THE REGISTER OF DEEDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 47-21 reads as rewritten:

"**§ 47-21. Blank or master forms of mortgages, etc.; embodiment by reference in instruments later filed.**

It shall be lawful for any person, firm or corporation to have a blank or master form of mortgage, deed of trust, or other instrument conveying an interest in, or creating a lien on, real and/or personal property, filed, indexed and recorded in the office of the register of deeds. When any ~~such~~ blank or master form is filed with the register of deeds, ~~he~~ the register of deeds shall record ~~the same, and shall index the same~~ and index it in the manner now provided by law for the indexing of instruments recorded in his office, except that the name of the person, firm or corporation whose name appears on ~~such~~ the blank or master form shall be inserted in the indices as grantor and also as grantee. The fee for filing, recording and indexing ~~such~~ a blank or master form shall be ~~five dollars ($5.00).~~ fifty dollars ($50.00) for the first page, which page shall not exceed 8 1/2 inches by 14 inches, plus two dollars ($2.00) for each additional page or fraction thereof. A page exceeding 8 1/2 inches by 14 inches shall be considered two pages.

When any deed, mortgage, deed of trust, or other instrument conveying an interest in, or creating a lien on, real and/or personal property, refers to the provisions, terms, covenants, conditions, obligations, or powers set forth in any ~~such~~ blank or master form recorded as ~~herein authorized,~~ authorized by this section, and states the

office of recordation of ~~such~~ the blank or master form, book and page where ~~same~~ it is ~~recorded such~~ recorded, that reference shall be equivalent to setting forth in extenso in ~~such~~ the deed, mortgage, deed of trust, or other instrument conveying an interest in, or creating a lien on, real and/or personal property, the provisions, terms, covenants, conditions, obligations and powers set forth in ~~such~~ the blank or master form. Provided this section shall not apply to Alleghany, Ashe, Avery, Beaufort, Bladen, Camden, Carteret, Chowan, Cleveland, Columbus, Dare, Gates, Granville, Guilford, Halifax, Iredell, Jackson, Martin, Moore, Perquimans, Sampson, Stanly, Swain, Transylvania, Vance, Washington and Watauga Counties."

Section 2. G.S. 161-10(a) reads as rewritten:

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

* * *

(8a) Vital Records Network. -- For obtaining access to the Vital Records Computer Network two dollars ($2.00).

* * *

(19) Miscellaneous Services. -- For performing miscellaneous services such as faxing documents, providing laminated copies of documents, expedited delivery of documents, and similar services, the cost of the service."

Section 3. This act becomes effective October 1, 2000.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1529

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

S1529-ARO-001

Page 1 of __

Date June 21 ,2000

Comm. Sub. [ ]
Amends Title [ ]

Senator Rand

moves to amend the bill on page 2, line 6-9,
by rewriting the lines to read:

"form. ~~Provided this section shall not apply to Alleghany, Ashe, Avery, Beaufort, Bladen, Camden, Carteret, Chowan, Cleveland, Columbus, Dare, Cates, Granville, Guilford, Halifax, Iredell, Jackson, Martin, Moore, Perquimans, Sampson, Stanly, Swain, Transylvania, Vance, Washington and Watauga Counties.~~ "

SIGNED Tony Rand
Amendment Sponsor

SIGNED Ken
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

SENATE BILL 1529:
Register of Deeds Fee Adjustments.

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Senator Dalton
Date:	June 21, 2000	**Summary by:**	Karen Cochrane Brown
Version:	First Edition		Committee Co-Counsel

SUMMARY:

Senate Bill 1529 increases the fee for filing, recording and indexing a blank or master form mortgage or deed of trust from $5.00 to $50.00 for the first page plus $2.00 for each additional page. The bill also authorizes the register of deeds to collect a fee of $2.00 for providing access to the Vital Records Computer Network and to collect the actual cost of providing miscellaneous services such as faxing documents, laminating documents, or providing expedited delivery.

CURRENT LAW:

Under current law, a person, firm or corporation may file a blank or master form mortgage, deed of trust or other instrument conveying an interest in, or creating a lien on real and/or personal property. A subsequent deed, mortgage, deed of trust or other instrument may refer to the provisions, terms, covenants, conditions, obligations, or powers set forth in the blank or master form and state the office of recordation, and the reference shall be the equivalent of setting forth the provisions of the blank or master form in full. The register of deeds is authorized to charge a fee of five dollars for filing, recording, and indexing a blank or master form. This provision does not apply to the following counties:

Alleghany, Ashe, Avery, Beaufort, Bladen, Camden, Carteret, Chowan, Cleveland, Columbus, Dare, Gates, Granville, Guilford, Halifax, Iredell, Jackson, Martin, Moore, Perquimans, Sampson, Stanly, Swain, Transylvania, Vance, Washington, and Watauga.

BILL ANALYSIS:

This bill authorizes the register of deeds to charge an increased fee for filing, recording and indexing a blank or master form document. The increase is from five dollars for the entire document to fifty dollars for the first page plus two dollars for each additional page.

In addition, the bill amends the law relating to uniform fees charged by registers of deeds by adding two additional services. The register of deeds may collect a two-dollar fee for obtaining access to the Vital Records Computer Network, and may also collect the cost of providing miscellaneous services such as faxing, laminating and expediting delivery.

This act becomes effective October 1, 2000.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 1529 (First Edition)

SHORT TITLE: Register of Deeds Fee Adjustments

SPONSOR(S): Senator Dalton

FISCAL IMPACT

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

	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05
REVENUES					
EXPENDITURES					
POSITIONS:					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: County Governments

EFFECTIVE DATE: This act is effective October 1, 2000.

BILL SUMMARY: This bill amends G.S. 47-21 to authorize the county Registers of Deeds to adjust the fee for filing, recording, and indexing a blank or master form of mortgage, deed of trust, or other instrument conveying a lien on real or personal property. The legislation allows them to raise the fee for this service from $5 to $50 for the first page, and $2 for each additional page or fraction thereof. This legislation does not apply to the following counties:

Alleghany, Ashe, Avery, Beaufort, Bladen, Camden, Carteret, Chowan, Cleveland, Columbus, Dare, Gates, Granville, Guilford, Halifax, Iredell, Jackson, Martin, Moore, Perquimans, Sampson, Stanly, Swain, Transylvania, Vance, Washington, and Watauga.

The second portion of this legislation amends G.S. 161-10 (a) to authorize the county Register of Deeds to collect a $2 access fee to the Vital Records Network, and to collect the cost of providing miscellaneous services.

ASSUMPTIONS AND METHODOLOGY: G.S. 47-21 that authorizes the collection of fees for the filing of blank or master forms for mortgages, deeds of trust, and other property liens was

first authorized in 1935, and was amended in 1971 to the current $5 rate. However, the convention of filing on blank or master forms is very rarely utilized in North Carolina anymore. According to the North Carolina Association of Registers of Deeds, on average, ten of these master forms are recorded and filed per year across the state. Of those filed, the documents are an average of six pages. This fiscal note assumes a yearly filing of ten of these master forms that contain six pages each. Therefore, upon the passing of this bill, the gross revenue for all counties will be approximately **$550** from this portion of the bill.

The second portion of this bill authorizes county Registers of Deeds to collect a $2 fee for access to the Vital Records Network, and to collect the costs of providing miscellaneous services. Currently, a North Carolina resident may, for a $10 fee, obtain an official birth certificate duplicate by travelling to Vital Records in Raleigh or waiting 6-8 weeks for the duplicate to arrive via the mail request system. Of this $10, $5 is directed to the state general fund and $5 to the State Automation Fund. A Vital Records Network that would allow residents to obtain an official birth certificate from any county in the state has been designed, and is being implemented. This system would allow North Carolina residents to obtain an official birth certificate from the Register of Deeds in their county of residence, without physically going to Vital Records in Raleigh or waiting 6-8 weeks for the mail request system. The test pilot for this Vital Records Network is scheduled for implementation in Harnett County in August of this year.

Under current legislation, Registers of Deeds are only authorized to collect $8 for access to this Vital Records Network. Of this $8, $5 is directed to the State Automation Fund, and $3 is directed to the state general fund. This situation creates a $2 discrepancy between obtaining a birth certificate via the network, and obtaining a certificate by the conventional means of mail request or travelling to Raleigh. Upon the passing of this legislation, the fee for obtaining a birth certificate duplicate would be the same regardless of which method is used. There is currently no estimate of the number of North Carolinians who will utilize the Vital Records Network service or the number of counties that will participate, until the performance of the test pilot is evaluated. Therefore, no estimate of the fiscal impact of this portion of the bill is available at this time. Yet given the time and expense of travel to Raleigh from other cities, and the time involved in a mail request, the majority of Registers of Deeds in the state feel that a vast majority of residents will choose to utilize the service.

The second portion of this bill also allows the county Register of Deeds to collect the costs of providing miscellaneous services that vary across counties. This portion of the bill is permissive, and authorizes the Registers of Deeds to charge a fee for the actual expenses incurred from providing such services such as lamination, faxing, expedited delivery, etc.. This legislation merely allows county Registers of Deeds to recoup the costs of these services, and therefore has no fiscal impact.

TECHNICAL CONSIDERATIONS:

PREPARED BY: Richard Bostic and Eugene Son (Research Assistant)

APPROVED BY:

DATE: June 19, 2000

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 1624
Committee Substitute Favorable 6/5/00

Short Title: Streamlined Sales Tax System. (Public)

Sponsors:

Referred to:

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATION OF THE NATIONAL GOVERNORS' ASSOCIATION FOR A STREAMLINED SALES TAX COLLECTION SYSTEM AND TO OTHERWISE IMPROVE COLLECTION.

The General Assembly of North Carolina enacts:

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

"**§ 105-164.27. Direct pay certificate.**

(a) Requirements. -- A person who purchases tangible personal property whose tax status cannot be determined at the time of the purchase because of one of the reasons listed below may apply to the Secretary for a direct pay certificate:

(1) The place of business where the property will be used is not known at the time of the purchase and a different tax consequence applies depending on where the property is used.

(2) The manner in which the property will be used is not known at the time of the purchase and one or more of the potential uses is taxable but others are not taxable.

(b) Procedure. -- An application for a direct pay certificate must be made on a form provided by the Secretary and contain the information required by the Secretary. The Secretary may grant the application if the Secretary finds that the applicant complies with the sales and use tax laws and that the applicant's compliance burden will be greatly reduced by use of the certificate.

(c) Effect. -- A direct pay certificate authorizes its holder to purchase any tangible personal property without paying tax to the seller and authorizes the seller to not collect any tax on a sale to the certificate holder. A person who purchases tangible personal property under a direct pay certificate is liable for use tax due on the purchase. The tax is payable when the property is placed in use. A direct pay certificate does not apply to taxes imposed under G.S. 105-164.4(a)(1f) or G.S. 105-164.4(a)(4a).

(d) Revocation. -- A direct pay certificate is valid until the holder returns it to the Secretary or it is revoked by the Secretary. The Secretary may revoke a direct pay certificate if the holder of the certificate does not file a sales and use tax return on time, does not pay sales and use on time, or otherwise fails to comply with the sales and use tax laws."

Section 2. Article 5 of Chapter 105 of the General Statutes is amended by adding the following new sections to read:

"**§ 105-164.43A. Certification of tax collector software and tax collector.**

(a) Software. -- The Secretary may certify a software program as a certified sales tax collection program if the Secretary determines that the program correctly determines all of the following and that the software can generate reports and returns required by the Secretary:

(1) The applicable combined State and local sales and use tax rate for a sale, based on a ship-to address.

(2) Whether or not an item is exempt from tax, based on a uniform product code or another method.

(3) Whether or not an exemption certificate offered by a purchaser is a valid certificate, based on the Department's registry of holders of exemption certificates.

(4) The amount of tax to be remitted for each taxpayer for a reporting period.

(5) Any other issue necessary for the application or calculation of sales and use tax due.

(b) Tax Collector. -- The Secretary may certify an entity as a Certified Sales Tax Collector if the entity meets all of the following requirements:

(1) The entity uses a certified sales tax collection program.

(2) The entity has agreed to update its program upon notification by the Secretary.

(3) The entity integrates its certified sales tax collection program with the system of a retailer for whom the entity collects tax so that the tax due on a sale is determined at the time of the sale.

(4) The entity remits the taxes it collects at the time and in the manner specified by the Secretary.

(5) The entity agrees to file sales and use tax returns on behalf of the retailers for whom it collects tax.

(6) The entity enters into a contract with the Secretary and agrees to comply with all the conditions of the contract.

"**§ 105-164.43B. Contract with Certified Sales Tax Collector.**

The Secretary may contract with a Certified Sales Tax Collector for the collection and remittance of sales and use taxes. The amount a Certified Sales Tax Collector charges under the contract is a cost of collecting the tax and is payable from the amount collected.

"**§ 105-164.43C. Effect of contract.**

(a) Retailer. -- A retailer may contract with a Certified Sales Tax Collector to collect and remit sales and use taxes payable to the State on sales made by the retailer. A retailer who contracts with a Certified Sales Tax Collector is not subject to audit by the State on the transactions it processes using the Collector's certified sales tax collection program. A retailer is subject to audit for transactions not processed by the Certified Sales Tax Collector.

The Department may review a retailer's procedures to determine if the certified sales tax collection program is functioning properly. A retailer who contracts with a Certified Sales Tax Collector is not liable for taxes due on sales processed using the program unless the retailer misrepresented the product it sells. A contract with a Certified Sales Tax Collector is not a factor in determining whether a person has nexus with this State for payment of any tax.

(b) Collector. -- A Certified Sales Tax Collector is the agent of a seller who contracts with the Certified Sales Tax Collector for collection and remittance of sales and use taxes payable to this State. As the seller's agent, the Certified Sales Tax Collector is liable for sales tax due on all sales transactions processed by the Certified Sales Tax Collector unless the seller misrepresented the type of property sold."

Section 3. G.S. 105-88(d) reads as rewritten:

"(d) A loan made by a person who does not comply with this section is not collectible at law ~~in the courts of this State in any case where the person making the loan has failed to pay the tax levied in this section or otherwise failed to comply with the provisions of this section.~~ under G.S. 105-269.13."

Section 4. G.S. 105-164.6A(b)(1) reads as rewritten:

"(b) Mandatory Provisions. -- The agreements must contain the following provisions:

(1) ~~The customer may elect to pay the use tax directly to the Secretary in accordance with law rather than to the seller.~~ The seller is not liable for use tax not paid to it by a customer."

Section 5. G.S. 105-164.13 is amended by adding a new subdivision to read:

"**§ 105-164.13. Retail sales and use tax.**

The sale at retail, the use, storage or consumption in this State of the following tangible personal property is specifically exempted from the tax imposed by this Article:

. . .

(16a) Tangible personal property sold to a person in the State but delivered to a person in another state."

. . . .

Section 6. G.S. 105-164.28 reads as rewritten:

"**§ 105-164.28. Certificate of resale.**

(a) Seller's Responsibility. -- A seller who accepts a certificate of resale from a purchaser of tangible personal property has the burden of proving that the sale was not a retail sale unless all of the following conditions are met:

(1) ~~The seller acted in good faith in accepting the certificate of resale.~~ For a sale made in person, the certificate is signed by the purchaser, states the purchaser's name, address, and registration number, and describes the type of tangible personal property generally sold by the purchaser in the regular course of business.

(2) ~~The certificate is in the form required by the Secretary.~~ For a sale made in person, the purchaser is engaged in the business of selling tangible personal property of the type sold.

(3) ~~The certificate is signed by the purchaser, states the purchaser's name, address, and registration number, and describes the type of tangible personal property generally sold by the purchaser in the regular course of business.~~ For a sale made over the Internet or by other remote means, the sales tax registration number given by the purchaser matches the number on the Department's registry.

~~(4) The purchaser is licensed under this Article or under the law of another taxing jurisdiction.~~

~~(5) The purchaser is engaged in the business of selling tangible personal property of the type sold.~~

(b) Liabilities. -- A purchaser who does not resell property purchased under a certificate of resale is liable for any tax subsequently determined to be due on the sale. A seller of property sold under a certificate of resale is jointly liable with the purchaser of the property for any tax subsequently determined to be due on the sale only if the Secretary proves that the sale was a retail sale."

Section 7. G.S. 105-236(5a) reads as rewritten:

"(5a) Misuse of Exemption ~~Certificate of Resale.~~ Certificate. -- For misuse of ~~a certificate of resale~~ an exemption certificate by a purchaser, the Secretary shall assess a penalty equal to two hundred fifty dollars ($250.00). An exemption certificate is a certificate issued by the Secretary that authorizes a retailer to sell tangible personal property to the holder of the certificate and either collect tax at a preferential rate or not collect tax on the sale. Examples of an exemption certificate include a certificate of resale, a direct pay certificate, and a farmer's certificate."

Section 8. G.S. 105-259(b) is amended by adding a new subdivision to read:

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

. . .

(25) To provide public access to a database containing the names of retailers who are registered to collect sales and use taxes under Article 5 of this Chapter."

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

"**§ 105-269.13. Debts not collectible under North Carolina law.**

(a) Debts Not Collectible. -- The following debts are not collectible and are not subject to execution under Article 28 of Chapter 1 of the General Statutes or any other provision of law:

(1) A loan made by a person who does not comply with G.S. 105-88.

(2) A debt owed to a retailer described in subsection (b) of this section as the result of the purchase of tangible personal property.

(b) Retailer. -- A debt owed to a retailer is subject to this section if all of the following applies to the retailer:

(1) The retailer meets one or more of the conditions in G.S. 105-164.8(b).

(2) The retailer is not registered to collect the use tax due under Article 5 of this Chapter on its sales delivered to an address in North Carolina.

(3) The retailer reported gross sales of at least five million dollars ($5,000,000) on its most recent federal income tax return."

Section 10. G.S. 105-269.14 is repealed.

Section 11. G.S. 105-164.16(d) reads as rewritten:

"(d) Use Tax on Out-of-State Purchases. -- ~~Use tax payable by~~ Notwithstanding subsection (b), an individual who purchases tangible personal property outside the State for a nonbusiness purpose ~~is due~~ shall file a use tax return on an annual basis. ~~For an individual who is not required to file an individual income tax return under Part 2 of Article 4 of this Chapter, the~~ The annual reporting period ends on the last day of the calendar ~~year and a use tax return is due by the following April 15. For an individual who is required to file an individual income tax return, the annual reporting period ends on the last day of the individual's income tax year, and the use tax must be paid on the income tax return as provided in G.S. 105-269.14.~~ year. The return is due by the due date, including any approved extensions, for filing the individual's income tax return."

Section 12. G.S. 105-466(c) reads as rewritten:

"(c) Collection of the tax, and liability therefor, shall begin and continue only on and after the first day of ~~a calendar month~~ the month of either January or July, as set by the board of county commissioners in the resolution levying the ~~tax,which shall in no case be~~ tax. In no event may the tax be imposed, or the tax rate changed, earlier than the first day of the second succeeding calendar month after the date of the adoption of the resolution. The county must give the Secretary at least 90 days advance notice of a new tax levy or tax rate change."

Section 13. Chapter 1096 of the 1967 Session Laws is amended by adding a new section to read:

"Section 10.3. Mecklenburg County must give the Secretary of Revenue at least 90 days advance notice of any tax rate change under this act. Any tax rate change under this act must become effective on the first day of the month of either January or July, as set by the board of county commissioners in the resolution levying the tax."

Section 14. G.S. 20-7(b1) reads as rewritten:

"(b1) Application. -- To obtain a drivers license from the Division, a person must complete an application form provided by the Division, present at least two forms of identification approved by the Commissioner, be a resident of this State, and demonstrate his or her physical and mental ability to drive safely a motor vehicle included in the class of license for which the person has applied. The Division may copy the identification presented or hold it for a brief period of time to verify its authenticity. To obtain an endorsement, a person must demonstrate his or her physical and mental ability to drive safely the type of motor vehicle for which the endorsement is required.

The application form must request all of the following ~~information:~~ information, and it must contain the disclosures concerning the request for an applicant's social security number required by section 7 of the federal Privacy Act of 1974, Pub. L. No. 93-579:

(1) The applicant's full name.
(2) The applicant's mailing address and residence address.
(3) A physical description of the applicant, including the applicant's sex, height, eye color, and hair color.
(4) The applicant's date of birth.
(5) The applicant's social security number. The Division shall not issue a license to an applicant who fails to provide the applicant's social security number. ~~The applicant's social security number shall not be printed on the license and may be released only to the Department of Health and Human Services, Child Support Enforcement Program, upon its request and for the purpose of establishing paternity or child support, or enforcing a child support order.~~
(6) The applicant's signature.

~~The application form must also contain the disclosures concerning the request for an applicant's social security number required by section 7 of the federal Privacy Act of 1974, Pub. L. No. 93-579.~~

(b2) Disclosure of Social Security Number. -- The social security number of an applicant is not a public record. The Division may not disclose an applicant's social security number except as allowed under federal law. A violation of the disclosure restrictions is punishable as provided in 42 U.S.C. § 408, and amendments to that law.

In accordance with 42 U.S.C. 405 and 42 U.S.C. 666, and amendments thereto, the Division may disclose a social security number obtained under ~~this subsection~~ subsection (b1) of this section only as follows:

(1) ~~for~~ For the purpose of administering the drivers license ~~laws or to~~ laws.

(2) To the Department of Health and Human Services, Child Support Enforcement Program for the purpose of ~~assist the State Child Support Enforcement Program in~~ establishing paternity or ~~establishing~~ child support or enforcing a child support order. ~~and may not disclose the social security number for any other purpose. The social security number of an applicant for a license or of a licensed driver is therefore not a public record. A violation of the disclosure restrictions is punishable as provided in 42 U.S.C. 408, and amendments thereto.~~

(3) To the Department of Revenue for the purpose of verifying taxpayer identity."

Section 15. G.S. 20-7(n)(7) reads as rewritten:

"(n) Format. -- A drivers license issued by the Division must be tamperproof and must contain all of the following information:

. . .

(7) ~~The license holder's social security number or another~~ An identifying number for the license holder assigned by the Division. The identifying number may not be the license holder's social security number."

. . . .

Section 16. Section 5.(a) of Chapter 341 of the 1999 Session Laws reads as rewritten:

"Section 5.(a) The Secretary of Revenue shall contract during the 1999-2001 fiscal biennium for the collection of delinquent tax debts owed by nonresidents and foreign entities. To implement this section, the Secretary may draw funds for the 1999-2000 fiscal year from net collections that would otherwise be credited to the General Fund under G.S. 105-269.14, enacted by Section 2 of this act. For the 2000-2001 fiscal year, the Secretary may retain the costs of implementing this section from the amounts collected pursuant to the contracts authorized by this section. The Secretary of Revenue shall report annually to the Revenue Laws Study Committee on its collections pursuant to this contract during the biennium."

Section 17. Section 6 of Chapter 341 of the 1999 Session Laws reads as rewritten:

"Section 6. The Department of Revenue shall conduct a study to identify and evaluate proposals for more efficient collection of taxes, including using electronic commerce and other technology to increase efficiency. The study shall include an analysis of the most efficient tax collection methods used in other states. The State Controller shall cooperate with the Department of Revenue in this study. The Department shall report the results of its study, including findings, recommendations,

and estimated revenue gains of each recommendation, to the Revenue Laws Study Committee by May 1, 2000. To implement this section, the Secretary of Revenue may draw up to fifty thousand dollars ($50,000) for the 1999-2000 fiscal year from net collections that would otherwise be credited to the General Fund under G.S. 105-269.14, enacted by Section 2 of this act. To implement the recommendations of this study, the Secretary may enter into a performance based contract and may draw up to five hundred thousand dollars ($500,000) for the 2000-2001 fiscal year from the revenue collected pursuant to Section 5 of this act to obtain assistance in developing a request for proposal for the performance based contract."

Section 18. Section 7 of this act becomes effective January 1, 2001. Sections 10 and 11 of this act become effective for taxable years beginning on or after January 1, 2003. The remainder of this act is effective when it becomes law.

HOUSE BILL 1624:
Streamlined Sales Tax System

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Rep. Miller
Date:	June 20, 2000	***Recommended by Revenue Laws***	
Version:	2nd Edition	**Summary by:**	Cindy Avrette and Martha Walston, Committee Counsel

SUMMARY: ***House Bill 1624 is a recommendation of the Revenue Laws Study Committee. It seeks to improve the State's sales and use tax collections in several different ways:***

- ***It simplifies and streamlines the sales and use tax collection system for remote and in-state retailers.***
- ***It provides that a remote seller who does not agree to collect the State's use tax may not use the State's courts to collect debts owed to it by a purchaser of its product in this State.***
- ***It allows the Department of Revenue to exchange information concerning a taxpayer's social security number with the Division of Motor Vehicles when it is necessary to identify a taxpayer.***
- ***It provides the Department of Revenue with the resources to continue its collection of delinquent tax debts owed by nonresidents and foreign entities for the remainder of this biennium.***
- ***It allows the Department of Revenue to retain up to $500,000 in revenues it collects from its nonresident delinquent tax debt contracts to obtain assistance in developing a performance-based contract for an automated collection system. The General Assembly asked the Department and the State Controller to study how to collect taxes more efficiently. The centralization and automation of the Department's delinquent tax debts are the primary recommendations of this study, conducted by PricewaterhouseCoopers.***

Section 7 provides that effective January 1, 2001, the penalty for misusing an exemption certificate applies not only to a certificate of resale, but also to a direct pay certificate and a farmer's certificate.

The House amended House Bill 1624 as follows:

- **Clarified that the retailer has the option to contract with a Certified Sales Tax Collector to collect and remit sales and use taxes due to the State.**
- **Repeals G.S. 105-269.14, which deals with payment of use taxes by individuals using the income tax return process. In S.L.1999-341, the General Assembly enacted this statute in an attempt to simplify the use tax collection. The act required that an individual who owed use tax on nonbusiness purchases and who was required to remit a State income tax return must pay the use tax owed with the income tax return. The income tax return was to have a space on it to indicate the amount of use tax owed.**
- **Requires individual who purchases tangible personal property outside the State for nonbusiness purpose to file an annual use tax return, due at the same time as the individual income tax return. This was the law prior to January 1, 1999.**

BILL ANALYSIS: House Bill 1624 seeks to improve tax collection as follows:

Streamlined Sales Tax Collection System:

Sections 1, 2, 4-8, 12, and 13 of the bill implement the streamlined sales tax collection system recommended by the National Governor's Association. The NGA's recommendation addresses the

difficulty states have collecting sales and use taxes on purchases from remote retailers. The recommendation provides a simplified collection process that would allow participating retailers to use a computer software program to be able to calculate the amount of tax due to the state on a purchase based upon the customer's ship-to address. The administration of the program would be the responsibility of a person certified by a state to collect its taxes, not the retailer.

To begin this method of collection, a state must certify a person to act as its tax collector. It is anticipated that the identity of the "certified sales tax collector" will vary depending upon the type of retailer involved. Certain large retailers may choose to act as their own collector.

To be certified as a sales tax collector, House Bill 1624 would require the Secretary of Revenue to find that the person meets all of the following conditions:

- Uses a sales tax collection software program certified by the Secretary. To be certified by the Secretary, the program must be able to determine the applicable tax rate based on a ship-to address, determine whether or not an item is exempt from tax, determine whether or not an exemption certificate is valid, calculate the tax due, and generate the reports and returns required by State law.
- Agrees to update its certified software program upon notification by the Secretary.
- Agrees to integrate the certified software program with the retailer's system for which the person collects the tax.
- Remits the tax due and files the necessary returns on behalf of the retailers for whom the person collects the tax.
- Enters into a contract with the Secretary and agrees to comply with the conditions of the contract.

The State would assume the responsibility for the costs of the system by contracting with the collector to reimburse the collector for the costs of operating the system and for the costs of integrating the system with those of participating retailers. The amount a collector may charge under a contract is considered a cost of collecting the tax and is payable from the amount collected. The payments to the collector will be made on a per transaction basis based on negotiated rates. The per transaction fee could be in the form of a flat per transaction rate, a percentage rate, or a combination of the two types of rates.

Participation in the program by retailers is voluntary. To participate in the program, a retailer must agree to let the certified sales tax collector integrate the certified software with its system so that the tax due on a sale can be determined at the time of the sale. The information on the amount of tax due will be available to a customer before completion of a transaction. Once the customer approves the purchase, the retailer will send the transaction through the payment processing system and the amount paid to the retailer will be the full amount of the purchase plus tax. A participating retailer will be required to enter into a standing debit authorization agreement with the collector that will enable the collector to debit the retailer's account on an agreed upon schedule for the amount of tax owed all participating states according to transactions processed by the collector. The collector will be liable for remitting the appropriate tax to the participating states. The participating retailer will not be subject to audits by the states on the transactions it processes using the collector's software program. A contract with a collector will not be a factor in considering whether a person has nexus with a state for payment of a tax.

To participate in this streamlined sales tax collection system, House Bill 1624 authorizes the Secretary of Revenue to certify a sales tax collection software program and a sales tax collector. (Section 2) The bill also makes the following statutory changes to meet the uniformity features needed to successfully implement the streamlined sales tax collection system:

- It makes the exemption process easier to administer by eliminating the "good faith" requirement when accepting an exemption certificate number from a purchaser on a sale made over the Internet

or by other remote means. (Section 6) It codifies a long-standing practice of the Department of Revenue to issue "direct pay certificates" to a person who is unsure how property the person purchases should be taxed at the time the property is purchased. (Section 1) And it provides that, effective January 1, 2001, the penalty for misusing an exemption certificate applies not only to a certificate of resale, but also to a direct pay certificate and a farmer's certificate. (Sections 7 and 18)

- It establishes a uniform sourcing rule that calculates the amount of tax due on a sale based on its "ship-to address". (Section 2) Under that rule, property sold to a person in NC but delivered to a person in another state is exempt from NC sales and use tax. (Section 5)
- It provides that the customer of a retailer who participates in the program must pay the sales and use tax on the item purchased. (Section 4)
- It provides that local government sales and use tax rate changes may only be made twice a year and the local government must give the State at least 90 days notice of any tax rate change. (Sections 12 and 13)

Use of NC Courts by Out-of-State Retailers:

Under current law, a loan made by a person who fails to pay or comply with the State privilege tax statute, G.S. 105-88, may not be collected through the State's courts. House Bill 1624 extends this exclusion to include debts owed to a retailer who is required by G.S. 105-164.8(b) to collect use tax for the State but refuses to do so if the retailer reported gross sales of at least $5,000,000 on its most recent federal income tax return. (Sections 3 and 9) The exclusion would only apply to debts owed on tangible personal property purchased from the retailer. A retailer is required to collect use tax for the State under G.S. 105-164.8(b) if the retailer maintains retail offices in the State, has representatives in the State who solicit business, or purposefully and systematically exploits the market in this State by any media-assisted means such as direct mail advertising, distribution of catalogs, computer-assisted shopping, television, radio, etc.

DMV Disclose Social Security Number to DOR:

Under federal law, 42 U.S.C. 405(c)(2)(C), a state may use a person's social security number for the purpose of identification in the administration of its tax laws. The Department of Revenue has used social security numbers to identify taxpayers for many years. Up until recently, the Department was able to obtain a taxpayer's social security number from the Division of Motor Vehicles. The Department may have asked the Division for a taxpayer's social security number when the Department had more than one number on file for a taxpayer and needed to know which number was correct, or when it needed to locate a taxpayer. The exchange of information between the Division and the Department was not addressed by statute. In 1997, the General Assembly amended the drivers license law to require all applicants for a driver's license to provide their social security numbers. The legislation gave specific authority for the Division to disclose social security numbers to the Child Support Enforcement Program. The law did not address the disclosure of the numbers to the Department of Revenue. As a result, the practice between the Division and the Department has stopped.

House Bill 1624 rewrites the drivers license statute pertaining to social security numbers to allow the Division to disclose a social security number to the Department for the purpose of verifying taxpayer identification. (Section 14) It also provides that the Division of Motor Vehicles may not use an applicant's social security number as the identifying number for the license holder. (Section 15) This clarification resolves a conflict between two subsections in G.S. 20-7: subsection (b1) provides that an

applicant's social security number may not be printed on the license, while subsection (n) says that the license holder's social security number may be the license holder's identifying number.

Contract for Collection of Delinquent Tax Debts:

Last session, the General Assembly allowed the Department of Revenue to contract for the collection of delinquent tax debts owed by nonresidents and foreign entities. A delinquent tax debt is the amount of tax due as stated in a final notice of assessment issued to the taxpayer when the taxpayer no longer has the right to contest the debt. The legislation stated that "[T]he Secretary of Revenue shall contract during the 1999-2001 fiscal biennium for the collection of delinquent tax debts ..." However, the legislation provided a funding mechanism for only the first year of the biennium. House Bill 1624 provides funding for the second year of the biennium. It allows the Secretary to retain the costs of the contracts from the amounts collected under the contracts. (Section 16)

The Department is currently involved in a pilot effort to contract for the collection of out-of-state accounts in conjunction with the Office of the State Controller. On March 16, 2000, the Department sent 1,016 accounts with a value of $927,170.46 to the Office of the State Controller for referral to a collection agency. Within the first 30 days, the Department realized a 2.5% return.

Implement Recommendation of PricewaterhouseCoopers to Centralize and Automate Debt Collection System:

Last session, the General Assembly authorized the Department of Revenue and the Office of the State Controller to conduct a study of the Department's delinquent collection practices and present findings and recommendations to the Revenue Laws Study Committee. The Office of the State Controller's existing contract with PricewaterhouseCoopers (PwC) was modified and PwC conducted the study. PwC made the following recommendations to improve the Department's debt collection practices:

- ✓ Implement an automated case management tool with debt scoring and performance measures. The projected impact of this recommendation would be an increase of delinquent tax collections by $11 million to $30 million annually.
- ✓ Centralize the collection process for individual income taxes, installment agreements, low dollar debts, and wage garnishments. The impact of this recommendation would be a more efficient use of the Department's resources.
- ✓ Contract with collection agencies for out-of-state debt. The impact of this recommendation would be an initial $20 million in additional revenues and $3 million in recurring revenues.
- ✓ Contract with collection agencies for long term delinquent accounts. The impact of this recommendation would be up to $20 million in revenues per year.

The Department would like to implement the recommendations of this study. To centralize its collection process, the Department would like to enter into a performance-based contract where the person who provides the automated system would be paid from the proceeds of the system based upon some variable that pertains to how well the system works. To enable the Secretary of Revenue to obtain assistance in developing a request for proposal for the performance-based contract, the bill allows the Secretary to draw up to $500,000 from the revenue collected pursuant to the contracts for the collection of delinquent tax debts owed by nonresidents and foreign entities. (Section 17)

FISCAL ANALYSIS MEMORANDUM

DATE: May 30, 2000

TO: House Finance Committee

FROM: Dave Crotts
Fiscal Research Division

RE: HB 1624
Streamlined Sales Tax System

FISCAL IMPACT

Yes (x) **No ( )** **No Estimate Available (x)**

GENERAL FUND REVENUE (STATE AND LOCAL): See "Assumptions and Methodology" section.

PRINCIPAL DEPARTMENT AFFECTED: The sales and use tax is collected by the Department of Revenue.

EFFECTIVE DATE: The sales tax exemption certificate provision becomes effective January 1, 2001. The remainder of the bill becomes effective when it becomes law.

ISSUE BACKGROUND: The objective of the proposal is to assist in the implementation of a system to simplify and streamline the sales and use tax collection system for remote and in-state retailers. This would be accomplished by shifting sales tax administration to a technology-oriented business model where the primary responsibility for calculating, collecting, reporting, and remitting the use tax lies with a "Certified Sales Tax Collector" instead of the remote retailer. The State would reimburse the Collector for the costs of integrating the system with a vendor's system and for operating the system. The costs of the system would be funded from the receipts collected and could be recovered through a flat transaction fee, a percentage rate, or some combination.

To participate in the program the Collector must use a certified software program to determine the state and local tax due on a transaction. The participating retailer will not be subject to state audit on the transactions it processes using the Collector's software. Finally, a contract with a Collector is not a factor in establishing nexus for state tax purposes.

EXPLANATION OF PROPOSAL:

(1) Eliminates the "good faith" requirement when accepting an exemption certificate from a purchaser on a sale made over the Internet or by other remote means.

(2) Codifies a long-standing practice of the Department of Revenue to issue "direct pay certificates" to a person who is unsure how the property purchased should be taxed at the time of the acquisition.

(3) Provides that the penalty for misusing an exemption certificate applies not only to a resale certificate but also to a direct pay certificate and a farmer's certificate.

(4) Establishes a uniform sourcing rule that calculates tax due based on a "ship-to address".

(5) Provides that the customer of a retailer who takes part in the new system must pay the sales and use tax on the item purchased.

(6) Provides that local sales tax rate changes may be made no more than twice a year and at least 90 days notice must be given to the Department before a rate change can be made.

(7) Prohibits the use of state courts in North Carolina for debts owed to a retailer who is required to collect use tax for the State on a mail-order transaction but refuses to do so. The provision would apply only to retailers who report gross sales of at least $5 million on the most recent federal income tax return.

(8) Allows the Division of Motor Vehicles to disclose a social security number to the Department of Revenue for the purpose of verifying a taxpayer's identification.

(9) Provides funding for contracts for the collection of delinquent tax debts owed by nonresidents and foreign entities. Funds are provided by allowing the Secretary of Revenue to apply the amounts collected under the contract to the cost of the contract.

(10) Allows the Secretary of Revenue to retain up to $500,000 from the amounts derived during the 2000-01 fiscal year from the collection of delinquent debts owed by nonresidents and foreign entities. The earmarking would pay for the assistance needed in developing a request for proposal for a more automated tax collection system.

ASSUMPTIONS AND METHODOLOGY: The provisions in the proposal represent implementation steps to achieving the objective of a simplified system of collecting sales and use taxes from remote and in-state retailers. Over the long-term a number of other actions will need to take place in North Carolina and other states to simplify the sales and use tax. Some examples include the development of common product definitions, local tax rate uniformity (numerous rates in other states), product return policies under the new system, joint audit procedures, and state/local tax exemption consistency. Thus, the current proposal is just the first step in a lengthy process.

A recent study by the Center for Business and Economic Research at the University of Tennessee estimates that by calendar year 2003 the incremental state and local revenue loss on e-commerce transactions would be $238 million. If the current revenue losses on catalog sales and e-commerce purchases are included, the maximum state and local revenue gain from the full implementation of the new system would be over $400 million by 2003.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1854*
Committee Substitute Favorable 6/7/00
Proposed Senate Committee Substitute H1854-PCS6309-LA001

Short Title: 2000 Fee Bill. (Public)

Sponsors:

Referred to:

May 30, 2000

A BILL TO BE ENTITLED

AN ACT TO SET THE PUBLIC UTILITY REGULATORY FEES AND THE INSURANCE REGULATORY CHARGE, TO INCREASE COURT COSTS, TO INCREASE JAIL FEES FOR PERSONS PAYING JAIL FEES PURSUANT TO PROBATIONARY SENTENCES, TO INCREASE THE FEE IMPOSED FOR EMERGENCY PLANNING, TO AUTHORIZE CERTAIN CHANGES IN PERMITS FOR OVERSIZE LOADS, AND TO ESTABLISH PENALTIES FOR PERMIT VIOLATIONS.

The General Assembly of North Carolina enacts:

TABLE OF CONTENTS:

PART I. PUBLIC UTILITY REGULATORY FEE
PART II. NORTH CAROLINA ELECTRIC MEMBERSHIP CORPORATION REGULATORY FEE
PART III. INSURANCE REGULATORY CHARGE
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PART V. JAIL FEES FOR LOCAL GOVERNMENTS
PART VI. INCREASE FEE FOR EMERGENCY PLANNING
PART VII. OVERSIZE LOAD PERMITS AND PENALTIES
PART VIII. EFFECTIVE DATES

PART I. PUBLIC UTILITY REGULATORY FEE

Section 1. The percentage rate to be used in calculating the public utility regulatory fee under G.S. 62-302(b)(2) is nine-hundredths percent (0.09%) for each public utility's North Carolina jurisdictional revenues earned during each quarter that begins on or after July 1, 2000.

PART II. NORTH CAROLINA ELECTRIC MEMBERSHIP CORPORATION REGULATORY FEE

Section 2. The annual fee imposed on The North Carolina Electric Membership Corporation under G.S. 62-302(b1) for the 2000-2001 fiscal year is two hundred thousand dollars ($200,000).

PART III. INSURANCE REGULATORY CHARGE

Section 3. The percentage rate to be used in calculating the insurance regulatory charge under G.S. 58-6-25 is seven percent (7%) for the 2000 calendar year.

PART IV. COURT COSTS FOR TECHNOLOGY

Section 4.(a) G.S. 7A-304(a)(4) reads as rewritten:

"(a) In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the prosecuting witness, the following costs shall be assessed and collected, except that when the judgment imposes an active prison sentence, costs shall be assessed and collected only when the judgment specifically so provides, and that no costs may be assessed when a case is dismissed.

. . .

(4) For support of the General Court of Justice, the sum of ~~sixty-one dollars ($61.00)~~ sixty-five dollars ($65.00) in the district court, including cases before a magistrate, and the sum of ~~sixty-eight dollars ($68.00)~~ seventy-two dollars ($72.00) in the superior court, to be remitted to the State Treasurer.

. . . ."

Section 4.(b) G.S. 7A-305(a)(2) reads as rewritten:

"(a) In every civil action in the superior or district court the following costs shall be assessed:

. . .

(2) For support of the General Court of Justice, the sum of ~~fifty-five dollars ($55.00)~~ fifty-nine dollars ($59.00) in the superior court, and the sum of ~~forty dollars ($40.00)~~ forty-four dollars ($44.00) in the district court except that if the case is assigned to a magistrate the sum shall be ~~twenty-eight dollars ($28.00).~~ thirty-three dollars ($33.00). Sums collected under this subsection shall be remitted to the State Treasurer.

. . . ."

Section 4.(c) G.S. 7A-306(a) and (b) read as rewritten:

"**§ 7A-306. Costs in special proceedings.**

(a) In every special proceeding in the superior court, the following costs shall be assessed:

(1) For the use of the courtroom and related judicial facilities, the sum of ten dollars ($10.00) to be remitted to the county. Funds derived from the facilities fees shall be used in the same manner, for the same purposes, and subject to the same restrictions, as facilities fees assessed in criminal actions.

(2) For support of the General Court of Justice the sum of ~~twenty-six dollars ($26.00).~~ thirty dollars ($30.00). In addition, in proceedings involving land, except boundary disputes, if the fair market value of the land involved is over one hundred dollars ($100.00), there shall be an additional sum of thirty cents (30¢) per one hundred dollars ($100.00) of value, or major fraction thereof, not to exceed a maximum additional sum of two hundred dollars ($200.00). Fair market value is determined by the sale price if there is a sale, the appraiser's valuation if there is no sale, or the appraised value from the property tax records if there is neither a sale nor an appraiser's valuation. Sums collected under this subsection shall be remitted to the State Treasurer.

(b) The facilities fee and ~~twenty-six dollars ($26.00)~~ thirty dollars ($30.00) of the General Court of Justice fee are payable at the time the proceeding is initiated.

. . . ."

Section 4.(d) G.S. 7A-307(a) and (b) read as rewritten:

"(a) In the administration of the estates of decedents, minors, incompetents, of missing persons, and of trusts under wills and under powers of attorney, and in collections of personal property by affidavit, the following costs shall be assessed:

(1) For the use of the courtroom and related judicial facilities, the sum of ten dollars ($10.00), to be remitted to the county. Funds derived from the facilities fees shall be used in the same manner, for the same purposes, and subject to the same restrictions, as facilities fees assessed in criminal actions.

(2) For support of the General Court of Justice, the sum of ~~twenty-six dollars ($26.00),~~ thirty dollars ($30.00), plus an additional forty cents (40¢) per one hundred dollars ($100.00), or major fraction thereof, of the gross estate, not to exceed three thousand dollars ($3,000). Gross estate shall include the fair market value of all personalty when received, and all proceeds from the sale of realty coming into the hands of the fiduciary, but shall not include the value of realty. In collections of personal property by affidavit, the fee based on the gross estate shall be computed from the information in the final affidavit of collection made pursuant to G.S. 28A-25-3 and shall be paid when that affidavit is filed. In all other cases, this fee shall be computed from the information

reported in the inventory and shall be paid when the inventory is filed with the clerk. If additional gross estate, including income, comes into the hands of the fiduciary after the filing of the inventory, the fee for such additional value shall be assessed and paid upon the filing of any account or report disclosing such additional value. For each filing the minimum fee shall be ~~ten dollars ($10.00).~~ fifteen dollars ($15.00). Sums collected under this subsection shall be remitted to the State Treasurer.

(2a) Notwithstanding subdivision (2) of this subsection, the fee of forty cents (40¢) per one hundred dollars ($100.00), or major fraction, of the gross estate, not to exceed three thousand dollars ($3,000), shall not be assessed on personalty received by a trust under a will when the estate of the decedent was administered under Chapters 28 or 28A of the General Statutes. Instead, a fee of ~~fifteen dollars ($15.00)~~ twenty dollars ($20.00) shall be assessed on the filing of each annual and final account.

(2b) Notwithstanding subdivisions (1) and (2) of this subsection, no costs shall be assessed when the estate is administered or settled pursuant to G.S. 28A-25-6.

(3) For probate of a will without qualification of a personal representative, the clerk shall assess a facilities fee as provided in subdivision (1) of this subsection and shall assess for support of the General Court of Justice, the sum of ~~seventeen dollars ($17.00).~~ twenty dollars ($20.00).

(b) In collections of personal property by affidavit, the facilities fee and ~~twenty-six dollars ($26.00)~~ thirty dollars ($30.00) of the General Court of Justice fee shall be paid at the time of filing the qualifying affidavit pursuant to G.S. 28A-25-1. In all other cases, these fees shall be paid at the time of filing of the first inventory. If the sole asset of the estate is a cause of action, ~~the thirty dollars ($30.00)~~ these fees shall be paid at the time of the qualification of the fiduciary.

. . . ."

Section 4.(e) G.S. 7A-308(a)(1) reads as rewritten:

"(a) The following miscellaneous fees and commissions shall be collected by the clerk of superior court and remitted to the State for the support of the General Court of Justice:

(1) Foreclosure under power of sale in deed of trust or mortgage ..... ~~$30.00~~ $40.00

If the property is sold under the power of sale, an additional amount will be charged, determined by the following formula: thirty cents (30¢) per one hundred dollars ($100.00), or major fraction thereof, of the final sale price. If the amount determined by the formula is less than ten dollars ($10.00), a minimum ten dollar ($10.00) fee will be collected. If the amount determined by

the formula is more than two hundred dollars ($200.00), a maximum two hundred dollar ($200.00) fee will be collected."

PART V. JAIL FEE FOR LOCAL GOVERNMENTS

Section 5. G.S. 7A-313 reads as rewritten:

"**§ 7A-313. Uniform jail fees.**

~~Only persons~~ Persons who are lawfully confined in jail awaiting ~~trial, or who are ordered to pay jail fees pursuant to a probationary sentence,~~ trial shall be liable to the county or municipality maintaining the jail in the sum of five dollars ($5.00) for each 24 hours' confinement, or fraction thereof, except that a person so confined shall not be liable for this fee if the case or proceeding against him is dismissed, or if acquitted, or if judgment is arrested, or if probable cause is not found, or if the grand jury fails to return a true bill.

Persons who are ordered to pay jail fees pursuant to a probationary sentence shall be liable to the county or municipality maintaining the jail at the same per diem rate paid by the Department of Correction to local jails for maintaining a prisoner, as set by the General Assembly in its appropriations acts."

PART VI. INCREASE FEE FOR EMERGENCY PLANNING

Section 6. G.S. 166A-6.1(b) reads as rewritten:

"(b) Every person, firm, corporation or municipality who is licensed to construct or who is operating a fixed nuclear facility for the production of electricity shall pay to the Department of Crime Control and Public Safety, for the use of the Division of Radiation Protection ~~Division~~ of the Department of Environment and Natural Resources, an annual fee of ~~eighteen thousand dollars ($18,000)~~ thirty-six thousand dollars ($36,000) for each fixed nuclear facility ~~which~~ that is located within this State or has a Plume Exposure Pathway Emergency Planning Zone of which any part is located within this State. This fee shall be applied to the costs of planning and implementing emergency response activities as are required by the Federal Emergency Management Agency for the operation of nuclear facilities. ~~Said~~ This fee is to be paid no later than July 31 of each year."

PART VII. OVERSIZE LOAD PERMITS AND PENALTIES

Section 7.(a) G.S. 20-119(d) reads as rewritten:

"(d) ~~Violation~~ For each violation of any of the terms or conditions of a special permit issued under this section ~~shall be a Class 3 misdemeanor. A person convicted of a Class 3 misdemeanor under this section shall be subject to a fine of not more than five hundred dollars ($500.00).~~ the Department of Transportation may assess a separate civil penalty against the registered owner of the vehicle as follows:

(1) A fine of five hundred dollars ($500.00) for any of the following: operating without a permit, moving a load off the route specified in the permit, falsifying information to obtain a permit, failing to comply with dimension restrictions of a permit, or failing to comply with escort vehicle requirements.

(2) A fine of two hundred fifty dollars ($250.00) for moving loads beyond the distance allowances of an annual permit covering the movement of house trailers from the retailer's premises or for operating in violation of time of travel restrictions.

(3) A fine of one hundred dollars ($100.00) for any other violation of the permit conditions or requirements imposed by applicable regulations.

The Department of Transportation may refuse to issue additional permits or suspend existing permits if there are repeated violations of subdivision (1) or (2) of this subsection."

Section 7.(b) G.S. 20-140 is amended by adding a new subsection to read:

"(f) A person is guilty of the Class 2 misdemeanor of reckless driving if the person drives a commercial motor vehicle carrying a load that is subject to the permit requirements of G.S. 20-119 upon a highway or any public vehicular area either:

(1) Carelessly and heedlessly in willful or wanton disregard of the rights or safety of others; or

(2) Without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property."

Section 7.(c) G.S. 20-141 is amended by adding a new subsection to read:

"(j3) A person is guilty of a Class 2 misdemeanor if the person drives a commercial motor vehicle carrying a load that is subject to the permit requirements of G.S. 20-119 upon a highway or any public vehicular area at a speed in excess of 15 miles per hour above either:

(1) The posted speed; or

(2) The restricted speed, if any, of the permit, or if no permit was obtained, the speed that would be applicable to the load if a permit had been obtained."

Section 7.(d) G.S. 20-16(c) reads as rewritten:

"(c) The Division shall maintain a record of convictions of every person licensed or required to be licensed under the provisions of this Article as an operator and shall enter therein records of all convictions of such persons for any violation of the motor vehicle laws of this State and shall assign to the record of such person, as of the date of commission of the offense, a number of points for every such conviction in accordance with the following schedule of convictions and points, except that points shall not be assessed for convictions resulting in suspensions or revocations under other provisions of laws: Further, any points heretofore charged for violation of the motor vehicle inspection laws shall not be considered by the Division of Motor Vehicles as a basis for suspension or revocation of driver's license:

Schedule of Point Values

Passing stopped school bus 5

Reckless driving 4
Hit and run, property damage only 4
Following too close 4
Driving on wrong side of road 4
Illegal passing 4
Running through stop sign 3
Speeding in excess of 55 miles per hour 3
Failing to yield right-of-way 3
Running through red light 3
No driver's license or license expired more than one year 3
Failure to stop for siren 3
Driving through safety zone 3
No liability insurance 3
Failure to report accident where such report is required 3
Speeding in a school zone in excess of the posted school zone speed limit 3
All other moving violations 2
Littering pursuant to G.S. 14-399 when the littering involves the use of a motor vehicle 1

Schedule of Point Values for Violations While Operating a Commercial Motor Vehicle

Passing stopped school bus 8
Rail-highway crossing violation 6
Careless and reckless driving in violation of G.S. 20-140(f) 6
Speeding in violation of G.S. 20-141(j3) 6
Reckless driving 5
Hit and run, property damage only 5
Following too close 5
Driving on wrong side of road 5
Illegal passing 5
Running through stop sign 4
Speeding in excess of 55 miles per hour 4
Failing to yield right-of-way 4
Running through red light 4
No driver's license or license expired more than one year 4
Failure to stop for siren 4
Driving through safety zone 4
No liability insurance 4
Failure to report accident where such report is required 4
Speeding in a school zone in excess of the posted school zone speed limit 4

Possessing alcoholic beverages in the passenger area of a commercial motor vehicle....4
All other moving violations....3
Littering pursuant to G.S. 14-399 when the littering involves the use of a motor vehicle....1

The above provisions of this subsection shall only apply to violations and convictions which take place within the State of North Carolina. The Schedule of Point Values for Violations While Operating a Commercial Motor Vehicle shall not apply to any commercial motor vehicle known as an "aerial lift truck" having a hydraulic arm and bucket station, and to any commercial motor vehicle known as a "line truck" having a hydraulic lift for cable, if the vehicle is owned, operated by or under contract to a public utility, electric or telephone membership corporation or municipality and used in connection with installation, restoration or maintenance of utility services.

No points shall be assessed for conviction of the following offenses:

Overloads
Over length
Over width
Over height
Illegal parking
Carrying concealed weapon
Improper plates
Improper registration
Improper muffler
Improper display of license plates or dealers' tags
Unlawful display of emblems and insignia
Failure to display current inspection certificate.

In case of the conviction of a licensee of two or more traffic offenses committed on a single occasion, such licensee shall be assessed points for one offense only and if the offenses involved have a different point value, such licensee shall be assessed for the offense having the greater point value.

Upon the restoration of the license or driving privilege of such person whose license or driving privilege has been suspended or revoked because of conviction for a traffic offense, any points that might previously have been accumulated in the driver's record shall be cancelled.

Whenever any licensee accumulates as many as seven points or accumulates as many as four points during a three-year period immediately following reinstatement of his license after a period of suspension or revocation, the Division may request the licensee to attend a conference regarding such licensee's driving record. The Division may also afford any licensee who has accumulated as many as seven points or any licensee who has accumulated as many as four points within a three-year period immediately following reinstatement of his license after a period of suspension or revocation an opportunity to attend a driver improvement clinic operated by the

Division and, upon the successful completion of the course taken at the clinic, three points shall be deducted from the licensee's conviction record; provided, that only one deduction of points shall be made on behalf of any licensee within any five-year period.

When a license is suspended under the point system provided for herein, the first such suspension shall be for not more than 60 days; the second such suspension shall not exceed six months and any subsequent suspension shall not exceed one year.

Whenever the driver's license of any person is subject to suspension under this subsection and at the same time also subject to suspension or revocation under other provisions of laws, such suspensions or revocations shall run concurrently.

In the discretion of the Division, a period of probation not to exceed one year may be substituted for suspension or for any unexpired period of suspension under subsections (a)(1) through (a)(10a) of this section. Any violation of probation during the probation period shall result in a suspension for the unexpired remainder of the suspension period. Any accumulation of three or more points under this subsection during a period of probation shall constitute a violation of the condition of probation."

Section 7.(e) G.S. 20-17.4(d) reads as rewritten:

"(d) Less Than a Year. -- A person is disqualified from driving a commercial motor vehicle for 60 days if that person is convicted of two serious traffic violations, or 120 days if convicted of three or more serious traffic violations, committed in a commercial motor vehicle arising from separate incidents occurring within a three-year period. For purposes of this subsection, a 'serious violation' includes violations of G.S. 20-140(f) and G.S. 20-141(j3)."

Section 7.(f) G.S. 20-119(b) reads as rewritten:

"(b) Upon the issuance of a special permit for an oversize or overweight vehicle by the Department of Transportation in accordance with this section, the applicant shall pay to the Department for a single trip permit a fee of ~~ten~~ twelve dollars ~~($10.00)~~ ($12.00) ~~for a single trip permit and fifty dollars ($50.00) for an annual permit issued for a single vehicle. Any person who operates more than one vehicle may obtain an annual permit for all oversize or overweight vehicles operated by the person upon payment of an annual fee based on the following schedule:~~

~~No. of Vehicles~~	~~Annual Permit Rate Per Vehicle~~
~~First 50~~	~~$50.00~~
~~51 to 100~~	~~40.00~~
~~101 to 150~~	~~30.00~~
~~Over 150~~	~~20.00~~

~~Any vehicle required to obtain an overweight permit shall not be charged an additional fee for oversize. Any vehicle required to obtain an oversize permit shall not be charged an additional fee for overweight.~~ for each dimension over lawful dimensions, including height, length, width, and weight up to 132,000 pounds. For overweight vehicles, the applicant shall pay to the Department for a single trip permit

in addition to the fee imposed by the previous sentence a fee of three dollars ($3.00) per 1,000 pounds over 132,000 pounds.

Upon the issuance of an annual permit for a single vehicle, the applicant shall pay a fee in accordance with the following schedule:

Commodity:	Annual Fee:
Annual Permit to Move House Trailers	$200.00
Annual Permit to Move Other Commodities	$100.00

In addition to the fees set out in this subsection, applications for permits that require an engineering study for pavement or structures or other special conditions or considerations shall be accompanied by a nonrefundable application fee of one hundred dollars ($100.00).

This subsection ~~shall~~ does not apply to farm equipment or machinery being used at the time for agricultural purposes, nor to the moving of a house as provided for by the license and permit requirements of Article 16 of this Chapter. Fees will not be assessed for permits for oversize and overweight vehicles issued to any agency of the United States Government or the State of North Carolina, its agencies, institutions, subdivisions, or municipalities if the vehicle is registered in the name of the agency."

Section 7.(g) It is the intent of the General Assembly that the permit fees provided in G.S. 20-119 shall be adjusted periodically to assure that the revenue generated by the fees is equal to the cost to the Department of administering the Oversize/Overweight Permit Unit Program within the Division of Highways. At least every two years, the Department shall review and compare the revenue generated by the permit fees and the cost of administering the program, and shall report to the Joint Legislative Transportation Oversight Committee created in G.S. 120-70.50 its recommendations for adjustments to the permit fees to bring the revenues and the costs into alignment.

PART VIII. EFFECTIVE DATES

Section 8.(a) Public Utility Regulatory Fee. -- Section 1 of this act becomes effective July 1, 2000.

Section 8.(b) North Carolina Electric Membership Corporation Regulatory Fee. -- Section 2 of this act becomes effective July 1, 2000.

Section 8.(c) Insurance Regulatory Charge. -- Section 3 of this act is effective when it becomes law.

Section 8.(d) Increase Court Costs. -- Section 4 of this act becomes effective July 15, 2000, and applies to all costs assessed or collected on and after that date.

Section 8.(e) Jail Fees for Local Governments. -- Section 5 of this act becomes effective July 1, 2000, and applies to sentences or portions of sentences being served on or after that date.

Section 8.(f) Increase Fee for Emergency Planning. -- Section 6 of this act becomes effective July 1, 2000.

Section 8.(g) Oversize Load Permits and Penalties. -- Section 7(f) of this act becomes effective October 1, 2000. The first report required by Section 7(g) of this act is due December 1, 2002.

Section 8.(h) Remainder. -- The remainder of this act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1854

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

H1854-ARB-6.21 Page 1 of __

Date_____,2000

Comm. Sub. [YES]
Amends Title [YES]
Second Edition

Senator _____

moves to amend the bill on page 1, line 7, by deleting the word "AND";

and on page 1, line 8, by rewriting the line to read:
"PERMIT VIOLATIONS AND TO AUTHORIZE AGENCIES TO PROVIDE ACCESS TO SERVICES THROUGH ELECTRONIC AND DIGITAL TRANSACTIONS AND TO IMPOSE A FEE FOR THOSE SERVICES.";

and on page 1, line 19, by rewriting the line to read:
"PART VIII. FEES FOR ACCESS TO AGENCY SERVICES THROUGH ELECTRONIC AND DIGITAL TRANSACTIONS
PART IX. EFFECTIVE DATES";

and on page 10, line 30, by rewriting the line to read:
"PART VIII. FEES FOR ACCESS TO AGENCY SERVICES THROUGH ELECTRONIC AND DIGITAL TRANSACTIONS

Section 8. Article 11A of Chapter 66 of the General Statutes is amended by adding a new section to read:

'**§ 66-58.12. Agencies may provide access to services through electronic and digital transactions; fees authorized.**

(a) Public agencies are encouraged to maximize citizen and business access to their services through the use of electronic and digital transactions. A public agency may determine, through program and transaction analysis, which of its services may be made available to the public through electronic means, including the Internet. The agency shall identify any inhibitors to electronic transactions between the agency and the public, including legal, policy, financial, or privacy concerns and specific inhibitors

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1854

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

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unique to the agency or type of transaction. An agency shall not provide a transaction through the Internet that is impractical, unreasonable, or not permitted by laws pertaining to privacy or security.

(b) An agency may charge a fee to cover its costs of permitting a person to complete a transaction or access services through the World Wide Web or other means of electronic access. The fee may be applied on a per transaction basis and may be calculated either as a flat fee or a percentage fee, as determined under an agreement between a person and a public agency. The fee must be approved by the Information Resource Management Commission, in consultation with the Joint Legislative Commission on Governmental Operations. The fee may be collected by the agency or by its third-party agent. The revenue derived from the fee must be credited to a nonreverting agency reserve account. The funds in the account may only be expended for e-commerce initiatives and projects approved by the Information Resource Management Commission, in consultation with the Joint Select Committee on Information Technology.'

PART IX. EFFECTIVE DATES";

and by renumbering the remaining sections accordingly;

and on page 11, line 4, by rewriting the line to read:
"Section 9.(h) Fees for access to agency services through electronic and digital transactions. -- Section 8 becomes effective when it becomes law.
Section 9.(i) Remainder. -- The remainder of this act is effective when it".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1854*
Committee Substitute Favorable 6/7/00
Senate Finance Committee Substitute Adopted 6/21/00
Proposed Senate Committee Substitute H1854-PCS6310-LA001

Short Title: 2000 Fee Bill. (Public)

Sponsors:

Referred to:

May 30, 2000

A BILL TO BE ENTITLED

AN ACT TO SET THE PUBLIC UTILITY REGULATORY FEES AND THE INSURANCE REGULATORY CHARGE, TO INCREASE COURT COSTS, TO INCREASE JAIL FEES FOR PERSONS PAYING JAIL FEES PURSUANT TO PROBATIONARY SENTENCES, TO INCREASE THE FEE IMPOSED FOR EMERGENCY PLANNING, TO AUTHORIZE CERTAIN CHANGES IN PERMITS FOR OVERSIZE LOADS AND ESTABLISH PENALTIES FOR PERMIT VIOLATIONS, TO AUTHORIZE AGENCIES TO PROVIDE ACCESS TO SERVICES THROUGH ELECTRONIC AND DIGITAL TRANSACTIONS AND TO IMPOSE A FEE FOR THOSE TRANSACTIONS, AND TO REPEAL THE SUNSET OF THE WHITE GOODS TAX AND DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO STUDY ISSUES RELATED TO THE SCRAP TIRE DISPOSAL TAX AND THE WHITE GOODS DISPOSAL TAX.

The General Assembly of North Carolina enacts:

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PART I. PUBLIC UTILITY REGULATORY FEE
PART II. NORTH CAROLINA ELECTRIC MEMBERSHIP CORPORATION REGULATORY FEE
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PART V. JAIL FEES FOR LOCAL GOVERNMENTS
PART VI. INCREASE FEE FOR EMERGENCY PLANNING
PART VII. OVERSIZE LOAD PERMITS AND PENALTIES
PART VIII. FEES FOR ACCESS TO AGENCY SERVICES THROUGH ELECTRONIC AND DIGITAL TRANSACTIONS
PART IX. WHITE GOODS SUNSET REPEAL
PART X. EFFECTIVE DATES

PART I. PUBLIC UTILITY REGULATORY FEE

Section 1. The percentage rate to be used in calculating the public utility regulatory fee under G.S. 62-302(b)(2) is nine-hundredths percent (0.09%) for each public utility's North Carolina jurisdictional revenues earned during each quarter that begins on or after July 1, 2000.

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Section 3. The percentage rate to be used in calculating the insurance regulatory charge under G.S. 58-6-25 is seven percent (7%) for the 2000 calendar year.

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Section 4.(a) G.S. 7A-304(a)(4) reads as rewritten:

"(a) In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the prosecuting witness, the following costs shall be assessed and collected, except that when the judgment imposes an active prison sentence, costs shall be assessed and collected only when the judgment specifically so provides, and that no costs may be assessed when a case is dismissed.

. . .

(4) For support of the General Court of Justice, the sum of ~~sixty-one dollars ($61.00)~~ sixty-five dollars ($65.00) in the district court, including cases before a magistrate, and the sum of ~~sixty-eight dollars ($68.00)~~ seventy-two dollars ($72.00) in the superior court, to be remitted to the State Treasurer.

. . . ."

Section 4.(b) G.S. 7A-305(a)(2) reads as rewritten:

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"**§ 7A-306. Costs in special proceedings.**

(a) In every special proceeding in the superior court, the following costs shall be assessed:

(1) For the use of the courtroom and related judicial facilities, the sum of ten dollars ($10.00) to be remitted to the county. Funds derived from the facilities fees shall be used in the same manner, for the same purposes, and subject to the same restrictions, as facilities fees assessed in criminal actions.

(2) For support of the General Court of Justice the sum of ~~twenty-six dollars ($26.00).~~ thirty dollars ($30.00). In addition, in proceedings involving land, except boundary disputes, if the fair market value of the land involved is over one hundred dollars ($100.00), there shall be an additional sum of thirty cents (30¢) per one hundred dollars ($100.00) of value, or major fraction thereof, not to exceed a maximum additional sum of two hundred dollars ($200.00). Fair market value is determined by the sale price if there is a sale, the appraiser's valuation if there is no sale, or the appraised value from the property tax records if there is neither a sale nor an appraiser's valuation. Sums collected under this subsection shall be remitted to the State Treasurer.

(b) The facilities fee and ~~twenty-six dollars ($26.00)~~ thirty dollars ($30.00) of the General Court of Justice fee are payable at the time the proceeding is initiated.

. . . ."

Section 4.(d) G.S. 7A-307(a) and (b) read as rewritten:

"(a) In the administration of the estates of decedents, minors, incompetents, of missing persons, and of trusts under wills and under powers of attorney, and in collections of personal property by affidavit, the following costs shall be assessed:

(1) For the use of the courtroom and related judicial facilities, the sum of ten dollars ($10.00), to be remitted to the county. Funds derived from the facilities fees shall be used in the same manner, for the same purposes, and subject to the same restrictions, as facilities fees assessed in criminal actions.

(2) For support of the General Court of Justice, the sum of ~~twenty-six dollars ($26.00),~~ thirty dollars ($30.00), plus an additional forty cents (40¢) per one hundred dollars ($100.00), or major fraction

thereof, of the gross estate, not to exceed three thousand dollars ($3,000). Gross estate shall include the fair market value of all personalty when received, and all proceeds from the sale of realty coming into the hands of the fiduciary, but shall not include the value of realty. In collections of personal property by affidavit, the fee based on the gross estate shall be computed from the information in the final affidavit of collection made pursuant to G.S. 28A-25-3 and shall be paid when that affidavit is filed. In all other cases, this fee shall be computed from the information reported in the inventory and shall be paid when the inventory is filed with the clerk. If additional gross estate, including income, comes into the hands of the fiduciary after the filing of the inventory, the fee for such additional value shall be assessed and paid upon the filing of any account or report disclosing such additional value. For each filing the minimum fee shall be ~~ten dollars ($10.00).~~ fifteen dollars ($15.00). Sums collected under this subsection shall be remitted to the State Treasurer.

(2a) Notwithstanding subdivision (2) of this subsection, the fee of forty cents (40¢) per one hundred dollars ($100.00), or major fraction, of the gross estate, not to exceed three thousand dollars ($3,000), shall not be assessed on personalty received by a trust under a will when the estate of the decedent was administered under Chapters 28 or 28A of the General Statutes. Instead, a fee of ~~fifteen dollars ($15.00)~~ twenty dollars ($20.00) shall be assessed on the filing of each annual and final account.

(2b) Notwithstanding subdivisions (1) and (2) of this subsection, no costs shall be assessed when the estate is administered or settled pursuant to G.S. 28A-25-6.

(3) For probate of a will without qualification of a personal representative, the clerk shall assess a facilities fee as provided in subdivision (1) of this subsection and shall assess for support of the General Court of Justice, the sum of ~~seventeen dollars ($17.00).~~ twenty dollars ($20.00).

(b) In collections of personal property by affidavit, the facilities fee and ~~twenty-six dollars ($26.00)~~ thirty dollars ($30.00) of the General Court of Justice fee shall be paid at the time of filing the qualifying affidavit pursuant to G.S. 28A-25-1. In all other cases, these fees shall be paid at the time of filing of the first inventory. If the sole asset of the estate is a cause of action, ~~the thirty dollars ($30.00)~~ these fees shall be paid at the time of the qualification of the fiduciary.

. . . ."

Section 4.(e) G.S. 7A-308(a)(1) reads as rewritten:

"(a) The following miscellaneous fees and commissions shall be collected by the clerk of superior court and remitted to the State for the support of the General Court of Justice:

(1) Foreclosure under power of sale in deed of trust or mortgage ..... ~~$30.00~~ $40.00

If the property is sold under the power of sale, an additional amount will be charged, determined by the following formula: thirty cents (30¢) per one hundred dollars ($100.00), or major fraction thereof, of the final sale price. If the amount determined by the formula is less than ten dollars ($10.00), a minimum ten dollar ($10.00) fee will be collected. If the amount determined by the formula is more than two hundred dollars ($200.00), a maximum two hundred dollar ($200.00) fee will be collected."

PART V. JAIL FEE FOR LOCAL GOVERNMENTS

Section 5. G.S. 7A-313 reads as rewritten:

"**§ 7A-313. Uniform jail fees.**

~~Only persons~~ Persons who are lawfully confined in jail awaiting ~~trial, or who are ordered to pay jail fees pursuant to a probationary sentence,~~ trial shall be liable to the county or municipality maintaining the jail in the sum of five dollars ($5.00) for each 24 hours' confinement, or fraction thereof, except that a person so confined shall not be liable for this fee if the case or proceeding against him is dismissed, or if acquitted, or if judgment is arrested, or if probable cause is not found, or if the grand jury fails to return a true bill.

Persons who are ordered to pay jail fees pursuant to a probationary sentence shall be liable to the county or municipality maintaining the jail at the same per diem rate paid by the Department of Correction to local jails for maintaining a prisoner, as set by the General Assembly in its appropriations acts."

PART VI. INCREASE FEE FOR EMERGENCY PLANNING

Section 6. G.S. 166A-6.1(b) reads as rewritten:

"(b) Every person, firm, corporation or municipality who is licensed to construct or who is operating a fixed nuclear facility for the production of electricity shall pay to the Department of Crime Control and Public Safety, for the use of the Division of Radiation Protection ~~Division~~ of the Department of Environment and Natural Resources, an annual fee of ~~eighteen thousand dollars ($18,000)~~ thirty-six thousand dollars ($36,000) for each fixed nuclear facility ~~which~~ that is located within this State or has a Plume Exposure Pathway Emergency Planning Zone of which any part is located within this State. This fee shall be applied to the costs of planning and implementing emergency response activities as are required by the Federal Emergency Management Agency for the operation of nuclear facilities. ~~Said~~ This fee is to be paid no later than July 31 of each year."

PART VII. OVERSIZE LOAD PERMITS AND PENALTIES

Section 7.(a) G.S. 20-119(d) reads as rewritten:

"(d) ~~Violation~~ For each violation of any of the terms or conditions of a special permit issued under this section ~~shall be a Class 3 misdemeanor. A person convicted~~

~~of a Class 3 misdemeanor under this section shall be subject to a fine of not more than five hundred dollars ($500.00).~~ the Department of Transportation may assess a separate civil penalty against the registered owner of the vehicle as follows:

(1) A fine of five hundred dollars ($500.00) for any of the following: operating without a permit, moving a load off the route specified in the permit, falsifying information to obtain a permit, failing to comply with dimension restrictions of a permit, or failing to comply with escort vehicle requirements.

(2) A fine of two hundred fifty dollars ($250.00) for moving loads beyond the distance allowances of an annual permit covering the movement of house trailers from the retailer's premises or for operating in violation of time of travel restrictions.

(3) A fine of one hundred dollars ($100.00) for any other violation of the permit conditions or requirements imposed by applicable regulations.

The Department of Transportation may refuse to issue additional permits or suspend existing permits if there are repeated violations of subdivision (1) or (2) of this subsection."

Section 7.(b) G.S. 20-140 is amended by adding a new subsection to read:

"(f) A person is guilty of the Class 2 misdemeanor of reckless driving if the person drives a commercial motor vehicle carrying a load that is subject to the permit requirements of G.S. 20-119 upon a highway or any public vehicular area either:

(1) Carelessly and heedlessly in willful or wanton disregard of the rights or safety of others; or

(2) Without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property."

Section 7.(c) G.S. 20-141 is amended by adding a new subsection to read:

"(j3) A person is guilty of a Class 2 misdemeanor if the person drives a commercial motor vehicle carrying a load that is subject to the permit requirements of G.S. 20-119 upon a highway or any public vehicular area at a speed in excess of 15 miles per hour above either:

(1) The posted speed; or

(2) The restricted speed, if any, of the permit, or if no permit was obtained, the speed that would be applicable to the load if a permit had been obtained."

Section 7.(d) G.S. 20-16(c) reads as rewritten:

"(c) The Division shall maintain a record of convictions of every person licensed or required to be licensed under the provisions of this Article as an operator and shall enter therein records of all convictions of such persons for any violation of the motor vehicle laws of this State and shall assign to the record of such person, as of the date of commission of the offense, a number of points for every such conviction

in accordance with the following schedule of convictions and points, except that points shall not be assessed for convictions resulting in suspensions or revocations under other provisions of laws: Further, any points heretofore charged for violation of the motor vehicle inspection laws shall not be considered by the Division of Motor Vehicles as a basis for suspension or revocation of driver's license:

Schedule of Point Values

Passing stopped school bus	5
Reckless driving	4
Hit and run, property damage only	4
Following too close	4
Driving on wrong side of road	4
Illegal passing	4
Running through stop sign	3
Speeding in excess of 55 miles per hour	3
Failing to yield right-of-way	3
Running through red light	3
No driver's license or license expired more than one year	3
Failure to stop for siren	3
Driving through safety zone	3
No liability insurance	3
Failure to report accident where such report is required	3
Speeding in a school zone in excess of the posted school zone speed limit	3
All other moving violations	2
Littering pursuant to G.S. 14-399 when the littering involves the use of a motor vehicle	1

Schedule of Point Values for Violations While Operating a Commercial Motor Vehicle

Passing stopped school bus	8
Rail-highway crossing violation	6
Careless and reckless driving in violation of G.S. 20-140(f)	6
Speeding in violation of G.S. 20-141(j3)	6
Reckless driving	5
Hit and run, property damage only	5
Following too close	5
Driving on wrong side of road	5
Illegal passing	5
Running through stop sign	4
Speeding in excess of 55 miles per hour	4
Failing to yield right-of-way	4

Running through red light 4
No driver's license or license expired more than one year 4
Failure to stop for siren 4
Driving through safety zone 4
No liability insurance 4
Failure to report accident where such report is required 4
Speeding in a school zone in excess of the posted school zone speed limit 4
Possessing alcoholic beverages in the passenger area of a commercial motor vehicle 4
All other moving violations 3
Littering pursuant to G.S. 14-399 when the littering involves the use of a motor vehicle 1

The above provisions of this subsection shall only apply to violations and convictions which take place within the State of North Carolina. The Schedule of Point Values for Violations While Operating a Commercial Motor Vehicle shall not apply to any commercial motor vehicle known as an "aerial lift truck" having a hydraulic arm and bucket station, and to any commercial motor vehicle known as a "line truck" having a hydraulic lift for cable, if the vehicle is owned, operated by or under contract to a public utility, electric or telephone membership corporation or municipality and used in connection with installation, restoration or maintenance of utility services.

No points shall be assessed for conviction of the following offenses:

Overloads
Over length
Over width
Over height
Illegal parking
Carrying concealed weapon
Improper plates
Improper registration
Improper muffler
Improper display of license plates or dealers' tags
Unlawful display of emblems and insignia
Failure to display current inspection certificate.

In case of the conviction of a licensee of two or more traffic offenses committed on a single occasion, such licensee shall be assessed points for one offense only and if the offenses involved have a different point value, such licensee shall be assessed for the offense having the greater point value.

Upon the restoration of the license or driving privilege of such person whose license or driving privilege has been suspended or revoked because of conviction for a traffic offense, any points that might previously have been accumulated in the driver's record shall be cancelled.

Whenever any licensee accumulates as many as seven points or accumulates as many as four points during a three-year period immediately following reinstatement of his license after a period of suspension or revocation, the Division may request the licensee to attend a conference regarding such licensee's driving record. The Division may also afford any licensee who has accumulated as many as seven points or any licensee who has accumulated as many as four points within a three-year period immediately following reinstatement of his license after a period of suspension or revocation an opportunity to attend a driver improvement clinic operated by the Division and, upon the successful completion of the course taken at the clinic, three points shall be deducted from the licensee's conviction record; provided, that only one deduction of points shall be made on behalf of any licensee within any five-year period.

When a license is suspended under the point system provided for herein, the first such suspension shall be for not more than 60 days; the second such suspension shall not exceed six months and any subsequent suspension shall not exceed one year.

Whenever the driver's license of any person is subject to suspension under this subsection and at the same time also subject to suspension or revocation under other provisions of laws, such suspensions or revocations shall run concurrently.

In the discretion of the Division, a period of probation not to exceed one year may be substituted for suspension or for any unexpired period of suspension under subsections (a)(1) through (a)(10a) of this section. Any violation of probation during the probation period shall result in a suspension for the unexpired remainder of the suspension period. Any accumulation of three or more points under this subsection during a period of probation shall constitute a violation of the condition of probation."

Section 7.(e) G.S. 20-17.4(d) reads as rewritten:

"(d) Less Than a Year. -- A person is disqualified from driving a commercial motor vehicle for 60 days if that person is convicted of two serious traffic violations, or 120 days if convicted of three or more serious traffic violations, committed in a commercial motor vehicle arising from separate incidents occurring within a three-year period. For purposes of this subsection, a 'serious violation' includes violations of G.S. 20-140(f) and G.S. 20-141(j3)."

Section 7.(f) G.S. 20-119(b) reads as rewritten:

"(b) Upon the issuance of a special permit for an oversize or overweight vehicle by the Department of Transportation in accordance with this section, the applicant shall pay to the Department for a single trip permit a fee of ~~ten~~ twelve dollars ~~($10.00)~~ ($12.00) ~~for a single trip permit and fifty dollars ($50.00) for an annual permit issued for a single vehicle. Any person who operates more than one vehicle may obtain an annual permit for all oversize or overweight vehicles operated by the person upon payment of an annual fee based on the following schedule:~~

~~No. of Vehicles~~	~~Annual Permit Rate Per Vehicle~~
~~First 50~~	~~$50.00~~
~~51 to 100~~	~~40.00~~

~~101 to 150 30.00~~
~~Over 150 20.00~~

~~Any vehicle required to obtain an overweight permit shall not be charged an additional fee for oversize. Any vehicle required to obtain an oversize permit shall not be charged an additional fee for overweight.~~ for each dimension over lawful dimensions, including height, length, width, and weight up to 132,000 pounds. For overweight vehicles, the applicant shall pay to the Department for a single trip permit in addition to the fee imposed by the previous sentence a fee of three dollars ($3.00) per 1,000 pounds over 132,000 pounds.

Upon the issuance of an annual permit for a single vehicle, the applicant shall pay a fee in accordance with the following schedule:

Commodity:	Annual Fee:
Annual Permit to Move House Trailers	$200.00
Annual Permit to Move Other Commodities	$100.00

In addition to the fees set out in this subsection, applications for permits that require an engineering study for pavement or structures or other special conditions or considerations shall be accompanied by a nonrefundable application fee of one hundred dollars ($100.00).

This subsection ~~shall~~ does not apply to farm equipment or machinery being used at the time for agricultural purposes, nor to the moving of a house as provided for by the license and permit requirements of Article 16 of this Chapter. Fees will not be assessed for permits for oversize and overweight vehicles issued to any agency of the United States Government or the State of North Carolina, its agencies, institutions, subdivisions, or municipalities if the vehicle is registered in the name of the agency."

Section 7.(g) It is the intent of the General Assembly that the permit fees provided in G.S. 20-119 shall be adjusted periodically to assure that the revenue generated by the fees is equal to the cost to the Department of administering the Oversize/Overweight Permit Unit Program within the Division of Highways. At least every two years, the Department shall review and compare the revenue generated by the permit fees and the cost of administering the program, and shall report to the Joint Legislative Transportation Oversight Committee created in G.S. 120-70.50 its recommendations for adjustments to the permit fees to bring the revenues and the costs into alignment.

PART VIII. FEES FOR ACCESS TO AGENCY SERVICES THROUGH ELECTRONIC AND DIGITAL TRANSACTIONS

Section 8. Article 11A of Chapter 66 of the General Statutes is amended by adding a new section to read:

"§ 66-58.12. Agencies may provide access to services through electronic and digital transactions; fees authorized.

(a) Public agencies are encouraged to maximize citizen and business access to their services through the use of electronic and digital transactions. A public agency may

determine, through program and transaction analysis, which of its services may be made available to the public through electronic means, including the Internet. The agency shall identify any inhibitors to electronic transactions between the agency and the public, including legal, policy, financial, or privacy concerns and specific inhibitors unique to the agency or type of transaction. An agency shall not provide a transaction through the Internet that is impractical, unreasonable, or not permitted by laws pertaining to privacy or security.

(b) An agency may charge a fee to cover its costs of permitting a person to complete a transaction through the World Wide Web or other means of electronic access. The fee may be applied on a per transaction basis and may be calculated either as a flat fee or a percentage fee, as determined under an agreement between a person and a public agency. The fee must be approved by the Information Resource Management Commission, in consultation with the Joint Legislative Commission on Governmental Operations. The fee may be collected by the agency or by its third-party agent. The revenue derived from the fee must be credited to a nonreverting agency reserve account. The funds in the account may be expended only for e-commerce initiatives and projects approved by the Information Resource Management Commission, in consultation with the Joint Select Committee on Information Technology."

PART IX. WHITE GOODS SUNSET REPEAL

Section 9.(a) Section 11 of Chapter 471 of the 1993 Session Laws, as amended by Section 15.1(b) of Chapter 769 of the 1993 Session Laws and Section 7 of S.L. 1998-24, reads as rewritten:

"Sec. 11. Sections 1 through 5 of this act and this section become effective January 1, 1994. ~~Section 3 of this act expires July 1, 2001. Section 6 of this act becomes effective July 1, 2001. Sections 7, 8, and 9 of this act become effective July 1, 2002.~~

~~The repeal of the tax imposed by Section 3 of this act does not affect the rights or liabilities of the State, a taxpayer, or another person that arose during the time the tax was in effect.~~ The first report submitted by the Department to the Environmental Review Commission under G.S. 130A-309.85, as enacted by this act, shall cover the period from January 1, 1994, to June 30, 1994."

Section 9.(b) The Department of Environment and Natural Resources shall study issues related to the scrap tire disposal tax and the white goods disposal tax. This study shall include an evaluation of whether the amount of the scrap tire disposal tax and the amount of the white goods disposal tax should be altered and whether the distribution of the proceeds of these taxes should be reapportioned. The Department shall report its findings and recommendations, including any legislative proposals, to the Environmental Review Commission no later than October 1, 2000.

PART X. EFFECTIVE DATES

Section 10.(a) Public Utility Regulatory Fee. -- Section 1 of this act becomes effective July 1, 2000.

Section 10.(b) North Carolina Electric Membership Corporation Regulatory Fee. -- Section 2 of this act becomes effective July 1, 2000.

Section 10.(c) Insurance Regulatory Charge. -- Section 3 of this act is effective when it becomes law.

Section 10.(d) Increase Court Costs. -- Section 4 of this act becomes effective July 15, 2000, and applies to all costs assessed or collected on and after that date.

Section 10.(e) Jail Fees for Local Governments. -- Section 5 of this act becomes effective July 1, 2000, and applies to sentences or portions of sentences being served on or after that date.

Section 10.(f) Increase Fee for Emergency Planning. -- Section 6 of this act becomes effective July 1, 2000.

Section 10.(g) Oversize Load Permits and Penalties. -- Section 7(f) of this act becomes effective October 1, 2000. The first report required by Section 7(g) of this act is due December 1, 2002.

Section 10.(h) Fees for Access to Agency Services Through Electronic and Digital Transactions. -- Section 8 is effective when it becomes law.

Section 10.(i) White Goods Sunset Repeal. -- Section 9 of this act is effective when it becomes law.

Section 10.(j) Remainder. -- The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 1560*
Committee Substitute Favorable 6/7/00

Short Title: Modify Bill Lee Act. (Public)

Sponsors:

Referred to:

May 17, 2000

A BILL TO BE ENTITLED

AN ACT TO MAKE MODIFICATIONS TO THE WILLIAM S. LEE ACT AND TO RELATED ECONOMIC DEVELOPMENT LAWS.

The General Assembly of North Carolina enacts:

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PART I. APPLICATION FEE EXEMPTIONS

Section 1.(a) G.S. 105-129.6(a1) reads as rewritten:

"(a1) Fee. -- When filing an application for certification under this section, the taxpayer must pay the Department of Commerce a fee of five hundred dollars ($500.00) for each credit the taxpayer intends to claim with respect to a location that is in an enterprise tier three, four, or five area, subject to a maximum fee of one thousand five hundred dollars ($1,500) per taxpayer per taxable year. This fee does

not apply to any credit the taxpayer intends to claim with respect to a location that is in a development zone as defined in G.S. 105-129.3A. If the taxpayer applies for certification for a credit that relates to locations in more than one enterprise tier area, the fee is based on the highest-numbered enterprise tier area.

The Secretary of Commerce shall retain one-fourth of the proceeds of the fee imposed in this section for the costs of administering this section. The Secretary of Commerce shall credit the remaining proceeds of the fee imposed in this section to the Department of Revenue for the costs of administering and auditing the credits allowed in this Article. The proceeds of the fee are receipts of the Department to which they are credited."

Section 1.(b) G.S. 105-129.13(e) reads as rewritten:

"(e) Application. -- To be eligible for the tax credit provided in this section, in addition to the application required under G.S. 105-129.6, the taxpayer must file an application for the credit with the Secretary of Revenue on or before April 15 of the year following the calendar year in which the contribution was made. The Secretary may grant extensions of this deadline, as the Secretary finds appropriate, upon the request of the taxpayer, except that the application may not be filed after September 15 of the year following the calendar year in which the contribution was made. An application is effective for the year in which it is timely filed. The application must be on a form prescribed by the Secretary and must include any supporting documentation that the Secretary may require. If a contribution for which a credit is applied for was of property rather than cash, the taxpayer must include with the application a certified appraisal of the value of the property contributed. There is no fee for an application under this section."

PART II. EXTEND CREDIT CARRYFORWARDS

Section 2. G.S. 105-129.5 reads as rewritten:

"**§ 105-129.5. (Repealed effective January 1, 2006) Tax election; ~~cap.~~ cap; carryforwards.**

(a) Tax Election. -- The credits provided in this Article are allowed against the franchise tax levied in Article 3 of this Chapter, ~~and~~ the income taxes levied in Article 4 of this Chapter, and the gross premiums tax levied in Article 8B of this Chapter. The taxpayer may divide the technology commercialization credit allowed in G.S. 105-129.9A between the taxes against which it is allowed. The taxpayer shall elect the percentage of the credit that will be taken against each tax when filing the return on which the credit is first taken. This election is binding. The percentage of the credit elected to be taken against each tax may be carried forward only against the same tax.

The taxpayer must take any other credit allowed in this Article against only one of the taxes against which it is allowed. The taxpayer shall elect the tax against which a credit will be claimed when filing the return on which the first installment of the credit is claimed. This election is binding. Any carryforwards of the credit must be claimed against the same tax.

(b) Cap. -- The credits allowed under this Article may not exceed fifty percent (50%) of the tax against which they are claimed for the taxable year, reduced by the sum of all other credits allowed against that tax, except tax payments made by or on behalf of the taxpayer. This limitation applies to the cumulative amount of credit, including carryforwards, claimed by the taxpayer under this Article against each tax for the taxable year.

(c) Carryforward. -- Any unused portion of a credit with respect to a large investment or with respect to the technology commercialization credit allowed in G.S. 105-129.9A may be carried forward for the succeeding 20 years. Any unused portion of a credit may be carried forward for the succeeding 10 years if the Secretary of Commerce certifies when an application for the credit is first made that the taxpayer will purchase or lease, and place in service in connection with the eligible business within a two-year period, at least fifty million dollars ($50,000,000) worth of one or more of the following: real property, machinery and equipment, or central office or aircraft facility property. If the taxpayer fails to make the level of investment certified within this two-year period, the taxpayer forfeits this enhanced carryforward period. Any unused portion of any other credit may be carried forward for the succeeding five years."

PART III. REQUIRE WAGE STANDARD FOR GRANTS

Section 3.(a) Section 16.2 of S.L. 1999-237 reads as rewritten:

"**INDUSTRIAL RECRUITMENT COMPETITIVE FUND**

Section 16.2.(a) Funds appropriated in this act to the Department of Commerce for the Industrial Recruitment Competitive Fund shall be used to continue the Fund. The purpose of the Fund is to provide financial assistance to those businesses or industries deemed by the Governor to be vital to a healthy and growing State economy and that are making significant efforts to establish or expand in North Carolina. Monies allocated from the Fund shall be used for the following purposes:

(1) Installation or purchase of equipment;

(2) Structural repairs, improvements, or renovations of existing buildings to be used for expansion; and

(3) Construction of or improvements to new or existing water, sewer, gas or electric utility distribution lines, or equipment for existing buildings.

Monies may also be used for construction of or improvements to new or existing water, sewer, gas or electric utility distribution lines, or equipment to serve new or proposed industrial buildings used for manufacturing and industrial operations. The Governor shall adopt guidelines and procedures for the commitment of monies from the Fund. Monies from the Fund may be allocated only to projects that meet the wage standard set out in G.S. 105-129.4(b).

Section 16.2.(b) The Department of Commerce shall report on or before October 1, 1999, and quarterly thereafter to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division on the commitment,

allocation, and use of funds allocated from the Industrial Recruitment Competitive Fund."

Section 3.(b) G.S. 143B-437.01(a) is amended by adding a new subdivision to read:

"(6) The funds shall not be used for any nonmanufacturing project that does not meet the wage standard set out in G.S. 105-129.4(b)."

PART IV. PROHIBIT FUNDING FOR DEFAULTING GRANTEES

Section 4. Part 1 of Article 10 of Chapter 143B of the General Statutes is amended by adding a new section to read:

"**§ 143B-431.2. Department of Commerce - limitation on grants and loans.**

The Department of Commerce may not make a loan nor award a grant to any individual, organization, or governmental unit if that individual, organization, or governmental unit is currently in default on any loan made by the Department of Commerce."

PART V. AIRCRAFT MAINTENANCE FACILITY CREDIT

Section 5.(a) G.S. 105-129.2(2) reads as rewritten:

"(2) Central ~~administrative office.~~ office or aircraft facility. -- ~~Either~~ Any of the following:

a. A corporate, subsidiary, or regional managing office, as defined by NAICS.

b. An auxiliary subdivision of an interstate passenger air carrier engaged primarily in centralized training for the carrier at its hub. ~~For the purpose of this definition, the terms 'interstate passenger air carrier' and 'hub' have the meanings provided in G.S. 105-164.3.~~

c. An auxiliary subdivision of an interstate passenger air carrier engaged primarily in aircraft maintenance and repair services or aircraft rebuilding as defined by NAICS."

Section 5.(b) G.S. 105-129.2 is amended by adding two new subdivisions to read:

"(8) Hub. -- Defined in G.S. 105-164.3.

(8a) Interstate passenger air carrier. -- Defined in G.S. 105-164.3."

Section 5.(c) G.S. 105-129.4(a) through (b1), as amended by Section 11 of this act, read as rewritten:

"**§ 105-129.4. (Repealed effective January 1, 2006) Eligibility; forfeiture.**

(a) Type of Business. -- A taxpayer is eligible for a credit allowed by G.S. 105-129.12 if the real property for which the credit is claimed is used for a central ~~administrative~~ office or aircraft facility that creates at least 40 new jobs. A taxpayer is eligible for the other credits allowed by this Article if the taxpayer engages in one of the following types of businesses and the jobs with respect to which a credit is claimed are created in that business, the machinery and equipment with respect to

which a credit is claimed are used in that business, and the research and development for which a credit is claimed are carried out as part of that business:

(1) Air courier services.
(2) Central ~~administrative~~ office or aircraft facility that creates at least 40 new jobs.
(2a) Customer service center located in an enterprise tier one or two area.
(3) Data processing.
(3a) Electronic mail order house that creates at least 250 new jobs and is located in an enterprise tier one or two area.
(4) Manufacturing.
(5) Warehousing.
(6) Wholesale trade.

(a1) New Jobs Defined. -- A central ~~administrative~~ office or aircraft facility creates at least 40 new jobs if the taxpayer hires at least 40 additional full-time employees to fill new positions at the office either in the year the taxpayer first uses the property as a central ~~administrative~~ office or aircraft facility or in the preceding 24 months while using temporary space for the central ~~administrative~~ office or aircraft facility functions during completion of the ~~administrative~~ central office or aircraft facility property. An electronic mail order house creates at least 250 new jobs if the taxpayer hires at least 250 additional full-time employees to fill new positions at the house in the two-year period ending on the last day of the taxable year the taxpayer first claims a credit under this Article. Jobs transferred from one area in the State to another area in the State are not considered new jobs for purposes of this subsection.

(a2) Expiration. -- If, during the period that installments of a credit under this Article accrue, the taxpayer is no longer engaged in one of the types of business described in subsection (a) of this section, the credit expires and the taxpayer may not take any remaining installments of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5.

(b) Wage Standard. -- A taxpayer is eligible for the credit for creating jobs or the credit for worker training if the jobs for which the credit is claimed meet the wage standard at the time the taxpayer applies for the credit. A taxpayer is eligible for the credit for investing in machinery and equipment, the credit for research and development, or the credit for investing in real property for a central ~~administrative~~ office or aircraft facility if the jobs at the location with respect to which the credit is claimed meet the wage standard at the time the taxpayer applies for the credit. Jobs meet the wage standard if they pay an average weekly wage that is at least equal to the applicable percentage times the applicable average weekly wage for the county in which the jobs will be located, as computed by the Secretary of Commerce from data compiled by the Employment Security Commission for the most recent period for which data are available. The applicable percentage for jobs located in an enterprise tier one area is one hundred percent (100%). The applicable percentage for all other jobs is one hundred ten percent (110%). The applicable average weekly wage is the

lowest of the following: (i) the average wage for all insured private employers in the county, (ii) the average wage for all insured private employers in the State, and (iii) the average wage for all insured private employers in the county multiplied by the county income/wage adjustment factor. The county income/wage adjustment factor is the county income/wage ratio divided by the State income/wage ratio. The county income/wage ratio is average per capita income in the county divided by the annualized average wage for all insured private employers in the county. The State income/wage ratio is the average per capita income in the State divided by the annualized average wage for all insured private employers in the State.

(b1) Large Investment. -- A taxpayer who is otherwise eligible for a tax credit under this Article becomes eligible for the large investment enhancements provided for credits under this Article if the Secretary of Commerce certifies that the taxpayer will purchase or lease, and place in service in connection with the eligible business within a two-year period, at least one hundred fifty million dollars ($150,000,000) worth of one or more of the following: real property, machinery and equipment, or central ~~administrative~~ office or aircraft facility property. If the taxpayer fails to make the level of investment certified within this two-year period, the taxpayer forfeits the large investment enhancements as provided in subsection (d) of this section.

. . . ."

Section 5.(d) G.S. 105-129.7(b) reads as rewritten:

"(b) Each taxpayer must provide with the tax return qualifying information for each credit claimed under this Article for the first taxable year the credit is claimed and for every year in which a subsequent installment or a carryforward of that credit is claimed. The qualifying information must be in the form prescribed by the Secretary, must cover each taxable year beginning with the first taxable year the credit is claimed, and must be signed and affirmed by the individual who signs the taxpayer's tax return. The information required by this subsection is information demonstrating that the taxpayer has met the conditions for qualifying for an initial credit and any installments and carryforwards, and includes the following:

(1) The physical location of the jobs and investment with respect to which the credit is claimed, including the enterprise tier designation of the location and whether it is in a development zone. In addition, for each individual who fills a job at a location with respect to which a credit is claimed, the place where the individual resided before taking the job, including any enterprise tier or development zone designation of that place.

(2) The type of business with respect to which the credit is claimed, as required by G.S. 105-129.4(a), and wage information described in G.S. 105-129.4(b).

(3) If the credit is claimed with respect to a large investment certified under G.S. ~~105-129.4(b1),~~ 105-129.4(b1) or is a credit with a carryforward period of 10 years under G.S. 105-129.5(c), the amount of the investment requirement under ~~that subsection~~ those subsections that has been met to date.

(4) Qualifying information required for the credit for creating jobs allowed under G.S. 105-129.8, the credit for investing in machinery and equipment allowed under G.S. 105-129.9, the credit for worker training allowed under G.S. 105-129.11, the credit for investing in central ~~administrative~~ office or aircraft facility property allowed in G.S. 105-129.12, and any other credits allowed under this Article."

Section 5.(e) G.S. 105-129.12 reads as rewritten:

"**§ 105-129.12. (Repealed effective January 1, 2006) Credit for investing in central ~~administrative~~ office or aircraft facility property.**

(a) Credit. -- If a taxpayer that has purchased or leased real property in this State begins to use the property as a central ~~administrative~~ office or aircraft facility during the taxable year, the taxpayer is allowed a credit equal to seven percent (7%) of the eligible investment amount. The eligible investment amount is the lesser of (i) the cost of the property and (ii) the amount by which the cost of all of the property the taxpayer is using in this State as central ~~administrative offices~~ office or aircraft facilities on the last day of the taxable year exceeds the cost of all of the property the taxpayer was using in this State as central ~~administrative offices~~ office or aircraft facilities on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer was using the most property in this State as central ~~administrative offices.~~ office or aircraft facilities. In the case of property that is leased, the cost of the property is not determined as provided in G.S. 105-129.2 but is considered to be the taxpayer's lease payments over a seven-year period, plus any expenditures made by the taxpayer to improve the property before it is used as the taxpayer's central ~~administrative~~ office or aircraft facility if the expenditures are not reimbursed or credited by the lessor. The maximum credit allowed a taxpayer under this section for property used as a central ~~administrative~~ office or aircraft facility is five hundred thousand dollars ($500,000). The entire credit may not be taken for the taxable year in which the property is first used as a central ~~administrative~~ office or aircraft facility but shall be taken in equal installments over the seven years following the taxable year in which the property is first used as a central ~~administrative office.~~ office or aircraft facility. The basis in any real property for which a credit is allowed under this section shall be reduced by the amount of credit allowable.

(b) Mixed Use Property. -- If the taxpayer uses only part of the property as the taxpayer's central ~~administrative office,~~ office or aircraft facility, the amount of the credit allowed under this section is reduced by multiplying it by a fraction the numerator of which is the square footage of the property used as the taxpayer's central ~~administrative~~ office or aircraft facility and the denominator of which is the total square footage of the property.

(c) Expiration. -- If, in one of the seven years in which the installment of a credit accrues, the property with respect to which the credit was claimed is no longer used as a central ~~administrative office,~~ office or aircraft facility, the credit expires and the taxpayer may not take any remaining installment of the credit. If, in one of the seven years in which the installment of a credit accrues, part of the property with respect to

which the credit was claimed is no longer used as a central ~~administrative office,~~ office or aircraft facility, the remaining installments of the credit shall be reduced by multiplying it by the fraction described in subsection (b) of this section. If, in one of the seven years in which the installment of a credit accrues, the total number of employees the taxpayer employs at all of its central ~~administrative offices~~ office or aircraft facilities in this State drops by 40 or more, the credit expires and the taxpayer may not take any remaining installment of the credit.

In each of these cases, the taxpayer may nonetheless take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5."

PART VI. EMPLOYEE BUYOUT INCENTIVE

Section 6. G.S. 105-129.4(e) reads as rewritten:

"(e) Change in Ownership of Business. -- The sale, merger, consolidation, conversion, acquisition, or bankruptcy of a business, or any transaction by which an existing business reformulates itself as another business, does not create new eligibility in a succeeding business with respect to credits for which the predecessor was not eligible under this Article. A successor business may, however, take any installment of or carried-over portion of a credit that its predecessor could have taken if it had a tax liability. The acquisition of a business is a new investment that creates new eligibility in the acquiring taxpayer under this Article if any of the following conditions are met:

(1) The business closed before it was acquired.

(2) The business was required to file a notice of plant closing or mass layoff under the federal Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2102, before it was acquired.

(3) The business was acquired by its employees ~~through~~ directly or indirectly through an acquisition company under an employee stock option transaction or another similar mechanism. For the purpose of this subdivision, "acquired" means that as part of the initial purchase of a business by the employees, the purchase included an agreement for the employees through the employee stock option transaction or another similar mechanism to obtain one of the following:

a. Ownership of more than fifty percent (50%) of the business.

b. Ownership of not less than forty percent (40%) of the business within seven years if the business has tangible assets with a net book value in excess of one hundred million dollars ($100,000,000) and has the majority of its operations located in an enterprise tier one, two, or three area."

PART VII. LOW-INCOME HOUSING CREDIT CHANGES

Section 7. G.S. 105-129.16B(a), (c), and (d) read as rewritten:

"(a) Credit. -- A taxpayer that is allowed for the taxable year a federal income tax credit for low-income housing under section 42 of the Code with respect to a qualified North Carolina low-income building, is allowed a credit under this Article equal to a percentage of the total federal credit allowed with respect to that building. For the purposes of this section, the total federal credit allowed is the total allowed during the 10-year federal credit period plus the disallowed first-year credit allowed in the 11th year. For the purposes of this section, the total federal credit is calculated based on qualified basis as of the end of the first year of the credit period and is not recalculated to reflect subsequent increases in qualified basis. For buildings that meet condition (c)(1) or (c)(1a) of this section, the credit percentage is seventy-five percent (75%). For other buildings, the credit percentage is twenty-five percent (25%).

. . .

(c) Definitions. -- The definitions in section 42 of the Code apply in this section. In addition, as used in this section the term "qualified North Carolina low-income building" means a qualified low-income building that was allocated a federal credit under section 42(h)(1) of the Code, was not allowed a federal credit under section 42(h)(4) of the Code, and meets any of the following conditions:

(1) It is located in an area that, at the time the federal credit is allocated to the building, is a tier one or two enterprise area, as defined in G.S. 105-129.3.

(1a) It is located in a county that, at the time the federal credit is allocated to the building, has been designated as having sustained severe or moderate damage from a hurricane or a hurricane-related disaster, according to the Federal Emergency Management Agency impact map, revised on September 25, 1999. Those counties are Bertie, Beaufort, Bladen, Brunswick, Carteret, Columbus, Craven, Dare, Duplin, Edgecombe, Greene, Halifax, Hertford, Jones, Lenoir, Martin, Nash, New Hanover, Northampton, Onslow, Pasquotank, Pender, Pitt, Washington, Wayne, and Wilson Counties.

(2) It is located in an area that, at the time the federal credit is allocated to the building, is a tier three or four enterprise area, and forty percent (40%) of its residential units are both rent-restricted and occupied by individuals whose income is fifty percent (50%) or less of area median gross income as defined in the Code.

(3) It is located in an area that, at the time the federal credit is allocated to the building, is a tier five enterprise area, and forty percent (40%) of its residential units are both rent-restricted and occupied by individuals whose income is thirty-five percent (35%) or less of area median gross income as defined in the Code.

(d) Expiration. -- If, in one of the five years in which an installment of the credit under this section accrues, the taxpayer is no longer eligible for the corresponding federal credit with respect to the same qualified North Carolina low-income building, then the credit under this section expires and the taxpayer may not take any

remaining installment of the credit. If, in one of the five years in which an installment of the credit under this section accrues, the building no longer qualifies as a low-income building under subdivision (2) or (3) of subsection (c) of this section because less than forty percent (40%) of its residential units are both rent-restricted and occupied by individuals who meet the income requirements, then the credit under this section expires and the taxpayer may not take any remaining installments of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.17."

PART VIII. MODIFY CREDIT AND EXPIRATION PROVISIONS

Section 8.(a) G.S. 105-129.8(a) reads as rewritten:

"(a) Credit. -- A taxpayer that meets the eligibility requirements set out in G.S. 105-129.4, has five or more ~~employees for at least 40 weeks during the taxable year,~~ full-time employees, and hires an additional full-time employee during that year to fill a position located in this State is allowed a credit for creating a new full-time job. The amount of the credit for each new full-time job created is set out in the table below and is based on the enterprise tier of the area in which the position is located. In addition, if the position is located in a development zone, the amount of the credit is increased by four thousand dollars ($4,000) per job.

Area Enterprise Tier	Amount of Credit
Tier One	$12,500
Tier Two	4,000
Tier Three	3,000
Tier Four	1,000
Tier Five	500

A position is located in an area if more than fifty percent (50%) of the employee's duties are performed in the area. The credit may not be taken in the taxable year in which the additional employee is hired. Instead, the credit shall be taken in equal installments over the four years following the taxable year in which the additional employee was hired and shall be conditioned on the continued employment by the taxpayer of the number of full-time employees the taxpayer had upon hiring the employee that caused the taxpayer to qualify for the credit.

If, in one of the four years in which the installment of a credit accrues, the number of the taxpayer's full-time employees falls below the number of full-time employees the taxpayer had in the year in which the taxpayer qualified for the credit, the credit expires and the taxpayer may not take any remaining installment of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5.

Jobs transferred from one area in the State to another area in the State shall not be considered new jobs for purposes of this section. If, in one of the four years in which the installment of a credit accrues, the position filled by the employee is moved to an area in a higher- or lower-numbered enterprise tier, or is moved from a development zone to an area that is not a development zone, the remaining installments of the

credit shall be calculated as if the position had been created initially in the area to which it was moved."

Section 8.(b) G.S. 105-129.9 reads as rewritten:

"**§ 105-129.9. Credit for investing in machinery and equipment.**

(a) General Credit. -- If a taxpayer that has purchased or leased eligible machinery and equipment places them in service in this State during the taxable year, the taxpayer is allowed a credit equal to seven percent (7%) of the excess of the eligible investment amount over the applicable threshold. Machinery and equipment are eligible if they are capitalized by the taxpayer for tax purposes under the Code and not leased to another party. In addition, in the case of a large investment, machinery and equipment that are not capitalized by the taxpayer are eligible if the taxpayer leases them from another party. The credit may not be taken for the taxable year in which the machinery and equipment are placed in service but shall be taken in equal installments over the seven years following the taxable year in which they are placed in service.

(a1) Technology Commercialization Credit. -- If a taxpayer is eligible for the credit allowed in this section with respect to eligible machinery and equipment and qualifies for one of the credits allowed in G.S. 105-129.9A with respect to the same machinery and equipment, the taxpayer may choose to take one of those credits instead of the credit allowed in this section. A taxpayer may take the credit allowed in this section or one of the credits allowed in G.S. 105-129.9A during a taxable year with respect to eligible machinery and equipment, but may not take more than one of these credits with respect to the same machinery and equipment.

(b) Eligible Investment Amount. -- The eligible investment amount is the lesser of (i) the cost of the eligible machinery and equipment and (ii) the amount by which the cost of all of the taxpayer's eligible machinery and equipment that are in service in this State on the last day of the taxable year exceeds the cost of all of the taxpayer's eligible machinery and equipment that were in service in this State on the last day of the base year. The base year is that year, of the three immediately preceding taxable years, in which the taxpayer had the most eligible machinery and equipment in service in this State. A taxpayer that claims a credit under this section must include with the application for certification required under G.S. 105-129.6(a) specific documentation supporting the taxpayer's calculation of the eligible investment amount under this subsection.

(c) Threshold. -- The applicable threshold is the appropriate amount set out in the following table based on the enterprise tier of the area where the eligible machinery and equipment are placed in service during the taxable year. If the taxpayer places eligible machinery and equipment in service in more than one area during the taxable year, the threshold applies separately to the eligible machinery and equipment placed in service in each area. If the taxpayer places eligible machinery and equipment in service in an area over the course of a two-year period, the applicable threshold for the second taxable year is reduced by the eligible investment amount for the previous taxable year.

Area Enterprise Tier	Threshold

Tier One	$ -0-
Tier Two	100,000
Tier Three	200,000
Tier Four	500,000
Tier Five	1,000,000

(d) Expiration. -- If, in one of the seven years in which the installment of a credit accrues, the machinery and equipment with respect to which the credit was claimed are disposed of, taken out of service, or moved out of State, the credit expires and the taxpayer may not take any remaining installment of the ~~credit.~~ credit for that machinery and equipment unless the cost of that machinery and equipment is offset in the same taxable year by the taxpayer's new investment in eligible machinery and equipment placed in service in the same enterprise tier, as provided in this subsection. If, during the taxable year the taxpayer disposed of the machinery and equipment for which installments remain, there has been a net reduction in the cost of all the taxpayer's eligible machinery and equipment that are in service in the same enterprise tier as the machinery and equipment that were disposed of, and the amount of this reduction is greater than twenty percent (20%) of the cost of the machinery and equipment that were disposed of, then the taxpayer forfeits the remaining installments of the credit for the machinery and equipment that were disposed of. If the amount of the net reduction is equal to twenty percent (20%) or less of the cost of the machinery and equipment that were disposed of, or if there is no net reduction, then the taxpayer does not forfeit the remaining installments of the expired credit. In determining the amount of any net reduction during the taxable year, the cost of machinery and equipment the taxpayer placed in service during the taxable year and for which the taxpayer claims a credit under Article 3B of this Chapter may not be included in the cost of all the taxpayer's eligible machinery and equipment that are in service. If in a single taxable year machinery and equipment with respect to two or more credits in the same tier are disposed of, the net reduction in the cost of all the taxpayer's eligible machinery and equipment that are in service in the same tier is compared to the total cost of all the machinery and equipment for which credits expired in order to determine whether the remaining installments of the credits are forfeited.

The ~~taxpayer may, however, take~~ expiration of a credit does not prevent the taxpayer from taking the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5.

If, in one of the seven years in which the installment of a credit accrues, the machinery and equipment with respect to which the credit was claimed are moved to an area in a higher-numbered enterprise tier, or are moved from a development zone to an area that is not a development zone, the remaining installments of the credit are allowed only to the extent they would have been allowed if the machinery and equipment had been placed in service initially in the area to which they were moved.

(e) Planned Expansion. -- A taxpayer that signs a letter of commitment with the Department of Commerce to place specific eligible machinery and equipment in service in an area within two years after the date the letter is signed may, in the year

the eligible machinery and equipment are placed in service in that area, calculate the credit for which the taxpayer qualifies based on the area's enterprise tier and development zone designation for the year the letter was signed. All other conditions apply to the credit, but if the area has been redesignated to a higher-numbered enterprise tier or has lost its development zone designation after the year the letter of commitment was signed, the credit is allowed based on the area's enterprise tier and development zone designation for the year the letter was signed. If the taxpayer does not place part or all of the specified eligible machinery and equipment in service within the two-year period, the taxpayer does not qualify for the benefit of this subsection with respect to the machinery and equipment not placed in service within the two-year period. However, if the taxpayer qualifies for a credit in the year the eligible machinery and equipment are placed in service, the taxpayer may take the credit for that year as if no letter of commitment had been signed pursuant to this subsection."

Section 8.(c) G.S. 105-129.4 is amended by adding a new subsection to read:

"(a2) Expiration. -- If, during the period that installments of a credit under this Article accrue, the taxpayer is no longer engaged in one of the types of business described in subsection (a) of this section, the credit expires and the taxpayer may not take any remaining installments of the credit. The taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.5."

PART IX. TECHNICAL CORRECTION

Section 9. G.S. 105-164.14(i) reads as rewritten:

"(i) **(Effective for taxes paid on or after May 1, 1999 until January 1, 2008)** Nonprofit Insurance Companies. -- Eligible nonprofit insurance companies are allowed an annual refund of sales and use taxes paid under this Article as provided in this subsection.

(1) **(Effective until January 1, 2004)** Refunds. -- An eligible nonprofit insurance company is allowed an annual refund of sales and use taxes paid by it under this Article on building materials, building supplies, fixtures, and equipment that become a part of its real property, and on computer systems hardware and software it capitalizes for tax purposes under the Code. Liability incurred indirectly by the company for sales and use taxes on these items is considered tax paid by the company. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the insurance company's fiscal year. Refunds applied for after the due date are barred.

(1) **(Effective January 1, 2004 until January 1, 2008)** Refunds. -- An eligible nonprofit insurance company is allowed an annual refund of sales and use taxes paid by it under this Article on building

materials, building supplies, fixtures, and equipment that become a part of its real property. Liability incurred indirectly by the company for sales and use taxes on these items is considered tax paid by the company. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the insurance company's fiscal year. Refunds applied for after the due date are barred.

(2) Eligibility. -- An insurance company is eligible for the refund provided in this subsection if it meets all of the following conditions:

a. It is a nonprofit corporation.

b. It is operated for the exclusive purpose of providing insurance and annuity contracts to or for the benefit of (i) organizations exempt from federal income tax under section 501(c)(3) of the ~~Code,~~ Code and their employees or (ii) public institutions and their employees.

c. The Secretary of Commerce has certified that the insurance company will invest at least twenty million dollars ($20,000,000) in constructing a facility in this State for the conduct of its operations.

(3) Forfeiture. -- If an eligible insurance company does not make the required minimum investment within five years after its first refund under this subsection, it loses its eligibility and forfeits all refunds already received under this subsection. Upon forfeiture, the company is liable for tax under this Article equal to the amount of all past taxes refunded under this subsection, plus interest at the rate established in G.S. 105-241.1(i), computed from the date each refund was issued. The tax and interest are due 30 days after the date of the forfeiture. A company that fails to pay the tax and interest is subject to the penalties provided in G.S. 105-236."

PART X. EFFECTIVE DATES

Section 10.(a) Application Fee Exemptions. -- Section 1 of this act becomes effective January 1, 2001, and applies to applications made on or after that date.

Section 10.(b) Extend Credit Carryforwards. -- Section 2 of this act is effective for taxable years beginning on or after January 1, 2000.

Section 10.(c) Require Wage Standard for Grants and Prohibit Funding for Defaulting Grantees. -- Sections 3 and 4 of this act become effective July 1, 2000, and apply to funds appropriated, grants awarded, or loans made on or after that date.

Section 10.(d) Aircraft Maintenance Facility Credit. -- Section 5 of this act is effective for taxable years beginning on or after January 1, 2001.

Section 10.(e) Employee Buyout Incentive. -- Section 6 of this act is effective May 1, 1999, and applies to acquisitions made on or after that date.

Section 10.(f) Low-Income Housing Credit Changes. -- G.S. 105-129.16B(d), as amended by Section 7 of this act, is effective for taxable years beginning on or after January 1, 2000. The remainder of Section 7 is effective for taxable years beginning on or after January 1, 2001, applies to buildings to which federal credits are allocated on or after January 1, 2001, and expires January 1, 2005.

Section 10.(g) Modify Credit and Expiration Provisions. -- Section 11 of this act is effective for taxable years beginning on or after January 1, 2000.

Section 10.(h) Technical Correction. -- Section 12 of this act becomes effective May 1, 1999, and applies to taxes paid on or after that date. Section 12 is repealed for taxes paid on or after January 1, 2008.

Section 10.(i) Remainder. -- The remainder of this act is effective when it becomes law.

HOUSE BILL 1560:
Modify Bill Lee Act

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Rep. Allen & Owens
Date:	June 20, 2000	**Summary by:**	Cindy Avrette
Version:	2nd Edition		House Committee Counsel

SUMMARY: ***The second edition of House Bill 1560 adds the substance of House Bill 1814 to House Bill 1560 so that all of the House provisions concerning the Bill Lee Act are in one bill. House Bill 1560 is a recommendation of the Revenue Laws Study Committee.***

CURRENT LAW: The General Assembly enacted the William S. Lee Act in 1996. It provides tax credits against income tax, franchise tax, and insurance premiums for qualifying businesses. The credits are more valuable for expansion or development in more distressed counties, small counties, and distressed urban areas. The credits will expire in 2006.

BILL ANALYSIS: House Bill 1814 changes the Bill Lee Act as follows:

PART I. APPLICATION FEE EXEMPTIONS – Becomes effective January 1, 2001, and applies to applications made on or after that date

To claim a credit under the Bill Lee Act, a taxpayer must provide with the tax return the certification of the Secretary of Commerce that the taxpayer meets all of the eligibility requirements with respect to each credit that the taxpayer claims. The taxpayer must file an application for certification with the Secretary. The application fee is currently $500 per credit in tiers 3, 4, and 5, with a cap of $1,500 per applicant. There is no application fee associated with credits claimed in tiers 1 and 2. **House Bill 1814 extends the fee exemption to apply not only to credits claimed in tiers 1 or 2, but also credits claimed in a development zone.** A development zone is an area within the corporate limits of a city with a population over 5,000. The area, composed of one or more contiguous census tracts or census block groups, must have a population of 1,000 or more. Of that population, more than 10% must be below the poverty level or the area must be adjacent to a tract or group that has more than 20% of its population below the poverty level.

Part I also clarifies there is no fee for an application filed with the Department of Revenue concerning the credit for a development zone project. Last year the General Assembly created a new tax credit for taxpayers that contribute cash or property to certain nonprofit agencies to be used for an improvement project in a development zone. An improvement project is a project to construct or improve real property for community development purposes or to acquire real property and convert it for community development purposes. The credit allowed is 25% of the amount contributed by the taxpayer. The total amount of credits that may be allowed in a taxable year is capped at $4 million. Taxpayers are required to apply to the Secretary of Revenue for these credits. If the total amount of credit applied for in a year exceeds $4 million, the Secretary will reduce each applicant's credit proportionally.

PART II. EXTEND CREDIT CARRYFORWARDS – Effective for taxable years beginning on or after January 1, 2000

The Bill Lee Act credits may not exceed 50% of the tax against which they are claimed. The limitation applies to the cumulative amount of credit claimed by the taxpayer, including carryforwards. As a general rule, any unused portion of a credit may be carried forward for five years. There are currently two exceptions to this general rule, and House Bill 1814 creates a third exception:

- Any unused portion of a credit with respect to a large investment may be carried forward for 20 years. A large investment is one where an eligible business purchases or leases, and places in service within a two-year period, $150,000,000 worth of one or more of the following: real property, machinery and equipment, or central administrative office property.
- Any unused portion of a credit with respect to the technology commercialization credit may be carried forward for 20 years. The General Assembly created the technology investment credit last year as an alternative to the 7% credit for investing in machinery and equipment. The credit applies only to investments in machinery and equipment used in production based on technology licensed from a research university. The investments must be located in a tier 1, 2, or 3 area and must equal at least $10 million during the taxable year and must total at least $100 million over a five-year period.
- **The bill would also allow any unused portion of a credit to be carried forward for 10 years if the Secretary of Commerce certifies that the taxpayer will purchase or lease, and place in service in connection with an eligible business within a two-year period, at least $50,000,000 worth of one or more of the following: real property, machinery and equipment, or central office or aircraft facility property. If the taxpayer fails to make the level of investment certified within the two-year period, the taxpayer forfeits the enhanced carryforward period.**

PART III. REQUIRE WAGE STANDARD FOR GRANTS – Effective July 1, 2000, and applies to funds appropriated, grants awarded, or loans made on or after that date

To be eligible for the credits under the Bill Lee Act, the jobs for which a credit is claimed and the jobs at the location with respect to which a credit is claimed must meet the applicable wage standard. For a tier 1 area, the jobs must pay an average weekly wage that is equal to the average weekly wage for that county. For other tier areas, the average weekly wage must equal 110% of the average weekly wage for that county. **This part requires that a business seeking a grant from the Industrial Recruitment Competitive Fund must meet the wage standard and the project for which a local government is seeking a grant from the Industrial Development Fund must meet the wage standard.**

PART IV. PROHIBIT FUNDING FOR DEFAULTING GRANTEES – Effective July 1, 2000, and applies to funds appropriated, grants awarded, or loans made on or after that date

Part IV prohibits the Department of Commerce from making a loan or awarding a grant to any individual, organization, or governmental unit that is currently in default on any loan made by the Department of Commerce.

PART V. AIRCRAFT MAINTENANCE FACILITY CREDIT – Effective for taxable years beginning on or after January 1, 2001

To qualify for a credit under the Bill Lee Act, the taxpayer must engage in one of the eligible businesses listed in the act. **Part V expands the list of eligible businesses to include an auxiliary subdivision of an interstate passenger air carrier engaged primarily in aircraft maintenance and repair services or aircraft rebuilding.** An interstate passenger air carrier is a person whose primary business is scheduled passenger air transportation.

This change allows the air carrier to qualify for the central administrative office credit as well as the credit for creating jobs, credit for investing in machinery and equipment, credit for research and development, and credit for worker training. It also allows the air carrier to qualify for the enhanced 20-year carryforward for large investments.

PART VI. EMPLOYEE BUYOUT INCENTIVE – Effective May 1, 1999, and applies to acquisitions made on or after that date

The Bill Lee Act credits are allowed only for new and expanding businesses. Therefore, as a general rule, the acquisition of a business, or any other transaction by which an existing business reformulates itself as another business, does not create new eligibility in the succeeding business. In 1998, the General Assembly provided an exception from this general rule for a business that has closed, has filed a federally required notice that closure is imminent, or has been purchased in an employee buyout. In these cases, the business is able to qualify for the credits to the same extent as a new business.

Part VI of the act revises the test for what constitutes an acquisition of a business by an employee buyout. It provides that the term "acquired" means that as part of the initial purchase of a business by the employees, the purchase included an agreement for the employees through the employee stock option transaction or another similar mechanism to obtain one of the following:

- Ownership of more than 50% of the business.
- Ownership of not less than 40% of the business within 7 years if the business has tangible assets with a net book value in excess of $100,000,000 and has the majority of its operations located in an enterprise tier one, two, or three area.

PART VII. LOW-INCOME HOUSING CREDIT CHANGES – Effective as stated below

Last session the General Assembly enacted a new tax credit for rehabilitating or constructing low-income housing. The credit is equal to a percentage of the amount of the taxpayer's federal credit for low-income housing with respect to eligible North Carolina low-income housing. The credit is 75% for buildings located in tier one or two and 25% for buildings located in other tiers. **Part VII of the act provides that the 75% credit is also allowed for buildings located in a county that has been designated as having sustained severe or moderate damage from a hurricane or a hurricane-related disaster, according to the Federal Emergency Management Agency impact map, revised on September 25, 1999.** These counties are Bertie, Beaufort, Bladen, Brunswick, Carteret, Columbus, Craven, Dare, Duplin, Edgecombe, Greene, Halifax, Hertford, Jones, Lenoir, Martin, Nash, New Hanover, Northampton, Onslow, Pasquotank, Pender, Pitt, Washington, Wayne, and Wilson Counties. **This part is effective for taxable years beginning on or after January 1, 2001, applies to buildings to which federal credits are allocated on or after January 1, 2001, and expires January 1, 2005.**

To qualify for the State credit, the test of what constitutes low-income housing for a building located in a tier 3, 4, or 5 area is harder to meet than under the federal law. The federal law requires that either (1) at

least 20 % of the residential units are rent-restricted and occupied by individuals whose income is 50% or less of area median gross income or (2) at least 40% of the residential units are rent-restricted and occupied by individuals whose income is 60% or less of area gross income. The State law for a tier 3 or 4 area requires that at least 40% of its residential units are rent-restricted and occupied by individuals whose income is 50% or less of area median gross income. For a tier 5 area, the State law requires that at least 40% of its residential units are rent-restricted and are occupied by individuals whose income is 35% or less of area median gross income. If, in one of the five years in which an installment is claimed, the taxpayer no longer qualifies for the federal credit, the taxpayer is no longer eligible for the State credit. **Part VII clarifies that if a building in a tier 3, 4, or 5 area no longer meets the more stringent State tax credit requirements, the remaining installments of the credit may not be taken, even though the building may continue to qualify for the federal credit. This part is effective for taxable years beginning on or after January 1, 2000.**

PART VIII. MODIFY CREDIT AND EXPIRATION PROVISIONS – Effective for taxable years beginning on or after January 1, 2000

Part VIII of the bill contains the changes to the Bill Lee Act recommended by the Revenue Laws Study Committee and contained in House Bill 1560, introduced by Rep. Allen. This Part does three things:

- It modifies the jobs tax credit to allow a taxpayer to claim a tax credit for creating a full-time job when it has 5 full-time employees regardless of how many weeks those employees work during the taxable year.
- It corrects a provision in the tax credit for investing in machinery and equipment that penalizes a taxpayer for replacing recently acquired equipment with new equipment.
- It clarifies that a taxpayer loses any remaining installments on tax credits claimed under the Bill Lee Act if the taxpayer ceases to engage in an eligible business.

Jobs Tax Credit Change. The Department of Commerce asked the Revenue Laws Study Commission to make this change to eliminate a restriction that has the unintended consequence of preventing a taxpayer from taking a tax credit for jobs created under certain circumstances. Under current law, a taxpayer that meets the eligibility requirements of the Bill Lee Act, has five or more employees for at least 40 weeks of the taxable year, and hires an additional full-time employee to fill a full-time position located in this State may claim a tax credit for creating a new full-time position. The size of the tax credit depends on the location of the new full-time position. The credit for any specific full-time position may be claimed only once and must be taken in installments over four years.

The 40-week requirement has the unintended effect of denying this credit to certain taxpayers. Under current law, an employer would not be eligible for this credit if it were to begin operations with more than 5 employees 13 weeks or more into the taxable year. However, a taxpayer may get around this 40-week requirement by signing a letter of commitment with the Department of Commerce to create at least 20 new full-time jobs in a specific area within a two-year period. This credit has the same attributes as the one described above. This credit is available in the taxable year after at least 20 employees are hired.

Section 8(a) would eliminate the 40-week requirement. The requirement does not serve any apparent purpose. It is believed that the fiscal impact of this change would be minimal since most taxpayers would be able to get around the requirement by signing a letter of commitment. The taxpayers that do not qualify for a letter of commitment and thus would benefit from this change are those who would begin operations with between 5 and 20 employees more than 12 weeks into the taxable year.

Correct Investment Tax Credit. Section 8(b) of the bill would correct a "reverse loophole" in the Bill Lee Act credit for investing in machinery and equipment. Under current law, if a taxpayer earns a credit for investing in machinery and then, within the seven-year period that installments of the credit are allowed, replaces the machinery with newly acquired machinery, the taxpayer not only loses the remaining installments earned on the original machinery but also gets no credit for investing in the replacement machinery except to the extent its value exceeds the value of the original machinery. Section 8(b) of this bill corrects this reverse loophole by providing that the remaining installments of the credit for the original machinery may be taken if the value of newly acquired machinery in the same enterprise tier offsets at least 80% of the value of the original machinery taken out of service. As under current law, a new credit is allowed to the extent the remaining value of the newly acquired machinery creates a net investment increase in excess of the applicable investment threshold. As under current law, there is no penalty if the taxpayer replaces the machinery after the end of the seven-year installment period.

Eligible Business Restriction. Section 8(c) of the bill clarifies that if a taxpayer that claims a Bill Lee Act credit ceases to engage in the type of business required to qualify for that credit, the taxpayer loses any remaining installments of the credit (but does not lose accrued carryforwards).

PART IX. TECHNICAL CORRECTION – Effective May 1, 1999, and applies to taxes paid on or after that date

Last session the General Assembly provided a sales tax refund to certain nonprofit insurance companies for State and local taxes they pay on building materials, supplies, fixtures, and equipment that become a part of their real property and on capitalized computer systems hardward and software. To qualify for these refunds, the insurance company must be operated for the exclusive purposes of providing insurance products to nonprofit charitable organization and their employees. In addition, the Secretary of Commerce must certify that the insurance company will invest at least $20 million in this State. **Part IX of this bill clarifies that to be eligible for this refund, an insurance company must be operated for the exclusive purpose of providing insurance products to organizations exempt from federal income tax and their employees or to public institutions and their employees.**

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1560 (Committee Substitute Favorable 6/7/00)

SHORT TITLE: Modify Bill Lee Act

FISCAL IMPACT

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

	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05
REVENUES					
General Fund			**-30,000**	**-60,000**	**-90,000**

PRINCIPAL DEPARTMENTS AFFECTED: Department of Revenue administers tax credits and Department of Commerce administers credit application and certification process. The enactment of the bill will not affect the budget requirements of either department.

EFFECTIVE DATE: See "Bill Summary".

ISSUE BACKGROUND: The Bill Lee Act is the package of state tax incentives that was first adopted in 1996 and has been modified in each subsequent year. The incentives are primarily in the form of tax credits for investment in machinery and equipment, job creation, worker training, and research/development. For many of the credits the counties of the State are divided into five economic distress tiers based on the unemployment rate, per capita income, and population growth. In general, the lower the tier of a county, the more favorable the incentive.

BILL SUMMARY: **Application Fee Changes.** Expands the fee exemption for Bill Lee Act credits claimed in a development zone and clarifies that there is no application fee for the special credit for a development zone project. Effective for applications made on or after January 1, 2001. **Extend Credit Carryforwards.** Bill Lee Act credits generally cannot exceed 50% of tax liability, with a 5-year carryforward. In recent years longer carryforwards have been established for specific incentives. The bill creates a new rule that allows unused credits to be carried forward to 10 years in cases where the taxpayer will purchase or lease, and place in service within 2 years, at least $50 million of real property, machinery and equipment, central office property, or aircraft facility property. Effective for taxable years beginning on or after January 1, 2000. **Wage Standards for Grants.** Average weekly wage standards apply to jobs credits under the Bill Lee Act. The standards vary by tier. The bill requires a business seeking a grant from the Industrial Recruitment Competitive Fund to meet the wage standard and the project for which a local government units is seeking an Industrial Development Fund grant to meet the

wage standard. Effective for activity occurring on or after July 1, 2000. **Prohibit Funding for Defaulting Grantees.** Prohibits the Department of Commerce from making a loan or awarding a grant to any individual, organization, or governmental units currently in default on a loan made by Commerce. Effective for activity occurring on or after July 1, 2000. **Aircraft Maintenance Facility Credit.** Expands the list of eligible businesses for the Bill Lee Act credits to include an auxiliary subdivision of an interstate passenger air carrier primarily engaged in aircraft maintenance and repair services or aircraft rebuilding. Effective for tax years beginning on or after January 1, 2001. **Employee Buyout Incentive.** In general, the acquisition of a business, or any other transaction by which an existing business reformulates itself, does not create new eligibility in the succeeding business. However, in 1998 an exception was allowed for an employee buyout situation. HB 1814 makes technical changes to the 1998 exception language. Effective for acquisitions made on or after May 1, 1999. **Low Income Housing Credit For Disaster Counties.** The 1999 General Assembly allowed a tax credit for constructing or rehabilitating low income housing. A 75% credit is allowed in tier 1 or 2 counties and 25% in the other counties. HB 1814 provides that the 75% credit is allowed for buildings located in a county that has been designated as having sustained severe or moderate damage from a hurricane or hurricane-related disaster Effective for tax years beginning on or after January 1, 2001, applies to buildings to which federal credits are allocated on or after January 1, 2001, and expires on January 1, 2005. **Low Income Housing Credit Technical Change**. Clarifies that if a building in a tier 3, 4, or 5 county no longer meets the State tax credit requirements, the remaining installments of the tax credit may not be taken even though the federal credit may still apply. Effective for tax years beginning on or after January 1, 2000. **Jobs Tax Credit Change**. To qualify a taxpayer must have 5 or more employees for at least 40 weeks per year. The bill eliminates the 40-week requirement. Effective for tax years beginning on or after January 1, 2000. **Investment Tax Credit Correction**. Under the Bill Lee Act, a targeted investment tax credit for investing in machinery and equipment must be taken over a 7-year period. If the taxpayer replaces the machinery or equipment with newly acquired property during the installment period, the remaining credit installments are eliminated and no credit is allowed on the new items except to the extent that its value exceeds the value of the original machinery. The bill provides that the remaining installments of the investment tax credit may be taken if the value of the newly acquired machinery and equipment offsets at least 80% of the value of the items taken out of service. Effective for tax years beginning on or after January 1, 2000. **Technical Correction.** Clarifies the eligibility requirements for the 1999 sales tax refunds to certain nonprofit insurance companies.

ASSUMPTIONS AND METHODOLOGY: Aircraft Maintenance Facility Credit. This estimate was based on a simulation of 1 new qualifying facility per year. For the facility, it was assumed that 100 jobs would be created and the investment in machinery and equipment would be $1.5 million. The eligible investment base is relatively low because a large portion of the equipment for such a facility would be part of the real property and not eligible for the credit (applies only to tangible personal property). The credit is taken in the year after the investment is made so there would be no budgetary impact until 2002-03. **Extend Credit Carryforward.** The Department of Commerce provided a revenue loss estimate that would amount to $1.7 million in 2013-14 and $8.5 million by 2017-18. This estimate was based on a simulation using the following assumptions: $1.16 billion of annual investments with 60% of investment in machinery and equipment, and 20% of credit having to be carried over due to the 50% limitation. An independent FRD analysis used more conservative assumptions including: 80% of the $1.16 billion of annual investments in machinery and equipment and 40% of the credits being carried

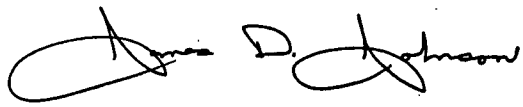
forward. This change does not have an impact for over 12 years due to the fact that the changes applies to new investment, the fact that the credit must be taken over 7 years starting with the year following the investment, and that current law provides for a 5-year carry forward. **Jobs Tax Credit Change**: Discussions with the Department of Commerce and Department of Revenue indicated that in the past most of the taxpayers affected by the 40-week requirement have been able to qualify through the "letter of commitment" language under G.S. 105-129.8(d). This requirement involves a commitment for "at least twenty new full-time jobs".

The remainder of the changes in the bill either have no impact (technical changes and changes where the cost was accounted for in prior legislation) or the impact is insignificant.

FISCAL RESEARCH DIVISION 733-4910

PREPARED BY: David Crotts

APPROVED BY: James D. Johnson



DATE: June 15, 2000

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 2

SENATE BILL 1305*
Second Edition Engrossed 6/20/00

Short Title: Revise Article 9 of the UCC. (Public)

Sponsors: Senator Hartsell.

Referred to: Judiciary I.

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO ENACT REVISED ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE, CONFORMING AMENDMENTS TO OTHER ARTICLES OF THE UNIFORM COMMERCIAL CODE, AND CONFORMING AMENDMENTS TO OTHER SECTIONS OF THE GENERAL STATUTES AND TO INCREASE CERTAIN FEES UNDER CURRENT ARTICLE 9, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

PART I. REVISED ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE.

Section 1. Article 9 of Chapter 25 of the General Statutes is rewritten to read:

"ARTICLE 9.

"Secured Transactions.

"PART 1.

"GENERAL PROVISIONS.

"SUBPART 1. SHORT TITLE, DEFINITIONS, AND GENERAL CONCEPTS.

"§ 25-9-101. Short title.

This Article may be cited as Uniform Commercial Code-Secured Transactions.

"§ 25-9-102. Definitions and index of definitions.

(a) Article 9 definitions. -- In this Article:

(1) 'Accession' means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(2) 'Account', except as used in 'account for', means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health-care-insurance receivables. The term does not include (i) rights to payment evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

(3) 'Account debtor' means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(4) 'Accounting', except as used in 'accounting for', means a record:

a. Authenticated by a secured party;

b. Indicating the aggregate unpaid secured obligations as of a date not more than 35 days earlier or 35 days later than the date of the record; and

c. Identifying the components of the obligations in reasonable detail.

(5) 'Agricultural lien' means an interest, other than a security interest, in farm products:

a. Which secures payment or performance of an obligation for:

1. Goods or services furnished in connection with a debtor's farming operation; or

2. Rent on real property leased by a debtor in connection with its farming operation;

b. Which is created by statute in favor of a person that:

1. In the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation; or
2. Leased real property to a debtor in connection with the debtor's farming operation; and

c. Whose effectiveness does not depend on the person's possession of the personal property.

(6) 'As-extracted collateral' means:

a. Oil, gas, or other minerals that are subject to a security interest that:
1. Is created by a debtor having an interest in the minerals before extraction; and
2. Attaches to the minerals as extracted; or

b. Accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

(7) 'Authenticate' means:

a. To sign; or

b. To execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record.

(8) 'Bank' means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.

(9) 'Cash proceeds' means proceeds that are money, checks, deposit accounts, or the like.

(10) 'Certificate of title' means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

(11) 'Chattel paper' means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this subdivision, 'monetary obligation' means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include (i) charters or other contracts involving the use or hire of a vessel or (ii) records that evidence a right to payment arising out of the use of a credit or charge card or information

contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(12) 'Collateral' means the property subject to a security interest or agricultural lien. The term includes:

a. Proceeds to which a security interest attaches;

b. Accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and

c. Goods that are the subject of a consignment.

(13) 'Commercial tort claim' means a claim arising in tort with respect to which:

a. The claimant is an organization; or

b. The claimant is an individual and the claim:

1. Arose in the course of the claimant's business or profession; and

2. Does not include damages arising out of personal injury to or the death of an individual.

(14) 'Commodity account' means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(15) 'Commodity contract' means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:

a. Traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or

b. Traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

(16) 'Commodity customer' means a person for which a commodity intermediary carries a commodity contract on its books.

(17) 'Commodity intermediary' means a person that:

a. Is registered as a futures commission merchant under federal commodities law; or

b. In the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

(18) 'Communicate' means:

a. To send a written or other tangible record;

b. To transmit a record by any means agreed upon by the persons sending and receiving the record; or

c. In the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

(19) 'Consignee' means a merchant to which goods are delivered in a consignment.

(20) 'Consignment' means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

a. The merchant:

1. Deals in goods of that kind under a name other than the name of the person making delivery;

2. Is not an auctioneer; and

3. Is not generally known by its creditors to be substantially engaged in selling the goods of others;

b. With respect to each delivery, the aggregate value of the goods is one thousand dollars ($1,000) or more at the time of delivery;

c. The goods are not consumer goods immediately before delivery; and

d. The transaction does not create a security interest that secures an obligation.

(21) 'Consignor' means a person that delivers goods to a consignee in a consignment.

(22) 'Consumer debtor' means a debtor in a consumer transaction.

(23) 'Consumer goods' means goods that are used or bought for use primarily for personal, family, or household purposes.

(24) 'Consumer-goods transaction' means a consumer transaction in which:

a. An individual incurs an obligation primarily for personal, family, or household purposes; and

b. A security interest in consumer goods secures the obligation.

(25) 'Consumer obligor' means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.

(26) 'Consumer transaction' means a transaction in which (i) an individual incurs an obligation primarily for personal, family, or household purposes, (ii) a security interest secures the obligation, and (iii) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.

(27) 'Continuation statement' means an amendment of a financing statement which:

a. Identifies, by its file number, the initial financing statement to which it relates; and

b. Indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(28) 'Debtor' means:

a. A person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

b. A seller of accounts, chattel paper, payment intangibles, or promissory notes; or

c. A consignee.

(29) 'Deposit account' means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

(30) 'Document' means a document of title or a receipt of the type described in G.S. 25-7-201(2).

(31) 'Electronic chattel paper' means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(32) 'Encumbrance' means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

(33) 'Equipment' means goods other than inventory, farm products, or consumer goods.

(34) 'Farm products' means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

a. Crops grown, growing, or to be grown, including:

1. Crops produced on trees, vines, and bushes; and

2. Aquatic goods produced in aquacultural operations;

b. Livestock, born or unborn, including aquatic goods produced in aquacultural operations;

c. Supplies used or produced in a farming operation; or

d. Products of crops or livestock in their unmanufactured states.

(35) 'Farming operation' means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

(36) 'File number' means the number assigned to an initial financing statement pursuant to G.S. 25-9-519(a).

(37) 'Filing office' means an office designated in G.S. 25-9-501 as the place to file a financing statement.

(38) 'Filing-office rule' means a rule adopted pursuant to G.S. 25-9-526.

(39) 'Financing statement' means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(40) 'Fixture filing' means the filing of a financing statement covering goods that are or are to become fixtures and satisfying G.S. 25-9-502(a) and (b). The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

(41) 'Fixtures' means goods that have become so related to particular real property that an interest in them arises under real property law.

(42) 'General intangible' means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

(43) 'Good faith' means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(44) 'Goods' means all things that are movable when a security interest attaches. The term includes (i) fixtures, (ii) standing timber that is to be cut and removed under a conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and (v) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

(45) 'Governmental unit' means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

(46) 'Health-care-insurance receivable' means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided.

(47) 'Instrument' means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include (i) investment property, (ii) letters of credit, or (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(48) 'Inventory' means goods, other than farm products, which:

a. Are leased by a person as lessor;

b. Are held by a person for sale or lease or to be furnished under a contract of service;

c. Are furnished by a person under a contract of service; or

d. Consist of raw materials, work in process, or materials used or consumed in a business.

(49) 'Investment property' means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

(50) 'Jurisdiction of organization', with respect to a registered organization, means the jurisdiction under whose law the organization is organized.

(51) 'Letter-of-credit right' means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(52) 'Lien creditor' means:

a. A creditor that has acquired a lien on the property involved by attachment, levy, or the like;

b. An assignee for benefit of creditors from the time of assignment;

c. A trustee in bankruptcy from the date of the filing of the petition; or

d. A receiver in equity from the time of appointment.

(53) 'Manufactured home' means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and

electrical systems contained therein. The term includes any structure that meets all of the requirements of this subdivision except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under Title 42 of the United States Code.

(54) 'Manufactured-home transaction' means a secured transaction:

a. That creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or

b. In which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

(55) 'Mortgage' means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.

(56) 'New debtor' means a person that becomes bound as debtor under G.S. 25-9-203(d) by a security agreement previously entered into by another person.

(57) 'New value' means (i) money, (ii) money's worth in property, services, or new credit, or (iii) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

(58) 'Noncash proceeds' means proceeds other than cash proceeds.

(59) 'Obligor' means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, (i) owes payment or other performance of the obligation, (ii) has provided property other than the collateral to secure payment or other performance of the obligation, or (iii) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

(60) 'Original debtor', except as used in G.S. 25-9-310(c), means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under G.S. 25-9-203(d).

(61) 'Payment intangible' means a general intangible under which the account debtor's principal obligation is a monetary obligation.

(62) 'Person related to', with respect to an individual, means:

a. The spouse of the individual;

b. A brother, brother-in-law, sister, or sister-in-law of the individual;

c. An ancestor or lineal descendant of the individual or the individual's spouse; or

d. Any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(63) 'Person related to', with respect to an organization, means:

a. A person directly or indirectly controlling, controlled by, or under common control with the organization;

b. An officer or director of, or a person performing similar functions with respect to, the organization;

c. An officer or director of, or a person performing similar functions with respect to, a person described in sub-subdivision a. of this subdivision;

d. The spouse of an individual described in sub-subdivision a., b., or c. of this subdivision; or

e. An individual who is related by blood or marriage to an individual described in sub-subdivision a., b., c., or d. of this subdivision and shares the same home with the individual.

(64) 'Proceeds', except as used in G.S. 25-9-609(b), means the following property:

a. Whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;

b. Whatever is collected on, or distributed on account of, collateral;

c. Rights arising out of collateral;

d. To the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or

e. To the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

(65) 'Production-money crops' means crops that secure a production-money obligation incurred with respect to the production of those crops.

(66) 'Production-money obligation' means an obligation of an obligor incurred for new value given to enable the debtor to produce crops if the value is in fact used for the production of the crops.

(67) 'Production of crops' includes tilling and otherwise preparing land for growing, planting, cultivating, fertilizing, irrigating, harvesting, gathering, and curing crops, and protecting them from damage or disease.

(68) 'Promissory note' means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and

does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(69) 'Proposal' means a record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to G.S. 25-9-620, 25-9-621, and 25-9-622.

(70) 'Public-finance transaction' means a secured transaction in connection with which:

a. Debt securities are issued;

b. All or a portion of the securities issued have an initial stated maturity of at least 20 years; and

c. The debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state.

(71) 'Pursuant to commitment', with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

(72) 'Record', except as used in 'for record', 'of record', 'record or legal title', and 'record owner', means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(73) 'Registered organization' means an organization organized solely under the law of a single state or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized.

(74) 'Secondary obligor' means an obligor to the extent that:

a. The obligor's obligation is secondary; or

b. The obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

(75) 'Secured party' means:

a. A person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

b. A person that holds an agricultural lien;

c. A consignor;

d. A person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;

e. A trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or

f. A person that holds a security interest arising under G.S. 25-2-401, 25-2-505, 25-2-711(3), 25-2A-508(5), 25-4-208, or 25-5-118.

(76) 'Security agreement' means an agreement that creates or provides for a security interest.

(77) 'Send', in connection with a record or notification, means:

a. To deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or

b. To cause the record or notification to be received within the time that it would have been received if properly sent under sub-subdivision a. of this subdivision.

(78) 'Software' means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

(79) 'State' means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(80) 'Supporting obligation' means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.

(81) 'Tangible chattel paper' means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

(82) 'Termination statement' means an amendment of a financing statement which:

a. Identifies, by its file number, the initial financing statement to which it relates; and

b. Indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(83) 'Transmitting utility' means a person primarily engaged in the business of:

a. Operating a railroad, subway, street railway, or trolley bus;

b. Transmitting communications electrically, electromagnetically, or by light;

c. Transmitting goods by pipeline or sewer; or

d. Transmitting or producing and transmitting electricity, steam, gas, or water.

(b) Definitions in other articles. -- The following definitions in other Articles of this Chapter apply to this Article:

'Applicant' G.S. 25-5-102.

'Beneficiary'	G.S. 25-5-102.
'Broker'	G.S. 25-8-102.
'Certificated security'	G.S. 25-8-102.
'Check'	G.S. 25-3-104.
'Clearing corporation'	G.S. 25-8-102.
'Contract for sale'	G.S. 25-2-106.
'Customer'	G.S. 25-4-104.
'Entitlement holder'	G.S. 25-8-102.
'Financial asset'	G.S. 25-8-102.
'Holder in due course'	G.S. 25-3-302.
'Issuer' (with respect to a letter of credit or letter-of-credit right)	G.S. 25-5-102.
'Issuer' (with respect to a security)	G.S. 25-8-201.
'Lease'	G.S. 25-2A-103.
'Lease agreement'	G.S. 25-2A-103.
'Lease contract'	G.S. 25-2A-103.
'Leasehold interest'	G.S. 25-2A-103.
'Lessee'	G.S. 25-2A-103.
'Lessee in ordinary course of business'	G.S. 25-2A-103.
'Lessor'	G.S. 25-2A-103.
'Lessor's residual interest'	G.S. 25-2A-103.
'Letter of credit'	G.S. 25-5-102.
'Merchant'	G.S. 25-2-104.
'Negotiable instrument'	G.S. 25-3-104.
'Nominated person'	G.S. 25-5-102.
'Note'	G.S. 25-3-104.
'Proceeds of a letter of credit'	G.S. 25-5-114.
'Prove'	G.S. 25-3-103.
'Sale'	G.S. 25-2-106.
'Securities account'	G.S. 25-8-501.
'Securities intermediary'	G.S. 25-8-102.
'Security'	G.S. 25-8-102.
'Security certificate'	G.S. 25-8-102.
'Security entitlement'	G.S. 25-8-102.
'Uncertificated security'	G.S. 25-8-102.

(c) Article 1 definitions and principles. -- Article 1 of this Chapter contains general definitions and principles of construction and interpretation applicable throughout this Article.

"§ 25-9-103. Purchase-money security interest; application of payments; burden of establishing.

(a) Definitions. -- In this section:

(1) 'Purchase-money collateral' means goods or software that secures a purchase-money obligation incurred with respect to that collateral; and

(2) 'Purchase-money obligation' means an obligation of an obligor incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used.

(b) Purchase-money security interest in goods. -- A security interest in goods is a purchase-money security interest:

(1) To the extent that the goods are purchase-money collateral with respect to that security interest;

(2) If the security interest is in inventory that is or was purchase-money collateral, also to the extent that the security interest secures a purchase-money obligation incurred with respect to other inventory in which the secured party holds or held a purchase-money security interest; and

(3) Also to the extent that the security interest secures a purchase-money obligation incurred with respect to software in which the secured party holds or held a purchase-money security interest.

(c) Purchase-money security interest in software. -- A security interest in software is a purchase-money security interest to the extent that the security interest also secures a purchase-money obligation incurred with respect to goods in which the secured party holds or held a purchase-money security interest if:

(1) The debtor acquired its interest in the software in an integrated transaction in which it acquired an interest in the goods; and

(2) The debtor acquired its interest in the software for the principal purpose of using the software in the goods.

(d) Consignor's inventory purchase-money security interest. -- The security interest of a consignor in goods that are the subject of a consignment is a purchase-money security interest in inventory.

(e) Application of payment in non-consumer-goods transaction. -- In a transaction other than a consumer-goods transaction, if the extent to which a security interest is a purchase-money security interest depends on the application of a payment to a particular obligation, the payment must be applied:

(1) In accordance with any reasonable method of application to which the parties agree;

(2) In the absence of the parties' agreement to a reasonable method, in accordance with any intention of the obligor manifested at or before the time of payment; or

(3) In the absence of an agreement to a reasonable method and a timely manifestation of the obligor's intention, in the following order:

a. To obligations that are not secured; and

b. If more than one obligation is secured, to obligations secured by purchase-money security interests in the order in which those obligations were incurred.

(f) No loss of status of purchase-money security interest in non-consumer-goods transaction. -- In a transaction other than a consumer-goods transaction, a purchase-money security interest does not lose its status as such, even if:

(1) The purchase-money collateral also secures an obligation that is not a purchase-money obligation;

(2) Collateral that is not purchase-money collateral also secures the purchase-money obligation; or

(3) The purchase-money obligation has been renewed, refinanced, consolidated, or restructured.

(g) Burden of proof in non-consumer-goods transaction. -- In a transaction other than a consumer-goods transaction, a secured party claiming a purchase-money security interest has the burden of establishing the extent to which the security interest is a purchase-money security interest.

(h) Non-consumer-goods transactions; no inference. -- The limitation of the rules in subsections (e), (f), and (g) of this section to transactions other than consumer-goods transactions is intended to leave to the court the determination of the proper rules in consumer-goods transactions. The court may not infer from that limitation the nature of the proper rule in consumer-goods transactions and may continue to apply established approaches.

"§ 25-9-103.1. Production-money crops; production-money obligation; production-money security interest; burden of establishing.

(a) Production-money crops. -- A security interest in crops is a production-money security interest to the extent that the crops are production-money crops.

(b) Production-money obligation. -- If the extent to which a security interest is a production-money security interest depends on the application of a payment to a particular obligation, the payment must be applied:

(1) In accordance with any reasonable method of application to which the parties agree;

(2) In the absence of the parties' agreement to a reasonable method, in accordance with any intention of the obligor manifested at or before the time of payment; or

(3) In the absence of an agreement to a reasonable method and a timely manifestation of the obligor's intention, in the following order:

a. To obligations that are not secured; and

b. If more than one obligation is secured, to obligations secured by production-money security interests in the order in which those obligations were incurred.

(c) Production-money security interest. -- A production-money security interest does not lose its status as such, even if:

(1) The production-money crops also secure an obligation that is not a production-money obligation;
(2) Collateral that is not production-money crops also secures the production-money obligation; or
(3) The production-money obligation has been renewed, refinanced, or restructured.

(d) Burden of proof. -- A secured party claiming a production-money security interest has the burden of establishing the extent to which the security interest is a production-money security interest.

"**§ 25-9-104. Control of deposit account.**

(a) Requirements for control. -- A secured party has control of a deposit account if:

(1) The secured party is the bank with which the deposit account is maintained;
(2) The debtor, secured party, and bank have agreed in an authenticated record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the deposit account without further consent by the debtor; or
(3) The secured party becomes the bank's customer with respect to the deposit account.

(b) Debtor's right to direct disposition. -- A secured party that has satisfied subsection (a) of this section has control, even if the debtor retains the right to direct the disposition of funds from the deposit account.

"**§ 25-9-105. Control of electronic chattel paper.**

A secured party has control of electronic chattel paper if the record or records comprising the chattel paper are created, stored, and assigned in such a manner that:

(1) A single authoritative copy of the record or records exists which is unique, identifiable and, except as otherwise provided in subdivisions (4), (5), and (6) of this section, unalterable;
(2) The authoritative copy identifies the secured party as the assignee of the record or records;
(3) The authoritative copy is communicated to and maintained by the secured party or its designated custodian;
(4) Copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the participation of the secured party;
(5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and
(6) Any revision of the authoritative copy is readily identifiable as an authorized or unauthorized revision.

"**§ 25-9-106. Control of investment property.**

(a) Control under G.S. 25-8-106. -- A person has control of a certificated security, uncertificated security, or security entitlement as provided in G.S. 25-8-106.

(b) Control of commodity contract. -- A secured party has control of a commodity contract if:

(1) The secured party is the commodity intermediary with which the commodity contract is carried; or

(2) The commodity customer, secured party, and commodity intermediary have agreed that the commodity intermediary will apply any value distributed on account of the commodity contract as directed by the secured party without further consent by the commodity customer.

(c) Effect of control of securities account or commodity account. -- A secured party having control of all security entitlements or commodity contracts carried in a securities account or commodity account has control over the securities account or commodity account.

"§ 25-9-107. Control of letter-of-credit right.

A secured party has control of a letter-of-credit right to the extent of any right to payment or performance by the issuer or any nominated person if the issuer or nominated person has consented to an assignment of proceeds of the letter of credit under G.S. 25-5-114(c) or otherwise applicable law or practice.

"§ 25-9-108. Sufficiency of description.

(a) Sufficiency of description. -- Except as otherwise provided in subsections (c), (d), and (e) of this section, a description of personal or real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.

(b) Examples of reasonable identification. -- Except as otherwise provided in subsection (d) of this section, a description of collateral reasonably identifies the collateral if it identifies the collateral by:

(1) Specific listing;

(2) Category;

(3) Except as otherwise provided in subsection (e) of this section, a type of collateral defined in this Chapter;

(4) Quantity;

(5) Computational or allocational formula or procedure; or

(6) Except as otherwise provided in subsection (c) of this section, any other method, if the identity of the collateral is objectively determinable.

(c) Supergeneric description not sufficient. -- A description of collateral as 'all the debtor's assets' or 'all the debtor's personal property' or using words of similar import does not reasonably identify the collateral.

(d) Investment property. -- Except as otherwise provided in subsection (e) of this section, a description of a security entitlement, securities account, or commodity account is sufficient if it describes:

(1) The collateral by those terms or as investment property; or

(2) The underlying financial asset or commodity contract.

(e) When description by type insufficient. -- A description only by type of collateral defined in this Chapter is an insufficient description of:

(1) A commercial tort claim; or
(2) In a consumer transaction, consumer goods, a security entitlement, a securities account, or a commodity account.

"SUBPART 2. APPLICABILITY OF ARTICLE.

"**§ 25-9-109. Scope.**

(a) General scope of Article. -- Except as otherwise provided in subsections (c) and (d) of this section, this Article applies to:

(1) A transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;
(2) An agricultural lien;
(3) A sale of accounts, chattel paper, payment intangibles, or promissory notes;
(4) A consignment;
(5) A security interest arising under G.S. 25-2-401, 25-2-505, 25-2-711(3), or 25-2A-508(5), as provided in G.S. 25-9-110; and
(6) A security interest arising under G.S. 25-4-208 or G.S. 25-5-118.

(b) Security interest in secured obligation. -- The application of this Article to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this Article does not apply.

(c) Extent to which Article does not apply. -- This Article does not apply to the extent that:

(1) A statute, regulation, or treaty of the United States preempts this Article;
(2) Another statute of this State expressly governs the creation, perfection, priority, or enforcement of a security interest created by this State or a governmental unit of this State;
(3) A statute of another state, a foreign country, or a governmental unit of another state or a foreign country, other than a statute generally applicable to security interests, expressly governs creation, perfection, priority, or enforcement of a security interest created by the state, country, or governmental unit; or
(4) The rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under G.S. 25-5-114.

(d) Inapplicability of Article. -- This Article does not apply to:

(1) A landlord's lien, other than an agricultural lien;
(2) A lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but G.S. 25-9-333 applies with respect to priority of the lien;
(3) An assignment of a claim for wages, salary, or other compensation of an employee;
(4) A sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose;

(5) An assignment of accounts, chattel paper, payment intangibles, or promissory notes which is for the purpose of collection only;
(6) An assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract;
(7) An assignment of a single account, payment intangible, or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;
(8) A transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health-care provider of a health-care-insurance receivable and any subsequent assignment of the right to payment, but G.S. 25-9-315 and G.S. 25-9-322 apply with respect to proceeds and priorities in proceeds;
(9) An assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;
(10) A right of recoupment or setoff, but:
a. G.S. 25-9-340 applies with respect to the effectiveness of rights of recoupment or setoff against deposit accounts; and
b. G.S. 25-9-404 applies with respect to defenses or claims of an account debtor;
(11) The creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for:
a. Liens on real property in G.S. 25-9-203 and G.S. 25-9-308;
b. Fixtures in G.S. 25-9-334;
c. Fixture filings in G.S. 25-9-501, 25-9-502, 25-9-512, 25-9-516, and 25-9-519; and
d. Security agreements covering personal and real property in G.S. 25-9-604;
(12) An assignment of a claim arising in tort, other than a commercial tort claim, but G.S. 25-9-315 and G.S. 25-9-322 apply with respect to proceeds and priorities in proceeds; or
(13) An assignment of a deposit account in a consumer transaction, but G.S. 25-9-315 and G.S. 25-9-322 apply with respect to proceeds and priorities in proceeds.

"§ 25-9-110. Security interests arising under Article 2 or 2A of this Chapter.

A security interest arising under G.S. 25-2-401, 25-2-505, 25-2-711(3), or 25-2A-508(5) is subject to this Article. However, until the debtor obtains possession of the goods:

(1) The security interest is enforceable, even if G.S. 25-9-203(b)(3) has not been satisfied;
(2) Filing is not required to perfect the security interest;
(3) The rights of the secured party after default by the debtor are governed by Article 2 or 2A of this Chapter; and

(4) The security interest has priority over a conflicting security interest created by the debtor.

"PART 2.
"EFFECTIVENESS OF SECURITY AGREEMENT;
ATTACHMENT OF SECURITY INTEREST;
RIGHTS OF PARTIES TO SECURITY AGREEMENT.
"SUBPART 1. EFFECTIVENESS AND ATTACHMENT.

"§ 25-9-201. General effectiveness of security agreement.

(a) General effectiveness. -- Except as otherwise provided in this Chapter, a security agreement is effective according to its terms between the parties, against purchasers of the collateral, and against creditors.

(b) Applicable consumer laws and other law. -- A transaction subject to this Article is subject to any applicable rule of law which establishes a different rule for consumers, to any other statute, rule, or regulation of this State that regulates the rates, charges, agreements, and practices for loans, credit sales, or other extensions of credit, and to any consumer-protection statute, rule, or regulation of this State, including Chapter 24 of the General Statutes, the Retail Installment Sales Act (Chapter 25A of the General Statutes), the North Carolina Consumer Finance Act (Article 15 of Chapter 53 of the General Statutes), and the Pawnbrokers Modernization Act of 1989 (Chapter 91A of the General Statutes).

(c) Other applicable law controls. -- In case of conflict between this Article and a rule of law, statute, or regulation described in subsection (b) of this section, the rule of law, statute, or regulation controls. Failure to comply with a statute or regulation described in subsection (b) of this section has only the effect the statute or regulation specifies.

(d) Further deference to other applicable law. -- This Article does not:

(1) Validate any rate, charge, agreement, or practice that violates a rule of law, statute, or regulation described in subsection (b) of this section; or

(2) Extend the application of the rule of law, statute, or regulation to a transaction not otherwise subject to it.

"§ 25-9-202. Title to collateral immaterial.

Except as otherwise provided with respect to consignments or sales of accounts, chattel paper, payment intangibles, or promissory notes, the provisions of this Article with regard to rights and obligations apply whether title to collateral is in the secured party or the debtor.

"§ 25-9-203. Attachment and enforceability of security interest; proceeds; supporting obligations; formal requisites.

(a) Attachment. -- A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.

(b) Enforceability. -- Except as otherwise provided in subsections (c) through (i) of this section, a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

(1) Value has been given;
(2) The debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and
(3) One of the following conditions is met:
a. The debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;
b. The collateral is not a certificated security and is in the possession of the secured party under G.S. 25-9-313 pursuant to the debtor's security agreement;
c. The collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under G.S. 25-8-301 pursuant to the debtor's security agreement; or
d. The collateral is deposit accounts, electronic chattel paper, investment property, or letter-of-credit rights, and the secured party has control under G.S. 25-9-104, 25-9-105, 25-9-106, or 25-9-107 pursuant to the debtor's security agreement.

(c) Other UCC provisions. -- Subsection (b) of this section is subject to G.S. 25-4-208 on the security interest of a collecting bank, G.S. 25-5-118 on the security interest of a letter-of-credit issuer or nominated person, G.S. 25-9-110 on a security interest arising under Article 2 or 2A of this Chapter, and G.S. 25-9-206 on security interests in investment property.

(d) When person becomes bound by another person's security agreement. -- A person becomes bound as debtor by a security agreement entered into by another person if, by operation of law other than this Article or by contract:
(1) The security agreement becomes effective to create a security interest in the person's property; or
(2) The person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.

(e) Effect of new debtor becoming bound. -- If a new debtor becomes bound as debtor by a security agreement entered into by another person:
(1) The agreement satisfies subdivision (b)(3) of this section with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement; and
(2) Another agreement is not necessary to make a security interest in the property enforceable.

(f) Proceeds and supporting obligations. -- The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by G.S. 25-9-315

and is also attachment of a security interest in a supporting obligation for the collateral.

(g) Lien securing right to payment. -- The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.

(h) Security entitlement carried in securities account. -- The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.

(i) Commodity contracts carried in commodity account. -- The attachment of a security interest in a commodity account is also attachment of a security interest in the commodity contracts carried in the commodity account.

"§ 25-9-204. After-acquired property; future advances.

(a) After-acquired collateral. -- Except as otherwise provided in subsection (b) of this section, a security agreement may create or provide for a security interest in after-acquired collateral.

(b) When after-acquired property clause not effective. -- A security interest does not attach under a term constituting an after-acquired property clause to:

(1) Consumer goods, other than an accession when given as additional security, unless the debtor acquires rights in them within 10 days after the secured party gives value; or

(2) A commercial tort claim.

(c) Future advances and other value. -- A security agreement may provide that collateral secures, or that accounts, chattel paper, payment intangibles, or promissory notes are sold in connection with future advances or other value, whether or not the advances or value are given pursuant to commitment.

"§ 25-9-205. Use or disposition of collateral permissible.

(a) When security interest not invalid or fraudulent. -- A security interest is not invalid or fraudulent against creditors solely because:

(1) The debtor has the right or ability to:

a. Use, commingle, or dispose of all or part of the collateral, including returned or repossessed goods;

b. Collect, compromise, enforce, or otherwise deal with collateral;

c. Accept the return of collateral or make repossessions; or

d. Use, commingle, or dispose of proceeds; or

(2) The secured party fails to require the debtor to account for proceeds or replace collateral.

(b) Requirements of possession not relaxed. -- This section does not relax the requirements of possession if attachment, perfection, or enforcement of a security interest depends upon possession of the collateral by the secured party.

"§ 25-9-206. Security interest arising in purchase or delivery of financial asset.

(a) Security interest when person buys through securities intermediary. -- A security interest in favor of a securities intermediary attaches to a person's security entitlement if:

(1) The person buys a financial asset through the securities intermediary in a transaction in which the person is obligated to pay the purchase price to the securities intermediary at the time of the purchase; and

(2) The securities intermediary credits the financial asset to the buyer's securities account before the buyer pays the securities intermediary.

(b) Security interest secures obligation to pay for financial asset. -- The security interest described in subsection (a) of this section secures the person's obligation to pay for the financial asset.

(c) Security interest in payment against delivery transaction. -- A security interest in favor of a person that delivers a certificated security or other financial asset represented by a writing attaches to the security or other financial asset if:

(1) The security or other financial asset:

a. In the ordinary course of business is transferred by delivery with any necessary indorsement or assignment; and

b. Is delivered under an agreement between persons in the business of dealing with such securities or financial assets; and

(2) The agreement calls for delivery against payment.

(d) Security interest secures obligation to pay for delivery. -- The security interest described in subsection (c) of this section secures the obligation to make payment for the delivery.

"SUBPART 2. RIGHTS AND DUTIES.

"§ 25-9-207. Rights and duties of secured party having possession or control of collateral.

(a) Duty of care when secured party in possession. -- Except as otherwise provided in subsection (d) of this section, a secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(b) Expenses, risks, duties, and rights when secured party in possession. -- Except as otherwise provided in subsection (d) of this section, if a secured party has possession of collateral:

(1) Reasonable expenses, including the cost of insurance and payment of taxes or other charges, incurred in the custody, preservation, use, or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(2) The risk of accidental loss or damage is on the debtor to the extent of a deficiency in any effective insurance coverage;

(3) The secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and

(4) The secured party may use or operate the collateral:

a. For the purpose of preserving the collateral or its value;

b. As permitted by an order of a court having competent jurisdiction; or

c. Except in the case of consumer goods, in the manner and to the extent agreed by the debtor.

(c) Rights and duties when secured party in possession or control. -- Except as otherwise provided in subsection (d) of this section, a secured party having possession of collateral or control of collateral under G.S. 25-9-104, 25-9-105, 25-9-106, or 25-9-107:

(1) May hold as additional security any proceeds, except money or funds, received from the collateral;

(2) Shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and

(3) May create a security interest in the collateral.

(d) Buyer of certain rights to payment. -- If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor:

(1) Subsection (a) of this section does not apply unless the secured party is entitled under an agreement:

a. To charge back uncollected collateral; or

b. Otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral; and

(2) Subsections (b) and (c) of this section do not apply.

"§ 25-9-208. Additional duties of secured party having control of collateral.

(a) Applicability of section. -- This section applies to cases in which there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations, or otherwise give value.

(b) Duties of secured party after receiving demand from debtor. -- Within 10 days after receiving an authenticated demand by the debtor:

(1) A secured party having control of a deposit account under G.S. 25-9-104(a)(2) shall send to the bank with which the deposit account is maintained an authenticated statement that releases the bank from any further obligation to comply with instructions originated by the secured party;

(2) A secured party having control of a deposit account under G.S. 25-9-104(a)(3) shall:

a. Pay the debtor the balance on deposit in the deposit account; or

b. Transfer the balance on deposit into a deposit account in the debtor's name;

(3) A secured party, other than a buyer, having control of electronic chattel paper under G.S. 25-9-105 shall:

a. Communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;

b. If the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

c. Take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party;

(4) A secured party having control of investment property under G.S. 25-8-106(d)(2) or G.S. 25-9-106(b) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party; and

(5) A secured party having control of a letter-of-credit right under G.S. 25-9-107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party.

"§ 25-9-209. Duties of secured party if account debtor has been notified of assignment.

(a) Applicability of section. -- Except as otherwise provided in subsection (c) of this section, this section applies if:

(1) There is no outstanding secured obligation; and

(2) The secured party is not committed to make advances, incur obligations, or otherwise give value.

(b) Duties of secured party after receiving demand from debtor. -- Within 10 days after receiving an authenticated demand by the debtor, a secured party shall send to an account debtor that has received notification of an assignment to the secured party as assignee under G.S. 25-9-406(a) an authenticated record that releases the account debtor from any further obligation to the secured party.

(c) Inapplicability to sales. -- This section does not apply to an assignment constituting the sale of an account, chattel paper, or payment intangible.

"§ 25-9-210. Request for accounting; request regarding list of collateral or statement of account.

(a) Definitions. -- In this section:

(1) 'Request' means a record of a type described in subdivision (2), (3), or (4) of this subsection.

(2) 'Request for an accounting' means a record authenticated by a debtor requesting that the recipient provide an accounting of the unpaid obligations secured by collateral and reasonably identifying the transaction or relationship that is the subject of the request.

(3) 'Request regarding a list of collateral' means a record authenticated by a debtor requesting that the recipient approve or correct a list of what the debtor believes to be the collateral securing an obligation and reasonably identifying the transaction or relationship that is the subject of the request.

(4) 'Request regarding a statement of account' means a record authenticated by a debtor requesting that the recipient approve or correct a statement indicating what the debtor believes to be the aggregate amount of unpaid obligations secured by collateral as of a specified date and reasonably identifying the transaction or relationship that is the subject of the request.

(b) Duty to respond to requests. -- Subject to subsections (c), (d), (e), and (f) of this section, a secured party, other than a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor, shall comply with a request within 14 days after receipt:

(1) In the case of a request for an accounting, by authenticating and sending to the debtor an accounting; and

(2) In the case of a request regarding a list of collateral or a request regarding a statement of account, by authenticating and sending to the debtor an approval or correction.

(c) Request regarding list of collateral; statement concerning type of collateral. -- A secured party that claims a security interest in all of a particular type of collateral owned by the debtor may comply with a request regarding a list of collateral by sending to the debtor an authenticated record including a statement to that effect within 14 days after receipt.

(d) Request regarding list of collateral; no interest claimed. -- A person that receives a request regarding a list of collateral, claims no interest in the collateral when it receives the request, and claimed an interest in the collateral at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor an authenticated record:

(1) Disclaiming any interest in the collateral; and

(2) If known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the collateral.

(e) Request for accounting or regarding statement of account; no interest in obligation claimed. -- A person that receives a request for an accounting or a request regarding a statement of account, claims no interest in the obligations when it receives the request, and claimed an interest in the obligations at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor an authenticated record:

(1) Disclaiming any interest in the obligations; and

(2) If known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the obligations.

(f) Charges for responses. -- A debtor is entitled without charge to one response to a request under this section during any six-month period. The secured party may require payment of a charge not exceeding twenty-five dollars ($25.00) for each additional response.

"PART 3.

"PERFECTION AND PRIORITY.

"SUBPART 1. LAW GOVERNING PERFECTION AND PRIORITY.

"§ 25-9-301. Law governing perfection and priority of security interests.

Except as otherwise provided in G.S. 25-9-303 through G.S. 25-9-306, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

(1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.

(2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.

(3) Except as otherwise provided in subdivision (4) of this section, while negotiable documents, goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

a. Perfection of a security interest in the goods by filing a fixture filing;

b. Perfection of a security interest in timber to be cut; and

c. The effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.

(4) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or

nonperfection, and the priority of a security interest in as-extracted collateral.

"§ 25-9-302. Law governing perfection and priority of agricultural liens.

While farm products are located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of an agricultural lien on the farm products.

"§ 25-9-303. Law governing perfection and priority of security interests in goods covered by a certificate of title.

(a) Applicability of section. -- This section applies to goods covered by a certificate of title, even if there is no other relationship between the jurisdiction under whose certificate of title the goods are covered and the goods or the debtor.

(b) When goods covered by certificate of title. -- Goods become covered by a certificate of title when a valid application for the certificate of title and the applicable fee are delivered to the appropriate authority. Goods cease to be covered by a certificate of title at the earlier of the time the certificate of title ceases to be effective under the law of the issuing jurisdiction or the time the goods become covered subsequently by a certificate of title issued by another jurisdiction.

(c) Applicable law. -- The local law of the jurisdiction under whose certificate of title the goods are covered governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in goods covered by a certificate of title from the time the goods become covered by the certificate of title until the goods cease to be covered by the certificate of title.

"§ 25-9-304. Law governing perfection and priority of security interests in deposit accounts.

(a) Law of bank's jurisdiction governs. -- The local law of a bank's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a deposit account maintained with that bank.

(b) Bank's jurisdiction. -- The following rules determine a bank's jurisdiction for purposes of this Part:

(1) If an agreement between the bank and the debtor governing the deposit account expressly provides that a particular jurisdiction is the bank's jurisdiction for purposes of this Part, this Article, or this Chapter, that jurisdiction is the bank's jurisdiction.

(2) If subdivision (1) of this subsection does not apply and an agreement between the bank and its customer governing the deposit account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

(3) If neither subdivision (1) nor subdivision (2) of this subsection applies and an agreement between the bank and its customer governing the deposit account expressly provides that the deposit account is maintained at an office in a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

(4) If none of subdivisions (1), (2), and (3) of this subsection applies, the bank's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the customer's account is located.

(5) If none of subdivisions (1), (2), (3), and (4) of this subsection applies, the bank's jurisdiction is the jurisdiction in which the chief executive office of the bank is located.

"§ 25-9-305. Law governing perfection and priority of security interests in investment property.

(a) Governing law: general rules. -- Except as otherwise provided in subsection (c) of this section, the following rules apply:

(1) While a security certificate is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in the certificated security represented thereby.

(2) The local law of the issuer's jurisdiction as specified in G.S. 25-8-110(d) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in an uncertificated security.

(3) The local law of the securities intermediary's jurisdiction as specified in G.S. 25-8-110(e) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a security entitlement or securities account.

(4) The local law of the commodity intermediary's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a commodity contract or commodity account.

(b) Commodity intermediary's jurisdiction. -- The following rules determine a commodity intermediary's jurisdiction for purposes of this Part:

(1) If an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that a particular jurisdiction is the commodity intermediary's jurisdiction for purposes of this Part, this Article, or this Chapter, that jurisdiction is the commodity intermediary's jurisdiction.

(2) If subdivision (1) of this subsection does not apply and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(3) If neither subdivision (1) nor subdivision (2) of this subsection applies and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the commodity account is maintained at an

office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(4) If none of subdivisions (1), (2), and (3) of this subsection applies, the commodity intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the commodity customer's account is located.

(5) If none of subdivisions (1), (2), (3), and (4) of this subsection applies, the commodity intermediary's jurisdiction is the jurisdiction in which the chief executive office of the commodity intermediary is located.

(c) When perfection governed by law of jurisdiction where debtor located. -- The local law of the jurisdiction in which the debtor is located governs:

(1) Perfection of a security interest in investment property by filing;

(2) Automatic perfection of a security interest in investment property created by a broker or securities intermediary; and

(3) Automatic perfection of a security interest in a commodity contract or commodity account created by a commodity intermediary.

"§ 25-9-306. Law governing perfection and priority of security interests in letter-of-credit rights.

(a) Governing law: issuer's or nominated person's jurisdiction. -- Subject to subsection (c) of this section, the local law of the issuer's jurisdiction or a nominated person's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a letter-of-credit right if the issuer's jurisdiction or nominated person's jurisdiction is a state.

(b) Issuer's or nominated person's jurisdiction. -- For purposes of this Part, an issuer's jurisdiction or nominated person's jurisdiction is the jurisdiction whose law governs the liability of the issuer or nominated person with respect to the letter-of-credit right as provided in G.S. 25-5-116.

(c) When section not applicable. -- This section does not apply to a security interest that is perfected only under G.S. 25-9-308(d).

"§ 25-9-307. Location of debtor.

(a) 'Place of business.' -- In this section, 'place of business' means a place where a debtor conducts its affairs.

(b) Debtor's location: general rules. -- Except as otherwise provided in this section, the following rules determine a debtor's location:

(1) A debtor who is an individual is located at the individual's principal residence.

(2) A debtor that is an organization and has only one place of business is located at its place of business.

(3) A debtor that is an organization and has more than one place of business is located at its chief executive office.

(c) Limitation of applicability of subsection (b). -- Subsection (b) of this section applies only if a debtor's residence, place of business, or chief executive office, as applicable, is located in a jurisdiction whose law generally requires information

concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording, or registration system as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. If subsection (b) of this section does not apply, the debtor is located in the District of Columbia.

(d) Continuation of location: cessation of existence, etc. -- A person that ceases to exist, have a residence, or have a place of business continues to be located in the jurisdiction specified by subsections (b) and (c) of this section.

(e) Location of registered organization organized under state law. -- A registered organization that is organized under the law of a state is located in that state.

(f) Location of registered organization organized under federal law; bank branches and agencies. -- Except as otherwise provided in subsection (i) of this section, a registered organization that is organized under the law of the United States and a branch or agency of a bank that is not organized under the law of the United States or a state are located:

(1) In the state that the law of the United States designates, if the law designates a state of location;

(2) In the state that the registered organization, branch, or agency designates, if the law of the United States authorizes the registered organization, branch, or agency to designate its state of location; or

(3) In the District of Columbia, if neither subdivision (1) nor subdivision (2) of this subsection applies.

(g) Continuation of location: change in status of registered organization. -- A registered organization continues to be located in the jurisdiction specified by subsection (e) or (f) of this section notwithstanding:

(1) The suspension, revocation, forfeiture, or lapse of the registered organization's status as such in its jurisdiction of organization; or

(2) The dissolution, winding up, or cancellation of the existence of the registered organization.

(h) Location of United States. -- The United States is located in the District of Columbia.

(i) Location of foreign bank branch or agency if licensed in only one state. -- A branch or agency of a bank that is not organized under the law of the United States or a state is located in the state in which the branch or agency is licensed, if all branches and agencies of the bank are licensed in only one state.

(j) Location of foreign air carrier. -- A foreign air carrier under the Federal Aviation Act of 1958, as amended, is located at the designated office of the agent upon which service of process may be made on behalf of the carrier.

(k) Section applies only to this Part. -- This section applies only for purposes of this Part.

"SUBPART 2. PERFECTION.

"§ 25-9-308. When security interest or agricultural lien is perfected; continuity of perfection.

(a) Perfection of security interest. -- Except as otherwise provided in this section and G.S. 25-9-309, a security interest is perfected if it has attached and all of the applicable requirements for perfection in G.S. 25-9-310 through G.S. 25-9-316 have been satisfied. A security interest is perfected when it attaches if the applicable requirements are satisfied before the security interest attaches.

(b) Perfection of agricultural lien. -- An agricultural lien is perfected if it has become effective and all of the applicable requirements for perfection in G.S. 25-9-310 have been satisfied. An agricultural lien is perfected when it becomes effective if the applicable requirements are satisfied before the agricultural lien becomes effective.

(c) Continuous perfection; perfection by different methods. -- A security interest or agricultural lien is perfected continuously if it is originally perfected by one method under this Article and is later perfected by another method under this Article, without an intermediate period when it was unperfected.

(d) Supporting obligation. -- Perfection of a security interest in collateral also perfects a security interest in a supporting obligation for the collateral.

(e) Lien securing right to payment. -- Perfection of a security interest in a right to payment or performance also perfects a security interest in a security interest, mortgage, or other lien on personal or real property securing the right.

(f) Security entitlement carried in securities account. -- Perfection of a security interest in a securities account also perfects a security interest in the security entitlements carried in the securities account.

(g) Commodity contract carried in commodity account. -- Perfection of a security interest in a commodity account also perfects a security interest in the commodity contracts carried in the commodity account.

"**§ 25-9-309. Security interest perfected upon attachment.** The following security interests are perfected when they attach:

(1) A purchase-money security interest in consumer goods, except as otherwise provided in G.S. 25-9-311(b) with respect to consumer goods that are subject to a statute or treaty described in G.S. 25-9-311(a);

(2) An assignment of accounts or payment intangibles which does not by itself or in conjunction with other assignments to the same assignee transfer a significant part of the assignor's outstanding accounts or payment intangibles;

(3) A sale of a payment intangible;

(4) A sale of a promissory note;

(5) A security interest created by the assignment of a health-care-insurance receivable to the provider of the health-care goods or services;

(6) A security interest arising under G.S. 25-2-401, 25-2-505, 25-2-711(3), or 25-2A-508(5), until the debtor obtains possession of the collateral;

(7) A security interest of a collecting bank arising under G.S. 25-4-208;

(8) A security interest of an issuer or nominated person arising under G.S. 25-5-118;
(9) A security interest arising in the delivery of a financial asset under G.S. 25-9-206(c);
(10) A security interest in investment property created by a broker or securities intermediary;
(11) A security interest in a commodity contract or a commodity account created by a commodity intermediary;
(12) An assignment for the benefit of all creditors of the transferor and subsequent transfers by the assignee thereunder; and
(13) A security interest created by an assignment of a beneficial interest in a decedent's estate.

"§ 25-9-310. When filing required to perfect security interest or agricultural lien; security interests and agricultural liens to which filing provisions do not apply.

(a) General rule: perfection by filing. -- Except as otherwise provided in subsection (b) of this section and G.S. 25-9-312(b), a financing statement must be filed to perfect all security interests and agricultural liens.

(b) Exceptions: filing not necessary. -- The filing of a financing statement is not necessary to perfect a security interest:

(1) That is perfected under G.S. 25-9-308(d), (e), (f), or (g);
(2) That is perfected under G.S. 25-9-309 when it attaches;
(3) In property subject to a statute, regulation, or treaty described in G.S. 25-9-311(a);
(4) In goods in possession of a bailee which is perfected under G.S. 25-9-312(d)(1) or (2);
(5) In certificated securities, documents, goods, or instruments which is perfected without filing or possession under G.S. 25-9-312(e), (f), or (g);
(6) In collateral in the secured party's possession under G.S. 25-9-313;
(7) In a certificated security which is perfected by delivery of the security certificate to the secured party under G.S. 25-9-313;
(8) In deposit accounts, electronic chattel paper, investment property, or letter-of-credit rights which is perfected by control under G.S. 25-9-314;
(9) In proceeds which is perfected under G.S. 25-9-315;
(10) That is perfected under G.S. 25-9-316; or
(11) Created in connection with the issuance of any bond, note, or other evidence of indebtedness for borrowed money by this State or any political subdivision or agency thereof, except as provided in G.S. 63A-11(e), 143B-456.1(f), 159C-28, and 159D-23.

(c) Assignment of perfected security interest. -- If a secured party assigns a perfected security interest or agricultural lien, a filing under this Article is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

"**§ 25-9-311. Perfection of security interests in property subject to certain statutes, regulations, and treaties.**

(a) Security interest subject to other law. -- Except as otherwise provided in subsection (d) of this section, the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(1) A statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt G.S. 25-9-310(a);

(2) A certificate-of-title statute of this State covering automobiles or other goods that provides for a security interest to be indicated on the certificate as a condition to or result of perfection of the security interest, including G.S. 20-58 and G.S. 75A-41; or

(3) A certificate-of-title statute of another jurisdiction which provides for a security interest to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

(b) Compliance with other law. -- Compliance with the requirements of a statute, regulation, or treaty described in subsection (a) of this section for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this Article. Except as otherwise provided in subsection (d) of this section and G.S. 25-9-313 and G.S. 25-9-316(d) and (e) for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in subsection (a) of this section may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

(c) Duration and renewal of perfection. -- Except as otherwise provided in subsection (d) of this section and G.S. 25-9-316(d) and (e), duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation, or treaty described in subsection (a) of this section are governed by the statute, regulation, or treaty. In other respects, the security interest is subject to this Article.

(d) Inapplicability to certain inventory. -- During any period in which collateral subject to a statute specified in subdivision (a)(2) of this section is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling goods of that kind, this section does not apply to a security interest in that collateral created by that person.

"**§ 25-9-312. Perfection of security interests in chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letter-of-credit rights, and money; perfection by permissive filing; temporary perfection without filing or transfer of possession.**

(a) Perfection by filing permitted. -- A security interest in chattel paper, negotiable documents, instruments, or investment property may be perfected by filing.

(b) Control or possession of certain collateral. -- Except as otherwise provided in G.S. 25-9-315(c) and (d) for proceeds:

(1) A security interest in a deposit account may be perfected only by control under G.S. 25-9-314;

(2) And except as otherwise provided in G.S. 25-9-308(d), a security interest in a letter-of-credit right may be perfected only by control under G.S. 25-9-314; and

(3) A security interest in money may be perfected only by the secured party's taking possession under G.S. 25-9-313.

(c) Goods covered by negotiable document. -- While goods are in the possession of a bailee that has issued a negotiable document covering the goods:

(1) A security interest in the goods may be perfected by perfecting a security interest in the document; and

(2) A security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.

(d) Goods covered by nonnegotiable document. -- While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:

(1) Issuance of a document in the name of the secured party;

(2) The bailee's receipt of notification of the secured party's interest; or

(3) Filing as to the goods.

(e) Temporary perfection: new value. -- A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession for a period of 20 days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement.

(f) Temporary perfection: goods or documents made available to debtor. -- A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for 20 days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

(1) Ultimate sale or exchange; or

(2) Loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.

(g) Temporary perfection: delivery of security certificate or instrument to debtor. -- A perfected security interest in a certificated security or instrument remains perfected for 20 days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:

(1) Ultimate sale or exchange; or

(2) Presentation, collection, enforcement, renewal, or registration of transfer.

(h) Expiration of temporary perfection. -- After the 20-day period specified in subsection (e), (f), or (g) of this section expires, perfection depends upon compliance with this Article.

"§ 25-9-313. When possession by or delivery to secured party perfects security interest without filing.

(a) Perfection by possession or delivery. -- Except as otherwise provided in subsection (b) of this section, a secured party may perfect a security interest in negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under G.S. 25-8-301.

(b) Goods covered by certificate of title. -- With respect to goods covered by a certificate of title issued by this State, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in G.S. 25-9-316(d).

(c) Collateral in possession of person other than debtor. -- With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:

(1) The person in possession authenticates a record acknowledging that it holds possession of the collateral for the secured party's benefit; or

(2) The person takes possession of the collateral after having authenticated a record acknowledging that it will hold possession of collateral for the secured party's benefit.

(d) Time of perfection by possession; continuation of perfection. -- If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.

(e) Time of perfection by delivery; continuation of perfection. -- A security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under G.S. 25-8-301 and remains perfected by delivery until the debtor obtains possession of the security certificate.

(f) Acknowledgment not required. -- A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.

(g) Effectiveness of acknowledgment; no duties or confirmation. -- If a person acknowledges that it holds possession for the secured party's benefit:

(1) The acknowledgment is effective under subsection (c) of this section or G.S. 25-8-301(a), even if the acknowledgment violates the rights of a debtor; and

(2) Unless the person otherwise agrees or law other than this Article otherwise provides, the person does not owe any duty to the

secured party and is not required to confirm the acknowledgment to another person.

(h) Secured party's delivery to person other than debtor. -- A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery:

(1) To hold possession of the collateral for the secured party's benefit; or

(2) To redeliver the collateral to the secured party.

(i) Effect of delivery under subsection (h); no duties or confirmation. -- A secured party does not relinquish possession, even if a delivery under subsection (h) of this section violates the rights of a debtor. A person to which collateral is delivered under subsection (h) of this section does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or law other than this Article otherwise provides.

"**§ 25-9-314. Perfection by control.**

(a) Perfection by control. -- A security interest in investment property, deposit accounts, letter-of-credit rights, or electronic chattel paper may be perfected by control of the collateral under G.S. 25-9-104, 25-9-105, 25-9-106, or 25-9-107.

(b) Specified collateral: time of perfection by control; continuation of perfection. -- A security interest in deposit accounts, electronic chattel paper, or letter-of-credit rights is perfected by control under G.S. 25-9-104, 25-9-105, or 25-9-107 when the secured party obtains control and remains perfected by control only while the secured party retains control.

(c) Investment property: time of perfection by control; continuation of perfection. -- A security interest in investment property is perfected by control under G.S. 25-9-106 from the time the secured party obtains control and remains perfected by control until:

(1) The secured party does not have control; and

(2) One of the following occurs:

a. If the collateral is a certificated security, the debtor has or acquires possession of the security certificate;

b. If the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner; or

c. If the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

"**§ 25-9-315. Secured party's rights on disposition of collateral and in proceeds.**

(a) Disposition of collateral: continuation of security interest or agricultural lien; proceeds. -- Except as otherwise provided in this Article and in G.S. 25-2-403(2):

(1) A security interest or agricultural lien continues in collateral notwithstanding sale, lease, license, exchange, or other disposition thereof unless the secured party authorized the disposition free of the security interest or agricultural lien; and

(2) A security interest attaches to any identifiable proceeds of collateral.

(b) When commingled proceeds identifiable. -- Proceeds that are commingled with other property are identifiable proceeds:

(1) If the proceeds are goods, to the extent provided by G.S. 25-9-336; and

(2) If the proceeds are not goods, to the extent that the secured party identifies the proceeds by a method of tracing, including application of equitable principles, that is permitted under law other than this Article with respect to commingled property of the type involved.

(c) Perfection of security interest in proceeds. -- A security interest in proceeds is a perfected security interest if the security interest in the original collateral was perfected.

(d) Continuation of perfection. -- A perfected security interest in proceeds becomes unperfected on the twenty-first day after the security interest attaches to the proceeds unless:

(1) The following conditions are satisfied:

a. A filed financing statement covers the original collateral;

b. The proceeds are collateral in which a security interest may be perfected by filing in the office in which the financing statement has been filed; and

c. The proceeds are not acquired with cash proceeds;

(2) The proceeds are identifiable cash proceeds; or

(3) The security interest in the proceeds is perfected other than under subsection (c) of this section when the security interest attaches to the proceeds or within 20 days thereafter.

(e) When perfected security interest in proceeds becomes unperfected. -- If a filed financing statement covers the original collateral, a security interest in proceeds which remains perfected under subdivision (d)(1) of this section becomes unperfected at the later of:

(1) When the effectiveness of the filed financing statement lapses under G.S. 25-9-515 or is terminated under G.S. 25-9-513; or

(2) The twenty-first day after the security interest attaches to the proceeds.

"§ 25-9-316. Continued perfection of security interest following change in governing law.

(a) General rule: effect on perfection of change in governing law. -- A security interest perfected pursuant to the law of the jurisdiction designated in G.S. 25-9-301(1) or G.S. 25-9-305(c) remains perfected until the earliest of:

(1) The time perfection would have ceased under the law of that jurisdiction;

(2) The expiration of four months after a change of the debtor's location to another jurisdiction; or

(3) The expiration of one year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction.

(b) Security interest perfected or unperfected under law of new jurisdiction. -- If a security interest described in subsection (a) of this section becomes perfected under the law of the other jurisdiction before the earliest time or event described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(c) Possessory security interest in collateral moved to new jurisdiction. -- A possessory security interest in collateral, other than goods covered by a certificate of title and as-extracted collateral consisting of goods, remains continuously perfected if:

(1) The collateral is located in one jurisdiction and subject to a security interest perfected under the law of that jurisdiction;

(2) Thereafter the collateral is brought into another jurisdiction; and

(3) Upon entry into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.

(d) Goods covered by certificate of title from this State. -- Except as otherwise provided in subsection (e) of this section, a security interest in goods covered by a certificate of title which is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from this State remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered.

(e) When subsection (d) security interest becomes unperfected against purchasers. -- A security interest described in subsection (d) of this section becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable requirements for perfection under G.S. 25-9-311(b) or G.S. 25-9-313 are not satisfied before the earlier of:

(1) The time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from this State; or

(2) The expiration of four months after the goods had become so covered.

(f) Change in jurisdiction of bank, issuer, nominated person, securities intermediary, or commodity intermediary. -- A security interest in deposit accounts, letter-of-credit rights, or investment property which is perfected under the law of the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of:

(1) The time the security interest would have become unperfected under the law of that jurisdiction; or

(2) The expiration of four months after a change of the applicable jurisdiction to another jurisdiction.

(g) Subsection (f) security interest perfected or unperfected under law of new jurisdiction. -- If a security interest described in subsection (f) of this section becomes perfected under the law of the other jurisdiction before the earlier of the time or the end of the period described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

"SUBPART 3. PRIORITY.

"§ 25-9-317. Interests that take priority over or take free of security interest or agricultural lien.

(a) Conflicting security interests and rights of lien creditors. -- A security interest or agricultural lien is subordinate to the rights of:

(1) A person entitled to priority under G.S. 25-9-322; and

(2) Except as otherwise provided in subsection (e) of this section, a person that becomes a lien creditor before the earlier of the time:

a. The security interest or agricultural lien is perfected; or

b. One of the conditions specified in G.S. 25-9-203(b)(3) is met and a financing statement covering the collateral is filed.

(b) Buyers that receive delivery. -- Except as otherwise provided in subsection (e) of this section, a buyer, other than a secured party, of tangible chattel paper, documents, goods, instruments, or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) Lessees that receive delivery. -- Except as otherwise provided in subsection (e) of this section, a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) Licensees and buyers of certain collateral. -- A licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, general intangibles, or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) Purchase-money security interest. -- Except as otherwise provided in G.S. 25-9-320 and G.S. 25-9-321, if a person files a financing statement with respect to a purchase-money security interest before or within 20 days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

"§ 25-9-318. No interest retained in right to payment that is sold; rights and title of seller of account or chattel paper with respect to creditors and purchasers.

(a) Seller retains no interest. -- A debtor that has sold an account, chattel paper, payment intangible, or promissory note does not retain a legal or equitable interest in the collateral sold.

(b) Deemed rights of debtor if buyer's security interest unperfected. -- For purposes of determining the rights of creditors of, and purchasers for value of an account or chattel paper from, a debtor that has sold an account or chattel paper, while the buyer's security interest is unperfected, the debtor is deemed to have rights and title to the account or chattel paper identical to those the debtor sold.

"§ 25-9-319. Rights and title of consignee with respect to creditors and purchasers.

(a) Consignee has consignor's rights. -- Except as otherwise provided in subsection (b) of this section, for purposes of determining the rights of creditors of, and purchasers for value of goods from, a consignee, while the goods are in the possession of the consignee, the consignee is deemed to have rights and title to the goods identical to those the consignor had or had power to transfer.

(b) Applicability of other law. -- For purposes of determining the rights of a creditor of a consignee, law other than this Article determines the rights and title of a consignee while goods are in the consignee's possession if, under this Part, a perfected security interest held by the consignor would have priority over the rights of the creditor.

"§ 25-9-320. Buyer of goods.

(a) Buyer in ordinary course of business. -- Except as otherwise provided in subsection (e) of this section, a buyer in ordinary course of business, other than a person buying farm products from a person engaged in farming operations, takes free of a security interest created by the buyer's seller, even if the security interest is perfected and the buyer knows of its existence.

(b) Buyer of consumer goods. -- Except as otherwise provided in subsection (e) of this section, a buyer of goods from a person who used or bought the goods for use primarily for personal, family, or household purposes takes free of a security interest, even if perfected, if the buyer buys:

(1) Without knowledge of the security interest;

(2) For value;

(3) Primarily for the buyer's personal, family, or household purposes; and

(4) Before the filing of a financing statement covering the goods.

(c) Effectiveness of filing for subsection (b). -- To the extent that it affects the priority of a security interest over a buyer of goods under subsection (b) of this section, the period of effectiveness of a filing made in the jurisdiction in which the seller is located is governed by G.S. 25-9-316(a) and (b).

(d) Buyer in ordinary course of business at wellhead or minehead. -- A buyer in ordinary course of business buying oil, gas, or other minerals at the wellhead or minehead or after extraction takes free of an interest arising out of an encumbrance.

(e) Possessory security interest not affected. -- Subsections (a) and (b) of this section do not affect a security interest in goods in the possession of the secured party under G.S. 25-9-313.

"**§ 25-9-321. Licensee of general intangible and lessee of goods in ordinary course of business.**

(a) 'Licensee in ordinary course of business'. -- In this section, 'licensee in ordinary course of business' means a person that becomes a licensee of a general intangible in good faith, without knowledge that the license violates the rights of another person in the general intangible, and in the ordinary course from a person in the business of licensing general intangibles of that kind. A person becomes a licensee in the ordinary course if the license to the person comports with the usual or customary practices in the kind of business in which the licensor is engaged or with the licensor's own usual or customary practices.

(b) Rights of licensee in ordinary course of business. -- A licensee in ordinary course of business takes its rights under a nonexclusive license free of a security interest in the general intangible created by the licensor, even if the security interest is perfected and the licensee knows of its existence.

(c) Rights of lessee in ordinary course of business. -- A lessee in ordinary course of business takes its leasehold interest free of a security interest in the goods created by the lessor, even if the security interest is perfected and the lessee knows of its existence.

"**§ 25-9-322. Priorities among conflicting security interests in and agricultural liens on same collateral.**

(a) General priority rules. -- Except as otherwise provided in this section, priority among conflicting security interests and agricultural liens in the same collateral is determined according to the following rules:

(1) Conflicting perfected security interests and agricultural liens rank according to priority in time of filing or perfection. Priority dates from the earlier of the time a filing covering the collateral is first made or the security interest or agricultural lien is first perfected, if there is no period thereafter when there is neither filing nor perfection.

(2) A perfected security interest or agricultural lien has priority over a conflicting unperfected security interest or agricultural lien.

(3) The first security interest or agricultural lien to attach or become effective has priority if conflicting security interests and agricultural liens are unperfected.

(b) Time of perfection: proceeds and supporting obligations. -- For the purposes of subdivision (a)(1) of this section:

(1) The time of filing or perfection as to a security interest in collateral is also the time of filing or perfection as to a security interest in proceeds; and

(2) The time of filing or perfection as to a security interest in collateral supported by a supporting obligation is also the time of filing or perfection as to a security interest in the supporting obligation.

(c) Special priority rules: proceeds and supporting obligations. -- Except as otherwise provided in subsection (f) of this section, a security interest in collateral

which qualifies for priority over a conflicting security interest under G.S. 25-9-327, 25-9-328, 25-9-329, 25-9-330, or 25-9-331 also has priority over a conflicting security interest in:

(1) Any supporting obligation for the collateral; and

(2) Proceeds of the collateral if:

a. The security interest in proceeds is perfected;

b. The proceeds are cash proceeds or of the same type as the collateral; and

c. In the case of proceeds that are proceeds of proceeds, all intervening proceeds are cash proceeds, proceeds of the same type as the collateral, or an account relating to the collateral.

(d) First-to-file priority rule for certain collateral. -- Subject to subsection (e) of this section and except as otherwise provided in subsection (f) of this section, if a security interest in chattel paper, deposit accounts, negotiable documents, instruments, investment property, or letter-of-credit rights is perfected by a method other than filing, conflicting perfected security interests in proceeds of the collateral rank according to priority in time of filing.

(e) Applicability of subsection (d). -- Subsection (d) of this section applies only if the proceeds of the collateral are not cash proceeds, chattel paper, negotiable documents, instruments, investment property, or letter-of-credit rights.

(f) Limitations on subsections (a) through (e). -- Subsections (a) through (e) of this section are subject to:

(1) Subsection (g) of this section and the other provisions of this Part;

(2) G.S. 25-4-208 with respect to a security interest of a collecting bank;

(3) G.S. 25-5-118 with respect to a security interest of an issuer or nominated person; and

(4) G.S. 25-9-110 with respect to a security interest arising under Article 2 or 2A of this Chapter.

(g) Priority under agricultural lien statute. -- A perfected agricultural lien on collateral has priority over a conflicting security interest in or agricultural lien on the same collateral if the statute creating the agricultural lien so provides.

"§ 25-9-323. Future advances.

(a) When priority based on time of advance. -- Except as otherwise provided in subsection (c) of this section, for purposes of determining the priority of a perfected security interest under G.S. 25-9-322(a)(1), perfection of the security interest dates from the time an advance is made to the extent that the security interest secures an advance that:

(1) Is made while the security interest is perfected only:

a. Under G.S. 25-9-309 when it attaches; or

b. Temporarily under G.S. 25-9-312(e), (f), or (g); and

(2) Is not made pursuant to a commitment entered into before or while the security interest is perfected by a method other than under G.S. 25-9-309 or G.S. 25-9-312(e), (f), or (g).

(b) Lien creditor. -- Except as otherwise provided in subsection (c) of this section, a security interest is subordinate to the rights of a person that becomes a lien creditor to the extent that the security interest secures an advance made more than 45 days after the person becomes a lien creditor unless the advance is made:

(1) Without knowledge of the lien; or

(2) Pursuant to a commitment entered into without knowledge of the lien.

(c) Buyer of receivables. -- Subsections (a) and (b) of this section do not apply to a security interest held by a secured party that is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor.

(d) Buyer of goods. -- Except as otherwise provided in subsection (e) of this section, a buyer of goods other than a buyer in ordinary course of business takes free of a security interest to the extent that it secures advances made after the earlier of:

(1) The time the secured party acquires knowledge of the buyer's purchase; or

(2) 45 days after the purchase.

(e) Advances made pursuant to commitment: priority of buyer of goods. -- Subsection (d) of this section does not apply if the advance is made pursuant to a commitment entered into without knowledge of the buyer's purchase and before the expiration of the 45-day period.

(f) Lessee of goods. -- Except as otherwise provided in subsection (g) of this section, a lessee of goods, other than a lessee in ordinary course of business, takes the leasehold interest free of a security interest to the extent that it secures advances made after the earlier of:

(1) The time the secured party acquires knowledge of the lease; or

(2) 45 days after the lease contract becomes enforceable.

(g) Advances made pursuant to commitment: priority of lessee of goods. -- Subsection (f) of this section does not apply if the advance is made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the 45-day period.

"§ 25-9-324. Priority of purchase-money security interests.

(a) General rule: purchase-money priority. -- Except as otherwise provided in subsection (g) of this section, a perfected purchase-money security interest in goods other than inventory or livestock has priority over a conflicting security interest in the same goods, and, except as otherwise provided in G.S. 25-9-327, a perfected security interest in its identifiable proceeds also has priority, if the purchase-money security interest is perfected when the debtor receives possession of the collateral or within 20 days thereafter.

(b) Inventory purchase-money priority. -- Subject to subsection (c) of this section and except as otherwise provided in subsection (g) of this section, a perfected purchase-money security interest in inventory has priority over a conflicting security

interest in the same inventory, has priority over a conflicting security interest in chattel paper or an instrument constituting proceeds of the inventory and in proceeds of the chattel paper, if so provided in G.S. 25-9-330, and, except as otherwise provided in G.S. 25-9-327, also has priority in identifiable cash proceeds of the inventory to the extent the identifiable cash proceeds are received on or before the delivery of the inventory to a buyer, if:

(1) The purchase-money security interest is perfected when the debtor receives possession of the inventory;

(2) The purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;

(3) The holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and

(4) The notification states that the person sending the notification has or expects to acquire a purchase-money security interest in inventory of the debtor and describes the inventory.

(c) Holders of conflicting inventory security interests to be notified. -- Subdivisions (b)(2) through (b)(4) of this section apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of inventory:

(1) If the purchase-money security interest is perfected by filing, before the date of the filing; or

(2) If the purchase-money security interest is temporarily perfected without filing or possession under G.S. 25-9-312(f), before the beginning of the 20-day period thereunder.

(d) Livestock purchase-money priority. -- Subject to subsection (e) of this section and except as otherwise provided in subsection (g) of this section, a perfected purchase-money security interest in livestock that are farm products has priority over a conflicting security interest in the same livestock, and, except as otherwise provided in G.S. 25-9-327, a perfected security interest in their identifiable proceeds and identifiable products in their unmanufactured states also has priority, if:

(1) The purchase-money security interest is perfected when the debtor receives possession of the livestock;

(2) The purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;

(3) The holder of the conflicting security interest receives the notification within six months before the debtor receives possession of the livestock; and

(4) The notification states that the person sending the notification has or expects to acquire a purchase-money security interest in livestock of the debtor and describes the livestock.

(e) Holders of conflicting livestock security interests to be notified. -- Subdivisions (d)(2) through (d)(4) of this section apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of livestock:

(1) If the purchase-money security interest is perfected by filing, before the date of the filing; or

(2) If the purchase-money security interest is temporarily perfected without filing or possession under G.S. 25-9-312(f), before the beginning of the 20-day period thereunder.

(f) Software purchase-money priority. -- Except as otherwise provided in subsection (g) of this section, a perfected purchase-money security interest in software has priority over a conflicting security interest in the same collateral, and, except as otherwise provided in G.S. 25-9-327, a perfected security interest in its identifiable proceeds also has priority, to the extent that the purchase-money security interest in the goods in which the software was acquired for use has priority in the goods and proceeds of the goods under this section.

(g) Conflicting purchase-money security interests. -- If more than one security interest qualifies for priority in the same collateral under subsection (a), (b), (d), or (f) of this section:

(1) A security interest securing an obligation incurred as all or part of the price of the collateral has priority over a security interest securing an obligation incurred for value given to enable the debtor to acquire rights in or the use of collateral; and

(2) In all other cases, G.S. 25-9-322(a) applies to the qualifying security interests.

"§ 25-9-324.1. Priority of production-money security interests and agricultural liens.

(a) Priority over conflicting security interests. -- Except as otherwise provided in subsections (c), (d), and (e) of this section, if the requirements of subsection (b) of this section are satisfied, a perfected production-money security interest in production-money crops has priority over a conflicting security interest in the same crops and, except as otherwise provided in G.S. 25-9-327, also has priority in their identifiable proceeds.

(b) Requirements for priority. -- A production-money security interest has priority under subsection (a) of this section if:

(1) The production-money security interest is perfected by filing when the production-money secured party first gives new value to enable the debtor to produce the crops;

(2) The production-money secured party sends an authenticated notification to the holder of the conflicting security interest not less than 10 or more than 30 days before the production-money secured party first gives new value to enable the debtor to produce the crops if the holder had filed a financing statement covering the crops before the date of the filing made by the production-money secured party; and

(3) The notification states that the production-money secured party has or expects to acquire a production-money security interest in the debtor's crops and provides a description of the crops.

(c) Multiple production-money security interests. -- Except as otherwise provided in subsection (d) or (e) of this section, if more than one security interest qualifies for priority in the same collateral under subsection (a) of this section, the security interests rank according to priority in time of filing under G.S. 25-9-322(a).

(d) New value to produce production-money crops. -- To the extent that a person holding a perfected security interest in production-money crops that are the subject of a production-money security interest gives new value to enable the debtor to produce the production-money crops and the value is in fact used for the production of the production-money crops, the security interests rank according to priority in time of filing under G.S. 25-9-322(a).

(e) Holder of agricultural lien and production-money security interest. -- To the extent that a person holds both an agricultural lien and a production-money security interest in the same collateral securing the same obligations, the rules of priority applicable to agricultural liens govern priority.

(f) Creating or perfecting production-money security interest not to operate as default or accelerating event. -- Creating or perfecting a production-money security interest shall not operate under any circumstances as a default on, an accelerating event under, or otherwise as a breach of any note or other instrument or agreement of any kind or nature to pay debt, any loan or credit agreement, or any security agreement or arrangement of any kind or nature where the collateral is real or personal property.

"§ 25-9-325. Priority of security interests in transferred collateral.

(a) Subordination of security interest in transferred collateral. -- Except as otherwise provided in subsection (b) of this section, a security interest created by a debtor is subordinate to a security interest in the same collateral created by another person if:

(1) The debtor acquired the collateral subject to the security interest created by the other person;

(2) The security interest created by the other person was perfected when the debtor acquired the collateral; and

(3) There is no period thereafter when the security interest is unperfected.

(b) Limitation of subsection (a) subordination. -- Subsection (a) of this section subordinates a security interest only if the security interest:

(1) Otherwise would have priority solely under G.S. 25-9-322(a) or G.S. 25-9-324; or

(2) Arose solely under G.S. 25-2-711(3) or G.S. 25-2A-508(5).

"§ 25-9-326. Priority of security interests created by new debtor.

(a) Subordination of security interest created by new debtor. -- Subject to subsection (b) of this section, a security interest created by a new debtor which is perfected by a filed financing statement that is effective solely under G.S. 25-9-508 in collateral in which a new debtor has or acquires rights is subordinate to a security interest in the same collateral which is perfected other than by a filed financing statement that is effective solely under G.S. 25-9-508.

(b) Priority under other provisions; multiple original debtors. -- The other provisions of this Part determine the priority among conflicting security interests in the same collateral perfected by filed financing statements that are effective solely under G.S. 25-9-508. However, if the security agreements to which a new debtor became bound as debtor were not entered into by the same original debtor, the conflicting security interests rank according to priority in time of the new debtor's having become bound.

"§ 25-9-327. Priority of security interests in deposit account.

The following rules govern priority among conflicting security interests in the same deposit account:

(1) A security interest held by a secured party having control of the deposit account under G.S. 25-9-104 has priority over a conflicting security interest held by a secured party that does not have control.

(2) Except as otherwise provided in subdivisions (3) and (4) of this section, security interests perfected by control under G.S. 25-9-314 rank according to priority in time of obtaining control.

(3) Except as otherwise provided in subdivision (4) of this section, a security interest held by the bank with which the deposit account is maintained has priority over a conflicting security interest held by another secured party.

(4) A security interest perfected by control under G.S. 25-9-104(a)(3) has priority over a security interest held by the bank with which the deposit account is maintained.

"§ 25-9-328. Priority of security interests in investment property.

The following rules govern priority among conflicting security interests in the same investment property:

(1) A security interest held by a secured party having control of investment property under G.S. 25-9-106 has priority over a security interest held by a secured party that does not have control of the investment property.

(2) Except as otherwise provided in subdivisions (3) and (4) of this section, conflicting security interests held by secured parties each of which has control under G.S. 25-9-106 rank according to priority in time of:

a. If the collateral is a security, obtaining control;

b. If the collateral is a security entitlement carried in a securities account and:

1. If the secured party obtained control under G.S. 25-8-106(d)(1), the secured party's becoming the person for which the securities account is maintained;

2. If the secured party obtained control under G.S. 25-8-106(d)(2), the securities intermediary's agreement to comply with the secured party's entitlement orders

with respect to security entitlements carried or to be carried in the securities account; or

3. If the secured party obtained control through another person under G.S. 25-8-106(d)(3), the time on which priority would be based under this subdivision if the other person were the secured party; or

c. If the collateral is a commodity contract carried with a commodity intermediary, the satisfaction of the requirement for control specified in G.S. 25-9-106(b)(2) with respect to commodity contracts carried or to be carried with the commodity intermediary.

(3) A security interest held by a securities intermediary in a security entitlement or a securities account maintained with the securities intermediary has priority over a conflicting security interest held by another secured party.

(4) A security interest held by a commodity intermediary in a commodity contract or a commodity account maintained with the commodity intermediary has priority over a conflicting security interest held by another secured party.

(5) A security interest in a certificated security in registered form which is perfected by taking delivery under G.S. 25-9-313(a) and not by control under G.S. 25-9-314 has priority over a conflicting security interest perfected by a method other than control.

(6) Conflicting security interests created by a broker, securities intermediary, or commodity intermediary which are perfected without control under G.S. 25-9-106 rank equally.

(7) In all other cases, priority among conflicting security interests in investment property is governed by G.S. 25-9-322 and G.S. 25-9-323.

"**§ 25-9-329. Priority of security interests in letter-of-credit right.**

The following rules govern priority among conflicting security interests in the same letter-of-credit right:

(1) A security interest held by a secured party having control of the letter-of-credit right under G.S. 25-9-107 has priority to the extent of its control over a conflicting security interest held by a secured party that does not have control.

(2) Security interests perfected by control under G.S. 25-9-314 rank according to priority in time of obtaining control.

"**§ 25-9-330. Priority of purchaser of chattel paper or instrument.**

(a) Purchaser's priority: security interest claimed merely as proceeds. -- A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed merely as proceeds of inventory subject to a security interest if:

(1) In good faith and in the ordinary course of the purchaser's business, the purchaser gives new value and takes possession of the

chattel paper or obtains control of the chattel paper under G.S. 25-9-105; and

(2) The chattel paper does not indicate that it has been assigned to an identified assignee other than the purchaser.

(b) Purchaser's priority; other security interests. -- A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed other than merely as proceeds of inventory subject to a security interest if the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under G.S. 25-9-105 in good faith, in the ordinary course of the purchaser's business, and without knowledge that the purchase violates the rights of the secured party.

(c) Chattel paper purchaser's priority in proceeds. -- Except as otherwise provided in G.S. 25-9-327, a purchaser having priority in chattel paper under subsection (a) or (b) of this section also has priority in proceeds of the chattel paper to the extent that:

(1) G.S. 25-9-322 provides for priority in the proceeds; or

(2) The proceeds consist of the specific goods covered by the chattel paper or cash proceeds of the specific goods, even if the purchaser's security interest in the proceeds is unperfected.

(d) Instrument purchaser's priority. -- Except as otherwise provided in G.S. 25-9-331(a), a purchaser of an instrument has priority over a security interest in the instrument perfected by a method other than possession if the purchaser gives value and takes possession of the instrument in good faith and without knowledge that the purchase violates the rights of the secured party.

(e) Holder of purchase-money security interest gives new value. -- For purposes of subsections (a) and (b) of this section, the holder of a purchase-money security interest in inventory gives new value for chattel paper constituting proceeds of the inventory.

(f) Indication of assignment gives knowledge. -- For purposes of subsections (b) and (d) of this section, if chattel paper or an instrument indicates that it has been assigned to an identified secured party other than the purchaser, a purchaser of the chattel paper or instrument has knowledge that the purchase violates the rights of the secured party.

"§ 25-9-331. Priority of rights of purchasers of instruments, documents, and securities under other Articles; priority of interests in financial assets and security entitlements under Article 8.

(a) Rights under Articles 3, 7, and 8 not limited. -- This Article does not limit the rights of a holder in due course of a negotiable instrument, a holder to which a negotiable document of title has been duly negotiated, or a protected purchaser of a security. These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in Articles 3, 7, and 8 of this Chapter.

(b) Protection under Article 8. -- This Article does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of a claim under Article 8 of this Chapter.

(c) Filing not notice. -- Filing under this Article does not constitute notice of a claim or defense to the holders, or purchasers, or persons described in subsections (a) and (b) of this section.

"§ 25-9-332. Transfer of money; transfer of funds from deposit account.

(a) Transferee of money. -- A transferee of money takes the money free of a security interest unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

(b) Transferee of funds from deposit account. -- A transferee of funds from a deposit account takes the funds free of a security interest in the deposit account unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

"§ 25-9-333. Priority of certain liens arising by operation of law.

(a) 'Possessory lien.' -- In this section, 'possessory lien' means an interest, other than a security interest or an agricultural lien:

(1) Which secures payment or performance of an obligation for services or materials furnished with respect to goods by a person in the ordinary course of the person's business;

(2) Which is created by statute or rule of law in favor of the person; and

(3) Whose effectiveness depends on the person's possession of the goods.

(b) Priority of possessory lien. -- A possessory lien on goods has priority over a security interest in the goods unless the lien is created by a statute that expressly provides otherwise.

"§ 25-9-334. Priority of security interests in fixtures and crops.

(a) Security interest in fixtures under this Article. -- A security interest under this Article may be created in goods that are fixtures or may continue in goods that become fixtures. A security interest does not exist under this Article in ordinary building materials incorporated into an improvement on land.

(b) Security interest in fixtures under real-property law. -- This Article does not prevent creation of an encumbrance upon fixtures under real property law.

(c) General rule: subordination of security interest in fixtures. -- In cases not governed by subsections (d) through (h) of this section, a security interest in fixtures is subordinate to a conflicting interest of an encumbrancer or owner of the related real property other than the debtor.

(d) Fixtures purchase-money priority. -- Except as otherwise provided in subsection (h) of this section, a perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property and:

(1) The security interest is a purchase-money security interest;

(2) The interest of the encumbrancer or owner arises before the goods become fixtures; and

(3) The security interest is perfected by a fixture filing before the goods become fixtures or within 20 days thereafter.

(e) Priority of security interest in fixtures over interests in real property. -- A perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(1) The debtor has an interest of record in the real property or is in possession of the real property and the security interest:

a. Is perfected by a fixture filing before the interest of the encumbrancer or owner is of record; and

b. Has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner;

(2) Before the goods become fixtures, the security interest is perfected by any method permitted by this Article and the fixtures are readily removable:

a. Factory or office machines;

b. Equipment that is not primarily used or leased for use in the operation of the real property; or

c. Replacements of domestic appliances that are consumer goods;

(3) The conflicting interest is a lien on the real property obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this Article; or

(4) The security interest is:

a. Created in a manufactured home in a manufactured-home transaction; and

b. Perfected pursuant to a statute described in G.S. 25-9-311(a)(2).

(f) Priority based on consent, disclaimer, or right to remove. -- A security interest in fixtures, whether or not perfected, has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(1) The encumbrancer or owner has, in an authenticated record, consented to the security interest or disclaimed an interest in the goods as fixtures; or

(2) The debtor has a right to remove the goods as against the encumbrancer or owner.

(g) Continuation of subdivision (f)(2) priority. -- The priority of the security interest under subdivision (f)(2) of this section continues for a reasonable time if the debtor's right to remove the goods as against the encumbrancer or owner terminates.

(h) Priority of construction mortgage. -- A mortgage is a construction mortgage to the extent that it secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, if a recorded record of the mortgage so indicates. Except as otherwise provided in subsections (e) and (f) of this section, a security interest in fixtures is subordinate to a construction mortgage if a record of the mortgage is recorded before the goods become fixtures and the goods become fixtures before the completion of the construction. A mortgage has

this priority to the same extent as a construction mortgage to the extent that it is given to refinance a construction mortgage.

(i) Priority of security interest in crops. -- Except as provided in G.S. 42-15, a perfected security interest in crops growing on real property has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property.

"**§ 25-9-335. Accessions.**

(a) Creation of security interest in accession. -- A security interest may be created in an accession and continues in collateral that becomes an accession.

(b) Perfection of security interest. -- If a security interest is perfected when the collateral becomes an accession, the security interest remains perfected in the collateral.

(c) Priority of security interest. -- Except as otherwise provided in subsection (d) of this section, the other provisions of this Part determine the priority of a security interest in an accession.

(d) Compliance with certificate-of-title statute. -- A security interest in an accession is subordinate to a security interest in the whole which is perfected by compliance with the requirements of a certificate-of-title statute under G.S. 25-9-311(b).

(e) Removal of accession after default. -- After default, subject to Part 6 of this Article, a secured party may remove an accession from other goods if the security interest in the accession has priority over the claims of every person having an interest in the whole.

(f) Reimbursement following removal. -- A secured party that removes an accession from other goods under subsection (e) of this section shall promptly reimburse any holder of a security interest or other lien on, or owner of, the whole or of the other goods, other than the debtor, for the cost of repair of any physical injury to the whole or the other goods. The secured party need not reimburse the holder or owner for any diminution in value of the whole or the other goods caused by the absence of the accession removed or by any necessity for replacing it. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

"**§ 25-9-336. Commingled goods.**

(a) 'Commingled goods.' -- In this section, 'commingled goods' means goods that are physically united with other goods in such a manner that their identity is lost in a product or mass.

(b) No security interest in commingled goods as such. -- A security interest does not exist in commingled goods as such. However, a security interest may attach to a product or mass that results when goods become commingled goods.

(c) Attachment of security interest to product or mass. -- If collateral becomes commingled goods, a security interest attaches to the product or mass.

(d) Perfection of security interest. -- If a security interest in collateral is perfected before the collateral becomes commingled goods, the security interest that attaches to the product or mass under subsection (c) of this section is perfected.

(e) Priority of security interest. -- Except as otherwise provided in subsection (f) of this section, the other provisions of this Part determine the priority of a security interest that attaches to the product or mass under subsection (c) of this section.

(f) Conflicting security interests in product or mass. -- If more than one security interest attaches to the product or mass under subsection (c) of this section, the following rules determine priority:

(1) A security interest that is perfected under subsection (d) of this section has priority over a security interest that is unperfected at the time the collateral becomes commingled goods.

(2) If more than one security interest is perfected under subsection (d) of this section, the security interests rank equally in proportion to the value of the collateral at the time it became commingled goods.

"§ 25-9-337. Priority of security interests in goods covered by certificate of title.

If, while a security interest in goods is perfected by any method under the law of another jurisdiction, this State issues a certificate of title that does not show that the goods are subject to the security interest or contain a statement that they may be subject to security interests not shown on the certificate:

(1) A buyer of the goods, other than a person in the business of selling goods of that kind, takes free of the security interest if the buyer gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest; and

(2) The security interest is subordinate to a conflicting security interest in the goods that attaches, and is perfected under G.S. 25-9-311(b), after issuance of the certificate and without the conflicting secured party's knowledge of the security interest.

"§ 25-9-338. Priority of security interest or agricultural lien perfected by filed financing statement providing certain incorrect information.

If a security interest or agricultural lien is perfected by a filed financing statement providing information described in G.S. 25-9-516(b)(5) which is incorrect at the time the financing statement is filed:

(1) The security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest gives value in reasonable reliance upon the incorrect information; and

(2) A purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of chattel paper, documents, goods, instruments, or a security certificate, receives delivery of the collateral.

"§ 25-9-339. Priority subject to subordination.

This Article does not preclude subordination by agreement by a person entitled to priority.

"SUBPART 4. RIGHTS OF BANK.

"**§ 25-9-340. Effectiveness of right of recoupment or setoff against deposit account.**

(a) Exercise of recoupment or setoff. -- Except as otherwise provided in subsection (c) of this section, a bank with which a deposit account is maintained may exercise any right of recoupment or setoff against a secured party that holds a security interest in the deposit account.

(b) Recoupment or setoff not affected by security interest. -- Except as otherwise provided in subsection (c) of this section, the application of this Article to a security interest in a deposit account does not affect a right of recoupment or setoff of the secured party as to a deposit account maintained with the secured party.

(c) When setoff ineffective. -- The exercise by a bank of a setoff against a deposit account is ineffective against a secured party that holds a security interest in the deposit account which is perfected by control under G.S. 25-9-104(a)(3), if the setoff is based on a claim against the debtor.

"**§ 25-9-341. Bank's rights and duties with respect to deposit account.**

Except as otherwise provided in G.S. 25-9-340(c), and unless the bank otherwise agrees in an authenticated record, a bank's rights and duties with respect to a deposit account maintained with the bank are not terminated, suspended, or modified by:

(1) The creation, attachment, or perfection of a security interest in the deposit account;

(2) The bank's knowledge of the security interest; or

(3) The bank's receipt of instructions from the secured party.

"**§ 25-9-342. Bank's right to refuse to enter into or disclose existence of control agreement.**

This Article does not require a bank to enter into an agreement of the kind described in G.S. 25-9-104(a)(2), even if its customer so requests or directs. A bank that has entered into such an agreement is not required to confirm the existence of the agreement to another person unless requested to do so by its customer.

"PART 4.

"RIGHTS OF THIRD PARTIES.

"**§ 25-9-401. Alienability of debtor's rights.**

(a) Other law governs alienability; exceptions. -- Except as otherwise provided in subsection (b) of this section and G.S. 25-9-406, 25-9-407, 25-9-408, and 25-9-409, whether a debtor's rights in collateral may be voluntarily or involuntarily transferred is governed by law other than this Article.

(b) Agreement does not prevent transfer. -- An agreement between the debtor and secured party which prohibits a transfer of the debtor's rights in collateral or makes the transfer a default does not prevent the transfer from taking effect.

"**§ 25-9-402. Secured party not obligated on contract of debtor or in tort.**

The existence of a security interest, agricultural lien, or authority given to a debtor to dispose of or use collateral, without more, does not subject a secured party to liability in contract or tort for the debtor's acts or omissions.

"**§ 25-9-403. Agreement not to assert defenses against assignee.**

(a) 'Value.' -- In this section, 'value' has the meaning provided in G.S. 25-3-303(a).

(b) Agreement not to assert claim or defense. -- Except as otherwise provided in this section, an agreement between an account debtor and an assignor not to assert against an assignee any claim or defense that the account debtor may have against the assignor is enforceable by an assignee that takes an assignment:

(1) For value;

(2) In good faith;

(3) Without notice of a claim of a property or possessory right to the property assigned; and

(4) Without notice of a defense or claim in recoupment of the type that may be asserted against a person entitled to enforce a negotiable instrument under G.S. 25-3-305(a).

(c) When subsection (b) not applicable. -- Subsection (b) of this section does not apply to defenses of a type that may be asserted against a holder in due course of a negotiable instrument under G.S. 25-3-305(b).

(d) Omission of required statement in consumer transaction. -- In a consumer transaction, if a record evidences the account debtor's obligation, law other than this Article requires that the record include a statement to the effect that the rights of an assignee are subject to claims or defenses that the account debtor could assert against the original obligee, and the record does not include such a statement:

(1) The record has the same effect as if the record included such a statement; and

(2) The account debtor may assert against an assignee those claims and defenses that would have been available if the record included such a statement.

(e) Rule for individual under other law. -- This section is subject to law other than this Article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(f) Other law not displaced. -- Except as otherwise provided in subsection (d) of this section, this section does not displace law other than this Article which gives effect to an agreement by an account debtor not to assert a claim or defense against an assignee.

"**§ 25-9-404. Rights acquired by assignee; claims and defenses against assignee.**

(a) Assignee's rights subject to terms, claims, and defenses; exceptions. -- Unless an account debtor has made an enforceable agreement not to assert defenses or claims, and subject to subsections (b) through (e) of this section, the rights of an assignee are subject to:

(1) All terms of the agreement between the account debtor and assignor and any defense or claim in recoupment arising from the transaction that gave rise to the contract; and

(2) Any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives a notification of the assignment authenticated by the assignor or the assignee.

(b) Account debtor's claim reduces amount owed to assignee. -- Subject to subsection (c) of this section and except as otherwise provided in subsection (d) of this section, the claim of an account debtor against an assignor may be asserted against an assignee under subsection (a) of this section only to reduce the amount the account debtor owes.

(c) Rule for individual under other law. -- This section is subject to law other than this Article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(d) Omission of required statement in consumer transaction. -- In a consumer transaction, if a record evidences the account debtor's obligation, law other than this Article requires that the record include a statement to the effect that the account debtor's recovery against an assignee with respect to claims and defenses against the assignor may not exceed amounts paid by the account debtor under the record, and the record does not include such a statement, the extent to which a claim of an account debtor against the assignor may be asserted against an assignee is determined as if the record included such a statement.

(e) Inapplicability to health-care-insurance receivable. -- This section does not apply to an assignment of a health-care-insurance receivable.

"§ 25-9-405. Modification of assigned contract.

(a) Effect of modification on assignee. -- A modification of or substitution for an assigned contract is effective against an assignee if made in good faith. The assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that the modification or substitution is a breach of contract by the assignor. This subsection is subject to subsections (b) through (d) of this section.

(b) Applicability of subsection (a). -- Subsection (a) of this section applies to the extent that:

(1) The right to payment or a part thereof under an assigned contract has not been fully earned by performance; or

(2) The right to payment or a part thereof has been fully earned by performance and the account debtor has not received notification of the assignment under G.S. 25-9-406(a).

(c) Rule for individual under other law. -- This section is subject to law other than this Article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(d) Inapplicability to health-care-insurance receivable. -- This section does not apply to an assignment of a health-care-insurance receivable.

"§ 25-9-406. Discharge of account debtor; notification of assignment; identification and proof of assignment; restrictions on assignment of accounts, chattel paper, payment intangibles, and promissory notes ineffective.

(a) Discharge of account debtor; effect of notification. -- Subject to subsections (b) through (i) of this section, an account debtor on an account, chattel paper, or a

payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) When notification ineffective. -- Subject to subsection (h) of this section, notification is ineffective under subsection (a) of this section:

(1) If it does not reasonably identify the rights assigned;

(2) To the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this Article; or

(3) At the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

a. Only a portion of the account, chattel paper, or payment intangible has been assigned to that assignee;

b. A portion has been assigned to another assignee; or

c. The account debtor knows that the assignment to that assignee is limited.

(c) Proof of assignment. -- Subject to subsection (h) of this section, if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a) of this section.

(d) Term restricting assignment generally ineffective. -- Except as otherwise provided in subsection (e) of this section and G.S. 25-2A-303 and G.S. 25-9-407 and subject to subsection (h) of this section, a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

(1) Prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or

(2) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(e) Inapplicability of subsection (d) to certain sales. -- Subsection (d) of this section does not apply to the sale of a payment intangible or promissory note.

(f) Legal restrictions on assignment generally ineffective. -- Except as otherwise provided in G.S. 25-2A-303 and G.S. 25-9-407 and subject to subsections (h) and (i)

of this section, a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:

(1) Prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in the account or chattel paper; or

(2) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.

(g) Subdivision (b)(3) not waivable. -- Subject to subsection (h) of this section, an account debtor may not waive or vary its option under subdivision (b)(3) of this section.

(h) Rule for individual under other law. -- This section is subject to law other than this Article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(i) Inapplicability. -- This section does not apply to an assignment of a health-care-insurance receivable. Subsection (f) of this section does not apply to an assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, a right the transfer of which is prohibited or restricted by any of the following statutes to the extent that the statute is inconsistent with subsection (f) of this section: North Carolina Structured Settlement Act (Article 44B of Chapter 1 of the General Statutes); North Carolina Crime Victims Compensation Act (Chapter 15B of the General Statutes); North Carolina Consumer Finance Act (Article 15 of Chapter 53 of the General Statutes); North Carolina Firemen's and Rescue Squad Workers' Pension Fund (Article 86 of Chapter 58 of the General Statutes); Employment Security Law (Chapter 96 of the General Statutes); North Carolina Workers' Compensation Act (Article 1 of Chapter 97 of the General Statutes); and Programs of Public Assistance (Article 2 of Chapter 108A of the General Statutes).

(j) Section prevails over specified inconsistent law. -- Except to the extent otherwise provided in subsection (i) of this section, this section prevails over any inconsistent provision of an existing or future statute, rule, or regulation of this State unless the provision is contained in a statute of this State, refers expressly to this section, and states that the provision prevails over this section.

"§ 25-9-407. Restrictions on creation or enforcement of security interest in leasehold interest or in lessor's residual interest.

(a) Term restricting assignment generally ineffective. -- Except as otherwise provided in subsection (b) of this section, a term in a lease agreement is ineffective to the extent that it:

(1) Prohibits, restricts, or requires the consent of a party to the lease to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, an interest of a party under the lease contract or in the lessor's residual interest in the goods; or

(2) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the lease.

(b) Effectiveness of certain terms. -- Except as otherwise provided in G.S. 25-2A-303(7), a term described in subdivision (a)(2) of this section is effective to the extent that there is:

(1) A transfer by the lessee of the lessee's right of possession or use of the goods in violation of the term; or

(2) A delegation of a material performance of either party to the lease contract in violation of the term.

(c) Security interest not material impairment. -- The creation, attachment, perfection, or enforcement of a security interest in the lessor's interest under the lease contract or the lessor's residual interest in the goods is not a transfer that materially impairs the lessee's prospect of obtaining return performance or materially changes the duty of or materially increases the burden or risk imposed on the lessee within the purview of G.S. 25-2A-303(4) unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the lessor.

"**§ 25-9-408. Restrictions on assignment of promissory notes, health-care-insurance receivables, and certain general intangibles ineffective.**

(a) Term restricting assignment generally ineffective. -- Except as otherwise provided in subsection (b) of this section, a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health-care-insurance receivable, or general intangible, is ineffective to the extent that the term:

(1) Would impair the creation, attachment, or perfection of a security interest; or

(2) Provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(b) Applicability of subsection (a) to sales of certain rights to payment. -- Subsection (a) of this section applies to a security interest in a payment intangible or

promissory note only if the security interest arises out of a sale of the payment intangible or promissory note.

(c) Legal restrictions on assignment generally ineffective. -- A rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:

(1) Would impair the creation, attachment, or perfection of a security interest; or

(2) Provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(d) Limitation on ineffectiveness under subsections (a) and (c). -- To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or general intangible or a rule of law, statute, or regulation described in subsection (c) of this section would be effective under law other than this Article but is ineffective under subsection (a) or (c) of this section, the creation, attachment, or perfection of a security interest in the promissory note, health-care-insurance receivable, or general intangible:

(1) Is not enforceable against the person obligated on the promissory note or the account debtor;

(2) Does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;

(3) Does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;

(4) Does not entitle the secured party to use or assign the debtor's rights under the promissory note, health-care-insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health-care-insurance receivable, or general intangible;

(5) Does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and

(6) Does not entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable, or general intangible.

(e) Section prevails over specified inconsistent law. -- Except to the extent otherwise provided in subsection (f) of this section, this section prevails over any inconsistent provision of an existing or future statute, rule, or regulation of this State unless the provision is contained in a statute of this State, refers expressly to this section, and states that the provision prevails over this section.

(f) Inapplicability. -- Subsection (c) of this section does not apply to an assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, a right the transfer of which is prohibited or restricted by any of the following statutes to the extent that the statute is inconsistent with subsection (c) of this section: North Carolina Structured Settlement Act (Article 44B of Chapter 1 of the General Statutes); North Carolina Crime Victims Compensation Act (Chapter 15B of the General Statutes); North Carolina Consumer Finance Act (Article 15 of Chapter 53 of the General Statutes); North Carolina Firemen's and Rescue Squad Workers' Pension Fund (Article 86 of Chapter 58 of the General Statutes); Employment Security Law (Chapter 96 of the General Statutes); North Carolina Workers' Compensation Act (Article 1 of Chapter 97 of the General Statutes); and Programs of Public Assistance (Article 2 of Chapter 108A of the General Statutes).

"**§ 25-9-409. Restrictions on assignment of letter-of-credit rights ineffective.**

(a) Term or law restricting assignment generally ineffective. -- A term in a letter of credit or a rule of law, statute, regulation, custom, or practice applicable to the letter of credit which prohibits, restricts, or requires the consent of an applicant, issuer, or nominated person to a beneficiary's assignment of or creation of a security interest in a letter-of-credit right is ineffective to the extent that the term or rule of law, statute, regulation, custom, or practice:

(1) Would impair the creation, attachment, or perfection of a security interest in the letter-of-credit right; or

(2) Provides that the assignment or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the letter-of-credit right.

(b) Limitation on ineffectiveness under subsection (a). -- To the extent that a term in a letter of credit is ineffective under subsection (a) of this section but would be effective under law other than this Article or a custom or practice applicable to the letter of credit, to the transfer of a right to draw or otherwise demand performance under the letter of credit, or to the assignment of a right to proceeds of the letter of credit, the creation, attachment, or perfection of a security interest in the letter-of-credit right:

(1) Is not enforceable against the applicant, issuer, nominated person, or transferee beneficiary;

(2) Imposes no duties or obligations on the applicant, issuer, nominated person, or transferee beneficiary; and

(3) Does not require the applicant, issuer, nominated person, or transferee beneficiary to recognize the security interest, pay or

render performance to the secured party, or accept payment or other performance from the secured party.

"PART 5.

"FILING.

"SUBPART 1. FILING OFFICE; CONTENTS AND EFFECTIVENESS OF FINANCING STATEMENT.

"§ 25-9-501. Filing offices.

(a) Filing offices. -- Except as otherwise provided in subsection (b) of this section, if the local law of this State governs perfection of a security interest or agricultural lien, the office in which to file a financing statement to perfect the security interest or agricultural lien is:

(1) The office designated for the filing or recording of a record of a mortgage on the related real property, if:

a. The collateral is as-extracted collateral or timber to be cut; or

b. The financing statement is filed as a fixture filing and the collateral is goods that are or are to become fixtures; or

(2) The office of the Secretary of State, in all other cases, including a case in which the collateral is goods that are or are to become fixtures and the financing statement is not filed as a fixture filing.

(b) Filing office for transmitting utilities. -- The office in which to file a financing statement to perfect a security interest in collateral, including fixtures, of a transmitting utility is the office of the Secretary of State. The financing statement also constitutes a fixture filing as to the collateral indicated in the financing statement which is or is to become fixtures.

"§ 25-9-502. Contents of financing statement; record of mortgage as financing statement; time of filing financing statement.

(a) Sufficiency of financing statement. -- Subject to subsection (b) of this section, a financing statement is sufficient only if it:

(1) Provides the name of the debtor;

(2) Provides the name of the secured party or a representative of the secured party; and

(3) Indicates the collateral covered by the financing statement.

(b) Real-property-related financing statements. -- Except as otherwise provided in G.S. 25-9-501(b), to be sufficient, a financing statement that covers as-extracted collateral or timber to be cut, or which is filed as a fixture filing and covers goods that are or are to become fixtures, must satisfy subsection (a) of this section and also:

(1) Indicate that it covers this type of collateral;

(2) Indicate that it is to be filed in the real property records;

(3) Provide a description of the real property to which the collateral is related; and

(4) If the debtor does not have an interest of record in the real property, provide the name of a record owner.

(c) Record of mortgage as financing statement. -- A record of a mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if:

(1) The record indicates the goods or accounts that it covers;

(2) The goods are or are to become fixtures related to the real property described in the record or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut;

(3) The record satisfies the requirements for a financing statement in this section other than an indication that it is to be filed in the real property records; and

(4) The record is duly recorded.

(d) Filing before security agreement or attachment. -- A financing statement may be filed before a security agreement is made or a security interest otherwise attaches.

"§ 25-9-503. Name of debtor and secured party.

(a) Sufficiency of debtor's name. -- A financing statement sufficiently provides the name of the debtor:

(1) If the debtor is a registered organization, only if the financing statement provides the name of the debtor indicated on the public record of the debtor's jurisdiction of organization which shows the debtor to have been organized;

(2) If the debtor is a decedent's estate, only if the financing statement provides the name of the decedent and indicates that the debtor is an estate;

(3) If the debtor is a trust or a trustee acting with respect to property held in trust, only if the financing statement:

a. Provides the name specified for the trust in its organic documents or, if no name is specified, provides the name of the settlor and additional information sufficient to distinguish the debtor from other trusts having one or more of the same settlors; and

b. Indicates, in the debtor's name or otherwise, that the debtor is a trust or is a trustee acting with respect to property held in trust; and

(4) In other cases:

a. If the debtor has a name, only if it provides the individual or organizational name of the debtor; and

b. If the debtor does not have a name, only if it provides the names of the partners, members, associates, or other persons comprising the debtor.

(b) Additional debtor-related information. -- A financing statement that provides the name of the debtor in accordance with subsection (a) of this section is not rendered ineffective by the absence of:

(1) A trade name or other name of the debtor; or

(2) Unless required under sub-subdivision (a)(4)b. of this section, names of partners, members, associates, or other persons comprising the debtor.

(c) Debtor's trade name insufficient. -- A financing statement that provides only the debtor's trade name does not sufficiently provide the name of the debtor.

(d) Representative capacity. -- Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement.

(e) Multiple debtors and secured parties. -- A financing statement may provide the name of more than one debtor and the name of more than one secured party.

"§ 25-9-504. Indication of collateral.

A financing statement sufficiently indicates the collateral that it covers if the financing statement provides:

(1) A description of the collateral pursuant to G.S. 25-9-108; or

(2) An indication that the financing statement covers all assets or all personal property.

"§ 25-9-505. Filing and compliance with other statutes and treaties for consignments, leases, other bailments, and other transactions.

(a) Use of terms other than 'debtor' and 'secured party.' -- A consignor, lessor, or other bailor of goods, a licensor, or a buyer of a payment intangible or promissory note may file a financing statement, or may comply with a statute or treaty described in G.S. 25-9-311(a), using the terms 'consignor', 'consignee', 'lessor', 'lessee', 'bailor', 'bailee', 'licensor', 'licensee', 'owner', 'registered owner', 'buyer', 'seller', or words of similar import, instead of the terms 'secured party' and 'debtor'.

(b) Effect of financing statement under subsection (a). -- This Part applies to the filing of a financing statement under subsection (a) of this section and, as appropriate, to compliance that is equivalent to filing a financing statement under G.S. 25-9-311(b), but the filing or compliance is not of itself a factor in determining whether the collateral secures an obligation. If it is determined for another reason that the collateral secures an obligation, a security interest held by the consignor, lessor, bailor, licensor, owner, or buyer which attaches to the collateral is perfected by the filing or compliance.

"§ 25-9-506. Effect of errors or omissions.

(a) Minor errors and omissions. -- A financing statement substantially satisfying the requirements of this Part is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading.

(b) Financing statement seriously misleading. -- Except as otherwise provided in subsection (c) of this section, a financing statement that fails sufficiently to provide the name of the debtor in accordance with G.S. 25-9-503(a) is seriously misleading.

(c) Financing statement not seriously misleading. -- If a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with G.S. 25-9-503(a), the name provided does not make the financing statement seriously misleading.

(d) 'Debtor's correct name.' -- For purposes of G.S. 25-9-508(b), the 'debtor's correct name' in subsection (c) of this section means the correct name of the new debtor.

"**§ 25-9-507. Effect of certain events on effectiveness of financing statement.**

(a) Disposition. -- A filed financing statement remains effective with respect to collateral that is sold, exchanged, leased, licensed, or otherwise disposed of and in which a security interest or agricultural lien continues, even if the secured party knows of or consents to the disposition.

(b) Information becoming seriously misleading. -- Except as otherwise provided in subsection (c) of this section and G.S. 25-9-508, a financing statement is not rendered ineffective if, after the financing statement is filed, the information provided in the financing statement becomes seriously misleading under G.S. 25-9-506.

(c) Change in debtor's name. -- If a debtor so changes its name that a filed financing statement becomes seriously misleading under G.S. 25-9-506:

(1) The financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within four months after, the change; and

(2) The financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the change, unless an amendment to the financing statement which renders the financing statement not seriously misleading is filed within four months after the change.

"**§ 25-9-508. Effectiveness of financing statement if new debtor becomes bound by security agreement.**

(a) Financing statement naming original debtor. -- Except as otherwise provided in this section, a filed financing statement naming an original debtor is effective to perfect a security interest in collateral in which a new debtor has or acquires rights to the extent that the financing statement would have been effective had the original debtor acquired rights in the collateral.

(b) Financing statement becoming seriously misleading. -- If the difference between the name of the original debtor and that of the new debtor causes a filed financing statement that is effective under subsection (a) of this section to be seriously misleading under G.S. 25-9-506:

(1) The financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within four months after, the new debtor becomes bound under G.S. 25-9-203(d); and

(2) The financing statement is not effective to perfect a security interest in collateral acquired by the new debtor more than four months after the new debtor becomes bound under G.S. 25-9-203(d) unless an initial financing statement providing the name of the new debtor is filed before the expiration of that time.

(c) When section not applicable. -- This section does not apply to collateral as to which a filed financing statement remains effective against the new debtor under G.S. 25-9-507(a).

"§ 25-9-509. Persons entitled to file a record.

(a) Person entitled to file record. -- A person may file an initial financing statement, amendment that adds collateral covered by a financing statement, or amendment that adds a debtor to a financing statement only if:

(1) The debtor authorizes the filing in an authenticated record or pursuant to subsection (b) or (c) of this section; or

(2) The person holds an agricultural lien that has become effective at the time of filing and the financing statement covers only collateral in which the person holds an agricultural lien.

(b) Security agreement as authorization. -- By authenticating or becoming bound as debtor by a security agreement, a debtor or new debtor authorizes the filing of an initial financing statement, and an amendment, covering:

(1) The collateral described in the security agreement; and

(2) Property that becomes collateral under G.S. 25-9-315(a)(2), whether or not the security agreement expressly covers proceeds.

(c) Acquisition of collateral as authorization. -- By acquiring collateral in which a security interest or agricultural lien continues under G.S. 25-9-315(a)(1), a debtor authorizes the filing of an initial financing statement, and an amendment, covering the collateral and property that becomes collateral under G.S. 25-9-315(a)(2).

(d) Person entitled to file certain amendments. -- A person may file an amendment other than an amendment that adds collateral covered by a financing statement or an amendment that adds a debtor to a financing statement only if:

(1) The secured party of record authorizes the filing; or

(2) The amendment is a termination statement for a financing statement as to which the secured party of record has failed to file or send a termination statement as required by G.S. 25-9-513(a) or (c), the debtor authorizes the filing, and the termination statement indicates that the debtor authorized it to be filed.

(e) Multiple secured parties of record. -- If there is more than one secured party of record for a financing statement, each secured party of record may authorize the filing of an amendment under subsection (d) of this section.

"§ 25-9-510. Effectiveness of filed record.

(a) Filed record effective if authorized. -- A filed record is effective only to the extent that it was filed by a person that may file it under G.S. 25-9-509.

(b) Authorization by one secured party of record. -- A record authorized by one secured party of record does not affect the financing statement with respect to another secured party of record.

(c) Continuation statement not timely filed. -- A continuation statement that is not filed within the six-month period prescribed by G.S. 25-9-515(d) is ineffective.

"§ 25-9-511. Secured party of record.

(a) Secured party of record. -- A secured party of record with respect to a financing statement is a person whose name is provided as the name of the secured party or a representative of the secured party in an initial financing statement that has been filed. If an initial financing statement is filed under G.S. 25-9-514(a), the assignee named in the initial financing statement is the secured party of record with respect to the financing statement.

(b) Amendment naming secured party of record. -- If an amendment of a financing statement which provides the name of a person as a secured party or a representative of a secured party is filed, the person named in the amendment is a secured party of record. If an amendment is filed under G.S. 25-9-514(b), the assignee named in the amendment is a secured party of record.

(c) Amendment deleting secured party of record. -- A person remains a secured party of record until the filing of an amendment of the financing statement which deletes the person.

"§ 25-9-512. Amendment of financing statement.

(a) Amendment of information in financing statement. -- Subject to G.S. 25-9-509, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or, subject to subsection (e) of this section, otherwise amend the information provided in, a financing statement by filing an amendment that:

(1) Identifies, by its file number, the initial financing statement to which the amendment relates; and

(2) If the amendment relates to an initial financing statement filed in a filing office described in G.S. 25-9-501(a)(1), provides the name of the debtor and the information specified in G.S. 25-9-502(b).

(b) Period of effectiveness not affected. -- Except as otherwise provided in G.S. 25-9-515, the filing of an amendment does not extend the period of effectiveness of the financing statement.

(c) Effectiveness of amendment adding collateral. -- A financing statement that is amended by an amendment that adds collateral is effective as to the added collateral only from the date of the filing of the amendment.

(d) Effectiveness of amendment adding debtor. -- A financing statement that is amended by an amendment that adds a debtor is effective as to the added debtor only from the date of the filing of the amendment.

(e) Certain amendments ineffective. -- An amendment is ineffective to the extent it:

(1) Purports to delete all debtors and fails to provide the name of a debtor to be covered by the financing statement; or

(2) Purports to delete all secured parties of record and fails to provide the name of a new secured party of record.

"§ 25-9-513. Termination statement.

(a) Consumer goods. -- A secured party shall cause the secured party of record for a financing statement to file a termination statement for the financing statement if the financing statement covers consumer goods and:

(1) There is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

(2) The debtor did not authorize the filing of the initial financing statement.

(b) Time for compliance with subsection (a). -- To comply with subsection (a) of this section, a secured party shall cause the secured party of record to file the termination statement:

(1) Within one month after there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

(2) If earlier, within 20 days after the secured party receives an authenticated demand from a debtor.

(c) Other collateral. -- In cases not governed by subsection (a) of this section, within 20 days after a secured party receives an authenticated demand from a debtor, the secured party shall cause the secured party of record for a financing statement to send to the debtor a termination statement for the financing statement or file the termination statement in the filing office if:

(1) Except in the case of a financing statement covering accounts or chattel paper that has been sold or goods that are the subject of a consignment, there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value;

(2) The financing statement covers accounts or chattel paper that has been sold but as to which the account debtor or other person obligated has discharged its obligation;

(3) The financing statement covers goods that were the subject of a consignment to the debtor but are not in the debtor's possession; or

(4) The debtor did not authorize the filing of the initial financing statement.

(d) Effect of filing termination statement. -- Except as otherwise provided in G.S. 25-9-510, upon the filing of a termination statement with the filing office, the financing statement to which the termination statement relates ceases to be effective. Except as otherwise provided in G.S. 25-9-510, for purposes of G.S. 25-9-519(g), 25-9-522(a), and 25-9-523(c), the filing with the filing office of a termination statement relating to a financing statement that indicates that the debtor is a transmitting utility also causes the effectiveness of the financing statement to lapse.

"§ 25-9-514. Assignment of powers of secured party of record.

(a) Assignment reflected on initial financing statement. -- Except as otherwise provided in subsection (c) of this section, an initial financing statement may reflect an assignment of all of the secured party's power to authorize an amendment to the

financing statement by providing the name and mailing address of the assignee as the name and address of the secured party.

(b) Assignment of filed financing statement. -- Except as otherwise provided in subsection (c) of this section, a secured party of record may assign of record all or part of its power to authorize an amendment to a financing statement by filing in the filing office an amendment of the financing statement which:

(1) Identifies, by its file number, the initial financing statement to which it relates;

(2) Provides the name of the assignor; and

(3) Provides the name and mailing address of the assignee.

(c) Assignment of record of mortgage. -- An assignment of record of a security interest in a fixture covered by a record of a mortgage which is effective as a financing statement filed as a fixture filing under G.S. 25-9-502(c) may be made only by an assignment of record of the mortgage in the manner provided by law of this State other than this Chapter.

"§ 25-9-515. Duration and effectiveness of financing statement; effect of lapsed financing statement.

(a) Five-year effectiveness. -- Except as otherwise provided in subsections (b), (e), (f), and (g) of this section, a filed financing statement is effective for a period of five years after the date of filing.

(b) Public-finance or manufactured-home transaction. -- Except as otherwise provided in subsections (e), (f), and (g) of this section, an initial financing statement filed in connection with a public-finance transaction or manufactured-home transaction is effective for a period of 30 years after the date of filing if it indicates that it is filed in connection with a public-finance transaction or manufactured-home transaction.

(c) Lapse and continuation of financing statement. -- The effectiveness of a filed financing statement lapses on the expiration of the period of its effectiveness unless before the lapse a continuation statement is filed pursuant to subsection (d) of this section. Upon lapse, a financing statement ceases to be effective and any security interest or agricultural lien that was perfected by the financing statement becomes unperfected, unless the security interest is perfected otherwise. If the security interest or agricultural lien becomes unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the collateral for value.

(d) When continuation statement may be filed. -- A continuation statement may be filed only within six months before the expiration of the five-year period specified in subsection (a) of this section or the 30-year period specified in subsection (b) of this section, whichever is applicable.

(e) Effect of filing continuation statement. -- Except as otherwise provided in G.S. 25-9-510, upon timely filing of a continuation statement, the effectiveness of the initial financing statement continues for a period of five years commencing on the day on which the financing statement would have become ineffective in the absence of the filing. Upon the expiration of the five-year period, the financing statement lapses in the same manner as provided in subsection (c) of this section, unless, before the

lapse, another continuation statement is filed pursuant to subsection (d) of this section. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the initial financing statement.

(f) Transmitting utility financing statement. -- If a debtor is a transmitting utility and a filed financing statement so indicates, the financing statement is effective until a termination statement is filed.

(g) Record of mortgage as financing statement. -- A record of a mortgage that is effective as a financing statement filed as a fixture filing under G.S. 25-9-502(c) remains effective as a financing statement filed as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real property.

"**§ 25-9-516. What constitutes filing; effectiveness of filing.**

(a) What constitutes filing. -- Except as otherwise provided in subsection (b) of this section, communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.

(b) Refusal to accept record; filing does not occur. -- Filing does not occur with respect to a record that a filing office refuses to accept because:

(1) The record is not communicated by a method or medium of communication authorized by the filing office;

(2) An amount equal to or greater than the applicable filing fee is not tendered;

(3) The filing office is unable to index the record because:

a. In the case of an initial financing statement, the record does not provide a name for the debtor;

b. In the case of an amendment or correction statement, the record:

1. Does not identify the initial financing statement as required by G.S. 25-9-512 or G.S. 25-9-518, as applicable; or

2. Identifies an initial financing statement whose effectiveness has lapsed under G.S. 25-9-515;

c. In the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's last name; or

d. In the case of a record filed in the filing office described in G.S. 25-9-501(a)(1), the record does not provide a sufficient description of the real property to which it relates;

(4) In the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;

(5) In the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not:

a. Provide a mailing address for the debtor;

b. Indicate whether the debtor is an individual or an organization; or

c. If the financing statement indicates that the debtor is an organization, provide:

1. A type of organization for the debtor;

2. A jurisdiction of organization for the debtor; or

3. An organizational identification number for the debtor or indicate that the debtor has none;

(6) In the case of an assignment reflected in an initial financing statement under G.S. 25-9-514(a) or an amendment filed under G.S. 25-9-514(b), the record does not provide a name and mailing address for the assignee; or

(7) In the case of a continuation statement, the record is not filed within the six-month period prescribed by G.S. 25-9-515(d).

(c) Rules applicable to subsection (b). -- For purposes of subsection (b) of this section:

(1) A record does not provide information if the filing office is unable to read or decipher the information; and

(2) A record that does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by G.S. 25-9-512, 25-9-514, or 25-9-518, is an initial financing statement.

(d) Refusal to accept record; record effective as filed record. -- A record that is communicated to the filing office with tender of the filing fee, but which the filing office refuses to accept for a reason other than one set forth in subsection (b) of this section, is effective as a filed record except as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the record from the files.

"§ 25-9-517. Effect of indexing errors.

The failure of the filing office to index a record correctly does not affect the effectiveness of the filed record.

"§ 25-9-518. Claim concerning inaccurate or wrongfully filed record.

(a) Correction statement. -- A person may file in the filing office a correction statement with respect to a record indexed there under the person's name if the person believes that the record is inaccurate or was wrongfully filed.

(b) Sufficiency of correction statement. -- A correction statement must:

(1) Identify the record to which it relates by the file number assigned to the initial financing statement to which the record relates;

(2) Indicate that it is a correction statement; and

(3) Provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.

(c) Record not affected by correction statement. -- The filing of a correction statement does not affect the effectiveness of an initial financing statement or other filed record.

"SUBPART 2. DUTIES AND OPERATION OF FILING OFFICE.

"§ 25-9-519. Numbering, maintaining, and indexing records; communicating information provided in records.

(a) Filing office duties. -- For each record filed in a filing office, the filing office shall:

(1) Assign a unique number to the filed record;

(2) Create a record that bears the number assigned to the filed record and the date and time of filing;

(3) Maintain the filed record for public inspection; and

(4) Index the filed record in accordance with subsections (c), (d), and (e) of this section.

(b) File number. -- Except as otherwise provided in subsection (i) of this section, a file number assigned after January 1, 2003, must include a digit that:

(1) Is mathematically derived from or related to the other digits of the file number; and

(2) Aids the filing office in determining whether a number communicated as the file number includes a single-digit or transpositional error.

(c) Indexing: general. -- Except as otherwise provided in subsections (d) and (e) of this section, the filing office shall:

(1) Index an initial financing statement according to the name of the debtor and index all filed records relating to the initial financing statement in a manner that associates with one another an initial financing statement and all filed records relating to the initial financing statement; and

(2) Index a record that provides a name of a debtor which was not previously provided in the financing statement to which the record relates also according to the name that was not previously provided.

(d) Indexing: real-property-related financing statement. -- If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, the filing office shall index it:

(1) Under the names of the debtor and of each owner of record shown on the financing statement as if they were the mortgagors under a mortgage of the real property described; and

(2) To the extent that the law of this State provides for indexing of records of mortgages under the name of the mortgagee, under the name of the secured party as if the secured party were the mortgagee thereunder, or, if indexing is by description, as if the financing statement were a record of a mortgage of the real property described.

(e) Indexing; real-property-related assignment. -- If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, the filing office shall index an assignment filed under G.S. 25-9-514(a) or an amendment filed under G.S. 25-9-514(b):

(1) Under the name of the assignor as grantor; and

(2) To the extent that the law of this State provides for indexing a record of the assignment of a mortgage under the name of the assignee, under the name of the assignee.

(f) Retrieval and association capability. -- The filing office shall maintain a capability:

(1) To retrieve a record by the name of the debtor and by the file number assigned to the initial financing statement to which the record relates; and

(2) To associate and retrieve with one another an initial financing statement and each filed record relating to the initial financing statement.

(g) Removal of debtor's name. -- The filing office may not remove a debtor's name from the index until one year after the effectiveness of a financing statement naming the debtor lapses under G.S. 25-9-515 with respect to all secured parties of record.

(h) Timeliness of filing office performance. -- The filing office shall perform the acts required by subsections (a) through (e) of this section at the time and in the manner prescribed by filing-office rule, but after January 1, 2003, not later than three business days after the filing office receives the record in question.

(i) Inapplicability to real-property-related filing office. -- Subsection (b) of this section does not apply to a filing office described in G.S. 25-9-501(a)(1).

"§ 25-9-520. Acceptance and refusal to accept record.

(a) Mandatory refusal to accept record. -- A filing office shall refuse to accept a record for filing for a reason set forth in G.S. 25-9-516(b) and may refuse to accept a record for filing only for a reason set forth in G.S. 25-9-516(b).

(b) Communication concerning refusal. -- If a filing office refuses to accept a record for filing, it shall communicate to the person that presented the record the fact of and reason for the refusal and the date and time the record would have been filed had the filing office accepted it. The communication must be made at the time and in the manner prescribed by filing-office rule but in no event more than three business days after the filing office receives the record.

(c) When filed financing statement effective. -- A filed financing statement satisfying G.S. 25-9-502(a) and (b) is effective, even if the filing office is required to

refuse to accept it for filing under subsection (a) of this section. However, G.S. 25-9-338 applies to a filed financing statement providing information described in G.S. 25-9-516(b)(5) which is incorrect at the time the financing statement is filed.

(d) Separate application to multiple debtors. -- If a record communicated to a filing office provides information that relates to more than one debtor, this Part applies as to each debtor separately.

"§ 25-9-521. Reserved.

"§ 25-9-522. Maintenance and destruction of records.

(a) Post-lapse maintenance and retrieval of information. -- The filing office shall maintain a record of the information provided in a filed financing statement for at least one year after the effectiveness of the financing statement has lapsed under G.S. 25-9-515 with respect to all secured parties of record. The record must be retrievable by using the name of the debtor and by using the file number assigned to the initial financing statement to which the record relates.

(b) Destruction of written records. -- Except to the extent that a statute governing disposition of public records provides otherwise, the filing office immediately may destroy any written record evidencing a financing statement. However, if the filing office destroys a written record, it shall maintain another record of the financing statement which complies with subsection (a) of this section.

"§ 25-9-523. Information from filing office.

(a) Acknowledgment of filing written record. -- If a person that files a written record requests an acknowledgment of the filing, the filing office shall send to the person an image of the record showing the number assigned to the record pursuant to G.S. 25-9-519(a)(1) and the date and time of the filing of the record. However, if the person furnishes a copy of the record to the filing office, the filing office may instead:

(1) Note upon the copy the number assigned to the record pursuant to G.S. 25-9-519(a)(1) and the date and time of the filing of the record; and

(2) Send the copy to the person.

(b) Acknowledgment of filing other record. -- If a person files a record other than a written record, the filing office shall communicate to the person an acknowledgment that provides:

(1) The information in the record;

(2) The number assigned to the record pursuant to G.S. 25-9-519(a)(1); and

(3) The date and time of the filing of the record.

(c) Communication of requested information. -- Except as otherwise provided in subsection (g) of this section, the filing office shall communicate or otherwise make available in a record, for which it shall not be liable, the following information to any person that requests it:

(1) Whether there is on file on a date and time specified by the filing office, but not a date earlier than three business days before the filing office receives the request, any financing statement that:

a. Designates a particular debtor;

b. Has not lapsed under G.S. 25-9-515 with respect to all secured parties of record; and

c. If the request so states, has lapsed under G.S. 25-9-515 and a record of which is maintained by the filing office under G.S. 25-9-522(a);

(2) The date and time of filing of each financing statement; and

(3) The information provided in each financing statement.

(d) Medium for communicating information. -- In complying with its duty under subsection (c) of this section, the filing office may communicate information in any medium. However, if requested, the filing office shall communicate information by issuing a record that can be admitted into evidence in the courts of this State without extrinsic evidence of its authenticity.

(e) Timeliness of filing office performance. -- The filing office shall perform the acts required by subsections (a) through (d) of this section at the time and in the manner prescribed by filing-office rule, but after January 1, 2003, for a filing office described in G.S. 25-9-501(a)(2), not later than three business days after the filing office receives the request.

(f) Reserved.

(g) Inapplicability to real-property-related filing office. -- Subsection (c) of this section does not apply to a filing office described in G.S. 25-9-501(a)(1) with respect to financing statements filed on or after the effective date of this act.

"**§ 25-9-524. Delay by filing office.**

Delay by the filing office beyond a time limit prescribed by this Part is excused if:

(1) The delay is caused by interruption of communication or computer facilities, war, emergency conditions, failure of equipment, or other circumstances beyond control of the filing office; and

(2) The filing office exercises reasonable diligence under the circumstances.

"**§ 25-9-525. Fees.**

(a) Initial financing statement or other record: general rule. -- Except as otherwise provided in subsection (e) of this section, the fee for filing and indexing a record under this Part is:

(1) Thirty dollars ($30.00) if the record is communicated in writing and consists of one or two pages;

(2) Forty-five dollars ($45.00) if the record is communicated in writing and consists of more than two pages, plus two dollars ($2.00) for each page over 10 pages; and

(3) Thirty dollars ($30.00) if the record is communicated by another medium authorized by filing-office rule.

(b) Reserved.

(c) Number of names. -- The number of names required to be indexed does not affect the amount of the fee in subsection (a) of this section.

(d) Response to information request. -- The fee for responding to a request for information from the filing office, including for communicating whether there is on file any financing statement naming a particular debtor, is:

(1) Thirty dollars ($30.00) if the request is communicated in writing; and

(2) Thirty dollars ($30.00) if the request is communicated by another medium authorized by filing-office rule.

Upon request the filing office shall furnish a copy of any filed financing statement or statement of assignment for a uniform fee of two dollars ($2.00) per page. This subsection does not require that a fee be charged for remote access searching of the filing office database.

(e) Record of mortgage. -- This section does not require a fee with respect to a record of a mortgage which is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut under G.S. 25-9-502(c). However, the recording and satisfaction fees that otherwise would be applicable to the record of the mortgage apply.

"§ 25-9-526. Filing-office rules.

(a) Adoption of filing-office rules. -- The Secretary of State shall adopt and publish rules to implement the Secretary of State's responsibilities under this Part. The filing-office rules must be consistent with this Article.

(b) Harmonization of rules. -- To keep the filing-office rules and practices of the filing office in harmony with the rules and practices of filing offices in other jurisdictions that enact substantially this Part, and to keep the technology used by the filing office compatible with the technology used by filing offices in other jurisdictions that enact substantially this Part, the Secretary of State, so far as is consistent with the purposes, policies, and provisions of this Article, in adopting, amending, and repealing filing-office rules, may:

(1) Consult with filing offices in other jurisdictions that enact substantially this Part;

(2) Consult the most recent version of the Model Rules promulgated by the International Association of Corporate Administrators or any successor organization; and

(3) Take into consideration the rules and practices of, and the technology used by, filing offices in other jurisdictions that enact substantially this Part.

"PART 6.

"DEFAULT.

"SUBPART 1. DEFAULT AND ENFORCEMENT OF SECURITY INTEREST.

"§ 25-9-601. Rights after default; judicial enforcement; consignor or buyer of accounts, chattel paper, payment intangibles, or promissory notes.

(a) Rights of secured party after default. -- After default, a secured party has the rights provided in this Part and, except as otherwise provided in G.S. 25-9-602, those provided by agreement of the parties. A secured party:

(1) May reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure; and

(2) If the collateral is documents, may proceed either as to the documents or as to the goods they cover.

(b) Rights and duties of secured party in possession or control. -- A secured party in possession of collateral or control of collateral under G.S. 25-9-104, 25-9-105, 25-9-106, or 25-9-107 has the rights and duties provided in G.S. 25-9-207.

(c) Rights cumulative; simultaneous exercise. -- The rights under subsections (a) and (b) of this section are cumulative and may be exercised simultaneously.

(d) Rights of debtor and obligor. -- Except as otherwise provided in subsection (g) of this section and G.S. 25-9-605, after default, a debtor and an obligor have the rights provided in this Part and by agreement of the parties.

(e) Lien of levy after judgment. -- If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

(1) The date of perfection of the security interest or agricultural lien in the collateral;

(2) The date of filing a financing statement covering the collateral; or

(3) Any date specified in a statute under which the agricultural lien was created.

(f) Execution sale. -- A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this Article.

(g) Consignor or buyer of certain rights to payment. -- Except as otherwise provided in G.S. 25-9-607(c), this Part imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

"**§ 25-9-602. Waiver and variance of rights and duties.**

Except as otherwise provided in G.S. 25-9-624, to the extent that they give rights to a debtor or obligor and impose duties on a secured party, the debtor or obligor may not waive or vary the rules stated in the following listed sections:

(1) G.S. 25-9-207(b)(4)c., which deals with use and operation of the collateral by the secured party;

(2) G.S. 25-9-210, which deals with requests for an accounting and requests concerning a list of collateral and statement of account;

(3) G.S. 25-9-607(c), which deals with collection and enforcement of collateral;

(4) G.S. 25-9-608(a) and G.S. 25-9-615(c) to the extent that they deal with application or payment of noncash proceeds of collection, enforcement, or disposition;

(5) G.S. 25-9-608(a) and G.S. 25-9-615(d) to the extent that they require accounting for or payment of surplus proceeds of collateral;

(6) G.S. 25-9-609 to the extent that it imposes upon a secured party that takes possession of collateral without judicial process the duty to do so without breach of the peace;

(7) G.S. 25-9-610(b), 25-9-611, 25-9-613, and 25-9-614, which deal with disposition of collateral;

(8) G.S. 25-9-615(f), which deals with calculation of a deficiency or surplus when a disposition is made to the secured party, a person related to the secured party, or a secondary obligor;

(9) G.S. 25-9-616, which deals with explanation of the calculation of a surplus or deficiency;

(10) G.S. 25-9-620, 25-9-621, and 25-9-622, which deal with acceptance of collateral in satisfaction of obligation;

(11) G.S. 25-9-623, which deals with redemption of collateral;

(12) G.S. 25-9-624, which deals with permissible waivers; and

(13) G.S. 25-9-625 and G.S. 25-9-626, which deal with the secured party's liability for failure to comply with this Article.

"§ 25-9-603. Agreement on standards concerning rights and duties.

(a) Agreed standards. -- The parties may determine by agreement the standards measuring the fulfillment of the rights of a debtor or obligor and the duties of a secured party under a rule stated in G.S. 25-9-602 if the standards are not manifestly unreasonable.

(b) Agreed standards inapplicable to breach of peace. -- Subsection (a) of this section does not apply to the duty under G.S. 25-9-609 to refrain from breaching the peace.

"§ 25-9-604. Procedure if security agreement covers real property or fixtures.

(a) Enforcement: personal and real property. -- If a security agreement covers both personal and real property, a secured party may proceed:

(1) Under this Part as to the personal property without prejudicing any rights with respect to the real property; or

(2) As to both the personal property and the real property in accordance with the rights with respect to the real property, in which case the other provisions of this Part do not apply.

(b) Enforcement: fixtures. -- Subject to subsection (c) of this section, if a security agreement covers goods that are or become fixtures, a secured party may proceed:

(1) Under this Part; or

(2) In accordance with the rights with respect to real property, in which case the other provisions of this Part do not apply.

(c) Removal of fixtures. -- Subject to the other provisions of this Part, if a secured party holding a security interest in fixtures has priority over all owners and encumbrancers of the real property, the secured party, after default, may remove the collateral from the real property.

(d) Injury caused by removal. -- A secured party that removes collateral shall promptly reimburse any encumbrancer or owner of the real property, other than the debtor, for the cost of repair of any physical injury caused by the removal. The secured party need not reimburse the encumbrancer or owner for any diminution in value of the real property caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

"§ 25-9-605. Unknown debtor or secondary obligor.

A secured party does not owe a duty based on its status as secured party:

(1) To a person that is a debtor or obligor, unless the secured party knows:

a. That the person is a debtor or obligor;

b. The identity of the person; and

c. How to communicate with the person; or

(2) To a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

a. That the person is a debtor; and

b. The identity of the person.

"§ 25-9-606. Time of default for agricultural lien.

For purposes of this Part, a default occurs in connection with an agricultural lien at the time the secured party becomes entitled to enforce the lien in accordance with the statute under which it was created.

"§ 25-9-607. Collection and enforcement by secured party.

(a) Collection and enforcement generally. -- If so agreed, and in any event after default, a secured party:

(1) May notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party;

(2) May take any proceeds to which the secured party is entitled under G.S. 25-9-315;

(3) May enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral;

(4) If it holds a security interest in a deposit account perfected by control under G.S. 25-9-104(a)(1), may apply the balance of the deposit account to the obligation secured by the deposit account; and

(5) If it holds a security interest in a deposit account perfected by control under G.S. 25-9-104(a)(2) or (a)(3), may instruct the bank

to pay the balance of the deposit account to or for the benefit of the secured party.

(b) Nonjudicial enforcement of mortgage. -- If necessary to enable a secured party to exercise under subdivision (a)(3) of this section the right of a debtor to enforce a mortgage nonjudicially, the secured party may record in the office in which a record of the mortgage is recorded:

(1) A copy of the security agreement that creates or provides for a security interest in the obligation secured by the mortgage; and

(2) The secured party's sworn affidavit in recordable form stating that:

a. A default has occurred; and

b. The secured party is entitled to enforce the mortgage nonjudicially.

(c) Commercially reasonable collection and enforcement. -- A secured party shall proceed in a commercially reasonable manner if the secured party:

(1) Undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral; and

(2) Is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.

(d) Expenses of collection and enforcement. -- A secured party may deduct from the collections made pursuant to subsection (c) of this section reasonable expenses of collection and enforcement, including reasonable attorney's fees and legal expenses incurred by the secured party.

(e) Duties to secured party not affected. -- This section does not determine whether an account debtor, bank, or other person obligated on collateral owes a duty to a secured party.

"§ 25-9-608. Application of proceeds of collection or enforcement; liability for deficiency and right to surplus.

(a) Application of proceeds, surplus, and deficiency if obligation secured. -- If a security interest or agricultural lien secures payment or performance of an obligation, the following rules apply:

(1) A secured party shall apply or pay over for application the cash proceeds of collection or enforcement under G.S. 25-9-607 in the following order to:

a. The reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

b. The satisfaction of obligations secured by the security interest or agricultural lien under which the collection or enforcement is made; and

c. The satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party

receives an authenticated demand for proceeds before distribution of the proceeds is completed.

(2) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder complies, the secured party need not comply with the holder's demand under sub-subdivision (a)(1)c. of this section.

(3) A secured party need not apply or pay over for application noncash proceeds of collection and enforcement under G.S. 25-9-607 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(4) A secured party shall account to and pay a debtor for any surplus, and the obligor is liable for any deficiency.

(b) No surplus or deficiency in sales of certain rights to payment. -- If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes, the debtor is not entitled to any surplus, and the obligor is not liable for any deficiency.

"§ 25-9-609. Secured party's right to take possession after default.

(a) Possession; rendering equipment unusable; disposition on debtor's premises. -- After default, a secured party:

(1) May take possession of the collateral; and

(2) Without removal, may render equipment unusable and dispose of collateral on a debtor's premises under G.S. 25-9-610.

(b) Judicial and nonjudicial process. -- A secured party may proceed under subsection (a) of this section:

(1) Pursuant to judicial process; or

(2) Without judicial process, if it proceeds without breach of the peace.

(c) Assembly of collateral. -- If so agreed, and in any event after default, a secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties.

"§ 25-9-610. Disposition of collateral after default.

(a) Disposition after default. -- After default, a secured party may sell, lease, license, or otherwise dispose of any or all of the collateral in its present condition or following any commercially reasonable preparation or processing.

(b) Commercially reasonable disposition. -- Every aspect of a disposition of collateral, including the method, manner, time, place, and other terms, must be commercially reasonable. If commercially reasonable, a secured party may dispose of collateral by public or private proceedings, by one or more contracts, as a unit or in parcels, and at any time and place and on any terms.

(c) Purchase by secured party. -- A secured party may purchase collateral:

(1) At a public disposition; or

(2) At a private disposition only if the collateral is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations.

(d) Warranties on disposition. -- A contract for sale, lease, license, or other disposition includes the warranties relating to title, possession, quiet enjoyment, and the like which by operation of law accompany a voluntary disposition of property of the kind subject to the contract.

(e) Disclaimer of warranties. -- A secured party may disclaim or modify warranties under subsection (d) of this section:

(1) In a manner that would be effective to disclaim or modify the warranties in a voluntary disposition of property of the kind subject to the contract of disposition; or

(2) By communicating to the purchaser a record evidencing the contract for disposition and including an express disclaimer or modification of the warranties.

(f) Record sufficient to disclaim warranties. -- A record is sufficient to disclaim warranties under subsection (e) of this section if it indicates 'There is no warranty relating to title, possession, quiet enjoyment, or the like in this disposition' or uses words of similar import.

"§ 25-9-611. Notification before disposition of collateral.

(a) 'Notification date.' -- In this section, 'notification date' means the earlier of the date on which:

(1) A secured party sends to the debtor and any secondary obligor an authenticated notification of disposition; or

(2) The debtor and any secondary obligor waive the right to notification.

(b) Notification of disposition required. -- Except as otherwise provided in subsection (d) of this section, a secured party that disposes of collateral under G.S. 25-9-610 shall send to the persons specified in subsection (c) of this section a reasonable authenticated notification of disposition.

(c) Persons to be notified. -- To comply with subsection (b) of this section, the secured party shall send an authenticated notification of disposition to:

(1) The debtor;

(2) Any secondary obligor; and

(3) If the collateral is other than consumer goods:

a. Any other person from which the secured party has received, before the notification date, an authenticated notification of a claim of an interest in the collateral;

b. Any other secured party or lienholder that, 10 days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

1. Identified the collateral;

2. Was indexed under the debtor's name as of that date; and
3. Was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date; and

c. Any other secured party that, 10 days before the notification date, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in G.S. 25-9-311(a).

(d) Subsection (b) inapplicable: perishable collateral; recognized market. -- Subsection (b) of this section does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.

(e) Compliance with sub-subdivision (c)(3)b. -- A secured party complies with the requirement for notification prescribed by sub-subdivision (c)(3)b. of this section if:

(1) Not later than 20 days or earlier than 30 days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in sub-subdivision (c)(3)b. of this section; and

(2) Before the notification date, the secured party:

a. Did not receive a response to the request for information; or

b. Received a response to the request for information and sent an authenticated notification of disposition to each secured party or other lienholder named in that response whose financing statement covered the collateral.

"§ 25-9-612. Timeliness of notification before disposition of collateral.

(a) Reasonable time is question of fact. -- Except as otherwise provided in subsection (b) of this section, whether a notification is sent within a reasonable time is a question of fact.

(b) Ten-day period sufficient in nonconsumer transaction. -- In a transaction other than a consumer transaction, a notification of disposition sent after default and 10 days or more before the earliest time of disposition set forth in the notification is sent within a reasonable time before the disposition.

"§ 25-9-613. Contents and form of notification before disposition of collateral: general.

Except in a consumer-goods transaction, the following rules apply:

(1) The contents of a notification of disposition are sufficient if the notification:

a. Describes the debtor and the secured party;

b. Describes the collateral that is the subject of the intended disposition;

c. States the method of intended disposition;

d. States that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and

e. States the time and place of a public disposition or the time after which any other disposition is to be made.

(2) Whether the contents of a notification that lacks any of the information specified in subdivision (1) of this section are nevertheless sufficient is a question of fact.

(3) The contents of a notification providing substantially the information specified in subdivision (1) of this section are sufficient, even if the notification includes:

a. Information not specified by that subdivision; or

b. Minor errors that are not seriously misleading.

(4) A particular phrasing of the notification is not required.

(5) The following form of notification and the form appearing in G.S. 25-9-614(3), when completed, each provides sufficient information:

NOTIFICATION OF DISPOSITION OF COLLATERAL

To: [Name of debtor, obligor, or other person to which the notification is sent]

From: [Name, address, and telephone number of secured party]

Name of Debtor(s): [Include only if debtor(s) is/are not an addressee]

[For a public disposition:]

We will sell [or lease or license, as applicable] the [describe collateral] [to the highest qualified bidder] in public as follows:

Day and Date: _____

Time: _____

Place: _____

[For a private disposition:]

We will sell [or lease or license, as applicable] the [describe collateral] privately sometime after [day and date].

You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell [or lease or license, as applicable] [for a charge of $_____].

You may request an accounting by calling us at [telephone number]

"**§ 25-9-614. Contents and form of notification before disposition of collateral: consumer-goods transaction.**

In a consumer-goods transaction, the following rules apply:

(1) A notification of disposition must provide the following information:

a. The information specified in G.S. 25-9-613(1);

b. A description of any liability for a deficiency of the person to which the notification is sent;

c. A telephone number from which the amount that must be paid to the secured party to redeem the collateral under G.S. 25-9-623 is available; and

d. A telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available.

(2) A particular phrasing of the notification is not required.

(3) The following form of notification, when completed, provides sufficient information:

[Name and address of secured party]

[Date]

NOTICE OF OUR PLAN TO SELL PROPERTY

[Name and address of any obligor who is also a debtor]

Subject: [Identification of Transaction]

We have your [describe collateral], because you broke promises in our agreement.

[For a public disposition:]

We will sell [describe collateral] at public sale. A sale could include a lease or license. The sale will be held as follows:

Date: _____

Time: _____

Place: _____

You may attend the sale and bring bidders if you want.

[For a private disposition:]

We will sell [describe collateral] at private sale sometime after [date]. A sale could include a lease or license.

The money that we get from the sale (after paying our costs) will reduce the amount you owe. If we get less money than you owe, you [will or will not, as applicable] still owe us the difference. If we get more money than you owe, you will get the extra money, unless we must pay it to someone else.

You can get the property back at any time before we sell it by paying us the full amount you owe (not just the past due payments), including our expenses. To learn the exact amount you must pay, call us at [telephone number].

If you want us to explain to you in writing how we have figured the amount that you owe us, you may call us at [telephone number] or write us at [secured party's address] and request a written explanation. [We will charge you $_____

for the explanation if we sent you another written explanation of the amount you owe us within the last six months.]

If you need more information about the sale call us at [telephone number] [or write us at [secured party's address]].

We are sending this notice to the following other people who have an interest in [describe collateral] or who owe money under your agreement:
[Names of all other debtors and obligors, if any]

(4) A notification in the form of subdivision (3) of this section is sufficient, even if additional information appears at the end of the form.

(5) A notification in the form of subdivision (3) of this section is sufficient, even if it includes errors in information not required by subdivision (1) of this section, unless the error is misleading with respect to rights arising under this Article.

(6) If a notification under this section is not in the form of subdivision (3) of this section, law other than this Article determines the effect of including information not required by subdivision (1) of this section.

"§ 25-9-615. Application of proceeds of disposition; liability for deficiency and right to surplus.

(a) Application of proceeds. -- A secured party shall apply or pay over for application the cash proceeds of disposition under G.S. 25-9-610 in the following order to:

(1) The reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing, and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

(2) The satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made;

(3) The satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if:

a. The secured party receives from the holder of the subordinate security interest or other lien an authenticated demand for proceeds before distribution of the proceeds is completed; and

b. In a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor; and

(4) A secured party that is a consignor of the collateral if the secured party receives from the consignor an authenticated demand for proceeds before distribution of the proceeds is completed.

(b) Proof of subordinate interest. -- If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under subdivision (a)(3) of this section.

(c) Application of noncash proceeds. -- A secured party need not apply or pay over for application noncash proceeds of disposition under G.S. 25-9-610 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(d) Surplus or deficiency if obligation secured. -- If the security interest under which a disposition is made secures payment or performance of an obligation, after making the payments and applications required by subsection (a) of this section and permitted by subsection (c) of this section:

(1) Unless subdivision (a)(4) of this section requires the secured party to apply or pay over cash proceeds to a consignor, the secured party shall account to and pay a debtor for any surplus; and

(2) The obligor is liable for any deficiency.

(e) No surplus or deficiency in sales of certain rights to payment. -- If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes:

(1) The debtor is not entitled to any surplus; and

(2) The obligor is not liable for any deficiency.

(f) Calculation of surplus or deficiency in disposition to person related to secured party. -- The surplus or deficiency following a disposition is calculated based on the amount of proceeds that would have been realized in a disposition complying with this Part to a transferee other than the secured party, a person related to the secured party, or a secondary obligor if:

(1) The transferee in the disposition is the secured party, a person related to the secured party, or a secondary obligor; and

(2) The amount of proceeds of the disposition is significantly below the range of proceeds that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

(g) Cash proceeds received by junior secured party. -- A secured party that receives cash proceeds of a disposition in good faith and without knowledge that the receipt violates the rights of the holder of a security interest or other lien that is not subordinate to the security interest or agricultural lien under which the disposition is made:

(1) Takes the cash proceeds free of the security interest or other lien;

(2) Is not obligated to apply the proceeds of the disposition to the satisfaction of obligations secured by the security interest or other lien; and

(3) Is not obligated to account to or pay the holder of the security interest or other lien for any surplus.

"§ 25-9-616. Explanation of calculation of surplus or deficiency.

(a) Definitions. -- In this section:

(1) 'Explanation' means a writing that:

a. States the amount of the surplus or deficiency;

b. Provides an explanation in accordance with subsection (c) of this section of how the secured party calculated the surplus or deficiency;

c. States, if applicable, that future debits, credits, charges, including additional credit service charges or interest, rebates, and expenses may affect the amount of the surplus or deficiency; and

d. Provides a telephone number or mailing address from which additional information concerning the transaction is available.

(2) 'Request' means a record:

a. Authenticated by a debtor or consumer obligor;

b. Requesting that the recipient provide an explanation; and

c. Sent after disposition of the collateral under G.S. 25-9-610.

(b) Explanation of calculation. -- In a consumer-goods transaction in which the debtor is entitled to a surplus or a consumer obligor is liable for a deficiency under G.S. 25-9-615, the secured party shall:

(1) Send an explanation to the debtor or consumer obligor, as applicable, after the disposition and:

a. Before or when the secured party accounts to the debtor and pays any surplus or first makes written demand on the consumer obligor after the disposition for payment of the deficiency; and

b. Within 14 days after receipt of a request; or

(2) In the case of a consumer obligor who is liable for a deficiency, within 14 days after receipt of a request, send to the consumer obligor a record waiving the secured party's right to a deficiency.

(c) Required information. -- To comply with sub-subdivision (a)(1)b. of this section, a writing must provide the following information in the following order:

(1) The aggregate amount of obligations secured by the security interest under which the disposition was made, and, if the amount reflects a rebate of unearned interest or credit service charge, an indication of that fact, calculated as of a specified date:

a. If the secured party takes or receives possession of the collateral after default, not more than 35 days before the secured party takes or receives possession; or

b. If the secured party takes or receives possession of the collateral before default or does not take possession of the collateral, not more than 35 days before the disposition;

(2) The amount of proceeds of the disposition;

(3) The aggregate amount of the obligations after deducting the amount of proceeds;

(4) The amount, in the aggregate or by type, and types of expenses, including expenses of retaking, holding, preparing for disposition, processing, and disposing of the collateral, and attorney's fees secured by the collateral which are known to the secured party and relate to the current disposition;

(5) The amount, in the aggregate or by type, and types of credits, including rebates of interest or credit service charges, to which the obligor is known to be entitled and which are not reflected in the amount in subdivision (1) of this subsection; and

(6) The amount of the surplus or deficiency.

(d) Substantial compliance. -- A particular phrasing of the explanation is not required. An explanation complying substantially with the requirements of subsection (a) of this section is sufficient, even if it includes minor errors that are not seriously misleading.

(e) Charges for responses. -- A debtor or consumer obligor is entitled without charge to one response to a request under this section during any six-month period in which the secured party did not send to the debtor or consumer obligor an explanation pursuant to subdivision (b)(1) of this section. The secured party may require payment of a charge not exceeding twenty-five dollars ($25.00) for each additional response.

"§ 25-9-617. Rights of transferee of collateral.

(a) Effects of disposition. -- A secured party's disposition of collateral after default:

(1) Transfers to a transferee for value all of the debtor's rights in the collateral;

(2) Discharges the security interest under which the disposition is made; and

(3) Discharges any subordinate security interest or other subordinate lien.

(b) Rights of good-faith transferee. -- A transferee that acts in good faith takes free of the rights and interests described in subsection (a) of this section, even if the secured party fails to comply with this Article or the requirements of any judicial proceeding.

(c) Rights of other transferee. -- If a transferee does not take free of the rights and interests described in subsection (a) of this section, the transferee takes the collateral subject to:

(1) The debtor's rights in the collateral;

(2) The security interest or agricultural lien under which the disposition is made; and

(3) Any other security interest or other lien.

"§ 25-9-618. Rights and duties of certain secondary obligors.

(a) Rights and duties of secondary obligor. -- A secondary obligor acquires the rights and becomes obligated to perform the duties of the secured party after the secondary obligor:

(1) Receives an assignment of a secured obligation from the secured party;

(2) Receives a transfer of collateral from the secured party and agrees to accept the rights and assume the duties of the secured party; or

(3) Is subrogated to the rights of a secured party with respect to collateral.

(b) Effect of assignment, transfer, or subrogation. -- An assignment, transfer, or subrogation described in subsection (a) of this section:

(1) Is not a disposition of collateral under G.S. 25-9-610; and

(2) Relieves the secured party of further duties under this Article.

"§ 25-9-619. Transfer of record or legal title.

(a) 'Transfer statement.' -- In this section, 'transfer statement' means a record authenticated by a secured party stating:

(1) That the debtor has defaulted in connection with an obligation secured by specified collateral;

(2) That the secured party has exercised its postdefault remedies with respect to the collateral;

(3) That, by reason of the exercise, a transferee has acquired the rights of the debtor in the collateral; and

(4) The name and mailing address of the secured party, debtor, and transferee.

(b) Effect of transfer statement. -- A transfer statement entitles the transferee to the transfer of record of all rights of the debtor in the collateral specified in the statement in any official filing, recording, registration, or certificate-of-title system covering the collateral. If a transfer statement is presented with the applicable fee and request form to the official or office responsible for maintaining the system, the official or office shall:

(1) Accept the transfer statement;

(2) Promptly amend its records to reflect the transfer; and

(3) If applicable, issue a new appropriate certificate of title in the name of the transferee.

(c) Transfer not a disposition; no relief of secured party's duties. -- A transfer of the record or legal title to collateral to a secured party under subsection (b) of this section or otherwise is not of itself a disposition of collateral under this Article and does not of itself relieve the secured party of its duties under this Article.

"§ 25-9-620. Acceptance of collateral in full or partial satisfaction of obligation; compulsory disposition of collateral.

(a) Conditions to acceptance in satisfaction. -- Except as otherwise provided in subsection (g) of this section, a secured party may accept collateral in full or partial satisfaction of the obligation it secures only if:

(1) The debtor consents to the acceptance under subsection (c) of this section;

(2) The secured party does not receive, within the time set forth in subsection (d) of this section, a notification of objection to the proposal authenticated by:

a. A person to which the secured party was required to send a proposal under G.S. 25-9-621; or

b. Any other person, other than the debtor, holding an interest in the collateral subordinate to the security interest that is the subject of the proposal;

(3) If the collateral is consumer goods, the collateral is not in the possession of the debtor when the debtor consents to the acceptance; and

(4) Subsection (e) of this section does not require the secured party to dispose of the collateral or the debtor waives the requirement pursuant to G.S. 25-9-624.

(b) Purported acceptance ineffective. -- A purported or apparent acceptance of collateral under this section is ineffective unless:

(1) The secured party consents to the acceptance in an authenticated record or sends a proposal to the debtor; and

(2) The conditions of subsection (a) of this section are met.

(c) Debtor's consent. -- For purposes of this section:

(1) A debtor consents to an acceptance of collateral in partial satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default; and

(2) A debtor consents to an acceptance of collateral in full satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default or the secured party:

a. Sends to the debtor after default a proposal that is unconditional or subject only to a condition that collateral not in the possession of the secured party be preserved or maintained;

b. In the proposal, proposes to accept collateral in full satisfaction of the obligation it secures; and

c. Does not receive a notification of objection authenticated by the debtor within 20 days after the proposal is sent.

(d) Effectiveness of notification. -- To be effective under subdivision (a)(2) of this section, a notification of objection must be received by the secured party:

(1) In the case of a person to which the proposal was sent pursuant to G.S. 25-9-621, within 20 days after notification was sent to that person; and

(2) In other cases:

a. Within 20 days after the last notification was sent pursuant to G.S. 25-9-621; or

b. If a notification was not sent, before the debtor consents to the acceptance under subsection (c) of this section.

(e) Mandatory disposition of consumer goods. -- A secured party that has taken possession of collateral shall dispose of the collateral pursuant to G.S. 25-9-610 within the time specified in subsection (f) of this section if:

(1) Sixty percent (60%) of the cash price has been paid in the case of a purchase-money security interest in consumer goods; or

(2) Sixty percent (60%) of the principal amount of the obligation secured has been paid in the case of a non-purchase-money security interest in consumer goods.

(f) Compliance with mandatory disposition requirement. -- To comply with subsection (e) of this section, the secured party shall dispose of the collateral:

(1) Within 90 days after taking possession; or

(2) Within any longer period to which the debtor and all secondary obligors have agreed in an agreement to that effect entered into and authenticated after default.

(g) No partial satisfaction in consumer transaction. -- In a consumer transaction, a secured party may not accept collateral in partial satisfaction of the obligation it secures.

"§ 25-9-621. Notification of proposal to accept collateral.

(a) Persons to which proposal to be sent. -- A secured party that desires to accept collateral in full or partial satisfaction of the obligation it secures shall send its proposal to:

(1) Any person from which the secured party has received, before the debtor consented to the acceptance, an authenticated notification of a claim of an interest in the collateral;

(2) Any other secured party or lienholder that, 10 days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

a. Identified the collateral;

b. Was indexed under the debtor's name as of that date; and

c. Was filed in the office or offices in which to file a financing statement against the debtor covering the collateral as of that date; and

(3) Any other secured party that, 10 days before the debtor consented to the acceptance, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in G.S. 25-9-311(a).

(b) Proposal to be sent to secondary obligor in partial satisfaction. -- A secured party that desires to accept collateral in partial satisfaction of the obligation it secures

shall send its proposal to any secondary obligor in addition to the persons described in subsection (a) of this section.

"§ 25-9-622. Effect of acceptance of collateral.

(a) Effect of acceptance. -- A secured party's acceptance of collateral in full or partial satisfaction of the obligation it secures:

(1) Discharges the obligation to the extent consented to by the debtor;

(2) Transfers to the secured party all of a debtor's rights in the collateral;

(3) Discharges the security interest or agricultural lien that is the subject of the debtor's consent and any subordinate security interest or other subordinate lien; and

(4) Terminates any other subordinate interest.

(b) Discharge of subordinate interest notwithstanding noncompliance. -- A subordinate interest is discharged or terminated under subsection (a) of this section, even if the secured party fails to comply with this Article.

"§ 25-9-623. Right to redeem collateral.

(a) Persons that may redeem. -- A debtor, any secondary obligor, or any other secured party or lienholder may redeem collateral.

(b) Requirements for redemption. -- To redeem collateral, a person shall tender:

(1) Fulfillment of all obligations secured by the collateral; and

(2) The reasonable expenses and attorney's fees described in G.S. 25-9-615(a)(1).

(c) When redemption may occur. -- A redemption may occur at any time before a secured party:

(1) Has collected collateral under G.S. 25-9-607;

(2) Has disposed of collateral or entered into a contract for its disposition under G.S. 25-9-610; or

(3) Has accepted collateral in full or partial satisfaction of the obligation it secures under G.S. 25-9-622.

"§ 25-9-624. Waiver.

(a) Waiver of disposition notification. -- A debtor or secondary obligor may waive the right to notification of disposition of collateral under G.S. 25-9-611 only by an agreement to that effect entered into and authenticated after default.

(b) Waiver of mandatory disposition. -- A debtor may waive the right to require disposition of collateral under G.S. 25-9-620(e) only by an agreement to that effect entered into and authenticated after default.

(c) Waiver of redemption right. -- Except in a consumer-goods transaction, a debtor or secondary obligor may waive the right to redeem collateral under G.S. 25-9-623 only by an agreement to that effect entered into and authenticated after default.

"SUBPART 2. NONCOMPLIANCE WITH ARTICLE.

"§ 25-9-625. Remedies for secured party's failure to comply with Article.

(a) Judicial orders concerning noncompliance. -- If it is established that a secured party is not proceeding in accordance with this Article, a court may order or restrain

collection, enforcement, or disposition of collateral on appropriate terms and conditions.

(b) Damages for noncompliance. -- Subject to subsections (c), (d), and (f) of this section, a person is liable for damages in the amount of any loss caused by a failure to comply with this Article. Loss caused by a failure to comply may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing.

(c) Persons entitled to recover damages; statutory damages in consumer-goods transaction. -- Except as otherwise provided in G.S. 25-9-628:

(1) A person that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages under subsection (b) of this section for its loss; and

(2) If the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this Part may recover for that failure in any event an amount not less than the credit service charge plus ten percent (10%) of the principal amount of the obligation or the time-price differential plus ten percent (10%) of the cash price.

(d) Recovery when deficiency eliminated or reduced. -- A debtor whose deficiency is eliminated under G.S. 25-9-626 may recover damages for the loss of any surplus. However, a debtor or secondary obligor whose deficiency is eliminated or reduced under G.S. 25-9-626 may not otherwise recover under subsection (b) of this section for noncompliance with the provisions of this Part relating to collection, enforcement, disposition, or acceptance.

(e) Statutory damages: noncompliance with specified provisions. -- In addition to any damages recoverable under subsection (b) of this section, the debtor, consumer obligor, or person named as a debtor in a filed record, as applicable, may recover five hundred dollars ($500.00) in each case from a person that:

(1) Fails to comply with G.S. 25-9-208;

(2) Fails to comply with G.S. 25-9-209;

(3) Files a record that the person is not entitled to file under G.S. 25-9-509(a);

(4) Fails to cause the secured party of record to file or send a termination statement as required by G.S. 25-9-513(a) or (c);

(5) Fails to comply with G.S. 25-9-616(b)(1) and whose failure is part of a pattern, or consistent with a practice, of noncompliance; or

(6) Fails to comply with G.S. 25-9-616(b)(2).

(f) Statutory damages: noncompliance with G.S. 25-9-210. -- A debtor or consumer obligor may recover damages under subsection (b) of this section and, in addition, five hundred dollars ($500.00) in each case from a person that, without reasonable cause, fails to comply with a request under G.S. 25-9-210. A recipient of a request under G.S. 25-9-210 which never claimed an interest in the collateral or

obligations that are the subject of a request under that section has a reasonable excuse for failure to comply with the request within the meaning of this subsection.

(g) Limitation of security interest: noncompliance with G.S. 25-9-210. -- If a secured party fails to comply with a request regarding a list of collateral or a statement of account under G.S. 25-9-210, the secured party may claim a security interest only as shown in the list or statement included in the request as against a person that is reasonably misled by the failure.

"§ 25-9-626. Action in which deficiency or surplus is in issue.

(a) Applicable rules if amount of deficiency or surplus in issue. -- In an action arising from a transaction, other than a consumer transaction, in which the amount of a deficiency or surplus is in issue, the following rules apply:

(1) A secured party need not prove compliance with the provisions of this Part relating to collection, enforcement, disposition, or acceptance unless the debtor or a secondary obligor places the secured party's compliance in issue.

(2) If the secured party's compliance is placed in issue, the secured party has the burden of establishing that the collection, enforcement, disposition, or acceptance was conducted in accordance with this Part.

(3) Except as otherwise provided in G.S. 25-9-628, if a secured party fails to prove that the collection, enforcement, disposition, or acceptance was conducted in accordance with the provisions of this Part relating to collection, enforcement, disposition, or acceptance, the liability of a debtor or a secondary obligor for a deficiency is limited to an amount by which the sum of the secured obligation, expenses, and attorney's fees exceeds the greater of:

a. The proceeds of the collection, enforcement, disposition, or acceptance; or

b. The amount of proceeds that would have been realized had the noncomplying secured party proceeded in accordance with the provisions of this Part relating to collection, enforcement, disposition, or acceptance.

(4) For purposes of sub-subdivision (a)(3)b. of this section, the amount of proceeds that would have been realized is equal to the sum of the secured obligation, expenses, and attorney's fees unless the secured party proves that the amount is less than that sum.

(5) If a deficiency or surplus is calculated under G.S. 25-9-615(f), the debtor or obligor has the burden of establishing that the amount of proceeds of the disposition is significantly below the range of prices that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

(b) Nonconsumer transactions; no inference. -- The limitation of the rules in subsection (a) of this section to transactions other than consumer transactions is

intended to leave to the court the determination of the proper rules in consumer transactions. The court may not infer from that limitation the nature of the proper rule in consumer transactions and may continue to apply established approaches.

"**§ 25-9-627. Determination of whether conduct was commercially reasonable.**

(a) Greater amount obtainable under other circumstances; no preclusion of commercial reasonableness. -- The fact that a greater amount could have been obtained by a collection, enforcement, disposition, or acceptance at a different time or in a different method from that selected by the secured party is not of itself sufficient to preclude the secured party from establishing that the collection, enforcement, disposition, or acceptance was made in a commercially reasonable manner.

(b) Dispositions that are commercially reasonable. -- A disposition of collateral is made in a commercially reasonable manner if the disposition is made:

(1) In the usual manner on any recognized market;

(2) At the price current in any recognized market at the time of the disposition; or

(3) Otherwise in conformity with reasonable commercial practices among dealers in the type of property that was the subject of the disposition.

(c) Approval by court or on behalf of creditors. -- A collection, enforcement, disposition, or acceptance is commercially reasonable if it has been approved:

(1) In a judicial proceeding;

(2) By a bona fide creditors' committee;

(3) By a representative of creditors; or

(4) By an assignee for the benefit of creditors.

(d) Approval under subsection (c) of this section not necessary; absence of approval has no effect. -- Approval under subsection (c) of this section need not be obtained, and lack of approval does not mean that the collection, enforcement, disposition, or acceptance is not commercially reasonable.

"**§ 25-9-628. Nonliability and limitation on liability of secured party; liability of secondary obligor.**

(a) Limitation of liability of secured party for noncompliance with Article. -- Unless a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person:

(1) The secured party is not liable to the person, or to a secured party or lienholder that has filed a financing statement against the person, for failure to comply with this Article; and

(2) The secured party's failure to comply with this Article does not affect the liability of the person for a deficiency.

(b) Limitation of liability based on status as secured party. -- A secured party is not liable because of its status as secured party:

(1) To a person that is a debtor or obligor, unless the secured party knows:

a. That the person is a debtor or obligor;

b. The identity of the person; and
c. How to communicate with the person; or

(2) To a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:
a. That the person is a debtor; and
b. The identity of the person.

(c) Limitation of liability if reasonable belief that transaction not a consumer-goods transaction or consumer transaction. -- A secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer-goods transaction or a consumer transaction or that goods are not consumer goods, if the secured party's belief is based on its reasonable reliance on:

(1) A debtor's representation concerning the purpose for which collateral was to be used, acquired, or held; or

(2) An obligor's representation concerning the purpose for which a secured obligation was incurred.

(d) Limitation of liability for statutory damages. -- A secured party is not liable to any person under G.S. 25-9-625(c)(2) for its failure to comply with G.S. 25-9-616.

(e) Limitation of multiple liability for statutory damages. -- A secured party is not liable under G.S. 25-9-625(c)(2) more than once with respect to any one secured obligation.

"PART 7.
"TRANSITION.

"**§ 25-9-701. Effective date.**

This act takes effect on July 1, 2001. References in this Part to 'this act' refer to PARTS I, II, and III of the session law by which this Part is added to Article 9 of Chapter 25 of the General Statutes. References in this Part to 'former Article 9' are to Article 9 of Chapter 25 of the General Statutes as in effect immediately before the effective date of this act.

"**§ 25-9-702. Savings clause.**

(a) Pre-effective-date transactions or liens. -- Except as otherwise provided in this Part, this act applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before the effective date of this act.

(b) Continuing validity. -- Except as otherwise provided in subsection (c) of this section and G.S. 25-9-703 through G.S. 25-9-709:

(1) Transactions and liens that were not governed by former Article 9, were validly entered into or created before the effective date of this act, and would be subject to this act if they had been entered into or created after the effective date of this act, and the rights, duties, and interests flowing from those transactions and liens remain valid after the effective date of this act; and

(2) The transactions and liens described in subdivision (1) of this subsection may be terminated, completed, consummated, and

enforced as required or permitted by this act or by the law that otherwise would apply if this act had not taken effect.

(c) Pre-effective-date proceedings. -- This act does not affect an action, case, or proceeding commenced before the effective date of this act.

"§ 25-9-703. Security interest perfected before effective date.

(a) Continuing priority over lien creditor: perfection requirements satisfied. -- A security interest that is enforceable immediately before the effective date of this act and would have priority over the rights of a person that becomes a lien creditor at that time is a perfected security interest under this act if, on the effective date of this act, the applicable requirements for enforceability and perfection under this act are satisfied without further action.

(b) Continuing priority over lien creditor: perfection requirements not satisfied. -- Except as otherwise provided in G.S. 25-9-705, if, immediately before the effective date of this act, a security interest is enforceable and would have priority over the rights of a person that becomes a lien creditor at that time, but the applicable requirements for enforceability or perfection under this act are not satisfied on the effective date of this act, the security interest:

(1) Is a perfected security interest for one year after the effective date of this act;

(2) Remains enforceable thereafter only if the security interest becomes enforceable under G.S. 25-9-203 before the year expires; and

(3) Remains perfected thereafter only if the applicable requirements for perfection under this act are satisfied before the year expires.

"§ 25-9-704. Security interest unperfected before effective date.

A security interest that is enforceable immediately before the effective date of this act but which would be subordinate to the rights of a person that becomes a lien creditor at that time:

(1) Remains an enforceable security interest for one year after the effective date of this act;

(2) Remains enforceable thereafter if the security interest becomes enforceable under G.S. 25-9-203 on the effective date of this act or within one year thereafter; and

(3) Becomes perfected:

a. Without further action, on the effective date of this act if the applicable requirements for perfection under this act are satisfied before or at that time; or

b. When the applicable requirements for perfection are satisfied if the requirements are satisfied after that time.

"§ 25-9-705. Effectiveness of action taken before effective date.

(a) Pre-effective-date action; one-year perfection period unless reperfected. -- If action, other than the filing of a financing statement, is taken before the effective date of this act and the action would have resulted in priority of a security interest over the rights of a person that becomes a lien creditor had the security interest become

enforceable before the effective date of this act, the action is effective to perfect a security interest that attaches under this act within one year after the effective date of this act. An attached security interest becomes unperfected one year after the effective date of this act unless the security interest becomes a perfected security interest under this act before the expiration of that period.

(b) Pre-effective-date filing. -- The filing of a financing statement before the effective date of this act is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under this act.

(c) Pre-effective-date filing in jurisdiction formerly governing perfection. -- This act does not render ineffective an effective financing statement that, before the effective date of this act, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in G.S. 25-9-103 of former Article 9. However, except as otherwise provided in subsections (d) and (e) of this section and G.S. 25-9-706, the financing statement ceases to be effective at the earlier of:

(1) The time the financing statement would have ceased to be effective under the law of the jurisdiction in which it is filed; and

(2) June 30, 2006.

(d) Continuation statement. -- The filing of a continuation statement after the effective date of this act does not continue the effectiveness of the financing statement filed before the effective date of this act. However, upon the timely filing of a continuation statement after the effective date of this act and in accordance with the law of the jurisdiction governing perfection as provided in Part 3 of this Article, the effectiveness of a financing statement filed in the same office in that jurisdiction before the effective date of this act continues for the period provided by the law of that jurisdiction.

(e) Application of subdivision (c)(2) to transmitting utility financing statement. -- Subdivision (c)(2) of this section applies to a financing statement that, before the effective date of this act, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in G.S. 25-9-103 of former Article 9 only to the extent that Part 3 of this Article provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(f) Application of Part 5. -- A financing statement that includes a financing statement filed before the effective date of this act and a continuation statement filed after the effective date of this act is effective only to the extent that it satisfies the requirements of Part 5 of this Article for an initial financing statement.

"§ 25-9-706. When initial financing statement suffices to continue effectiveness of financing statement.

(a) Initial financing statement in lieu of continuation statement. -- The filing of an initial financing statement in the office specified in G.S. 25-9-501 continues the effectiveness of a financing statement filed before the effective date of this act if:

(1) The filing of an initial financing statement in that office would be effective to perfect a security interest under this act;
(2) The pre-effective-date financing statement was filed in an office in another state or another office in this State; and
(3) The initial financing statement satisfies subsection (c) of this section.

(b) Period of continued effectiveness. -- The filing of an initial financing statement under subsection (a) of this section continues the effectiveness of the pre-effective-date financing statement:
(1) If the initial financing statement is filed before the effective date of this act, for the period provided in G.S. 25-9-403 of former Article 9 with respect to a financing statement; and
(2) If the initial financing statement is filed after the effective date of this act, for the period provided in G.S. 25-9-515 with respect to an initial financing statement.

(c) Requirement for initial financing statement under subsection (a). -- To be effective for purposes of subsection (a) of this section, an initial financing statement must:
(1) Satisfy the requirements of Part 5 of this Article for an initial financing statement;
(2) Identify the pre-effective-date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and
(3) Indicate that the pre-effective-date financing statement remains effective.

"**§ 25-9-707. Amendment of pre-effective-date financing statement.**

(a) 'Pre-effective-date financing statement'. -- In this section, 'pre-effective-date financing statement' means a financing statement filed before the effective date of this act.

(b) Applicable law. -- After the effective date of this act, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a pre-effective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in Part 3 of this Article. However, the effectiveness of a pre-effective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(c) Method of amending: general rule. -- Except as otherwise provided in subsection (d) of this section, if the law of this State governs perfection of a security interest, the information in a pre-effective-date financing statement may be amended after the effective date of this act only if:
(1) The pre-effective-date financing statement and an amendment are filed in the office specified in G.S. 25-9-501;

(2) An amendment is filed in the office specified in G.S. 25-9-501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies G.S. 25-9-706(c); or

(3) An initial financing statement that provides the information as amended and satisfies G.S. 25-9-706(c) is filed in the office specified in G.S. 25-9-501.

(d) Method of amending: continuation. -- If the law of this State governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement may be continued only under G.S. 25-9-705(d) and (f) or G.S. 25-9-706.

(e) Reserved.

(f) Method of amending: termination. -- If the law of this State governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement may be terminated after the effective date of this act only if:

(1) The pre-effective-date financing statement and a termination statement are filed in the office specified in G.S. 25-9-501; or

(2) A termination statement is filed in the office specified in G.S. 25-9-501 concurrently with the filing in that office of an initial financing statement that satisfies G.S. 25-9-706(c). Under this subsection, no separate fee shall be charged for the filing or indexing of the termination statement.

"§ 25-9-708. Persons entitled to file initial financing statement or continuation statement.

A person may file an initial financing statement or a continuation statement under this Part if:

(1) The secured party of record authorizes the filing; and

(2) The filing is necessary under this Part:

a. To continue the effectiveness of a financing statement filed before the effective date of this act; or

b. To perfect or continue the perfection of a security interest.

"§ 25-9-709. Priority.

(a) Law governing priority. -- This act determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before the effective date of this act, former Article 9 determines priority.

(b) Priority if security interest becomes enforceable under G.S. 25-9-203. -- For purposes of G.S. 25-9-322(a), the priority of a security interest that becomes enforceable under G.S. 25-9-203 dates from the effective date of this act if the security interest is perfected under this act by the filing of a financing statement before the effective date of this act which would not have been effective to perfect the security interest under former Article 9. This subsection does not apply to conflicting security interests each of which is perfected by the filing of such a financing statement.

"§ 25-9-710. Special transitional provision for maintaining and searching local-filing office records.

(a) In this section:

(1) 'Former-Article-9 records' means:
a. Financing statements and other records that have been filed in the local-filing office before July 1, 2001, and that are, or upon processing and indexing will be, reflected in the index maintained, as of June 30, 2001, by the local-filing office for financing statements and other records filed in the local-filing office before July 1, 2001; and
b. The index as of June 30, 2001.
The term does not include records presented to a local-filing office for filing after June 30, 2001, whether or not the records relate to financing statements filed in the local-filing office before July 1, 2001.
(2) 'Local-filing office' means a filing office, other than the office of the Secretary of State, that is designated as the proper place to file a financing statement under G.S. 25-9-401(1) of former Article 9. The term applies only with respect to a record that covers a type of collateral as to which the filing office is designated in that section as the proper place to file.

(b) A local-filing office must not accept for filing a record presented after June 30, 2001, whether or not the record relates to a financing statement filed in the local-filing office before July 1, 2001.

(c) Until July 1, 2008, each local-filing office must maintain all former Article 9 records in accordance with former Article 9. A former Article 9 record that is not reflected on the index maintained at June 30, 2001, by the local-filing office must be processed and indexed, and reflected on the index as of June 30, 2001, as soon as practicable but in any event no later than July 30, 2001.

(d) Until at least June 30, 2008, each local-filing office must respond to requests for information with respect to former Article 9 records relating to a debtor and issue certificates, in accordance with former Article 9. The fees charged for responding to requests for information relating to a debtor and issuing certificates with respect to former-Article-9 records must be the fees in effect under former Article 9 on June 30, 2001.

(e) After June 30, 2008, each local-filing office may remove and destroy, in accordance with any then applicable record retention law of this State, all former-Article-9 records, including the related index.

(f) This section does not apply, with respect to financing statements and other records, to a filing office in which mortgages or records of mortgages on real property are required to be filed or recorded, if:
(1) The collateral is timber to be cut or as-extracted collateral, or
(2) The record is or relates to a financing statement filed as a fixture and the collateral is goods that are or are to become fixtures."

Section 2.(a) Article 9 of Chapter 25 of the General Statutes, as enacted by Section 1 of this act, is amended by adding the following new section to read:
"**§ 25-9-521. Uniform form of written financing statement and amendment.**

(a) Initial financing statement form. -- A filing office that accepts written records may not refuse to accept a written initial financing statement in the following form and format except for a reason set forth in G.S. 25-9-516(b):

(b) Amendment form. -- A filing office that accepts written records may not refuse to accept a written record in the following form and format except for a reason set forth in G.S. 25-9-516(b)."

Section 2.(b) The Revisor of Statutes shall cause to be printed in G.S. 25-9-521(a), as enacted by subsection (a) of this section, the "National UCC Financing Statement (Form UCC1) (Rev. 07/29/98)" and the "National UCC Financing Statement Addendum (Form UCC1 Ad) (Rev. 07/29/98)" as reproduced in the official text of U.C.C. Article 9 (1999), which are hereby incorporated by reference into G.S. 25-9-521(a).

Section 2.(c) The Revisor of Statutes shall cause to be printed in G.S. 25-9-521(b), as enacted by subsection (a) of this section, the "National UCC Financing Statement Amendment (Form UCC3) (Rev. 07/29/98)" and the "National UCC Financing Statement Amendment Addendum (Form UCC3 Ad) (Rev. 07/29/98)" as reproduced in the official text of U.C.C. Article 9 (1999), which are hereby incorporated by reference into G.S. 25-9-521(b).

PART II. CONFORMING AMENDMENTS TO OTHER ARTICLES OF THE UNIFORM COMMERCIAL CODE.

Section 3. G.S. 25-1-105(2) reads as rewritten:

"(2) Where one of the following provisions of this Chapter specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. (G.S. 25-2-402).

Applicability of the article on bank deposits and collections. (G.S. 25-4-102).

Governing law in the article on Funds Transfers. (G.S. 25-4A-507).

Letters of Credit. (G.S. 25-5-116).

Bulk transfers subject to the article on bulk transfers. (G.S. 25-6-102).

Applicability of the article on investment securities. (G.S. 25-8-110).

~~Perfection provisions of the article on secured transactions. (G.S. 25-9-103).~~

Law governing perfection, the effect of perfection or nonperfection, and the priority of security interests and agricultural liens. (G.S. 25-9-301 through G.S. 25-9-307).

~~Governing law in the article on Funds Transfers. (G.S. 25-4A-507).~~

~~Letters of Credit. (G.S. 25-5-116).~~"

Section 4. G.S. 25-1-109 reads as rewritten:

"**§ 25-1-109. Section captions.**

Section captions are parts of this chapter. The subsection headings in Article 9 of this Chapter are not parts of this Chapter."

Section 5. G.S. 25-1-201(9) reads as rewritten:

"(9) 'Buyer in ordinary course of business' means a person ~~who~~ that buys goods in good ~~faith and~~ faith, without knowledge that the sale ~~to him is in violation of~~ violates the ~~ownership~~ rights ~~or security interest~~ of ~~a third party~~ another person in the ~~goods~~ goods, and ~~buys~~ in the ordinary course from a ~~person~~ person, other than a pawnbroker, in the business of selling goods of that ~~kind but does not include a pawnbroker. All persons who sell minerals or the like (including oil and gas) at wellhead or minehead shall be deemed to be persons~~ kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. ~~"Buying"~~ A buyer in ordinary course of business may ~~be~~ buy for ~~cash~~ cash, ~~or~~ by exchange of other ~~property~~ property, or on secured or unsecured ~~credit~~ credit, and ~~includes receiving~~ may acquire goods or documents of title under a preexisting contract for ~~sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.~~ sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under Article 2 of this Chapter may be a buyer in ordinary course of business. A person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt is not a buyer in ordinary course of business."

Section 6. G.S. 25-1-201(32) reads as rewritten:

"(32) 'Purchase' includes taking by sale, discount, negotiation, mortgage, pledge, lien, security interest, issue or re-issue, gift or any other voluntary transaction creating an interest in property."

Section 7. G.S. 25-1-201(37) reads as rewritten:

"(37) 'Security interest' means an interest in personal property or fixtures which secures payment or performance of an obligation. ~~The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (G.S. 25-2-401) is limited in effect to a reservation of a "security interest".~~ The term also includes any interest of a consignor and a buyer of ~~accounts or~~ accounts, chattel ~~paper which~~ paper, a payment intangible, or a promissory note in a transaction that is subject to Article 9 of this Chapter. The special property interest of a buyer of goods on identification of those goods to a contract for sale under G.S. 25-2-401 is not a 'security interest,' but a buyer may also acquire a 'security interest' by complying with Article 9 of this Chapter. ~~Unless a consignment is intended as security, reservation~~

~~of title thereunder is not a "security interest" but a consignment is in any event subject to the provisions on consignment sales (G.S. 25-2-326).~~ Except as otherwise provided in G.S. 25-2-505, the right of a seller or lessor of goods under Article 2 or 2A of this Chapter to retain or acquire possession of the goods is not a 'security interest', but a seller or lessor may also acquire a 'security interest' by complying with Article 9 of this Chapter. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (G.S. 25-2-401) is limited in effect to a reservation of a 'security interest'.

(a) Whether a transaction creates a lease or security interest is determined by the facts of each case; however, a transaction creates a security interest ~~if:~~ if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and:

(i) The original term of the lease is equal to or greater than the remaining economic life of the goods, or

(ii) The lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods, or

(iii) The lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement, or

(iv) The lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

(b) A transaction does not create a security interest merely because it provides that:

(i) The present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into,

(ii) The lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording, or registration fees, or service or maintenance costs with respect to the goods,

(iii) The lessee has an option to renew the lease or to become the owner of the goods,

(iv) The lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed, or

(v) The lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

(c) For purposes of this subsection (37):

(i) Additional consideration is not nominal if (i) when the option to renew the lease is granted to the lessee the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed, or (ii) when the option to become the owner of the goods is granted to the lessee the price is stated to be the fair market value of the goods determined at the time the option is to be performed. Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised;

(ii) 'Reasonably predictable' and 'remaining economic life of the goods' are to be determined with reference to the facts and circumstances at the time the transaction is entered into; and

(iii) 'Present value' means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into."

Section 8. G.S. 25-2-103(3) reads as rewritten:

"(3) The following definitions in other articles apply to this article:

'Check.' G.S. 25-3-104.

'Consignee.' G.S. 25-7-102.

'Consignor.' G.S. 25-7-102.

'Consumer goods.' ~~G.S. 25-9-109.~~ G.S. 25-9-102.

'Dishonor.' ~~G.S. 25-3-507.~~ G.S. 25-3-502.

'Draft.' G.S. 25-3-104."

Section 9. G.S. 25-2-210 reads as rewritten:

"§ 25-2-210. Delegation of performance; assignment of rights.

~~(1) A party may perform his duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having his original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.~~

~~(2) Unless otherwise agreed all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, or increase materially the burden or risk imposed on him by his contract, or impair materially his chance of obtaining return performance. A right to damages for breach of the whole contract, or a right arising out of the assignor's due performance of his entire obligation can be assigned despite agreement otherwise.~~

~~(3) Unless the circumstances indicate the contrary a prohibition of assignment of "the contract" is to be construed as barring only the delegation to the assignee of the assignor's performance.~~

~~(4) An assignment of "the contract" or of "all my rights under the contract" or an assignment in similar general terms is an assignment of rights and unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and its acceptance by the assignee constitutes a promise by him to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.~~

~~(5) The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may without prejudice to his rights against the assignor demand assurances from the assignee.~~

(1) A party may perform his duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having his original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.

(2) Except as otherwise provided in G.S. 25-9-406, unless otherwise agreed, all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, or increase materially the burden or risk imposed on him by his contract, or impair materially his chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor's due performance of his entire obligation can be assigned despite agreement otherwise.

(3) The creation, attachment, perfection, or enforcement of a security interest in the seller's interest under a contract is not a transfer that materially changes the duty of or increases materially the burden or risk imposed on the buyer or impairs materially the buyer's chance of obtaining return performance within the purview of subsection (2) of this section unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the seller. Even in that event, the creation, attachment, perfection, and enforcement of the security interest remain effective, but (i) the seller is liable to the buyer for damages caused by the delegation to the extent that the damages could not reasonably be prevented by the buyer, and (ii) a court having jurisdiction may grant other appropriate relief,

including cancellation of the contract for sale or an injunction against enforcement of the security interest or consummation of the enforcement.

(4) Unless the circumstances indicate the contrary, a prohibition of assignment of 'the contract' is to be construed as barring only the delegation to the assignee of the assignor's performance.

(5) An assignment of 'the contract' or of 'all my rights under the contract' or an assignment in similar general terms is an assignment of rights and unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and its acceptance by the assignee constitutes a promise by him to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.

(6) The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may without prejudice to his rights against the assignor demand assurances from the assignee."

Section 10. G.S. 25-2-326 reads as rewritten:

"**§ 25-2-326. Sale on approval and sale or return; ~~consignment sales and~~ rights of creditors.**

~~(1) Unless otherwise agreed, if delivered goods may be returned by the buyer even though they conform to the contract, the transaction is~~

~~(a) a "sale on approval" if the goods are delivered primarily for use, and~~

~~(b) a "sale or return" if the goods are delivered primarily for resale.~~

~~(2) Except as provided in subsection (3), goods held on approval are not subject to the claims of the buyer's creditors until acceptance; goods held on sale or return are subject to such claims while in the buyer's possession.~~

~~(3) Where goods are delivered to a person for sale and such person maintains a place of business at which he deals in goods of the kind involved, under a name other than the name of the person making delivery, then with respect to claims of creditors of the person conducting the business the goods are deemed to be on sale or return. The provisions of this subsection are applicable even though an agreement purports to reserve title to the person making delivery until payment or resale or uses such words as "on consignment" or "on memorandum." However, this subsection is not applicable if the person making delivery~~

~~(a) complies with an applicable law providing for a consignor's interest or the like to be evidenced by a sign, or~~

~~(b) establishes that the person conducting the business is generally known by his creditors to be substantially engaged in selling the goods of others, or~~

~~(c) complies with the filing provisions of the article on secured transactions (article 9).~~

~~(4) Any "or return" term of a contract for sale is to be treated as a separate contract for sale within the statute of frauds section of this article (G.S. 25-2-201) and as contradicting the sale aspect of the contract within the provisions of this article on parol or extrinsic evidence (G.S. 25-2-202).~~

(1) Unless otherwise agreed, if delivered goods may be returned by the buyer even though they conform to the contract, the transaction is:

(a) a 'sale on approval' if the goods are delivered primarily for use, and

(b) a 'sale or return' if the goods are delivered primarily for resale.

(2) Goods held on approval are not subject to the claims of the buyer's creditors until acceptance; goods held on sale or return are subject to such claims while in the buyer's possession.

(3) Any 'or return' term of a contract for sale is to be treated as a separate contract for sale within the statute of frauds section of this article (G.S. 25-2-201) and as contradicting the sale aspect of the contract within the provisions of this article on parol or extrinsic evidence (G.S. 25-2-202)."

Section 11. G.S. 25-2-502 reads as rewritten:

"**§ 25-2-502. Buyer's right to goods on seller's repudiation, failure to deliver, or insolvency.**

~~(1) Subject to subsection (2) and even though the goods have not been shipped a buyer who has paid a part or all of the price of goods in which he has a special property under the provisions of the immediately preceding section [G.S. 25-2-501] may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if the seller becomes insolvent within ten days after receipt of the first installment on their price.~~

~~(2) If the identification creating his special property has been made by the buyer he acquires the right to recover the goods only if they conform to the contract for sale.~~

(1) Subject to subsections (2) and (3) of this section and even though the goods have not been shipped, a buyer who has paid a part or all of the price of goods in which he has a special property under G.S. 25-2-501 may, on making and keeping good a tender of any unpaid portion of their price, recover them from the seller if:

a. in the case of goods bought for personal, family, or household purposes, the seller repudiates or fails to deliver as required by the contract; or

b. in all cases, the seller becomes insolvent within 10 days after receipt of the first installment on their price.

(2) The buyer's right to recover the goods under subdivision (1)a. of this section vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver.

(3) If the identification creating his special property has been made by the buyer, he acquires the right to recover the goods only if they conform to the contract for sale."

Section 12. G.S. 25-2-716(3) reads as rewritten:

"(3) The buyer has a right of replevin for goods identified to the contract if after reasonable effort he is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered. In the case of goods bought for personal,

family, or household purposes, the buyer's right of replevin vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver."

Section 13. G.S. 25-2A-103(3) reads as rewritten:

"(3) The following definitions in other Articles apply to this Article:

'Account'. ~~G.S. 25-9-106.~~ G.S. 25-9-102(a)(2).

'Between merchants'. G.S. 25-2-104(3).

'Buyer'. G.S. 25-2-103(1)(a).

'Chattel paper'. ~~G.S. 25-9-105(1)(b).~~ G.S. 25-9-102(a)(11).

'Consumer goods'. ~~G.S. 25-9-109(1).~~ G.S. 25-9-102(a)(23).

'Document'. ~~G.S. 25-9-105(1)(f).~~ G.S. 25-9-102(a)(30).

'Entrusting'. G.S. 25-2-403(3).

~~'General intangibles'. G.S. 25-9-106.~~

'General intangible'. G.S. 25-9-102(a)(42).

'Good faith'. G.S. 25-2-103(1)(b).

'Instrument'. ~~G.S. 25-9-105(1)(i).~~ G.S. 25-9-102(a)(47).

'Merchant'. G.S. 25-2-104(1).

'Mortgage'. ~~G.S. 25-9-105(1)(j).~~ G.S. 25-9-102(a)(55).

'Pursuant to commitment'. ~~G.S. 25-9-105(1)(k).~~ G.S. 25-9-102(a)(68).

'Receipt. G.S. 25-2-103(1)(c).

'Sale'. G.S. 25-2-106(1).

'Sale on approval'. G.S. 25-2-326.

'Sale or return'. G.S. 25-2-326.

'Seller'. G.S. 25-2-103(1)(d)."

Section 14. G.S. 25-2A-303 reads as rewritten:

"**§ 25-2A-303. Alienability of party's interest under lease contract or of lessor's residual interest in goods; delegation of performance; transfer of rights.**

~~(1) As used in this section, "creation of a security interest" includes the sale of a lease contract that is subject to Article 9 of this Chapter, Secured Transactions, by reason of G.S. 25-9-102(1)(b).~~

~~(2) Except as provided in subsections (3) and (4) of this section, a provision in a lease agreement which (i) prohibits the voluntary or involuntary transfer, including a transfer by sale, sublease, creation, or enforcement of a security interest, or attachment, levy, or other judicial process, of an interest of a party under the lease contract or of the lessor's residual interest in the goods; or (ii) makes such a transfer an event of default, gives rise to the rights and remedies provided in subsection (5) of this section, but a transfer that is prohibited or is an event of default under the lease agreement is otherwise effective.~~

~~(3) A provision in a lease agreement which (i) prohibits the creation or enforcement of a security interest in an interest of a party under the lease contract or in the lessor's residual interest in the goods, or (ii) makes such a transfer an event of default, is not enforceable unless, and then only to the extent that, there is an actual transfer by the lessee of the lessee's right of possession or use of the goods in violation of the provision or an actual delegation of a material performance of either~~

~~party to the lease contract in violation of the provision. Neither the granting nor the enforcement of a security interest in (i) the lessor's interest under the lease contract or (ii) the lessor's residual interest in the goods is a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the lessee within the purview of subsection (5) of this section unless, and then only to the extent that, there is an actual delegation of a material performance of the lessor.~~

~~(4) A provision in a lease agreement which (i) prohibits a transfer of a right to damages for default with respect to the whole lease contract or of a right to payment arising out of the transferor's due performance of the transferor's entire obligation, or (ii) makes such a transfer an event of default, is not enforceable, and such a transfer is not a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract within the purview of subsection (5) of this section.~~

~~(5) Subject to subsections (3) and (4) of this section:~~

~~(a) if a transfer is made which is made an event of default under a lease agreement, the party to the lease contract not making the transfer, unless that party waives the default or otherwise agrees, has the rights and remedies described in G.S. 25-2A-501(2);~~

~~(b) if paragraph (a) is not applicable and if a transfer is made that (i) is prohibited under a lease agreement or (ii) materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract, unless the party not making the transfer agrees at any time to the transfer in the lease contract or otherwise, then, except as limited by contract, (i) the transferor is liable to the party not making the transfer for damages caused by the transfer to the extent that the damages could not reasonably be prevented by the party not making the transfer and (ii) a court having jurisdiction may grant other appropriate relief, including cancellation of the lease contract or an injunction against the transfer.~~

~~(6) A transfer of "the lease" or of "all my rights under the lease", or a transfer in similar general terms, is a transfer of rights and, unless the language or the circumstances, as in a transfer for security, indicate the contrary, the transfer is a delegation of duties by the transferor to the transferee. Acceptance by the transferee constitutes a promise by the transferee to perform those duties. The promise is enforceable by either the transferor or the other party to the lease contract.~~

~~(7) Unless otherwise agreed by the lessor and the lessee, a delegation of performance does not relieve the transferor as against the other party of any duty to perform or of any liability for default.~~

~~(8) In a consumer lease, to prohibit the transfer of an interest of a party under the lease contract or to make a transfer an event of default, the language must be specific, by a writing, and conspicuous.~~

(1) As used in this section, 'creation of a security interest' includes the sale of a lease contract that is subject to Article 9 of this Chapter, Secured Transactions, by reason of G.S. 25-9-109(a)(3).

(2) Except as provided in subsection (3) of this section and G.S. 25-9-407, a provision in a lease agreement which (i) prohibits the voluntary or involuntary transfer, including a transfer by sale, sublease, creation, or enforcement of a security interest, or attachment, levy, or other judicial process, of an interest of a party under the lease contract or of the lessor's residual interest in the goods; or (ii) makes such a transfer an event of default, gives rise to the rights and remedies provided in subsection (4) of this section, but a transfer that is prohibited or is an event of default under the lease agreement is otherwise effective.

(3) A provision in a lease agreement which (i) prohibits a transfer of a right to damages for default with respect to the whole lease contract or of a right to payment arising out of the transferor's due performance of the transferor's entire obligation, or (ii) makes such a transfer an event of default, is not enforceable, and such a transfer is not a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract within the purview of subsection (4) of this section.

(4) Subject to subsection (3) of this section and G.S. 25-9-407:

(a) if a transfer is made which is made an event of default under a lease agreement, the party to the lease contract not making the transfer, unless that party waives the default or otherwise agrees, has the rights and remedies described in G.S. 25-2A-501(2);

(b) if paragraph (a) is not applicable and if a transfer is made that (i) is prohibited under a lease agreement or (ii) materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract, unless the party not making the transfer agrees at any time to the transfer in the lease contract or otherwise, then, except as limited by contract, (i) the transferor is liable to the party not making the transfer for damages caused by the transfer to the extent that the damages could not reasonably be prevented by the party not making the transfer and (ii) a court having jurisdiction may grant other appropriate relief, including cancellation of the lease contract or an injunction against the transfer.

(5) A transfer of 'the lease' or of 'all my rights under the lease', or a transfer in similar general terms, is a transfer of rights and, unless the language or the circumstances, as in a transfer for security, indicate the contrary, the transfer is a delegation of duties by the transferor to the transferee. Acceptance by the transferee

constitutes a promise by the transferee to perform those duties. The promise is enforceable by either the transferor or the other party to the lease contract.

(6) Unless otherwise agreed by the lessor and the lessee, a delegation of performance does not relieve the transferor as against the other party of any duty to perform or of any liability for default.

(7) In a consumer lease, to prohibit the transfer of an interest of a party under the lease contract or to make a transfer an event of default, the language must be specific, by a writing, and conspicuous."

Section 15. G.S. 25-2A-307 reads as rewritten:

"**§ 25-2A-307. Priority of liens arising by attachment or levy on, security interests in, and other claims to goods.**

~~(1) Except as otherwise provided in G.S. 25-2A-306, a creditor of a lessee takes subject to the lease contract.~~

~~(2) Except as otherwise provided in subsections (3) and (4) of this section and in G.S. 25-2A-306 and G.S. 25-2A-308, a creditor of a lessor takes subject to the lease contract unless:~~

~~(a) the creditor holds a lien that attached to the goods before the lease contract became enforceable;~~

~~(b) the creditor holds a security interest in the goods and the lessee did not give value and receive delivery of the goods without knowledge of the security interest; or~~

~~(c) the creditor holds a security interest in the goods which was perfected (G.S. 25-9-303) before the lease contract became enforceable.~~

~~(3) A lessee in the ordinary course of business takes the leasehold interest free of a security interest in the goods created by the lessor even though the security interest is perfected (G.S. 25-9-303) and the lessee knows of its existence.~~

~~(4) A lessee other than a lessee in the ordinary course of business takes the leasehold interest free of a security interest to the extent that it secures future advances made after the secured party acquires knowledge of the lease or more than 45 days after the lease contract becomes enforceable, whichever first occurs, unless the future advances are made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the 45-day period.~~

(1) Except as otherwise provided in G.S. 25-2A-306, a creditor of a lessee takes subject to the lease contract.

(2) Except as otherwise provided in subsection (3) of this section and in G.S. 25-2A-306 and G.S. 25-2A-308, a creditor of a lessor takes subject to the lease contract unless the creditor holds a lien that attached to the goods before the lease contract became enforceable.

(3) Except as otherwise provided in G.S. 25-9-317, 25-9-321, and 25-9-323, a lessee takes a leasehold interest subject to a security interest held by a creditor of the lessor."

Section 16. G.S. 25-2A-309(1)(b) reads as rewritten:

"(b) a 'fixture filing' is the filing, in the office where a record of a mortgage on the real estate would be filed or recorded, of a financing statement covering goods that are or are to become fixtures and conforming to the requirements of ~~G.S. 25-9-402(5);~~ G.S. 25-9-502(a) and (b);"

Section 17. G.S. 25-4-208(c) reads as rewritten:

"(c) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents, and proceeds. So long as the bank does not receive final settlement for the item or give up possession of the item or accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to Article 9, but:

(1) No security agreement is necessary to make the security interest enforceable ~~(G.S. 25-9-203(1)(a);~~ (G.S. 25-9-203(b)(3)a.);

(2) No filing is required to perfect the security interest; and

(3) The security interest has priority over conflicting perfected security interests in the item, accompanying documents or proceeds."

Section 18. Article 5 of Chapter 25 of the General Statutes is amended by adding a new section to read:

"**§ 25-5-118. Security interest of issuer or nominated person.**

(a) An issuer or nominated person has a security interest in a document presented under a letter of credit to the extent that the issuer or nominated person honors or gives value for the presentation.

(b) So long as and to the extent that an issuer or nominated person has not been reimbursed or has not otherwise recovered the value given with respect to a security interest in a document under subsection (a) of this section, the security interest continues and is subject to Article 9 of this Chapter, but:

(1) A security agreement is not necessary to make the security interest enforceable under G.S. 25-9-203(b)(3);

(2) If the document is presented in a medium other than a written or other tangible medium, the security interest is perfected; and

(3) If the document is presented in a written or other tangible medium and is not a certificated security, chattel paper, a document of title, an instrument, or a letter of credit, the security interest is perfected and has priority over a conflicting security interest in the document so long as the debtor does not have possession of the document."

Section 19. G.S. 25-6-102 reads as rewritten:

"**§ 25-6-102. 'Bulk transfers'; transfers of equipment; enterprises subject to this article; bulk transfers subject to this article.**

(1) A 'bulk transfer' is any transfer in bulk and not in the ordinary course of the transferor's business of a major part of the materials, supplies, merchandise or other inventory ~~(G.S. 25-9-109)~~ (G.S. 25-9-102) of an enterprise subject to this article.

(2) A transfer of a substantial part of the equipment ~~(G.S. 25-9-109)~~ (G.S. 25-9-102) of such an enterprise is a bulk transfer if it is made in connection with a bulk transfer of inventory, but not otherwise.

(3) The enterprises subject to this article are all those whose principal business is the sale of merchandise from stock, including those who manufacture what they sell.

(4) Except as limited by ~~the following section [G.S. 25-6-103]~~ G.S. 25-6-103 all bulk transfers of goods located within this State are subject to this article."

Section 20. G.S. 25-7-503(1) reads as rewritten:

"(1) A document of title confers no right in goods against a person who before issuance of the document had a legal interest or a perfected security interest in them and who neither

(a) delivered or entrusted them or any document of title covering them to the bailor or his nominee with actual or apparent authority to ship, store or sell or with power to obtain delivery under this article (G.S. 25-7-403) or with power of disposition under this chapter (G.S. 25-2-403 and ~~25-9-307)~~ G.S. 25-9-320) or other statute or rule of law; nor

(b) acquiesced in the procurement by the bailor or his nominee of any document of title."

Section 21. G.S. 25-8-103(f) reads as rewritten:

"(f) A commodity contract, as defined in ~~G.S. 25-9-115,~~ G.S. 25-9-102(a)(15), is not a security or financial asset."

Section 22. G.S. 25-8-106 reads as rewritten:

"**§ 25-8-106. Control.**

(a) A purchaser has 'control' of a certificated security in bearer form if the certificated security is delivered to the purchaser.

(b) A purchaser has 'control' of a certificated security in registered form if the certificated security is delivered to the purchaser, and:

(1) The certificate is endorsed to the purchaser or in blank by an effective endorsement; or

(2) The certificate is registered in the name of the purchaser, upon original issue or registration of transfer by the issuer.

(c) A purchaser has 'control' of an uncertificated security if:

(1) The uncertificated security is delivered to the purchaser; or

(2) The issuer has agreed that it will comply with instructions originated by the purchaser without further consent by the registered owner.

(d) A purchaser has 'control' of a security entitlement if:

(1) The purchaser becomes the entitlement holder; ~~or~~

(2) The securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser without further consent by the entitlement ~~holder.~~ holder; or

(3) Another person has control of the security entitlement on behalf of the purchaser or, having previously acquired control of the security entitlement, acknowledges that it has control on behalf of the purchaser.

(e) If an interest in a security entitlement is granted by the entitlement holder to the entitlement holder's own securities intermediary, the securities intermediary has control.

(f) A purchaser who has satisfied the requirements of ~~subdivision (c) (2) or (d) (2)~~ subsection (c) or (d) of this section has ~~control~~ control, even if the registered owner in the case of ~~subdivision (c) (2)~~ subsection (c) of this section or the entitlement holder in the case of ~~subdivision (d) (2)~~ subsection (d) of this section retains the right to make substitutions for the uncertificated security or security entitlement, to originate instructions or entitlement orders to the issuer or securities intermediary, or otherwise to deal with the uncertificated security or security entitlement.

(g) An issuer or a securities intermediary may not enter into an agreement of the kind described in subdivision (c) (2) or (d) (2) of this section without the consent of the registered owner or entitlement holder, but an issuer or a securities intermediary is not required to enter into such an agreement even though the registered owner or entitlement holder so directs. An issuer or securities intermediary that has entered into such an agreement is not required to confirm the existence of the agreement to another party unless requested to do so by the registered owner or entitlement holder."

Section 23. G.S. 25-8-110(e) reads as rewritten:

"~~(e) The following rules determine a 'securities intermediary's jurisdiction' for purposes of this section:~~

~~(1) If an agreement between the securities intermediary and its entitlement holder specifies that it is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.~~

~~(2) If an agreement between the securities intermediary and its entitlement holder does not specify the governing law as provided in subdivision (1) of this subsection, but expressly specifies that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.~~

~~(3) If an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in subdivision (1) or (2) of this subsection, the securities intermediary's jurisdiction is the jurisdiction in which is located the office identified in an account statement as the office serving the entitlement holder's account.~~

~~(4) If an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in subdivision (1) or (2) of this subsection and an account statement does not identify an office serving the entitlement holder's account as provided in subdivision (3) of this subsection, the securities intermediary's jurisdiction is the jurisdiction in which is located the chief executive office of the securities intermediary.~~

(e) The following rules determine a 'securities intermediary's jurisdiction' for purposes of this section:

(1) If an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that a particular jurisdiction is the securities intermediary's jurisdiction for purposes of this Part, this Article, or this Chapter, that jurisdiction is the securities intermediary's jurisdiction.

(2) If subdivision (1) of this subsection does not apply and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(3) If neither subdivision (1) nor subdivision (2) of this section applies and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(4) If none of the preceding subdivisions applies, the securities intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the entitlement holder's account is located.

(5) If none of the preceding subdivisions applies, the securities intermediary's jurisdiction is the jurisdiction in which the chief executive office of the securities intermediary is located."

Section 24. G.S. 25-8-301(a) reads as rewritten:

"(a) Delivery of a certificated security to a purchaser occurs when:

(1) The purchaser acquires possession of the security certificate;

(2) Another person, other than a securities intermediary, either acquires possession of the security certificate on behalf of the purchaser or, having previously acquired possession of the certificate, acknowledges that it holds for the purchaser; or

(3) A securities intermediary acting on behalf of the purchaser acquires possession of the security certificate, only if the certificate is in registered form and ~~has been~~ is (i) registered in the name of the purchaser, (ii) payable to the order of the purchaser, or (iii) specially indorse to the purchaser by an effective ~~indorsement.~~ indorsement and has not been indorsed to the securities intermediary or in blank."

Section 25. G.S. 25-8-302(a) reads as rewritten:

"(a) Except as otherwise provided in subsections (b) and (c) of this section, ~~upon delivery~~ a purchaser of a certificated or uncertificated security ~~to a purchaser, the~~

~~purchaser~~ acquires all rights in the security that the transferor had or had power to transfer."

Section 26. G.S. 25-8-510 reads as rewritten:

"**§ 25-8-510. Rights of purchaser of security entitlement from entitlement holder.**

(a) ~~An~~ In a case not covered by the priority rules in Article 9 of this Chapter or the rules stated in subsection (c) of this section, an action based on an adverse claim to a financial asset or security entitlement, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who purchases a security entitlement, or an interest therein, from an entitlement holder if the purchaser gives value, does not have notice of the adverse claim, and obtains control.

(b) If an adverse claim could not have been asserted against an entitlement holder under G.S. 25-8-502, the adverse claim cannot be asserted against a person who purchases a security entitlement, or an interest therein, from the entitlement holder.

(c) In a case not covered by the priority rules in ~~Article 9,~~ Article 9 of this Chapter, a purchaser for value of a security entitlement, or an interest therein, who obtains control has priority over a purchaser of a security entitlement, or an interest therein, who does not obtain control. ~~Purchasers~~ Except as otherwise provided in subsection (d) of this section, purchasers who have control rank ~~equally, except that a~~ according to priority in time of:

(1) The purchaser's becoming the person for whom the securities account, in which the security entitlement is carried, is maintained, if the purchaser obtained control under G.S. 25-8-106(d)(1);

(2) The securities intermediary's agreement to comply with the purchaser's entitlement orders with respect to security entitlements carried or to be carried in the securities account in which the security entitlement is carried, if the purchaser obtained control under G.S. 25-8-106(d)(2); or

(3) If the purchaser obtained control through another person under G.S. 25-8-106(d)(3), the time on which priority would be based under this subsection if the other person were the secured party.

(d) A securities intermediary as purchaser has priority over a conflicting purchaser who has control unless otherwise agreed by the securities intermediary."

PART III. CONFORMING AMENDMENTS TO OTHER SECTIONS OF THE GENERAL STATUTES.

Section 27. G.S. 6-21.2(5) reads as rewritten:

"(5) The holder of an unsecured note or other writing(s) evidencing an unsecured debt, and/or the holder of a note and chattel mortgage or other security agreement and/or the holder of a conditional sale contract or any other such security agreement which evidences both a monetary obligation and a security interest in or a lease of specific goods, or his attorney at law, shall, after maturity of the obligation by default or otherwise, notify the maker, debtor,

account debtor, endorser or party sought to be held on said obligation that the provisions relative to payment of attorneys' fees in addition to the "outstanding balance" shall be enforced and that such maker, debtor, account debtor, endorser or party sought to be held on said obligation has five days from the mailing of such notice to pay the "outstanding balance" without the attorneys' fees. If such party shall pay the "outstanding balance" in full before the expiration of such time, then the obligation to pay the attorneys' fees shall be void, and no court shall enforce such provisions.

Notwithstanding the foregoing, however, if debtor has defaulted or violated the terms of the security agreement and has refused, on demand, to surrender possession of the collateral to the secured party as authorized by ~~§ 25-9-503,~~ G.S. 25-9-609, with the result that said secured party is required to institute an ancillary claim and delivery proceeding to secure possession of said collateral; no such written notice shall be required before enforcement of the provisions relative to payment of attorneys' fees in addition to the "outstanding balance."

Section 28. G.S. 20-28.2(f)(5) reads as rewritten:

"(5) The lienholder agrees to sell the motor vehicle in accordance with the terms of its agreement and pursuant to the provisions of ~~Part 5~~ Part 6 of Article 9 of Chapter 25 of the General Statutes. Upon the sale of the motor vehicle, the lienholder will pay to the clerk of court of the county in which the vehicle was forfeited all proceeds from the sale, less the amount of the lien in favor of the lienholder, and any towing and storage costs paid by the lienholder."

Section 29. G.S. 20-28.3(e3)(1) reads as rewritten:

"(1) A lienholder may file a petition with the clerk of court requesting the court to order pretrial release of a seized motor vehicle. The lienholder shall serve a copy of the petition on all interested parties which shall include the registered owner, the titled owner, the district attorney, and the county board of education attorney. Upon 10 days' prior notice of the date, time, and location of the hearing sent by the lienholder to all interested parties, a judge, after a hearing, shall order a seized motor vehicle released to the lienholder conditioned upon payment of all towing and storage costs incurred as a result of the seizure and impoundment of the motor vehicle if the judge determines, by the greater weight of the evidence, that:

a. Default on the obligation secured by the motor vehicle has occurred;

b. As a consequence of default, the lienholder is entitled to possession of the motor vehicle;

c. The lienholder agrees to sell the motor vehicle in accordance with the terms of its agreement and pursuant to the provisions of ~~Part 5~~ Part 6 of Article 9 of Chapter 25 of the General Statutes. Upon sale of the motor vehicle, the lienholder will pay to the clerk of court of the county in which the driver was charged all proceeds from the sale, less the amount of the lien in favor of the lienholder, and any towing and storage costs paid by the lienholder;

d. The lienholder agrees not to sell, give, or otherwise transfer possession of the seized motor vehicle while the motor vehicle is subject to forfeiture, or the forfeited motor vehicle after the forfeiture hearing, to the defendant or the motor vehicle owner; and

e. The seized motor vehicle while the motor vehicle is subject to forfeiture, or the forfeited motor vehicle after the forfeiture hearing, had not previously been released to the lienholder as a result of a prior seizure involving the same defendant or motor vehicle owner."

Section 30. G.S. 20-58.8 reads as rewritten:

"**§ 20-58.8. Applicability of §§ 20-58 to 20-58.8; use of term 'lien'.**

~~(a) The provisions of G.S. 20-58 through 20-58.8 apply to the perfection of security interests pursuant to G.S. 25-9-302.~~

(b) The provisions of G.S. 20-58 through 20-58.8 inclusive shall not apply to or affect:

(1) A lien given by statute or rule of law for storage of a motor vehicle or to a supplier of services or materials for a vehicle;

(2) A lien arising by virtue of a statute in favor of the United States, this State or any political subdivision of this State; or

(3) A security interest in a vehicle created by a manufacturer or by a dealer in new or used vehicles who holds the vehicle in his inventory. ~~Such security interests shall be perfected by filing a financing statement under Article 9 of the Uniform Commercial Code.~~

(c) When the term "lien" is used in other sections of this Chapter, or has been used prior to October 1, 1969, with reference to transactions governed by G.S. 20-58 through 20-58.8, to describe contractual agreements creating security interests in personal property, the term "lien" shall be construed to refer to a "security interest" as the term is used in G.S. 20-58 through 20-58.8 and the Uniform Commercial Code."

Section 31. G.S. 25A-16 reads as rewritten:

"**§ 25A-16. Transfer of equity.**

If a buyer voluntarily transfers his rights in collateral pursuant to ~~G.S. 25-9-311~~ applicable law and the seller agrees, the seller may impose a transfer fee not to

exceed ten percent (10%) of the unpaid balance of the debt or thirty-five dollars ($35.00), whichever is less."

Section 32. G.S. 25A-22(b) reads as rewritten:

"(b) Upon the payment of all sums for which the buyer is obligated under a consumer credit sale, the seller shall promptly release any security interest in accordance with the terms of ~~G.S. 25-9-404~~ G.S. 25-9-513 or G.S. 20-58.4, whichever is applicable. In the event a security interest in real property is involved, the seller shall take such action as is necessary to enable the lien to be discharged of record under the provisions of G.S. 45-37."

Section 33. G.S. 44-68.14(a)(1) reads as rewritten:

"(1) The Secretary of State, he shall cause the notice to be ~~marked, held, and indexed~~ numbered, maintained, and indexed in accordance with ~~the provisions of G.S. 25-9-403(4),~~ G.S. 25-9-519, as if the notice were a financing statement within the meaning of the Uniform Commercial Code, Chapter 25 of the General Statutes; or".

Section 34. G.S. 44-68.14(b) reads as rewritten:

"(b) If a certificate of release, nonattachment, discharge, or subordination of any lien is presented to the Secretary of State for filing he shall cause:

(1) A record of a certificate of release or nonattachment to be ~~marked, held, and indexed~~ numbered, maintained, and indexed as if a record of the certificate were a termination statement within the meaning of the Uniform Commercial Code, Chapter 25 of the General Statutes, but the record of the notice of lien to which the certificate relates may not be removed from the files; and

(2) A record of a certificate of discharge or subordination to be ~~marked, held, and indexed~~ numbered, maintained, and indexed as if the record of the certificate were a release of collateral within the meaning of the Uniform Commercial Code, Chapter 25 of the General Statutes."

Section 35. G.S. 47-20(b)(1) reads as rewritten:

"(1) 'Rents, issues, or profits' means all amounts payable by or on behalf of any lessee, tenant, or other person having a possessory interest in real estate on account of or pursuant to any written or oral lease or other instrument evidencing a possessory interest in real property or pursuant to any form of tenancy implied by law, and all amounts payable by or on behalf of any licensee or permittee or other person occupying or using real property under license or permission from the owner or person entitled to possession. The term shall not include farm products as defined in ~~G.S. 25-9-109(3),~~ G.S. 25-9-102(34), timber, the proceeds from the sale of farm products or timber, or the proceeds from the recovery or severance of any mineral deposits located on or under real property."

Section 36. G.S. 53-177 reads as rewritten:

"**§ 53-177. Recording fees.**

The licensee may collect from the borrower the amount of any fees necessary to file or record its security interest with any public official or agency of a county or the State as may be required pursuant to ~~G.S. 25-9-302 et seq.~~ Article 9 of Chapter 25 of the General Statutes or G.S. 20-58 **et seq.** Upon full disclosure to the borrower on how the fees will be applied, such fees may either (i) be paid by the licensee to such public official or agency of the county or State, or (ii) in lieu of recording or filing, applied by the licensee to purchase nonfiling or nonrecording insurance on the instrument securing the loan, or (iii) be retained by a licensee that elects to self insure against the loss of a security interest by reason of not filing or recording its security instrument: Provided, however, the amount collected by the licensee from the borrower for the purchase of a nonfiling or nonrecording insurance policy, or for self insurance, shall be the premium amount for such insurance as fixed by the Commissioner of Insurance. Such premium shall be at least one dollar ($1.00) less than the cost of recording or filing a security interest. Provided further, a licensee shall not collect or permit to be collected any notary fee in connection with any loan made under this Article, nor may a licensee collect any fee from the borrower for the cost of releasing a security interest except such fee as actually paid to any public official or agency of the county or State for such purpose."

Section 37. G.S. 63A-11(e) reads as rewritten:

"(e) ~~The provisions of G.S. 25-9-104(e) and G.S. 25-9-302(6) to the contrary notwithstanding, the provisions of Article 9 of the North Carolina Uniform Commercial Code, G.S. 25-9-101 to G.S. 25-9-607 inclusive, shall apply to transactions under this section, but not to transactions involving the issuance of bonds for airport projects, to the same extent the provisions of Article 9 would apply were G.S. 25-9-104(e) and G.S. 25-9-302(6) repealed.~~ Article 9 of Chapter 25 of the General Statutes applies to transactions under this section but not to transactions involving the issuance of bonds for airport projects."

Section 38. G.S. 75A-41 reads as rewritten:

"**§ 75A-41. Security interests subsequently created.**

~~Security interests, other than a security interest in inventory held for sale to be perfected only as provided in G.S. 25-9-301 to G.S. 25-9-408,~~ Except for security interests in watercraft that are inventory held for sale, security interests created in watercraft by the voluntary act of the owner after the original issue of title to the owner must be shown on the certificate of title. In such cases, the owner shall file an application with the Commission on a blank furnished for that purpose, setting forth the security interests and other information as the Commission requires. The Commission, if satisfied that it is proper that the same be recorded and upon surrender of the certificate of title covering the watercraft, shall thereupon issue a new certificate of title showing their security interests in the order of the priority according to the date of the filing of the application. For the purpose of recording the subsequent security interest, the Commission may require any secured party to deliver the certificate of title to the Commission. The newly issued certificate shall

be sent or delivered to the secured party from whom the prior certificate was obtained."

Section 39. G.S. 75A-42 reads as rewritten:

"**§ 75A-42. Certificate as notice of security interest.**

A certificate of title, when issued by the Commission showing a security interest, shall be deemed adequate notice to the State, creditors, and purchasers that a security interest in the watercraft exists and the recording or filing of the creation or reservation of a security interest in the county or city wherein the purchaser or debtor resides or elsewhere is not necessary and shall not be required. Watercraft, other than those that are inventory held for sale, for which a certificate of title is currently in ~~effect,~~ effect shall be exempt from the provisions of ~~G.S. 25-9-302, 25-9-304, 25-9-307, 25-9-309, 25-9-312, 25-9-318, and 25-9-401 to 25-9-408~~ G.S. 25-9-309, 25-9-310, 25-9-312, 25-9-320, 25-9-322, 25-9-323, 25-9-324, 25-9-331, 25-9-404, 25-9-405, 25-9-406, and 25-9-501 to 25-9-526 for so long as the certificate of title remains in effect."

Section 40. G.S. 75A-44 reads as rewritten:

"**§ 75A-44. Priority of security interests shown on certificates.**

~~The security interests, except security interests in watercraft which are inventory held for sale and which are perfected under G.S. 25-9-301 to 25-9-408,~~ Except for security interests in watercraft that are inventory held for sale, security interests shown upon the certificates of title issued by the Commission pursuant to applications for certificates shall have priority over any other liens or security interests against the watercraft however created and recorded, except for a mechanics lien for repairs, provided that the mechanic furnishes the holder of any recorded lien who may request it with an itemized sworn statement of the work done and materials supplied for which the lien is claimed."

Section 41. G.S. 143B-456.1(f) reads as rewritten:

"(f) ~~The provisions of G.S. 25-9-104(e) and G.S. 25-9-302(6) to the contrary notwithstanding, the provisions of Article 9 of the North Carolina Uniform Commercial Code, being G.S. 25-9-101 to G.S. 25-9-607, inclusive, shall apply to transactions under this section to the same extent the provisions of such Article 9 would apply were G.S. 25-9-104(e) and G.S. 25-9-302(6) hereby repealed.~~ Article 9 of Chapter 25 of the General Statutes applies to transactions under this section."

Section 42. G.S. 159C-28 reads as rewritten:

"**§ 159C-28. Application of the U.C.C.**

~~The provisions of G.S. 25-9-104(e) and 25-9-302(6) to the contrary notwithstanding, the provisions of Article 9 of the North Carolina Uniform Commercial Code, being G.S. 25-9-101 to 25-9-607, inclusive, shall apply to transactions under Chapter 159C to the same extent the provisions of such Article 9 would apply were G.S. 25-9- 104(e) and 25-9-302(6) hereby repealed.~~ Article 9 of Chapter 25 of the General Statutes applies to transactions under this Chapter."

Section 43. G.S. 159D-23 reads as rewritten:

"**§ 159D-23. Application of Article 9 of Chapter 25.**

~~The provisions of G.S. 25-9-104(e) and 25-9-302(6) to the contrary notwithstanding, the provisions of Article 9 of North Carolina Uniform Commercial Code, being G.S. 25-9-101 to 25-9-607, inclusive, shall apply [to] transactions under this Chapter 159D to the same extent the provisions of such Article 9 would apply were G.S. 25-9-104(e) and 25-9-302(6) hereby repealed.~~ Article 9 of Chapter 25 of the General Statutes applies to transactions under this Chapter."

Section 44. G.S. 161-10(a)(13) reads as rewritten:

"(13) Uniform Commercial Code. -- Such fees as are provided for in Chapter 25, Article 9, ~~Part 4,~~ Part 5, of the General Statutes."

PART IV. UCC ARTICLE 9 FILING FEES INCREASE.

Section 45. G.S. 25-9-403(5) reads as rewritten:

"(5) The uniform fee for filing and indexing and for stamping a copy furnished by the secured party to show the date and place of filing for an original financing statement or for a continuation statement is ~~fifteen dollars ($15.00).~~ thirty dollars ($30.00)."

Section 46. G.S. 25-9-405 reads as rewritten:

"**§ 25-9-405. Assignment of security interest; duties of filing officer; fees.**

(1) A financing statement may disclose an assignment of a security interest in the collateral described in the financing statement by indication in the financing statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the statement. On presentation to the filing officer of such a financing statement the filing officer shall mark the same as provided in G.S. 25-9-403(4). The uniform fee for filing, indexing, and furnishing filing data for a financing statement so indicating an assignment is ~~fifteen dollars ($15.00).~~ thirty dollars ($30.00).

(2) A secured party may assign of record all or part of his rights under a financing statement by the filing in the place where the original financing statement was filed of a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number and also the most current file number if it has been continued and the date of filing of the financing statement and the name and address of the assignee and containing a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of such a separate statement, the filing officer shall mark such separate statement with the date and hour of the filing. He shall note the assignment on the Uniform Commercial Code index of the financing statement, and in the case of a fixture filing, or a filing covering timber to be cut, or covering minerals or the like (including oil and gas) or accounts subject to subsection (5) of G.S. 25-9-103, he shall index in the real estate index the assignment under the name of the assignor as grantor and, to the extent that the law of this State provides for indexing the assignment of a mortgage under the name of the assignee, he shall index the assignment of the financing statement under the name of the assignee. The uniform fee for filing, indexing, and furnishing filing data about such a separate statement of

assignment is ~~fifteen dollars ($15.00).~~ thirty dollars ($30.00). Notwithstanding the provisions of this subsection, an assignment of record of a security interest in a fixture contained in a mortgage effective as a fixture filing (subsection (6) of G.S. 25-9-402) may be made only by an assignment of the mortgage in the manner provided by the law of the State other than this Chapter.

(3) After the disclosure or filing of an assignment under this section, the assignee is the secured party of record."

Section 47. G.S. 25-9-406 reads as rewritten:

"**§ 25-9-406. Release of collateral; duties of filing officer; fees.**

A secured party of record may, by his signed statement, release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released, the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. A statement of release signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with subsection (2) of G.S. 25-9-405, including payment of the required fee. Upon presentation of such a statement of release to the filing officer he shall mark the statement with the hour and date of filing and shall note the same upon the margin of the index of the filing of the financing statement. The uniform fee for filing and noting such a statement of release is ~~fifteen dollars ($15.00).~~ thirty dollars ($30.00)."

Section 48. G.S. 25-9-407 reads as rewritten:

"**§ 25-9-407. Information from filing officer.**

(1) If the person filing any financing statement, termination statement, statement of assignment or statement of release furnishes the filing officer a copy thereof, the filing officer shall upon request note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to such person.

(2) Upon request of any person, the filing officer shall issue his certificate for which he shall not be liable showing whether there is on file, on the date and hour stated therein, any presently effective financing statement naming a particular debtor and any statement of assignment thereof and if there is, giving the date and hour of filing of each such statement and the names and addresses of each secured party therein. The uniform fee for such a certificate shall be ~~fifteen dollars ($15.00).~~ thirty dollars ($30.00). Where the Uniform Commercial Code index has been automated, the filing officer shall issue a computer printout of the index entries for a particular debtor for a fee of ~~fifteen dollars ($15.00).~~ thirty dollars ($30.00). Upon request the filing officer shall furnish a copy of any filed financing statement or statement of assignment for a uniform fee of one dollar ($1.00) per page."

PART V. DIRECTIONS AND EFFECTIVE DATE.

Section 49. The Revisor of Statutes shall cause to be printed along with this act all relevant portions of the official comments to the Uniform Commercial Code, Revised Article 9 and conforming amendments to Articles 1, 2, 2A, 4, 5, 6, 7,

and 8 and all explanatory comments of the drafters of this act as the Revisor deems appropriate.

Section 50. The Department of the Secretary of State shall study the issue of fraudulent filings under Article 9 of Chapter 25 of the General Statutes that are intended to hinder, harass, delay, or otherwise interfere with public employees in the performance of their lawful duties. The Department shall report to the General Assembly by January 1, 2001, with any recommendations which may include the creation of civil or criminal sanctions or remedies related to these filings.

Section 51. Parts I, II, and III of this act become effective July 1, 2001. Part IV of this act becomes effective September 1, 2000, and applies to fees paid on or after that date. The remainder of this act is effective when it becomes law.

STATE OF NORTH CAROLINA
GENERAL STATUTES COMMISSION
POST OFFICE BOX 629
RALEIGH, NORTH CAROLINA 27602
(919) 716-6800

MEMORANDUM

TO: Senate Finance Committee

FROM: General Statutes Commission

DATE: June 20, 2000

RE: **Senate Bill 1305 (Revise Article 9 of the UCC)**

Senate Bill 1305 is based on Uniform Commercial Code Revised Article 9 (Secured Transactions), which was completed by the National Conference of Commissioners on Uniform State Laws in conjunction with the American Law Institute to update the statutory framework that governs security interests in personal property and fixtures. Revised Article 9 expands the scope of property and transactions covered by current Article 9, modifies as well as creates definitions, modernizes the filing system for financing statements, simplifies methods of perfection and increases the certainty of priority rules, formulates clearer rules for the enforcement of security interests, and provides specific transition rules. About 25 states have already enacted Revised Article 9 to become effective on the uniform effective date of July 1, 2001.

Senate Bill 1305 consists of five parts. Part I is based on Revised Article 9. Part II makes conforming amendments to other articles of the Uniform Commercial Code. Part III makes conforming and clarifying amendments to other sections of the General Statutes. Part IV increases certain fees in current Article 9 from $15.00 to $30.00 to provide revenue to help with the implementation of Revised Article 9. Part V authorizes the printing of drafters' comments, provides a delayed effective date of September 1, 2000, for the increases in current fees, and provides a delayed effective date of July 1, 2001, for Revised Article 9 and the conforming and clarifying amendments. The Senate Judiciary I Committee amended Part V to authorize the Secretary of State to "study the issue of fraudulent filings under Article 9 of Chapter 25 of the General Statutes that are intended to hinder, harass, delay or otherwise interfere with public employees in the performance of their lawful duties" and to report to the General Assembly by January 1, 2001.

Revised Article 9 supports commerce by reducing costs and uncertainty of financing personal property, including the modern form of asset securitization. It accomplishes this by, among other things:

- Scope and definitional provisions that bring within Revised Article 9 several kinds of collateral formerly left to the uncertainties of common law, e.g., health care receivables, deposit accounts in nonconsumer transactions, commercial tort claims, and proceeds which are stock dividends and licensing royalties. Revised Article 9 also applies to the perfection and priority of agricultural liens.

- Filing rules that require only one filing for each debtor in most financing transactions, no matter how many items or kinds of collateral are involved. Revised Article 9 provides for central filing in the Secretary of State's office for filings other than fixture filings and filings with respect to timber to be cut and "as-extracted collateral", which will continue to be filed in the register of deeds' office.

- Requiring most filings to be made at the location of the debtor, e.g., state of formation for a registered entity, rather than where the collateral is located. Thus the filer knows just where to file and the searcher knows exactly where to look.

- Timing standards for performance by filing offices.

- Vastly simplified rules that determine which state's law controls.

- Simplified formalities such as allowing electronic "signatures" on the security agreement and permitting very broad description of collateral in filings.

- Facilitation of electronic filing by providing uniform statutory forms for filing and eliminating the requirement that the debtor sign an authorized financing statement.

- Providing for perfection by "control" rather than filing or possession of collateral, for deposit accounts, letter of credit rights, and electronic chattel paper as well as investment property.

- Priority and foreclosure rules that settle existing uncertainties and enhance purchase money security.

- Elimination of North Carolina's nonuniform Part 6 (Public Sale Procedures) of current UCC Article 9 and providing a uniform "safe harbor" form for giving notice to the debtor of a private or public foreclosure sale.

- Additional protection of consumer debtors in foreclosure by additional disclosure requirements.

- Transition rules that provide detailed guidelines, including time frames, for creditors whose security interests are already perfected under existing law. Under these rules, creditors will be able to determine when and how they must act to continue, amend or terminate perfection.

These and other changes made by Revised Article 9 eliminate much risk and cost associated with secured financing. North Carolina's prestige as a major banking and financial center makes passage in time for the uniform effective date of July 1, 2001, extremely urgent.

The strategy of Revised Article 9 is to create a nationwide mechanism for secured transactions. For this reason, uniformity is more than usually important. However, some variations of a local nature have seemed advisable, which include:

- Incorporating Revised Article 9's optional set of model provisions for priority of production-money security interests in crops.

- Bringing forward the current exemption from filing provided for security interests created in connection with the issuance of bonds, notes, or other evidence of indebtedness for borrowed money by the State or its political subdivisions or agencies.

- Providing that Revised Article 9's provisions, which render ineffective any legal restrictions on the assignment of rights to payment, do not apply to certain specified statutory restrictions on assignments, e.g., structured settlement payment rights, workers' compensation claims, and crime victims award payments.

- Postponing to January 1, 2003, the date after which filings in the Secretary of State's office are required to have assigned file numbers that include a verification number, commonly known as a "check digit".

- Changing from two business days to three business days the time period in which filing offices are required to perform the duties imposed by §§ 25-9-519 and 25-9-523 and providing a delayed effective date of January 1, 2003, for compliance with the time period.

- Requiring a filing office to communicate its refusal to accept a record for filing within three business days rather than two business days after receipt of the record.

- Bringing forward the current nonliability provision for the information communicated by a filing office in responding to a request for information.

- Deleting the requirement that filing offices make copies of all filed records available to the public because the public records law already covers access to these records.

- Deleting the provision for an increased fee for filing and indexing a record of a mortgage as an initial financing statement where the financing statement indicates that it is filed in connection with either a public-finance transaction or a manufactured-home transaction.

- Deleting the requirement of an annual report to the Governor and the Legislature on filing office operations.

- Providing that a financing statement filed before July 1, 2001, may be terminated only by filing in the office specified in § 25-9-501. (§ 25-9-706(c)).

The following materials from the Uniform Law Commissioners' information kit on Revised Article 9 are attached for informational purposes: (1) a facts sheet stating Revised Article 9's purpose, origin, and legislative activity in other jurisdictions; (2) a statement of reasons why states should adopt Revised Article 9; and (3) a summary highlighting significant changes made by Revised Article 9. The Official Comments to Revised Article 9 are available and will be published in the General Statutes as annotations if Senate Bill 1305 is enacted.

Attachments

A Few Facts About

REVISED UCC ARTICLE 9, SECURED TRANSACTIONS (1999)

PURPOSE: Updates UCC Article 9, last revised in 1972 and adopted in every state. Article 9 provides a statutory framework that governs secured transactions—transactions which involve the granting of credit secured by personal property.

ORIGIN: Completed by the Uniform Law Commissioners, in conjunction with the American Law Institute, in 1999.

ENDORSED BY: American Bar Association

STATE ADOPTIONS:

Alaska*
Arizona
California
Hawaii**
Illinois **
Indiana *
Iowa *
Kansas *
Kentucky *
Maine *
Maryland
Minnesota *
Montana
Nebraska
Nevada
Oklahoma *
Rhode Island **
South Dakota *
Tennessee *
Texas
Utah *
Vermont*
Virginia *
Washington *
West Virginia *

2000 INTRODUCTIONS:

Colorado
Delaware
District of Columbia
Florida
Idaho
Massachusetts
Michigan
Mississippi
Missouri
New Jersey
New Mexico
New York
North Carolina
South Carolina
Wyoming

For any further information regarding the Revision of UCC Article 9, Secured Transactions, please contact John McCabe or Katie Robinson at 312-915-0195.

* *2000 Enactment*
** *Awaiting Governor's Signature*

(6/8/00)

(Please note: this information can also be found on our Website at www.nccusl.org)

WHY STATES SHOULD ADOPT
UNIFORM COMMERCIAL CODE ARTICLE 9 - SECURED TRANSACTIONS

Trillions of dollars of commercial and consumer credit are granted each year in secured transactions under Article 9 of the Uniform Commercial Code -- a manufacturer finances the acquisition of machinery and raw materials, a retailer finances inventory, a consumer finances furniture for a new house. The manufacturer, the retailer, and the consumer all depend upon Article 9 of the Uniform Commercial Code to make it possible for them to obtain the credit they need. Their creditors get assurance, in the form of the collateral that secures the granting of credit, that it will cushion the risk of default in the event the debtor does not pay the debt. Article 9 of the Uniform Commercial Code is absolutely necessary to economic function in the United States. It is the crankshaft for the American economic engine, and it is the envy of the rest of the world, which often struggles with the mechanics of credit granting and enforcement of creditor's rights.

Major revisions to Article 9 were completed in 1998. These revisions bring Article 9 into the 21st Century. There are many reasons that Revised Article 9 should be adopted in every state.

Technology. Paper-based transactions are giving way to electronic transactions. Revised Article 9 makes way for this revolution.

Volume. Article 9 was first proposed in 1951. Its last update was in 1972. Since 1972 the volume of commerce and the volume of credit has increased exponentially. Volume of secured transactions increases proportionately and directly with increase in economic activity in the United States. *The filing system revisions are particularly necessary to meet the problem of increased volume.*

New Collateral. New kinds of property and transactions have been developed since Article 9 was last amended. The *scope* of Article 9 expands to keep up and the 1998 revisions meet the needs for collateral into the new millennium. Examples of specific new collateral are deposit accounts and health insurance receivables.

Certainty of Perfection. Uncertainties about where to perfect a security interest under old Article 9 are overcome by the new basic rule in the 1998 revisions that makes the location of the debtor the place where the creditor will perfect the security interest.

New Liens. Statutory, non-possessory liens have proliferated since Article 9 was originally approved. Such liens represent a risk for creditors, and a potential conflict with security interests in collateral, if there is no public notice of their existence. Article 9 includes certain statutory, non-possessory liens for the purposes of providing public notice and setting priorities between creditors.

Clarification of Rules. Over time, provisions of Article 9 have been interpreted by courts, sometimes in conflicting ways. Some decisions deal with issues that were not expressly addressed in original Article 9. The result is ambiguity in the application of some rules. The revisions to Article 9 address and cure the accrued ambiguity problems.

Consumer Impact. Revised Article 9 addresses consumer issues that were not addressed in original Article 9.

Commitment to Uniformity. Amendments to Article 9 from state to state have created differences that impair interstate transactions. The revisions address specific kinds of secured transactions in oil and gas and agriculture in an effort to re-establish uniformity of law governing these kinds of transactions.

UNIFORM COMMERCIAL CODE
REVISED ARTICLE 9, SECURED TRANSACTIONS (1998)

- A Summary -

The Uniform Commercial Code has eleven substantive articles. Article 9, Secured Transactions, may be the most important of the eleven. Article 9 provides the rules governing any transaction (other than a finance lease) that couples a debt with a creditor's interest in a debtor's personal property. If the debtor defaults, the creditor may repossess and sell the property (generally called collateral) to satisfy the debt. The creditor's interest is called a "security interest." Article 9 also covers certain kinds of sales that look like a grant of a security interest.

The operation of Article 9 appears deceptively simple. There are two key concepts: "attachment" and "perfection." These terms describe the two key events in the creation of a "security interest." Attachment generally occurs when the security interest is effective between the creditor and the debtor, and that usually happens when their agreement provides that it take place. Perfection occurs when the creditor establishes his or her "priority" in relation to other creditors of the debtor in the same collateral. The creditor with "priority" may use the collateral to satisfy the debtor's obligation when the debtor defaults before other creditors subsequent in priority may do so. Perfection occurs usually when a "financing statement" is filed in the appropriate public record. Generally, the first to file has the first priority, and so on.

Article 9 relies on the public record because it provides the means for creditors to determine if there is any security interest that precedes theirs—a notice function. A subsequent secured creditor cannot complain that his or her grant of credit was made in ignorance of the prior security interests easily found in the public record, and cannot complain of the priority of the prior interests as a result. Every secured creditor has a priority over any unsecured creditor.

The somewhat simple description in the prior paragraphs should not mislead anyone. Article 9 is not simple. There are substantial exceptions to the above-stated perfection rule, for example. Filing is not the only method for perfection. Much depends upon the kind of property that is collateral. Possession of collateral by the secured party is an alternative method of perfection for many kinds of collateral. For some kinds of property, control (a defined term) either perfects the interest or provides a better priority than filing does. There are kinds of transactions for which attachment is perfection. Priority is, also, not always a matter of perfecting a security interest first in time.

The following numbered topics highlight Article 9 as revised in 1998. They are not a treatise on Revised Article 9, but are a schematic summary of its relevant changes.

1. **The Scope Issue.** The 1998 revision expands the "scope" of Article 9. What this means literally is that the kinds of property in which a security interest can be taken by a creditor under Article 9 increases over those available in Article 9 before revision. Also, certain kinds of transactions that did not come under Article 9 before, now come under Article 9. These are some of the kinds of collateral that are included in Revised Article 9 that are not in original Article 9: sales of payment intangibles and promissory notes; security interests created by governmental debtors; health insurance receivables; consignments; and commercial tort claims. Nonpossessory, statutory agricultural liens come under Article 9 for determination of perfection and priority, generally the same as security interests come under it for those purposes.

2. **Perfection.** Filing a financing statement remains the dominant way to perfect a security interest in most kinds of property. It is clearer in Revised Article 9 that filing a financing statement will perfect a security interest, even if there is another method of perfection. "Control" is the method of perfection for letter of credit rights and deposit accounts, as well as for investment property. Control was available only to perfect security interests in investment property under old Article 9. A creditor has control when the debtor cannot transfer the property without the creditor's consent. Possession, as an alternative method to filing a financing statement to perfect a security interest, is the only method for perfecting a security interest in money that is not proceeds of sale from property subject to a security interest. Automatic perfection for a purchase money security interest is increased from ten days in old Article 9 to twenty days in Revised Article 9. Attachment of a purchase money security interest is perfection, at least for the twenty-day period. Then another method of perfection is necessary to continue the perfected security interest. However, a purchase money security interest in consumer goods remains perfected automatically for the duration of the security interest.

3. **Choice of Law.** In interstate secured transactions, it is necessary to determine which state's laws apply to perfection, the effect of perfection and the priority of security interests. It is particularly important to know where to file a financing statement. The 1998 revisions to Article 9 make two fundamental changes from old Article 9. In old Article 9, the basic rule chooses the law of the state in which the collateral is found as the law that governs perfection, effect of perfection,

and a creditor's priority. In Revised Article 9, the new rule chooses the state that is the location of the debtor. Further, if the debtor is an entity created by registration in a state, the location of the debtor is the location in which the entity is created by registration. If an entity is a corporation, for example, the location of the debtor is the state in which the corporate charter is filed or registered. In old Article 9, the entity that is a debtor is located in the state in which it has its chief executive office. These changes in basic choice of law rules will change the place in which a financing statement is filed in a great many instances from the place it would have been filed under old Article 9. At the same time, the location of the debtor establishes a more certain place to perfect than the old rule does. Collateral shifts location much easier than the debtors do.

4. **The Filing System.** Improvements in the filing system in the 1998 revisions to Article 9 include a full commitment to centralized filing—one place in every state in which financing statements are filed, and a filing system that escorts filing from the world of filed documents to the world of electronic communications and records. Under Revised Article 9, the only local filing of financing statements occurs in the real estate records for fixtures. Fixtures are items of personal property that become physically part of the real estate, and are treated as part of the real estate until severed from it. It is anticipated that electronic filing of financing statements will replace the filing of paper. Paper filing of financing statements is already disappearing in many states in 1998, as Revised Article 9 becomes available to them. Revised Article 9 definitions and provisions allow this transition from paper to electronic filing without further revision of the law. Revised Article 9 makes filing office operations more ministerial than old Article 9 did. The office that files financing statements has no responsibility for the accuracy of information on the statements and is fully absolved from any liability for the contents of any statements received and filed. Financing statements may, therefore, be considerably simplified. There is no signature requirement, for example, for a financing statement.

5. **Consumer Transactions.** Revised Article 9 makes a clearer distinction between transactions in which the debtor is a consumer than prior Article 9 did. Enforcement of a security interest that is included in a consumer transaction is handled differently in certain respects in the 1998 revisions to Article 9 than it was pre-1998. Examples of consumer provisions are: a consumer cannot waive redemption rights in a financing agreement; a consumer buyer of goods who pre-pays in whole or in part, has an enforceable interest in the purchased goods and may obtain the goods as a remedy; a consumer is entitled to disclosure of the amount of any deficiency assessed against him

or her, and the method for calculating the deficiency; and, a secured creditor may not accept collateral as partial satisfaction of a consumer obligation, so that choosing strict foreclosure as a remedy means that no deficiency may be assessed against the debtor. Although it governs more than consumer transactions, the good faith standard becomes the objective standard of commercial reasonableness in the 1998 revisions to Article 9.

6. **Default and Enforcement.** Article 9 provisions on default and enforcement deal generally with the procedures for obtaining property in which a creditor has a security interest and selling it to satisfy the debt, when the debtor is in default. Normally, the creditor has the right to repossess the property. Revised Article 9 includes new rules dealing with "secondary" obligors (guarantors), new special rules for some of the new kinds of property subject to security interests, new rules for the interests of subordinate creditors with security interests in the same property, and new rules for aspects of enforcement when the debtor is a consumer debtor. These are some of the specific new rules: a secured party (creditor with security interest) is obliged to notify a secondary obligor when there is a default, and a secondary obligor generally cannot waive rights by becoming a secondary obligor; a secured party who repossesses goods and sells them is subject to the usual warranties that are part of any sale; junior secured creditors (subsequent in priority) and lienholders who have filed financing statements, must be notified when a secured party repossesses collateral; and, if a secured party sells collateral at a low price to an insider buyer, the price that the goods should have obtained in a commercially reasonable sale, rather than the actual price, is the price that will be used in calculating the deficiency.

Founded in 1892, the National Conference of Commissioners on Uniform State Laws is a confederation of state commissioners on uniform laws. Its membership comprises more than 300 attorneys, judges, and law professors, who are appointed by each of the 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands, to draft uniform and model state laws and work toward their enactment.

FISCAL ANALYSIS MEMORANDUM

DATE: June 21, 2000

TO: Senate Finance Committee

FROM: Richard Bostic
Fiscal Research Division

RE: SB 1305 – Revise Article 9 of the UCC

FISCAL IMPACT

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

	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05
REVENUES					
General Fund					
Secretary of State	$2,520,000	$8,804,529	$8,804,529	$8,804,529	$8,804,529
County revenues	($240,155)	($1,915,067)	($1,915,067)	($1,915,067)	($1,915,067)
EXPENDITURES					
General Fund					
Secretary of State *	$3,895,865	$1,954,334	$1,954,334	$1,954,334	$1,954,334
POSITIONS:					
Secretary of State *	45	45	45	45	45

** Requested by department; not yet reviewed by Fiscal Research Division*

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of the Secretary of State; County Registers of Deeds

EFFECTIVE DATE: Part IV (fee increase) is effective September 1, 2000 and applies to fees paid on or after that date. The remainder of the bill is effective July 1, 2001.

BILL SUMMARY: This bill rewrites Article 9 of the Uniform Commercial Code to conform state law to revisions adopted by the National Conference of Commissioners on Uniform State

Laws. One major change is a requirement that all financing statements be filed with the Secretary of State except for fixture filings, which will continue to be filed with county Registers of Deeds. The bill also increases filing fees from $15 to $30.

ASSUMPTIONS AND METHODOLOGY:

EXPENDITURES:
The North Carolina Association of Registers of Deeds reported 209,365 UCC filings in county offices in FY 1998-99. The UCC staff of the Department of Secretary of State sampled 10,000 of the local filings and determined that SB 1305 will transfer 61% of the county filings to the state level. This equals 127,713 new filings transferred into the UCC Division each year, an amount nearly equal to the current workload of 140,000 filings received annually. SB 1305 will also require the Secretary of State to file liens on approximately 50,000 manufactured homes. In addition, section 25-9-523 (e) requires all filings be processed in three business days.

To handle the increased workload in a timely manner, the Secretary of State requests 45 additional positions in the UCC section beginning in FY 2000-01. To house and equip this new staff, the Secretary of State requests the following one-time expenditures:

Nonrecurring	
Computers	$ 248,504
Office Equipment	$ 61,264
Contractual Services (programming,etc)	$ 351,490
Rent/Lease Building	$ 319,000
Office Furniture	$ 955,773
Total	**$1,936,031**

The recurring costs of 45 positions is as follows:

Salaries	$1,242,332
Benefits	$ 306,752
Office equipment	$ 30,600
Telephone service	$ 39,000
Office supplies	$ 20,650
Rent/lease	$ 225,000
Contractual services	$ 40,000
Maintenance agreement	$ 40,000
Travel	$ 10,000
Total	**$1,954,334**

NOTE: These budget estimates have not yet been analyzed by the Fiscal Research Division.

REVENUE:
I. Counties
As stated above, there were 209,365 UCC filings in county offices in FY 1998-99. SB 1305 will transfer all filings except fixtures and timber/minerals filings from the counties to the Secretary

of State. Ann Shaw, President of the North Carolina Association of Registers of Deeds, estimates that counties will retain only 15% of the current UCC filings. The 209,365 UCC filings in FY 1998-99 generated $2,857,217 (9% of the filings were terminations that were charged no fee). After the transfer to the state, it is estimated that only 31,405 filings will remain in the counties for revenues of $471,075. This is a loss of $2,386,142 to county general funds. Part of the loss is offset by an increase in the fee from $15 to $30. The counties will recoup $471, 075 from the fee increase. Additional fees could be received from multiple page filings, but there is no data on the number of such filings in the counties. One final complication is that the bill allows pre-filing of documents prior to July 1, 2001. State and county officials cannot estimate the impact of this provision. This memo assumes half of those that would file in the county will chose to file with state in FY 2000-01. Counties will receive the new fee for half the filings (104,682) for revenue of $3,140,475 in FY 2000-01. Adjusting this for the September effective date (10 months) gives a revenue projection of $2,617,062. The net revenue loss for FY 2000-01 is $240,155.

II. Secretary of State

The Secretary of State currently has 140,000 UCC filings. Of this total, 80% are charged $15 and 20% are charged no fee. The approximate revenues are $1,680,000. Under SB 1305, the Secretary of State will receive 317,713 filings annually. At a minimum of $30 per filing, this workload will generate $9,531,390 in revenue. It is estimated that 20% of these filings will have additional pages that will require an additional $15 fee. This would yield an additional $953,139 in revenue. The net increase for the General Fund will be approximately $8,804,529.

As stated above, half the filings now done in the counties will be pre-filed with the Secretary of State thus new revenues in FY 2000-01 will be $1,915,695 (63,857 filings X $30). The Secretary of State will also receive a fee increase starting in September 2000. The current 140,000 filings charged a fee of $30 will produce $4.2 million. The current revenue is $1.68 million thus the net revenue is $2.52 million.

TECHNICAL CONSIDERATIONS:

VISITOR REGISTRATION SHEET

SENATE FINANCE — **WEDNESDAY, JUNE 21, 2000**

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sadie Richburg	Town of Leland
Jane Gilbert	Town of Leland
Dial Hewett	Town of Leland
Franky Thomas	Mayor Town of Leland
Kirk Rivers	Councilman of Elizabeth City
Vicky Hunt	Chairman N.C. Film Council
Naj Silek	Film Industry Supporter
Paul Stock	NC Bankers Assn.
Natalie English	Charlotte Chamber
Allyson K Duncan	Kilpatricic Stockton
Kelli Kukura	DuPont
Jill Stewart	Citizen

VISITOR REGISTRATION SHEET

SENATE FINANCE — **Name of Committee**

WEDNESDAY, JUNE 21, 2000 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Susan J. Valaam	Nationwide
V L McBride	NCDOT
Ann Edmondson	NCRMA
John McMillan	McFarlane PA.
Fran Preston	NCRMA
Alan Miller	Banks & Dixon LLP
Michelle Cook	Weyerhaeuser
Andy Ellen	NCRMA
Mary Carmichael	REBIC
Jim Blackburn	N.C. Association of County Commissioners
Emily Meeker	Conservation Council of NC
Robert A. MATHEA	N.C. Utilities Commission
Bob Gillam	NCUC - Public Staff
Robert Bennink	NCUC Staff

VISITOR REGISTRATION SHEET

SENATE FINANCE — **Name of Committee**

WEDNESDAY, JUNE 21, 2000 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
[signature]	NCCCS
[signature]	State Treasurer
P. Hardy Hall	General Statutes Commission
Caroline Brown	UNC School of Law (Rev. UCC Art 9 Joint Editorial Comm.)
THOMAS B. ANDERSON, JR.	Womble Carlyle Sandridge & Rice (Rev. UCC Art 9 Drafting Comm.)
Floyd M. Lewis	General Statutes Commission
Sabra J. Faires	Dept. of Revenue
LENNIE COLLINS	NC DOR
NANCY POMERANZ	NC DOR
CHARLES COLLINS	"
Patti Seawell	"

VISITOR REGISTRATION SHEET

SENATE FINANCE — **Name of Committee**

WEDNESDAY, JUNE 21, 2000 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Andy Sabol	NC DOR
[signature]	Dept of Secretary of State
Jon CALA	" "
Claire J. Malstaff	Sec of State
Deborah Johnson	NCSPA
Scott Templeton	Sec. State
Stephanie Montgomery	Sec of State
Mike Arnette	NCASA
Rhoda Harris	Town of Elon College, Alderman
Beth Schmidt	Town of Elon College, Mayor
Robert PARTIN	SCOTLAND NECK MAYOR
Rob Schofield	NC Justice Ctr.
Amy Farlow	Hafer, Caldwell
Beth Leonard Melby	NCDOJ for NCDOT

CORRECTED COMMITTEE REPORT

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
John Kerr, Co-Chair
David Hoyle, Co-Chair

Wednesday, June 21, 2000

SENATOR KERR,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS #1)**1560** Modify Bill Lee Act.
Sequential Referral: None
Recommended Referral: None

S.B.(CS #1)**1285** Litter Prevention Special Plate.
Sequential Referral: None
Recommended Referral: None

S.B.(CS #1)**1305** Revise Article 9 of the UCC.
Sequential Referral: None
Recommended Referral: None

S.B. **1331** White Goods Sunset Repeal.
Sequential Referral: None
Recommended Referral: None

S.B. **1502** Increase Fees/Investment Advisor Revisions.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. **1460** Film Industry Incentives
Draft Number: PCS7789
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

**UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL**

H.B.(CS #1)**1854** 2000 Fee Bill.

Draft Number:	PCS6309
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 7

Committee Clerk Comment: None

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
John Kerr, Co-Chair
David Hoyle, Co-Chair

Thursday, June 22, 2000

SENATOR KERR,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 2

H.B.(SCS #1)**1854** 2000 Fee Bill

Draft Number:	PCS6310
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment: Fee bill

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
John Kerr, Co-Chair
David Hoyle, Co-Chair

Thursday, June 22, 2000

SENATOR KERR,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. **1474** Lease Law Exemption/Buncombe T.C.C.

Draft Number:	PCS7792
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE C.S. BILL

H.B. **1559** Conform with Federal Law.

Draft Number:	PCS8205
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comment: SB 1474 and HB 1559

SENATE FINANCE COMMITTEE

THURSDAY, JUNE 22, 2000

ON THE FLOOR
(RECESS DURING SESSION)

The Senate Finance Committee met on Thursday, June 22, 2000, at 11:30 A.M. on the floor while session was in recess with Senator John Kerr presiding. All committee members present for session were in attendance.

SB 1481 - RESEARCH TRIANGLE PARK BOUNDARY

Senator Kerr was recognized to explain the bill. After a brief discussion, Senator Rand moved to give the bill a "Favorable Report", motion carried. Copy of bill is included in the minutes.

SB 1484 – LOCAL OPTION HOMESTEAD RELIEF

Senator Hoyle was recognized to explain the bill. After a brief discussion, Senator Lee moved to give the bill a "Favorable Report", motion carried. Copy of bill is included in the minutes.

SB 1463 - DARE UTILITY UNDERGROUNDING AMENDMENTS

Senator Hoyle was recognized to explain the bill. He moved for adoption of a proposed committee substitute, motion passed. After a time of discussion, Senator Phillips moved to give the bill a "Favorable Report", motion carried. Copy of bill and supporting documents included in the minutes.

HB 1854 – 2000 FEE BILL

Senator Kerr was recognized to explain this Bill. HB 1854 was heard on Wednesday, June 21, 2000, and was incorrectly reported out. (See June 21st minutes.) The bill was before the Finance Committee for re-consideration. Senator Kerr moved for adoption of a new Committee Sub and the motion carried. At the conclusion of his explanation of the new Committee Sub, Senator Gulley moved for a "Favorable Report" and the motion carried. Copy of Com. Sub included in the minutes.

Meeting adjourned.

David W. Hoyle, Co-Chairman

John H. Kerr, III, Co-Chairman

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

Committee Reports are Attachments #1, #2 and #3

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

Committee Report is Attachment # 1

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1481*

Short Title: Research Triangle Park Boundary. (Local)

Sponsors: Senators Miller; Gulley, Lucas, and Reeves.

Referred to: State and Local Government.

May 25, 2000

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LEGAL DESCRIPTION OF THE REAL PROPERTY LOCATED WITHIN THE COUNTIES OF DURHAM AND WAKE, AS SET FORTH IN SECTION 2, CHAPTER 435, SESSION LAWS OF 1985, AND AS AMENDED BY SECTION 4, CHAPTER 841, SESSION LAWS OF 1989.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 435 of the Session Laws of 1985 (as amended by Section 4 of Chapter 841 of the Session Laws of 1989) is amended by changing the phrase "the following described territory" to the phrase "either of the following described territories" and adding at the end of the section the following:

"As shown on a survey entitled "Survey for Biogen Inc.," dated April 11, 1995, prepared by Greenhorne & O'Mara, Inc., and recorded in Plat Book 138, Page 167, Durham County Registry and Book of Maps 1997, Page 1316, Wake County Registry, and being that property described in that deed recorded in Book 1741, Page 937, Durham County Registry, and in Book 5209, page 771, Wake County Registry, and more particularly described as follows: Beginning at an iron pipe set in the southern right-of-way of Davis Drive, said iron pipe being located South 82__30'21" East 676.43 feet from an existing angle iron, the original northwest corner of W.R. O'Briant Property as shown on a plat recorded in Book of Maps 1960, Page 64 of the Wake County Registry, and in Plat Book 40, Page 80 of the Durham County Registry; running thence from said beginning point South 82__30'21" East 988.66 feet to an existing iron pipe, said pipe being located in the southeastern property line of the Research Triangle Foundation of North Carolina property described in Book 148, Page 331, Durham County Registry, and in the western property line of The Davis

Park Associates, Ltd. property as shown on Plat Book 116, Page 116, Durham County Registry; thence along The Davis Park Associates, Ltd. western property line South 07__02'02" West 579.40 feet to an existing iron pipe located in the northern property line of the Davis Drive Associates No. 2 property as shown on Plat Book 116, Page 115, Durham County Registry; thence along the Davis Drive Associates No. 2 northern and western property lines the following two calls: North 78__07'33" West 331.59 feet to an existing 4-inch channel iron; thence South 09__05'35" West 721.58 feet to an existing iron pipe located in the northwest corner of the property owned now or formerly by Richard J. Thompson, et al as described in Book 2750, Page 748, Wake County Registry; thence along the Thompson, et al, western property line South 09__02'51" West 1,355.84 feet to an existing 4-inch channel iron located in the northern property line of the Research Triangle Foundation of North Carolina property as described in Book 1670, Page 239, Wake County Registry; thence along the northern line of the Research Triangle Foundation of North Carolina property North 78__10'21" West 1,087.20 feet to an existing ½ inch steel rod located in the northeast corner of the Biogen Inc. property as shown on Book of Maps 1994, Page 1560, Wake County Registry; thence along the Biogen Inc. northern property line the following two calls: North 78__10'21" West 56.35 feet to an existing angle iron; thence North 80__01'56" West 156.55 feet to an existing iron pipe located in the eastern property line of the Research Triangle Foundation of North Carolina property as described in Book 1670, Page 239, Wake County Registry; thence along the eastern line of the Research Triangle Foundation of North Carolina property North 07__49'13" East 770.98 feet to a new iron pipe; thence North 55__22'58" West 496.22 feet to a new iron pipe located in the southern right-of-way of Davis Drive; thence along the southern right-of-way of Davis Drive North 34__37'02" East 902.55 feet to an existing rebar and cap North Carolina Department of Transportation right-of-way marker; thence North 33__12'21" East 84.07 feet to an iron pipe set; thence North 33__12'21" East 207.08 feet to an iron pipe set; thence North 46__18'46" East 265.38 feet to an iron pipe set; thence North 59__54'40" East 270.77 feet to an iron pipe set; thence North 71__20'59" East 233.29 feet to an iron pipe set, the point and place of BEGINNING, containing 84.654 acres.

Section 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1484

Short Title: Local Option Homestead Relief. (Public)

Sponsors: Senators Hoyle; Albertson, Carter, Cooper, and Perdue.

Referred to: Judiciary I.

May 25, 2000

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CONSTITUTION OF NORTH CAROLINA, IF APPROVED BY THE VOTERS IN THE 2000 GENERAL ELECTION, TO AUTHORIZE THE GENERAL ASSEMBLY TO ENACT LEGISLATION ALLOWING EACH COUNTY TO (I) INCREASE THE AMOUNT OF THE PROPERTY TAX HOMESTEAD EXEMPTION FOR LOW-INCOME ELDERLY AND DISABLED INDIVIDUALS IN THAT COUNTY AND (II) RAISE THE DEFINITION OF "LOW-INCOME" SO THAT MORE ELDERLY AND DISABLED INDIVIDUALS CAN QUALIFY FOR THE EXEMPTION.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Article V of the North Carolina Constitution is amended by adding a new subsection to read:

"(8) Property tax homestead exclusion. If the General Assembly enacts legislation classifying and excluding from ad valorem taxation part of the value of the residence of each elderly or disabled individual whose income is below a maximum amount and who satisfies other conditions, the General Assembly may, notwithstanding subsection (2) of this section, enact a general law uniformly applicable throughout the State authorizing each county to increase the portion of a classified residence's value that is excluded in that county and to increase the maximum income threshold to qualify for the exclusion in that county."

Section 2. G.S. 105-277.1 is amended by adding a new subsection to read:

"(a1) Local Option Increase. -- The board of commissioners of a county may, by resolution, increase the amount of the exclusion provided in subsection (a) of this section, increase the maximum income threshold provided in subdivision (a)(2) of

this section, or both. An increase adopted under this subsection shall apply uniformly within the county. The board of commissioners of a county may, by resolution, repeal or reduce an increase adopted under this subsection, but may not reduce the exclusion or the income threshold provided in subsection (a) of this section. A resolution changing the exclusion amount or the income threshold within a county pursuant to this subsection shall become effective no earlier than for the taxable year beginning July 1 following adoption of the resolution."

Section 3. G.S. 105-309(f) reads as rewritten:

"(f) The following information shall appear on each abstract or on an information sheet distributed with the abstract. If the county has increased the exclusion amount or the income threshold pursuant to G.S. 105-277.1(a1), the assessor shall substitute the applicable dollar amounts. The abstract or sheet must include the address and telephone number of the assessor below the notice required by this subsection. The notice shall read as follows:

'PROPERTY TAX RELIEF FOR ELDERLY AND PERMANENTLY DISABLED PERSONS.

North Carolina excludes from property taxes the first twenty thousand dollars ($20,000) in appraised value of a permanent residence owned and occupied by North Carolina residents aged 65 or older or totally and permanently disabled whose income does not exceed fifteen thousand dollars ($15,000). Income means the owner's adjusted gross income as determined for federal income tax purposes, plus all moneys received other than gifts or inheritances received from a spouse, lineal ancestor or lineal descendant.

If you received this exclusion in (assessor insert previous year), you do not need to apply again unless you have changed your permanent residence. If you received the exclusion in (assessor insert previous year) and your income in (assessor insert previous year) was above fifteen thousand dollars ($15,000), you must notify the assessor. If you received the exclusion in (assessor insert previous year) because you were totally and permanently disabled and you are no longer totally and permanently disabled, you must notify the assessor. If the person receiving the exclusion in (assessor insert previous year) has died, the person required by law to list the property must notify the assessor. Failure to make any of the notices required by this paragraph before April 15 will result in penalties and interest.

If you did not receive the exclusion in (assessor insert previous year) but are now eligible, you may obtain a copy of an application from the assessor. It must be filed by April 15.'"

Section 4. G.S. 105-328 reads as rewritten:

"**§ 105-328. Listing, appraisal, and assessment of property subject to taxation by cities and towns situated in more than one county.**

(a) ~~For~~ Except as provided in subsection (a1) of this section, for purposes of municipal taxation, all property subject to taxation by a city or town situated in two or more counties may, by resolution of the governing body of the municipality, be

listed, appraised, and assessed as provided in G.S. 105-326 and 105-327 if, in such a case, in the opinion of the governing body, the same appraisal and assessment standards will thereby apply uniformly throughout the municipality. However, if, in such a case, the governing body ~~shall determine~~ determines that adoption of the appraisals and assessments fixed by the counties will not result in uniform appraisals and assessments throughout the municipality, the governing body may, by horizontal adjustments, equalize the appraisal and assessment values fixed by the counties in order to obtain the required uniformity. Taxes levied by the city or town shall be levied uniformly on the assessments so determined.

(a1) This section does not apply to assessments of property that differ in any of the counties in which the city or town is located because of a local option adjustment in the homestead exclusion under G.S. 105-277.1(a1).

(b) Should the governing body of a city or town situated in two or more counties not adopt the procedure provided in subsection ~~(a), above,~~ (a) of this section, all property subject to taxation by the municipality shall be listed, appraised, and assessed as provided in subdivisions (b)(1) through (b)(6), below.

(1) The governing body of the city or town shall appoint a municipal assessor on or before the first Monday in July in each odd-numbered year. The governing body may remove the municipal assessor from office during his term for good cause after giving him notice in writing and an opportunity to appear and be heard at a public session of the appointing body. Whenever a vacancy occurs in the office, the governing body shall appoint a qualified person to serve as municipal assessor for the period of the unexpired term. Persons holding the position of municipal assessor on July 1, 1971, shall be deemed qualified to fill the position. A person appointed as a municipal assessor shall meet the qualifications and requirements set for a county assessor under G.S. 105-294.

(2) With the approval of the governing body, a municipal assessor may employ testers, appraisers, and clerical assistants necessary to carry out the listing, appraisal, assessing, and billing functions required by law.

(3) A municipal assessor and the persons employed by him have the same powers and duties as their county equivalents with respect to property subject to taxation by a city or town.

(4) The governing body shall, with respect to property subject to city or town taxation, be vested with the powers and duties vested by this Subchapter in boards of county commissioners and boards of equalization and review. Appeals may be taken from the municipal board of equalization and review or governing body to the Property Tax Commission in the manner provided in this Subchapter for appeals from county boards of equalization and review and boards of county commissioners.

(5) All expenses incident to the listing, appraisal, and assessment of property for the purpose of city or town taxation shall be borne by the municipality for whose benefit the work is undertaken.

(6) The intent of this subsection (b) is to provide cities and towns that are situated in two or more counties with machinery for listing, appraising, and assessing property for municipal taxation equivalent to that established by this Subchapter for counties. The powers to be exercised by, the duties imposed on, and the possible penalties against municipal governing bodies, boards of equalization and review, assessors, and persons employed by an assessor shall be the same as those provided in this Subchapter by, on, or against county boards of commissioners, boards of equalization and review, assessors, and persons employed by an assessor."

Section 5. The catch line of G.S. 105-277.1 reads as rewritten:

"**§ 105-277.1. Property ~~classified for taxation at reduced valuation.~~ tax homestead exclusion.**"

Section 6. The amendment set out in Section 1 of this act shall be submitted to the qualified voters of the State at the statewide general election to be held in November 2000. The election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the General Statutes. The question to be used in the voting systems and ballots shall be:

"[ ] FOR [ ] AGAINST

Constitutional amendment authorizing the General Assembly to allow counties to (1) increase the property tax exemption for a residence owned by a low-income elderly or disabled person and (2) raise the definition of 'low-income' so more elderly and disabled persons can qualify for the exemption."

Section 7. If a majority of the votes cast on the question are in favor of the amendment set out in Section 1 of this act, the State Board of Elections shall certify the amendment to the Secretary of State. The amendment becomes effective upon this certification. The Secretary of State shall enroll the amendment so certified among the permanent records of that office.

Section 8. Sections 2, 3, and 4 of this act become effective only if the constitutional amendment proposed by Section 1 of this act is approved as provided in Sections 6 and 7 of this act. If the constitutional amendment is approved, Sections 2, 3, and 4 of this act become effective when the State Board of Elections certifies the amendment to the Secretary of State. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 2

SENATE BILL 1463
State and Local Government Committee Substitute Adopted 6/14/00

Short Title: Dare Utility Undergrounding Amendments. (Local)

Sponsors:

Referred to:

May 25, 2000

A BILL TO BE ENTITLED

AN ACT TO ALLOW DARE COUNTY TO EXPAND THE PURPOSE OF SPECIAL TAX DISTRICTS TO UNDERGROUND ELECTRIC UTILITY LINES SO AS TO ALLOW UNDERGROUNDING OF TELEPHONE AND CABLE TELEVISION LINES.

The General Assembly of North Carolina enacts:

Section 1. Section 1.1 of S.L. 1999-127 reads as rewritten:

"Section 1.1. Authorization to Create Utility District. A county board of commissioners may create one or more Utility Districts for the purpose of raising and expending funds to underground ~~electric~~ electric and telephone utility lines in the district."

Section 2. Section 5.(a) of S.L. 1999-127 reads as rewritten:

"Section 5.(a) Powers. By resolution the board of commissioners of the county, acting ex officio on behalf of the Utility District, may levy a tax of up ~~to one~~ to:

(1) One dollar ($1.00) per month on each residential electric power customer bill for service within the district, and up to five dollars ($5.00) per month on each commercial or industrial electric power customer bill within the district.

(2) One dollar ($1.00) per month on each residential telephone customer line for service within the district and up to five dollars ($5.00) per month on each commercial or industrial telephone customer line within the district."

Section 3. Section 6 of S.L. 1999-127 reads as rewritten:

"Section 6. Use of Funds. The taxes levied under this act, after being expended for the necessary administrative expenses of the utility district, shall be used only for undergrounding of ~~electric~~ electric and telephone utility lines within the district. The budget for the Utility District shall be adopted by the special commission for that district. The budget shall include funding to pay for the installation of conduit for underground telephone cable, where required."

Section 4. Section 9.(b) of S.L. 1999-127 reads as rewritten:

"Section 9.(b) Collection. Every ~~electric~~ utility subject to a tax authorized by this act shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall be collected as part of the charge for furnishing ~~electric power.~~ service. The tax shall be stated and charged separately and shall be paid by the purchaser to the utility as trustee for and on account of the Utility District. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the utility. The Utility District shall design, print, and furnish to all appropriate utilities in the district the necessary forms for filing returns and instructions to ensure the full collection of the tax. A utility who collects a tax authorized by this act may deduct from the amount remitted to the Utility District a discount equal to the discount the State allows the utility for State sales and use tax. For the purpose of this act, a utility includes a government entity providing ~~electric~~ service, a cooperative, and any other ~~electric~~ utility. A utility shall have the same right to suspend or terminate service for nonpayment of the tax that it has to suspend or terminate service for payment of any other part of the utility bill. ~~The obligation of the utility to pay the tax if the customer has not paid the bill is the same as its liability under G.S. 105-164.4(a)(4a).~~ A utility has no obligation to take any legal action to enforce the collection of taxes under this act. The county or the district may initiate a collection action in its name and reasonable costs and attorneys' fees may be awarded to the plaintiff."

Section 5. Section 5 of S.L. 1999-127 is amended by adding a new subsection to read:

"Section 5.(d) The board of commissioners may exempt from payment of the tax any person for whom the payment would work an unreasonable financial hardship in accordance with criteria established by the board of commissioners."

Section 6. Section 5 of S.L. 1999-127 is amended by adding a new subsection to read:

"Section 5.(e) The commission may order any cable television lines (or other utility lines other than electric or telephone) to be undergrounded when any electric or telephone line on the same pole is undergrounded."

Section 7. S.L. 1999-127 is amended to add new sections to read:

"Section 13.(a) The district shall coordinate with affected utilities, municipalities, and the North Carolina Department of Transportation to facilitate acquisition of rights-of-way for burial of cable."

Section 13.(b) The undergrounding required by this act shall be a coordinated effort between the utility district, and the affected electric, telephone, and cable television utilities.

Section 14. The State Auditor may perform audits pursuant to Article 5A of Chapter 147 of the General Statutes to ensure that funds collected by or paid to the utility district are being managed in accordance with the provisions of this act, and shall perform an audit at least every two years. The costs of the audit shall be reimbursed to the State Auditor by the utility district."

Section 8. Section 5(c) of S.L. 1999-127 reads as rewritten:

"Section 5.(c) The commission may contract with the State of North Carolina, another local government, or a private entity for carrying out the projects authorized by this act. Any State, local government, or other entity which carries out projects authorized by this act, or otherwise takes action affecting utilities pursuant to the terms of this act shall remain fully liable for any damages to utility company property. Any private sector entity with which the district wishes to contract to carry out projects authorized by this act must be approved in writing in advance by each utility whose facilities will be affected and must carry sufficient insurance to cover any damages caused."

Section 9. Section 4(a) of S.L. 1999-127 reads as rewritten:

"Section 4.(a) Governing Board. Each Utility District shall be governed by a special commission consisting of one person appointed by the board of commissioners of that county, one nonvoting member appointed by the board of commissioners of the county who has been recommended by each local telephone exchange carries licensed to do business in North Carolina and providing service in that county, one nonvoting member appointed by the board of commissioners of the county who has been recommended by each electric utility provider in the county, one person appointed by the governing board of each municipality that has annexed its territory to the district under Section 3(a) of this act.

Section 10. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 1463
State and Local Government Committee Substitute Adopted 6/14/00
Proposed Committee Substitute S1463-PCS7793-LB

Short Title: Dare Utility Undergrounding Amendments. (Local)

Sponsors:

Referred to:

May 25, 2000

A BILL TO BE ENTITLED

AN ACT TO ALLOW DARE COUNTY TO CREATE SPECIAL DISTRICTS TO UNDERGROUND LINES.

The General Assembly of North Carolina enacts:

Section 1. Authorization to Create Utility District. A county board of commissioners may create one or more Utility Districts for the purpose of raising and expending funds to underground electric and telephone utility lines in the district.

Section 2.(a) Procedure. A county board of commissioners may by resolution signify its determination to create a Utility District under the provisions of this act. The resolution shall be adopted after a public hearing thereon, notice of which hearing shall be given by publication at least once, not less than 10 days prior to the date fixed for the hearing, in a newspaper having a general circulation in the county. The notice shall contain a brief statement of the substance of the proposed resolution, shall set forth the boundaries of the district, and shall state the time and place of the public hearing. No other publication of the resolution is required under the provisions of any other law.

Section 2.(b) The resolution shall include articles of incorporation which shall set forth:

(1) The name of the district;

(2) A statement that the district is organized under this act; and

(3) A description of the boundaries, which may include any territory designated by the county board of commissioners that is not in the corporate limits of any municipality.

Section 2.(c) No territory may be in more than one district.

Section 2.(d) All territory of a district shall be within the county.

Section 2.(e) A certified copy of the resolution signifying the determination to organize a district under the provisions of this act shall be filed with the Secretary of State, together with proof of publication of the notice of hearing on the resolution. If the Secretary of State finds that the resolution, including the articles of incorporation, conforms to the provisions of this act and that the notice of hearing was properly published, the Secretary of State shall file the resolution and proof of publication in the records of that office, shall issue a certificate of incorporation under the seal of the State, and shall record the same in an appropriate book of record. The issuance of the certificate of incorporation by the Secretary of State shall constitute the district, a public body and body politic and corporate of the State of North Carolina. This certificate of incorporation shall be conclusive evidence of the fact that the district has been duly created and established under the provisions of this act.

Section 2.(f) When the district has been duly organized and its officers appointed as provided by this act, the secretary or clerk of the district shall certify to the Secretary of State the names and addresses of the officers as well as the address of the principal office of the district.

Section 3.(a) Annexation to District. By adoption of a resolution, and with the approval of the board of commissioners of a county by resolution, any municipality located wholly within that county may annex the entirety of that municipality to any Utility District created by this act, but no municipality may be in more than one district. The resolution shall be adopted by the municipal governing board after a public hearing thereon, notice of which hearing shall be given by publication at least once, not less than 10 days prior to the date fixed for the hearing, in a newspaper having a general circulation in the county. The notice shall contain a brief statement of the substance of the proposed resolution and shall state the time and place of the public hearing. No other publication of the resolution is required under the provisions of any other law.

Section 3.(b) By adoption of a resolution, the board of commissioners of a county may annex any area within that county but not within the corporate limits of any municipality to a Utility District, but no area may be in more than one district. The resolution shall be adopted by the county board of commissioners after a public hearing thereon, notice of which hearing shall be given by publication at least once, not less than 10 days prior to the date fixed for the hearing, in a newspaper having a general circulation in the county. The notice shall contain a brief statement of the substance of the proposed resolution, the boundaries of the proposed annexation, and shall state the time and place of the public hearing. No other publication of the resolution is required under the provisions of any other law.

Section 3.(c) If any area in a Utility District is annexed to the corporate limits of any municipality, it shall remain in the same Utility District notwithstanding any other provision of this act.

Section 4.(a) Governing Board. Each Utility District shall be governed by a special commission consisting of one person appointed by the board of commissioners of that county, one nonvoting member appointed by the board of commissioners of the county who has been recommended by each local telephone exchange carrier licensed to do business in North Carolina and providing service in that county, one nonvoting member appointed by the board of commissioners of the county who has been recommended by each electric utility provider in the county, one nonvoting member appointed by the board of commissioners of the county who has been recommended by each cable television provider in the county, and one person appointed by the governing board of each municipality that has annexed its territory to the district under Section 3(a) of this act.

Section 4.(b) In the case of Dare County, one person shall also be appointed to the Special Commission by the Roanoke Island Commission established by Part 27A of Article 2 of Chapter 143B of the General Statutes. Appointments shall be for two-year terms.

Section 5.(a) Powers. By resolution the board of commissioners of the county, acting ex officio on behalf of the Utility District, may levy an assessment of up to:

(1) One dollar ($1.00) per month on each residential electric power customer bill for service within the district, and up to five dollars ($5.00) per month on each commercial or industrial electric power customer bill within the district.

(2) One dollar ($1.00) per month on each residential telephone customer bill for service within the district and up to five dollars ($5.00) per month on each commercial or industrial telephone customer bill within the district.

Section 5.(b) The Utility District may receive contributions from the State of North Carolina, local governments, and the private sector for corporate purposes authorized by this act.

Section 5.(c) The commission may contract with the State of North Carolina, another local government, or a private entity for carrying out the projects authorized by this act. Any State, local government, or other entity which carries out projects authorized by this act, or otherwise takes action affecting any company whose lines are effected pursuant to the terms of this act shall remain fully liable for any damages to company property. Any private sector entity with which the district wishes to contract to carry out projects authorized by this act must be approved in writing in advance by each company whose facilities will be affected and must carry sufficient insurance to cover any damages caused.

Section 5.(d) The board of commissioners may exempt from payment of the assessment on an electric bill any person for whom the payment would work an unreasonable financial hardship in accordance with criteria established by the board

of commissioners. The board of commissioners shall exempt from payment of the assessment on a telephone bill those low-income residential telephone customers who pay reduced rates for local telephone service pursuant to an order of the North Carolina Utilities Commission.

Section 5.(e) The commission may order any cable television lines (or other lines other than electric or telephone) to be undergrounded when any electric or telephone line on the same pole is undergrounded.

Section 6. Use of Funds. The assessments levied under this act, after being expended for the necessary administrative expenses of the utility district, shall be used only for undergrounding of electric and telephone utility lines within the district. The budget for the Utility District shall be adopted by the special commission for that district. The budget shall include funding to pay for the installation of conduit for underground telephone cable, where required.

Section 7. Corporate Existence. A Utility District created under this act shall have the power granted by this act, and may do all acts reasonably necessary to fulfill this purpose. A simple majority of the governing board constitutes a quorum, and approval by a majority of those present is sufficient to determine any matter before the governing body, if a quorum is present.

Section 8. Fiscal Control. The Utility District is a special district under G.S. 159-7 and is covered by the applicable provisions of Chapter 159 of the General Statutes.

Section 9.(a) Levy. An assessment authorized by this act may be levied only by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto. An assessment authorized by this act shall become effective on the date specified in the resolution levying the assessment. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the third month after the date the resolution is adopted. In establishing the effective date, the board of commissioners shall consult with any utility that will be collecting the assessment to determine any administrative lead times that might be desirable.

Section 9.(b) Collection. Every utility subject to an assessment authorized by this act shall, on and after the effective date of the levy of the assessment, collect it. The assessment shall be collected as part of the charge for furnishing service. The assessment shall be stated and charged separately and shall be paid by the purchaser to the utility as trustee for and on account of the Utility District. The assessment shall be passed on to the purchaser instead of being borne by the utility. The Utility District shall design, print, and furnish to all appropriate utilities in the district the necessary forms for filing returns and instructions to ensure the full collection of the assessment. A utility who collects an assessment authorized by this act may deduct from the amount remitted to the Utility District a discount equal to the discount the State allows the utility for State sales and use tax. For the purpose of this act, a utility includes a government entity providing service, a cooperative, and any other utility. A utility shall have the same right to suspend or terminate service for nonpayment of the assessment that it has to suspend or

terminate service for payment of any other part of the utility bill. A utility has no obligation to take any legal action to enforce the collection of assessments under this act. The county or the district may initiate a collection action in its name and reasonable costs and attorneys' fees may be awarded to the plaintiff.

Section 9.(c) Administration. The Utility District shall administer an assessment it levies under this act. An assessment authorized by this act is due and payable to the district finance officer in monthly installments on or before the last day of the month following the month in which the assessment accrues. Every person, firm, corporation, or association liable for the assessment shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the Utility District. The return shall state the total gross receipts derived in the preceding month upon which the assessment is levied. A return filed with the district finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 as if the Utility District were a county. The Utility District may adopt a payment schedule keyed to the billing cycle of the utility collecting the assessment rather than the calendar month, as long as there are at least 12 billing cycles per year.

Section 9.(d) Penalties. A person, firm, corporation, or association who fails or refuses to file an assessment return or pay an assessment authorized by this act as required by law is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The governing board of the Utility District has the same authority to waive the penalties for an assessment authorized by this act that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

Section 9.(e) Increase, Repeal, or Reduction. An assessment levied by a district under this act may be increased not in excess of the maximum allowed by this act, repealed or reduced by a resolution adopted by the board of commissioners of the county, acting ex officio on behalf of the Utility District. Repeal or reduction of an assessment authorized by this act shall become effective on the first day of a month and may not be earlier than the first day of the third month after the date the resolution is adopted. Repeal or reduction of an assessment authorized by this act does not affect a liability for an assessment that was attached before the effective date of the repeal or reduction, nor does it affect a right to a refund of an assessment that accrued before the effective date of the repeal or reduction. In establishing the effective date, the board of commissioners shall consult with any utility that will be collecting the assessment to determine any administrative lead times that might be desirable. Once the lines have been undergrounded and the costs have been paid, the board of commissioners shall terminate the assessment.

Section 10. Interlocal Agreements. By interlocal agreement adopted under Chapter 160A of the General Statutes, a Utility District created under this act may contract with a municipality or county to handle assessment collections and fiscal control.

Section 11.(a) The district shall coordinate with affected utilities, municipalities, and the North Carolina Department of Transportation to facilitate acquisition of rights-of-way for burial of cable.

Section 11.(b) The undergrounding required by this act shall be a coordinated effort between the utility district and the affected electric, telephone, and cable television companies.

Section 12. The State Auditor may perform audits pursuant to Article 5A of Chapter 147 of the General Statutes to ensure that funds collected by or paid to the Utility District are being managed in accordance with the provisions of this act, and shall perform an audit at least every two years. The costs of the audit shall be reimbursed to the State Auditor by the Utility District.

Section 13. This act applies to Dare County only.

Section 14. Sections 1.1 through 11 of S.L. 1999-127 are repealed.

Section 15. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 4

HOUSE BILL 1854*
Committee Substitute Favorable 6/7/00
Senate Finance Committee Substitute Adopted 6/21/00
Senate Finance Committee Substitute No. 2 Adopted 6/22/00

Short Title: 2000 Fee Bill. (Public)

Sponsors:

Referred to:

May 30, 2000

A BILL TO BE ENTITLED

AN ACT TO SET THE PUBLIC UTILITY REGULATORY FEES AND THE INSURANCE REGULATORY CHARGE, TO INCREASE COURT COSTS, TO INCREASE JAIL FEES FOR PERSONS PAYING JAIL FEES PURSUANT TO PROBATIONARY SENTENCES, TO INCREASE THE FEE IMPOSED FOR EMERGENCY PLANNING, TO AUTHORIZE CERTAIN CHANGES IN PERMITS FOR OVERSIZE LOADS AND ESTABLISH PENALTIES FOR PERMIT VIOLATIONS, TO AUTHORIZE AGENCIES TO PROVIDE ACCESS TO SERVICES THROUGH ELECTRONIC AND DIGITAL TRANSACTIONS AND TO IMPOSE A FEE FOR THOSE TRANSACTIONS, AND TO REPEAL THE SUNSET OF THE WHITE GOODS TAX AND DIRECT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES TO STUDY ISSUES RELATED TO THE SCRAP TIRE DISPOSAL TAX AND THE WHITE GOODS DISPOSAL TAX.

The General Assembly of North Carolina enacts:

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PART I. PUBLIC UTILITY REGULATORY FEE

Section 1. The percentage rate to be used in calculating the public utility regulatory fee under G.S. 62-302(b)(2) is nine-hundredths percent (0.09%) for each public utility's North Carolina jurisdictional revenues earned during each quarter that begins on or after July 1, 2000.

PART II. NORTH CAROLINA ELECTRIC MEMBERSHIP CORPORATION REGULATORY FEE

Section 2. The annual fee imposed on The North Carolina Electric Membership Corporation under G.S. 62-302(b1) for the 2000-2001 fiscal year is two hundred thousand dollars ($200,000).

PART III. INSURANCE REGULATORY CHARGE

Section 3. The percentage rate to be used in calculating the insurance regulatory charge under G.S. 58-6-25 is seven percent (7%) for the 2000 calendar year.

PART IV. COURT COSTS FOR TECHNOLOGY

Section 4.(a) G.S. 7A-304(a)(4) reads as rewritten:

"(a) In every criminal case in the superior or district court, wherein the defendant is convicted, or enters a plea of guilty or nolo contendere, or when costs are assessed against the prosecuting witness, the following costs shall be assessed and collected, except that when the judgment imposes an active prison sentence, costs shall be assessed and collected only when the judgment specifically so provides, and that no costs may be assessed when a case is dismissed.

. . .

(4) For support of the General Court of Justice, the sum of ~~sixty-one dollars ($61.00)~~ sixty-five dollars ($65.00) in the district court, including cases before a magistrate, and the sum of ~~sixty-eight dollars ($68.00)~~ seventy-two dollars ($72.00) in the superior court, to be remitted to the State Treasurer.

. . . ."

Section 4.(b) G.S. 7A-305(a)(2) reads as rewritten:

"(a) In every civil action in the superior or district court the following costs shall be assessed:

. . .

(2) For support of the General Court of Justice, the sum of ~~fifty-five dollars ($55.00)~~ fifty-nine dollars ($59.00) in the superior court, and the sum of ~~forty dollars ($40.00)~~ forty-four dollars ($44.00) in the district court except that if the case is assigned to a magistrate the sum shall be ~~twenty-eight dollars ($28.00).~~ thirty-three dollars ($33.00). Sums collected under this subsection shall be remitted to the State Treasurer.

. . . ."

Section 4.(c) G.S. 7A-306(a) and (b) read as rewritten:

"**§ 7A-306. Costs in special proceedings.**

(a) In every special proceeding in the superior court, the following costs shall be assessed:

(1) For the use of the courtroom and related judicial facilities, the sum of ten dollars ($10.00) to be remitted to the county. Funds derived from the facilities fees shall be used in the same manner, for the same purposes, and subject to the same restrictions, as facilities fees assessed in criminal actions.

(2) For support of the General Court of Justice the sum of ~~twenty-six dollars ($26.00).~~ thirty dollars ($30.00). In addition, in proceedings involving land, except boundary disputes, if the fair market value of the land involved is over one hundred dollars ($100.00), there shall be an additional sum of thirty cents (30¢) per one hundred dollars ($100.00) of value, or major fraction thereof, not to exceed a maximum additional sum of two hundred dollars ($200.00). Fair market value is determined by the sale price if there is a sale, the appraiser's valuation if there is no sale, or the appraised value from the property tax records if there is neither a sale nor an appraiser's valuation. Sums collected under this subsection shall be remitted to the State Treasurer.

(b) The facilities fee and ~~twenty-six dollars ($26.00)~~ thirty dollars ($30.00) of the General Court of Justice fee are payable at the time the proceeding is initiated.

. . . ."

Section 4.(d) G.S. 7A-307(a) and (b) read as rewritten:

"(a) In the administration of the estates of decedents, minors, incompetents, of missing persons, and of trusts under wills and under powers of attorney, and in collections of personal property by affidavit, the following costs shall be assessed:

(1) For the use of the courtroom and related judicial facilities, the sum of ten dollars ($10.00), to be remitted to the county. Funds derived from the facilities fees shall be used in the same manner, for the same purposes, and subject to the same restrictions, as facilities fees assessed in criminal actions.

(2) For support of the General Court of Justice, the sum of ~~twenty-six dollars ($26.00),~~ thirty dollars ($30.00), plus an additional forty cents (40¢) per one hundred dollars ($100.00), or major fraction

thereof, of the gross estate, not to exceed three thousand dollars ($3,000). Gross estate shall include the fair market value of all personalty when received, and all proceeds from the sale of realty coming into the hands of the fiduciary, but shall not include the value of realty. In collections of personal property by affidavit, the fee based on the gross estate shall be computed from the information in the final affidavit of collection made pursuant to G.S. 28A-25-3 and shall be paid when that affidavit is filed. In all other cases, this fee shall be computed from the information reported in the inventory and shall be paid when the inventory is filed with the clerk. If additional gross estate, including income, comes into the hands of the fiduciary after the filing of the inventory, the fee for such additional value shall be assessed and paid upon the filing of any account or report disclosing such additional value. For each filing the minimum fee shall be ~~ten dollars ($10.00).~~ fifteen dollars ($15.00). Sums collected under this subsection shall be remitted to the State Treasurer.

(2a) Notwithstanding subdivision (2) of this subsection, the fee of forty cents (40¢) per one hundred dollars ($100.00), or major fraction, of the gross estate, not to exceed three thousand dollars ($3,000), shall not be assessed on personalty received by a trust under a will when the estate of the decedent was administered under Chapters 28 or 28A of the General Statutes. Instead, a fee of ~~fifteen dollars ($15.00)~~ twenty dollars ($20.00) shall be assessed on the filing of each annual and final account.

(2b) Notwithstanding subdivisions (1) and (2) of this subsection, no costs shall be assessed when the estate is administered or settled pursuant to G.S. 28A-25-6.

(3) For probate of a will without qualification of a personal representative, the clerk shall assess a facilities fee as provided in subdivision (1) of this subsection and shall assess for support of the General Court of Justice, the sum of ~~seventeen dollars ($17.00).~~ twenty dollars ($20.00).

(b) In collections of personal property by affidavit, the facilities fee and ~~twenty-six dollars ($26.00)~~ thirty dollars ($30.00) of the General Court of Justice fee shall be paid at the time of filing the qualifying affidavit pursuant to G.S. 28A-25-1. In all other cases, these fees shall be paid at the time of filing of the first inventory. If the sole asset of the estate is a cause of action, ~~the thirty dollars ($30.00)~~ these fees shall be paid at the time of the qualification of the fiduciary.

. . . ."

Section 4.(e) G.S. 7A-308(a)(1) reads as rewritten:

"(a) The following miscellaneous fees and commissions shall be collected by the clerk of superior court and remitted to the State for the support of the General Court of Justice:

(1) Foreclosure under power of sale in deed of trust or mortgage ..... ~~$30.00~~ $40.00
If the property is sold under the power of sale, an additional amount will be charged, determined by the following formula: thirty cents (30¢) per one hundred dollars ($100.00), or major fraction thereof, of the final sale price. If the amount determined by the formula is less than ten dollars ($10.00), a minimum ten dollar ($10.00) fee will be collected. If the amount determined by the formula is more than two hundred dollars ($200.00), a maximum two hundred dollar ($200.00) fee will be collected."

PART V. JAIL FEE FOR LOCAL GOVERNMENTS

Section 5. G.S. 7A-313 reads as rewritten:

"**§ 7A-313. Uniform jail fees.**

~~Only persons~~ Persons who are lawfully confined in jail awaiting ~~trial, or who are ordered to pay jail fees pursuant to a probationary sentence,~~ trial shall be liable to the county or municipality maintaining the jail in the sum of five dollars ($5.00) for each 24 hours' confinement, or fraction thereof, except that a person so confined shall not be liable for this fee if the case or proceeding against him is dismissed, or if acquitted, or if judgment is arrested, or if probable cause is not found, or if the grand jury fails to return a true bill.

Persons who are ordered to pay jail fees pursuant to a probationary sentence shall be liable to the county or municipality maintaining the jail at the same per diem rate paid by the Department of Correction to local jails for maintaining a prisoner, as set by the General Assembly in its appropriations acts."

PART VI. INCREASE FEE FOR EMERGENCY PLANNING

Section 6. G.S. 166A-6.1(b) reads as rewritten:

"(b) Every person, firm, corporation or municipality who is licensed to construct or who is operating a fixed nuclear facility for the production of electricity shall pay to the Department of Crime Control and Public Safety, for the use of the Division of Radiation Protection ~~Division~~ of the Department of Environment and Natural Resources, an annual fee of ~~eighteen thousand dollars ($18,000)~~ thirty-six thousand dollars ($36,000) for each fixed nuclear facility ~~which~~ that is located within this State or has a Plume Exposure Pathway Emergency Planning Zone of which any part is located within this State. This fee shall be applied to the costs of planning and implementing emergency response activities as are required by the Federal Emergency Management Agency for the operation of nuclear facilities. ~~Said~~ This fee is to be paid no later than July 31 of each year."

PART VII. OVERSIZE LOAD PERMITS AND PENALTIES

Section 7.(a) G.S. 20-119(d) reads as rewritten:

"(d) ~~Violation~~ For each violation of any of the terms or conditions of a special permit issued under this section ~~shall be a Class 3 misdemeanor. A person convicted~~

~~of a Class 3 misdemeanor under this section shall be subject to a fine of not more than five hundred dollars ($500.00).~~ the Department of Transportation may assess a separate civil penalty against the registered owner of the vehicle as follows:

(1) A fine of five hundred dollars ($500.00) for any of the following: operating without a permit, moving a load off the route specified in the permit, falsifying information to obtain a permit, failing to comply with dimension restrictions of a permit, or failing to comply with escort vehicle requirements.

(2) A fine of two hundred fifty dollars ($250.00) for moving loads beyond the distance allowances of an annual permit covering the movement of house trailers from the retailer's premises or for operating in violation of time of travel restrictions.

(3) A fine of one hundred dollars ($100.00) for any other violation of the permit conditions or requirements imposed by applicable regulations.

The Department of Transportation may refuse to issue additional permits or suspend existing permits if there are repeated violations of subdivision (1) or (2) of this subsection."

Section 7.(b) G.S. 20-140 is amended by adding a new subsection to read:

"(f) A person is guilty of the Class 2 misdemeanor of reckless driving if the person drives a commercial motor vehicle carrying a load that is subject to the permit requirements of G.S. 20-119 upon a highway or any public vehicular area either:

(1) Carelessly and heedlessly in willful or wanton disregard of the rights or safety of others; or

(2) Without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property."

Section 7.(c) G.S. 20-141 is amended by adding a new subsection to read:

"(j3) A person is guilty of a Class 2 misdemeanor if the person drives a commercial motor vehicle carrying a load that is subject to the permit requirements of G.S. 20-119 upon a highway or any public vehicular area at a speed in excess of 15 miles per hour above either:

(1) The posted speed; or

(2) The restricted speed, if any, of the permit, or if no permit was obtained, the speed that would be applicable to the load if a permit had been obtained."

Section 7.(d) G.S. 20-16(c) reads as rewritten:

"(c) The Division shall maintain a record of convictions of every person licensed or required to be licensed under the provisions of this Article as an operator and shall enter therein records of all convictions of such persons for any violation of the motor vehicle laws of this State and shall assign to the record of such person, as of the date of commission of the offense, a number of points for every such conviction

in accordance with the following schedule of convictions and points, except that points shall not be assessed for convictions resulting in suspensions or revocations under other provisions of laws: Further, any points heretofore charged for violation of the motor vehicle inspection laws shall not be considered by the Division of Motor Vehicles as a basis for suspension or revocation of driver's license:

Schedule of Point Values

Passing stopped school bus	5
Reckless driving	4
Hit and run, property damage only	4
Following too close	4
Driving on wrong side of road	4
Illegal passing	4
Running through stop sign	3
Speeding in excess of 55 miles per hour	3
Failing to yield right-of-way	3
Running through red light	3
No driver's license or license expired more than one year	3
Failure to stop for siren	3
Driving through safety zone	3
No liability insurance	3
Failure to report accident where such report is required	3
Speeding in a school zone in excess of the posted school zone speed limit	3
All other moving violations	2
Littering pursuant to G.S. 14-399 when the littering involves the use of a motor vehicle	1

Schedule of Point Values for Violations While Operating a Commercial Motor Vehicle

Passing stopped school bus	8
Rail-highway crossing violation	6
Careless and reckless driving in violation of G.S. 20-140(f)	6
Speeding in violation of G.S. 20-141(j3)	6
Reckless driving	5
Hit and run, property damage only	5
Following too close	5
Driving on wrong side of road	5
Illegal passing	5
Running through stop sign	4
Speeding in excess of 55 miles per hour	4
Failing to yield right-of-way	4

Running through red light 4
No driver's license or license expired more than one year 4
Failure to stop for siren 4
Driving through safety zone 4
No liability insurance 4
Failure to report accident where such report is required 4
Speeding in a school zone in excess of the posted school zone speed limit 4
Possessing alcoholic beverages in the passenger area of a commercial motor vehicle 4
All other moving violations 3
Littering pursuant to G.S. 14-399 when the littering involves the use of a motor vehicle 1

The above provisions of this subsection shall only apply to violations and convictions which take place within the State of North Carolina. The Schedule of Point Values for Violations While Operating a Commercial Motor Vehicle shall not apply to any commercial motor vehicle known as an "aerial lift truck" having a hydraulic arm and bucket station, and to any commercial motor vehicle known as a "line truck" having a hydraulic lift for cable, if the vehicle is owned, operated by or under contract to a public utility, electric or telephone membership corporation or municipality and used in connection with installation, restoration or maintenance of utility services.

No points shall be assessed for conviction of the following offenses:

Overloads
Over length
Over width
Over height
Illegal parking
Carrying concealed weapon
Improper plates
Improper registration
Improper muffler
Improper display of license plates or dealers' tags
Unlawful display of emblems and insignia
Failure to display current inspection certificate.

In case of the conviction of a licensee of two or more traffic offenses committed on a single occasion, such licensee shall be assessed points for one offense only and if the offenses involved have a different point value, such licensee shall be assessed for the offense having the greater point value.

Upon the restoration of the license or driving privilege of such person whose license or driving privilege has been suspended or revoked because of conviction for a traffic offense, any points that might previously have been accumulated in the driver's record shall be cancelled.

Whenever any licensee accumulates as many as seven points or accumulates as many as four points during a three-year period immediately following reinstatement of his license after a period of suspension or revocation, the Division may request the licensee to attend a conference regarding such licensee's driving record. The Division may also afford any licensee who has accumulated as many as seven points or any licensee who has accumulated as many as four points within a three-year period immediately following reinstatement of his license after a period of suspension or revocation an opportunity to attend a driver improvement clinic operated by the Division and, upon the successful completion of the course taken at the clinic, three points shall be deducted from the licensee's conviction record; provided, that only one deduction of points shall be made on behalf of any licensee within any five-year period.

When a license is suspended under the point system provided for herein, the first such suspension shall be for not more than 60 days; the second such suspension shall not exceed six months and any subsequent suspension shall not exceed one year.

Whenever the driver's license of any person is subject to suspension under this subsection and at the same time also subject to suspension or revocation under other provisions of laws, such suspensions or revocations shall run concurrently.

In the discretion of the Division, a period of probation not to exceed one year may be substituted for suspension or for any unexpired period of suspension under subsections (a)(1) through (a)(10a) of this section. Any violation of probation during the probation period shall result in a suspension for the unexpired remainder of the suspension period. Any accumulation of three or more points under this subsection during a period of probation shall constitute a violation of the condition of probation."

Section 7.(e) G.S. 20-17.4(d) reads as rewritten:

"(d) Less Than a Year. -- A person is disqualified from driving a commercial motor vehicle for 60 days if that person is convicted of two serious traffic violations, or 120 days if convicted of three or more serious traffic violations, committed in a commercial motor vehicle arising from separate incidents occurring within a three-year period. For purposes of this subsection, a 'serious violation' includes violations of G.S. 20-140(f) and G.S. 20-141(j3)."

Section 7.(f) G.S. 20-119(b) reads as rewritten:

"(b) Upon the issuance of a special permit for an oversize or overweight vehicle by the Department of Transportation in accordance with this section, the applicant shall pay to the Department for a single trip permit a fee of ~~ten~~ twelve dollars ~~($10.00)~~ ($12.00) ~~for a single trip permit and fifty dollars ($50.00) for an annual permit issued for a single vehicle. Any person who operates more than one vehicle may obtain an annual permit for all oversize or overweight vehicles operated by the person upon payment of an annual fee based on the following schedule:~~

~~No. of Vehicles~~	~~Annual Permit Rate Per Vehicle~~
~~First 50~~	~~$50.00~~
~~51 to 100~~	~~40.00~~

~~101 to 150 30.00~~
~~Over 150 20.00~~

~~Any vehicle required to obtain an overweight permit shall not be charged an additional fee for oversize. Any vehicle required to obtain an oversize permit shall not be charged an additional fee for overweight.~~ for each dimension over lawful dimensions, including height, length, width, and weight up to 132,000 pounds. For overweight vehicles, the applicant shall pay to the Department for a single trip permit in addition to the fee imposed by the previous sentence a fee of three dollars ($3.00) per 1,000 pounds over 132,000 pounds.

Upon the issuance of an annual permit for a single vehicle, the applicant shall pay a fee in accordance with the following schedule:

Commodity:	Annual Fee:
Annual Permit to Move House Trailers	$200.00
Annual Permit to Move Other Commodities	$100.00

In addition to the fees set out in this subsection, applications for permits that require an engineering study for pavement or structures or other special conditions or considerations shall be accompanied by a nonrefundable application fee of one hundred dollars ($100.00).

This subsection ~~shall~~ does not apply to farm equipment or machinery being used at the time for agricultural purposes, nor to the moving of a house as provided for by the license and permit requirements of Article 16 of this Chapter. Fees will not be assessed for permits for oversize and overweight vehicles issued to any agency of the United States Government or the State of North Carolina, its agencies, institutions, subdivisions, or municipalities if the vehicle is registered in the name of the agency."

Section 7.(g) It is the intent of the General Assembly that the permit fees provided in G.S. 20-119 shall be adjusted periodically to assure that the revenue generated by the fees is equal to the cost to the Department of administering the Oversize/Overweight Permit Unit Program within the Division of Highways. At least every two years, the Department shall review and compare the revenue generated by the permit fees and the cost of administering the program, and shall report to the Joint Legislative Transportation Oversight Committee created in G.S. 120-70.50 its recommendations for adjustments to the permit fees to bring the revenues and the costs into alignment.

PART VIII. FEES FOR ACCESS TO AGENCY SERVICES THROUGH ELECTRONIC AND DIGITAL TRANSACTIONS

Section 8. Article 11A of Chapter 66 of the General Statutes is amended by adding a new section to read:

"§ 66-58.12. Agencies may provide access to services through electronic and digital transactions; fees authorized.

(a) Public agencies are encouraged to maximize citizen and business access to their services through the use of electronic and digital transactions. A public agency may

determine, through program and transaction analysis, which of its services may be made available to the public through electronic means, including the Internet. The agency shall identify any inhibitors to electronic transactions between the agency and the public, including legal, policy, financial, or privacy concerns and specific inhibitors unique to the agency or type of transaction. An agency shall not provide a transaction through the Internet that is impractical, unreasonable, or not permitted by laws pertaining to privacy or security.

(b) An agency may charge a fee to cover its costs of permitting a person to complete a transaction through the World Wide Web or other means of electronic access. The fee may be applied on a per transaction basis and may be calculated either as a flat fee or a percentage fee, as determined under an agreement between a person and a public agency. The fee must be approved by the Information Resource Management Commission, in consultation with the Joint Legislative Commission on Governmental Operations. The fee may be collected by the agency or by its third-party agent. The revenue derived from the fee must be credited to a nonreverting agency reserve account. The funds in the account may be expended only for e-commerce initiatives and projects approved by the Information Resource Management Commission, in consultation with the Joint Select Committee on Information Technology."

PART IX. WHITE GOODS SUNSET REPEAL

Section 9.(a) Section 11 of Chapter 471 of the 1993 Session Laws, as amended by Section 15.1(b) of Chapter 769 of the 1993 Session Laws and Section 7 of S.L. 1998-24, reads as rewritten:

"Sec. 11. Sections 1 through 5 of this act and this section become effective January 1, 1994. ~~Section 3 of this act expires July 1, 2001. Section 6 of this act becomes effective July 1, 2001. Sections 7, 8, and 9 of this act become effective July 1, 2002.~~

~~The repeal of the tax imposed by Section 3 of this act does not affect the rights or liabilities of the State, a taxpayer, or another person that arose during the time the tax was in effect.~~ The first report submitted by the Department to the Environmental Review Commission under G.S. 130A-309.85, as enacted by this act, shall cover the period from January 1, 1994, to June 30, 1994."

Section 9.(b) The Department of Environment and Natural Resources shall study issues related to the scrap tire disposal tax and the white goods disposal tax. This study shall include an evaluation of whether the amount of the scrap tire disposal tax and the amount of the white goods disposal tax should be altered and whether the distribution of the proceeds of these taxes should be reapportioned. The Department shall report its findings and recommendations, including any legislative proposals, to the Environmental Review Commission no later than October 1, 2000.

PART X. EFFECTIVE DATES

Section 10.(a) Public Utility Regulatory Fee. -- Section 1 of this act becomes effective July 1, 2000.

Section 10.(b) North Carolina Electric Membership Corporation Regulatory Fee. -- Section 2 of this act becomes effective July 1, 2000.

Section 10.(c) Insurance Regulatory Charge. -- Section 3 of this act is effective when it becomes law.

Section 10.(d) Increase Court Costs. -- Section 4 of this act becomes effective July 15, 2000, and applies to all costs assessed or collected on and after that date.

Section 10.(e) Jail Fees for Local Governments. -- Section 5 of this act becomes effective July 1, 2000, and applies to sentences or portions of sentences being served on or after that date.

Section 10.(f) Increase Fee for Emergency Planning. -- Section 6 of this act becomes effective July 1, 2000.

Section 10.(g) Oversize Load Permits and Penalties. -- Section 7(f) of this act becomes effective October 1, 2000. The first report required by Section 7(g) of this act is due December 1, 2002.

Section 10.(h) Fees for Access to Agency Services Through Electronic and Digital Transactions. -- Section 8 is effective when it becomes law.

Section 10.(i) White Goods Sunset Repeal. -- Section 9 of this act is effective when it becomes law.

Section 10.(j) Remainder. -- The remainder of this act is effective when it becomes law.

(Attachment #1)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Thursday, June 22, 2000

SENATOR HOYLE,
submits the following with recommendations as to passage:

FAVORABLE

S.B.	**1481**	Research Triangle Park Bounday.	
		Sequential Referral:	None
		Recommended Referral:	None
S.B.	**1484**	Local Option Homestead Relief	
		Sequential Referral:	None
		Recommended Referral:	None

TOTAL REPORTED:2

Committee Clerk Comment: Bill taken up on Chamber Floor

(Attachment #2)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
John Kerr, Co-Chair
David Hoyle, Co-Chair

Thursday, June 22, 2000

SENATOR KERR,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 2

H.B.(SCS #1)**1854** 2000 Fee Bill

Draft Number:	PCS6310
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 1

Committee Clerk Comment: Fee bill

(Attachment #3)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Thursday, June 22, 2000

SENATOR HOYLE,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

S.B.(CS #1)**1463** Dare Utility Undergrounding Amendmentas

Draft Number:	PCS7793
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment: Bill Taken Up on Senate Chamber Floor

SENATE FINANCE COMMITTEE

TUESDAY, JUNE 27, 2000

9:00 AM – ROOM 643
1:00 PM – ROOM 544

The Senate Finance Committee met on Tuesday, June 27, 2000 at 9:00 AM in room 643 and again at 1:00 PM in room 544, with Senator Hoyle presiding. There were 25 members of the committee present. Russell Jimmette and Rachel Evans, both sponsored by Senator Kerr were introduced as the pages for the meeting.

9:00 AM Meeting:

HB 1803 –HUNTERSVILLE ANNEXATION AGREEMENT

Senator Hoyle offered an amendment to the bill and moved for adoption, motion passed. Senator Soles moved to give the bill a "Favorable Report as amended", motion passed. Copy of bill and supporting documents included in the minutes.

HB 1629 – BUTNER WATER AND SEWER BOND

Representative Crawford was recognized to explain the bill. Senator Soles moved to give the bill a "Favorable Report", motion passed. Copy of bill and supporting documents included in the minutes.

HB 1579 – MONROE CHARTER CONSOLIDATION

Representative Melton was recognized to explain the bill. Senator Rucho moved to give the bill a "Favorable Report", motion passed. Copy of bill and supporting documents included in the minutes.

SB 1544 – TOURIST DIRECTIONAL SIGN PROGRAM

Senator Garrou was recognized to explain the bill. Senator Wellons moved for adoption of a proposed committee substitute, motion passed. After a time of discussion, Senator Wellons moved to give the bill a "Favorable Report", motion passed. Copy of bill and supporting documents included in the minutes.

SB 1252 – BROWNFIELDS TAX INCENTIVE

Senator Odom was recognized to explain the bill. After a brief discussion, Senator Dannelly moved to give the bill a "Favorable Report", motion passed. Copy of bill and supporting documents included in minutes.

HB 1473 – RENEWABLE ENERGY MFR. CREDIT

Representative Hackney was recognized to explain the bill. Senator Hoyle announced that vote taken last session on a proposed committee substitute should be reconsidered, motion by Senator Hoyle to reconsider the vote taken last year, motion passed. Senator Soles moved for adoption of a new proposed committee substitute, motion passed. After a time of discussion; Senator Soles moved to give the bill a "Favorable Report", motion passed. Copy of bill and supporting documents included in minutes.

HB 1539 – QUALIFIED ZONE ACADEMY BOND ACT

Representative Rogers was recognized to explain the bill. After a brief discussion, Senator Hartsell moved to give the bill a "Favorable Report", motion passed. Copy of bill and supporting documents included in minutes.

HB 1132 – PRESERVE FARMLANDS/SMALL FARMS

Representative Insko was recognized to again come and explain the bill. After a brief discussion, Senator Lee moved to give the bill a "Favorable Report", motion passed. Copy of bill and supporting documents included in minutes.

HB 1602 – STORMWATER UTILITY FEE

Representative Gibson was recognized to explain the bill After a time of discussion, Senator Rand moved to give the bill a "Favorable Report", motion passed. Copy of bill and supporting documents included in minutes.

SB 1448 – HILLSBOROUGH DEANNEXATION

Senator Kinnaird was recognized to explain the bill. Senator Rand moved for adoption of a proposed committee substitute, motion passed. After a brief discussion, Senator Rand moved to give the bill a "Favorable Report", motion passed. Copy of bill and supporting documents included in minutes.

MEETING RECESSED UNTIL 1:00 PM IN ROOM 544.

1:OO PM MEETING

The Senate Finance Committee reconvened at 1:00 PM in Room 544 of the Legislative Office Building with Senator Hoyle presiding. There were 25 members of the committee present.

SB 1300 -MIDLAND INCORPORATION

Senator Hartsell was recognized to explain the bill. After a brief explanation, Senator Moore moved to give the bill a "Favorable Report", motion passed. Copy of bill included in the minutes.

HB 1667 - CHARLOTTE CHARTER CONSOLIDATION

Senator Clodfelter was recognized to explain the bill. After a brief explanation, Senator Hartsell moved to give the bill a "Favorable Report", motion passed. Copy of bill included in the minutes.

HB 1587 - SEAGROVE ANNEXATION

Senator Lee was recognized to explain the bill for Representative Brubaker. After a brief explanation, Senator Soles moved to give the bill a "Favorable Report", motion passed. Copy of bill included in the minutes.

HB 677 - PROPERTY TAX CHANGES

Representative Haire was recognized to explain the bill. Senator Dannelly moved for adoption of a proposed committee substitute, motion passed. After a time of discussion, Senator Hoyle announced that the bill would be held and heard at a later meeting. Copy of bill and supporting documents included in the minutes.

HB 1624 - STREAMLINED SALES TAX SYSTEM

Representative Miller was recognized to explain the bill. After a time of discussion and an amendment by Senator Harris, which was not adopted, it was decided by Senator Hoyle that since there were questions on the bill, that the bill be held and heard at a later meeting. Copy of bill and supporting documents included in the minutes.

SB 1542 – VIDEO POKER MACHINES ILLEGAL

Senator Wellons was recognized to explain the bill. Senator Wellons moved for adoption of a proposed committee substitute, motion passed. After a length discussion on the bill, Senator Gulley moved to give the bill a "Favorable Report", motion passed. Copy of bill and supporting documents included in minutes.

Meeting adjourned.

David W. Hoyle, Co-Chairman

John H. Kerr, III, Co-Chairman

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

Visitors' Sign Up Sheet for 9:00 AM Meeting is Attachment #1
Visitors' Sign Up Sheet for 1:00 PM Meeting is Attachment #2
Committee Reports are Attachments #3 and #4

AGENDA

SENATE FINANCE COMMITTEE

TUESDAY, JUNE 27, 2000

9:00 AM-ROOM 643 (LOB)
1:00 PM-ROOM 544 (LOB)

MEETING CALLED TO ORDER – SENATOR HOYLE, PRESIDING
INTRODUCTION OF PAGES
BILLS TO BE CONSIDERED:

PUBLIC – ROLL CALL:

HB 1473 - Renewable Energy Mfr. Credit – Rep. Hackney
HB 1539 - Qualified Zone Academy Bond Act - Rep. Rogers
HB 1602 - Stormwater Utility Fee – Rep. Gibson
HB 1624 - Streamlined Sales Tax System - Rep. Miller

LOCAL – ROLL CALL:

SB 1300 – Midland Incorporation - Sen. Hartsell
SB 1446 - Orange Omnibus Local Act - Sen. Kinnaird
SB 1448 - Hillsborough Deannexation - Sen. Kinnaird
HB 1579 - Monroe Charter Consolidation - Rep. Melton
HB 1587 - Seagrove Annexation - Rep. Brubaker
HB 1667 - Charlotte Charter Consolidation - Rep. Alexander
HB 1803 - Huntersville Annexation Agreement - Rep. Saunders

PUBLIC BILLS:

SB 1252 - Brownfields Tax Incentive - Sen. Odom
SB 1542 - Video Poker Machines Illegal - Sen. Wellons
SB 1544 - Tourist Directional Sign Program – Sen. Garrou
HB 677 – Property Tax Changes- Rep. Haire
HB 1132 - Preserve Farmlands/Small Farms - Rep. Insko
HB 1629 - Butner Water and Sewer Bond - Rep. Crawford

MEETING ADJOURNED

AGENDA

SENATE FINANCE COMMITTEE

TUESDAY, JUNE 27, 2000

1:00 PM-ROOM 544 (LOB)

MEETING CALLED TO ORDER – SENATOR HOYLE, PRESIDING

INTRODUCTION OF PAGES

BILLS TO BE CONSIDERED:

PUBLIC – ROLL CALL:

HB 1624 - Streamlined Sales Tax System - Rep. Miller

LOCAL – ROLL CALL:

SB 1300 – Midland Incorporation – Sen. Hartsell
SB 1446 - Orange Omnibus Local Act - Sen. Kinnaird
HB 1587 - Seagrove Annexation - Rep. Brubaker
HB 1667 - Charlotte Charter Consolidation - Rep. Alexander

PUBLIC BILLS:

SB 1542 - Video Poker Machines Illegal - Sen. Wellons
SB 1544 – Tourist Directional Sign Program – Sen. Garrou
HB 677 – Property Tax Changes – Rep. Haire

MEETING ADJOURNED

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

HOUSE BILL 1803*

Short Title: Huntersville Annexation Agreement. (Local)

Sponsors: Representative Saunders.

Referred to: Finance.

May 25, 2000

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE TOWN OF HUNTERSVILLE TO AMEND AN AGREEMENT FOR PAYMENTS IN LIEU OF ANNEXATION.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding any applicable provision of the General Statutes or any other public or local law, the Town of Huntersville is granted certain contract powers as follows:

(1) The Town of Huntersville may amend the agreement authorized by S.L. 1997-266 ("Agreement") which provided that in consideration of certain payments to the Town in lieu of taxes, certain property described in the Agreement as the "McGuire Nuclear Station Property" would not be involuntarily annexed by the Town prior to December 31, 2027. The Agreement shall be amended by extending the term that the McGuire Nuclear Station Property may not be involuntarily annexed by the Town for 15 years until December 31, 2042, and by accelerating the tax equivalent payments required under Schedule 1 by Duke Power to Huntersville to reflect present value considerations as follows:

AMENDED SCHEDULE 1

Tax Equivalent Payments: The parties agree that Schedule 1 of the Agreement shall be deleted and this Amended Schedule 1 placed

in its stead. The tax equivalent payments required under Schedule 1 by Duke Power to Huntersville with respect to its McGuire Nuclear Station Property shall be accelerated under this Amended Schedule 1 to reflect the total and complete prepayment of the remaining tax equivalent payments based on present value considerations as follows:

Year	Payment
1996	0
1997	0
1998	$333,333(Paid)
1999	$333,333(Paid)
2000 [August 1, 2000]	$2,700,000
2000	$333,333
2001	$333,333
2002	$333,333
2003	$333,333
2004	$333,333

The parties further agree that tax equivalent payments required under Amended Schedule 1 may be further amended and accelerated upon mutual agreement of the parties to reflect future prepayments based upon present value considerations.

Except as herein amended, the Agreement shall remain in full force and effect and that certain property described in the Agreement as the "McGuire Nuclear Station Property" may not be involuntarily annexed by the Town prior to December 31, 2042. The Town of Huntersville shall not seek to repeal this act upon its approval by the General Assembly.

(2) The amendment to the Agreement entered into as provided in subdivision (1) of this section is specifically determined to be consistent with the public policy of the State of North Carolina.

(3) Any amendment to the Agreement entered into as provided in subdivision (1) of this section is binding on and enforceable against the current and future members of the Board of Commissioners of the Town of Huntersville during the full term of such Agreement and any extension thereof.

(4) The parties to any Agreement amended in accordance with subdivision (1) of this section shall be authorized by this section to further modify, amend, and extend such Agreement on mutual written consent, without the approval of the General Assembly, provided that any such modification or amendment does not materially alter the concept of the Agreement.

Section 2. The Town of Huntersville may accept, as consideration for such amendment, an accelerated schedule for payments in lieu of taxes.

Section 3. The Agreement and its amendment under Section 1 of this act shall apply to the McGuire Nuclear Station Property described as follows.

EXHIBIT A

Parcel 1: That certain tract of land containing 25.25 acres, more or less, beginning at a point in the easterly boundary of County Road NO. 2134 and running thence N 88-52-58 E 653.8 feet to a point; thence S 7-19-56E 237.1 feet to a point; thence S 77-32-50 E 1130.4 feet to a point; thence S 45-37-01 W 1310.6 feet to a point; thence N 30-20-20 W 1144.1 feet to a point; thence N 84-16-48 W 245.8 feet to a point in the easterly boundary of County Road No. 2134; thence with said Road N 4-25-22 W 372.1 feet to the point of Beginning and being shown as Tax Parcels Nos. 16, 17 and 18 on tax map recorded in Book 13 at page 13 of the Mecklenburg County Registry, Parcel 2: That certain tract of land containing 1,239.0 acres, more or less and being more particularly described as BEGINNING at a point in the Catawba River, said point being located in the Mecklenburg/Lincoln County line and running thence from said beginning point in a generally easterly direction with the boundary of the Cowans Ford Hydroelectric Project (Lake Norman) a distance of 13, 136 feet to a point; thence S 2-50-59 W 176.6 feet to a point; thence S 25-09-08 E 147.8 feet to a point; thence with the boundary of the Cowans Ford Hydroelectric Project (Lake Norman) a distance of 711.4 feet to a point; thence leaving the boundary of the Cowans Ford Hydroelectric Project S 11-37 E 47.9 feet to a point; thence S 4-55 W 85.1 feet to a point; thence S 25-41 W 63.9 feet to a point; thence N 74-37W 29.5 feet to an iron pipe; thence N 80-24 W 13.1 feet to a stake; thence S 1-11 E-291.7 feet to an iron pin; thence S 5-50 W-151.3 feet to the centerline of road 2182; thence S 5-50 W-120.8 feet to an iron; thence S 11-22 W-241.7 feet to an iron pin; thence S 16-54 W-241.7 feet to an iron pin; thence S 22-26 W-241.7 feet to an iron pin; thence S 27-58 W-128.8 feet to an iron pin; thence S 5-50 W-151.3 feet to the centerline of road 2182; thence N 61-15 E-489.9 feet to an iron pin; thence S 51-07 E-214.9 feet to an iron pipe; thence S 11-42 E-444.5 feet to an iron pin; thence S 12-54 E-40.2 feet to an iron pipe; thence S 12-14 E-173 feet to an iron pin; thence S 12-20 E-152.0 feet to an iron pipe; thence S 82-15 W-444.2 feet to an iron pipe; thence N 7-51 W-224.9 feet to an iron pipe; thence S 82-13 W-150.3 feet to an iron pipe; thence S 8-07 E-225.2 feet to an iron pipe; thence S 82-30 W-252.5 feet to an iron; thence crossing NC Hwy. 73; S 41-36 W-155.1 feet to an iron pipe; thence N 82-26 E-304.6 feet to a concrete monument; thence N 82-14 E-591.0 feet to an iron pipe; thence S 8-47 E-210.6 feet to an iron pipe; thence N 81-52 E-210.5 feet to an iron pin; thence S 12-37 W-527.1 feet to an iron pipe; thence N 67-05 E-99.0 feet to a stake; thence S 74-55 E 1082.5 feet to a stake; thence S 23-15 W-2128.0 feet to an iron pipe; thence S 87-51 W-341.6 feet to a stake; thence S 72-56 W-662.7 feet to a stake; thence N 13-47 W-363.2 feet to an iron pin; thence S 62-54 W-375.0 feet to an iron pin; thence S 59-08 W-797.9 feet to an iron pipe; thence S 17-17 W-1048.5 feet to an iron pin in an old road bed; thence

following the old road bed S-81-46 E-232.6 feet to an iron pin; thence S 88-02 E-614.5 feet to the centerline of Cashion Road; thence with Cashion Road S 41-23 W-42.5 feet to an iron pin; thence S 58-52 W-317.6 feet to an iron pin; thence S 55-13 W-212.0 feet to an iron pin; thence S 52-39 W-136.4 feet to an iron pin; thence S 39-21 W-115.4 feet to an iron pin; thence S 27-28 W-374.7 feet to an iron pin; thence S 33-29 W-191.2 feet to an iron pipe in the centerline of road; thence leaving Cashion Road S 79-04 W-1003.2 feet to a bolt; thence S 52-29' E-499.0 feet to a hickory; thence S 24-27 W-369.0 feet to a hickory; thence N 88-34 W 2484.4 feet to a point; thence S 4-24 E 488.0 feet to a point; thence S 4-24 E 488.0 feet to an iron pipe; thence S 31-08 W 33.5 feet to an iron pipe; thence S 31-08 W 33.5 feet to an iron pipe; thence S 26-31-50 E 81.29 feet to a point; thence S 11-18-01 E 140.80 feet to a point; thence S 36-40-59 E 85.20 feet to a point; thence S 54-46-13 E 99.3 feet to a point; thence S 48-26-06 E 165.1 feet to a point; thence S 78-47-39 W 44.3 feet to a point; thence N 70-23-55 W 64.0 feet to a point; thence N 62-38-07 W 119.2 feet to a point; thence N 46-16-58 W 115.6 feet to a point; thence S 20-53-48 W 64.2 feet to a point; thence S 72-56-18 W 69.8 feet to a point; thence N 17-25-07 W 60.8 feet to a point; thence N 41-16-04 W 90.8 feet to a point; thence S 31-08 W 117.0 feet to a point; thence S 6-57-15 E 121.0 feet to a point; thence S 38-21-58 E 154.8 feet to a point; thence S 31-49-57 E 128.6 feet to a point; thence S 21-44-01 E 150.1 feet to a point; thence S 24-46-05 E 163.0 feet to a point; thence S 20-00-04 E 152.5 feet to a point; thence S 13-33-03 E 115.1 feet to a point; thence S 10-37-00 E 135.7 feet to a point; thence S 3-15-45 W 80.3 feet to a point; thence S 1-48-59 E 87.7 feet to a point; thence S 81-27-08 E 141.3 feet to a point; thence S 86-05-51 E 126.8 feet to a point; thence N 35-45-45 E 77.0 feet to a point; thence N 4-18-05 W 95.6 feet to a point; thence N 28-03-50 W 120.2 feet to a point; thence N 34-32-57 W 142.6 feet to a point; thence N 7-27-12 W 208.3 feet to a point; thence S 74-55-06 E 128.4 feet to a point; thence N 70-39-55 E 214.3 feet to a point; thence S 34-57-12 E 85.2 feet to a point; thence S 14-09-08 W 120.9 feet to a point; thence S 36-38-57 W 142.8 feet to a point; thence S 43-56-01 E 90.8 feet to a point; thence S 09-24-14 E 135.5 feet to a point; thence S 05-20-06 E 81.2 feet to a point; thence S 26-38-06 W 102.7 feet to a point; thence S 6-48-38 E 40.9 feet to a point; thence S 58-54-04 E 211.7 feet to a point; thence S 88-34-13 E 102.0 feet to a point; thence S 38-39-48 E 73.8 feet to a point; thence S 1-21-43 E 85.0 feet to a point; thence S 62-52-04 E 149.1 feet to a point; thence S 4-42-28 E 27.3 feet to a point; thence S 87-41-57 W 2089.2 feet to a point in the Catawba River (Mecklenburg/Lincoln County Line); thence with the Mecklenburg/Lincoln County Line 12,055 feet to the point of BEGINNING.

Section 4. No portion of the McGuire Nuclear Station Property shall be subject to involuntary annexation, or designation as an urban tax district or otherwise subjected to the power of a municipal taxing authority by Huntersville or any other town or municipality or consolidated government during the term of the agreement referenced in Section 1 of this act.

Section 5. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1803

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H1803-ALB-1

Page 1 of __

Date_____,2000

Comm. Sub. []
Amends Title []

moves to amend the bill on page 3, line 9, by deleting "NO." and substituting "No."

further moves to amend the bill on page 3, lines 30 through 31, by deleting "thence S 5-50 W-151.3 feet to the centerline of road 2182;"

further moves to amend the bill on page 3, line 39, by deleting "W-527.1", and substituting "E 527.1"

further moves to amend the bill on page 4, line 23, by deleting "81-27-08", and substituting "81-29-08"

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 1629
Committee Substitute Favorable 6/5/00

Short Title: Butner Water & Sewer Bonds. (Public)

Sponsors:

Referred to:

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE ISSUANCE OF STATE REVENUE BONDS TO FINANCE IMPROVEMENTS TO THE WATER AND SEWER SYSTEM FOR THE COMMUNITY OF BUTNER AND THE CAMP BUTNER RESERVATION.

The General Assembly of North Carolina enacts:

Section 1. Findings and purpose. The General Assembly finds and determines as follows:

(1) The Community of Butner and the Camp Butner reservation constitute a unique State resource administered by the State of North Carolina through the Secretary of the North Carolina Department of Health and Human Services and regulated by Parts 1 through 1B of Article 6 of Chapter 122C of the General Statutes.

(2) Pursuant to G.S. 122C-407, the Department is authorized to acquire, construct, establish, enlarge, maintain, operate, and contract for the operation of a water supply and distribution system and a sewage collection and disposal system for the Camp Butner reservation. Acting pursuant to this authority, the Department has so established a water and sewer system for the Camp Butner reservation. While historically the Department has been able to construct, acquire, maintain, and operate the water and sewer system from funds appropriated to the Department by the General Assembly, from rates, fees, and charges collected from the users of the system, and from other funds available to the Department,

significant capital outlay is now required for the improvement and maintenance of the water and sewer system and at present there are not sufficient resources available for that purpose.

(3) The Secretary of Health and Human Services has proposed that the State finance improvements to the Camp Butner reservation through the issuance of revenue bonds issued by the State pursuant to The State and Local Government Revenue Bond Act, Article 5 of Chapter 159 of the General Statutes. G.S. 159-88(c) mandates that prior to the adoption of a bond order authorizing the issuance of revenue bonds of the State under The State and Local Government Revenue Bond Act, the General Assembly must enact legislation authorizing the undertaking of the revenue bond project to be financed and fixing the maximum aggregate principal amount of revenue bonds that will be issued for that purpose.

(4) It is the intent of the General Assembly to enact the legislation necessary so that the State may issue revenue bonds for the purpose of paying (i) the costs of acquisition, construction, reconstruction, improvement, enlargement, betterment, and extension of the water supply and distribution system and sewage collection and disposal system for the Community of Butner and the Camp Butner reservation and (ii) certain costs of issuance of the revenue bonds.

Section 2. Definitions. The following definitions apply in this act:

(1) "Department" means the North Carolina Department of Health and Human Services.

(2) "Secretary" means the Secretary of the North Carolina Department of Health and Human Services, or any successor office.

(3) "Project" means the water supply and distribution system and sewer collection and disposal system serving an area including, but not limited to, the Community of Butner and the Camp Butner reservation pursuant to G.S. 122C-407.

Section 3. General grant of powers. The State of North Carolina, acting through the Secretary, is authorized, subject to the provisions of this act, to issue revenue bonds pursuant to The State and Local Government Revenue Bond Act to pay the costs of the project and associated costs. The project is a "revenue bond project" within the meaning of The State and Local Government Revenue Bond Act. Except as otherwise provided in this act, these revenue bonds shall be issued in compliance with The State and Local Government Revenue Bond Act, and in administering the project the provisions of The State and Local Revenue Bond Act shall be in full force and effect.

Section 4. Issuance of revenue bonds. The total amount of bonds to be issued pursuant to this act shall not exceed forty million dollars ($40,000,000). These bonds may be issued at one time or from time to time as the Secretary considers necessary. Bonds issued pursuant to this act shall be issued pursuant to an order

adopted by the Council of State under G.S. 159-88 of The State and Local Government Revenue Bond Act. Bonds issued pursuant to this act shall be sold by the Local Government Commission pursuant to the provisions of Article 7 of Chapter 159 of the General Statues.

Section 5. Negotiable instruments. Notwithstanding any of the foregoing provisions of this act or any recitals in any bonds issued under the provisions of this act, all these bonds are negotiable instruments under the laws of this State, subject only to any applicable provisions for registration.

Section 6. Tax exemptions. Bonds issued under this act shall at all times be free from taxation by the State or any political subdivision or any of their agencies, excepting estate, inheritance, or gift taxes, income taxes on the gain from the transfer of the securities, and franchise taxes. The interest on the bonds is not subject to taxation as income.

Section 7. Interpretation of act. (a) Additional method. This act provides an additional and alternative method for the doing of the things authorized by the act and is supplemental and additional to powers conferred by other laws, and, except as expressly provided, does not derogate any powers now existing.

Section 7.(b) Statutory references. References in this act to specific sections or Chapters of the General Statutes are intended to be references to these sections or Chapters as they may be amended from time to time by the General Assembly.

Section 7.(c) Liberal construction. This act, being necessary for the health and welfare of the people of the State, shall be liberally construed to effect its purposes.

Section 7.(d) Severability. If any provision of this act or its application to any person or circumstance is held invalid, that invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 8. Effective date. This act is effective when it becomes law.

HOUSE BILL 1629:
Butner Water & Sewer Bonds

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Rep. Crawford
Date:	June 25, 2000	**Summary by:**	Cindy Avrette
Version:	2nd Edition		Committee Counsel

SUMMARY: ***House Bill 1629 authorizes the State to issue $40 million of revenue bonds under The State and Local Government Revenue Bond Act to finance improvements to the Butner water and sewer system. The revenues of the Butner water and sewer system will secure the revenue bonds. The House Finance Committee only made technical corrections to the bill.***

CURRENT LAW: The Camp Butner reservation is an unincorporated area of the State located geographically in Granville County. The reservation is under the jurisdiction of the State and is administered by the Secretary of Health and Human Services. The general powers of the Secretary in governing the reservation are similar to those of a City Council. G.S. 122C-407 specifically authorizes the Secretary to operate a water supply and distribution system and a sewage collection and disposal system for the Camp Butner reservation. The Secretary may fix and enforce water and sewer rates and charges. The water and sewer system is in need of extensive improvements. The Department of Health and Human Services and the Department of Administration have suggested that a revenue bond financing would be an appropriate method for financing the cost of the improvements.

The State and Local Revenue Bond Act provides the statutory authority for the issuance of revenue bonds by local governments to finance the cost of revenue-producing facilities, such as water and sewer systems. Under a revenue bond, the revenues from the bond-financed project are pledged as the security for the payment of the bond. In 1983, the Act was amended to allow the State to issue bonds under it, subject to the same provisions as applied to local governments. However, before the State may issue bonds under the Act, the General Assembly must enact legislation authorizing the undertaking of the revenue bond project and the issuance of revenue bonds for it. The legislation must also fix the maximum aggregate principal amount of revenue bonds that will be issued for the project.

BILL ANALYSIS: House Bill 1629 provides the legislation necessary to authorize the issuance of $40 million of revenue bonds for the purpose of financing improvements to the water supply and distribution system and the sewer collection and disposal system serving the Community of Butner and the Camp Butner reservation. If the legislation is enacted, the State Treasurer must submit an application to the Local Government Commission for approval of the bond issue. In determining whether the bond issuance should be approved, the Commission must find all of the following:

- The proposed revenue bond issue is necessary.
- The amount proposed is adequate and not excessive.
- The proposed project is feasible.
- The net revenues of the project to be financed will be sufficient to service the proposed revenue bonds.
- The bonds can be marketed at a reasonable interest cost.

If the Commission approves the application for the issuance of the revenue bonds, the Council of State may adopt a revenue bond order. In fixing the details of the revenue bonds, the State is subject to the same restrictions as local governments under The State and Local Revenue Bond Act. The Local Government Commission would sell the bonds.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1629 (House Finance Committee Substitute)

SHORT TITLE: Butner Water & Sewer Bonds

SPONSOR(S): Representatives Crawford, Allen & Fox

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05
REVENUES					
General Fund		No fiscal impact			
EXPENDITURES					
General Fund	$106,145	$90,223	$73,417	$56,168	$35,824

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Health and Human Services (HHS), Department of State Treasurer- Local Government Commission, Department of Correction, Office of Juvenile Justice, Department of Agriculture & Consumer Services, Department of Crime Control & Public Safety

EFFECTIVE DATE: Effective when it becomes law.

BILL SUMMARY:
The bill authorizes the issuance of up to $40 million in state revenue bonds to finance improvements to the water and sewer system for the community of Butner and the Camp Butner reservation. The bonds will be sold by the Local Government Commission and will be exempt from state tax.

ASSUMPTIONS AND METHODOLOGY:
Approximately $37.2 million in improvements are proposed for the Butner water and sewer system. Since these improvements will be phased in over 15 years, the bonds will be sold as needed to fund construction. The proposed bond sale schedule, subject to approval by the Local Government Commission, is as follows:

FY 2000-01	$9,946,300
FY 2005-06	$10,000,000
FY 2011-12	$15,730,000
FY 2014-15	$1,523,000
	$37,199,300

To repay the bond debt, water and sewer rates will increase an estimated 24% to 28%. The current versus proposed rates are as follows:

	Current	Proposed
Water Rates		
0 to 3,000 gallons	$8	
Greater than 3,000 gallons	$1.70 per 1,000 gallons	
0 to 2,000 gallons		$9
Greater than 2,000 gallons		$2.35 per 1,000 gallons
Sewage Rates		
0 to 3,000 gallons	$12	
Greater than 3,000 gallons	$1.70 per 1,000 gallons	
0 to 2,000 gallons		$12
Greater than 2,000 gallons		$2.35 per 1,000 gallons

The users of Butner water and sewer service are as follows:

	Water	Sewer
Industrial	37%	33%
Federal prison	21%	19%
Commercial & residential	16%	14%
State institutions	16%	14%
Sanitary districts (2)	10%	12%
Town of Creedmoor	0	8%

From April 1999 to April 2000, state institutions in Butner spent $442,272 on water and sewer services. The following is a breakdown of expenditures by department.

	Amount	Percent
Dept. of Health & Human Services	$272,191	61.5%
Dept. of Corrections	$141,798	32.1%
Office of Juvenile Justice	$17,766	4.0%
Dept. of Agriculture & Consumer Services	$9,845	2.2%
Dept. of Crime Control & Public Safety	$672	.2%

If water and sewer fees are increased 28% to pay for needed improvements, then an additional $123,836 must be appropriated from the General Fund each year to the five agencies listed above. Based on the most recent twelve months of expenditures, the increased appropriation would be apportioned as follows:

Dept. of Health & Human Services	$76,214
Dept. of Corrections	$39,703
Office of Juvenile Justice	$4,974
Dept. of Agriculture & Consumer Services	$2,757
Dept. of Crime Control & Public Safety	$188
	$123,836

Based on information from the Department of Health and Human Services (HHS), the largest user of water and sewer services among state institutions, future year budgets include only inflationary increases as approved by the Office of State Budget and Management (OSBM). Instead of a 28% increase for the water and sewer line item for Butner next year, HHS has included only 4% as instructed by OSBM. The following table shows the shortfall in funding between the amount needed to repay water and sewer bonds (28% rate hike) and the inflationary increases built into state agency budgets (4% to 5% a year).

	FY 1999-00*	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05
Dept. of Health & Human Services	$272.191	$283,079	$292,878	$303,221	$313,836	$326,357
Dept. of Corrections	141,798	$147,470	$152,575	$157,963	$163,493	$170,016
Office of Juvenile Justice	$17,766	$18,477	$19,116	$19,791	$20,484	$21,301
Dept. of Agriculture & Consumer Services	$9,845	$10,239	$10,593	$10,967	$11,351	$11,804
Dept. of Crime Control & Public Safety	$672	$699	$723	$749	$775	$806
	$442,272	$459,963	$475,885	$492,691	$509,940	$530,284
Revenue needed to repay bonds		$566,108	$566,108	$566,108	$566,108	$566,108
Difference		$106,145	$90,223	$73,417	$56,168	$35,824

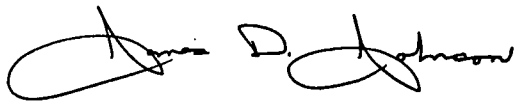
* Based on April 1999 to April 2000 actual expenditures

If this bill passes, the Office of Management and Budget would have the opportunity to build the new rates into the agency budgets as a continuation item.

TECHNICAL CONSIDERATIONS:

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic

APPROVED BY: James D. Johnson



DATE: June 9, 2000

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 1579
Committee Substitute Favorable 6/6/00

Short Title: Monroe Charter Consolidation. (Local)

Sponsors:

Referred to:

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO REVISE AND CONSOLIDATE THE CHARTER OF THE CITY OF MONROE.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the City of Monroe is revised and consolidated to read as follows:

"THE CHARTER OF THE CITY OF MONROE.

"ARTICLE I. INCORPORATION, CORPORATE POWERS, AND BOUNDARIES.

"Section 1.1. **Incorporation.** The City of Monroe in Union County and the inhabitants thereof shall continue to be a municipal body politic and corporate, under the name of the 'City of Monroe,' hereinafter at times referred to as the 'City.'

"Section 1.2. **Powers.** The City shall have and may exercise all of the powers, duties, rights, privileges, and immunities conferred upon the City of Monroe specifically by this Charter or upon municipal corporations by general law. The term 'general law' is employed herein as defined in G.S. 160A-1.

"Section 1.3. **Corporate Limits.** The corporate limits shall be those existing at the time of ratification of this Charter, as set forth on the official map of the City and as they may be altered from time to time in accordance with law. An official map of the City, showing the current municipal boundaries, shall be maintained permanently in the office of the City Clerk and shall be available for public inspection. Upon alteration of the corporate limits pursuant to law, the appropriate changes to the

official map shall be made and copies shall be filed in the office of the Secretary of State, the Union County Register of Deeds, and the appropriate board of elections.

"ARTICLE II. GOVERNING BODY.

"Section 2.1. **City Governing Body; Composition.** The City Council, hereinafter referred to as the 'Council,' and the Mayor shall be the governing body of the City.

"Section 2.2. **City Council; Composition; Terms of Office.** The Council shall be composed of six members, to be elected by all the qualified voters of the City, for staggered terms of four years or until their successors are elected and qualified.

"Section 2.3. **Mayor; Term of Office; Duties.** The Mayor shall be elected by all the qualified voters of the City for a term of two years or until a successor is elected and qualified. The Mayor shall be the official head of the City government and preside at meetings of the Council; shall have the right to cast one vote, and one vote only, upon any question or matter before the Council; and shall exercise the powers and duties conferred by law or as directed by the Council.

"Section 2.4. **Mayor Pro Tempore.** The Council shall elect one of its members as Mayor Pro Tempore to perform the duties of the Mayor during his or her absence or disability, in accordance with general law. The Mayor Pro Tempore shall serve in such capacity at the pleasure of the Council.

"Section 2.5. **Meetings.** In accordance with general law, the Council shall establish a suitable time and place for its regular meetings. Special and emergency meetings may be held as provided by general law.

"Section 2.6. **Quorum; Voting.** Official actions of the Council and all votes shall be taken in accordance with the applicable provisions of general law, including, but not limited to, G.S. 160A-75. The quorum provisions of G.S. 160A-74 shall apply.

"Section 2.7. **Compensation, Qualifications for Office; Vacancies.** The compensation and qualifications of the Mayor and Council members shall be in accordance with general law. Vacancies that occur in any elective office of the City shall be filled by majority vote of the remaining members of the governing body and shall be filled for the remainder of the unexpired term, notwithstanding the contrary provisions of G.S. 160A-63.

"ARTICLE III. ELECTION.

"Section 3.1. **Regular Municipal Elections.** Regular municipal elections shall be held in each odd-numbered year in accordance with the uniform municipal election laws of North Carolina. Elections shall be conducted on a nonpartisan basis and the results determined using the nonpartisan election and runoff method as provided in G.S. 163-293.

"Section 3.2. **Election of Mayor.** A Mayor shall be elected in each regular municipal election. The Mayor serving on the date of ratification of this act shall serve until the expiration of his or her term or until a successor is elected and qualified.

"Section 3.3. **Election of Council Members.** Three Council members shall be elected at large in each regular municipal election, as the respective terms expire. The council members serving on the date of ratification of this act shall serve until the expiration of their terms or until their successors are elected and qualified.

"Section 3.4. **Special Elections and Referenda.** Special elections and referenda may be held only as provided by general law or applicable local acts of the General Assembly.

"ARTICLE IV. ORGANIZATION AND ADMINISTRATION.

"Section 4.1. **Form of Government.** The City shall operate under the council-manager form of government, in accordance with Part 2 of Article 7 of Chapter 160A of the General Statutes.

"Section 4.2. **City Manager; Appointment; Powers and Duties.** The Council shall appoint a City Manager who shall be responsible for the administration of all departments of the City government. The City Manager shall have all the powers and duties conferred by general law, except as expressly limited by the provisions of this Charter, and the additional powers and duties conferred by the Council, so far as authorized by general law.

"Section 4.3. **City Attorney.** The Council shall appoint a City Attorney licensed to practice law in North Carolina. It shall be the duty of the City Attorney to represent the City, advise City officials, and perform other duties as required by law or as the Council may prescribe.

"Section 4.4. **City Clerk.** The Council shall appoint a City Clerk to keep a journal of the proceedings of the Council, to maintain official records and documents, to give notice of meetings, and to perform such other duties as required by law or as the Council may prescribe.

"Section 4.5. **Chief of Police.** The Council shall appoint a Chief of Police to maintain the peace and order of the community, enforce the laws, and perform such other duties as required by law or as the Council may prescribe.

"Section 4.6. **Tax Collector.** The Council shall appoint a Tax Collector to collect all taxes owed to the City, perform those duties specified in G.S. 105-350, and such other duties as required by law or as the Council may prescribe.

"Section 4.7. **Other Administrative Officers and Employees.** The Council may authorize other positions to be filled by appointment by the City Manager and may organize the City government as deemed appropriate, subject to the requirements of general law.

"Section 4.8. **Council-Manager Relationship.** The Council shall hold the City Manager responsible for the proper management of the affairs of the City and he or she shall keep the Council informed of the conditions and needs of the City and shall make such reports and recommendations as may be requested by the Council or as he or she may deem necessary. The City Manager shall have the authority to appoint and remove all officers, department heads, and employees in the administrative service of the City, except those provided in this Charter to be appointed and removed by the Council. The City Manager shall have direct supervisory authority over the City Attorney, City Clerk, Chief of Police, and Tax Collector in the performance of their respective duties and responsibilities. Neither the Mayor, the City Council, nor any member thereof shall direct the conduct or activities of any City employee, directly or indirectly, except through the City Manager.

"Section 4.9. **Settlement of Claims by City Manager.** The Council may authorize the City Manager to settle claims against the City for (i) personal injuries or damages to property when the amount involved does not exceed the sum of five thousand dollars ($5,000) and does not exceed the actual loss sustained, including loss of time, medical expenses, and any other expenses actually incurred; and (ii) the taking of small portions of private property which are needed for the rounding of corners at intersections of streets, when the amount involved in any such settlement does not exceed five thousand dollars ($5,000) and does not exceed the actual loss sustained. Settlement of a claim by the City Manager pursuant to this section shall constitute a complete release of the City from any and all damages sustained by the person involved in such settlement in any manner arising out of the incident, occasion, or taking complained of. All such settlements and all such releases shall be approved in advance by the City Attorney.

"ARTICLE V. STREETS AND SIDEWALKS.

"Section 5.1. **Assessments for Sidewalk or Curb and Gutter Improvements; Petition Unnecessary.** In addition to any authority granted by general law, the Council may levy special assessments for sidewalk improvements or repairs or curb and gutter improvements or repairs without the necessity of a petition. Improvements or repairs may be ordered according to standards and specifications of the City, and four-fifths of the total costs assessed against abutting property, not including the cost of improvements made at intersections, according to one or more of the assessment bases set forth in Article 10 of Chapter 160A of the General Statutes. In ordering improvements or repairs without a petition and assessing the costs thereof under authority of this Article, the Council shall comply with the procedures provided by Article 10 of Chapter 160A of the General Statutes, except those provisions relating to petitions of property owners and the sufficiency thereof. The effect of levying assessments under authority of this Article shall be the same as if the assessments were levied under Authority of Article 10 of Chapter 160A of the General Statutes.

"Section 5.2. **Acquisition of Street Right-of-Way Outside City Limits.** The authority of the City to acquire street right-of-way outside the corporate limits shall continue as provided in Chapter 177, Session Laws of 1985.

"ARTICLE VI. POLICE.

"Section 6.1. **City Police/Service of Civil Process.** In addition to the authority granted by G.S. 160A-285, City police officers shall have the power to serve civil citations, notices, complaints, and orders issued by the governing body or by a public officer of the City. Such authority shall exist within the corporate limits and the extraterritorial police jurisdiction as defined in G.S. 160A-286.

"ARTICLE VII. BIDDING AND PROCUREMENT.

"Section 7.1. **Force Account Work.** The authority of the City to proceed under G.S. 143-135 when work is performed by appointed agents using labor crews and equipment leased on a per diem basis shall continue as provided in Chapter 128, Session Laws of 1985.

"Section 7.2. **Natural Gas Purchases.** The authority of the City to purchase natural gas for consumption or resale using the informal bidding procedure of G.S. 143-131 shall continue as provided in Chapter 18, Session Laws of 1989.

"ARTICLE VIII. FIREFIGHTERS' RETIREMENT FUND.

"Section 8.1. **Fireman's Supplemental Retirement Fund.** The Monroe Fireman's Supplemental Retirement Fund shall continue as authorized by Chapter 31, Session Laws of 1975; Chapter 532, Session Laws of 1981; and any subsequent acts.

"ARTICLE IX. ALCOHOLIC BEVERAGE CONTROL.

"Section 9.1. **Alcoholic Beverage Control Stores.** Alcoholic Beverage Control Stores shall operate within the City of Monroe as provided in Chapter 541, Session Laws of 1963, as amended by Chapter 165, Session Laws of 1965; Chapter 197, Session Laws of 1989; Chapter 32, Session Laws of 1993; and any subsequent acts."

Section 2. The purpose of this act is to revise the Charter of the City of Monroe and to consolidate certain acts concerning the property, affairs, and government of the City. It is intended to continue without interruption those provisions of prior acts which are expressly consolidated into this act, so that all rights and liabilities which have accrued are preserved and may be enforced.

Section 3. This act does not repeal or affect any acts concerning the property, affairs, or government of public schools, or any acts validating official actions, proceedings, contracts, or obligations of any kind.

Section 4. The following acts, having served the purposes for which they were enacted or having been consolidated into this act, are expressly repealed:

Chapter 48, Private Laws of 1844-45
Chapter 239, Private Laws of 1848-49, except Section 1
Chapter 171, Private Laws of 1860-61
Chapter 83, Private Laws of 1872-73
Chapter 47, Private Laws of 1881, except for the first clause of Section 1
Chapter 12, Public Laws of 1887
Chapter 4, Private Laws of 1887
Chapter 89, Private Laws of 1887
Chapter 179, Private Laws of 1891
Chapter 48, Private Laws of 1893
Chapter 263, Private Laws of 1893
Chapter 78, Public Laws of 1897
Chapter 76, Private Laws of 1897
Chapter 127, Private Laws of 1897
Chapter 352, Private Laws of 1899
Chapter 434, Private Laws of 1901
Chapter 41, Private Laws of 1905
Chapter 111, Private Laws of 1905
Chapter 314, Private Laws of 1905
Chapter 406, Private Laws of 1905
Chapter 336, Private Laws of 1907, except Section 5
Chapter 352, Private Laws of 1907, except Section 4

Chapter 11, Private Laws of 1908 (Ex. Sess.)
Chapter 269, Private Laws of 1913
Chapter 383, Private Laws of 1913
Chapter 409, Private Laws of 1913
Chapter 455, Private Laws of 1913
Chapter 456, Private Laws of 1913
Chapter 58, Private Laws of 1913 (Ex. Sess.)
Chapter 26, Private Laws of 1917
Chapter 114, Public-Local Laws of 1919, as to Monroe only
Chapter 2, Private Laws of 1920 (Ex. Sess.)
Chapter 76, Private Laws of 1920 (Ex. Sess.)
Chapter 45, Private Laws of 1925, except Section 1
Chapter 187, Private Laws of 1925
Chapter 124, Private Laws of 1927
Chapter 132, Private Laws of 1927
Chapter 21, Private Laws of 1931
Chapter 178, Private Laws of 1933
Chapter 60, Public-Local Laws of 1937
Chapter 210, Public-Local Laws of 1939
Chapter 597, Session Laws of 1945
Chapter 28, Session Laws of 1947
Chapter 166, Session Laws of 1947, except Section 1
Chapter 641, Session Laws of 1949, except Section 1 and Section 2
Chapter 674, Session Laws of 1951
Chapter 123, Session Laws of 1953
Chapter 52, Session Laws of 1955
Chapter 497, Session Laws of 1955
Chapter 185, Session Laws of 1957
Chapter 703, Session Laws of 1957
Chapter 423, Session Laws of 1959
Chapter 466, Session Laws of 1959
Chapter 498, Session Laws of 1959
Chapter 1000, Session Laws of 1959, except Section 5
Chapter 121, Session Laws of 1961
Chapter 10, Session Laws of 1963
Chapter 70, Session Laws of 1963, except Section 11 and Section 13
Chapter 334, Session Laws of 1967
Chapter 370, Session Laws of 1967
Chapter 720, Session Laws of 1971
Chapter 419, Session Laws of 1975, except Section 2
Chapter 511, Session Laws of 1981
Chapter 270, Session Laws of 1983.

Section 5. This act does not affect any rights or interests which arose under any provisions repealed by this act.

Section 6. All existing ordinances, resolutions, and other provisions of the City of Monroe not inconsistent with the provisions of this act shall continue in effect until repealed or amended.

Section 7. No action or proceeding pending on the effective date of this act by or against the City or any of its departments or agencies shall be abated or otherwise affected by this act.

Section 8. If any provision of this act or application thereof is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Section 9. Whenever a reference is made in this act to a particular provision of the General Statutes, and such provision is later amended, superseded, or recodified, the reference shall be deemed amended to refer to the amended law or the law which most clearly corresponds to the statutory provision which is superseded or recodified.

Section 10. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1544

Short Title: Tourist Directional Sign Program. (Public)

Sponsors: Senators Garrou; Albertson and Wellons.

Referred to: Appropriations/Base Budget.

May 30, 2000

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A TOURIST ORIENTED DIRECTIONAL SIGN (TODS) PROGRAM.

The General Assembly of North Carolina enacts:

Section 1. Chapter 136 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 11B.

"Tourist Oriented Directional Sign Program.

"**§ 136-140.15. Scope of operations.**

(a) Tourist oriented directional signs (TODS) are guide signs which shall display the business identification of and directional information for business, service, and activity facilities. Each facility shall derive a major portion of income or visitors during the normal business season from road users not residing in the immediate area of the facility. TODS may include businesses involved with seasonal agricultural products.

(b) TODS shall not be installed for a business when any signs for that business would be required at intersections where, due to the number or conflicting locations of other highway signs or traffic control devices, or other physical or topographical features of the roadside, their presence would be impractical, unfeasible, or result in an unsafe or hazardous condition.

"**§ 136-140.16. Business eligibility criteria.**

(a) Any tourist oriented business shall be eligible to participate in the TODS Program. A business is considered to be 'tourist oriented' if a substantial portion of its products or services are of significant interest to tourists.

(b) All businesses shall be open to the general public and be 'tourist oriented' as defined in subsection (a) of this section. Businesses open to 'members only' or which restrict access to their facilities by the general public are not eligible for participation in the Program.

(c) Businesses shall comply with all applicable laws, ordinances, rules, and regulations concerning the provision of public accommodations without regard to race, religion, color, age, sex, national origin, disability, and any other category protected by federal or State constitutional or statutory law concerning the granting of licenses and approvals for public facilities.

(d) Businesses shall meet the following standards:

(1) Shall have the name of the business prominently displayed on the premises in such a manner that it is readily visible to motorists from the public highway on which the business is located.

(2) Shall be in continuous operation at least eight hours a day, five days a week during its normal season or the normal operating season for the type of business.

(3) Shall be licensed and approved by the appropriate State and/or local agencies regulating the particular type of business or activity.

(e) If a business is currently shown on another official highway guide sign (i.e., logo sign, supplemental guide sign) on the same approach to an intersection where a TODS panel for that business would be located, the business may elect to keep the existing highway guide sign or have it removed and replaced with TODS. If the business elects to retain the existing highway guide sign, the business shall be ineligible for TODS at that intersection.

"**§ 136-140.17. Terminating participation in Program.**

A business may terminate its participating in the Program at any time. The business will not be entitled to a refund of any fees paid, or portions thereof, because of voluntary termination of participation by the business, for any reason, prior to the end of its current contract period.

"**§ 136-140.18. Temporary removal or covering of TODS panels.**

(a) A business shall be allowed to close for remodeling or to repair damage from fire or other natural disaster, during which time its TODS panels shall be covered or removed. No refund of fees or any extension of the time remaining in their contract for participation will be provided for the period of closure.

(b) The Department may, at its discretion, remove or cover TODS panels for roadway construction or maintenance, for routine maintenance of the TODS assembly, traffic research study, or for any other reason deemed to be necessary or appropriate by the Department. Businesses shall not be entitled to any refunds of fee amounts for the period that the TODS panels are covered or removed unless this period exceeds seven days.

(c) The TODS panels for seasonal businesses shall have an appropriate message added during the period in which the businesses are open to the public as part of their normal seasonal operation.

"**§ 136-140.19. Department to issue rules to implement the TODS Program.**

The Department shall issue rules to implement the TODS Program created by this Article. Included in those rules:

(1) The Department shall set a fee to cover the initial costs of signs, sign maintenance, and administering the Program.

(2) The Department shall establish a standard for the size, color, and letter height of the TODS as specified in the National Manual of Uniform Traffic Control Devices for Streets and Highways.

(3) TODS shall not be placed for businesses more than five miles from the intersection or where prohibited by local ordinance.

(4) The number of TODS panels shall be limited to six per intersection with placement based on the earliest date of application and only one eligible business, service, or activity on each panel.

(5) If a business is not directly on a State highway, it is eligible for TODS panels if the following requirements are met:

a. It is located on a street that directly connects with a State road; and

b. It is located so that only one directional sign, placed on a State road, will lead the tourist to the place of business.

(6) A business shall not be eligible for TODS if it or its on-premises signs are readily visible from a State road."

Section 2. There is appropriated from the General Fund to the Department of Transportation the sum of ten thousand dollars ($10,000) for the 2000-2001 fiscal year to implement the Tourist Oriented Directional Sign Program.

Section 3. This act becomes effective July 1, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 1544
Proposed Committee Substitute S1544-PCS7795-LK4(LC)

Short Title: Tourist Directional Sign Program. (Public)

Sponsors:

Referred to:

May 30, 2000

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A TOURIST-ORIENTED DIRECTIONAL SIGN (TODS) PROGRAM.

The General Assembly of North Carolina enacts:

Section 1. Chapter 136 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 11B.

"Tourist-Oriented Directional Sign Program.

"**§ 136-140.15. Scope of operations.**

(a) Program. -- The Department of Transportation shall administer a tourist-oriented directional signs (TODS) program.

(b) Definitions. -- The following definitions apply in this Article:

(1) TODS. -- Tourist-oriented directional signs (TODS) are guide signs that display the business identification of and directional information for tourist-oriented facilities.

(2) Tourist-oriented business. -- A business the substantial portion of whose products or services are of significant interest to tourists. The term may include a business involved with seasonal agricultural products.

(3) Tourist-oriented facility. -- A business, service, or activity facility that derives a major portion of income or visitors during the normal business season from road users not residing in the immediate area of the facility.

(c) Limitation. -- The Department shall not install TODS for a business if the signs would be required at intersections where, due to the number of conflicting locations of other highway signs or traffic control devices, or other physical or topographical features of the roadside, their presence would be impractical or unfeasible, or result in an unsafe or hazardous condition.

(d) Duplication. -- If a business is currently shown on another official highway guide sign, such as a logo sign or supplemental guide sign, on the same approach to an intersection where a TODS panel for that business would be located, the business may elect to keep the existing highway guide sign or have it removed and replaced with TODS. If the business elects to retain the existing highway guide sign, the business is ineligible for TODS at that intersection.

"**§ 136-140.16. Business eligibility criteria.**

Any tourist-oriented business is eligible to participate in the TODS program if it meets all of the following conditions:

(1) It is open to the general public and is not restricted to 'members only'.

(2) It does not restrict access to its facilities by the general public.

(3) It complies with all applicable laws, ordinances, rules, and regulations concerning the provision of public accommodations without regard to race, religion, color, age, sex, national origin, disability, and any other category protected by federal or State constitutional or statutory law concerning the granting of licenses and approvals for public facilities.

(4) It meets the following standards:

a. It has the name of the business prominently displayed on the premises in a manner that makes it readily visible to motorists from the public highway on which the business is located.

b. It is in continuous operation at least eight hours a day, five days a week during its normal season or the normal operating season for the type of business.

c. It is licensed and approved by the appropriate State and local agencies regulating the particular type of business or activity.

"**§ 136-140.17. Terminating participation in program.**

A business may terminate its participation in the TODS program at any time. The business is not entitled to a refund of any part of any fees paid because of voluntary termination of participation by the business, for any reason, before the end of its current contract period.

"**§ 136-140.18. Temporary modification of TODS panels.**

(a) The Department shall allow a participating business to close for remodeling or to repair damage from fire or other natural disaster if its TODS panels are covered or removed while the business is closed. No refund of fees or extension of the time remaining in the contract for participation will be provided for the period of closure.

(b) The Department may, at its discretion, remove or cover TODS panels for roadway construction or maintenance, for routine maintenance of the TODS assembly, for traffic research study, or for any other reason it considers appropriate. Businesses are not entitled to any refunds of fee amounts for the period that the TODS panels are covered or removed under this subsection unless the period exceeds seven days.

(c) The TODS panels for seasonal businesses shall have an appropriate message added during the period in which the businesses are open to the public as part of their normal seasonal operation.

"**§ 136-140.19. Department to adopt rules to implement the TODS program.**

The Department shall adopt rules to implement the TODS program created by this Article. The rules shall include all of the following:

(1) The Department shall set a fee to cover the initial costs of signs, sign maintenance, and administering the program.

(2) The Department shall establish a standard for the size, color, and letter height of the TODS as specified in the National Manual of Uniform Traffic Control Devices for Streets and Highways.

(3) TODS shall not be placed for businesses more than five miles from the sign.

(4) TODS shall not be placed where prohibited by local ordinance.

(5) The number of TODS panels shall not exceed six per intersection with placement based on the earliest date of application and with only one tourist-related facility on each panel.

(6) If a business is not directly on a State highway, it is eligible for TODS panels only if both of the following requirements are met:

a. It is located on a street that directly connects with a State road.

b. It is located so that only one directional sign, placed on a State road, will lead the tourist to the place of business.

(7) A TODS shall not be placed immediately in advance of the business if the facility and its on-premise advertising signs are readily visible from the roadway.

(8) The Department shall limit the placement of TODS to along highways other than fully controlled access highways and to rural areas in and around towns or cities with a population of less than 25,000."

Section 2. This act becomes effective July 1, 2000.

SENATE BILL 1544:
Tourist Directional Sign Program

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Senator Garrou
Date:	June 26, 2000	**Summary by:**	Fred Kameny, Intern and Martha H. Harris, Staff Attorney
Version:	PCS2855		

SUMMARY: The proposed committee substitute for House Bill 1544 would establish within the Department of Transportation a tourist-oriented directional sign (TODS) program for businesses and other facilities that are of significant interest to tourists. The Department would be authorized to set user fees covering the cost of the program, so no appropriation from the General Fund or Highway Fund is required. The bill would become effective July 1, 2000.

ANALYSIS: The bill would add a new Article 11B to Chapter 136 of the General Statutes directing the Department of Transportation to administer a new program intended to make tourists better aware of these businesses and facilities by having the department erect nearby directional road signs. Signs may be erected only in rural areas and only along highways that are not fully controlled access highways. This limitation was not in the original bill, but is added by the proposed committee substitute.

The statute specifies eligibility criteria for the program, including requirements that an eligible business be open to the general public, be in continuous operation for at least part of the year, and comply with applicable anti-discrimination laws. The bill also precludes the installation of signs that are impractical or unsafe, that duplicate existing signs, or that are more than five miles from the businesses to which they relate. Finally, a sign may not be placed directly in advance of a business that is readily visible from the roadway.

The bill authorizes the Department to set fees, by rule, to cover all costs of administering the TODS program. The costs will include design, fabrication, installation, and administrative expenses. The first edition of the bill included a $10,000 appropriation from the General Fund to support the program; that appropriation is removed in the proposed committee substitute.

Although it is uncertain how many businesses might take part in the TODS program, it is estimated that under similar programs there have been about 4,000 tourist signs installed in Pennsylvania, 1,000 in Michigan, and 400 in Oregon.

In addition to limiting the program to rural areas and removing the appropriation, the proposed committee substitute reorganizes and clarifies the statutory language.

DRAFT

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: Senate Bill 1544 (Proposed Senate Finance Committee Substitute S1544-CSLK-4(LC))

SHORT TITLE: Tourist Directional Sign Program

SPONSOR(S): Senators Garrou; Albertson and Wellons

FISCAL IMPACT

Yes ( ) **No (X)** **No Estimate Available ( )**

	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05
REVENUES					
EXPENDITURES					
POSITIONS:					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Transportation

EFFECTIVE DATE: July 1, 2000

BILL SUMMARY: TOURIST DIRECTIONAL SIGN PROGRAM. Creates new Art. 11B in GS Ch. 136 (GS 136-140.15 through 136-140.19) requiring DOT to implement a tourist oriented directional sign (TODS) program. Defines a TODS as a guide sign displaying business identification and directional information for tourist-oriented businesses, services, and activities. Specifies eligibility criteria for businesses to be included on signs and requires DOT to issue rules dealing with, among other things, fees for cost of signs; size, color, and letter height of signs; and number of panels per sign. Effective July 1, 2000.

ASSUMPTIONS AND METHODOLOGY: This program is fee-supported and therefore does not have an impact on the Highway Fund.

DOT estimates that the cost for a business to participate in the TODS program could be approximately $800, broken out as follows:

DRAFT

One-time Administrative Cost (Application Review, Site Review, Contract Preparation)	$150
Sign Design	100
Sign Fabrication (2 mainline signs @$100, 1 trailblazer sign at $50)	250
Signs, sign supports, installation	300
TOTAL (Additional signs would add to the cost)	$800

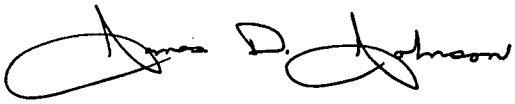
In addition, there would be an annual maintenance cost of approximately $50 per business.

There is no estimate available on how many businesses would choose to participate in the program. DOT understands that Pennsylvania has about 4000 signs installed in a similar program, Michigan has about 1000, and Oregon has about 400. However, as North Carolina has the second largest state highway system, the potential could be quite large.

TECHNICAL CONSIDERATIONS:

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Bob Weiss

APPROVED BY: James D. Johnson



DATE: June 26, 2000

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1252*

Short Title: Brownfields Tax Incentive. (Public)

Sponsors: Senator Odom.

Referred to: Agriculture/Environment/Natural Resources.

May 16, 2000

A BILL TO BE ENTITLED

AN ACT TO CREATE A TAX INCENTIVE FOR THE REDEVELOPMENT OF BROWNFIELDS PROPERTIES, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Article 12 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-277.13. Taxation of improvements on brownfields.**

(a) Qualifying improvements on brownfields properties are designated a special class of property under Article V, Sec. 2(2) of the North Carolina Constitution and shall be appraised, assessed, and taxed in accordance with this section. An owner of land is entitled to the partial exclusion provided by this section for the first five taxable years beginning after the first completion of any qualifying improvements made after the later of July 1, 2000, or the date of the brownfields agreement. After property has qualified for the exclusion provided by this section, the assessor for the county in which the property is located shall annually appraise the improvements made to the property during the period of time that the owner is entitled to the exclusion.

(b) For the purposes of this section, the terms "qualifying improvements on brownfields properties" and "qualifying improvements" mean improvements made to real property that is subject to a brownfields agreement entered into by the Department of Environment and Natural Resources and the owner pursuant to G.S. 130A-310.32.

(c) The following table establishes the percentage of the appraised value of the qualified improvements that is excluded based on the taxable year:

Year	Percent of Appraised Value Excluded
Year 1	90%
Year 2	75%
Year 3	50%
Year 4	30%
Year 5	10%."

Section 2. This act is effective for taxes imposed for taxable years beginning on or after July 1, 2001.

SENATE BILL 1252:
Brownfields Tax Incentive

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Senator Odom
Date:	June 27, 2000	**Summary by:**	Rick Zechini, Staffi Attorney and Karen Cochrane Brown Committee Co-Counsel
Version:	First Edition		

SUMMARY: ***Senate Bill 1252 temporarily reduces the local property tax on brownfields properties.***

BACKGROUND: The Brownfields Property Reuse Act authorizes the Department of Environment and Natural Resources (DENR) to enter into brownfields agreements with prospective developers. These brownfields agreements allow a developer to cleanup a contaminated property to a level that is less "clean" than would otherwise be required by law in exchange for subjecting the property to land-use restrictions. A developer who enters into an agreement with DENR and is complying with the agreement will not be held liable for cleanup of areas of contaminants identified in the agreement, so long as the activities conducted on the property do not increase the risk of harm to public health or the environment and the developer has not violated the land-use restrictions under the agreement.

BILL ANALYSIS: Senate Bill 1252 provides that the owner of real property that is subject to a brownfields agreement is entitled to a partial exclusion from local property tax for the first five years that improvements are made to the property. The partial exclusion is available beginning after the first completion of improvements made after the later of July 1, 2000, or the date of the brownfields agreement. The following table describes the percentage of the appraised value of improvements that is excluded based on the taxable year:

Taxable Year	Percent of Appraised Value
Year 1	90%
Year 2	75%
Year 3	50%
Year 4	30%
Year 5	10%

The Environmental Review Commission recommended this proposal to the 2000 Regular Session of the 1999 General Assembly for its consideration.

EFFECTIVE DATE: Senate Bill 1252 is effective for taxes imposed for taxable years beginning on or after July 1, 2001.

This summary was prepared by Rick Zechini, Committee Counsel to the Senate Agriculture, Environment, and Natural Resources Committee.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 1252 (First Edition)

SHORT TITLE: Brownfields Tax Incentive

SPONSOR(S): Senator Odom

FISCAL IMPACT

Yes ( ) **No ( )** **No Estimate Available (X)**

	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05
REVENUES					
Local Governments	See Assumptions and Methodology				
EXPENDITURES					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Environment and Natural Resources, County and Municipal Governments

EFFECTIVE DATE: Effective for taxes imposed for taxable years beginning on or after July 1, 2001.

BILL SUMMARY:

This bill would amend Article 12 of Chapter 105 of the General Statutes (Property Subject to Taxation) by including another section. This section creates a partial tax exemption for the appraised value of qualifying quality improvements on brownfields sites for the first five taxable years. This partial exemption includes any qualified improvements under the brownfields program completed after July 1, 2000. The following table outlines the partial tax exemption schedule:

Year	***Percentage of Appraised Value for Qualified Improvements Excluded***
Year 1	90%
Year 2	75%
Year 3	50%
Year 4	30%
Year 5	10%

BACKGROUND INFORMATION:
Chapter 9 of GS 130A provides for "brownfields agreements" between the Department of Environment and Natural Resources (DENR) and prospective developers of underutilized property. The qualified property under this agreement includes abandoned, idled, or underused property, at which expansion or redevelopment is hindered by potential state or locally mandated remediation of environmental contamination Under the agreement, the state provides the prospective developer with a covenant not to sue, contingent upon the developer conducting actions outlined in the agreement. Those actions are directed by the DENR, and include a mix of qualifying quality improvements, and enforceable land use restrictions. Qualifying quality improvements by the developer are defined as those site modifications authorized by the DENR, and include the cleanup of environmental contamination, prevention of future contamination, and modifications that would maximize benefit for the public. The restrictions placed upon land use prevent potential risks to public health and safety. Some examples would include the restriction of health care or child care facilities from the premises, as well as restrictions on the use of groundwater and soil from the site.

For entry into the program, prospective developers must show they did not cause or contribute to the contamination of the site, projects must emphasize redevelopment, and they must have public benefit commensurate with the liability relief provided. Projects that have resulted in public benefit are the preservation of an historic mill in Raleigh for mixed residential and commercial use, redevelopment of an abandoned furniture factory that created over 200 jobs in a rural town of 1000, and the construction of an inner city Winston-Salem supermarket. In limiting the liability and remediation costs of the prospective developer, redevelopment projects that would not ordinarily have been able to obtain financing are able to proceed. The money spent by the state on the brownfields program leverages large sums of private investment. On one site, $20,000 spent on state oversight and negotiation resulted in excess of $8 million in private investment for remediation and development.

There are currently 3 completed brownfields agreements and 6 agreements signed and pending. 17 additional applications have been filed and are active. There are over 1000 potential brownfields sites across the state that are currently underutilized or idle due to real or perceived environmental contamination.

ASSUMPTIONS AND METHODOLOGY:

This bill serves as a tax incentive to encourage additional brownfields development. It is not possible to accurately predict the extent to which this tax exemption will induce new developers to enter the program. Department of Environment and Natural Resources staff feel that this tax incentive will serve as an effective means of attracting additional brownfields site developers, as well as providing an incentive for pending agreements to proceed at a more rapid pace.

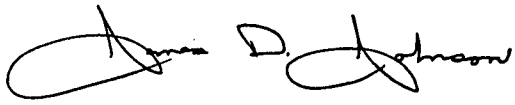
The tax exemption only extends to the tax appraised value of qualifying improvements upon the site, not the value of the entire site. It is not possible to predict the amount that each developer would spend on qualifying improvements, nor the tax assessed value of these improvements. However DENR staff and numerous county tax assessors feel that the additional property tax revenue provided by improvements to sites would be far greater than the combined tax loss over the five-year partial exemption period.

Due to the aforementioned factors, no estimate is available at this time.

TECHNICAL CONSIDERATIONS:

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic and Eugene Son (Research Assistant)

APPROVED BY: James D. Johnson



DATE: June 1, 2000

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 1473
Committee Substitute Favorable 6/15/99

Short Title: Renewable Energy Mfr Credit. (Public)

Sponsors:

Referred to:

May 13, 1999

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE INCOME TAX CREDIT FOR MANUFACTURERS OF CERTAIN RENEWABLE ENERGY EQUIPMENT AND TO SUNSET THE CREDIT FOR COSTS INCURRED DURING TAXABLE YEARS BEGINNING ON OR AFTER JANUARY 1, 2002.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-130.28 reads as rewritten:

"**§ 105-130.28. Credit against corporate income tax for construction of a ~~photovoltaic~~ renewable energy equipment facility.**

(a) ~~Any~~ Credit. -- A corporation that constructs in North Carolina a facility for the ~~production of photovoltaic~~ manufacture of renewable energy equipment is allowed a credit against the tax imposed by this Part equal to twenty-five percent (25%) of the installation and equipment costs of construction paid during the taxable year. The entire credit may not be taken for the taxable year in which the costs are paid but must be taken in five equal installments beginning with the taxable year in which the costs are paid.

No credit is allowed, however, to the extent that any of the costs of the equipment were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the facility at the time of construction. ~~The credit allowed by this section may not exceed the amount of the tax imposed by this Part for the taxable year reduced by the sum of all credits allowable, except payments of tax made by or on behalf of the taxpayer.~~

(b) ~~As used in this section, "photovoltaic equipment" means those products designed, manufactured, and produced to convert sunlight directly into electricity.~~ Definitions. -- The following definitions apply in this section:

(1) Biomass equipment. -- Products designed to use renewable biomass resources for biofuel production of ethanol, methanol, and biodiesel; anaerobic biogas production of methane utilizing agricultural and animal waste or garbage; or commercial thermal or electrical generation from renewable energy crops or wood waste materials. The term also includes related devices for converting, conditioning, and storing the liquid fuels, gas, and electricity produced with biomass equipment.

(2) Renewable biomass resources. -- Organic matter produced by terrestrial and aquatic plants and animals, such as standing vegetation, aquatic crops, forestry and agricultural residues, landfill wastes, and animal wastes.

(3) Renewable energy equipment. -- Biomass equipment, solar electric or thermal equipment, and wind energy equipment.

(4) Solar electric or thermal equipment. -- Products designed to convert sunlight into electricity or heat.

(5) Wind energy equipment. -- Products designed to capture and convert wind energy into electricity or mechanical power.

(c) Carryforward. -- The credit allowed by this section may not exceed the amount of the tax imposed by this Part for the taxable year reduced by the sum of all credits allowable, except payments of tax made by or on behalf of the taxpayer. Any unused portion of the credit may be carried forward for the succeeding 10 years. ~~The amount of credit allowed under this section may be carried over for the next succeeding five years.~~

(d) No Double Credit. -- A taxpayer that claims any other credit allowed under this Chapter with respect to construction of a facility for the manufacture of renewable energy equipment may not take the credit allowed in this section with respect to the same facility."

Section 2. G.S. 105-130.28, as amended by this act, is repealed effective for costs incurred during taxable years beginning on or after January 1, 2002.

Section 3. This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under the statute repealed by this act before the effective date of its repeal, nor does it affect the right to any refund or credit of a tax that accrued under the repealed statute before the effective date of its repeal.

Section 4. This act is effective for taxable years beginning on or after January 1, 2000.

(b) ~~As used in this section, "photovoltaic equipment" means those products designed, manufactured, and produced to convert sunlight directly into electricity.~~ Definitions. -- The following definitions apply in this section:

(1) Biomass equipment. -- Products designed to use renewable biomass resources for biofuel production of ethanol, methanol, and biodiesel; anaerobic biogas production of methane utilizing agricultural and animal waste or garbage; or commercial thermal or electrical generation from renewable energy crops or wood waste materials. The term also includes related devices for converting, conditioning, and storing the liquid fuels, gas, and electricity produced with biomass equipment.

(2) Renewable biomass resources. -- Organic matter produced by terrestrial and aquatic plants and animals, such as standing vegetation, aquatic crops, forestry and agricultural residues, landfill wastes, and animal wastes.

(3) Renewable energy equipment. -- Biomass equipment, solar electric or thermal equipment, and wind energy equipment.

(4) Solar electric or thermal equipment. -- Products designed to convert sunlight into electricity or heat.

(5) Wind energy equipment. -- Products designed to capture and convert wind energy into electricity or mechanical power.

(c) Carryforward. -- The credit allowed by this section may not exceed the amount of the tax imposed by this Part for the taxable year reduced by the sum of all credits allowable, except payments of tax made by or on behalf of the taxpayer. Any unused portion of the credit may be carried forward for the succeeding 10 years. ~~The amount of credit allowed under this section may be carried over for the next succeeding five years.~~

(d) No Double Credit. -- A taxpayer that claims any other credit allowed under this Chapter with respect to construction of a facility for the manufacture of renewable energy equipment may not take the credit allowed in this section with respect to the same facility."

Section 2. G.S. 105-130.28, as amended by this act, is repealed effective for costs incurred during taxable years beginning on or after January 1, 2002.

Section 3. This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under the statute repealed by this act before the effective date of its repeal, nor does it affect the right to any refund or credit of a tax that accrued under the repealed statute before the effective date of its repeal.

Section 4. This act is effective for taxable years beginning on or after January 1, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1473
PROPOSED SENATE COMMITTEE SUBSTITUTE H1473-PCSLY-002BX
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION

Short Title: Renewable Energy Mfr Credit. (Public)

Sponsors:

Referred to: Finance

May 13, 1999

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE INCOME TAX CREDIT FOR MANUFACTURERS OF CERTAIN RENEWABLE ENERGY EQUIPMENT AND TO FURTHER ADJUST THE SHARE CERTAIN CITIES RECEIVE FROM THE STATE GROSS RECEIPTS TAX.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-130.28 reads as rewritten:

"**§ 105-130.28. Credit against corporate income tax for construction of a ~~photovoltaic~~ renewable energy equipment facility.**

(a) ~~Any~~ Credit. -- A corporation that constructs in North Carolina a facility for the ~~production of photovoltaic~~ manufacture of renewable energy equipment is allowed a credit against the tax imposed by this Part equal to twenty-five percent (25%) of the installation and equipment costs of construction paid during the taxable year. The entire credit may not be taken for the taxable year in which the costs are paid but must be taken in five equal installments beginning with the taxable year in which the costs are paid.

No credit is allowed, however, to the extent that any of the costs of the equipment were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the facility at the time of construction. ~~The credit allowed by this section may not exceed~~

~~the amount of the tax imposed by this Part for the taxable year reduced by the sum of all credits allowable, except payments of tax made by or on behalf of the taxpayer.~~

(b) ~~As used in this section, "photovoltaic equipment" means those products designed, manufactured, and produced to convert sunlight directly into electricity.~~ Definitions. -- The following definitions apply in this section:

(1) Biomass equipment. -- Products designed to use renewable biomass resources for biofuel production of ethanol, methanol, and biodiesel; anaerobic biogas production of methane utilizing agricultural and animal waste or garbage; or commercial thermal or electrical generation from renewable energy crops or wood waste materials. The term also includes related devices for converting, conditioning, and storing the liquid fuels, gas, and electricity produced with biomass equipment.

(2) Renewable biomass resources. -- Defined in G.S. 105-129.15.

(3) Renewable energy equipment. -- Biomass equipment, solar electric or thermal equipment, and wind energy equipment.

(4) Solar electric or thermal equipment. -- Products designed to convert sunlight into electricity or heat.

(5) Wind energy equipment. -- Products designed to capture and convert wind energy into electricity or mechanical power.

(c) Carryforward. -- The credit allowed by this section may not exceed the amount of the tax imposed by this Part for the taxable year reduced by the sum of all credits allowable, except payments of tax made by or on behalf of the taxpayer. Any unused portion of the credit may be carried forward for the succeeding 10 years. ~~The amount of credit allowed under this section may be carried over for the next succeeding five years.~~

(d) No Double Credit. -- A taxpayer that claims any other credit allowed under this Chapter with respect to construction of a facility for the manufacture of renewable energy equipment may not take the credit allowed in this section with respect to the same facility."

Section 2. G.S. 105-116.1 reads as rewritten:

"**§ 105-116.1. Distribution of gross receipts taxes to cities.**

(a) Definitions. -- The following definitions apply in this section:

(1) Freeze deduction. -- The amount by which the percentage distribution amount of a city was required to be reduced in fiscal year 1995-96 in determining the amount to distribute to the city.

(2) Percentage distribution amount. -- Three and nine hundredths percent (3.09%) of the gross receipts derived by an electric power company and a telephone company from sales within a city that are taxable under G.S. 105-116 or G.S. 105-120.

(b) Distribution. -- The Secretary must distribute to the cities part of the taxes collected under this Article on electric power companies and telephone companies. Each city's share for a calendar quarter is the percentage distribution amount for that city for that quarter minus one-fourth of the city's hold-back amount and one-fourth of the city's proportionate share of the annual cost to the Department of administering the distribution. The Secretary must make the distribution within 75 days after the end of each calendar quarter.

(c) Limited Hold-Harmless Adjustment. -- The hold-back amount for a city that, in the 1995-96 fiscal year, received from gross receipts taxes less than ninety-five percent (95%) of the amount it received in the 1990-91 fiscal year but at least sixty percent (60%) of the amount it received in the 1990-91 fiscal year is the amount determined by the following calculation:

(1) Adjust the city's 1995-96 distribution by adding the city's freeze deduction to the amount distributed to the city for that year.

(2) Compare the adjusted 1995-96 amount with the city's 1990-91 distribution.

(3) If the adjusted 1995-96 amount is less than or equal to the city's 1990-91 distribution, the hold-back amount for the city is zero.

(4) If the adjusted 1995-96 amount is more than the city's 1990-91 distribution, the hold-back amount for the city is the city's freeze deduction minus the difference between the city's 1990-91 distribution and the city's 1995-96 distribution.

(c1) Additional Limited Hold-Harmless Adjustment. -- The hold-back amount for a city that, in the 1995-96 fiscal year, received from gross receipts taxes less than sixty percent (60%) of the amount it received in the 1990-91 fiscal year is the amount determined by the following calculation:

(1) Adjust the city's 1999-2000 distribution by adding the city's freeze deduction to the amount distributed to the city for that year.

(2) Compare the adjusted 1999-2000 amount with the city's 1990-91 distribution.

(3) If the adjusted 1999-2000 amount is less than or equal to the city's 1990-91 distribution, the hold-back amount for the city is zero.

(4) If the adjusted 1999-2000 amount is more than the city's 1990-91 distribution, the hold-back amount for the city is the city's freeze deduction minus the difference between the city's 1990-91 distribution and the city's 1999-2000 distribution.

(d) Allocation of Hold-Harmless Adjustment. -- The hold-back amount for a city that, in the 1995-96 fiscal year, received from gross receipts taxes at least ninety-five percent (95%) of the amount it received in the 1990-91 fiscal year is the amount determined by the following calculation:

(1) Determine the amount by which the freeze deduction is reduced for all cities whose hold-back amount is determined under ~~subsection (c)~~ subsections (c) and (c1) of this section. This amount is the total hold-harmless adjustment.

(2) Determine the amount of gross receipts taxes that would be distributed for the quarter to cities whose hold-back amount is determined under this subsection if these cities received their percentage distribution amount minus one-fourth of their freeze deduction.

(3) For each city included in the calculation in subdivision (2) of this subsection, determine that city's percentage share of the amount determined under that subdivision.

(4) Add to the city's freeze deduction an amount equal to the city's percentage share under subdivision (3) of this subsection multiplied by the total hold-harmless adjustment.

(e) Disqualification. -- No municipality may receive any funds under this section if it was incorporated with an effective date of on or after January 1, 2000, and is disqualified from receiving funds under G.S. 136-41.2. No municipality may receive any funds under this section, incorporated with an effective date on or after January 1, 2000, unless a majority of the mileage of its streets are open to the public. The previous sentence becomes

effective with respect to distribution of funds on or after July 1, 1999."

Section 3. G.S. 105-130.28, as amended by this act, is repealed effective for costs incurred during taxable years beginning on or after January 1, 2006.

Section 4. This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under the statute repealed by this act before the effective date of its repeal, nor does it affect the right to any refund or credit of a tax that accrued under the repealed statute before the effective date of its repeal.

Section 5. Sections 1 and 3 of this act are effective for taxable years beginning on or after January 1, 2000. Section 2 of this act becomes effective October 1, 2000 and applies to distributions made on or after that date. The remainder of this act is effective when it becomes. law.

HOUSE BILL 1473:
Renewable Energy Manufacturers Credit

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Rep. Hackney
Date:	June 20, 2000	**Summary by:**	Martha K. Walston
Version:	Proposed Senate Committee Substitute		Committee Counsel

SUMMARY: ***House Bill 1473 expands the current corporate tax credit for a corporation that constructs a facility for the production of photovoltaic equipment to include the construction of a facility for the production of other types of renewable energy equipment. The bill provides that the credit must be taken in five equal installments and extends the carry forward from 5 years to 10 years. The bill becomes effective for taxable years beginning on or after January 1, 2000, and sunsets the credit for costs incurred during taxable years beginning on or after January 1, 2006.***

House Bill 1473 also adjusts the share certain cities receive from the State gross receipts tax.

CURRENT LAW: A corporation that constructs a facility for the production of photovoltaic equipment is allowed a credit equal to 25% of the installation and equipment costs of construction paid during the taxable year. The amount of the credit may not exceed the amount of tax owed; any unused credit may be carried forward for five years. Photovoltaic equipment means products designed, manufactured, and produced to convert sunlight directly into electricity. The credit is not allowed to the extent that federal, State, or local grants provide any of the costs of the equipment. To secure the credit, the taxpayer must own or control the facility at the time of construction.

BILL ANALYSIS:

Tax Credit for Manufacturers of Renewable Energy Equipment. House Bill 1473 would allow a corporation that constructed a facility in North Carolina for the manufacture of renewable energy equipment to receive a corporate income tax credit equal to 25% of the installation and equipment costs of construction paid during the taxable year. Renewable energy equipment is defined by the bill as biomass equipment, solar electric or thermal equipment, and wind energy equipment. This broad definition encompasses the current definition of photovoltaic equipment. The credit allowed under this bill differs from the current credit in the following ways:

- The entire credit could not be taken for the taxable year in which the costs are paid, but would be taken in five equal installments beginning with the taxable year in which the costs are paid.
- Any unused portion of the credit may be carried forward for 10 years instead of 5 years.
- A taxpayer that claims any other credit with respect to the construction of a facility to manufacture renewable energy equipment may not take this credit with respect to the same facility.

Adjustment to Franchise Tax Distribution Formula for Cities. House bill 1473 also makes an adjustment to the franchise tax distribution formula for cities.[1]

Background: Under the $1.2 billion State budget fix in 1991, the State eliminated the future growth to cities of this shared revenue. The total amount distributed was frozen but the relative share of each city changed based on the proportion of that city's receipts compared to the total of all cities' receipts. When the 1993 General Assembly restored growth, effective beginning with the 1995-96 fiscal year, it was decided that the State would "holdback" an amount equal to the growth of the distribution base from 1990-91 to 1994-95 as the contribution of each city to the State's budget problems. After growth was restored in 1995-96, it was discovered that some cities received less net distribution than in 1990-91, the last year prior to the "growth freeze". This happened to cities that experienced a temporary franchise tax base growth in the freeze years (1990-91 through 1994-95) and then a reduction of the base in 1995–96. To adjust for this loss of tax base growth, the 1997 General Assembly reduced the holdback amount, thereby increasing the amount of State franchise tax distributed to 40 cities. These 40 cities were the ones whose 1995-96 distributions were less than 95% of their 1990-91 distributions. The 1997 act increased the annual distribution to the affected cities by a total of $194,841. The annual distribution to the other 500 cities was reduced by the same amount, so that the State share of the franchise tax was not reduced. The 1997 adjustment, however, was not sufficient to hold the Town of Denton's loss to a level that did not go below its 1990-91 distribution. The reason the 1997 adjustment formula did not fully compensate Denton is because the manufacturing facility that was the basis of the holdback had not fully closed by 1995-96.

House Bill 1473 would allow the adjustment formula for a city that, in the 1995-96 fiscal year, received from gross receipts taxes less than 60% of the amount it received in the 1990-91 fiscal year, to be based upon the 1999-2000 fiscal year distribution rather than the higher 1995-96 distribution. This exception to the adjustment formula would apply to distributions made on or after October 1, 2000.

Cindy Avrette, committee counsel to House Finance, contributed substantially to this summary.

[1] The State distributes part of the State franchise tax imposed on utilities to the cities. Prior to July 1, 1999, the franchise taxes that were distributed were the taxes on electricity, piped natural gas, and telephone service. The rate for each utility was 3.22% In S.L. 1998-22, the General Assembly combined the franchise gross receipts and sales taxes on piped natural gas into a single per therm excise tax. That act preserved the distribution of the gross receipts tax to cities by providing that 50% of the new excise tax on piped gas service within a city would be distributed to that city.

NORTH CAROLINA GENERAL ASSEMBLY
LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1473 (REVISED Senate Finance Committee Substitute)

SHORT TITLE: Renewable Energy Manufacturer Credit

SPONSOR(S): Senate Finance Committee Substitute

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
GENERAL FUND					
Energy Mfr. Credit	No estimate available				
State Gross Receipts Tax	Redistribution of tax proceeds among cities				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue

EFFECTIVE DATE: Sections 1 and 2 (tax credit) of this act are effective for taxable years beginning on or after January 1, 2000. The franchise tax distribution change becomes effective for distributions taking place on or after October 1, 2000.

BILL SUMMARY:

Renewable Energy Credits. Replaces the corporate tax credit for constructing a photovoltaic (PV) equipment facility with a corporate tax credit for constructing a renewable energy equipment facility. The tax credit is taken in five equal installments over five years. Unused tax credits have a 10 year carryforward. No taxpayer may receive more than one tax credit for this type of facility.

Franchise Tax Distribution. Makes a slight modification to the distribution of the State franchise tax on utility gross receipts that is shared with cities.

BACKGROUND:

Franchise Tax Distribution. Under the $1.2 billion State budget fix in 1991, the State eliminated the future growth to cities of this shared revenue. When the 1993 General Assembly restored growth, effective beginning with 1995-96, it was decided that the State would "holdback" an amount equal to the growth of the distribution base from 1990-91 to 1994-95 as the contribution of each city to the State's budget problems.

After growth was restored in 1995-96, it was discovered that some cities received less net distribution than in 1990-91, the last year prior to the "growth freeze". The reason had to do with the fact that in a handful of cities the source of the 1990-91 to 1994-95 growth had disappeared.

A good example is the town of Denton in which an apparel manufacturing plant that had come on line during the freeze period had closed down. This meant that Denton was being penalized for a distribution holdback that came from a plant that was no longer part of the franchise tax base.

The 1997 General Assembly modified the holdback to try to hold harmless 41 cities to approximately the 1990-91 distribution level. After the law was enacted the Town of Denton discovered that because the apparel manufacturing plant had not fully closed by 1995-96, the use of that year as the calculation base meant that the Town was still facing a substantial distribution loss, when compared to 1990-91.

This bill adjusts the 1997 holdback fix by replacing the 1995-96 fiscal year with 1998-99 to calculate the hold harmless provision.

ASSUMPTIONS AND METHODOLOGY:

Energy Tax Credit

The current corporate income tax credit for constructing photovoltaic manufacturing facilities has not been used since it was created in 1981. The Department of Revenue reported no usage of the credit from 1981 to 1987. After 1987, no separate accounting was done for each energy credit. Officials with the North Carolina Solar Center and the North Carolina Solar Energy Association do not recall this credit ever being used. These solar energy advocates believe the existing law's 5-year carry forward period is too short for new companies to show a profit and benefit from the tax incentive. The credit in HB 1473 lengthens the carry forward period from 5 to 10 years and expands credit eligibility to include biomass and wind energy equipment.

This fiscal note cannot predict the number of firms that will apply for this revised corporate tax credit nor the amount of credit to be requested. However, if only one firm applies for the credit, there will be a General Fund revenue loss due to the absence of applicants for the current tax credit program. The Chief of the Renewable Energy Branch of the U.S. Department of Energy (DOE) believes North Carolina is a good candidate for a small photovoltaic (PV) company using specialized technology and for a biomass equipment company working with the wood products industry. An example of a small PV company is Atlantis Energy, which built a $1.5 million plant in Cape Charles Virginia in 1995 to produce custom designed PV modules. A biomass equipment plant might be attracted to the North Carolina wood products industry, that produced 1,730 million kilowatt hours of energy from wood and wood waste in 1995. (DOE/Energy Information Administration)

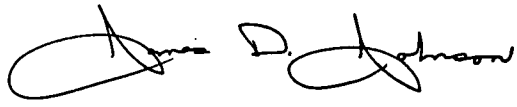
The Chief of the DOE Renewable Energy Branch believes that manufacturers of photovoltaic (PV) and biomass equipment will expand production capacity over the next five years. The Million Solar Roofs Initiative that DOE began in 1997 aims to install a million solar energy systems on one million U.S. buildings by the year 2010. Since 64% of the shipments from the nation's 24 manufacturers of PV cells and modules (DOE 1995 estimate) are exported, an increase in domestic demand should prompt an expansion of PV plant capacity.

Franchise Tax Distribution

Based on actual tax base, holdback, and distribution data from the Department of Revenue, it is estimated that in future years the Town of Denton will receive an additional $14,000 per year. There is no State budget impact because the Denton funds will come from a pro rata reduction in the distribution of other cites.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic & David Crotts

APPROVED: James D. Johnson



DATE: June 26, 2000

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1473
Committee Substitute Favorable 6/15/99
Proposed Senate Committee Substitute H1473-PCS2446-LY002BX

Short Title: Renewable Energy Mfr Credit. (Public)

Sponsors:

Referred to:

May 13, 1999

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE INCOME TAX CREDIT FOR MANUFACTURERS OF CERTAIN RENEWABLE ENERGY EQUIPMENT AND TO FURTHER ADJUST THE SHARE CERTAIN CITIES RECEIVE FROM THE STATE GROSS RECEIPTS TAX.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-130.28 reads as rewritten:

"**§ 105-130.28. Credit against corporate income tax for construction of a ~~photovoltaic~~ renewable energy equipment facility.**

(a) ~~Any~~ Credit. -- A corporation that constructs in North Carolina a facility for the ~~production of photovoltaic~~ manufacture of renewable energy equipment is allowed a credit against the tax imposed by this Part equal to twenty-five percent (25%) of the installation and equipment costs of construction paid during the taxable year. The entire credit may not be taken for the taxable year in which the costs are paid but must be taken in five equal installments beginning with the taxable year in which the costs are paid.

No credit is allowed, however, to the extent that any of the costs of the equipment were provided by federal, State, or local grants. To secure the credit allowed by this section, the taxpayer must own or control the facility at the time of construction. ~~The credit allowed by this section may not exceed the amount of the tax imposed by this Part for the taxable year reduced by the sum of all credits allowable, except payments of tax made by or on behalf of the taxpayer.~~

(b) ~~As used in this section, "photovoltaic equipment" means those products designed, manufactured, and produced to convert sunlight directly into electricity.~~ Definitions. -- The following definitions apply in this section:

(1) Biomass equipment. -- Products designed to use renewable biomass resources for biofuel production of ethanol, methanol, and biodiesel; anaerobic biogas production of methane utilizing agricultural and animal waste or garbage; or commercial thermal or electrical generation from renewable energy crops or wood waste materials. The term also includes related devices for converting, conditioning, and storing the liquid fuels, gas, and electricity produced with biomass equipment.

(2) Renewable biomass resources. -- Defined in G.S. 105-129.15.

(3) Renewable energy equipment. -- Biomass equipment, solar electric or thermal equipment, and wind energy equipment.

(4) Solar electric or thermal equipment. -- Products designed to convert sunlight into electricity or heat.

(5) Wind energy equipment. -- Products designed to capture and convert wind energy into electricity or mechanical power.

(c) Carryforward. -- The credit allowed by this section may not exceed the amount of the tax imposed by this Part for the taxable year reduced by the sum of all credits allowable, except payments of tax made by or on behalf of the taxpayer. Any unused portion of the credit may be carried forward for the succeeding 10 years. ~~The amount of credit allowed under this section may be carried over for the next succeeding five years.~~

(d) No Double Credit. -- A taxpayer that claims any other credit allowed under this Chapter with respect to construction of a facility for the manufacture of renewable energy equipment may not take the credit allowed in this section with respect to the same facility."

Section 2. G.S. 105-116.1 reads as rewritten:

"**§ 105-116.1. Distribution of gross receipts taxes to cities.**

(a) Definitions. -- The following definitions apply in this section:

(1) Freeze deduction. -- The amount by which the percentage distribution amount of a city was required to be reduced in fiscal year 1995-96 in determining the amount to distribute to the city.

(2) Percentage distribution amount. -- Three and nine hundredths percent (3.09%) of the gross receipts derived by an electric power company and a telephone company from sales within a city that are taxable under G.S. 105-116 or G.S. 105-120.

(b) Distribution. -- The Secretary must distribute to the cities part of the taxes collected under this Article on electric power companies and telephone companies. Each city's share for a calendar quarter is the percentage distribution amount for that city for that quarter minus one-fourth of the city's hold-back amount and one-fourth of the city's proportionate share of the annual cost to the Department of

administering the distribution. The Secretary must make the distribution within 75 days after the end of each calendar quarter.

(c) Limited Hold-Harmless Adjustment. -- The hold-back amount for a city that, in the 1995-96 fiscal year, received from gross receipts taxes less than ninety-five percent (95%) of the amount it received in the 1990-91 fiscal year but at least sixty percent (60%) of the amount it received in the 1990-91 fiscal year is the amount determined by the following calculation:

(1) Adjust the city's 1995-96 distribution by adding the city's freeze deduction to the amount distributed to the city for that year.

(2) Compare the adjusted 1995-96 amount with the city's 1990-91 distribution.

(3) If the adjusted 1995-96 amount is less than or equal to the city's 1990-91 distribution, the hold-back amount for the city is zero.

(4) If the adjusted 1995-96 amount is more than the city's 1990-91 distribution, the hold-back amount for the city is the city's freeze deduction minus the difference between the city's 1990-91 distribution and the city's 1995-96 distribution.

(c1) Additional Limited Hold-Harmless Adjustment. -- The hold-back amount for a city that, in the 1995-96 fiscal year, received from gross receipts taxes less than sixty percent (60%) of the amount it received in the 1990-91 fiscal year is the amount determined by the following calculation:

(1) Adjust the city's 1999-2000 distribution by adding the city's freeze deduction to the amount distributed to the city for that year.

(2) Compare the adjusted 1999-2000 amount with the city's 1990-91 distribution.

(3) If the adjusted 1999-2000 amount is less than or equal to the city's 1990-91 distribution, the hold-back amount for the city is zero.

(4) If the adjusted 1999-2000 amount is more than the city's 1990-91 distribution, the hold-back amount for the city is the city's freeze deduction minus the difference between the city's 1990-91 distribution and the city's 1999-2000 distribution.

(d) Allocation of Hold-Harmless Adjustment. -- The hold-back amount for a city that, in the 1995-96 fiscal year, received from gross receipts taxes at least ninety-five percent (95%) of the amount it received in the 1990-91 fiscal year is the amount determined by the following calculation:

(1) Determine the amount by which the freeze deduction is reduced for all cities whose hold-back amount is determined under ~~subsection (c)~~ subsections (c) and (c1) of this section. This amount is the total hold-harmless adjustment.

(2) Determine the amount of gross receipts taxes that would be distributed for the quarter to cities whose hold-back amount is determined under this subsection if these cities received their percentage distribution amount minus one-fourth of their freeze deduction.

(3) For each city included in the calculation in subdivision (2) of this subsection, determine that city's percentage share of the amount determined under that subdivision.

(4) Add to the city's freeze deduction an amount equal to the city's percentage share under subdivision (3) of this subsection multiplied by the total hold-harmless adjustment.

(e) Disqualification. -- No municipality may receive any funds under this section if it was incorporated with an effective date of on or after January 1, 2000, and is disqualified from receiving funds under G.S. 136-41.2. No municipality may receive any funds under this section, incorporated with an effective date on or after January 1, 2000, unless a majority of the mileage of its streets are open to the public. The previous sentence becomes effective with respect to distribution of funds on or after July 1, 1999."

Section 3. G.S. 105-130.28, as amended by this act, is repealed effective for costs incurred during taxable years beginning on or after January 1, 2006.

Section 4. This act does not affect the rights or liabilities of the State, a taxpayer, or another person arising under the statute repealed by this act before the effective date of its repeal, nor does it affect the right to any refund or credit of a tax that accrued under the repealed statute before the effective date of its repeal.

Section 5. Sections 1 and 3 of this act are effective for taxable years beginning on or after January 1, 2000. Section 2 of this act becomes effective October 1, 2000, and applies to distributions made on or after that date. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 3

HOUSE BILL 1539*
Committee Substitute Favorable 5/24/00
Committee Substitute #2 Favorable 6/12/00

Short Title: Qualified Zone Academy Bond Act of 2000. (Public)

Sponsors:

Referred to:

May 16, 2000

A BILL TO BE ENTITLEBill

AN ACT TO DESIGNATE THE STATE BOARD OF EDUCATION AS THE STATE EDUCATION AGENCY RESPONSIBLE FOR ADMINISTERING THE QUALIFIED ZONE ACADEMY BOND PROGRAM.

The General Assembly of North Carolina enacts:

Section 1. Chapter 115C of the General Statutes is amended by adding a new Article to read:

"ARTICLE 34B.

"Qualified Zone Academy Bonds.

"**§ 115C-489.5. Qualified zone academy bonds; findings.**

The General Assembly finds:

(a) Section 226 of the Taxpayer Relief Act of 1997, as codified at 26 U.S.C. § 1397E, provides funds for school improvements through taxable qualified zone academy bonds. Ninety-five percent (95%) or more of the proceeds of a qualified zone academy bond issue must be used for a qualified purpose with respect to a qualified zone academy established by an eligible local education agency.

(b) Partnerships between private entities and local schools are promoted through the use of qualified zone academy bonds. Issuers must certify that they have received written commitments from one or more private entities to make qualified contributions valued at ten percent (10%) of the proceeds of the issue.

(c) Eligible taxpayers may receive federal tax credits for holding the qualified zone academy bonds. It is intended that the qualified zone academy bonds be sold at par

value so that the tax credits received are instead of interest that otherwise would have been paid on the bonds. Therefore, issuers of qualified zone academy bonds are obligated to repay the principal amount of the qualified zone academy bonds but need not make interest payments.

(d) Applicable federal law limits the amount of qualified zone academy bonds that may be issued in North Carolina in a calendar year.

"**§ 115C-489.6. Administration; consultation; issuance of bonds.**

(a) State Board of Education to Administer Program. -- The State Board of Education is designated the State education agency responsible for administering the qualified zone academy bond program in North Carolina for the purposes of 26 U.S.C. § 1397E. The State Board of Education shall perform all activities required to implement and carry out the qualified zone activity bond program in North Carolina. Those activities include:

(1) Defining those areas and schools that are eligible under federal law to participate in the qualified zone academy bond program in North Carolina.

(2) Designing an application process under which proposals may be solicited from qualified zone academies.

(3) Determining the eligibility of an applicant to be a participating qualified zone academy.

(4) Awarding the State's allocation of total funds among selected applicants and establishing conditions upon the usage of the allocation. These conditions must include:

a. Requiring that the bond proceeds be used only for rehabilitating or repairing the public school facility in which the qualified zone academy is located, which may include (i) wiring and other infrastructure improvements related to providing technology and (ii) equipment related to the rehabilitation or repair, but not personal computers or similar technology equipment.

b. Conditions designed to assure that the allocation is used in a timely manner.

(5) Confirming that the terms of any qualified zone academy bonds issued in accordance with this program are consistent with the terms of the federal program.

(b) Assistance. -- The Department of Public Instruction shall provide the State Board of Education any support it requires in carrying out this section.

(c) Consultation. -- In reviewing applications and awarding allocations, the State Board of Education shall consult with the Local Government Commission to determine whether a prospective issuer of qualified zone academy bonds is able to issue or incur marketable obligations.

(d) Issuance of Bonds. -- Any bonds designated as qualified zone academy bonds may be issued pursuant to the applicable provisions of and in compliance with the Local Government Bond Act, Article 4 of Chapter 159 of the General Statutes, or

pursuant to the applicable provisions of and in compliance with G.S. 160A-20, to the extent authorized by G.S. 153A-158.1. As provided in G.S. 159-123(b), bonds designated as qualified zone academy bonds to be issued pursuant to the Local Government Bond Act may be sold by the Local Government Commission at private sale."

Section 2. G.S. 159-123(b) reads as rewritten:

"(b) The following classes of bonds may be sold at private sale:

(1) Bonds that a State or federal agency has previously agreed to purchase.

(2) Any bonds for which no legal bid is received within the time allowed for submission of bids.

(3) Revenue bonds, including any refunding bonds issued pursuant to G.S. 159-84, and special obligation bonds issued pursuant to Chapter 159I of the General Statutes.

(4) Refunding bonds issued pursuant to G.S. 159-78.

(5) Refunding bonds issued pursuant to G.S. 159-72 if the Local Government Commission determines that a private sale is in the best interest of the issuing unit.

(6) Bonds designated as qualified zone academy bonds pursuant to G.S. 115C-489.6, if the Local Government Commission determines that a private sale is in the best interest of the issuing unit."

Section 3. G.S. 150B-21.1 is amended by adding a new subsection to read:

"(a7) Notwithstanding the provisions of subdivision (a)(2) of this section, an agency may adopt a temporary rule to implement the provisions of any of the following acts until all rules necessary to implement the provisions of the act have become effective as either temporary or permanent rules:

(1) Reserved.

(2) Article 34B of Chapter 115C of the General Statutes."

Section 4. Interpretation of Act. (a) Additional Method. This act provides an additional and alternative method for the doing of the things it authorizes and is as supplemental and additional to powers conferred by other laws. Except as otherwise expressly provided, it does not derogate any powers now existing.

Section 4.(b) Statutory References. References in this act to specific sections or Chapters of the General Statutes are intended to be references to those sections or Chapters as they may be amended from time to time by the General Assembly.

Section 4.(c) Liberal Construction. This act, being necessary for the health and welfare of the people of the State, shall be liberally construed to effect its purposes.

Section 4.(d) Severability. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

Section 5. G.S. 150B-21.1(a7)(2), as enacted by Section 3 of this act, is repealed effective July 1, 2003.

Section 6. This act is effective when it becomes law.

HOUSE BILL 1539:
Qualified Zone Academy Bonds

BILL ANALYSIS

Committee: Senate Finance
Date: June 25, 2000
Version: 3rd Edition

Introduced by: Rep. Rogers
Recommended by Education Oversight
Summary by: Cindy Avrette
Committee Counsel

SUMMARY: ***House Bill 1539 is a recommendation of the Joint Legislative Education Oversight Committee. It authorizes the State Board of Education to administer selection and monitoring provisions of federal legislation that allows counties to issue Qualified Zone Academy Bonds (QZABs) on behalf of eligible public schools. HB 1539 was discussed in House Education and House Finance.***

BACKGROUND: QZABs are a relatively new financing tool that can be used by eligible public schools for renovation and repair projects and for equipment and up-to-date technology. Under current law, they cannot be used for new construction. Congress enacted the QZAB program in 1997. Under the QZAB program, bondholders (banks, insurance companies, and other financial institutions) receive a federal income tax credit in lieu of a cash interest payment. This means that local governments may borrow money under the QZAB program at a zero interest rate.

Congress allocated $400 million in QZABs to the states in 1998, 1999, and 2000. An additional $400 million will be allocated in 2001. Each state has a specified allotment, which is based on the number of individuals with incomes below the poverty level.

Only certain public schools can qualify as a qualified zone academy eligible for the bonds. To be a qualified zone academy, the public school must meet one of the following two conditions:

- Be located in an empowerment zone or enterprise community.
- Expect at least 35% of its students to be eligible for free or reduced-cost lunches under the federal school lunch program. This criterion is the one that schools are most likely to meet.

A participating public school must also meet two additional requirements:

- Its programs must be designed in cooperation with private business to improve education and it must be subject to local academic standards and assessments.
- It must have commitments from private entities to contribute property or services in an amount equal to 10% of the QZABs to be issued.

BILL ANALYSIS: Each state is responsible for administering the QZAB program. North Carolina does not currently have a process for administering the program. House Bill 1539 authorizes the State Board of Education to administer a program to identify eligible schools, set up an application process, select one or more schools each year, and confirm that the bonds are issued in accordance with the federal restrictions. **House Finance amended the bill by removing the exemption of the State Board of Education from the Administrative Procedure Act's rule-making requirements related to administering the QZAB program. House Finance also added language to allow the State Board to adopt temporary rules to administer the QZAB program. This temporary rule-making provision sunsets July1, 2003.**

The bill limits the purpose for which bond proceeds may be used to rehabilitating and repairing eligible public schools, which may include wiring and equipment related to this purpose but not personal computers or similar technology equipment. The bill provides that the QZABs must be issued pursuant to the Local Government Bond Act. Since a local government does not have to have a formal bond issue to participate in the program, the bill provides that any other financing arrangement must be made in accordance with G.S. 160A-20, which governs other financing options such as installment contracts and certificates of participation. **House Finance also added language that the bonds must be issued to the extent authorized by G.S. 153A-158.1. This statute, which regulates the acquisition and improvement of school property in 76 counties, also governs financing options for public schools.**

Kory Goldsmith, counsel to the Education Committee, and Martha Walston, counsel to the Senate Finance Committee, contributed to this summary.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1539 (House Finance Committee Substitute)

SHORT TITLE: Qualified Zone Academy Bond Act of 2000

SPONSOR(S): Representatives Rogers and Yongue

FISCAL IMPACT

Yes ( ) **No (X)** **No Estimate Available ( )**

	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05
REVENUES					
EXPENDITURES	No General Fund Impact				
POSITIONS:					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: County Governments

EFFECTIVE DATE: The act is effective when it becomes law.

BILL SUMMARY: This legislation authorizes the State Board of Education to administer selection and monitoring provisions of federal legislation (26 U.C.S. 1379E) that allows counties to issue Qualified Zone Academy Bonds (QZABs) on behalf of eligible public schools.

BACKGROUND INFORMATION: The federal Taxpayer Relief Act of 1997 provides federal funding for certain public schools and programs by allowing local governments to issue Qualified Zone Academy Bonds for the rehabilitation and renovation of schools, development of course materials, and training of teachers and personnel. Bonds may not be issued for new construction. The local governments pay the principal on the bond, but pay no interest to the bondholder. In lieu of interest, the bondholder receives a federal tax credit.

$9,115,000 was allocated to North Carolina in 1998 and $8,851,000 in 1999 under the federal QZAB program. North Carolina counties are authorized to issue $11,281,000 in bond principal for the year 2000. The combined total of QZAB principal that counties are authorized to issue nationally is $400 million. In order for North Carolina counties to utilize the interest exemption on approximately $9.1 million authorized for 1998, the county bonds must be issued by

December 31, 2000. After this date, counties are no longer able to issue the 1998 QZAB bond allocation.

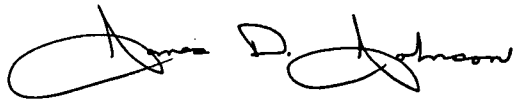
ASSUMPTIONS AND METHODOLOGY: There is no fiscal impact from this bill on the state level. The state issues no bonds, and shoulders none of the responsibility of the county QZAB issuance. County governments in effect, pay less over the term of the bond. They are only responsible for the repayment of the principal, while the interest due to bondholders is federally subsidized in the form of a tax credit.

Additionally, upon the passing of this bill, there will be no additional administration or operating costs. The State Board of Education will utilize existing staff and resources in the monitoring and direction of the program.

TECHNICAL CONSIDERATIONS:

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic and Eugene Son (Research Assistant)

APPROVED BY: James D. Johnson



DATE: June 7, 2000

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 4

HOUSE BILL 1132*
Second Edition Engrossed 4/28/99
Committee Substitute Favorable 7/8/99
Committee Substitute #2 Favorable 7/13/99

Short Title: Preserve Farmlands/Promote Small Farms. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO PROMOTE THE PRESERVATION OF FARMLAND AND TO PROMOTE SMALL, FAMILY-OWNED FARMS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 106-744(c) reads as rewritten:

"(c) There is established a 'North Carolina Farmland Preservation Trust Fund' to be administered by the Commissioner of Agriculture. The Trust Fund shall consist of all monies received for the purpose of purchasing agricultural conservation easements or transferred from counties or private sources. The Trust Fund shall be invested as provided in G.S. 147-69.2 and G.S. 147-69.3. The Commissioner shall use Trust Fund monies for the purchase of agricultural conservation easements, including transaction costs, and shall distribute Trust Fund monies ~~to counties and private nonprofit conservation organizations~~ for such purchases, including transaction ~~costs.~~ costs, as follows:

(1) To a private nonprofit conservation organization that matches thirty percent (30%) of the Trust Fund monies it receives with funds from sources other than the Trust Fund.

(2) To counties according to the match requirements under subsection (c1) of this section.

(c1) A county that is an enterprise tier four county or an enterprise tier five county, as these tiers are defined in G.S. 105-129.3(a), and that has prepared a

countywide farmland protection plan shall match fifteen percent (15%) of the Trust Fund monies it receives with county funds. A county that has not prepared a countywide farmland protection plan shall match thirty percent (30%) of the Trust Fund monies it receives with county funds. A county that is an enterprise tier one county, an enterprise tier two county, or an enterprise tier three county, as these counties are defined in G.S. 105-129.3(a), and that has prepared a countywide farmland protection plan shall not be required to match any of the Trust Fund monies it receives with county funds.

(c2) The Commissioner of Agriculture shall adopt rules ~~and regulations~~ governing the use, distribution, investment, and management of Trust Fund monies."

Section 2. G.S. 106-744 is amended by adding two new subsections to read:

"(e) As used in subsection (c1) of this section, a countywide farmland protection plan means a plan that satisfies all of the following requirements:

(1) The countywide farmland protection plan shall contain a list and description of existing agricultural activity in the county.

(2) The countywide farmland protection plan shall contain a list of existing challenges to continued family farming in the county.

(3) The countywide farmland protection plan shall contain a list of opportunities for maintaining or enhancing small, family-owned farms and the local agricultural economy.

(4) The countywide farmland protection plan shall describe how the county plans to maintain a viable agricultural community and shall address farmland preservation tools, such as agricultural economic development, including farm diversification and marketing assistance; other kinds of agricultural technical assistance, such as farm infrastructure financing, farmland purchasing, linking with younger farmers, and estate planning; the desirability and feasibility of donating agricultural conservation easements, and entering into voluntary agricultural districts.

(5) The countywide farmland protection plan shall contain a schedule for implementing the plan and an identification of possible funding sources for the long-term support of the plan.

(f) A countywide farmland protection plan that meets the requirements of subsection (e) of this section may be formulated with the assistance of an agricultural advisory board designated pursuant to G.S. 106-739."

Section 3. Part 2 of Article 18 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"**§ 153A-335.1. Fees to support farmland protection.**

A county that has prepared and adopted a countywide farmland protection plan containing all the elements set forth in G.S. 106-744(e) may adopt an ordinance imposing a fee of no more than ten dollars ($10.00) for each subdivision plat required to be filed with the register of deeds for recordation. The monies collected pursuant

to this section shall be used to meet the county match requirements for obtaining funding from the North Carolina Farmland Preservation Trust Fund."

Section 4. This act becomes effective July 1, 2000.

HOUSE BILL 1132:
Preserve Farmlands/Promote Small Farms.

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Representative Insko
Date:	June 7, 2000	**Summary by:**	Karen Cochrane Brown
Version:	Fourth Edition		Committee Co-Counsel

SUMMARY: ***House Bill 1132 amends the Farmland Preservation Enabling Act to authorize distribution of Farmland Preservation Trust Fund monies to nonprofit conservation organizations on a 30% matching basis, and to counties on a 30%, 15% or 0% matching basis, depending on their tier status and whether the county has prepared a farmland protection plan. The bill also authorizes counties to impose a $10.00 fee for filing a subdivision plat with the register of deeds, to be used for the county match requirement for receiving funds from the trust fund.***

CURRENT LAW:

The Farmland Preservation Enabling Act was first enacted in 1986, to authorize counties to undertake farmland preservation programs. The Act also authorizes counties to purchase agricultural conservation easements over qualifying farmland and establishes the North Carolina Farmland Preservation Trust Fund to assist in the purchase of such easements. The Fund is administered by the Commissioner of Agriculture, who distributes trust fund monies to counties and private nonprofit conservation organizations for the purpose of purchasing agricultural conservation easements.

BILL ANALYSIS:

This bill amends the Farmland Preservation Enabling Act to make matching funds a requirement for receiving funds from the Farmland Preservation Trust Fund. Private nonprofit conservation organizations must match 30% of the money it receives from the Trust Fund with money from other sources. Counties must match on the following basis:

- 15% for a county that is an enterprise tier four or five county and that has prepared a countywide farmland protection plan.
- 30% for any county that has not prepared a countywide farmland protection plan.
- 0% for a county that is an enterprise tier one, two, or three county and that has prepared a countywide farmland protection plan.

Section 2 of the bill defines a farmland protection plan as a plan that contains: (1) a list and description of existing county agricultural activity; (2) a list of continuing challenges to continued family farming in the county; (3) a list of opportunities for maintaining or enhancing small family-owned farms and the local agricultural economy; (4) a description of county plans to maintain a viable agricultural community; and (5) a schedule for implementing the plan and identification of possible funding sources for the long term support of the plan. This section also provides that countywide farmland protection plans may be formulated with the assistance of an agricultural advisory board designated pursuant to the Farmland Preservation Enabling Act.

A county that has prepared and adopted a countywide farmland protection plan may impose a fee of no more than $10 for each subdivision plat required to be filed with the Register of Deeds for recordation. The money collected shall be used to meet the county match requirements for the Farmland Preservation Trust Fund.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: H.B. 1132 (Fourth Edition)

SHORT TITLE: Preserve Farmlands/Promote Small Farms

SPONSOR(S): Rep. Insko

DRAFT

FISCAL IMPACT

Yes ( ) **No ( )** **No Estimate Available (X)**

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
General Fund	* No General Fund Impact *				
Local Governments	* See Assumptions and Methodology *				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Participating local governments.

EFFECTIVE DATE: July 1, 2000

BILL SUMMARY: The bill amends the Farmland Preservation Enabling Act. The bill makes county matching funds a requirement for receiving funds from the North Carolina Farmland Preservation Trust Fund. The county match requirements outlined in the legislation are as follows: 15% if the county has prepared a countywide farmland protection plan, 30% if the county has not created such a plan. Tier 1,2, and 3 counties (under the Bill Lee Act) are not required to provide any matching funds if they have prepared a countywide farmland protection plan. The bill requires that private non-profit organizations that draw Trust Fund monies must also provide a 30% match. The bill defines a Farmland Protection Plan, and authorizes counties that have prepared such a plan to impose a fee of no more than $10.00 for each subdivision plat filed with the Register of Deeds. This revenue must be used to meet the county match requirements. Finally, the legislation clarifies that countywide farmland protection plans may be formulated with the assistance of an agricultural advisory board designated by the Farmland Protection Enabling Act.

BACKGROUND INFORMATION: In 1985, the General Assembly enacted the Farmland Preservation Enabling Act, that authorized counties to undertake a series of programs to encourage the preservation of qualifying farmland. Qualifying farmland is defined as real property that:

1) Is participating in the farm present-use-value taxation program by G.S. 105-277.2 to 277.7;
2) Is certified by the Soil Conservation Service of the U.S. Department of Agriculture as being a farm on which at least two-thirds of the land is composed of soils that (a) are best suited for providing food, seed, fiber, forage, timber, and oil seed crops (b) have good soil qualities (c) are favorable for all major crops common to the county where the land is located (d) have a favorable growing season, and (e) receive the available moisture needed to produce high yields an average eight of ten years;
3) Is managed in accordance with the Soil Conservation Service erosion control practices that are addressed to highly erodable land; and
4) Is the subject of a conservation agreement as defined in G.S. 121-35, between the county and the owner of such land that prohibits nonfarm use or development of such land for a period of at least ten years.

The variety of programs authorized by the Farmland Preservation Enabling Act include:
1) The creation of Voluntary Agricultural Districts to encourage and foster agricultural communities, and to increase protection from nuisance suits and other negative impacts on properly managed farms.
2) The creation of an Agricultural Advisory Board to review and make recommendations concerning the agricultural districts, advise county commissioners on issues affecting the agricultural community, and perform other related tasks assigned by the board of county commissioners.
3) Hold public hearings on the condemnation of farmland.
4) Waive water and sewer assessments.
5) Adopt county ordinances.
6) Purchase agricultural conservation easements.

This bill addresses the sixth of the above listed authorities created by the Farmland Preservation Enabling Act, and will become effective on July 1, 2000.

ASSUMPTIONS AND METHODOLOGY: The two potential fiscal impacts of the bill relate to the $10.00 fee and the potential property tax loss.

According to the North Carolina Department of Agriculture and Consumer Services, the following thirteen counties have created programs and ordinances under the North Carolina Farmland Preservation Act:

-Avery
-Buncome
-Cherokee
-Clay
-Durham
-Forsyth
-Haywood
-Henderson
-Macon
-Madison
-Orange
-Rowan
-Wake

Grants from the Farmland Preservation Trust Fund were issued as follows:

	Farmland	County	Size(acres)
1	Daltonia Plantation	Iredell	198
2	Darrider farm	Rowan	81
3	Newlin-Hickory Grove Dairy	Alamance	122
4	Richardson Farm	Allegheny	298
5	Blackburn Farm	Forsyth	59
6	Preston Farm	Forsyth	207
7	Green Farm	Cabarrus	317
8	Prston Farm	Forsyth	66 of 200
9	Bovender Farm	Rutherford	304 of 935
10	Theys Farm	Wake	92 of 100
11	Liberty Farms	Randolph & Chatham	444 of 458
		Total	**2188 acres**

Under current law no county match is needed to participate in the program. Both the Department of Agriculture and representatives of the Sierra Club and Wildlife Federation believe that no county in the state currently has a program that would qualify under the proposed legislation, although some may be considering such a direction. Both the indicated interest groups and the Department agree that there is no reliable estimate of the number of counties that may choose to participate in the revised system. Therefore, no accurate fiscal estimate is available on the fee portion of the bill.

If a county chooses to participate there may be a potential property tax loss. If the county or a non-profit purchase the land using monies from the Trust, that land may become exempt from property tax. If monies are used to purchase an easement, the land value may decrease because the easement limits how the property can be used. However, the potential loss should be minimal for two reasons. First, because the land must be farmland in order to qualify under the rules of the Trust, the property is already listed at the reduced farm use value. Second, since most counties will only purchase easements, the land will still be taxable as farmland. Since the land is already listed as farmland, there would be no property tax loss.

TECHNICAL CONSIDERATIONS:

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Linda Struyk Millsaps, Richard Bostic, and Eugene Son (Research Assistant)

APPROVED BY:

DATE: June 5, 2000

DRAFT

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1132*
Second Edition Engrossed 4/28/99
Committee Substitute Favorable 7/8/99
Committee Substitute #2 Favorable 7/13/99
Proposed Senate Committee Substitute
H1132-CSRO-002
ATTENTION: LINE NUMBERS MAY CHANGE AFTER ADOPTION.

Short Title: Preserve Farmlands/Promote Small Farms. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO PROMOTE THE PRESERVATION OF FARMLAND AND TO PROMOTE SMALL, FAMILY-OWNED FARMS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 106-744(c) reads as rewritten:

"(c) There is established a 'North Carolina Farmland Preservation Trust Fund' to be administered by the Commissioner of Agriculture. The Trust Fund shall consist of all monies received for the purpose of purchasing agricultural conservation easements or transferred from counties or private sources. The Trust Fund shall be invested as provided in G.S. 147-69.2 and G.S. 147-69.3. The Commissioner shall use Trust Fund monies for the purchase of agricultural conservation easements, including transaction costs, and shall distribute Trust Fund monies ~~to counties and private nonprofit conservation organizations~~ for such purchases, including transaction ~~costs.~~ costs, as follows:

(1) To a private nonprofit conservation organization that matches thirty percent (30%) of the Trust Fund

monies it receives with funds from sources other than the Trust Fund.

(2) To counties according to the match requirements under subsection (c1) of this section.

(c1) A county that is an enterprise tier four county or an enterprise tier five county, as these tiers are defined in G.S. 105-129.3(a), and that has prepared a countywide farmland protection plan shall match fifteen percent (15%) of the Trust Fund monies it receives with county funds. A county that has not prepared a countywide farmland protection plan shall match thirty percent (30%) of the Trust Fund monies it receives with county funds. A county that is an enterprise tier one county, an enterprise tier two county, or an enterprise tier three county, as these counties are defined in G.S. 105-129.3(a), and that has prepared a countywide farmland protection plan shall not be required to match any of the Trust Fund monies it receives with county funds.

(c2) The Commissioner of Agriculture shall adopt rules ~~and regulations~~ governing the use, distribution, investment, and management of Trust Fund monies."

Section 2. G.S. 106-744 is amended by adding two new subsections to read:

"(e) As used in subsection (c1) of this section, a countywide farmland protection plan means a plan that satisfies all of the following requirements:

(1) The countywide farmland protection plan shall contain a list and description of existing agricultural activity in the county.

(2) The countywide farmland protection plan shall contain a list of existing challenges to continued family farming in the county.

(3) The countywide farmland protection plan shall contain a list of opportunities for maintaining or enhancing small, family-owned farms and the local agricultural economy.

(4) The countywide farmland protection plan shall describe how the county plans to maintain a viable agricultural community and shall address farmland preservation tools, such as agricultural economic development, including farm diversification and marketing assistance; other kinds of agricultural technical assistance, such as farm infrastructure financing, farmland purchasing, linking with younger farmers, and estate planning; the

desirability and feasibility of donating agricultural conservation easements, and entering into voluntary agricultural districts.

(5) The countywide farmland protection plan shall contain a schedule for implementing the plan and an identification of possible funding sources for the long-term support of the plan.

(f) A countywide farmland protection plan that meets the requirements of subsection (e) of this section may be formulated with the assistance of an agricultural advisory board designated pursuant to G.S. 106-739."

Section 3. This act becomes effective July 1, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1132*
Second Edition Engrossed 4/28/99
Committee Substitute Favorable 7/8/99
Committee Substitute #2 Favorable 7/13/99
Proposed Senate Committee Substitute H1132-PCSA260-RO002

Short Title: Preserve Farmlands/Promote Small Farms. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO PROMOTE THE PRESERVATION OF FARMLAND AND TO PROMOTE SMALL, FAMILY-OWNED FARMS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 106-744(c) reads as rewritten:

"(c) There is established a 'North Carolina Farmland Preservation Trust Fund' to be administered by the Commissioner of Agriculture. The Trust Fund shall consist of all monies received for the purpose of purchasing agricultural conservation easements or transferred from counties or private sources. The Trust Fund shall be invested as provided in G.S. 147-69.2 and G.S. 147-69.3. The Commissioner shall use Trust Fund monies for the purchase of agricultural conservation easements, including transaction costs, and shall distribute Trust Fund monies ~~to counties and private nonprofit conservation organizations~~ for such purchases, including transaction ~~costs.~~ costs, as follows:

(1) To a private nonprofit conservation organization that matches thirty percent (30%) of the Trust Fund monies it receives with funds from sources other than the Trust Fund.

(2) To counties according to the match requirements under subsection (c1) of this section.

(c1) A county that is an enterprise tier four county or an enterprise tier five county, as these tiers are defined in G.S. 105-129.3(a), and that has prepared a

countywide farmland protection plan shall match fifteen percent (15%) of the Trust Fund monies it receives with county funds. A county that has not prepared a countywide farmland protection plan shall match thirty percent (30%) of the Trust Fund monies it receives with county funds. A county that is an enterprise tier one county, an enterprise tier two county, or an enterprise tier three county, as these counties are defined in G.S. 105-129.3(a), and that has prepared a countywide farmland protection plan shall not be required to match any of the Trust Fund monies it receives with county funds.

(c2) The Commissioner of Agriculture shall adopt rules ~~and regulations~~ governing the use, distribution, investment, and management of Trust Fund monies."

Section 2. G.S. 106-744 is amended by adding two new subsections to read:

"(e) As used in subsection (c1) of this section, a countywide farmland protection plan means a plan that satisfies all of the following requirements:

(1) The countywide farmland protection plan shall contain a list and description of existing agricultural activity in the county.

(2) The countywide farmland protection plan shall contain a list of existing challenges to continued family farming in the county.

(3) The countywide farmland protection plan shall contain a list of opportunities for maintaining or enhancing small, family-owned farms and the local agricultural economy.

(4) The countywide farmland protection plan shall describe how the county plans to maintain a viable agricultural community and shall address farmland preservation tools, such as agricultural economic development, including farm diversification and marketing assistance; other kinds of agricultural technical assistance, such as farm infrastructure financing, farmland purchasing, linking with younger farmers, and estate planning; the desirability and feasibility of donating agricultural conservation easements, and entering into voluntary agricultural districts.

(5) The countywide farmland protection plan shall contain a schedule for implementing the plan and an identification of possible funding sources for the long-term support of the plan.

(f) A countywide farmland protection plan that meets the requirements of subsection (e) of this section may be formulated with the assistance of an agricultural advisory board designated pursuant to G.S. 106-739."

Section 3. This act becomes effective July 1, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 1602
Committee Substitute Favorable 6/20/00

Short Title: Stormwater Utility Fees. (Public)

Sponsors:

Referred to:

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT STORMWATER UTILITY FEES MAY BE USED TO FUND ALL COSTS OF STORMWATER MANAGEMENT PROGRAMS, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-274 reads as rewritten:

"**§ 153A-274. Public enterprise defined.**

As used in this Article, 'public enterprise' includes:

(1) Water supply and distribution ~~systems,~~ systems.

(2) Wastewater collection, treatment, and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or ~~systems,~~ systems.

(3) Solid waste collection and disposal systems and ~~facilities,~~ facilities.

(4) ~~Airports,~~ Airports.

(5) Off-street parking ~~facilities,~~ facilities.

(6) Public transportation ~~systems,~~ systems.

(7) ~~Structural~~ Stormwater management programs designed to protect water quality by controlling the level of pollutants in, and the quantity and flow of, stormwater and structural and natural stormwater and drainage systems of all types."

Section 2. G.S. 153A-277 reads as rewritten:

"**§ 153A-277. Authority to fix and enforce rates.**

(a) A county may establish and revise from time to time schedules of rents, rates, fees, charges, and penalties for the use of or the services furnished by a public enterprise. Schedules of rents, rates, fees, charges, and penalties may vary for the same class of service in different areas of the county and may vary according to classes of service, and different schedules may be adopted for services provided outside of the county. A county may include a fee relating to subsurface discharge wastewater management systems and services on the property tax bill for the real property where the system for which the fee is imposed is located.

(a1) (1) Before it establishes or revises a schedule of rates, fees, charges, or penalties for stormwater management programs and structural and natural stormwater and drainage systems under this section, the board of commissioners shall hold a public hearing on the matter. A notice of the hearing shall be given at least once in a newspaper having general circulation in the area, not less than seven days before the public hearing. The hearing may be held concurrently with the public hearing on the proposed budget ordinance.

(2) The fees established under this subsection must be made applicable throughout the area of the county outside municipalities. Schedules of rates, fees, charges, and penalties for providing stormwater management programs and structural and natural stormwater and drainage system service may vary according to whether the property served is residential, commercial, or industrial property, the property's use, the size of the property, the area of impervious surfaces on the property, the quantity and quality of the runoff from the property, the characteristics of the watershed into which stormwater from the property drains, and other factors that affect the stormwater drainage system. Rates, fees, and charges imposed under this subsection may not exceed the county's cost of providing a stormwater management program and a structural and natural stormwater and drainage system. The county's cost of providing a stormwater management program and a structural and natural stormwater and drainage system includes any costs necessary to assure that all aspects of stormwater quality and quantity are managed in accordance with federal and State laws, regulations, and rules.

(3) No stormwater utility fee may be levied under this subsection whenever two or more units of local government operate separate stormwater management programs or separate structural and natural stormwater and drainage system services in the same area within a county. However, two or more units of local government may allocate among themselves the functions, duties, powers, and responsibilities for jointly operating a ~~single~~ stormwater management program and structural and natural stormwater and drainage system service in the same area within a county, provided

that only one unit may levy a fee for the service within the joint service area. For purposes of this subsection, a unit of local government shall include a regional authority providing stormwater management programs and structural and natural stormwater and drainage system services.

(b) A county may collect delinquent accounts by any remedy provided by law for collecting and enforcing private debts, and may specify by ordinance the order in which partial payments are to be applied among the various enterprise services covered by a bill for the services. A county may also discontinue service to a customer whose account remains delinquent for more than 10 days. If a delinquent customer is not the owner of the premises to which the services are delivered, the payment of the delinquent account may not be required before providing services at the request of a new and different tenant or occupant of the premises. If water or sewer services are discontinued for delinquency, it is unlawful for a person other than a duly authorized agent or employee of the county to reconnect the premises to the water or sewer system.

(c) Rents, rates, fees, charges, and penalties for enterprisory services are in no case a lien upon the property or premises served and, except as provided in subsection (d) of this section, are legal obligations of the person contracting for them, provided that no contract shall be necessary in the case of structural and natural stormwater and drainage systems.

(d) Rents, rates, fees, charges, and penalties for enterprisory services are legal obligations of the owner of the property or premises served when:

(1) The property or premises is leased or rented to more than one tenant and services rendered to more than one tenant are measured by the same meter; or

(2) Charges made for use of a sewerage system are billed separately from charges made for the use of a water distribution system."

Section 3. G.S. 160A-311 reads as rewritten:

"**§ 160A-311. Public enterprise defined.**

As used in this Article, the term 'public enterprise' includes:

(1) Electric power generation, transmission, and distribution ~~systems;~~ systems.

(2) Water supply and distribution ~~systems;~~ systems.

(3) Wastewater collection, treatment, and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or ~~systems;~~ systems.

(4) Gas production, storage, transmission, and distribution systems, where systems shall also include the purchase ~~and/or~~ or lease of natural gas fields and natural gas reserves, the purchase of natural gas supplies, and the surveying, drilling and any other activities related to the exploration for natural gas, whether within the State or ~~without;~~ without.

(5) Public transportation ~~systems;~~ systems.

(6) Solid waste collection and disposal systems and ~~facilities;~~ facilities.
(7) Cable television ~~systems;~~ systems.
(8) Off-street parking facilities and ~~systems;~~ systems.
(9) ~~Airports;~~ Airports.
(10) ~~Structural~~ Stormwater management programs designed to protect water quality by controlling the level of pollutants in, and the quantity and flow of, stormwater and structural and natural stormwater and drainage systems of all types."

Section 4. G.S. 160A-314 reads as rewritten:

"**§ 160A-314. Authority to fix and enforce rates.**

(a) A city may establish and revise from time to time schedules of rents, rates, fees, charges, and penalties for the use of or the services furnished by any public enterprise. Schedules of rents, rates, fees, charges, and penalties may vary according to classes of service, and different schedules may be adopted for services provided outside the corporate limits of the city.

(a1) (1) Before it establishes or revises a schedule of rates, fees, charges, or penalties for stormwater management programs and structural and natural stormwater and drainage systems under this section, the city council shall hold a public hearing on the matter. A notice of the hearing shall be given at least once in a newspaper having general circulation in the area, not less than seven days before the public hearing. The hearing may be held concurrently with the public hearing on the proposed budget ordinance.

(2) The fees established under this subsection must be made applicable throughout the area of the city. Schedules of rates, fees, charges, and penalties for providing stormwater management programs and structural and natural stormwater and drainage system service may vary according to whether the property served is residential, commercial, or industrial property, the property's use, the size of the property, the area of impervious surfaces on the property, the quantity and quality of the runoff from the property, the characteristics of the watershed into which stormwater from the property drains, and other factors that affect the stormwater drainage system. Rates, fees, and charges imposed under this subsection may not exceed the city's cost of providing a stormwater management program and a structural and natural stormwater and drainage system. The city's cost of providing a stormwater management program and a structural and natural stormwater and drainage system includes any costs necessary to assure that all aspects of stormwater quality and quantity are managed in accordance with federal and State laws, regulations, and rules.

(3) No stormwater utility fee may be levied under this subsection whenever two or more units of local government operate separate stormwater management programs or separate structural and

natural stormwater and drainage system services in the same area within a county. However, two or more units of local government may allocate among themselves the functions, duties, powers, and responsibilities for jointly operating a ~~single~~ stormwater management program and structural and natural stormwater and drainage system service in the same area within a county, provided that only one unit may levy a fee for the service within the joint service area. For purposes of this subsection, a unit of local government shall include a regional authority providing stormwater management programs and structural and natural stormwater and drainage system services.

(a2) A fee for the use of a disposal facility provided by the city may vary based on the amount, characteristics, and form of recyclable materials present in solid waste brought to the facility for disposal. This section does not prohibit a city from providing aid to low-income persons to pay all or part of the cost of solid waste management services for those persons.

(b) A city shall have power to collect delinquent accounts by any remedy provided by law for collecting and enforcing private debts, and may specify by ordinance the order in which partial payments are to be applied among the various enterprise services covered by a bill for the services. A city may also discontinue service to any customer whose account remains delinquent for more than 10 days. When service is discontinued for delinquency, it shall be unlawful for any person other than a duly authorized agent or employee of the city to do any act that results in a resumption of services. If a delinquent customer is not the owner of the premises to which the services are delivered, the payment of the delinquent account may not be required before providing services at the request of a new and different tenant or occupant of the premises, but this restriction shall not apply when the premises are occupied by two or more tenants whose services are measured by the same meter.

(c) Except as provided in subsection (d) of this section and G.S. 160A-314.1, rents, rates, fees, charges, and penalties for enterprisory services shall be legal obligations of the person contracting for them, and shall in no case be a lien upon the property or premises served, provided that no contract shall be necessary in the case of structural and natural stormwater and drainage systems.

(d) Rents, rates, fees, charges, and penalties for enterprisory services shall be legal obligations of the owner of the premises served when:

(1) The property or premises is leased or rented to more than one tenant and services rendered to more than one tenant are measured by the same meter.

(2) Charges made for use of a sewage system are billed separately from charges made for the use of a water distribution system.

(e) Nothing in this section shall repeal any portion of any city charter inconsistent herewith."

Section 5. G.S. 162A-2(12) reads as rewritten:

"(12) The term 'water system' shall mean and include all plants, systems, facilities or properties used or useful or having the present capacity for future use in connection with the supply or distribution of water or the control and drainage of stormwater runoff and any integral part thereof, including but not limited to water supply systems, water distribution systems, stormwater management programs designed to protect water quality by controlling the level of pollutants in, and the quantity and flow of, stormwater and structural and natural stormwater and drainage systems of all types, sources of water supply including lakes, reservoirs and wells, intakes, mains, laterals, aqueducts, pumping stations, standpipes, filtration plants, purification plants, hydrants, meters, valves, and all necessary appurtenances and equipment and all properties, rights, easements and franchises relating thereto and deemed necessary or convenient by the authority for the operation thereof."

Section 6. G.S. 162A-6(14c) reads as rewritten:

"(14c) To adopt ordinances to regulate and control the discharge of sewage or stormwater into any sewerage system owned or operated by the ~~authority and~~ authority, to adopt ordinances concerning stormwater management programs designed to protect water quality by controlling the level of pollutants in and the quantity and flow of stormwater, and to adopt ordinances to regulate and control structural and natural stormwater and drainage systems of all types. Prior to the adoption of any such ordinance or any amendment to any such ordinance, the authority shall first pass a declaration of intent to adopt such ordinance or amendment. The declaration of intent shall describe the ordinance which it is proposed that the authority adopt. The declaration of intent shall be submitted to each governing body for review and comment. The authority shall consider any comment or suggestions offered by any governing body with respect to the proposed ordinance or amendment. Thereafter, the authority shall be authorized to adopt such ordinance or amendment to it at any time after 60 days following the submission of the declaration of intent to each governing body."

Section 7. G.S. 162A-9 reads as rewritten:

"**§ 162A-9. Rates and charges; contracts for water or services; deposits; delinquent charges.**

(a) An authority may establish and revise a schedule of rates, fees, and other charges for the use of and for the services furnished or to be furnished by any water system or sewer system or parts thereof owned or operated by the authority. The rates, fees, and charges established under this subsection are not subject to supervision or regulation by any bureau, board, commission, or other agency of the State or of any political subdivision.

Before an authority sets or revises rates, fees, or other charges for stormwater management programs and structural or natural stormwater and drainage system service, the authority shall hold a public hearing on the matter. At least seven days before the hearing, the authority shall publish notice of the public hearing in a newspaper having general circulation in the area. An authority may impose rates, fees, or other charges for stormwater management programs and stormwater and drainage system service on a person even though the person has not entered into a contract to receive the service.

Rates, fees, and charges shall be fixed and revised so that the revenues of the authority, together with any other available funds, will be sufficient at all times:

(1) To pay the cost of maintaining, repairing, and operating the systems or parts thereof owned or operated by the authority, including reserves for such purposes, and including provision for the payment of principal of and interest on indebtedness of a political subdivision or of political subdivisions which payment shall have been assumed by the authority, and

(2) To pay the principal of and the interest on all bonds issued by the authority under the provisions of this Article as the same shall become due and payable and to provide reserves therefor.

The fees established under this subsection must be made applicable throughout the service area. Schedules of rates, fees, charges, and penalties for providing stormwater management programs and structural and natural stormwater and drainage system service may vary according to whether the property served is residential, commercial, or industrial property, the property's use, the size of the property, the area of impervious surfaces on the property, the quantity and quality of the runoff from the property, the characteristics of the watershed into which stormwater from the property drains, and other factors that affect the stormwater drainage system. Rates, fees, and charges imposed under this subsection for stormwater management programs and stormwater and drainage system service may not exceed the authority's cost of providing a stormwater management program and a structural and natural stormwater and drainage system. The authority's cost of providing a stormwater management program and a structural and natural stormwater and drainage system includes any costs necessary to assure that all aspects of stormwater quality and quantity are managed in accordance with federal and State laws, regulations, and rules.

No stormwater utility fee may be levied under this subsection whenever two or more units of local government operate separate stormwater management programs or separate structural and natural stormwater and drainage system services in the same area within a county. However, two or more units of local government may allocate among themselves the functions, duties, powers, and responsibilities for jointly operating a ~~single~~ stormwater management program and structural and natural stormwater and drainage system service in the same area within a county, provided that only one unit may levy a fee for the service within the joint service area. For purposes of this subsection, a unit of local government shall include a regional

authority providing stormwater management programs and structural and natural stormwater and drainage system services.

(b) Notwithstanding any of the foregoing provisions of this section, the authority may enter into contracts relating to the collection, treatment or disposal of sewage or the purchase or sale of water which shall not be subject to revision except in accordance with their terms.

(c) In order to insure the payment of such rates, fees and charges as the same shall become due and payable, the authority may do the following in addition to exercising any other remedies which it may have:

(1) Require reasonable advance deposits to be made with it to be subject to application to the payment of delinquent rates, fees and charges.

(2) At the expiration of 30 days after any rates, fees and charges become delinquent, discontinue supplying water or the services and facilities of any water system or sewer system of the authority.

(3) Specify the order in which partial payments are to be applied when a bill covers more than one service."

Section 8. Sections 1 through 4 of this act are effective retroactively to 15 July 1989. Sections 5 through 7 of this act are effective retroactively to 8 July 1991. Section 8 of this act is effective when this act becomes law.

HOUSE BILL 1602:
Stormwater Utility Fees

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Reps. Gibson, McMahan, Adams, Insko, and Jarrell
Date:	June 25, 2000		
Version:	Third Edition	**Summary by:**	Rick Zechini, Staff Attorney

SUMMARY: ***House Bill 1602 authorizes counties, municipalities, and water and sewer authorities to establish and operate stormwater management programs as public enterprises and charge fees for the use of or services provided by these programs. The bill was amended on the House Floor to add a severability clause. The bill was discussed in the House Environment and House Finance Committees. Senate Bill 1336, introduced by Senator Odom, is identical to HB 1602, except that it does not contain a severability clause. SB 1336 is in Senate Finance.***

CURRENT LAW: The federal Clean Water Act requires an operator of a municipal storm sewer system serving 100,000 people or more to develop a stormwater management program. In the near future, federal law will also require an operator of a smaller municipal storm sewer system to develop a stormwater management program.

BACKGROUND: The North Carolina General Assembly responded to these federal requirements by enacting legislation (S.L. 1989-643) designed to allow counties and municipalities to establish and operate stormwater systems as public enterprises and charge fees for the services provided by these stormwater systems. In Smith Chapel Baptist Church v. City of Durham, 350 NC 805 (1999) the North Carolina Supreme Court interpreted the legislation enacted in 1989. The court found that the definition of public enterprise as it pertained to stormwater systems was a grant of authority limited to the physical infrastructure, structural or natural, for servicing stormwater. The court concluded that the City of Durham could not operate a stormwater management program as a public enterprise. Thus, the city could only charge fees to fund the construction, maintenance, and operation of the physical infrastructure of the stormwater system and could not charge fees to administer the stormwater management program.

BILL ANALYSIS: The First Edition of House Bill 1602 amended the definition of "public enterprise" in the county and municipal statutes to explicitly include stormwater management programs. The First Edition also made conforming changes to the statutes that allow counties and municipalities to charge fees for the use of and services provided by public enterprises. The Environmental Review Commission recommended this proposal to the 2000 Regular Session of the 1999 General Assembly for its consideration.

House Bill 1602 was amended by House Finance to also authorize water and sewer authorities to establish and operate stormwater management programs and to charge fees for the use of or services provided by these programs. The 2nd Edition allows these authorities to adopt ordinances concerning stormwater management programs. The House amended House Bill 1602 by adding a severability clause.

EFFECTIVE DATE: The sections of the bill that apply to counties and municipalities are effective retroactively to July 15, 1989. The sections of the bill that apply to water and sewer authorities are effective retroactively to July 8, 1991

Summary updated by Committee Counsel, Martha K. Walston

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 1602 (First Edition)

SHORT TITLE: Stormwater Utility Fees

SPONSOR(S): Representatives Gibson, McMahan, Adams, Insko, Jarrell, and Jeffus.

FISCAL IMPACT

Yes ( ) **No (X)** **No Estimate Available ( )**

	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05
REVENUES					
EXPENDITURES	No Fiscal Impact				
POSITIONS:					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: County Governments

EFFECTIVE DATE: Effective when the act becomes law and applies retroactively to July 15, 1989.

BILL SUMMARY: This bill amends the definition of "public enterprise" in the county and municipal statutes to include, among other things, "stormwater management programs designed to protect water quality by controlling the level of pollutants in, and the quantity and flow of, stormwater and structural and natural stormwater and drainage systems of all types." The bill also makes conforming changes to the statutes that allow counties and municipalities to charge fees for the use of and services provided by public enterprises (also known as utilities). [1]

ASSUMPTIONS AND METHODOLOGY:

Background: The federal Clean Water Act of 1987 requires operators of municipal storm sewer systems serving 100,000 people or more to develop stormwater management programs. In response to this federal requirement, the 1989 General Assembly enacted legislation designed to allow counties and municipalities to establish and operate stormwater systems as public

[1] House Environment and Natural Resources, Committee Counsel Bill Summary, June 6, 2000.

enterprises (or utilities) and to charge fees for the services provided by these stormwater systems. In 1999, the North Carolina Supreme Court ruled that counties' and municipalities' authority to establish and operate stormwater systems as public enterprises was limited to the construction, maintenance and operation of the physical infrastructure of the stormwater system, and did not extend to the operation of stormwater management programs, which include supplemental activities such as public education, pollution prevention efforts and land use planning and management techniques.[2]

This bill amends the definition of public enterprise to explicitly include stormwater management programs and applies retroactively to July 15, 1989, the effective date of original state legislation. This expanded definition is intended to clarify that stormwater utility fees may be used to fund all costs of stormwater management programs, not just the physical infrastructure of the stormwater system.

Expenditures: This bill imposes no new expenditure requirements on counties or municipalities. It only expands counties' and municipalities' options for ways to pay for the expenses associated with the federal law that requires operators of municipal storm sewer systems serving 100,000 people or more to develop stormwater management programs. In March 2003, the federal government is expanding the number of municipal stormwater systems required to develop stormwater management programs to include urbanized areas with populations of 50,000 or greater. According to the Department of Environment and Natural Resources, there are 85 urbanized areas that will automatically fall under this new requirement and approximately 30 more that may have to comply with the federal law. This bill provides these additional urbanized areas with an option to pay for this federal requirement, but again it does not impose any new expenditures.

Revenues: Counties and municipalities that either voluntarily develop stormwater management programs or are required to develop stormwater management programs under the federal Clean Water Act have two options for paying for the costs associated with these programs: establish a stormwater management utility fee or use general fund money raised through property taxes. This bill provides those counties and municipalities with *the option* of charging a stormwater management utility fee. The authority to act on this option is discretionary. Because this bill does not require any county or municipality to charge a stormwater utility fee, there is no fiscal impact on the local governments' revenues as a result of this bill.

Of the six municipalities (Charlotte, Durham, Greensboro, Raleigh, Winston-Salem, and Fayetteville/Cumberland County) currently required to develop stormwater management programs, five have established stormwater utility fees to cover the costs of operation. Only one (Raleigh) has chosen to fund the program through its general fund. Of the five municipalities charging a stormwater utility fee, all five thought the initial state legislation gave them the authority to fund costs associated with a stormwater management program. This bill provides the clarifying language that explicitly states that the stormwater utility fees can be used for stormwater management programs and applies this expanded definition retroactively to July 15, 1989. Because this bill only adds clarifying language to allow the existing municipalities to

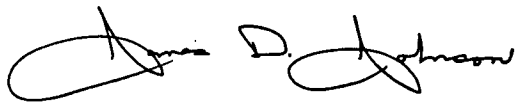
[2] House Environment and Natural Resources, Committee Counsel Bill Summary, June 6, 2000.

continue funding their stormwater management programs out of their stormwater utility fees, there is no new fiscal impact on the local governments' budgets.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Jennifer Hoffmann

APPROVED BY: James D. Johnson



DATE: June 13, 2000

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1448

Short Title: Hillsborough Deannexation. (Local)

Sponsors: Senators Kinnaird; and Lee.

Referred to: Finance.

May 25, 2000

A BILL TO BE ENTITLED

AN ACT TO REMOVE FROM THE CORPORATE LIMITS OF THE TOWN OF HILLSBOROUGH AN AREA PREVIOUSLY ANNEXED BY THE TOWN UNDER THE VOLUNTARY ANNEXATION PROVISIONS OF PART 4 (ANNEXATION OF NONCONTIGUOUS AREAS) OF ARTICLE 4A OF CHAPTER 160A OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

Section 1. The following described property, being approximately 31.65 acres of an area consisting of approximately 105.63 acres annexed to and made a part of the Town of Hillsborough by Ordinance No. 980310-1, duly adopted by the Board of Commissioners for the Town of Hillsborough on April 14, 1998, all in accordance with the provisions of law applicable to the voluntary annexation of noncontiguous areas set forth in Part 4 of Article 4A of Chapter 160A of the General Statutes, is removed from the corporate limits of the Town of Hillsborough, effective June 30, 2000:

Commencing at the NCGS monument "STREET" at the intersection of King and Cameron Streets, Hillsborough, Orange County, North Carolina, and then running from said monument North 52 degrees 25 minutes 58 seconds East 15,804.24 feet to the point and place of BEGINNING in the center of New Sharon Church Road. Thence from said point of beginning North 00 degrees 48 minutes 47 seconds West along the center of New Sharon Church Road 200.00 feet, thence North 89 degrees 08 minutes 18 seconds East 1,141.03 feet, thence North 45 degrees 02 minutes 22 seconds East 1,932.26 feet, thence South 44 degrees 57 minutes 38 seconds East 200.00 feet, thence South 45 degrees 02 minutes 22 seconds West 1,725.86 feet; thence

North 89 degrees 08 minutes 18 seconds East 1,155.45 feet, thence South 00 degrees 12 minutes 52 seconds East 200.01 feet, thence South 89 degrees 08 minutes 18 seconds West 1,177.25 feet, thence south 21 degrees 15 minutes 48 seconds West 2,521.31 feet, thence North 68 degrees 44 minutes 12 seconds West 200.00 feet, thence North 21 degrees 15 minutes 48 seconds East 2,440.00 feet, thence South 89 degrees 08 minutes 18 seconds West 1,188.64 feet, to the point and place of beginning, and containing approximately 31.65 acres, and being a portion of the property described in Record Book 1739, at pages 261 through 263, in the Office of the Register of Deeds of Orange County, North Carolina.

The above-described area to be removed from the corporate limits of the Town of Hillsborough is a portion of the annexed area that is shown on the plat "-ANNEXATION MAP - FOX HILL FARM" dated January 22, 1998, as prepared by ENT Land Surveys, Inc., and recorded in Plat Book 80, at page 171, in the Office of the Register of Deeds of Orange County, North Carolina; said portion to be removed is the area located to the East of New Sharon Church Road.

Section 2. Taxes on real and personal property within the above-described area due and payable to the Town of Hillsborough for fiscal years up through and including fiscal year 1999-2000 shall remain due and payable and shall be collected in accordance with applicable provisions of law if not paid in full prior to the effective date of this act. No taxes on the real or personal property within the above-described area shall be due to the Town of Hillsborough for fiscal year 2000-2001 or thereafter unless and until this property is again brought within the corporate limits of the Town of Hillsborough.

Section 3. From and after June 30, 2000, the Orange County zoning district classification applicable to the property, i.e., Agricultural Residential (A/R), that surrounds the above-described property shall be applicable to this property, unless and until such classification is changed by Orange County pursuant to law.

Section 4. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 1448
Proposed Committee Substitute S1448-PCS6785-LB

Short Title: Hillsborough Deannexation. (Local)

Sponsors:

Referred to:

May 25, 2000

A BILL TO BE ENTITLED

AN ACT TO REMOVE FROM THE CORPORATE LIMITS OF THE TOWN OF HILLSBOROUGH AN AREA PREVIOUSLY ANNEXED BY THE TOWN UNDER THE VOLUNTARY ANNEXATION PROVISIONS OF PART 4 (ANNEXATION OF NONCONTIGUOUS AREAS) OF ARTICLE 4A OF CHAPTER 160A OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

Section 1. The following described property, being approximately 105.63 acres annexed to and made a part of the Town of Hillsborough by Ordinance No. 980310-1, duly adopted by the Board of Commissioners for the Town of Hillsborough on April 14, 1998, all in accordance with the provisions of law applicable to the voluntary annexation of noncontiguous areas set forth in Part 4 of Article 4A of Chapter 160A of the General Statutes, is removed from the corporate limits of the Town of Hillsborough, effective June 30, 2000:

Commencing at the northeast corner of lot 51 of Phase One - Section C "Fox Hill Farm" as shown on plat recorded in Plat Book 74, page 136, Orange County Registry, said corner having NC Grid coordinates: North 858,812.08, East 1,980,350.98, (NAD 83 in feet) and being designated as Point A on the plat: "-Annexation Map - Fox Hill Farm" dated January 22, 1998, as prepared by ENT Land Surveys, Inc., and then running from said corner N 77-48-05 E 296.84 feet to the point and place of BEGINNING. Thence from said point of beginning the following courses and distances:

N 33-02-04 E 200.00 feet to a point and S 56-57-56 E 761.06 feet to a point

N 17-01-12 E 1994.73 feet to a point and S 82-36-08 W 1301.53 feet to a point
N 04-19-00 E 204.24 feet to a point and N 82-36-08 E 1267.48 feet to a point
N 29-15-14 W 1394.92 feet to a point and N 60-44-46 E 200.00 feet to a point
S 29-15-14 E 737.11 feet to a point and N 60-44-46 E 1410.01 feet to a point
S 29-15-14 E 200.00 feet to a point and S 60-44-46 W 1410.01 feet to a point
S 29-15-14 E 564.79 feet to a point and S 73-42-47 E 932.56 feet to a point
S 16-17-13 W 200.00 feet to a point and N 73-42-47 W 874.70 feet to a point
S 17-01-12 W 917.30 feet to a point and S 36-39-05 E 1498.66 feet to a point
S 53-20-55 W 200.00 feet to a point and N 36-39-05 W 1351.59 feet to a point
S 17-01-12 W 917.30 feet to a point and S 22-46-56 E 1598.31 feet to a point
S 33-31-03 E 1039.76 feet to a point and N 89-08-18 E 1306.85 feet to a point
in the center of New Sharon Church Road.
Thence continuing N 89-08-18 E 1141.03 feet to a point
N 45-02-22 E 1932.26 feet to a point and S 44-57-38 E 200.00 feet to a point
S 45-02-22 W 1725.86 feet to a point and N 89-08-18 E 1155.45 feet to a point
S 00-12-52 E 200.01 feet to a point and S 89-08-18 W 1177.25 feet to a point
S 21-15-48 W 2521.31 feet to a point and N 68-44-12 W 200.00 feet to a point
N 21-15-48 E 2440.00 feet to a point and S 89-08-18 W 1188.64 feet to a point
in the center of New Sharon Church Road.
Thence continuing S 89-08-18 W 1337.50 feet to a point
S 62-17-34 W 1024.10 feet to a point and N 27-42-26 W 200.00 feet to a point
N 62-17-34 E 937.27 feet to a point and N 33-31-03 W 890.93 feet to a point
S 82-45-50 W 1491.98 feet to a point and N 07-14-10 W 200.00 feet to a point
N 82-45-50 E 1414.78 feet to a point and N 22-46-56 W 1407.72 feet to a point
N 56-57-56 W 937.00 feet

to the point and place of beginning, and containing 105.63 acres, and being a portion of the property described in Record Book 872 page 513.

Section 2. Taxes on real and personal property within the above-described area due and payable to the Town of Hillsborough for fiscal years up through and including fiscal year 1999-2000 shall remain due and payable and shall be collected in accordance with applicable provisions of law if not paid in full prior to the effective date of this act. No taxes on the real or personal property within the above-described area shall be due to the Town of Hillsborough for fiscal year 2000-2001 or thereafter unless and until this property is again brought within the corporate limits of the Town of Hillsborough.

Section 3. From and after June 30, 2000, the Orange County zoning district classification applicable to the property, i.e., Agricultural Residential (A/R), that surrounds the above-described property shall be applicable to this property, unless and until such classification is changed by Orange County pursuant to law.

Section 4. This act is effective when it becomes law.

SENATE BILL 1300
State and Local Government Committee Substitute Adopted 6/26/00

Short Title: Midland Incorporation. (Local)

Sponsors:

Referred to:

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO INCORPORATE THE TOWN OF MIDLAND, SUBJECT TO A REFERENDUM.

The General Assembly of North Carolina enacts:

Section 1. A Charter for the Town of Midland is enacted to read:

"CHARTER OF THE TOWN OF MIDLAND.

"CHAPTER I.

"INCORPORATION AND CORPORATE POWERS.

"Section 1.1. **Incorporation and Corporate Powers.** The inhabitants of the Town of Midland are a body corporate and politic under the name 'Town of Midland'. Under that name they shall have all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general law of North Carolina.

"CHAPTER II.

"CORPORATE BOUNDARIES.

"Section 2.1. **Town Boundaries.** Until modified in accordance with the law, the corporate boundaries of the Town of Midland are as follows:

BEGINNING at a point of the northernmost corner of the property described by the Cabarrus County Tax Maps as Map/PIN 5556-12-4009. Thence in a southwesterly direction along the western boundaries of properties Map/PIN 5556-12-4009, 5556-11-1569, and 5556-01-7367. Continuing directly across Highway 601 to the Highway 601 right-of-way on the northwest property line of the property Map/PIN 5556-00-4725. Continuing in a southeastern direction along the right-of-way that borders Highway 601 to the right-of-way of Sossoman Road near northeast corner of the property.

Continuing southwest along the right-of-way to the point of intersection with the property Map/PIN 5556-00-5380. Thence moving west along the southeast property line of Map/PIN 5556-00-4725 to the point of intersection with the property Map/PIN 5546-90-9409. Thence moving northwest along the southwesternmost boundaries of Map/PIN 5556-00-4725, and Map/PIN 5546-91-7410 to the point where it intersects with the easterly corner of the property Map/PIN 5546-90-2819. Thence west and south along the north and west perimeter of said parcel to the point of intersection with Spring Drive. Continuing directly across Spring Drive to the northeast corner of Map/PIN 5546-80-8682. Thence west along the north boundary and south along the west boundary of said property to its southwest corner. Turn west and go to the southeast corner of Map/PIN 5545-80-5613. Turn south along the westerly property line of Map/PIN 5546-80-6239 and go to its intersection with the northernmost corner of Map/PIN 5545-89-4183. Continuing in a southwestern direction along the westernmost property line of Map/PIN 5545-89-4183 to the intersection of the property Map/PIN 5545-78-6238.

Thence moving in a northwestern direction along the northeastern property lines to the northernmost point of the property Map/PIN 5545-78-6238. Thence southwesterly along the southeast property lines of Map/PINs 5545-78-3569, 5545-78-1244, 5545-78-0052, and 5545-67-8748 to the south corner of Map/PIN 5545-67-8748. Thence northwest to the southeast corner of Map/PIN 5545-67-6519 and continuing west along the southeast property line to the south corner of said parcel. Turn southwest and go to the northernmost corner of Map/PIN 5545-67-3175. Continue southeast along the northeasterly property line of Map/PINs 5545-67-3175, 5545-67-3051, and 5545-66-3858 to the east corner of Map/PIN 5545-66-3858. Turn southwest and follow the northwest property line of Map/PIN 5545-66-4715 to the northwest corner of said parcel. Turn south and follow the west property line of Map/PINs 5545-66-4715, 5545-66-5602, and 5545-66-4494 to the intersection with the northerly property line of Map/PIN 5545-66-2067. Turn southwesterly along the northwesterly property line of Map/PIN 5545-66-2067 to the southeast corner of parcel Map/PIN 5545-56-8171. Thence continue north and then west along said parcel to the northwest corner of Map/PIN 5545-56-8171. Thence northwest across Snowcrest Drive to the north corner of Map/PIN 5545-56-6098. Turn southwest and continue along the east and south property lines of Map/PINs 5545-56-5300, 5545-56-3032, 5545-56-1145 to the east corner of Map/PIN 5545-56-0025. Thence southwest along the east property line of Map/PINs 5545-56-0025, 5545-45-9992, and 5545-45-9642 to the southeast corner of Map/PIN 5545-45-9642. Turn west and continue along the Map/PIN 5545-45-9642 property line to the intersection with the property line of Map/PIN 5545-45-6701.

Thence continuing southwest along the easternmost property lines of Map/PINs 5545-45-6701, and 5545-45-1648 to the southeasternmost corner of the property. Thence continuing southwest along the west property lines of Map/PINs 5545-45-4280 and 5545-35-7453. Thence continuing southwest 65 feet thence in a western direction across Troutman Road to the northeastern corner of Map/PIN 5545-34-9832. Thence continuing in a northwest direction to the northwest corner of the property. From that corner of the property continue southwest along the northwest property lines of

Map/PIN 5545-34-9832 and 5545-34-8782 to the southwest corner of Map/PIN 5545-34-8782.

Thence continue southeast to the northwestern corner of property Map/PIN 5545-34-8423. Thence continue southwest along the property line to the southwest corner of the property. Thence continue westerly and southerly along Map/PIN 5545-34-6124 to the intersection with Map/PIN 5545-34-2199. Thence continue westerly along the southerly property line of Map/PINs 5545-34-3410 and 5545-24-9440 to the northwest corner of property Map/PIN 5545-24-8197.

Thence continuing in a southwestern direction to the southwesternmost corner of Map/PIN 5545-24-8197. From that corner continue in a southeast direction to a point where the property line intersects the property line of property Map/PIN 5545-33-0983. At that point continue in a western direction to the westernmost corner of Map/PIN 5545-33-0983.

From that point continuing in a northwestern direction along the southern property line of Map/PIN 5545-24-5291 to its southwest corner. Then turn southwest and continue along the easterly and then northwest along the southeasterly property line of Map/PIN 5545-23-1979 to the northernmost corner of Map/PIN 5545-13-9685. Turn southwest and go to the westernmost corner of said property. Cross directly over an unnamed private road to the southernmost corner of Map/PIN 5545-13-6890. Proceed southwest along the southeast property line of Map/PINs 5545-13-3599 and 5545-13-0296 to the point of intersection with the east property line of Map/PIN 5545-02-7867. Go north on the east property line of said parcel to the southeast corner of property Map/PIN 5545-03-6194.

Turn southwest and proceed along the south and west property line of said parcel to the northernmost corner of Map/PIN 5545-02-5755. Thence southwest along the southeast property line of Map/PIN 5545-02-2876 to the northernmost corner of Map/PIN 5545-02-1533. Proceed along the northeast property line to the southeast corner of said parcel. Turn southwest and proceed along the southeast property line of Map/PINs 5545-02-1533 and 5535-92-8388 to the south corner of Map/PIN 5535-92-8388. Cross directly over Bethel Church Road to the east corner of Map/PIN 5535-92-5207. Continue along the southeast property line of Map/PIN 5535-92-5207 to the westernmost corner of Map/PIN 5535-91-6926. Turn southeast following the property line of Map/PIN 5535-91-6926 to the south corner of property Map/PIN 5545-02-6926. Continue southeast from that corner to the southwest corner of Map/PIN 5545-02-5551 and then east along said property line to the western right-of-way of Bethel Church Road.

Thence continue southeast along the western right-of-way of Bethel Church Road to the north property line of Map/PIN 5545-00-3369. Thence continue southwest to the northerly northwest corner of said property. Thence continue southeast along the property line to the northeastern corner of property Map/PIN 5545-00-3704. Thence continue west-southwest along the north property lines of Map/PINs 5545-00-3704 and 5535-90-9617 to the northwest corner of Map/PIN 5535-90-9617. From that corner continue south along the property line to the southwest corner of the property. Thence continue northeast to the point of intersection with the westerly property line

of Map/PIN 5545-00-3369. From that point continue south along said property line to the southerly southwest corner of the property Map/PIN 5545-00-3369. Thence continue southwest along the northerly property lines of Map/PINs 5534-99-8401, 5534-99-3460, 5534-99-2451, 5534-99-1410, and 5534-89-9430 to the northwest corner of the property Map/PIN 5534-89-9430. Thence move south to the northerly right-of-way for NC Highway 24/27. Thence continue west to the intersection with the property line of Map/PIN 5535-80-5534. Thence continue north then northwest to the northwest corner of the property. Thence continue southwest along the northerly property lines of the properties Map/PINs 5535-80-1414 and 5535-70-5934 to the northwest corner of Map/PIN 5535-70-5934.

Thence continue southeast to the northern corner of property Map/PIN 5535-70-1627. From that point continue southwest along the property line to the southeastern corner of property Map/PIN 5535-60-8678. Thence continue north and west along said property line around to the west corner of Map/PIN 5535-60-8678 and then southwest across Sam Black Road to the southeast corner of Map/PIN 5535-60-3559. From that point continue north along the property line to the north corner of Map/PIN 5535-50-3559. Thence proceed southwest along the easterly property line of Map/PIN 5535-50-4455 to its point of intersection with the northerly right-of-way for NC Highway 24/27.

Turn west along the NC Highway 24/27 right-of-way to its point of intersection with the property line of Map/PIN 5534-49-5492. Continue northwest to the north corner of said property. Cross directly over property Map/PIN 5535-50-4455 to the southerly northeast corner of Map/PIN 5534-49-4506. Proceed northwest along the northeast property lines of Map/PINs 5534-49-4506 and 5534-49-3677 to the northernmost corner of Map/Pin 5534-49-3677. Thence turn southwest and thence southeast to the southwest corner of said parcel. Continue southeast along the property line of Map/PINs 5534-49-4506 and 5534-49-4415 to a point of intersection with the northerly right-of-way for NC Highway 24/27.

From that point continue west along the northerly NC Highway 24/27 right-of-way to the western right-of-way of Flowes Store Road. Thence continue southeast along the west right-of-way of Flowes Store Road and Old Camden Road to the point of intersection with the southeasterly property line of property Map/PIN 5524-97-8018. Thence go northeast along the property line to the southeast corner of said parcel. Thence continue southeast across Old Camden Road to the southwestern corner of property Map/PIN 5534-07-8047. Continuing southeast along the southern property line of the said property and the property line of Map/PIN 5534-07-9085 to the southeastern corner of Map/PIN 5534-07-9085. Thence continue northeast along the northwesterly property line of Map/PIN 5534-17-6044 to the northernmost corner of the property. Thence north along the westerly property line of Map/PIN 5534-27-4832 to the westerly northwest corner of said property. Thence northeast along property lines to the northwest corner of Map/PIN 5534-28-2266. Thence southeast and northeast along the property line to the southeast corner of said parcel.

Thence continue along the northeasterly property lines of Map/PINs 5534-28-2266, 5534-28-1414, and 5534-28-1507 to the northeast corner of Map/PIN 5534-28-1507.

Thence cross Ritchie Road to the northwestern corner of property Map/PIN 5534-28-8371. Thence continue east along the said property line to the northerly northeast corner. Thence continue northwest along the westerly property line of property Map/PIN 5534-37-8848 to the westernmost corner of the property then northeast along the property line to the point of intersection with the southerly right-of-way for NC Highway 24/27. Thence continue along the right-of-way to the west property line of Map/PIN 5534-38-6988.

From that intersection continue south to the southwestern corner of the property. Thence continue southeast to the southeastern corner and then north to the right-of-way on the southern side of NC Highway 24/27. Thence continue east along the right-of-way to the west property line of Map/PIN 5534-49-0076. Continue south to the southwest corner of the parcel, thence continue southeasterly along the southerly property lines of Map/PINs 5534-49-0076 and 5534-49-4044 to the southernmost corner of Map/PIN 5534-49-4044. Thence continue northeast along the property line to the southwestern corner of Map/PIN 5534-49-8018. From that corner continue east to the southeastern corner of the said property and thence north to the right-of-way on the south side of NC Highway 24/27. Thence continue east along the right-of-way to the east property line of property Map/PIN 5534-68-1909. Thence continue southwest along the property line to the southeastern corner of Map/PIN 5534-68-1909. Thence continuing northeast along the south boundaries of Map/PINs 5534-69-4031, 5534-69-7102, and 5534-69-7183 to the southeast corner of Map/PIN 5534-69-7183 and thence north along the property line to the right-of-way along the south side of NC Highway 24/27. From that point continue east along the right-of-way to the intersection with the west right-of-way of Sam Black Road. Thence continue southeast along the right-of-way on the west side of Sam Black Road to the point of intersection with the northeast property line of property Map/PIN 5534-78-8739. Thence continue northwest to the northwestern corner of the property then southwest to the southwestern corner of the property.

Thence continue southeast along the property line to the southeastern corner of the property. Then cross Sam Black Road to the southwest corner of Map/PIN 5534-88-3986. Continue along the southerly property line of Map/PIN 5534-88-3986 to the southernmost corner of the property. Thence continue southeast along the southwest property line of Map/PIN 5534-97-1831 to the southern corner of the said property. Thence continuing southeast along the northeast property line of Map/PIN 5534-96-1653 to the southeastern corner of the property. Thence continuing southeast along the northeast property line of Map/PIN 5534-96-2168 to the southeast corner of said property. Thence continue southwest along the property line to the southwest corner of Map/PIN 5534-96-2168. Turn southeast and follow the southwest property lines of Map/PINs 5534-85-8783 and 5534-85-6566 to the south corner of Map/PIN 5534-85-6566. Cross directly over Ben Black Road to the northernmost corner of property Map/PIN 5534-85-4281. Thence continue southwest along the northwest property line to the southwest corner of the property. From that corner of the property continue southeast across the Norfolk Southern Railway right-of-way to the northwest corner of Map/PIN 5534-84-6486. Follow the Norfolk Southern Railway right-of-way to its

point of intersection with the northerly east line of the property Map/PIN 5534-84-6486. Thence continue along the eastern property lines of Map/PIN 5534-84-6486 to the southerly southeast corner of the property. Thence continue west-northwest along the southern property line to the westernmost corner of said property. From that corner continue southwest along the southeast property line of Map/PIN 5534-75-7521 to the southernmost corner of the property. Thence continue southwest to the southernmost corner of the property Map/PIN 5534-64-2431. From that point continue northwest along the southwest property line of said property and continue along the northeast property line of Map/PIN 5534-54-4074 to the northernmost corner of property Map/PIN 5534-54-4074.

Thence south along the property line of property Map/PIN 5534-54-1462 to the southeastern corner of the property. Thence continue along the southern property line to the southwestern corner of the property. From that point continue southwest along the west side of Map/Pin 5543-43-8793 to the right-of-way of Sleepy Hollow Road on the northern side. Thence continue northwest along the right-of-way to its intersection with the west side of property Map/PIN 5534-44-7569. Continue along the southwesterly property lines of Map/PIN 5534-44-7569 to the north corner of Map/Pin 5534-44-3371. From that point continue southwest along the northwest property line of Map/Pin 5534-44-3371 to the right-of-way of Sleepy Hollow Road along the northern side of the road. Thence continue west-northwest along the right-of-way to the point of intersection with Map/PIN 5534-34-3396. Turn north-northwest and follow said property line to the northerly southwest corner of that parcel. Follow the west and south property lines of property Map/PIN 5534-35-6533 to its point of intersection with the Norfolk Southern Railway right-of-way. From that intersection continue across the Norfolk Southern track to the Norfolk Southern Railway right-of-way along the northern side of the rail line. Thence continue westerly along the right-of-way to its intersection with the easterly property line of Map/PIN 5534-15-4291. Thence continue north to the northeast corner of said property. Thence continue west along the property line to the northwest corner of Map/PIN 5534-15-4291. Turn south and follow the westerly property lines of Map/PINs 5534-15-4291, 5534-14-4946, 5534-14-4842, 5534-14-4781, 5534-14-5548, 5534-14-5471, 5534-14-5268, 5534-14-5146, and 5534-13-6874 to the southwest corner of property Map/PIN 5534-13-6874. Thence continue southeast to the southeast corner of said property. From that corner continue north to the northeast corner of the property. Thence continue east along the northern property line of property Map/PINs 5534-23-2783 and 5534-33-1831 to the northern northeast corner of property Map/PIN 5534-33-1831. Thence, proceed south-southwest along the west property line of property Map/PIN 5534-33-3879 to the southwest corner of Map/PIN 5534-33-3879, then travel east-southeast along the southern property line of said parcel to the intersection with property Map/PIN 5534-33-4522. From here turn southwest and proceed along the northwest property line of Map/PIN 5534-33-4522 to the southwest corner of the property.

Thence proceed southeast along the northeastern boundary of property Map/PIN 5534-32-1232 to its easternmost corner. Turn west and follow the boundary of Map/PIN 5534-32-3086 to its westernmost intersection with Map/PIN 5534-31-3478.

Follow the northern border of Map/PIN 5534-31-3478 east to the intersection with Map/PIN 5534-31-5848. Turn south and follow the property line of property Map/PIN 5534-31-5848 to its southeast corner. Turn southeast and follow the northeastern border of the property Map/PIN 5534-41-0295 to its intersection with the west right-of-way of Cabarrus Station Road. Turn southwest and follow the right-of-way to its intersection with the northeasterly property line of Map/PIN 5534-40-2825. Turn northwest and follow said property line to its northern corner, thence southwest to its western corner. Now follow the property line for property Map/PIN 5534-40-2825 back to the westerly right-of-way for Cabarrus Station Road.

Continue southwest along said right-of-way until you meet the northeastern property line of Map/PIN 5534-30-8212. From here, turn northwest and go to the north corner of said parcel. Turn southwest and follow the property line to its western corner. Turn southeast and go to the north corner of Map/PIN 5533-39-6802. Turn southwest and follow the property lines of Map/PINs 5533-39-6802 and 5533-39-4605 respectively. Turn southeast at the westernmost corner of Map/PIN 5533-39-4605 and go to the north corner of property Map/PIN 5533-39-1416. Turn southwest and follow the property line of Map/PIN 5533-39-1416 west then south to the Cabarrus Station Road right-of-way.

Follow the northwesterly right-of-way of Cabarrus Station Road southwest until you come to its intersection with the property line of Map/PIN 5533-18-9661. Turn northwest and follow this line until you reach the northeast corner of the parcel. Turn southwest and travel along the westernmost southeast property line of Map/Pin 5533-29-4326 to the northwest corner of Map/PIN 5533-18-3388. From here, turn southeast and follow the property line for Map/PIN 5533-18-3388 until you reach the southwest corner of the property.

Cross directly over Cabarrus Station Road to the northwest corner of Map/PIN 5533-17-8801. Then go southeast along the property line to the point of intersection with the southwesterly right-of-way of Cabarrus Station Road. Travel northeast along the right-of-way until you reach the northeast property line of Map/PIN 5533-17-9887. Turn southeast and go to the intersection of Map/PIN 5533-27-2838 and the Cabarrus County Boundary. Continue southeast along the Cabarrus County Boundary to its intersection with the southeast property line of said property. From here, turn northeast and go along the northwest property line of Map/PIN 5533-27-8192 to the northeast corner of Map/PIN 5533-27-8192. Continue traveling northeast along the northwest property lines of Map/PINs 5533-37-3408 and 5533-48-0035 until you reach the northern corner of Map/PIN 5533-48-0035. Turn southeast and follow this property line to the intersection with Map/PIN 5533-47-7785. From here, turn northeast and follow the property line of Map/PIN 5533-47-7785 until you reach the northwest corner of Map/PIN 5533-57-4817. Turn southeast and follow this property line until you reach the right-of-way for the cul-de-sac on Forestbluff Drive. Continue following around the west side of the right-of-way until reaching Map/PIN 5533-57-5427. Turn southwest and follow the property line to the intersection with Map/PIN 5533-57-1174. Turn east and follow the property line of Map/PINs 5533-57-5427 and

5533-57-7516 to the intersection with Map/PIN 5533-57-7151. Turn south and follow this property line to the intersection with the Ben Black Road right-of-way.
From here, turn southwest and travel along the northerly Ben Black Road right-of-way for 727 feet. Turn southeast to the northwest corner of Map/PIN 5533-55-4997. Turn south and follow the property line of Map/PIN 5533-55-4997 until you meet Map/PIN 5533-55-7467. Now turn northeast and follow the Map/PIN 5533-55-7467 northwest property line until you meet Map/PIN 5533-66-0296. Turn southeast and travel along the property lines of Map/PINs 5533-66-0296 and 5533-66-2076 to the southern corner of Map/PIN 5533-66-2076. Turn northeast and follow the northwesterly property lines of Map/PIN 5533-76-5268 around to the north corner of Map/PIN 5533-76-2656. Cross directly over Ben Black Road to the south property line of Map/PIN 5533-77-2327.
Turn northeast and go to the southeast corner of Map/PIN 5533-77-2327. Turn northwest and go to the north corner of said property. From here, go north-northeast along the eastern borders of Map/PINs 5533-78-1051 and 5533-78-1271. At the northeast corner of 5533-78-1271 turn northwest and follow the southern boundary of Map/PIN 5533-68-6765 until you reach the Forestbluff Dr. right-of-way. Turn southwest and follow the Forestbluff Dr. right-of-way to its intersection with Map/PIN 5533-68-0070. From here, turn northwest and travel to the border of Map/PIN 5533-58-3389. Turn northeast and go to the southern corner of Map/PIN 5533-58-9936. Turn northwest and follow the property line of Map/PIN 5533-58-3389 to the end of Waterbury Road. From here, go northeast until you reach the northerly right-of-way for Waterbury Road. Turn west and go until you meet Map/PIN 5533-49-7149. Turn northeast and follow this property line until it intersects with Map/PIN 5533-49-5850. Turn southwest and go to the southern corner of said property. Turn northwest and go until you meet Map/PIN 5533-49-0935, then turn northeast and go to the easternmost corner of the property. From here, turn northwest and go to the Cabarrus Station Road right-of-way. Turn northeast and travel to the southwest property line of Map/PIN 5534-40-1154. From here, turn southeast and go to the southern corner of said property. Turn northeast and go along the southeast property lines of Map/PINs 5534-40-1154 and 5534-40-2371 to the eastern corner of Map/PIN 5534-40-2371. Turn southeast and go along the southwest property line of Map/PIN 5534-40-5408 to the south corner of Map/PIN 5534-40-5408. Turn northeast and go along the property line to the eastern corner of said property. Turn northeast and follow the northern property line for Map/PIN 5534-50-3474 up to its northern corner. Turn north-northwest and follow the eastern border of Map/PIN 5534-51-2593 until you reach the southwest corner of Map/PIN 5534-52-6179. Turn northeast and follow the border of said property until you reach the southerly right of way for Cabarrus Station Road.
Follow the Cabarrus Station Road right-of-way east to the west property line of Map/PIN 5534-72-3682. Turn southeast and follow the boundary of said property around until you meet the Cabarrus Station Road right-of-way again. Continue east on the right-of-way to the southwest edge of Map/PIN 5534-72-6774. Turn southeast and travel along the northeast edge of Map/PINs 5534-71-9823 and 5534-80-9905 to

the southern corner of Map/PIN 5534-91-5983. Turn north and go along the property line to the Bethel Avenue Extension right-of-way. Follow the westerly Bethel Avenue Extension right-of-way south to the point of intersection with Map/PIN 5534-91-6180. Turn due north to the point of intersection with the southwest property line of Map/PIN 5544-01-7629. Turn southeast and go to the southwest corner of said property. Turn southwest and follow the west property lines of Map/PINs 5543-29-0546 and 5543-09-5170 to the southwest corner of Map/PIN 5543-29-0546. Turn east and follow the south property line of Map/PIN 5543-29-0546, 5543-29-6374, 5543-29-8440, 5543-39-0670, 5543-39-4530, and 5543-39-4936 to the southeast corner of Map/PIN 5543-39-4936. Cross directly over Map/PIN 5543-37-3491 to the southwest corner of Map/PIN 5543-44-4681. Continue along the south property line of Map/PINs 5543-49-4681, 5544-40-9609 and 5544-50-5735 to the southwest corner of Map/PIN 5544-50-8763.

Follow the western boundary of 5544-50-8763 north to the northwest corner of said property. Turn west and go along the north property lines of Map/PINs 5544-50-5735 and 5544-40-9609 to the northernmost corner of Map/PIN 5544-40-9609. Turn northeast and go to the easternmost corner of Map/PIN 5544-51-3808. Turn northwest and go to the northerly northeast corner of said parcel. Turn north to the easternmost corner of Map/PIN 5544-42-8481. Go to the westernmost corner of Map/PIN 5544-63-6383. Follow the northwest perimeter of Map/PIN 5544-63-6383 north to the north corner and then southeast until you reach the property's easternmost corner. From here follow the southern border of Map/PIN 5544-83-4451 to the western corner of Map/PIN 5544-83-7180. Turn southwest along the west property line of Map/PINs 5544-92-1669 and 5544-92-0588 to the northwest corner of Map/PIN 5544-92-2309. Turn southeast and follow around the north, east, and south borders of said property until you reach its southwest corner. Turn south and follow the western border of Map/PIN 5544-91-2911 until you reach the centerline of the Norfolk Southern Railway tracks.

From here, cross to the south side of the railroad track to the northwest corner of Map/PIN 5544-91-6017. Follow the southwest border of said property until you reach the centerline of Highway 601. Follow the centerline of Highway 601 south for approximately 2364 feet until you reach a point directly opposite the southwest property line of Map/PIN 5543-89-3040. Turn southeast and go along the southwest property lines of Map/PINs 5543-89-3040 and 5543-88-7716 to the southernmost corner of Map/PIN 5543-88-7716. Turn northeast and follow the boundary of said property to its easternmost corner. Turn northwest and follow the same boundary and the northeast boundary of Map/PIN 5543-89-3040 to the southernmost corner of Map/PIN 5543-89-5201. Turn northeast and follow the boundary of Map/PIN 5543-88-8145 around to the intersection with the northwest corner of Map/PIN 5553-08-6749. Continue east along the northern border of Map/PIN 5553-08-6749 until you reach the Hopewell Church Road westerly right-of-way. Turn southeast and continue following the right-of-way to the northern perimeter of Map/PIN 5553-18-1552. From here, turn southwest and follow the boundary of Map/PINs 5553-08-6749 and 5543-88-8145 until you reach the westernmost corner of Map/PIN 5543-97-0017. Turn

southeast and follow the border of Map/PIN 5543-97-0017 to the intersection with Map/PIN 5543-97-6556. At this point, turn northeast and follow the southern boundary of said property to the intersection with Map/PIN 5553-06-9822. From here, follow the eastern border of Map/PIN 5543-96-6459 south to the southwest corner of Map/PIN 5553-06-6441. Turn southeast and follow the south boundary of Map/PIN 5553-06-6441 to its southeast corner. Cross directly over Map/PIN 5553-15-8474 and Hopewell Church Road to the southwest corner of Map/PIN 5553-15-4576. Continue southeast along the property lines of Map/PINs 5553-15-4576 and 5553-15-8474 to the southernmost corner of Map/PIN 5553-15-8474. Turn northeast and follow the perimeter of said property until you reach the easterly Hopewell Church Road right-of-way. Turn northeast and follow the right-of-way to the southwest border of Map/PIN 5553-16-9800. Turn southeast and follow the northeast border of Map/PIN 5553-24-9675 to the southernmost corner of Map/PIN 5553-26-8196. Turn northeast and follow the northwest boundary of Map/PIN 5553-35-9990 to its northernmost corner. Continue northeast, following the eastern boundary of Map/PIN 5553-38-6833. Continue along the perimeter of said property until you reach the southernmost corner of Map/PIN 5553-29-5443.

From here, turn northwest and follow the northeast border of Map/PIN 5553-18-6976 to the southern corner of Map/PIN 5553-19-6599. Turn northeast and follow the west boundary of Map/PIN 5553-29-5443 to its northernmost corner. Continue north along the northwest border of Map/PIN 5554-20-2483 until you reach Garmon Mill Road. Cross Garmon Mill Road to a point 27 feet west of the southeast corner of Map/PIN 5554-21-2045 on the south property line of said parcel. Turn east and go to the southeast corner of Map/PIN 5554-21-2045, cross over Oak St., and follow the Chaney Road northern right-of-way to the southeast corner of Map/PIN 5554-21-4046. Turn north and follow the western boundary of Map/PIN 5554-31-1263, directly across the Norfolk Southern Railway right-of-way to the west edge of Map/PIN 5554-31-0864, and continue along the west property line of said property and Map/PIN 5554-32-0922 to the west corner of Map/PIN 5554-32-0922. At the intersection with Map/PIN 5554-23-1707, continue northwest along said property's southwest boundary until you reach the northeast corner of Map/PIN 5554-13-6172. Turn west-southwest and follow the south and west boundaries of Map/PIN 5554-13-3760 around until you reach the property's northeasternmost corner. At this point, turn northeast and follow the western boundary of Map/PIN 5554-24-2721 to its northerly northwest corner. Turn northwest and follow the northern border of Map/PIN 5554-16-5399 until you reach the easterly right-of-way of US Highway 601.

Thence continue northeast along the right-of-way on the southeast side of US Highway 601 to its intersection with the southwest border of property Map/PIN 5554-17-6858. Thence continue southeast along the property line to the southeastern corner of said property. From that corner continue northeast along the property line of said property and property Map/PIN 5554-18-6075 to the northeastern corner of Map/PIN 5554-18-6075. Thence continue southeast along the property line of Map/PIN 5554-18-7280 to the southeast corner of said property. From that corner continue northeast along the eastern property line of the property and the property Map/PIN 5554-18-

8327 to the northeast corner of 5554-18-8327. Thence continue southeast to the southeast corner of Map/PIN 5554-18-7567.
Thence continue to the southernmost corner of property Map/PIN 5554-29-4168; Turn northeast and follow the northerly property line of Map/PIN 5554-38-7270 around to the southwest corner of Map/PIN 5554-49-7745. Thence continue east along the Map/PIN 5554-49-7745 property line and the property line of Map/PIN 5554-49-8595 to the southeast corner of the property. Thence continue east along the southern right-of-way of Loving Road to the property line of Map/PIN 5554-58-7874. From that point continue south along the property lines of said property and property Map/PIN 5554-58-2939 for approximately 723 feet to a point directly opposite the southwest corner of Map/PIN 5554-58-3931.
From that point continue east to the southwest corner and then to the southeast corner of property Map/PIN 5554-58-3931. Thence continue north along said property line to the northerly northeast corner of the property. From that corner of the property continue northeast directly across the property of Map/PIN 5554-58-7874 to the southern property line of Map/PIN 5554-59-4334. Thence continue east along the property line to the easterly northeast corner of the property. From that point continue directly across the property Map/PIN 5554-58-7874 to the property line of Map/PIN 5554-59-8365. Thence continue southeast to the southerly southwest corner of Map/PIN 5554-59-8365. Thence continue south to the northwest corner of Map/PIN 5554-69-0079. Thence continue southeast along the property line to the southernmost corner of Map/PIN 5554-69-2254. From that corner continue northeast along the property line to the southwestern corner of property Map/PIN 5554-69-5056. Thence continue southeast along the property lines of said property and property Map/PIN 5554-68-8951 to the southernmost corner of the property Map/PIN 5554-68-8951. Thence continue northeast along the eastern side of the property to the point of intersection with McManus Road. Turn and go east to the intersection with the McManus Road right-of-way.
Thence continue northeast along the right-of-way of McManus Road on the eastern side of the road to the intersection with the south border of property Map/PIN 5555-70-2167. Thence continue east to the southeastern corner of Map/PIN 5555-70-2167 then northeast to the northeasternmost corner and then northwest to the point of intersection with the McManus Road right-of-way. Thence continue northeast along the right-of-way on the eastern side of the road to the southwest property line of property Map/PIN 5555-70-4703. Thence continue southeast along the property line to the southernmost corner of said property and then northerly along the eastern property line to the point of intersection with NC Highway 24/27 southerly right of way. Thence continue directly across the Highway to the southeast corner of property Map/PIN 5555-72-5202. Continue along the southerly property lines of Map/PIN 5555-71-7706 and 5555-71-8321 to the southeast corner of Map/PIN 5555-71-8321.
Thence continue northwest along the eastern boundary to the northeast corner of the property. Thence continuing northwest along the property line of Map/PIN 5555-71-7706 to the northernmost corner of the property Map/PIN 5555-71-7706. Thence continue southwest along the westerly property line of said property and property

Map/PIN 5555-71-5202 to the point of intersection with the NC Highway 24/27 right-of-way. Thence continue southwest along the northern right-of-way of NC Highway 24/27 to the point of intersection with the east property line of Map/PIN 5555-61-8154. Thence continue northerly along the property line of said property to the northernmost corner. From that corner continue southwest along the northwest property line to the point of intersection with the NC Highway 24/27 right-of-way. Thence continue west along the northern right-of-way to the point of intersection with the east property line of property Map/PIN 5555-50-3891.

From that point continue northwest along the eastern property line of Map/PIN 5555-50-3891 to the northernmost corner of the property. Thence continue northeast along the southeast property line of property Map/PIN 5555-51-3993 to the northeastern corner of the property. Thence continue northwest along the northern property line to the northwestern corner of the property and continue southwest along the western property line of the property to the point of intersection with the NC Highway 24/27 right-of-way. Thence continue southwest along the northern right of way to the point of intersection with the property Map/PIN 5555-30-9401. Thence continue northeast along said property line to the northeast corner of the property and then southwest along the property line to the northwestern corner of the property. Thence continue northeast along the east property lines of Map/PINs 5555-30-6464 and 5555-30-8813 to the northeast corner of Map/PIN 5555-30-8813. Thence continue around the perimeter of Map/PIN 5555-30-8813 to the northwest corner of Map/PIN 5555-30-6464.

Cross over Widenhouse Road to the northeast corner of property Map/PIN 5555-30-3368. Thence continue northwest along the northern property line of Map/PIN 5555-30-3368 to the northwestern corner of the property. Thence continue northeast along the southeast property line of Map/PIN 5555-20-7506 to the northeastern corner of the property. From that corner continue northwest along the northern property line to the point of intersection with property Map/PIN 5555-21-3274. Thence continue northeast along the property line of said property to the northeastern corner of the property. From that corner continue west to the northwest corner of the property and continue south to the southwest corner. Cross directly over US Highway 601 to the northeast corner of property Map/PIN 5555-11-2213. Thence continue northwest along the northern property line of said property to the northernmost corner of the property.

Thence continue southwest along the northwest property line of property Map/PIN 5555-01-2134 to the west corner of the property. From that corner continue southwest along the property line of the property Map/PIN 5545-90-6414 to the point of intersection with the property Map/PIN 5545-90-1280. Thence continue northwest to the northwestern corner of said property. From that corner continue southwest along the property line to the southwest corner of Map/PIN 5545-90-1280 then southeast to the point of intersection with property Map/PIN 5544-99-4865. Thence continue southwest along the property line of Map/PIN 5544-99-4865 to the intersection with Map/PIN 5544-99-0543. Thence continue west along the northern boundary of said

property and property Map/PIN 5544-89-8583 to the northwestern corner of Map/PIN 5544-89-8583.

Thence continue south to the intersection with the northerly NC Highway 24/27 right-of-way. Thence continue west along the northern right-of-way of NC Highway 24/27 to the point of intersection with the property Map/PIN 5544-79-6696. Turn north, and follow the western border of Map/PIN 5545-80-6865 to the northeast corner of Map/PIN 5545-71-6954. Turn west and follow the northern border of said property and Map/PIN 5545-71-2774 until you reach the northwest corner of Map/PIN 5545-71-2774. Turn southwest and follow the boundaries of Map/PINs 5545-71-2774, 5545-71-0151, and 5545-60-9722 to the southeast corner of Map/PIN 5545-61-1127. Turn northwest and travel to the southwest corner of Map/PIN 5545-61-1127. Turn northeast and follow the western border of said property to its northwestern corner.

Turn northwest and follow the northern border of Map/PIN 5545-41-9555 until you reach the Jim Sossoman Road right-of-way. Turn northeast and follow the eastern right-of-way to its point of intersection with Map/PIN 5545-62-3629. Turn southeast and follow the southern boundary of Map/PIN 5545-62-3629 to its southeast corner. Turn north and follow the eastern bounds of Map/PINs 5545-62-3629, 5545-62-4814, 5545-62-4978, 5545-63-5135, 5545-53-8663, 5545-63-6465, 5545-63-7640, and 5545-64-1035 to the northeast corner of Map/PIN 5545-64-1035. Turn northwest and follow the border of said property to the Jim Sossoman Road eastern right-of-way.

Turn northeast and follow the eastern right-of-way to the intersection with Map/PIN 5545-74-8667. Turn southeast and follow the southern border of Map/PIN 5545-74-8667 to its easternmost corner. Continue northeast along the southeast border of Map/PIN 5545-84-6783 to its easternmost corner. Turn northwest and follow the east border of Map/PIN 5545-84-6783 to the northeast corner crossing over an unnamed right-of-way to the southeast corner of Map/PIN 5545-85-7344. Continue along the eastern and northern borders of said property until you reach the property's northwest corner. Continue northwest along the northern border of Map/PIN 5545-85-3576 to its northern corner. Turn southwest and go to the southwest corner of said property. When you reach an unnamed right-of-way, turn northwest and follow the right-of-way to the Jim Sossoman Road eastern right-of-way. When you reach the right-of-way for Jim Sossoman Road, turn northeast and follow the eastern right-of-way to its point of intersection with Map/PIN 5545-98-7291.

From this point, travel east along the southern border of Map/PIN 5545-98-7291 until you reach its southeast corner. Turn south and follow the eastern border of Map/PIN 5545-97-7724 and 5555-06-6822 to the southeast corner of 5555-06-6822. Turn southeast and follow the border of Map/PIN 5545-87-4111 southeast and then southwest to the southeast corner. From here, turn east and follow the northeast perimeter of Map/PIN 5555-03-7435 until you reach the southeast corner of Map/PIN 5555-12-6854. Turn north and follow the easterly property line of Map/PINs 5555-12-6854, 5555-12-6938, 5555-13-5302, 5555-13-4567, 5555-13-4840, 5555-14-4080, 5555-14-4158, 5555-14-4356, 5555-14-1498, 5555-14-4651, 5555-14-3932, and 5555-15-5279 to the northeast corner of Map/PIN 5555-15-5279. Turn southeast, cross the road to the southwest corner of Map/PIN 5555-25-0668, and continue to the southeast corner of

Map/PIN 5555-25-0668. Turn northeast and follow the western boundary of Map/PIN 5555-35-9827 to the northernmost corner of Map/PIN 5555-26-7559. Cross Mt. Pleasant Road to the southeast corner of Map/PIN 5555-27-5019. Proceed north along the easterly property line of said parcel and Map/PINs 5555-27-5383 and 5555-27-6647 to the southeast corner of Map/PIN 5555-28-5511.

Continue west along the southern boundary of Map/PIN 5555-28-5511 to its southwest corner. Cross Highway 601 to the southeast corner of Map/PIN 5555-17-6979. Proceed northerly along the easterly property lines of Map/PINs 5555-17-6979, 5555-18-6156, 5555-18-5472, 5555-18-4955, and 5555-19-2451 to the southeast corner of Map/PIN 5555-19-3854. Cross Highway 601 to the northwest corner of Map/PIN 5555-29-0676. Proceed along the west and south borders of the parcel to the southeast corner of said property. Follow the northeast property line of said parcel to the south corner of Map/PIN 5555-29-2721. Continue north on the east property line of Map/PIN 5555-29-2721 to the northeastern corner of said parcel. Turn northwest and follow the border of said property to its northwest corner. Turn northeast and follow the western border of Map/PIN 5555-29-9552 to its northwest corner. Turn west and follow the southern border of Map/PIN 5556-21-3259 back to the easterly US Highway 601 right-of-way. Staying on the east side right-of-way, continuing along Map/Pin 5556-21-3259 northwest then northeast to the intersection of Map/PIN 5556-23-1563. Turn west and follow the southern border of Map/PIN 5556-23-1563 to the Point of Beginning.

This area excludes any area described in Section 1 of S.L. 2000-7.

"CHAPTER III.

"GOVERNING BODY.

"Section 3.1. **Structure of Governing Body; Number of Members.** The governing body of the Town of Midland shall be the Town Council, which shall have four members, and the Mayor.

"Section 3.2. **Manner of Electing Town Council; Term of Office.** The qualified voters of the entire Town shall elect the members of the Town Council and, except as provided in this section, they shall serve four-year terms. In 2001, the two candidates receiving the highest number of votes shall be elected to four- year terms and the two candidates receiving the next highest number of votes shall be elected to two-year terms. In 2003 and biennially thereafter, two members shall be elected to four-year terms.

"Section 3.3. **Manner of Electing Mayor; Term of Office.** The qualified voters of the entire Town shall elect the Mayor. In 2001 and quadrennially thereafter, the Mayor shall be elected for a term of four years.

"Section 3.4. **Initial Council.** Until the organizational meeting after the initial regular municipal election of 2001, L.W. 'Bunk' Whitley, Joyce Beatty, and Dan Short are hereby appointed as members of the Town Council. Until that time, the Council shall consist of three members. Until the organizational meeting after the initial regular municipal election of 2001, the Town Council shall choose from among its members one person to serve as Mayor.

"CHAPTER IV.

"ELECTIONS.

"Section 4.1. **Conduct of Town Elections.** Regular municipal elections shall be held in each odd-numbered year in accordance with the uniform municipal election laws of North Carolina. Elections shall be conducted on a nonpartisan basis and results determined by a plurality as provided in G.S. 163-292.

"CHAPTER V.

"ADMINISTRATION.

"Section 5.1. **Town to Operate Under Mayor-Council Plan.** The Town of Midland shall operate under the Mayor-Council form of government as provided in Part 3 of Article 7 of Chapter 160A of the General Statutes."

Section 2. From and after the effective date of this act, the citizens and property in the Town of Midland shall be subject to municipal taxes levied for the year beginning July 1, 2000. For that purpose the Town shall obtain from Cabarrus County a record of property in the area herein incorporated which was listed for taxes as of January 1, 2000. The Town may adopt a budget ordinance for fiscal year 2000-2001 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year 2000-2001, ad valorem taxes may be paid at par or face amount within 90 days of adoption of the budget ordinance and thereafter in accordance with the schedule in G.S. 105-360.

Section 3. The Cabarrus County Board of Elections shall conduct an election on November 7, 2000, for the purpose of submission to the qualified voters of the area described in Section 2.1 of the Charter of the Town of Midland the question of whether or not the area shall be incorporated as the Town of Midland. Registration for the election shall be conducted in accordance with G.S. 163-288.2.

Section 4. In the election, the question on the ballot shall be:

"[ ]FOR [ ]AGAINST

Incorporation of the Town of Midland."

Section 5. In the election, if a majority of the votes are cast "For incorporation of the Town of Midland", Sections 1 through 2 of this act shall become effective on the date that the Cabarrus County Board of Elections certifies the results of the election. Otherwise, those sections shall have no force and effect.

Section 6. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 1667
Committee Substitute Favorable 6/12/00

Short Title: Charlotte Charter Consolidation. (Local)

Sponsors:

Referred to:

May 23, 2000

A BILL TO BE ENTITLED

AN ACT TO REVISE AND CONSOLIDATE THE CHARTER OF THE CITY OF CHARLOTTE.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the City of Charlotte is revised and consolidated to read as follows:

"THE CHARTER OF THE CITY OF CHARLOTTE.

"CHAPTER 1.

"ORGANIZATION AND POWERS.

"Section 1.01. **Incorporation and Corporate Powers.** The City shall continue to be a body politic and corporate by the name of "City of Charlotte."

"Section 1.02. **Existing Corporate Boundaries.** The corporate boundaries of the City shall be those existing at the time of ratification of this Charter and as the same may be altered from time to time in accordance with applicable laws.

"CHAPTER 2.

"ELECTIONS.

"Section 2.01. **Regular Municipal Elections; Conduct.** Regular municipal elections shall be held in the City every two years in odd-numbered years, and shall be conducted in accordance with the Uniform Municipal Elections Laws of North Carolina. The Mayor and members of the Council shall be elected according to the partisan election method authorized for municipalities.

"Section 2.02. **Election of the Mayor.** The Mayor shall be elected to serve a term of two years. The Mayor shall be elected by the qualified voters of the City voting at large.

"Section 2.03. **Election of Council Members.** The Council shall consist of 11 members. The City shall be divided into seven single-member electoral districts; Council members shall be apportioned to the districts so that each member represents the same number of persons as nearly as possible, except for members apportioned to the City at large. The qualified voters of each district shall nominate and elect candidates who reside in the district for seats apportioned to that district, and all the qualified voters of the City shall nominate and elect candidates apportioned to the City at large. There shall be four at-large members of the City Council. All members of the Council shall serve a term of two years.

"CHAPTER 3.

"GOVERNING BODY.

"Section 3.01. **Compensation of Mayor and Council members.** The salary of the Mayor and each Council member shall be in such amounts as established by the Council from time to time.

"Section 3.02. **Meetings.** Notwithstanding the provisions of general law, only the Mayor, or in the absence of the Mayor, the Mayor Pro Tempore, or a majority of the members of the Council may call special or emergency meetings.

"Secs. 3.03--3.22. Reserved.

"Section 3.23. **Quorum; Procedure; Voting.** (a) Six members of the Council shall constitute a quorum. A member who has withdrawn from a meeting, whether excused or not excused, shall be counted as present for purposes of determining a quorum.

(b) Its meetings shall be public and the Mayor, who shall be the official head of the City, shall preside, if present, but shall have no vote except in case of a tie, or as provided herein. Six affirmative votes of the Council members, or five of such affirmative votes, together with the affirmative vote of the Mayor, in case of a tie vote, shall be required for the passage of any motion, resolution, or ordinance. Motions, resolutions, and ordinances granting special franchises and special privileges must be voted on and passed at not less than two regular meetings of the Council. Except as provided in this section, motions, resolutions, and ordinances will be deemed adopted if passed upon one reading. Except for Council appointments to committees, boards, and commissions; its employment of the City Manager, the City Attorney and the City Clerk; its internal affairs and matters which must be approved by the voters, the Mayor may veto any action adopted by the Council. The veto must be exercised at the meeting at which the action was taken. An action vetoed by the Mayor shall automatically be on the agenda at the next regular or special meeting of the Council, but shall not become effective unless it was readopted by the Council with at least seven members voting in the affirmative. In the absence of the Mayor, the Mayor Pro Tempore shall preside and, when so presiding, shall have the right to vote upon all questions, but shall have no additional vote in case of a tie, and shall not have veto power; and in the absence of both, a chair Pro Tempore shall be chosen to preside at such meeting, and, when so presiding, he shall have the right to

vote upon all questions, but shall have no additional vote in case of a tie. Provided further, however, the Mayor shall have a vote in the consideration of amendments to zoning ordinances when said amendments are the subject of a valid protest as defined by G.S. 160A-385. In voting on amendments to zoning ordinances, the Mayor shall be deemed a member of the legislative body as that term is used in G.S. 160A-385. Provided further, however, the Mayor shall have a vote in the consideration of the employment or dismissal of the City Manager, the City Attorney and the City Clerk.

"Section 3.24. **Powers and Duties of Mayor.** (a) The Mayor shall be ex officio member of all boards or commissions elected or appointed by the Council or the Mayor, and he shall serve upon the same in an advisory capacity only and shall not have a vote.

(b) In the absence or incapacity of the Mayor, all his duties, powers, and obligations shall be vested in the Mayor Pro Tempore.

"CHAPTER 4.

"ADMINISTRATION.

"ARTICLE I. IN GENERAL.

"Section 4.01. **Form of Government.** The City shall operate under the Council-Manager form of government.

"ARTICLE II. City Manager.

"Section 4.02. **Appointments by Council.** The Council shall appoint the City Manager, City Clerk, and City Attorney, each of whom shall hold office during the pleasure of the Council.

"Section 4.03. **Council-Manager Relationship.** The Council shall hold the City Manager responsible for the proper management of the affairs of the City, and the City Manager shall keep the Council informed of the conditions and needs of the City, and shall make such reports and recommendations as may be requested by the Council or as the City Manager may deem necessary. Neither the Mayor, the Council nor any member thereof shall direct the conduct or activities of any City employee, directly or indirectly, except through the City Manager.

"Section 4.04. **Acting City Manager.** The Council may from time to time designate a department head or other City employee as acting City Manager who shall have the authority, during any absence, illness, or other disability of the City Manager, or during any temporary vacancy in the office of the City Manager, to exercise the powers and duties of the City Manager, except as the Council may otherwise prescribe.

"Section 4.05. **Personnel Administration Standards.** The Council shall establish by appropriate ordinances a system of personnel administration, not inconsistent with the provisions for civil service hereinafter set forth, governing the appointment, promotion, transfer, layoff, removal, discipline, and welfare of City employees. Such ordinances shall be based upon the following general standards:

(1) Employment shall be based on merit without regard to race, creed, color, sex, political affiliation, age, or physical defect or impairment of the applicant unless the defect or impairment prevents the applicant from performing, with reasonable

accommodation, an essential function of the employment sought. "Physical defect" or "impairment" shall be defined to mean any physical disability, infirmity, malformation, or disfigurement which is caused by bodily injury, birth defect, or illness including epilepsy.

(2) Conditions of employment shall be maintained to promote efficiency and economy in the operation of the City government.

(3) Position classification and compensation plans shall be established and revised from time to time to meet changing conditions.

(4) Appointments and promotions shall be made solely on the basis of merit and fitness, demonstrated by examination or other evidence of competence.

(5) Tenure of employment shall be subject to satisfactory performance of work, personal conduct compatible with the trust inherent in public service, necessity for the performance of work, and availability of funds.

(6) Such ordinances shall also prescribe the details of personnel organizations and procedures.

The City Council may, in its discretion, delegate all or any part of the authority granted to it by G.S. 160A-162 to the City Manager.

"Section 4.06. **Optional Rights.** The City Manager may:

(1) Approve the:

a. Acquisition by the City of real property having a value of ten thousand dollars ($10,000) or less.

b. Acquisition or sale by the City of real property having a value of more than ten thousand dollars ($10,000), when the City Manager certifies to the Council that the property is being acquired or sold for the purpose of increasing the supply of affordable housing available to low- or moderate-income persons. The Manager shall, within 10 days of any transaction authorized by this subdivision, report the details to the Council.

(2) Approve certain contracts as provided in Section 8.86 of this Charter.

(3) Approve agreements permitting encroachments into setbacks and rights-of-way.

(4) Accept dedicated streets for City maintenance.

"Secs. 4.07--4.60. Reserved.

"ARTICLE III. CIVIL SERVICE.

"Section 4.61. **Civil service Board; Membership, Powers and Duties.** (a) Establishment. There is hereby continued a civil service Board for the City of Charlotte, to consist of five members and two alternates; three members and one alternate to be appointed by the Council and two members and one alternate to be appointed by the Mayor. Each member shall serve for a term of three years. In case

of a vacancy on the Board, the Council or the Mayor, as the case may be, shall fill such vacancy for the unexpired term of said member. For the purposes of establishing a quorum of the Board, any combination of Board members and alternates totaling three shall constitute a quorum. All Board members and alternates shall attend regular meetings for the purposes of meeting attendance policy and familiarity with Board business and procedures. Alternates shall attend hearings when needed due to scheduling conflicts of regular Board members and shall vote only when serving in the absence of a regular Board member. Attendance at meetings and continued service on the Board shall be governed by the attendance policies established by the Council. Vacancies resulting from a member's failure to attend the required number of meetings or hearings shall be filled as provided herein.

(b) Qualifications; Removal. The members of the Civil Service Board shall be registered voters of the City of Charlotte or County of Mecklenburg and shall take an oath to faithfully perform their duties. The members of said Board shall be subject to removal from office by a two-thirds vote of the Council, with or without cause.

(c) Examinations. The Board shall establish and fix requirements for applicants for employment in the fire and police departments. All applicants shall be subjected to examination by or at the direction of said Board. The examination shall be competitive and free to all persons meeting the requirements of the Board, subject to reasonable limitations as to residence, age, health, and moral character; provided that:

(1) Applicants for employment in the fire department shall be at least 18 years of age, and

(2) Applicants for employment in the police department shall be at least 20 years of age.

The Council may, by ordinance, at any time and from time to time, fix and establish such lesser maximum age limits for applicants as may be consistent with the needs of the respective departments. The examination for applicants shall be practical in character and shall be limited to matters which fairly test the relative ability of the applicant to discharge the duties of the position applied for and shall include tests of physical qualifications and health, but no applicant shall be examined concerning his political or religious opinions or affiliations.

(d) Notice. Notice of time and place of every examination shall be given by the Board for one week preceding such examination in a newspaper published in the City, and such notice shall be posted in a conspicuous place in the office of the Board, or its designee, for at least two weeks preceding such examination.

(e) Register. The Board shall prepare and keep a register of persons passing the examination, graded according to the respective showings upon the examination, which register shall determine the appointments to be made in each of the departments under the eligibility rules and regulations established by the Board.

(f) Definitions. The terms "officer or employee" or "officer," as used in this Article, shall mean sworn officers with regard to the police department and shall mean uniformed personnel with regard to the fire department.

(g) Restrictions. No officer or employee of the fire and police departments shall take any part in any election or political function while in uniform or on duty other

than that of exercising his right to vote. Any officer or employee found by the Board to have violated this provision may be dismissed from service by the Board, or the Board may adjudge other punishment.

(h) Relieving a Member From Duty. The chief of either the fire or police department, or the officer in charge in the absence of the chief, may relieve an officer or employee of the respective departments of all duties, and the chief, or the officer in charge in the absence of the chief, shall provide such officer or employee with a written complaint setting forth the department rules or regulations the officer or employee is charged with violating, along with a statement of the basic facts supporting the charge, and the chief, or the officer in charge in the absence of the chief, shall simultaneously cite such officer to the Board for an automatic hearing as set forth herein with a recommendation that such officer be dismissed from the department. Any officer so relieved of duty shall not receive any pay or be assigned any duties until the Board has acted upon the charges at the conclusion of its hearing. In the alternative, the chief, or the officer in charge in the absence of the chief, may cite such officer to the Board for an automatic hearing in accordance with the foregoing procedure, but without relieving the officer from duty.

(i) Dismissal or Suspension of Officer. The chief of either the fire or police department, or the officer in charge in the absence of the chief, may suspend without pay for a period not exceeding 30 days, any officer or employee of the respective departments. In suspending such officer, the chief, or the officer in charge in the absence of the chief, will provide such officer with a written complaint setting forth the department rules or regulations the officer is charged with violating, along with a statement of the basic facts supporting the charge. Any such officer so suspended may appeal to the Board by giving written notice of appeal to the Board with a copy to the chief of such officer's department. Such notice of appeal must be received by the Board within a period of 15 days from the date of the officer's suspension, whereupon a hearing before the Board on such appeal shall be conducted as provided in subparagraph (c). Any officer suspended without pay shall receive no pay for the period of suspension unless the officer is found by the Board not to have committed the offense, or unless the Board adjudges a different period of suspension without pay, in which case the officer shall receive no pay for such different period of suspension.

(j) Appeal Hearings. Upon receipt of a citation for termination from either chief or upon receipt of notice of appeal for a suspension from any civil service covered police officer or firefighter, the Board shall hold a hearing not less than 15 days nor more than 30 days from the date the notice of appeal, or the citation, is received by the Board, and shall promptly notify the officer of the hearing date. Termination hearings shall be held with a panel of five made up of any combination of available members or alternates, and suspension hearings shall be held with a panel of three made up of any combination of available members or alternates. In the event an officer desires a hearing at a date other than that set by the Board within the period set forth above, such officer may file a written request for a change of hearing date setting forth the reasons for such request, and the Chair of the Board is empowered

to approve or disapprove such request; provided that such request must be received by the Board at least seven days prior to the date set for the hearing. For good cause, the Chair of the Board may set a hearing date other than within the period set forth above, or may continue the hearing from time to time. In the conduct of its hearing, each member of the Board shall have the power to subpoena witnesses, administer oaths, and compel the production of evidence. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the Board may apply to the General Court of Justice, Superior Court Division, for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all parties. If any person, while under oath at a hearing of the Board, willfully swears falsely, such person shall be guilty of a Class 1 misdemeanor. Both the officer and the police or fire department shall have the right to present relevant evidence to the Board at its hearing. The officer must be furnished with a copy of the charges which have been brought against an officer and which will be heard by the Board. The officer shall be required to answer questions from members of the Board or the Board's counsel; however, the officer may refuse to answer any question where the answer might incriminate the officer with respect to any criminal violation of State or federal laws. The officer may be present at all evidentiary portions of the hearing, may retain counsel to represent the officer at the hearing, and may cross-examine those witnesses who testify against the officer. The officer will be given the right to an open or closed hearing as he may elect. After the evidentiary portion of the hearing is concluded, the Board will consider the evidence in closed session, and the Board will make findings of facts which will be provided to the officer together with a statement of the action taken by the Board on the basis of its findings of fact.

(k) General Powers of the Board. If, at the completion of its hearing, the Board shall find that:

(1) An officer has not committed the offense or offenses with which such officer has been charged, the Board may restore such officer to full duty with reimbursement of any pay lost during the period the officer was suspended or relieved from duty.

(2) An officer has committed the offense or offenses with which such officer has been charged, the Board may issue an order:

a. Dismissing such officer;

b. Suspending such officer, without pay, for a period not exceeding 90 days; or

c. Imposing such other lesser punishment as it deems just and proper.

The Board may suspend its dismissal or suspension without pay and place such officer on probation for a period not to exceed one year upon such reasonable conditions as the Board may deem appropriate. The Board may order the department to furnish to the Board, during the period of probation, such information regarding the officer as the Board deems necessary.

(l) Appeal from Action of Board. Any officer may appeal from any order of the Board to the Superior Court of Mecklenburg County by giving notice of appeal, in writing, to the Superior Court within 10 days after the entry of the order. Assignments of error must be filed with the court and served upon the Board within 30 days after the entry of the order. The appeal to the Superior Court will be upon the record of the proceedings before the Board at its hearing.

(m) Incapability of performance. In those situations where the chief of the fire or police department determines that an officer of the respective department is permanently disabled, the chief may cite that officer to the Board with a statement of the facts relating to the inability of such officer to perform his duties, and the Board shall, upon receipt of any such citation, hold a hearing as provided for herein, and the Board may dismiss such officer if it finds that such officer can no longer perform his duty. Permanently disabled, as used in this paragraph, shall mean the continuing or enduring incapacity because of physical injury, sickness, or mental illness as determined by competent medical authority, to earn the wages which the officer was receiving at the time of the injury, sickness, or determination of mental illness in the same or any other related employment.

(n) Power of the Board to Require Investigation. The Board may require the chief of the fire or police department to investigate any incident or circumstance involving officers of such departments which shall come to the Board's attention; provided that a majority of the Board shall first determine that such an investigation is in the public's interest. The respective chief shall report the results of an investigation to the Board in writing within a time to be set by the Board.

(o) Annual Report. The Board shall make an annual report of its actions for the preceding year, and said annual report shall be kept in the files of the Board, and a copy delivered to the Council.

(p) Secretary. The City Clerk shall act as secretary to the Board and shall keep the minutes of its meetings and shall be custodian of all papers and records pertaining to the business of said Board and shall perform such other duties as the Board may require.

(q) Accommodations. The Council shall provide suitable rooms for the Board and shall provide sufficient reasonable use of public buildings for meetings and hearings of said Board as may be necessary.

(r) Compensation. The members of said Board shall serve without compensation.

(s) City Finance. Nothing in this Article shall be so construed as to deprive the Council of its control of the finances of said City.

(t) Exceptions. The provisions of this Article pertaining to civil service coverage of officers and employees of the fire and police departments shall not apply to the chief of the fire department or the chief of the police department and shall not apply to an officer of the police or fire department until he or she has been an officer of the respective department for at least 12 months. During such 12-months' probationary period, he or she shall be subject to discharge by the chief of such department under rules promulgated with respect thereto, such rules to be approved by the Council.

(u) Promotions and Demotions. The chief of the police department and the chief of the fire department shall have authority to make all promotions of officers of their respective departments, subject to majority approval of the Civil Service Board. Promotions are probationary for six months from the date they become effective. Any demotions, except voluntary demotions, shall be made only after written charges are preferred and a hearing held before the Civil Service Board. Except as otherwise provided, demotions must be approved by a majority vote of the Board.

(v) Wartime Emergency. Notwithstanding any other provisions of this Article, during any wartime emergency and for six months thereafter, officers of the fire department and police department may be employed on a temporary basis, and such temporarily employed officers may be discharged by the City Manager without the preferment of charges.

(w) Auxiliary Officers. The Council may authorize the City Manager to appoint auxiliary officers of the fire and police departments without previous examinations by the Civil Service Board, who, subject to such rules and conditions as the chiefs of their respective departments shall prescribe, shall have all the powers and duties of regular members of the police and fire departments. Such auxiliary officers of the said departments shall be subject to discharge by the City Manager, with or without cause, and without a hearing before the Civil Service Board.

"CHAPTER 5.

"AUTHORITIES, BOARDS, AND COMMISSIONS.

"ARTICLE I. IN GENERAL.

"Section 5.01. **Powers of Mayor and Council.** (a) In addition to any authorities, Boards or commissions now, or hereafter created and established by or pursuant to general, local, or special law, or this Charter, the Council may create and establish, by ordinance or resolution, such other authorities, boards, and commissions as it may deem necessary or appropriate to the administration, regulation, and operation of services, activities, and functions which the City is authorized by law to perform, regulate, and carry on. It is desirable that in appointing persons to boards, commissions, and authorities, the appointing authority should attempt to secure reasonable representation on each such body of all sexes, races, geographic sections of the City, and political parties. Provided, however, that such representation shall not be required, and the validity of any appointment may not be challenged on grounds that such representation has not been achieved.

(b) Any authority, board, commission, or other agency to which the Mayor or Council appoints members or appropriates money is hereby required to furnish to the Mayor and Council, upon request, such information as the Mayor and Council may deem relevant to the affairs of any such authority, board, commission, or other agency. The duty to provide such information is mandatory and may be enforced by an action for mandamus in the Superior Court of Mecklenburg County.

(c) The Mayor and Council may develop a plan and adopt such ordinances or resolutions as may be necessary to provide that the Mayor shall appoint one-third of the membership, and the Council shall appoint two-thirds of the membership of the following boards, commissions, and authorities:

(1) The Auditorium-Coliseum-Civic Center Authority;
(2) The Civil Service Board;
(3) The Housing Authority; and
(4) The Board of Adjustment.

"Secs. 5.02--5.20. Reserved.

"ARTICLE II. AUDITORIUM-COLISEUM-CONVENTION CENTER AUTHORITY.

"Section 5.21. **Continuation.** (a) The control, management, and operation of the property and improvements now or hereafter made or acquired by the City for auditorium, coliseum, civic center, and baseball stadium purposes shall continue to be vested in the authority to be known as the auditorium-coliseum-convention center authority. The authority shall continue to be composed of seven members, five members to be appointed by the Council and two members to be appointed by the Mayor. Each member shall serve a term of three years. No member shall serve more than two consecutive terms. In case any vacancy shall be created on said authority, the Council or the Mayor, as the case may be, shall appoint a member to fill the unexpired term. The members of the authority shall receive no compensation.

(b) Attendance of meetings and continued service on the authority shall be governed by the attendance policies established by the Council. Vacancies resulting from a member's failure to attend the required number of meetings shall be filled as provided herein.

"Section 5.22. **Officers and Funds.** The members of the authority shall elect annually from their body a chair, vice-chair, and a secretary and otherwise provide for the efficient administration of its affairs; provided, however, the finance officer of the City shall by virtue of his office be also the finance officer of the authority, and he shall serve as such finance officer without additional compensation. All funds of the authority shall be kept by its treasurer in a separate bank account or accounts from other funds of the City and shall be paid out only in accordance with procedures established by such authority. The net proceeds from the operation of the authority shall be used to pay the interest and retirement on the bonded debt of the City incurred in connection with such auditorium-coliseum-convention center-baseball stadium and shall not be used for any other purpose until said bonds, principal, and interest have been paid, except as may be otherwise approved by the Council for other uses of the authority. Quarterly operating statements of the authority and an annual audited statement shall be presented to the Council. The authority shall be deemed a "special district," as defined in G.S. 159-7, for purposes of the Local Government Budget and Fiscal Control Act and shall budget and administer its fiscal affairs according to the provisions of that act applicable to special districts.

"Section 5.23. **Powers and Duties.** (a) The authority shall operate the auditorium-coliseum-convention center-baseball stadium in a proper, efficient, economical, and business-like manner, to the end that such properties and facilities may effectively serve the public needs for which they were established at the least cost and expense to the City. The authority shall appoint a Manager of such auditorium-coliseum-

convention center-baseball stadium properties, whose salary shall be fixed by the authority. Such Manager shall, in addition to other duties imposed upon him by the authority, be responsible for the collection of rents or fees for the use of the properties and facilities of the authority. The authority shall select such other personnel as it deems advisable to properly operate such properties. The authority shall have full and complete control of such auditorium-coliseum-convention center-baseball stadium properties and facilities; shall have full and complete control over granting and denying the use of, and establishing and collecting rents and fees for the use of, the properties and facilities; shall make all reasonable rules and regulations as it deems necessary for the proper operation and maintenance of such properties and facilities; may expend funds of the authority for the advertising and promotion of the use of the properties and facilities; and may sponsor and promote shows, events, games and activities involving the use of the properties and facilities and make reasonable charges therefor.

(b) The authority may, in its discretion, lease or rent auditorium-coliseum-convention center-baseball stadium properties and facilities for such terms and upon such conditions as the authority may determine but not for longer than 10 years. Leases and rentals for terms of more than one year may be executed only after 10 days' public notice by publication describing the property to be leased or rented, stating the annual lease or rental payments and announcing the authority's intent to authorize the lease or rental at its next meeting. No public notice or resolution of the authority is required with respect to leases and rentals for terms of one year or less.

"CHAPTER 6.

"REGULATORY AND PLANNING FUNCTIONS.

"ARTICLE I. IN GENERAL.

"Secs. 6.01--6.10. Reserved.

"ARTICLE II. TRAFFIC AND PARKING.

"Section 6.11. **Parking Regulations and Violations.** (a) The Council may provide by ordinance that each hour a vehicle remains illegally parked in an on-street parking space is a separate offense, and the violator may be given a ticket for each offense.

(b) The Council may provide by ordinance that any vehicle that has been towed for a parking violation is to be held until the towing fee and any related parking tickets and penalties are paid in full, or a bond is posted in the amount of the towing fee and any related parking tickets and penalties. Payment of the towing fee and any related parking tickets and penalties or posting of a bond shall not constitute a waiver of a person's right to contest the towing or any related parking tickets and penalties.

"Section 6.12. **Fire Safety Parking Regulations.** Notwithstanding the provisions of Chapter 20 of the General Statutes or any other public or local laws to the contrary, the Council may adopt ordinances that prohibit parking or standing of motor vehicles within 15 feet in either direction of a fire hydrant or entrance to a fire station or within any area designated as a fire lane. Any ordinances adopted pursuant to this act may be enforced by authorized municipal authorities, including the Charlotte Fire Department, whether or not the vehicle is parked on public or private property, in the same manner that is used to enforce other parking laws and ordinances.

"Section 6.13. **Speed Limits.** The director of transportation may establish speed limits, as required by G.S. 20-141, on streets within the City of Charlotte, on behalf of the local governing body, the Charlotte City Council.

"Secs. 6.14--6.60. Reserved.

"ARTICLE III. UNSAFE BUILDINGS.

"Section 6.61. **Power to Inspect and Condemn Unsafe and Dangerous Buildings.** The Council may provide by ordinance for the inspection, condemnation, and removal of unsafe and dangerous buildings. Such ordinance may provide for the entry in and upon all premises, buildings, and structures within the jurisdiction of the City, to inspect and discover whether the same are unsafe and dangerous to life or property on account of defects or dilapidation, and to cause all unsafe and dangerous conditions to be repaired or removed, and all filth and trash in and around the same to be removed. Such ordinance may also provide for the condemnation, as unsafe and dangerous to life or property, of any such building or structure and to prohibit further use or occupancy thereof. If the owner of any such building or structure which has been so condemned, fails or refuses, after notice, hearing, and order, to repair or remove the unsafe and dangerous building or structure pursuant to such order, he shall be guilty of a Class 3 misdemeanor punishable as for a violation of any municipal ordinance. A copy of such notice and order shall be certified by the City Clerk and filed for recording in the office of the Clerk of Superior Court for Mecklenburg County in the Record of Lis Pendens and from the date or dates of recording of such notice and order, they shall be binding upon the successors and assigns of the owner. In addition, if the owner fails or refuses as aforesaid, or, if the owner cannot, after reasonable and diligent search and notice by publication, be located or found, then the City may enter upon such premises and remedy such unsafe and dangerous condition or demolish and remove such building or structure if necessary, and to charge the costs thereof against the owner of said premises, and the same shall be and remain a lien against the said premises until such costs are paid in full, and the lien herein provided shall have the same priority as the lien for unpaid taxes and may be collected in the same manner as taxes upon real property and the City, its agents, servants, employees, and contractors, shall not be liable in any manner, civilly or criminally, for carrying out the terms and provisions of this section or any ordinance adopted pursuant hereto. The term "costs", as used in this section, shall include interest at the rate of not less than six percent (6%) per annum until said lien is paid, nor more than twelve percent (12%) per annum until said lien is paid; the rate of interest to be determined by the Council on an annual fiscal year basis. Provided, that if the Council should fail to set a rate of interest in any fiscal year, the rate of interest in effect for the preceding fiscal year shall continue in effect.

"Secs. 6.62--6.80. Reserved.

"ARTICLE IV. FIRE PROTECTION.

"Section 6.81. **Power to Destroy Property.** The chief of the fire department or the officer in charge at the scene of a fire may order the blowing up, tearing down, or other destruction of any building, property, or structure when it is deemed necessary for the protection of life and property to stop the progress of a fire. No person shall

be held liable, civilly or criminally, for acting in obedience to orders thus given, nor shall the chief or officer giving such order be held liable, civilly or criminally, for the giving of such order or for damages to property destroyed pursuant to order.

"Section 6.82. **Power of Arrest.** The fire chief and his assistants, while on duty during fires, shall have the powers conferred upon police officers of the City to make arrests, and may make arrests without warrants for interference with or obstruction to their operations.

"Secs. 6.83--6.100. Reserved.

"ARTICLE V. DRAINAGE AND SANITATION.

"Section 6.101. **Drainage of Premises.** The Council may require that all property owners provide adequate drainage facilities to the end that their premises be free from standing water and permit the natural flow of water thereon to be taken care of, and to provide that in case of failure on the part of such owner or owners to so provide the same, to go upon their premises and construct the necessary facilities and to charge the costs thereof against the premises so improved.

"Section 6.102. **Weeds and Overgrowth.** The Council may require the owner or owners of all premises, vacant or improved, to keep same free from trash, obnoxious weeds, or overgrowth as they may be ordered and to provide that in case of failure on the part of such owner or owners to comply with any such order, to go upon their premises and perform such work as may be necessary to comply with such order, and to charge the cost thereof against the premises upon which such work is performed.

"Section 6.103. **Costs a Lien as for Taxes.** The costs to the City of any work performed under this Article shall constitute a lien upon the premises upon which the work is performed. The lien provided for herein shall have the same priority as the lien for unpaid taxes and may be collected in the same manner as taxes upon real property. The term "costs", as used in this section, shall include interest at the rate of not less than six percent (6%) per annum until said lien is paid, nor more than twelve percent (12%) per annum until said lien is paid; the rate of interest to be determined by the Council on an annual fiscal year basis. Provided, that if the Council should fail to set a rate of interest in any fiscal year, the rate of interest in effect for the preceding fiscal year shall continue in effect.

"Secs. 6.104--6.120. Reserved.

"ARTICLE VI. UTILITIES REGULATION.

"Section 6.121. **Power to Regulate; Franchises.** The Council may regulate and supervise the operation of all public utilities and quasi-public utilities operating or doing business within the City to the end that all citizens of the City shall receive from said public utilities and quasi-public utilities, equal treatment, good service, and just and reasonable rates, and to grant or refuse franchises or privileges to such utilities and to regulate the erection and location of all poles in the City and to require that all wires, pipes, and conduits be placed underground and to regulate the same; provided that such regulations shall not be in contravention of the general laws of North Carolina applicable to such utilities, as the same are now or may hereafter be enacted.

"Secs. 6.122--6.150. Reserved.

"ARTICLE VII. FAIR HOUSING.

"Section 6.151. **Equal Housing.** (a) The Council may adopt ordinances prohibiting discrimination on the basis of race, color, sex, religion, handicap, familial status, or national origin in real estate transactions. Such ordinances may regulate or prohibit any act, practice, activity, or procedure related, directly or indirectly, to the sale or rental of public or private housing, which affects or may tend to affect the availability or desirability of housing on an equal basis to all persons; may provide that violations constitute a criminal offense; may subject the offender to civil penalties; and may provide that the City may enforce the ordinances by application to the Superior Court Division of the General Court of Justice for appropriate legal and equitable remedies, including, but not limited to, mandatory and prohibitory injunctions and orders of abatement, attorneys' fees, and punitive damages, and the court shall have jurisdiction to grant such remedies.

(b) The Council also may amend any ordinance adopted pursuant to the provisions contained in subsection (a) of this section to ensure that such ordinance remains substantially equivalent to the federal Fair Housing Act (41 U.S.C.S. § 3601, et seq.). Any ordinance enacted pursuant to section 6.151(a) prohibiting discrimination on the basis of familial status shall not apply to housing for older persons as defined in the federal Fair Housing Act (41 U.S.C.S. § 3601, et seq.).

"Section 6.152. **Exemptions.** Any ordinance enacted pursuant to this Article may provide for exemption from its coverage:

(1) The rental of a housing accommodation in a building containing accommodations for not more than four families living independently of each other if the lessor or a member of his family resides in one of those accommodations.

(2) The rental of a room or rooms in a housing accommodation by an individual if he or a member of his family resides there.

(3) With respect to discrimination based on sex, the rental or leasing of housing accommodations in single-sex dormitory property.

(4) With respect to discrimination based on religion to housing accommodations owned and operated for other than a commercial purpose by a religious organization, association, or society, or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society, the sale, rental, or occupancy of such housing accommodation being limited or preference being given to persons of the same religion, unless membership in such religion is restricted because of race, color, national origin, or sex.

(5) Any person, otherwise subject to its provisions, who adopts and carries out a plan to eliminate present effects of past discriminatory practices or to assure equal opportunity in real estate transactions, if the plan is part of a conciliation agreement entered into by that person under the provisions of the ordinance.

"Section 6.153. **Enforcement.** The Council may create or designate a committee to assume the duty and responsibility of enforcing ordinances adopted pursuant to this article. Such committee may be granted any authority deemed necessary by the Council for the proper enforcement of any fair housing ordinance, including, but not limited to, the power to:

(1) Promulgate rules for the receipt, initiation, investigation, and conciliation of complaints of violations of the ordinance.

(2) Require answers to interrogatories, the production of documents and things, and the entry upon land and premises in the possession of a party to a complaint alleging a violation of the ordinance; compel the attendance of witnesses at hearings, administer oaths, and examine witnesses under oath or affirmation.

(3) Apply to the Superior Court of the General Court of Justice, upon the failure of any person to respond to or comply with a lawful interrogatory, request for production of documents and things, request to enter upon land and premises, or subpoena, for an order requiring such person to respond or comply.

(4) Upon finding reasonable cause to believe that a violation of the ordinance has occurred, to petition the General Court of Justice for appropriate civil relief on behalf of the aggrieved person or persons.

"Section 6.154. **Complaints and Other Records.** The Council may provide that neither complaints filed with any committee pursuant to the ordinance nor the results of the committee's investigations, discovery, or attempts at conciliation, in whatever form prepared and preserved, shall be subject to inspection, examination, or copying under the provisions of what is now Chapter 132 of the General Statutes.

"Section 6.155. **Committee Meetings.** The Council may provide that the statutory provisions relating to meetings of governmental bodies, presently embodied in Article 33C of Chapter 143 of the General Statutes, shall not apply to the activity of any committee authorized to enforce the ordinance, to the extent that said committee is receiving a complaint or conducting an investigation, discovery, or conciliation pertaining to a complaint filed pursuant to the ordinance.

"Secs. 6.156--6.182. Reserved.

"ARTICLE VIII. ZONING REGULATION.

"Section 6.183. **Amendments to Zoning Ordinances.** As a part of, and not in limitation of, the powers granted by general laws to enact amendments to zoning ordinances, whenever the Council is petitioned to enact an amendment changing the zoning of a particular area, it shall have and may exercise the power to amend by changing the existing zoning classification of the area covered by the petition, or any part or parts thereof, to the classification requested or to a higher classification or classifications, without the necessity of withdrawal or modification of the petition; provided that notices of hearings on such amendments shall inform the public that such action may be taken. If the Council desires to exercise the power granted herein,

it shall, for the purposes of this section, provide by ordinance for the classification of zoning districts from highest to lowest classification.

"Section 6.184. **Zoning Board of Adjustment.** (a) Members shall be appointed for a term of three years, and no member shall serve more than two full consecutive terms. The board of adjustment shall have and exercise all of the powers, duties, and functions enumerated in G.S. 160A-388; provided, however, that a majority vote of the members of the board shall be necessary to reverse any order, requirement, decision or determination of any administrative official charged with enforcement of the zoning ordinance or to decide in favor of the applicant any matter upon which it is required to pass under any ordinance or to effect any variation from the provisions of the ordinance.

(b) The board of adjustment shall have the power, upon an appeal filed with it by the owner of the property, to vary or modify the regulations of the zoning ordinance, as they apply to a particular piece of property, in accordance with G.S. 160A-388(d). Where such relief is granted, the board may impose reasonable and appropriate conditions and safeguards for the protection of the public interest and of neighboring properties.

"Secs. 6.185--6.201 Reserved.

"ARTICLE IX. SUBDIVISION REGULATION.

"Section 6.202. **Recording of Plats.** No one shall file or record in the Mecklenburg County Register of Deeds a plat of a subdivision of land located within the City's territorial jurisdiction without the approval of the Charlotte-Mecklenburg Planning Commission as required by this Article. The filing or recording of a plat of a subdivision without the approval of the Charlotte-Mecklenburg Planning Commission, as required by this Article, shall be null and void.

"Section 6.203. **Acceptance of and Improvements in Unapproved Streets.** The City shall not accept for maintenance, lay out, open, improve, grade, pave, or light any street or authorize the laying of water mains, sewer connections, or other facilities or utilities in any street within its territorial jurisdiction, (i) unless such street shall have been accepted or opened as, or shall have otherwise received the legal status of a public street prior to the said attachment of the City's subdivision jurisdiction, or (ii) unless such street corresponds in its location and lines with a street shown on a subdivision plat approved by the Charlotte-Mecklenburg Planning Commission, or (iii) unless such street be accepted as a public street by the City Manager.

"Section 6.204. **Approval of Plats.** The City Council may enact an ordinance providing that no plat of a subdivision of land lying within the corporate limits of the City of Charlotte or within the perimeter area shall be filed or recorded until it shall have been submitted to and approved by the Charlotte-Mecklenburg Planning Commission in accordance with regulations adopted under authority of this Article and such approval entered in writing on the plat by the Secretary of the Commission.

"Section 6.205. **Change or Modification of Street Names.** The Charlotte Department of Transportation may hear and approve requests to change or modify street names within the City of Charlotte. Any person dissatisfied with a decision of the Department may appeal to the City Council. In the event of an appeal, the City

Council may affirm, modify, or overturn the decision of the department. The decision of the City Council on appeal shall be final.

"Secs. 6.206--6.220. Reserved.

"ARTICLE X. TREES.

"Section 6.221. **Removal, Replacement, and Preservation of Trees.** The Council may adopt ordinances, only after holding public hearings, to regulate the removal of trees from public and private property within the City in order to preserve, protect, and enhance one of the most valuable natural resources of the community and to protect the health, safety and welfare of its citizens.

"CHAPTER 7.

"CITY SERVICES AND FACILITIES.

"ARTICLE I. IN GENERAL.

"Secs. 7.01--7.20. Reserved.

"ARTICLE II. WATER AND SEWER.

"Section 7.21. **Remedies for Collection of Charges.** In addition to the remedies provided by general law for the collection of charges for water and sewerage services, both within and without the corporate limits, if any such charge is not paid within 10 days after it becomes due, the same shall become a lien upon the property served or in connection with which the service or facility is used and said shall have the same priority as the lien for unpaid taxes and may be collected in the same manner as taxes upon real property. The Council may also require the payment of reasonable deposits by owners or tenants as a condition precedent to the furnishing of water or sewerage services, or both. Such deposits may be retained by the City as assurance for the payment of charges and may be refunded, without interest, upon such terms and conditions as the Council may establish.

"Section 7.22. **Dedication of Water and Sewer Lines.** Should any person, firm, or corporation connect any privately owned water or sewer line or lines without first dedicating, giving, granting, and conveying same to the City, the act of connecting shall be deemed a dedication, gift, grant, and conveyance of such lines to the City, and the City may accept same or may order the disconnection of such lines.

"Secs. 7.23--7.40. Reserved.

"ARTICLE III. REFUSE DISPOSAL.

"Section 7.41. **Disposition of Disposal Sites.** The Council may in its discretion lease or sell, at private sale, any lands now or hereafter owned or acquired by the City, to any person, firm, or corporation contracting with the City for disposal of municipally collected refuse, for use as a plant site or sites, upon such terms and considerations as the Council may prescribe.

"Secs. 7.42--7.70. Reserved.

"ARTICLE IV. SPAY/NEUTER CLINIC AND DIFFERENTIAL LICENSE TAX.

"Section 7.71. **Spay/Neuter Clinic.** The City may establish, equip, operate and maintain a spay/neuter clinic for cats and dogs, employ personnel for this clinic and appropriate and expend tax and nontax funds, including property taxes, for those purposes. In lieu of the City itself operating the spay/neuter clinic, the City is further authorized to contract with any individual, corporation, nonprofit corporation,

governmental body, or any other group for the purpose of operating a spay/neuter clinic, or for providing spay/neuter services for dogs and cats within the City. The City may appropriate and expend tax and nontax funds, including property taxes, for these purposes.

"Section 7.72. **Differential Licensing Tax.** The City may levy an annual differential license tax on the privilege of keeping a dog or cat within the City. The Council may levy a lower annual license tax for spayed or neutered dogs and cats than for nonspayed and nonneutered dogs and cats within the City.

"Secs. 7.73--7.80. Reserved.

"ARTICLE V. EMINENT DOMAIN.

"Section 7.81. **Powers and Procedures.** (a) Notwithstanding the provisions of G.S. 40A-1, in the exercise of its authority of eminent domain for the acquisition of property to be used for streets and highways, water supply and distribution systems, sewage collection and disposal systems, and airports, the City is hereby authorized to use the procedure and authority prescribed in Article 9 of Chapter 136 of the General Statutes, as now or hereafter amended; provided further, that whenever therein any reference is made to the State of North Carolina or any agency thereof, such reference shall be deemed to include the City, and whenever therein any reference is made to any official of the state of North Carolina, such reference shall be deemed to include the City Manager; provided further that nothing herein shall be construed to enlarge the power of the City to condemn property already devoted to public use.

(b) The City shall have the power of eminent domain to acquire property to provide housing for low- and moderate-income persons but only to acquire: (i) vacant structures Boarded up as a result of housing code violations; (ii) structures that have been found to contain housing code violations that the property owner has failed or refused to correct within a reasonable time; and (iii) vacant properties rendered vacant as a result of a housing code enforcement demolition order. Provided that in the exercise of its authority of eminent domain to acquire property to provide housing for low- and moderate-income persons, the City shall follow the procedures prescribed in Chapter 40A of the General Statutes. Vesting of title to the property taken under this subsection, and right to possession shall occur pursuant to the provisions of G.S. 40A-42(b). The City may not file an eminent domain action to acquire property described in clauses (i) or (ii) of this subsection until the property owner has had 150 days from the date of the order finding violations of the City housing code to correct the violations. The Council must adopt a plan to use condemned property for low- or moderate-income housing prior to exercising the powers under this subsection.

"Secs 7.82--7.103. Reserved.

"ARTICLE VI. LOCAL IMPROVEMENTS.

"Section 7.104. **Alternative Procedures.** (a) Upon receipt of a petition from an owner or owners representing fifty percent (50%) or less of the total street frontage where fifty percent (50%) or more of the total street frontage is in one ownership, the Council may order the making of any local improvement and assess the cost against

the abutting property in the same manner and following the same procedures as set forth in the general laws of North Carolina for the making of special assessments against property benefitted by local improvements.

(b) The Council may order the making of any local improvements and assess the cost thereof, except the City's portion, against only a limited number of abutting properties upon receipt of a petition from all such property owners asking that the improvement be made and that the total amount to be assessed for the improvement be assessed only against their properties.

(c) No petition shall be necessary for the making of any local improvements for which the City bears the entire cost without assessment.

(d) If, in the judgment of the Council, the abutting property to be assessed will be benefitted in an amount at least equal to the assessment, and such judgment shall be conclusive, no petition for local improvements shall be necessary and the Council may order the making of any local improvements and assess the cost thereof against abutting properties in the following cases:

(1) Street improvements and/or curb and gutter. When, in the judgment of the Council, any street or part of a street is unsafe; or, the improvement of a street or part of a street not more than three blocks in length is necessary to connect streets already paved; or, the improvement of a street or part of a street is necessary to connect a paved street, or portion thereof, with a paved highway; or, the improvement of a street or part of a street is necessary to provide a paved approach to a railroad or street grade separation or any bridge; or, any street or part of a street should be widened to accommodate present and anticipated volumes of traffic thereon.

(2) Water main improvements. When, in the judgment of the Council, any street or part of a street, or any property within the City, is without a public water supply and can be served, and water service should be provided in the public interest.

(3) Sanitary sewer improvements. When, in the judgment of the Council, any street or part of a street, or any property within the City, is without a public sanitary sewer system and can be served, and sanitary sewer service should be provided in the public interest.

(4) Storm sewer or other surface drainage improvements. When, in the judgment of the Council, any street or part of a street, or any property within the City, is without storm sewer or other surface drainage improvements, and can be served, and storm sewer or other surface drainage should be provided in the public interest.

(5) Sidewalk improvements. When, in the judgment of the Council, any street or part of a street is without sidewalks and sidewalks should be provided in the public interest.

(e) Whenever the Council finds that public interest requires a sidewalk or sidewalks or portion of driveways within the public right-of-way be repaired, the total

cost of such repairs may be assessed against the property abutting the sidewalk or driveway repaired. Before an assessment may be made against abutting property for a sidewalk or driveway repair, at least 30 days' written notice must be given to the abutting property owner personally or by registered or certified mail to his last known address or as shown on the tax records, that he is required to make the designated repairs at his own cost and expense in conformity with the sidewalk standards adopted by the City, and if he shall fail to make such repairs within 30 days after notice served upon him, the City may thereupon make said repairs and assess the cost thereof. Provided, however, if the Council finds that any sidewalk or driveway is in need of immediate repair, the Council may adopt a resolution setting out such finding and directing that such repair be made immediately by the City and that the cost thereof be assessed against the property abutting without notice to the property owner affected.

"Section 7.105. **Planting Strip and Driveway Maintenance.** It shall be the responsibility of the abutting property owner to maintain any property or driveway between the property line and the curb of a paved street.

"Section 7.106. **Corner Lot Exemption.** The Council may determine the amount and applicability of assessment exemptions for corner lots. Provided, exemptions for corner lots shall apply to only one side of each such lot and the amount of the exemption shall not exceed seventy-five percent (75%) of the frontage of that side. If the corner formed by the two intersecting streets is rounded into a curve or is foreshortened for the purpose of providing sight distance or for any other purpose of construction, the frontage for assessment purposes shall be calculated to the midpoint of the curve or foreshortened corner.

"Section 7.107. **Exchange of Property.** In connection with street widening, the City may purchase with any available funds, property immediately adjacent to property located on a street corner; provided, in the opinion of the Council, the value of such inside lands does not exceed the value of the corner property needed for street-widening purposes, and may convey and transfer such inside lands to the owner of the corner property in exchange for property needed for street-widening purposes, at private sale.

"Section 7.108. **Water and Sewer Facilities; Additional Authority.** In the construction, reconstruction, or extension of the water and sewerage systems, or either of them in whole or in part, the City shall have, in addition to all other authority now or hereafter granted, the authority to specially assess the costs thereof in accordance with the procedures and authority prescribed for counties by Article 9 of Chapter 153A of the General Statutes, as the same may be amended from time to time.

"ARTICLE VII. UPTOWN DEVELOPMENT PROJECTS.

"Section 7.109. **Public-Private Development Projects.** (a) Definition. In this Article, public-private development projects means a capital project located: (i) in the City's central business district, as defined by the Council; (ii) in or along a major transportation corridor; or (iii) in a development zone designated pursuant to G.S. 105-129.3A; comprising one or more buildings or other improvements and including

both public and private facilities. By way of illustration but not limitation, such a project might include a single building comprising a publicly owned parking structure and publicly owned convention center and a privately owned hotel or office building.

(b) Authorization. If the Council finds that it is likely to be of significant economic benefit to the area of the City in which the project is located, the City may acquire, construct, own, and operate or participate in the acquisition, construction, ownership, and operation of a public-private development project or of specific facilities within such a project. The City may enter into binding contracts with one or more private developers with respect to acquiring, constructing, owning, or operating such a project. Such a contract shall among other provisions, specify the following:

(1) The property interest of both the City and the developer or developers in the project.

(2) The responsibilities of the City and the developer or developers for construction of the project.

(3) The responsibilities of the City and the developer or developers with respect to financing the project.

(4) The responsibilities of the City and the developer or developers with respect to the operation of the project.

Such a contract may be entered into before the acquisition of any real property necessary to the project.

(c) Property Acquisition. A public-private development project may be constructed on property acquired by the developer or developers or on property directly acquired by the City by any means.

(d) Property Disposition. In connection with a public-private development project, the City may lease or convey interests in property owned by it, including air rights over public facilities, by private negotiation or sale, and Article 12 of Chapter 160A of the General Statutes does not apply to such dispositions.

(e) Construction of the Project. The contract between the City and the developer or developers may provide that the developer or developers shall be responsible for construction of the entire public-private development project. If so, the contract shall include such provisions as the City Council deems sufficient to assure that the public facility or facilities included in the project meet the needs of the City and are constructed at a reasonable price. A project constructed pursuant to this paragraph is not subject to Article 8 of Chapter 143 of the General Statutes as long as City funds constitute not more than fifty percent (50%) of the total costs of the project.

(f) Operation. The City may contract for the operation of any public facility or facilities included in a public-private development project by a person, partnership, firm, or corporation, public or private. Such a contract shall include provisions sufficient to assure that any such facility or facilities are operated for the benefit of the citizens of the City.

(g) Grant Funds. To assist in the financing of its share of a public-private development project, the City may apply for, accept, and expend grant funds from the federal or State governments.

"CHAPTER 8.
"MISCELLANEOUS.
"ARTICLE I. IN GENERAL.
"Secs. 8.01--8.20. Reserved.
"ARTICLE II. SALE OF PROPERTY.

"Section 8.21. **Personal Property.** The City may sell any and all personal property belonging to the City at private sale, and without resorting to public outcry and sale.

"Section 8.22. **Real Property.** (a) Whenever a disposition of an interest in real property is authorized by the City, the instrument conveying such interest may be executed by the Mayor or the Mayor's designee and attested by the City Clerk or Deputy City Clerk, with the corporate seal of the City attached. In the sale of real estate, the City may execute deeds in the usual form and containing full covenants of warranty.

(b) The City may convey interests in real property owned by it by private negotiation or sale, with respect to parcels of property having a fair market value of ten thousand dollars ($10,000) or less, and Article 12 of Chapter 160A of the General Statutes shall not apply to such dispositions. The City Manager may approve such dispositions.

(c) The City may, in addition to other authorized means, convey real property owned by it to persons of low- or moderate-income for residential purposes using the negotiated offer, advertisement, and upset bid process and requirements established by G.S. 160A-269, provided, however, the City may lower the bid deposit requirement to an amount not less than one percent (1%) of an offeror's bid.

(d) When the Council determines that a sale or disposition of property will advance or further any Council-adopted economic development, transportation, urban revitalization, community development, or land-use plan or policy, the City may, in addition to other authorized means, sell, exchange, or transfer the fee or any lesser interest in real property, either by public sale or by negotiated private sale. The City may attach to the transfer and to the interest conveyed such covenants, conditions, or restrictions (or a combination of them) the City deems necessary to further such adopted policies or plans. The consideration received by the City, if any, for such conveyance, may reflect the restricted use of the property resulting from such covenants, conditions, or restrictions. An interest in property pursuant to this subsection may be conveyed only pursuant to resolution of the Council authorizing the conveyance. Notice of the proposed transaction shall be given at least 10 days prior to adoption of the resolution by publication in a newspaper of general circulation, generally describing:

(1) The property involved;
(2) The nature of the interest to be conveyed; and
(3) All of the material terms of the proposed transaction, including any covenants, conditions, or restrictions which may be applicable.

The notice shall give the time and place of the Council meeting where the proposed transaction will be considered and shall announce the Council's intention

to authorize the proposed transaction. Notwithstanding the foregoing, the City may not sell the land or buildings located at 100 Paul Buck Boulevard by private sale.

"Secs. 8.23--8.80. Reserved.

"ARTICLE III. CONTRACTS AND PURCHASES.

"Section 8.81. **Bid Deposits.** The City may, in connection with bids on purchases and contracts to the City, accept as a bid deposit: cash; a cashier's check issued by or certified check drawn on a bank insured by the Federal Deposit Insurance Corporation; a United States money order payable to the City of Charlotte; or a bid bond issued by an insurance company authorized to engage in such business in North Carolina.

"Section 8.82. **Contract Specification Requirements.** The Council may establish minimum Minority and/or Women's Business Enterprise participation (M/WBE) requirements and in that event shall include such requirements in the specifications for City contracts. In addition, in construction and repair contracts under which subcontracts are customarily awarded by that primary contractor, the Council may establish specifications requiring bidders to subcontract a certain designated percentage of the construction and repair work amount; provided, that nothing in the specifications or requirements developed shall be construed to require that the award of subcontracts be made to subcontractors who do not submit the lowest responsible sub-bid and do not meet the bonding requirements otherwise required by law. Notwithstanding the provisions of G.S. 143-129 and G.S. 143-131, the Council may consider a bidder's compliance with specifications containing M/WBE or subcontracting requirements in its award of contracts, and may, in its discretion, refuse to award a contract to a bidder if it determines that the bidder has failed to make a good faith effort to comply with said requirements.

"Section 8.83. **Public Contracts.** G.S. 143-129 as it applies to the City is amended to provide that the City Manager or his designee may waive the requirement for a bid bond or deposit for the purchase of apparatus, supplies, material, or equipment where the successful bidder does not have any past experience of nonperformance with the City. The Council may consider a bid for the purchase of apparatus, supplies, materials, or equipment and award a contract on such bid notwithstanding the fact that the proposal is not accompanied by a bid deposit with the City.

"Section 8.84. **Exemption from Certain Purchasing Requirements.** (a) Because of the:

(1) Highly complex and innovative nature of telecommunications, data processing, and data communications equipment, supplies and services; and

(2) Desirability of a single point of responsibility for the development of contracts for products and services which include in their scope, combinations of design, installation, operation, management, and service and maintenance responsibilities over prolonged periods of time.

In some instances it may be beneficial to the City to award a contract on the basis of factors other than cost alone, including, but not limited to, (i) system design, (ii)

operation experience, (iii) system reliability, (iv) long-term operational costs, (v) compatibility with existing equipment, and (vi) emerging technology. Therefore, notwithstanding the provisions of Article 8 of Chapter 143 of the General Statutes, or any other general, special, or local law, a contract entered into between the City and any person selected as a responsible proposer pursuant to this section may be awarded, negotiated, and entered into in accordance with the following provisions for the award of a contract based upon an evaluation of proposals submitted in response to a request for proposal prepared by or for the City.

(b) This section establishes special procedures for the purchase and lease of telecommunications, data processing and data communications equipment, supplies and services, and applies only to those purchases and leases.

(c) The City shall give notice that it is requesting proposal as follows:

(1) By mailing notice of request for proposals a minimum of 10 days prior to the time specified for opening of said proposal to suppliers represented on the City's current relevant bid list; and

(2) By advertisement at least one week before the time specified for the opening of said proposals in a newspaper having general circulation in the City. The advertisement shall state the time and place where the request for proposals may be had, and the time and place for opening of said proposals, and shall reserve to the City the right to reject any or all such proposals.

All proposals shall be opened in public. Proposal shall be sealed if the invitation to propose so specifies.

(d) The City shall require in its request for proposals that each proposal to be submitted:

(1) Shall include:

a. Information relating to the experience of the proposer on the basis of which said proposer purports to be qualified to carry out all work required by a proposed contract;

b. The ability of the proposer to secure adequate financing;

c. Proposals for project staffing, implementation of work tasks, and the carrying out of all responsibilities required by a proposed contract;

(2) Language clearly identifying and specifying all elements of cost which would become charges to the City, in whichever form, in return for the fulfillment by the proposer of all tasks and responsibilities established by the request for the proposal for the full lifetime of a proposed contract, including, as appropriate, but not limited to, (i) the cost of purchase or lease of equipment, (ii) the cost of design, installation, operation, management, and maintenance of any system, and (iii) the cost of any services performed by proposer; and

(3) Shall include such other information as the City may determine to have a material bearing on its ability to evaluate any proposal in accordance with this section.

The City may prescribe the form and content of such proposal and, in any event, the proposer must submit sufficiently detailed information to permit a fair and equitable evaluation of such proposal. The City may evaluate such proposals based on one or more of the factors set forth above as the City determines to be appropriate.

(e) The City may make a contract award to any responsible proposer selected pursuant to this section based on a determination that the selected proposal is more responsive to the request for proposals and may thereupon negotiate a contract with said proposer for the purchase and/or lease of equipment and performance of the services set forth in the request for proposals and the response thereto. Such determination is conclusive.

"Section 8.85. **Construction, Design, and Operation of Sludge Management Facilities.** (a) Unless a different meaning is required by the context, the following definitions shall apply throughout this section:

(1) "Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, institutional, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility, or any other waste having similar characteristics and effects.

(2) "Sludge management" means purposeful, systematic control of the generation, storage, collection, transport, treatment, processing, recovery, and disposal of sludge.

(3) "Sludge management facility" means land, personnel, and equipment used in sludge management.

(4) "Storage" means the containment of sludge in a manner which does not constitute disposal.

(5) "City" means the City of Charlotte.

(b) To acknowledge the highly complex and innovative nature of sludge management technology for processing sludge, the relatively limited availability of existing and proven proprietary technology involving sludge management facilities, the desirability of a single point of responsibility for the development of facilities, and the economic and technical utility of contracts for sludge management which include in their scope combinations of design, construction, operation, management, and maintenance responsibilities over prolonged periods of time and that in some instances it may be beneficial to the City to award a contract on the basis of factors other than cost alone, including, but not limited to, facility design, operational experience, system reliability, long-term operational costs, compatibility with sludge production facilities, environmental impact, and operation guarantees, this section establishes special procedures for the construction, design, and operation of sludge management facilities. Accordingly, and notwithstanding the provisions of Article 8 of Chapter 143 of the General Statutes, or any general, special, or local law, a contract

entered into between the City and any person pursuant to this section may be awarded in accordance with the following provisions for the award of a contract based upon an evaluation of proposals submitted in response to a request for proposals prepared by or for the City.

The City shall give notice that it is requesting proposals as follows: Proposals shall be invited by advertisement at least one week before the time specified for the opening of said proposals in a newspaper having general circulation in the City. The advertisement shall state the time and place where the request for proposals may be had, and the time and place for opening of the proposals, and shall reserve to the City the right to reject any or all such proposals. All proposals shall be opened in public. Proposals shall be sealed if the invitation to propose so specifies. Nothing in this paragraph limits the City from publicizing the request for proposals by other means or from directly soliciting proposals.

(c) The City shall require in its request for proposals that each proposal to be submitted shall include:

(1) Information relating to the experience of the proposer on the basis of which said proposer purports to be qualified to carry out all work required by a proposed contract; the ability of the proposer to secure adequate financing; and proposals for project staffing, implementation of work tasks, and the carrying out of all responsibilities required by a proposed contract;

(2) A proposal clearly identifying and specifying all elements of cost which would become charges to the City, in whatever form, in return for the fulfillment by the proposer of all tasks and responsibilities established by the request for the proposal for the full lifetime of a proposed contract, including, as appropriate, but not limited to, the cost of planning, design, construction, operation, management, and/or maintenance of any facility; provided, that the City may prescribe the form and content of such proposal and that, in any event, the proposer must submit sufficiently detailed information to permit a fair and equitable evaluation of such proposal; and

(3) Such other information as the City may determine to have a material bearing on its ability to evaluate any proposal in accordance with this section.

(d) Proposals received in response to such request for proposals may be evaluated on the basis of a technical analysis of facility design, operational experience of the technology to be utilized in the proposed facility, system reliability and availability, efficiency, environmental impact and protection, required staffing level during operation, projection of anticipated revenues from the materials produced by the facility, net cost to the City for operation and maintenance of the facility for the duration of time to be established in the request for proposals, and upon such other factors and information as the City determined to have a material bearing on its

ability to evaluate any proposal, which factors were set forth in said request for proposal.

(e) The City may make a contract award to any responsible proposer selected pursuant to this section based upon a determination that the selected proposal is more responsive to the request for proposals and may thereupon negotiate a contract with said proposer for the performance of the services set forth in the request for proposals and the response thereto. Such determination shall be deemed to be conclusive. Notwithstanding other provisions of Article 8 of Chapter 143 of the General Statutes, or any other general, local, or special law, a contract may be negotiated and entered into between a City and any person selected as a responsible proposer hereunder which may provide for, but not be limited to, the following:

(1) A contract, lease, rental, license, permit, or other authorization to design, construct, operate, and maintain such a sludge management facility, upon such terms and conditions for such consideration and for such term or duration, not to exceed 40 years, as may be agreed upon by the City and such person;

(2) Payment by the City of a fee or other charge to such person for acceptance, processing, management, and disposal of sludge;

(3) An obligation on the part of the City to deliver or cause to be delivered to a sludge management facility, guaranteed quantities of sludge; and

(4) The sale, utilization, or disposal of any form of material or residue resulting from the operation of any sludge management facility.

(f) The construction work for any facility or structure which is ancillary to the sludge management facility and which does not involve storage and processing of sludge or the recovery of useful or marketable forms of materials from sludge at the sludge management facility, shall be procured through competitive bidding procedures as described in Article 8 of Chapter 143 of the General Statutes. Such ancillary facilities shall include, but shall not necessarily be limited to, the following: roads, water and sewer lines to the facility limits, transfer stations, scale house, administration buildings, and residue and bypass disposal sites.

"Sec. 8.86. **Award and Approval of Certain Contracts.** The City Manager or the City Manager's duly authorized designee may award, approve, and execute contracts or agreements of any kind or nature on behalf of the City when the amount of such contract or agreement does not exceed fifty thousand dollars ($50,000); provided that the City Council shall have approved a sufficient appropriation in the annual budget for the current fiscal year for the general purpose specified in the contract or agreement. In addition, the City Manager or the City Manager's duly authorized designee may approve or execute amendments to contracts or agreements, including contracts initially approved by the City Council, when the amount in question does not exceed fifty thousand dollars ($50,000). Furthermore, the City Manager or the City Manager's duly authorized designee may award, approve, and execute contracts for the construction and installation of water and sewer lines that will eventually become a part of the City utility system, regardless of the amount, where the

construction and installation is the sole responsibility and is at the sole expense of another person, firm, or corporation.

"Secs. 8.87--8.100. Reserved.

"ARTICLE IV. CONFLICT OF INTEREST.

"Section 8.101. **Penalty.** It shall be unlawful for the Mayor or any member of the Council, or other officer or employee of the City, directly or indirectly, to become an independent contractor for work done by the City, or to become directly or indirectly financially interested in, or receive profits from, any purchase by the City. Any such person or persons violating this provision shall be guilty of a Class 1 misdemeanor.

"Secs. 8.102--8.120. Reserved.

"ARTICLE V. JOINT PERFORMANCE OF FUNCTIONS, ACTIVITIES, AND SERVICES.

"Section 8.121. **Purpose and Power.** For the purpose of enabling the more efficient and/or economical administration and performance of functions, activities, and services, the City of Charlotte and the County of Mecklenburg may, whenever it is deemed in the best interests of their citizens, enter into written agreements for the joint performance of any and all functions, activities, and services which each is now or hereafter authorized to undertake, perform, and carry on. Such joint performance may be carried on through consolidation of existing agencies or departments or through the creation and establishment of new agencies or departments and may include institutions or buildings now existing or hereafter constructed, owned, and operated, either singly or jointly.

"Section 8.122. **Provisions of Agreements.** Such written agreements shall set forth: the functions, activities, and services to be thus jointly carried on; the manner of administration thereof; the manner in which the expenses thereof shall be apportioned; and the manner in which any fees or revenues derived therefrom shall be apportioned. Such agreements may specify the term thereof and they may be terminated by either party thereto upon one-year's written notice to the other party of intention to terminate, and such agreements may be amended from time to time upon the mutual consent of the City and the County. Upon the ratification of such agreements by the governing bodies of the City and the County, they shall be spread upon their respective minutes.

"Section 8.123. **Effect of Agreements.** Whenever any such agreement has been ratified, then the consolidated agency, department, or institution designated or created to carry on such joint performance, shall be vested with all the powers, rights, duties, functions, and jurisdiction pertaining to the function, activity, or service to be jointly performed, theretofore existing or thereafter granted by law and vested in the City, the County, or both, and in the agencies, departments, or institutions so consolidated or created.

"Section 8.124. **Agreements With Other Governmental Agencies.**

The City may enter into similar written agreements as provided hereinabove, with any other governmental agency having similar authority.

"Secs. 8.125--8.130. Reserved.

"ARTICLE VI. LEASE OF PROPERTY.

"Section 8.131. **Generally.** Notwithstanding the provisions of G.S. 160A-272, the Council may, in its discretion, lease City-owned property for such terms and upon such conditions as the Council may determine, including terms of more than 10 years without the necessity of following any procedures other than those required by G.S. 160A-272 for leases of 10 years or less."

Section 2. The purpose of this act is to revise the Charter of the City of Charlotte and to consolidate certain acts concerning the property, affairs, and government of the City. It is intended to continue without interruption those provisions of prior acts which are expressly consolidated into this act, so that all rights and liabilities which have accrued are preserved and may be enforced.

Section 3. This act does not repeal or affect any acts concerning the property, affairs, or government of public schools or any acts validating official actions, proceedings, contracts, or obligations of any kind.

Section 4.(a) The following acts, having served the purposes for which they were enacted or having been consolidated into this act, are expressly repealed:

YEAR	CHAPTER
1965	711
1965	713, Sections 1 and 2 only
1967	216
1967	290
1967	730
1967	740
1967	840
1969	65
1969	133
1969	333
1969	384
1969	916
1971	48
1971	49
1971	92
1971	97
1971	140
1971	414
1971	903, Section 1 only
1973	309
1973	332
1973	432
1973	481
1973	841
1973	901
1973	968
1973	980

1973	1045
1973	1046
1975	58
1975	85
1975	115
1975	424
1977	140
1977	141
1977	1161
1979	390
1979	391
1979	446
1981	55
1981	61
1981	363
1981	365
1981	366
1981	441
1981	1135
1981	1136
1981	1137
1981	1138
1981	1140
1981	1167
1983	71, as to the City of Charlotte only
1983	92
1983	437
1983	954
1983	956
1983	1008
1985	343
1985	345
1985	346
1985	347
1985	370, except for Sections 7, 8, and 9
1985	388
1987	191
1987	344
1987	1026
1989	31
1989	149
1989	170
1989	184
1989	185

1989	220
1993	60
1993	171
1993	196
1993	229, except for Section 2
1993	708
1995	23
1995	170
1995	623

S.L. 1997-45
S.L. 1997-107
S.L. 1997-127
S.L. 1997-264
S.L. 1997-305, Sections 1 and 2 only
S.L. 1999-88
S.L. 1999-99
S.L. 1999-456, Section 46 only.

Section 4.(b) Notwithstanding any other provision of this act, the following act (including any amendment thereto) is not repealed and the provisions of that act remain effective as to the City of Charlotte as if this act had not been enacted:

YEAR	CHAPTER
1993	417.

Section 4.(c) This act does not repeal by implication any local acts otherwise applicable to the City of Charlotte.

Section 5. The Mayor and Council members serving on the date of ratification of this act shall serve until the expiration of their terms or until their successors are elected and qualified.

Section 6. This act does not affect any rights or interests which arose under any provisions repealed by this act.

Section 7. All existing ordinances, resolutions, and other provisions of the City of Charlotte not inconsistent with the provisions of this act shall continue in effect until repealed or amended.

Section 8. No action or proceeding pending on the effective date of this act by or against the City or any of its departments or agencies shall be abated or otherwise affected by this act.

Section 9. Whenever a reference is made in this act to a particular provision of the General Statutes, and such provision is later amended, superseded, or recodified, the reference shall be deemed amended to refer to the amended General Statute, or to the General Statute which most clearly corresponds to the statutory provision which is superseded or recodified.

Section 10. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 1587
Committee Substitute Favorable 6/6/00

Short Title: Seagrove Annexation. (Local)

Sponsors:

Referred to:

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO ANNEX A DESCRIBED AREA TO THE CORPORATE LIMITS OF THE TOWN OF SEAGROVE AND PROVIDE THAT IT SHALL NOT BE CONSIDERED IN CALCULATING THE MAXIMUM AMOUNT OF SATELLITE ANNEXATIONS ALLOWED FOR THAT TOWN.

The General Assembly of North Carolina enacts:

Section 1. The corporate limits of the Town of Seagrove are extended to include so much of the following described area that is not already in the corporate limits:

BEGINNING at a point in the centerline of Seagrove Plank Road (NCSR 2846), said point being located North 22° 19' 01" East 47.40 feet from the intersection of Bennett Farm Road (NCSR 2848) with Seagrove Plank Road (NCSR 2846); thence from said beginning point along the centerline of Seagrove Plank Road as it curves to the left a chord course and distance of North 18° 56' 48" East 294.05 feet and a radius of 2,774.250 feet to a point; thence continuing along the centerline of Seagrove Plank Road North 16° 38' 16" East 236.40 feet to a point, the southwest corner of Gary Callicutt; thence along the southern line of Gary Callicutt South 73° 06' 24" East 404.71 feet, crossing an existing iron pipe at 30.84 feet to an existing iron pipe, the southeast corner of Gary Callicutt; thence along the eastern line of Gary Callicutt North 16° 56' 32" East 164.77 feet to an existing iron pipe in the southern line of Lonnie Blackmon; thence along the southern line of Lonnie Blackmon the following courses and distances: South 72° 58' 13" East 94.81 feet to an existing iron rod and South 84° 11' 03" East 292.94 feet to an existing iron rod, the southeast corner of

Blackmon and the southwest corner of Annie Jorgensen; thence along the southern line of Jorgensen the following courses and distances: South 84° 09' 45" East 1,197.14 feet to an existing angle iron; thence along the eastern line of Jorgensen North 24° 10' 18" East 647.02 feet to an existing iron pipe in the southern line of Cicero Bennett and in a branch; thence along the branch the following courses and distances: South 14° 24' 52" East 29.22 feet, South 88° 51' 24" East 80.18, South 47° 37' 27" East 73.37, South 26° 56' 34" East 50.15, South 70° 29' 42" East 108.61 feet, North 81° 22' 43" East 40.12 feet, South 88° 40' 25" East 64.64 feet, South 74° 13' 02" East 76.80 feet, South 74° 55' 08" East 94.22 feet and South 87° 20' 12" East 88.76 feet to a point in Fork Creek; thence along Fork Creek the following courses and distances: South 33° 17' 42" West 28.98 feet, South 64° 11' 20" West 56.21 feet, South 25° 54' 45" West 130.07 feet, South 14° 43' 37" West 50.58 feet, South 37° 07' 39" West, 152.04 feet, South 17° 19' 01" West 96.18 feet, South 07° 57' 19" East 93.04 feet, South 29° 50' 54" West 57.63 feet, South 88° 37' 18" West 55.27 feet, South 05° 39' 19" West 68.01 feet, South 86° 17' 47" West 43.63 feet, South 48° 33' 01" West 70.01 feet, South 04° 06' 23" East 29.26 feet, South 53° 41' 07" West 30.35 feet, South 08° 52' 52" West 65.70 feet, South 14° 09' 18" East 41.67 feet, South 52° 52' 26" West 38.74 feet, South 31° 45' 35" East 24.64 feet, South 01° 10' 31" West 28.91 feet and South 35° 31' 10" West 6.22 feet to a point in the line of James Graves; thence along the line of James Graves line the following courses and distances: North 87° 59' 58" West 303.80 feet, crossing an existing 36" poplar, to a new iron pipe, South 36° 03' 49" West 387.19 feet to a new iron pipe at stone in fence line and North 82° 23' 58" West 874.21 feet to an existing stone, the northeast corner of Paul Payne (Book 947, Page 22); thence along the northern line of Paul Payne North 82° 24' 57" West 379.97 feet to an existing stone and North 82° 45' 43" West 232.77 feet to an existing stone in the eastern line of Zeb Lindsay; thence along the eastern line of Lindsay North 06° 10' 57" East 206.39 feet to an existing stone; thence along the northern line of Zeb Lindsay in part and the northern line of Paul Payne (Book 879, Page 37) in part North 83° 22' 37" West 606.83 feet, crossing an existing angle iron at 576.09 feet, to the BEGINNING containing 49.178 acres, more or less, all according to a survey for H. Clay Presnell Estate by Steven D. Brown, RLS dated May 14, 1994 designated as Job No. 94024.

Section 2. In calculating the maximum area allowed for satellite corporate limits under G.S. 160A-58.1(b)(5), the entire territory described in Section 1 of this act is excluded.

Section 3. This act becomes effective June 30, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 3

HOUSE BILL 677
Committee Substitute Favorable 4/23/99
Third Edition Engrossed 4/28/99

Short Title: Certain Counties Delinquent Taxes. (Local)

Sponsors:

Referred to:

March 29, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CHEROKEE, GRAHAM, HAYWOOD, JACKSON, MADISON, POLK, AND SWAIN COUNTIES TO REQUIRE THE PAYMENT OF DELINQUENT PROPERTY TAXES BEFORE RECORDING DEEDS CONVEYING PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. Article 2 of Chapter 161 of the General Statutes is amended by adding a new section to read:

"**§ 161-31. Tax certification.**

The board of commissioners of a county may, by resolution, require the register of deeds not to accept any deed for registration unless the county tax collector has certified that no delinquent ad valorem county taxes, ad valorem municipal taxes, or taxes with which the collector is charged are a lien on the property described in the deed."

Section 2. This act applies only to Cherokee, Graham, Haywood, Jackson, Madison, Polk, and Swain Counties.

Section 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 677
Committee Substitute Favorable 4/23/99
Third Edition Engrossed 4/28/99
Proposed Senate Committee Substitute H677-PCS2440-LC

Short Title: Property Tax Changes. (Public)

Sponsors:

Referred to:

March 29, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CHEROKEE, GRAHAM, HAYWOOD, JACKSON, MADISON, POLK, AND SWAIN COUNTIES TO REQUIRE THE PAYMENT OF DELINQUENT PROPERTY TAXES BEFORE RECORDING DEEDS CONVEYING PROPERTY AND TO PROVIDE FOR REDUCED PROPERTY TAX VALUATIONS FOR LOW-INCOME HOUSING.

The General Assembly of North Carolina enacts:

Section 1.(a) Article 2 of Chapter 161 of the General Statutes is amended by adding a new section to read:

"**§ 161-31. Tax certification.**

The board of commissioners of a county may, by resolution, require the register of deeds not to accept any deed for registration unless the county tax collector has certified that no delinquent ad valorem county taxes, ad valorem municipal taxes, or taxes with which the collector is charged are a lien on the property described in the deed."

Section 1.(b) This section applies only to Cherokee, Graham, Haywood, Jackson, Madison, Polk, and Swain Counties.

Section 2. Article 12 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-277.13. Low-income buildings.**

(a) For the purpose of this section, a low-income building is a qualified low-income building as defined in section 42 of the Code that is subject to a restrictive covenant pursuant to section 42 of the Code under which the rents that may be charged tenants of the building are restricted. The term does not include a building exempted from taxation under G.S. 105-278.6.

(b) Low-income buildings are designated a special class of property under Section 2(3) of Article V of the North Carolina Constitution and shall be assessed for taxation in accordance with this section. A low-income building shall be assessed at eighty percent (80%) of its true value as determined in accordance with G.S. 105-283 when it was last appraised under G.S. 105-286 or G.S. 105-287.

(c) When a restrictive covenant pursuant to section 42 of the Code expires, subsection (b) of this section no longer applies and the building shall be assessed at one hundred percent (100%) of its true value for the succeeding taxable year as of January 1 following the expiration."

Section 3. Section 2 of this act is effective for taxes imposed for taxable years beginning on or after July 1, 2001. The remainder of this act is effective when it becomes law.

HOUSE BILL 677:
Property Tax Changes

BILL ANALYSIS

Committee:	Senate Finance	Introduced by:	Rep. Haire
Date:	June 19, 2000	Summary by:	Martha K. Walston and Martha H. Harris
Version:	PCS2440-LC		

SUMMARY: The proposed Senate Committee Substitute converts this local bill to a public bill by adding a Statewide property tax reduction for certain low-income housing. The first part of the bill, which previously received a favorable report in this Committee, is a local provision that authorizes the Counties of Cherokee, Graham, Haywood, Jackson, Polk, and Swain to require the payment of delinquent property taxes before a deed conveying property can be recorded. The bill was received from the House on the crossover deadline, April 29, 1999.

PROPERTY TAX ON LOW INCOME HOUSING: Section 2 of the proposed committee substitute would provide a property tax reduction for low-income buildings for which the owner has agreed to rent restrictions in exchange for federal and State income tax credits. Ad valorem taxes apply to the full market value of taxable property. Under this proposal, a low-income building would be assessed at 80% of market value as long as it is subject to rent restrictions.

Under current law, low-income housing that is owned by a nonprofit, charitable corporation and used for a charitable purpose (providing housing for people with low incomes) is exempt from property tax. Most low-income housing is not owned by nonprofit corporations, however. For-profit entities invest in and own low-income buildings in order to take advantage of federal and State income tax credits. The financial benefits of the tax credits make low-income housing an attractive investment despite the lower rents to which the owners agree in order to receive the credits. Through the income tax credits, the federal government and the State's General Fund subsidize commercial investment in low-income housing. Section 2 of this bill would add a local government subsidy.

This proposal arises from a dispute in Durham County in which the county assessed a low-income building at its market value of $7.5 million. The taxpayer asserted that the property should be appraised at a reduced value of $5.7 million, based on the reduced income from restricted rents, without accounting for the economic value of the tax credits. In a split decision, the Property Tax Commission ruled in favor of Durham County in June 2000. The taxpayer has the right to appeal this decision.

DELINQUENT TAXES: Section 1 of House Bill 677 authorizes the boards of commissioners of the Counties of Cherokee, Graham, Haywood, Jackson, Madison, Polk, and Swain to pass a resolution requiring the register of deeds in each of these counties to refuse to accept any deed for registration if there are delinquent property taxes owing on the property described in the deed or if there are any taxes that are a lien on the property. The county tax collector must first

certify that there are no delinquent taxes. This section becomes effective when the bill becomes law.

The following similar provisions exist for other local governments:

- S.L. 1993-657 requires payment of delinquent taxes in Ashe County before recording deeds.
- S.L. 1987-537 authorizes Mitchell County to direct its register of deeds not to record any deed unless the county tax collector certifies that all delinquent county and municipal taxes have been paid with respect to the property described in the deed. If the deed describes property located in the Town of Spruce Pine, then the deed must be accompanied by a certificate from the tax collector of that Town stating that all municipal taxes with respect to the property have been paid.
- S.L. 1999-326 adds the Town of Bakersville to the certification requirement for Mitchell County.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 1624
Committee Substitute Favorable 6/5/00

Short Title: Streamlined Sales Tax System. (Public)

Sponsors:

Referred to:

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATION OF THE NATIONAL GOVERNORS' ASSOCIATION FOR A STREAMLINED SALES TAX COLLECTION SYSTEM AND TO OTHERWISE IMPROVE COLLECTION.

The General Assembly of North Carolina enacts:

Section 1. Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-164.27. Direct pay certificate.**

(a) Requirements. -- A person who purchases tangible personal property whose tax status cannot be determined at the time of the purchase because of one of the reasons listed below may apply to the Secretary for a direct pay certificate:

(1) The place of business where the property will be used is not known at the time of the purchase and a different tax consequence applies depending on where the property is used.

(2) The manner in which the property will be used is not known at the time of the purchase and one or more of the potential uses is taxable but others are not taxable.

(b) Procedure. -- An application for a direct pay certificate must be made on a form provided by the Secretary and contain the information required by the Secretary. The Secretary may grant the application if the Secretary finds that the applicant complies with the sales and use tax laws and that the applicant's compliance burden will be greatly reduced by use of the certificate.

(c) Effect. -- A direct pay certificate authorizes its holder to purchase any tangible personal property without paying tax to the seller and authorizes the seller to not collect any tax on a sale to the certificate holder. A person who purchases tangible personal property under a direct pay certificate is liable for use tax due on the purchase. The tax is payable when the property is placed in use. A direct pay certificate does not apply to taxes imposed under G.S. 105-164.4(a)(1f) or G.S. 105-164.4(a)(4a).

(d) Revocation. -- A direct pay certificate is valid until the holder returns it to the Secretary or it is revoked by the Secretary. The Secretary may revoke a direct pay certificate if the holder of the certificate does not file a sales and use tax return on time, does not pay sales and use on time, or otherwise fails to comply with the sales and use tax laws."

Section 2. Article 5 of Chapter 105 of the General Statutes is amended by adding the following new sections to read:

"**§ 105-164.43A. Certification of tax collector software and tax collector.**

(a) Software. -- The Secretary may certify a software program as a certified sales tax collection program if the Secretary determines that the program correctly determines all of the following and that the software can generate reports and returns required by the Secretary:

(1) The applicable combined State and local sales and use tax rate for a sale, based on a ship-to address.

(2) Whether or not an item is exempt from tax, based on a uniform product code or another method.

(3) Whether or not an exemption certificate offered by a purchaser is a valid certificate, based on the Department's registry of holders of exemption certificates.

(4) The amount of tax to be remitted for each taxpayer for a reporting period.

(5) Any other issue necessary for the application or calculation of sales and use tax due.

(b) Tax Collector. -- The Secretary may certify an entity as a Certified Sales Tax Collector if the entity meets all of the following requirements:

(1) The entity uses a certified sales tax collection program.

(2) The entity has agreed to update its program upon notification by the Secretary.

(3) The entity integrates its certified sales tax collection program with the system of a retailer for whom the entity collects tax so that the tax due on a sale is determined at the time of the sale.

(4) The entity remits the taxes it collects at the time and in the manner specified by the Secretary.

(5) The entity agrees to file sales and use tax returns on behalf of the retailers for whom it collects tax.

(6) The entity enters into a contract with the Secretary and agrees to comply with all the conditions of the contract.

"**§ 105-164.43B. Contract with Certified Sales Tax Collector.**

The Secretary may contract with a Certified Sales Tax Collector for the collection and remittance of sales and use taxes. The amount a Certified Sales Tax Collector charges under the contract is a cost of collecting the tax and is payable from the amount collected.

"**§ 105-164.43C. Effect of contract.**

(a) Retailer. -- A retailer may contract with a Certified Sales Tax Collector to collect and remit sales and use taxes payable to the State on sales made by the retailer. A retailer who contracts with a Certified Sales Tax Collector is not subject to audit by the State on the transactions it processes using the Collector's certified sales tax collection program. A retailer is subject to audit for transactions not processed by the Certified Sales Tax Collector.

The Department may review a retailer's procedures to determine if the certified sales tax collection program is functioning properly. A retailer who contracts with a Certified Sales Tax Collector is not liable for taxes due on sales processed using the program unless the retailer misrepresented the product it sells. A contract with a Certified Sales Tax Collector is not a factor in determining whether a person has nexus with this State for payment of any tax.

(b) Collector. -- A Certified Sales Tax Collector is the agent of a seller who contracts with the Certified Sales Tax Collector for collection and remittance of sales and use taxes payable to this State. As the seller's agent, the Certified Sales Tax Collector is liable for sales tax due on all sales transactions processed by the Certified Sales Tax Collector unless the seller misrepresented the type of property sold."

Section 3. G.S. 105-88(d) reads as rewritten:

"(d) A loan made by a person who does not comply with this section is not collectible at law ~~in the courts of this State in any case where the person making the loan has failed to pay the tax levied in this section or otherwise failed to comply with the provisions of this section.~~ under G.S. 105-269.13."

Section 4. G.S. 105-164.6A(b)(1) reads as rewritten:

"(b) Mandatory Provisions. -- The agreements must contain the following provisions:

(1) ~~The customer may elect to pay the use tax directly to the Secretary in accordance with law rather than to the seller.~~ The seller is not liable for use tax not paid to it by a customer."

Section 5. G.S. 105-164.13 is amended by adding a new subdivision to read:

"**§ 105-164.13. Retail sales and use tax.**

The sale at retail, the use, storage or consumption in this State of the following tangible personal property is specifically exempted from the tax imposed by this Article:

. . .

(16a) Tangible personal property sold to a person in the State but delivered to a person in another state."

. . . .

Section 6. G.S. 105-164.28 reads as rewritten:

"**§ 105-164.28. Certificate of resale.**

(a) Seller's Responsibility. -- A seller who accepts a certificate of resale from a purchaser of tangible personal property has the burden of proving that the sale was not a retail sale unless all of the following conditions are met:

(1) ~~The seller acted in good faith in accepting the certificate of resale.~~ For a sale made in person, the certificate is signed by the purchaser, states the purchaser's name, address, and registration number, and describes the type of tangible personal property generally sold by the purchaser in the regular course of business.

(2) ~~The certificate is in the form required by the Secretary.~~ For a sale made in person, the purchaser is engaged in the business of selling tangible personal property of the type sold.

(3) ~~The certificate is signed by the purchaser, states the purchaser's name, address, and registration number, and describes the type of tangible personal property generally sold by the purchaser in the regular course of business.~~ For a sale made over the Internet or by other remote means, the sales tax registration number given by the purchaser matches the number on the Department's registry.

~~(4) The purchaser is licensed under this Article or under the law of another taxing jurisdiction.~~

~~(5) The purchaser is engaged in the business of selling tangible personal property of the type sold.~~

(b) Liabilities. -- A purchaser who does not resell property purchased under a certificate of resale is liable for any tax subsequently determined to be due on the sale. A seller of property sold under a certificate of resale is jointly liable with the purchaser of the property for any tax subsequently determined to be due on the sale only if the Secretary proves that the sale was a retail sale."

Section 7. G.S. 105-236(5a) reads as rewritten:

"(5a) Misuse of Exemption ~~Certificate of Resale.~~ Certificate. -- For misuse of ~~a certificate of resale~~ an exemption certificate by a purchaser, the Secretary shall assess a penalty equal to two hundred fifty dollars ($250.00). An exemption certificate is a certificate issued by the Secretary that authorizes a retailer to sell tangible personal property to the holder of the certificate and either collect tax at a preferential rate or not collect tax on the sale. Examples of an exemption certificate include a certificate of resale, a direct pay certificate, and a farmer's certificate."

Section 8. G.S. 105-259(b) is amended by adding a new subdivision to read:

"(b) Disclosure Prohibited. -- An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

. . .

(25) To provide public access to a database containing the names of retailers who are registered to collect sales and use taxes under Article 5 of this Chapter."

Section 9. Article 9 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-269.13. Debts not collectible under North Carolina law.**

(a) Debts Not Collectible. -- The following debts are not collectible and are not subject to execution under Article 28 of Chapter 1 of the General Statutes or any other provision of law:

(1) A loan made by a person who does not comply with G.S. 105-88.

(2) A debt owed to a retailer described in subsection (b) of this section as the result of the purchase of tangible personal property.

(b) Retailer. -- A debt owed to a retailer is subject to this section if all of the following applies to the retailer:

(1) The retailer meets one or more of the conditions in G.S. 105-164.8(b).

(2) The retailer is not registered to collect the use tax due under Article 5 of this Chapter on its sales delivered to an address in North Carolina.

(3) The retailer reported gross sales of at least five million dollars ($5,000,000) on its most recent federal income tax return."

Section 10. G.S. 105-269.14 is repealed.

Section 11. G.S. 105-164.16(d) reads as rewritten:

"(d) Use Tax on Out-of-State Purchases. -- ~~Use tax payable by~~ Notwithstanding subsection (b), an individual who purchases tangible personal property outside the State for a nonbusiness purpose ~~is due~~ shall file a use tax return on an annual basis. ~~For an individual who is not required to file an individual income tax return under Part 2 of Article 4 of this Chapter, the~~ The annual reporting period ends on the last day of the calendar ~~year and a use tax return is due by the following April 15. For an individual who is required to file an individual income tax return, the annual reporting period ends on the last day of the individual's income tax year, and the use tax must be paid on the income tax return as provided in G.S. 105-269.14.~~ year. The return is due by the due date, including any approved extensions, for filing the individual's income tax return."

Section 12. G.S. 105-466(c) reads as rewritten:

"(c) Collection of the tax, and liability therefor, shall begin and continue only on and after the first day of ~~a calendar month~~ the month of either January or July, as set by the board of county commissioners in the resolution levying the ~~tax, which shall in no case be~~ tax. In no event may the tax be imposed, or the tax rate changed, earlier than the first day of the second succeeding calendar month after the date of the adoption of the resolution. The county must give the Secretary at least 90 days advance notice of a new tax levy or tax rate change."

Section 13. Chapter 1096 of the 1967 Session Laws is amended by adding a new section to read:

"Section 10.3. Mecklenburg County must give the Secretary of Revenue at least 90 days advance notice of any tax rate change under this act. Any tax rate change under this act must become effective on the first day of the month of either January or July, as set by the board of county commissioners in the resolution levying the tax."

Section 14. G.S. 20-7(b1) reads as rewritten:

"(b1) Application. -- To obtain a drivers license from the Division, a person must complete an application form provided by the Division, present at least two forms of identification approved by the Commissioner, be a resident of this State, and demonstrate his or her physical and mental ability to drive safely a motor vehicle included in the class of license for which the person has applied. The Division may copy the identification presented or hold it for a brief period of time to verify its authenticity. To obtain an endorsement, a person must demonstrate his or her physical and mental ability to drive safely the type of motor vehicle for which the endorsement is required.

The application form must request all of the following ~~information:~~ information, and it must contain the disclosures concerning the request for an applicant's social security number required by section 7 of the federal Privacy Act of 1974, Pub. L. No. 93-579:

(1) The applicant's full name.

(2) The applicant's mailing address and residence address.

(3) A physical description of the applicant, including the applicant's sex, height, eye color, and hair color.

(4) The applicant's date of birth.

(5) The applicant's social security number. The Division shall not issue a license to an applicant who fails to provide the applicant's social security number. ~~The applicant's social security number shall not be printed on the license and may be released only to the Department of Health and Human Services, Child Support Enforcement Program, upon its request and for the purpose of establishing paternity or child support, or enforcing a child support order.~~

(6) The applicant's signature.

~~The application form must also contain the disclosures concerning the request for an applicant's social security number required by section 7 of the federal Privacy Act of 1974, Pub. L. No. 93-579.~~

(b2) Disclosure of Social Security Number. -- The social security number of an applicant is not a public record. The Division may not disclose an applicant's social security number except as allowed under federal law. A violation of the disclosure restrictions is punishable as provided in 42 U.S.C. § 408, and amendments to that law.

In accordance with 42 U.S.C. 405 and 42 U.S.C. 666, and amendments thereto, the Division may disclose a social security number obtained under ~~this subsection~~ subsection (b1) of this section only as follows:

(1) ~~for~~ For the purpose of administering the drivers license ~~laws or to~~ laws.

(2) To the Department of Health and Human Services, Child Support Enforcement Program for the purpose of ~~assist the State Child Support Enforcement Program in~~ establishing paternity or ~~establishing~~ child support or enforcing a child support order. ~~and may not disclose the social security number for any other purpose. The social security number of an applicant for a license or of a licensed driver is therefore not a public record. A violation of the disclosure restrictions is punishable as provided in 42 U.S.C. 408, and amendments thereto.~~

(3) To the Department of Revenue for the purpose of verifying taxpayer identity."

Section 15. G.S. 20-7(n)(7) reads as rewritten:

"(n) Format. -- A drivers license issued by the Division must be tamperproof and must contain all of the following information:

. . .

(7) ~~The license holder's social security number or another~~ An identifying number for the license holder assigned by the Division. The identifying number may not be the license holder's social security number."

. . . .

Section 16. Section 5.(a) of Chapter 341 of the 1999 Session Laws reads as rewritten:

"Section 5.(a) The Secretary of Revenue shall contract during the 1999-2001 fiscal biennium for the collection of delinquent tax debts owed by nonresidents and foreign entities. To implement this section, the Secretary may draw funds for the 1999-2000 fiscal year from net collections that would otherwise be credited to the General Fund under G.S. 105-269.14, enacted by Section 2 of this act. For the 2000-2001 fiscal year, the Secretary may retain the costs of implementing this section from the amounts collected pursuant to the contracts authorized by this section. The Secretary of Revenue shall report annually to the Revenue Laws Study Committee on its collections pursuant to this contract during the biennium."

Section 17. Section 6 of Chapter 341 of the 1999 Session Laws reads as rewritten:

"Section 6. The Department of Revenue shall conduct a study to identify and evaluate proposals for more efficient collection of taxes, including using electronic commerce and other technology to increase efficiency. The study shall include an analysis of the most efficient tax collection methods used in other states. The State Controller shall cooperate with the Department of Revenue in this study. The Department shall report the results of its study, including findings, recommendations,

and estimated revenue gains of each recommendation, to the Revenue Laws Study Committee by May 1, 2000. To implement this section, the Secretary of Revenue may draw up to fifty thousand dollars ($50,000) for the 1999-2000 fiscal year from net collections that would otherwise be credited to the General Fund under G.S. 105-269.14, enacted by Section 2 of this act. To implement the recommendations of this study, the Secretary may enter into a performance based contract and may draw up to five hundred thousand dollars ($500,000) for the 2000-2001 fiscal year from the revenue collected pursuant to Section 5 of this act to obtain assistance in developing a request for proposal for the performance based contract."

Section 18. Section 7 of this act becomes effective January 1, 2001. Sections 10 and 11 of this act become effective for taxable years beginning on or after January 1, 2003. The remainder of this act is effective when it becomes law.

FISCAL ANALYSIS MEMORANDUM

DATE: June 27, 2000

TO: House Finance Committee
FROM: Dave Crotts
Fiscal Research Division
RE: HB 1624 (With Senate Finance Amendment)
Streamlined Sales Tax System

FISCAL IMPACT

Yes (x) **No ( )** **No Estimate Available (x)**

GENERAL FUND REVENUE (STATE AND LOCAL): See "Assumptions and Methodology" section.
PRINCIPAL DEPARTMENT AFFECTED: The sales and use tax is collected by the Department of Revenue.
EFFECTIVE DATE: The sales tax exemption certificate provision becomes effective January 1, 2001. The remainder of the bill becomes effective when it becomes law.

ISSUE BACKGROUND: The objective of the proposal is to assist in the implementation of a system to simplify and streamline the sales and use tax collection system for remote and in-state retailers. This would be accomplished by shifting sales tax administration to a technology-oriented business model where the primary responsibility for calculating, collecting, reporting, and remitting the use tax lies with a "Certified Sales Tax Collector" instead of the remote retailer. The State would reimburse the Collector for the costs of integrating the system with a vendor's system and for operating the system. The costs of the system would be funded from the receipts collected and could be recovered through a flat transaction fee, a percentage rate, or some combination.

To participate in the program the Collector must use a certified software program to determine the state and local tax due on a transaction. The participating retailer will not be subject to state audit on the transactions it processes using the Collector's software. Finally, a contract with a Collector is not a factor in establishing nexus for state tax purposes.
EXPLANATION OF PROPOSAL: (1) Eliminates the "good faith" requirement when accepting an exemption certificate from a purchaser on a sale made over the Internet or by other remote means.

(2) Codifies a long-standing practice of the Department of Revenue to issue "direct pay certificates" to a person who is unsure how the property purchased should be taxed at the time of the acquisition.

(3) Provides that the penalty for misusing an exemption certificate applies not only to a resale certificate but also to a direct pay certificate and a farmer's certificate.

(4) Establishes a uniform sourcing rule that calculates tax due based on a "ship-to address".

(5) Provides that the customer of a retailer who takes part in the new system must pay the sales and use tax on the item purchased.

(6) Provides that local sales tax rate changes may be made no more than twice a year and at least 90 days notice must be given to the Department before a rate change can be made.

(7) Prohibits the use of state courts in North Carolina for debts owed to a retailer who is required to collect use tax for the State on a mail-order transaction but refuses to do so. The provision would apply only to retailers who report gross sales of at least $5 million on the most recent federal income tax return.

(8) Allows the Division of Motor Vehicles to disclose a social security number to the Department of Revenue for the purpose of verifying a taxpayer's identification.

(9) Provides funding for contracts for the collection of delinquent tax debts owed by nonresidents and foreign entities. Funds are provided by allowing the Secretary of Revenue to apply the amounts collected under the contract to the cost of the contract.

(10) Allows the Secretary of Revenue to retain as much as needed to develop a request for proposal for a more automated tax collection system. The earmarking shall come from the amounts derived during the 2000-01 fiscal year from the collection of delinquent debts owed by nonresidents and foreign entities.

(11) Requires certified sales tax collector to be bonded or have an irrevocable letter of credit in an amount set by the Secretary of Revenue.

(12) Provides that Department of Revenue may audit a retailer participating in steamlined sales tax system in the case of fraud.

ASSUMPTIONS AND METHODOLOGY: The provisions in the proposal represent implementation steps to achieving the objective of a simplified system of collecting sales and use taxes from remote and in-state retailers. Over the long-term a number of other actions will need to take place in North Carolina and other states to simplify the sales and use tax. Some examples include the development of common product definitions, local tax rate uniformity (numerous rates in other states), product return policies under the new system, joint audit procedures, and state/local tax exemption consistency. Thus, the current proposal is just the first step in a lengthy process.

A recent study by the Center for Business and Economic Research at the University of Tennessee estimates that by calendar year 2003 the incremental state and local revenue loss on e-commerce transactions would be $238 million. If the current revenue losses on catalog sales and e-commerce purchases are included, the maximum state and local revenue gain from the full implementation of the new system would be over $400 million by 2003.

Vaid

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1624

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H1624-ARB-6.24 Page 1 of __

Date_____,2000

Comm. Sub. [yes]
Amends Title []
Second Edition

Senator_____

moves to amend the bill on page 3, line 3, by adding the following immediately before the word "The": A Certified Sales Tax Collector must file with the Secretary a bond or an irrevocable letter of credit in the amount set by the Secretary. A bond must be conditioned upon compliance with the contract, be payable to the State, and be in the form required by the Secretary.";

and on page 3, line 9, by deleting "A" and substituting "In the absence of fraud, a";

and on page 3, lines 35 through 44, read as rewritten:

"Section 5. G.S. 105-164.13(14a) is recodified as G.S. 105-164.13(33a) and reads as rewritten:

'(33a) ~~Printed material which is sold by a printer~~ Tangible personal property sold by a retailer to a purchaser within or without this State, when ~~such printed material~~ the property is delivered in this State to a common carrier or to the United States Postal Service for delivery to the purchaser or the purchaser's designees outside this ~~State, if~~ State and the purchaser does not ~~thereafter~~ subsequently use the ~~printed material~~ property in this State.'";

and on page 5, lines 22 and 23, by adding the following new subsection between those lines to read:

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1624

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

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"(c) Assignment. -- An assignment to a person of a debt listed in subsection (a) of this section is subject to the collection restrictions imposed by this section.";

and on page 8, lines 6 through 9, by rewriting the lines to read: "this study, the Secretary may enter into a performance based contract and may withhold from the revenue collected pursuant to Section 5 of this act the amount needed to obtain assistance in developing a request for proposal for the performance based contract.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1542

Short Title: Video Poker Machines Illegal. (Public)

Sponsors: Senators Wellons; and Carpenter.

Referred to: Finance.

May 30, 2000

A BILL TO BE ENTITLED

AN ACT TO MAKE POSSESSION OF MORE THAN THREE VIDEO POKER MACHINES ON ONE PREMISE ILLEGAL IN NORTH CAROLINA AND TO IMPOSE A PRIVILEGE TAX ON ALL VIDEO POKER MACHINES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-306 reads as rewritten:

"**§ 14-306. Slot machine or device defined.**

(a) Any machine, apparatus or device is a slot machine or device within the provisions of G.S. 14-296 through 14-309, if it is one that is adapted, or may be readily converted into one that is adapted, for use in such a way that, as a result of the insertion of any piece of money or coin or other object, such machine or device is caused to operate or may be operated in such manner that the user may receive or become entitled to receive any piece of money, credit, allowance or thing of value, or any check, slug, token or memorandum, whether of value or otherwise, or which may be exchanged for any money, credit, allowance or any thing of value, or which may be given in trade, or the user may secure additional chances or rights to use such machine, apparatus or device; or any other machine or device designed and manufactured primarily for use in connection with gambling and which machine or device is classified by the United States as requiring a federal gaming device tax stamp under applicable provisions of the Internal Revenue Code. This definition is intended to embrace all slot machines and similar devices except slot machines in which is kept any article to be purchased by depositing any coin or thing of value, and for which may be had any article of merchandise which makes the same return or returns of equal value each and every time it is operated, or any machine wherein

may be seen any pictures or heard any music by depositing therein any coin or thing of value, or any slot weighing machine or any machine for making stencils by the use of contrivances operated by depositing in the machine any coin or thing of value, or any lock operated by slot wherein money or thing of value is to be deposited, where such slot machines make the same return or returns of equal value each and every time the same is operated and does not at any time it is operated offer the user or operator any additional money, credit, allowance, or thing of value, or check, slug, token or memorandum, whether of value or otherwise, which may be exchanged for money, credit, allowance or thing of value or which may be given in trade or by which the user may secure additional chances or rights to use such machine, apparatus, or device, or in the playing of which the operator does not have a chance to make varying scores or tallies.

(b) The definition contained in ~~the first paragraph~~ subsection (a) of this section and G.S. 14-296, 14-301, 14-302, and 14-305 does not include coin-operated machines, video games, and devices used for amusement. Included within this exception are pinball machines, video games, and other mechanical devices that involve the use of skill or dexterity to make varying scores or tallies and which, in actual operation, limit to eight the number of accumulated credits or replays that may be played at one time and which may award free replays or paper coupons that may be exchanged for prizes or merchandise with a value not exceeding ten dollars ($10.00), but may not be exchanged or converted to money."

Section 2. Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-306.1. Types of machines and devices prohibited by law; penalties.**

(a) It shall be unlawful for any person to keep on his premises or operate or permit to be kept on his premises more than three video games with a free play feature operated by a slot in which is deposited a coin or thing of value, or other device operated by a slot in which is deposited a coin or thing of value for the play of any form of card game for amusement and involving the use of skill or dexterity or machines that display different pictures, words, or symbols, at different plays or different numbers, whether in words or figures or, which deposit tokens, paper tickets, markers, or coins at regular intervals or in varying numbers to the player or in the machine, but the provisions of this section do not extend to coin-operated nonpayout pin tables, in-line pin games, or to automatic weighing, measuring, musical, and vending machines which are constructed to give a certain uniform and fair return in value for each coin deposited and in which there is no element of chance.

(b) Any person violating the provisions of this section is guilty of a Class 1 misdemeanor and, upon conviction, shall be fined not less than one thousand dollars ($1,000).

A second or subsequent violation of this section is a Class I felony.

A person violating the provisions of this section involving the operation of having caused the operation of 10 or more machines prohibited by this act shall be guilty of a Class G felony.

In addition to any other punishment imposed, the violator shall be, as a condition of probation, prohibited from possessing any machine described in subsection (a) of this section for a period of one year."

Section 3. Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-306.2. Seizure and sale of unlawful machines.**

Any machine involved in a violation of G.S. 14-306 or of subsection (a) of G.S. 14-306.1 shall be seized by any law enforcement officer using the procedure set forth in G.S. 75D-5(f) and the proceeds of any sale shall be returned to the law enforcement agency effectuating the seizure."

Section 4. Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-306.3. Privilege tax on video poker machines.**

(a) Every person, firm, or corporation that is engaged in the operation of a machine, the number of which is limited per location, as described in G.S. 14-306.1(a), shall apply for and procure from the Secretary of Revenue a State license for the privilege of operating those machines and shall pay for each machine a tax in the amount of one hundred dollars ($100.00) per year.

(b) The tax imposed by this section does not apply to machines other than those limited by G.S. 14-306.1.

(c) The tax imposed by this section shall be imposed as a State license tax for the privilege of operating the taxed machines, and nothing in this section shall be construed to relieve any person, firm, or corporation from the payment of any other tax or fee required by law.

(d) A separate State license shall be required for each location at which a machine described in G.S. 14-306.1(a) is located.

(e) The tax imposed by this section shall be paid to the Secretary of Revenue, or to one of the Secretary's deputies, shall be due and payable within thirty 30 days after the licensed machines are obtained, whether purchased or leased, and placed in the location, and are due annually, thereafter, on the first day of July of each year and after that date shall be deemed delinquent, and subject to all the remedies available and the penalties imposed for the payment of delinquent State license and privilege taxes.

(f) The Secretary of Revenue shall transfer, quarterly, the proceeds from the collection of the tax imposed by this section, to the sheriff of the county from which the tax was derived for use in enforcing the provisions of this Article."

Section 5. This act becomes effective December 1, 2000, and the taxes added in Section 4 of this act become effective January 1, 2001.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 1542
Proposed Committee Substitute S1542-PCS7796-LB1A

Short Title: Video Poker Machines Illegal. (Public)

Sponsors:

Referred to:

May 30, 2000

A BILL TO BE ENTITLED

AN ACT TO MAKE POSSESSION OF VIDEO POKER AND OTHER VIDEO GAME MACHINES IN NORTH CAROLINA UNLAWFUL.

The General Assembly of North Carolina enacts:

Section 1. Chapter 14 of the General Statutes is amended by adding a new section to read:

"**§ 14-306.1. Types of machines and devices prohibited by law; penalties.**

(a) Notwithstanding G.S. 14-306, it shall be unlawful for any person to keep on that person's premises or to operate or permit to be kept on that person's premises any video game machine on which any of the following games are played by depositing a coin, credit card, or debit card, or by any other means which would effectuate payment to activate the game:

(1) A video poker game or any other kind of video card game.
(2) A video bingo game.
(3) A video craps game.
(4) A video keno game.
(5) A video lotto game.
(6) A video game that involves matching different pictures, words, numbers, or symbols.

(b) Any person violating the provisions of this section is guilty of a Class 1 misdemeanor and, upon conviction, shall be fined not less than one thousand dollars ($1,000).

A second or subsequent violation of this section is a Class I felony.

A person violating the provisions of this section involving the operation or having caused the operation of 10 or more machines prohibited by this section shall be guilty of a Class G felony."

Section 2. G.S. 14-298 reads as rewritten:

"**§ 14-298. Gaming tables, illegal punchboards and slot machines to be destroyed by police officers.**

All sheriffs and officers of police are hereby authorized and directed, on information made to them on oath that any gaming table prohibited to be used by G.S. 14-289 through 14-300, ~~or~~ any illegal punchboard or illegal slot ~~machine~~ machine, or any video game machine prohibited to be used by G.S. 14-306.1, is in the possession or use of any person within the limits of their jurisdiction, to destroy the same by every means in their power; and they shall call to their aid all the good citizens of the county, if necessary, to effect its destruction."

Section 3. This act becomes effective December 1, 2000.

SENATE BILL 1542:
Video Poker Machines Illegal

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Senator Wellons
Date:	June 26, 2000	**Summary by:**	Martha K. Walston
Version:	Proposed Committee Substitute		Committee Counsel

SUMMARY: ***The proposed committee substitute for Senate Bill 1542 adds a new section to Article 37 (Lotteries and Gaming) of the Criminal Law Chapter. The new section makes the possession of certain video game machines illegal. Senate Bill 1542 also authorizes local law enforcement to destroy these illegal video game machines. The act becomes effective December 1, 2000.***

CURRENT LAW: Under current law, certain slot machines and punchboards are illegal. Coin-operated machines, video games, and devices used for amusement are not considered illegal. Included within allowable exceptions are: pinball machines, video games, and other mechanical devices that involve the use of skill or dexterity to make varying scores or tallies and which, in actual operation, limit to eight the number of accumulated credits or replays that may be played at one time and which may award free replays or paper coupons that may be exchanged for prizes or merchandise with a value not exceeding $10.00. The coupons may not be exchanged or converted to money.

BILL ANALYSIS: Senate Bill 1542 does the following:

Certain video game machines unlawful. -- adds a new section making it unlawful for any person to keep on that person's premises or to operate or permit to be kept on that person's premises any video game machine when any of the following games on the machines require payment to play:

1. A video poker game or any other kind of video card game.
2. A video bingo game.
3. A video craps game.
4. A video keno game.
5. A video lotto game.
6. A video game that involves matching different pictures, words, numbers, or symbols.

- Violations for keeping or operating unlawful video game machines:
  - First offense is a Class 1 misdemeanor and carries a fine of not less than $1,000.
  - Second or subsequent offense is a Class I felony. The presumptive sentence is 4 to 6 months of community punishment or may consist of a fine only
  - If a person operates 10 or more machines prohibited by the section, that person is guilty of a Class G felony. A Class G felony carries a presumptive sentence of 10 to 13 months intermediate punishment or and active punishment. The sentence may also include a fine.

  - If any punishment is imposed under new G.S. 14-306.1, then the violator shall be, as a condition of probation, prohibited from possessing any unlawful video card game machine for a period of one year.

- Destruction of unlawful video game machines. Under current law, G.S. 14-298 authorizes local law enforcement to exercise their power to destroy any illegal gaming table, punchboard, or slot machine within their jurisdiction. Senate Bill 1542 extends this authority to apply to illegal video game machines prohibited by G.S. 14-306.1.

(Attachment #1)

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 6/27/00 9:00AM

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
George Hoben	City of Greensboro
Linda Mabe	City of Greensboro
[illegible]	[illegible]
Jimmy Lynch	NCDOT / Traffic Engineering Branch
Bob McGuffey	N.C. Solar Center
Richard Harkrader	NC Solar Energy Association
Ben Matthews	NCPAI
Ann Belcher	SBE
Sandy Salstrom	SBE
Nic Heinke	NCETTA
Alex Kennaught	NCConnect; ED

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 6/27/00

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sabra Faires	DOR
CHARLES COLLINS	"
Bill Conwell	"
Jennifer Stark	UNC-Chapel Hill
ED TURLINGTON	BROOKS, PIERCE LAW FIRM
AL ADAMS	PARKER, POE, ADAMS & BERNSTEIN LLP
Brian Francis	Mecklenburg County

(Attachment #2)

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 6/27/00 1P.M.

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Katherine Davis	Electricities
Carrie Cole + Alysse Ellage	NCFPC
Ruffin Poole	NCDOJ
Leslie Belcher	NCCBI
Ed Regan	NC A.C.C.
Andy Ellen	NCRMA
Fran Preston	NCRMA
Ann Edmondson	NCRMA
Evelyn Thornton	UNC-CH
Sabra Faires	DOR
Sharon Miller	C.U.C.A

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 6/27/00 1:00 P.M.

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Jo Schofield	NC Low Inc Housing Coalition
Eddie Caldwell	H McCC+C, P.A.
Jon Williams	CCPS
James A Hayes	Hayes Music Co
David Cohen	R G B Inc
R. Paul Wilms	NCHBA
Stuart LeGrand	MCCI
Bob Hagemann	City of Charlotte
Boyd Cauble	"
Brian Francis	Mecklenburg County
Stephanie Mansun	NCAR

(Attachment #3)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Tuesday, June 27, 2000

SENATOR HOYLE,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS #2)**1539** Qualified Zone Academy Bond Act of 2000
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1)**1579** Monroe Charter Consolidation
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1)**1587** Seagrove Annexation
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1)**1602** Stormwater Utility Fees
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1)**1629** Butner Water & Sewer Bonds
Sequential Referral: None
Recommended Referral: None

H.B.(CS #1)**1667** Charlotte Charter Consolidation
Sequential Referral: None
Recommended Referral: None

S.B. **1252** Brownfields Tax Incentive
Sequential Referral: None
Recommended Referral: None

S.B.(CS #1)**1300** Midland Incorporation
Sequential Referral: None
Recommended Referral: None

FAVORABLE, AS AMENDED

H.B. **1803** Huntersville Annexation Agreement
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. **1448** Hillsborough Deannexation
Draft Number: PCS6785
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

S.B. **1542** Video Poker Machines Illegal
Draft Number: PCS7796
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE C.S. BILL

H.B.(CS #1)**1473** Renewable Energy Mfr Credit
Draft Number: PCS2446
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 12

Committee Clerk Comment:

(Attachment #4)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Tuesday, June 27, 2000

SENATOR HOYLE,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. **1544** Tourist Directional Sign Program

Draft Number:	PCS7795
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO SENATE C.S. BILL

H.B.(CS #2)**1132** Preserve Farmlands/Promote Small Farms

Draft Number:	PCSA260
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comment:

SENATE FINANCE COMMITTEE

WEDNESDAY, JUNE 28, 2000

1:00 P.M. – ROOM 544

The Senate Finance Committee met on Wednesday, June 28, 2000, at 1:00 P.M. in Room 544 with Senator John Kerr presiding. There were 23 committee members present for the meeting. The Pages were Whitney Ward, Rachel Evans, sponsored by Senator Kerr, and Kelly White.

HB 1730 – SUGAR MOUNTAIN CHARTER.

Representative Thompson was recognized to explain his Bill. Senator Metcalf moved for a Favorable Report. The motion carried. Copy of Bill included in the minutes.

HB 1699 – INSURANCE LICENSE FEES/RECIPROCITY.

Representative Hurley was recognized to explain his Bill. Bill Hale, representing the NC Department of Insurance, and Frank Gray, with the NC Insurance Department's Manufactured Homes Division, spoke in support of this Bill. Senator Lee moved for a Favorable Report. The motion carried. Copy of Bill, Explanation and Fiscal Note included in the minutes.

HB 1656 – LINCOLN COUNTY E & R BOARD.

Senator Hoyle was recognized to explain this Bill and Senator Dannelly moved for a Favorable Report and the motion carried. Copy of Bill included in the minutes.

HB 1819 – RURAL DEVELOPMENT AUTHORITY.

Representative Tolson was recognized to explain his Bill. Rick Carlisle, Secretary of the NC Commerce Department, spoke in support of this Bill. Senator Albertson moved for a Favorable Report and the motion passed. Copy of Bill, Explanation and Fiscal Note included in the minutes.

HB 1624 – STREAMLINED SALES TAX SYSTEM.

Representative Miller was recognized to explain his Bill. This Bill had been on the Agenda for June 21st and on for June 27th. On June 21st., no action was taken and at the June 27th meeting, Senator Harris had offered an Amendment which had been discussed and the Bill had been displaced until a later date. Senator Harris was recognized and sent forth a new Amendment, after withdrawing his first Amendment. After discussion on this second Amendment, Senator Clodfelter offered a perfecting Amendment. Secretary

Muriel Offerman, Department of Revenue, was recognized to speak on this Bill. Fran Preston, representing the NC Retail Merchants' Association, also spoke on the Bill. After a general discussion, Senator Clodfelter withdrew his perfecting Amendment and offered another Amendment. This second Amendment was adopted on his motion and on a further motion, Senator Harris's Amendment, as perfected by Senator Clodfelter's Amendment, was adopted by the committee. On motion by Senator Albertson, HB 1624, as amended, was given a Favorable Report by the committee and will be rolled into a new Committee Sub. Copy of Bill, Fiscal Note, Senator Harris's first Amendment and Explanation of Amendment, Senator Harris's second Amendment, Senator Clodfelter's Amendment that was withdrawn, Senator Clodfelter's second Amendment that was adopted and copy of the new Committee Sub included in the minutes.

HB 1290 – LIMIT RECYCLING TAX INCENTIVES.

Senator Soles moved to adopt a new Committee Sub on this Bill and the motion carried. The Committee Sub was explained by Martha Walston, Staff Attorney. After discussion it was decided by the Chairs that this Bill would be held over and voted on at a later date. Copy of the Bill, Committee Sub, Explanation and Fiscal Note included in the minutes.

David W. Hoyle, Co-Chair
Senate Finance Committee

John H. Kerr, III, Co-Chair
Senate Finance Committee

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

Visitors' Sign Up Sheet is Attachment # 1
Committee Report(s) are Attachment # 2

AGENDA

SENATE FINANCE COMMITTEE MEETING

WEDNESDAY, JUNE 28, 2000

ROOM 544 - 1:00 P.M.

CALL MEETING TO ORDER

INTRODUCE PAGES

HB 677 – Property Tax Changes – Rep. Haire

HB 1290 – Limit Recycling Tax Incentives – Rep. Luebke

HB 1624 – Streamlined Sales Tax System – Rep. Miller

HB 1656 – Lincoln County E & R Board – Rep. Kiser

HB 1699 – Insurance License Fees/Reciprocity – Rep. Hurley

HB 1730 – Sugar Mountain Charter – Rep. Thompson

HB 1819 – Rural Development Authority – Rep. Tolson

ADJOURN MEETING

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1730

Short Title: Sugar Mountain Charter. (Local)

Sponsors: Representatives Thompson and Buchanan.

Referred to: Finance.

May 25, 2000

A BILL TO BE ENTITLED

AN ACT CONCERNING ANNEXATION AND EXTRATERRITORIAL ZONING IN THE VILLAGE OF SUGAR MOUNTAIN.

The General Assembly of North Carolina enacts:

Section 1. Chapter VI of the Charter of the Village of Sugar Mountain, being Chapter 395 of the 1985 Session Laws, is repealed.

Section 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 3

HOUSE BILL 1699
Committee Substitute Favorable 6/7/00
Committee Substitute #2 Favorable 6/20/00

Short Title: Insurance License Fees/Reciprocity/AB. (Public)

Sponsors:

Referred to:

May 25, 2000

A BILL TO BE ENTITLED

AN ACT TO EQUALIZE RESIDENT AND NONRESIDENT INSURANCE BROKER LICENSE FEES; TO MAKE NORTH CAROLINA INSURANCE PRODUCER LICENSING LAWS COMPLY WITH THE RECIPROCITY REQUIREMENTS IN THE FEDERAL GRAMM-LEACH-BLILEY ACT, PUBLIC LAW 106-102; TO AMEND THE MINIMUM EDUCATION REQUIREMENTS FOR THE DEPARTMENT OF INSURANCE FINANCIAL EXAMINER AND ANALYST APPLICANTS; TO AMEND THE DEFINITION OF "PERSON" IN THE BEACH AND FAIR PLAN LAWS; TO AMEND THE DEFINITION OF "BRANCH OFFICE" IN THE MOTOR CLUB LAWS; TO INCREASE THE BOND AMOUNT FOR MANUFACTURED HOUSING LICENSEES; TO REQUIRE NOTIFICATION TO THE MANUFACTURED HOUSING BOARD FROM MANUFACTURED HOUSING LICENSEES OF CHANGES IN OWNERSHIP CONTROL AND BANKRUPTCIES; AND TO EXPEDITE BUILDING PLAN REVIEWS BY EXEMPTING REVIEWS OF COUNTY AND CITY BUILDINGS COMPRISING FEWER THAN TEN THOUSAND SQUARE FEET.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-33-125(a) reads as rewritten:

"(a) The following table indicates the annual fees that are required for the respective licenses issued, renewed, or cancelled under this Article and Article 21 of this Chapter:

Adjuster	$ 75.00
Adjuster, crop hail only	20.00
Agent appointment cancellation (paid by insurer)	10.00
Agent appointment, individual	20.00
Agent appointment, nonindividual	50.00
Agent appointment, Medicare supplement and long-term care, individual	10.00
Agent appointment, Medicare supplement and long-term care, nonindividual	20.00
Agent, overseas military	20.00
Broker, nonresident	~~100.00~~
	50.00
Broker, resident	50.00
Limited representative	20.00
Limited representative cancellation (paid by insurer)	10.00
Motor vehicle damage appraiser	75.00
Recertification, continuing education	5.00
Surplus lines licensee, corporate	50.00
Surplus lines licensee, individual	50.00

These fees are in lieu of any other license fees. Fees paid by an insurer on behalf of a person who is licensed or appointed to represent the insurer shall be paid to the Commissioner on a quarterly or monthly basis, in the discretion of the Commissioner. The recertification fee in this subsection shall be paid by persons subject to G.S. 58-33-130 at the time they renew their licenses or appointments under G.S. 58-33-130(c)."

Section 2. Article 33 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-33-32. Interstate reciprocity in producer licensing.**

(a) The purpose of this section is to make North Carolina insurance producer licensing comply with the reciprocity requirements in the federal Gramm-Leach-Bliley Act, Public Law 106-102. This section does not apply to surplus lines licensees in Article 21 of this Chapter, except as provided in subsections (c) and (d) of this section.

(b) As used in this section:

(1) 'Home state' means the District of Columbia and any state or territory of the United States in which an insurance producer maintains a principal place of residence or principal place of business and is licensed to act as an insurance producer.

(2) 'Insurance producer' or 'producer' means a person required to be licensed under this Article to sell, solicit, or negotiate insurance.

(3) 'License' means a document issued by the Commissioner authorizing a person to act as an insurance producer for the kinds of insurance specified in the document. The license itself does not create any authority, actual, apparent, or inherent, in the holder to represent or commit to an insurance carrier.

(4) 'Limited line credit insurance' includes any type of credit insurance written under Article 57 of this Chapter, mortgage life, mortgage guaranty, mortgage disability, automobile dealer gap insurance, and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing that credit obligation and that the Commissioner determines should be designated a form of limited line credit insurance.

(5) 'Limited line credit insurance producer' means a person who sells, solicits, or negotiates one or more forms of limited line credit insurance coverage to individuals through a master, corporate, group, or individual policy.

(6) 'Negotiate' means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract, provided that the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers.

(7) 'Sell' means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company.

(8) 'Solicit' means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company.

(9) 'Uniform Application' means the most recent version of the NAIC Uniform Application for resident and nonresident producer licensing.

(10) 'Uniform Business Entity Application' means the most recent version of the NAIC Uniform Business Entity Application for a resident and a nonresident corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.

(c) Unless denied licensure under G.S. 58-33-30 or G.S. 58-33-50, a nonresident person shall receive a nonresident producer license if:

(1) The person is currently licensed as a resident and in good standing in that person's home state;

(2) The person has submitted the proper request for licensure and has paid the fees required by G.S. 58-33-125;

(3) The person has submitted or transmitted to the Commissioner the application for licensure that the person submitted to that person's

home state, or in lieu of the same, a completed Uniform Application or Uniform Business Entity Application; and

(4) The person's home state awards nonresident producer licenses to residents of this State on the same basis.

The Commissioner may verify the producer's licensing status through the producer database maintained by the NAIC or affiliates or subsidiaries of the NAIC.

(d) Notwithstanding any other provision of this section, a person licensed as a surplus lines producer in that person's home state shall receive a nonresident surplus lines license pursuant to the provisions of this section. Except for the licensure provisions of this section, nothing in this section otherwise amends or supersedes any provision of Article 21 of this Chapter.

(e) Notwithstanding any other provision of this section, a person licensed or registered as a viatical settlement broker, viatical settlement provider, or viatical settlement representative, as defined in G.S. 58-58-42(a), in that person's home state shall receive a nonresident viatical settlement broker, viatical settlement provider, or viatical settlement representative license pursuant to this section. Except for the licensure provisions of this section, nothing in this section otherwise amends or supersedes any provision of G.S. 58-58-42.

(f) Notwithstanding any other provision of this section, a person licensed as a limited line credit insurance producer or other type of insurance producer in that person's home state shall receive a nonresident limited lines producer license pursuant to the provisions of this section, granting the same scope of authority as granted under the license issued by the producer's home state.

(g) An individual who applies for an insurance producer license in this State who was previously licensed for the same kinds of insurance in that individual's home state shall not be required to complete any prelicensing education or examination. This exemption is available only if:

(1) The applicant is currently licensed in the applicant's home state; or

(2) The application is received within 90 days after the cancellation of the applicant's previous license and the applicant's home state issues a certification that, at the time of cancellation, the applicant was in good standing in that state; or

(3) The home state's producer database records, maintained by the NAIC or affiliates or subsidiaries of the NAIC, indicate that the producer is or was licensed in good standing for the kind of insurance requested.

(h) The Commissioner shall not assess a greater fee for an insurance license or related service to a nonresident producer based solely on the fact that the producer does not reside in this State.

(i) The Commissioner shall waive any license application requirements for a nonresident license applicant with a valid license from the applicant's home state, except the requirements imposed by subsection (c) of this section, if the applicant's home state awards nonresident licenses to residents of this State on the same basis.

(j) A nonresident producer's satisfaction of the nonresident producer's home state's continuing education requirements for licensed insurance producers shall constitute satisfaction of this State's continuing education requirements if the nonresident producer's home state recognizes the satisfaction of its continuing education requirements imposed upon producers from this State on the same basis.

(k) A producer shall report to the Commissioner any administrative action taken against the producer in another state or by another governmental agency in this State within 30 days after the final disposition of the matter. This report shall include a copy of the order or consent order and other relevant legal documents.

(l) Within 30 days after the initial pretrial hearing date, a producer shall report to the Commissioner any criminal prosecution of the producer taken in any state. The report shall include a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents."

Section 3. G.S. 58-33-30(h)(2)b. reads as rewritten:

"b. ~~A~~ Except as provided in G.S. 58-33-32, a nonresident of this State may be licensed without taking an otherwise required written examination if the ~~Commissioner~~ insurance regulator of the state of the applicant's residence certifies that the applicant has passed a similar written examination or has been a continuous holder, prior to the time such written examination was required, of a license like the license being applied for in this State."

Section 4. G.S. 58-2-25(b) reads as rewritten:

"(b) The minimum education requirements for financial analysts and examiners referred to in subsection (a) of this section are a bachelors degree, with the appropriate courses in accounting as defined in 21 NCAC 8A.0309, and other courses that are required to qualify the applicant as a candidate for the uniform certified public accountant examination, based on the examination requirements in effect at the time of ~~employment by the Department of the analyst or examiner.~~ graduation by the analyst or examiner from an accredited college or university."

Section 5. Article 45 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-45-6. Persons who can be insured by the Association.**

As used in this Article, 'person' includes any county, city, or other political subdivision of the State of North Carolina."

Section 6. Article 46 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-46-2. Persons who can be insured by the Association.**

As used in this Article, 'person' includes any county, city, or other political subdivision of the State of North Carolina."

Section 7. G.S. 58-69-2(1) reads as rewritten:

"(1) 'Branch or district office' means any physical location, other than a motor club's home ~~office, where the motor club or its representatives conduct~~ office, that is used by the motor club or its

representatives as a principal place of business for conducting any type of business authorized under this ~~Article.~~ Article and as a place of business that is used by clients or prospective clients in meeting or dealing with the motor club or its representatives in the normal course of business authorized under this Article."

Section 8. G.S. 143-143.12(a) reads as rewritten:

"(a) A person licensed as a manufactured home salesperson shall not be required to furnish a bond, but each applicant approved by the Board for license as a manufacturer, dealer, or set-up contractor shall furnish a corporate surety bond, cash bond or fixed value equivalent in the following amounts:

(1) For a manufacturer, two thousand dollars ($2,000) per manufactured home manufactured in the prior license year, up to a maximum of one hundred thousand dollars ($100,000). When no manufactured homes were produced in the prior year, the amount required shall be based on the estimated number of manufactured homes to be produced during the current year.

(2) For a dealer who has ~~four or less places~~ one place of business, the amount shall be ~~twenty-five~~ thirty-five thousand dollars ~~($25,000)~~ ($35,000).

(3) For a dealer who has more than ~~four places~~ one place of business, the amount shall be ~~fifty thousand dollars ($50,000)~~ twenty-five thousand dollars ($25,000) for each additional place of business.

(4) For a set-up contractor, the amount shall be ~~five~~ ten thousand dollars ~~($5,000)~~($10,000)."

Section 9. G.S. 143-143.11A reads as rewritten:

"**§ 143-143.11A. Notification of change of ~~address; service of notice.~~ address, control of ownership, and bankruptcy.**

(a) Every applicant for a license shall inform the Board of the applicant's business address. Every licensee shall give written notification to the Board of any change in the licensee's business address, for whatever reason, within 10 business days after the licensee moves to a new address or a change in the address takes place. A violation of this subsection shall not constitute grounds for revocation, suspension, or non-renewal of a license or for the imposition of any other penalty by the Board.

(b) Notwithstanding any other provision of law, whenever the Board is authorized or required to give notice to a licensee under this Article, the notice may be delivered personally to the licensee or sent by first-class mail to the licensee at the address provided to the Board under subsection (a) of this section. Notice shall be deemed given four days after mailing, and any Department employee may certify that notice has been given.

(c) Every person licensed under this Article, except for a person licensed as a manufactured home salesperson, shall give written notification to the Board of any change in ownership or control of the licensee's business within 30 business days after the change. A 'change in ownership or control' means the sale or conveyance of the capital stock of the business or of an owner's interest in the business, which operates

to place a person or group of persons, not previously in control of the business, in effective control of the business. A violation of this subsection shall not constitute grounds for revocation, suspension, or nonrenewal of a license or for the imposition of any other penalty by the Board.

(d) Upon the filing for protection under the United States Bankruptcy Code by any licensee, or by any business in which the licensee holds a position of employment, management or ownership, the licensee shall notify the Board of the filing of protection within three business days after the filing. Upon the appointment of a receiver by a court of this State for any licensee, or for any business in which the licensee holds a position of employment, management, or ownership the licensee shall notify the Board of the appointment within three business days after the appointment."

Section 10. G.S. 58-31-40 reads as rewritten:

"**§ 58-31-40. Commissioner to inspect State property; plans submitted.**

(a) ~~It is the duty of the Commissioner at least once in each year, or oftener, if deemed necessary, to~~ The Commissioner shall, at least once every year or more often if the Commissioner considers it necessary, visit, inspect, and thoroughly examine ~~each State institution or other~~ every State property ~~with a view to its~~ to analyze and determine its protection from fire, ~~as well as to the safety of its inmates or the property therein~~ including the property's occupants or contents, ~~in case of fire, and call to the attention of the board or officer having the same~~ The Commissioner shall notify the agency or official in charge of the property of any defect noted by ~~him~~ the Commissioner or any improvement ~~deemed~~ considered by the Commissioner to be necessary.

(b) No agency ~~board, commission, superintendent,~~ or other person ~~or persons~~ authorized ~~and~~ or directed by law to select ~~plans~~ a plan and erect ~~buildings~~ a building for the use of the State ~~of North Carolina~~ or any ~~institution thereof,~~ State institution shall receive and approve of the plan until it is submitted to and approved by the Commissioner as to the safety of the proposed building from fire, including the property's occupants or contents. No agency or person authorized or directed by law to select a plan or erect a building comprising 10,000 square feet or more for the use of any county, city, ~~or incorporated town~~ or school district shall receive and approve of ~~any plans~~ the plan until ~~they are~~ it is submitted to and approved by the Commissioner ~~of Insurance of the State~~ as to the safety of the proposed ~~buildings~~ building from fire, ~~as well as the protection of the inmates in case of fire.~~ including the property's occupants or contents."

Section 11. Sections 8 and 9 of this act become effective September 1, 2000. The remainder of this act is effective when it becomes law.

HB 1699:
Insurance License Fees/Reciprocity/AB

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Representative Hurley
Date:	June 28, 2000	**Summary by:**	Trina Griffin, Staff Atty.
Version:	3rd Edition		Mary Shuping, Rsch. Asst.

SUMMARY: ***House Bill 1699 reduces the annual licensing fee for nonresident insurance brokers. This bill also establishes a system of reciprocity for the licensing of insurance agents and brokers ("producers") to implement portions of the federal Gramm-Leach-Bliley Act which relate to the enactment of uniform laws governing the licensure of individuals and entities authorized to sell and solicit the purchase of insurance. The Federal Certification, as required by G.S. 120-36.8, is attached to this summary.***

The bill also

- ***Revises the examination requirements for financial analysts and examiners who work for the Department of Insurance (Section 4).***
- ***Clarifies the definition of "person" as used in two Articles in the Chapter on Insurance (Sections 5 & 6).***
- ***Revises the definition of a motor club or association "branch or district office" (Section 7).***
- ***Raises the surety bond amounts for manufactured home dealers and set-up contractors. (Section 8)***
- ***Requires notification to the Manufactured Housing Board from manufacturing housing licensees of any change in ownership or control of the licensee's business and of any federal bankruptcy or State receivership proceedings commenced against the licensee. (Section 9)***
- ***Allows architectural plans for city, county, and school buildings that are less than 10,000 feet to be approved by the local government's planning department and not the Commissioner. (Section 10)***

BILL ANALYSIS

Section 1. reduces the fee for a nonresident broker from $100.00 to $50.00.

BILL ANALYSIS - CHANGES REQUIRED TO IMPLEMENT FEDERAL LAW (Sections 2-3):

Section 2. Section 2 adds a new section to Article 33 of Chapter 58 of the General Statutes to comply with the reciprocity requirements of the federal law, specifically by establishing a procedure for nonresident producers to obtain a license in North Carolina.

G.S. 58-33-32(a) – (b) set forth the purpose of the new section and set out the applicable definitions.

G.S. 58-33-32(c) provides that a nonresident can obtain a North Carolina license if:

- The nonresident is currently licensed as a resident in good standing in the person's home state.
- The nonresident has submitted an application and paid the proper fees.
- The nonresident has submitted a copy of the person's home state licensure application, or a completed Uniform Application or Uniform Business Entity application.
- The nonresident's home state awards nonresident licenses on the same basis as North Carolina.

G.S. 58-33-32(d)-(f) provide that the licensure provisions of this section also apply to nonresidents licensed as surplus line producers, viatical settlement brokers, or limited line credit insurance producers who are seeking licensure in North Carolina.

G.S. 58-33-32(g) provides that a nonresident applicant is exempt from North Carolina's prelicensing education and examination requirements *if*:

- The applicant is currently licensed in the applicant's home state; *or*
- The application is received within 90 days after cancellation of the applicant's previous license, and the applicant's home state issues a certification that the applicant was in good standing; *or*
- The home state's producer database records indicate the applicant is or was licensed in good standing.

G.S. 58-33-32(h) provides that the Commissioner of Insurance cannot assess a greater fee for an insurance license for a nonresident based solely on the fact that the producer does not reside in North Carolina.

G.S. 58-33-32(i) provides that, except for the requirements in subsection (c), the licensure requirements for a nonresident will be waived *if* the applicant's home state awards a nonresident license to residents of North Carolina on the same basis.

G.S. 58-33-32(j) provides that satisfaction of the continuing education requirements in the applicant's home state will satisfy the continuing education requirements in North Carolina as long as there is a reciprocal agreement for identical treatment for North Carolina applicants in that state.

G.S. 58-33-32(k)-(l) require a producer to report to the Commissioner of Insurance any administrative action or criminal prosecution taken against the producer.

Section 3 makes conforming changes to G.S. 58-33-30.

BILL ANALYSIS – ADDITIONAL CHANGES (Sections 4-10)

Examination Requirements – Financial Analysts: **Section 4** changes the applicable examination requirements for financial analysts and examiners who work for the Department of Insurance. The bill proposes that a financial analyst or examiner must have taken all courses necessary to qualify for the CPA examination based on the examination requirements *in effect at the time the applicant graduated from an accredited college or university* (in addition to satisfying the minimum education requirements). The current law requires that the analyst or examiner have taken the courses required for the CPA examination in effect at the time of employment by the Department.

Clarification of Defintion of "Person": **Sections 5 and 6** of the bill clarify the definition of "person" as used in two Articles in the Chapter on Insurance: Essential Property Insurance for Beach Area Property (Article 45) and Fair Access to Insurance Requirements (Article 46). Both Articles involve the NC Insurance Underwriting Association which was established as a market of last resort for customers who have difficulty obtaining property insurance in the voluntary market. The bill states that "person" as used in these Articles shall include the State of North Carolina or any county, city, or other political subdivision of the State of North Carolina. For Article 45, the proposed definition would clarify that cities and counties with an insurable interest in beach property are eligible to apply to the Association for coverage. For Article 46, the proposed definition would ensure that cities and counties were eligible for coverage under the FAIR Plan which covers all other property.

Definition of Motor Club Branch Office: **Section 7** of the bill revises the definition of a motor club or association "branch or district office," which must be licensed by the Commissioner of Insurance. The current law defines a branch or district office as *any physical location, other than the home office, where representatives conduct business.* This bill would change that definition to any physical location, other than the home office, that is used as a *principal place of business and a place of business used by clients in meeting or dealing with motor club representatives in the normal course of business.*

Manufactured Housing Revisions: **Section 8** of the bill raises the surety bond amounts for manufactured dealers and set-up contractors, as detailed below:

Type of Manufactured Home License	Current Bond Amount	Proposed Bond Amount
Manufacturer	$2,000 per manufactured home, up to a maximum of $100,000	**NO CHANGE**
Dealer	• $25,000 for 4 or less places of business; • $50,000 for more than 4 places of business	• $35,000 for 1 place of business; • $25,000 for each additional place of business
Set-up Contractor	$5,000	$10,000

Section 8 becomes effective September 1, 2000

Section 9 requires manufactured housing licensees (except salespersons) to notify the Manufactured Housing Board of:

- Any change in ownership or control of the licensee's business.
- Any federal bankruptcy or State receivership proceedings commenced against the licensee.

Section 9 becomes effective September 1, 2000.

Architectural Plans – Local Government Buildings: **Section 10** provides that architectural plans for city, county, and school buildings that comprise fewer than 10,000 square feet would be approved by the local government's planning department and not by the Commissioner of Insurance.

EFFECTIVE DATE: Except as otherwise noted above, the bill is effective when it becomes law.

Bil Hale, Legislative Counsel, Department of Insurance, contributed to this summary.

FEDERAL CERTIFICATION FOR
HB 1699 – INSURANCE LICENSE FEES/RECIPROCITY/AB

Prepared by: Trina Griffin, Staff Attorney, Research Division

June 9, 2000

Federal Certification Required

G.S. 120-36.8 requires that every introduced bill proposing any change in the law which purports to implement federal law or purports to be required or necessary for compliance with federal law, or on which is conditioned the receipt of federal funds, shall have attached a certification identifying the federal law.

Background & Applicable Federal Law

House Bill 1699 proposes to implement certain provisions of the Gramm-Leach-Bliley Act, 15 USC §§ 6751 *et seq.* This information provides a summary of and citations to the relevant provisions of 15 USC §§ 6751 *et seq.* and the corresponding parts of HB1699.

In part, the Gramm-Leach-Bliley Act relates to the enactment of uniform laws and regulations governing the licensure of individuals and entities authorized to sell and solicit the purchase of insurance ("producers"). The Act requires at least a majority of the States to enact these laws by November 12, 2002. If the National Association of Insurance Commissioners ("NAIC") determines that the uniformity or reciprocity required has not been achieved by a majority of the States by November 12, 2002, the National Association of Registered Agents and Brokers ("NARAB") will be established. This Association would provide a mechanism through which uniform licensing, appointment, continuing education, and other qualification requirements could be adopted and applied on a multistate basis. NARAB would be a nonprofit corporation subject to the supervision and oversight of the NAIC. The requirements of this Act are not mandatory, and no federal funds are contingent upon compliance with this Act.

EXPLANATION - HOUSE BILL 1699

SECTION 1. FEES

Section 1 of HB1699 reduces the annual nonresident broker license fee from $100.00 to $50.00. ***However, this section is unrelated to the Gramm-Leach-Bliley Act. This provision does not require certification pursuant to G.S. 120-36.8.***

SECTION 2. INTERSTATE RECIPROCITY IN PRODUCER LICENSING

15 USC 6751(a) establishes the uniformity requirements. A State satisfies this provision if it (1) establishes uniform criteria regarding the integrity, personal qualifications, education, training and experience of licensed insurance producers, (2) establishes uniform continuing education requirements, including ethics, for licensed insurance producers, (3) establishes criteria to ensure that an insurance product is suitable and appropriate for the consumer, and (5) does not impose limitations on nonresident insurance producers because of their residence or place of operations. ***The National Association of Insurance Commissioners drafted and adopted a Producer Licensing Model Act to provide a uniform model for states electing to comply with the Gramm-Leach-Bliley Act. HB1699 conforms to the Model Act.***

15 USC 6751(b) establishes reciprocity requirements with regard to three main areas: licensing procedures, continuing education requirements and limitations on producer activities. The States must grant reciprocity to residents of all other States that satisfy each of these requirements.

1. Licensing Procedures - A state must license a nonresident, who is licensed in its home state, without requiring any additional requirements other than submission of an application and a copy of the applicant's home state application for licensure, proof that the producer is licensed and in good standing in its home state, and payment of the requisite fees. ***Section 2 of HB1699 adds a new section to Article 33 of Chapter 58 to comply with these reciprocity guidelines. Specifically, 58-33-32(c) states that a nonresident shall receive a nonresident producer license if the producer is a licensed resident in good standing in its home state, if the producer has submitted the requisite fees and application, if the producer has submitted a copy of its home state licensure application, and the home state awards nonresident licenses on the same basis as North Carolina.***

2. Continuing Education Requirements - A nonresident's satisfaction of continuing education requirements in its home state must constitute satisfaction of the continuing education requirements in the foreign state. ***58-33-32(j) provides that a nonresident who satisfies the continuing education requirements in the producers' home state shall constitute satisfaction of the continuing education requirements of this State as long as the home state has reciprocal treatment for licensed North Carolina insurance producers.***

3. No Limitations – A state must not impose any limitations on a nonresident's producer activities because of its residence or place of operations. ***Neither specifically prohibits discriminatory practices against nonresident producers, but there are no provisions that limit a nonresident's producer activities. In addition, 58-33-32(h) states that the Commissioner of Insurance shall not assess a greater fee for an insurance license to a nonresident producer based solely on the fact that the producer is a nonresident.***

15 USC §§ 6752-6762, 6764, 6766 make provisions for the establishment and governance of NARAB including provisions for membership criteria, a board of directors, bylaws, disciplinary action, and oversight by the NAIC. This Association will only be established if a majority of the states fail to enact uniformity and reciprocity requirements for the licensing of insurance producers by November 12, 2002. ***These sections do not require any legislative action by the states.***

15 USC § 6763 prohibits states from impeding the activities of any insurance producer because that producer is or plans to become a member of the Association or impose any requirements upon members of the Association that are different from the criteria for membership in the Association. Any state law that attempts to do so is preempted. ***This section does not require any legislative action by the states.***

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1699 (Proposed House Finance Committee Substitute)

SHORT TITLE: Insurance License Fees/Reciprocity/AB

SPONSOR(S): Rep. Hurley

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05
REVENUES	($11,050)	($11,050)	($11,050)	($11,050)	($11,050)

Note: Revenue from the annual fee and the application fee may increase if the revised reciprocity provisions result in an increase in the number of nonresident producers. However, no estimate of potential increases in revenue is available at this time.

EXPENDITURES

POSITIONS: 0

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Insurance

EFFECTIVE DATE: Sections 8 and 9 become effective September 1, 2000. The remainder is effective when it becomes law.

BILL SUMMARY: Section 1 reduces the annual licensing fee for nonresident insurance brokers from $100 to $50. Section 2 of the bill adds a new section to Article 33 of Chapter 58 to comply with the reciprocity requirements in the federal Gramm-Leach-Bliley Act (Public Law 106-102) and to establish a procedure for nonresident producers to obtain a license in North Carolina. It sets forth the procedures a nonresident person must follow to obtain a nonresident producer license. These provisions are modeled after the Producer Licensing Model Act drafted and adopted by the National Association of Insurance Commissioners.

Section 4 changes the applicable examination requirements for financial analysts and examiners who work for the Department of Insurance.

Section 8 of the bill increases the surety bond applicants licensed as dealers or set-up contractors must furnish. It increases the bond for a dealer with one place of business to $25,000. A dealer with more than one business must furnish $25,000 for each additional place of business.

Currently those with four or less must furnish $25,000 and others furnish $50,000. The bill also increases the bond for a set up contractor from $5,000 to $10,000.

Section 9 of the bill requires manufactured housing licensees to notify the Manufacturing Housing Board within 30 days of any change in address, ownership control, and bankruptcy.

Section 10 of the bill eliminates the requirement that the Commissioner of Insurance review plans for county, city and school district buildings comprising less than 10,000 square feet.

Sections 3, 5, 6, and 7 make some technical changes and clarifications of miscellaneous insurance provisions.

ASSUMPTIONS AND METHODOLOGY:

Sections 1 and 2: The bill reduces the annual fee for a nonresident broker license and it establishes procedures for nonresident brokers and agents to obtain a license in the State. The changes impact the revenue from the annual license fee and it also has the potential to impact the workload for processing applications for nonresident producers.

Section 1 of the bill reduces the annual nonresident broker license fee from $100.00 to $50.00. For 1998-99, there were 221 nonresident brokers. Assuming the number of nonresident brokers remains constant, the total revenue from the nonresident broker license fee would ***decrease*** by $11,050 annually. Assuming, however, that implementation of section 2, which establishes a procedure for nonresident producers to obtain a license in North Carolina, will result in an increase in the number of nonresident producer applicants, the revenue from the application fee (currently $30) and the annual fee ($50 as revised by Section 1 of the bill) may increase. At this time no data is available upon which to estimate what revenue increases, if any, will be.

Also, as noted above, Section 2 establishes procedures for a nonresident producer to obtain a license in the State. The Department believes that administering the reciprocity requirements will not significantly impact its current workload and estimates that implementation of this portion of the bill will have no fiscal impact.

Section 10: This section eliminates the current requirement that the Commissioner review plans for city, county or school district buildings that are less than 10,000 square feet. Currently, the Office of the Fire Marshall's Engineering Division in the Department of Insurance reviews the building plans for all non-State owned buildings including those for use by a city, county or school district. Because of the number of plans submitted, there is a backlog for completing the initial review. The current turnaround time for the initial review of a set of plans is 5-8 weeks. Eliminating the need to review the plans for city, county, or school district buildings with less than 10,000 square feet, will reduce the workload. However, the reduction in the workload is not expected to result in the need for fewer positions. Rather, the reduced workload should allow the Department to complete its initial review of plans on a more timely basis and reduce the backlog.

Remaining Sections: Sections 3, 5, and 6 make technical changes and clarifications of miscellaneous insurance provisions. Section 4 changes the applicable examination requirement for financial analysts and examiners. Section 7 restricts the definition of a motor club district or association branch office. These sections are primarily technical or clarifying in nature. The

implementation of these changes has no impact on the workload and no fiscal impact on the department.

Section 8 increases the bond that a dealer or set-up contractor must furnish. Section 9 requires manufactured homes licensees to notify the Board of any change in address, ownership control or bankruptcy petition within 30 days. The bond increase and the notification provision have no impact on the Department's revenue or its workload

TECHNICAL CONSIDERATIONS:

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Marilyn Chism

APPROVED BY:

DATE:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 3

HOUSE BILL 1656
Committee Substitute Favorable 6/7/00
Committee Substitute #2 Favorable 6/20/00

Short Title: Lincoln County E&R Board. (Local)

Sponsors:

Referred to:

May 23, 2000

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE APPOINTMENT OF A SPECIAL BOARD OF EQUALIZATION AND REVIEW FOR LINCOLN COUNTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-322 reads as rewritten:

"**§ 105-322. Lincoln County board of equalization and review.**

(a) ~~Personnel.~~ Board Composed of Commissioners if Special Board Not Appointed. -- ~~Except as otherwise provided herein,~~ If the board of county commissioners does not appoint a special board of equalization and review as provided in this section, the board of equalization and review of ~~each~~ the county shall be composed of the members of the board of county commissioners.

(a1) Appointment of Special Board. -- Upon the adoption of a resolution so providing, the board of commissioners is authorized to appoint a special board of equalization and review to carry out the duties imposed under this section. ~~The resolution shall provide for the membership, qualifications, terms of office and the filling of vacancies on the board.~~ The special board shall be composed of five members and three alternate members. The board of commissioners shall ~~also~~ designate ~~the chairman~~ a chair of the special ~~board.~~ board from the membership of the board. The special board shall elect a vice-chair from its membership to serve as acting chair in the absence of the chair as necessary. To be eligible for appointment to the special board, the board of county commissioners must find that the person has

satisfactory knowledge of or experience in real estate, fee appraisals, banking, farming, or other business management.

Members of the special board shall serve a term of two years. No member may serve more than three consecutive terms. Vacancies shall be filled by the board of county commissioners; a successor appointed to fill a vacancy shall serve for the remainder of the term. Members of the special board shall serve at the pleasure of the board of county commissioners.

~~The resolution may also authorize a taxpayer to appeal a decision of the special board with respect to the listing or appraisal of his property or the property of others to the board of county commissioners.~~ The resolution creating the special board shall be adopted not later than the first Monday in March of the year for which it is to be effective and shall continue in effect until revised or rescinded. It shall be entered in the minutes of the meeting of the board of commissioners and a copy thereof shall be forwarded to the Department of Revenue within 15 days after its adoption.

~~Nothing in this subsection (a) shall be construed as repealing any law creating a special board of equalization and review or creating any board charged with the duties of a board of equalization and review in any county.~~

(a2) Quorum; Alternates. -- A majority of the members of the special board shall constitute a quorum for the purpose of transacting business. A decision of the special board shall be made by a majority of the members present. An alternate member of the special board shall have all the powers and duties of a regular board member when sitting as a member of the board or of any subcommittee or panel created by the board. The board of county commissioners shall adopt a resolution setting forth any other provisions it deems necessary to govern the proceedings of the special board and any subcommittee or panel created by the special board.

(b) Compensation. -- The board of county commissioners shall fix the compensation and allowances to be paid members of the board of equalization and review for their services and expenses.

(c) Oath. -- Each member of the board of equalization and review shall take the oath required by Article VI, § 7 of the North Carolina Constitution with the following phrase added to it: 'that I will not allow my actions as a member of the board of equalization and review to be influenced by personal or political friendships or obligations,'. The oath must be filed with the clerk of the board of county commissioners.

(d) Clerk and Minutes. -- The assessor or a person designated by the assessor shall serve as clerk to the board of equalization and review, shall be present at all meetings, shall maintain accurate minutes of the actions of the board, shall draft all written decisions of the special board, and shall give to the board such information as ~~he~~ the clerk may have or can obtain with respect to the listing and valuation of taxable property in the county. The chair of the special board shall review all written decisions drafted by the clerk. Only the chair of the special board or, in the chair's absence, the vice-chair can execute the decisions of the special board.

(e) Time of Meeting. -- ~~Each~~ Except as otherwise provided in this section, each year the board of equalization and review shall hold its first meeting not earlier than

the first Monday in April and not later than the first Monday in May. ~~In years in which a county does not conduct a real property revaluation, the~~ The board shall complete its duties on or before the ~~third Monday following its first meeting~~ advertised adjournment date unless, in its opinion, a longer period of time is necessary or expedient to a proper execution of its responsibilities. ~~In no event shall~~ Except as provided in subdivision (g)(7) of this section, the board may not sit later than July 1 except to hear and determine requests made under the provisions of subdivision (g)(2), below, when such requests are made within the time prescribed by law. ~~In the year in which a county conducts a real property revaluation, the board shall complete its duties on or before December 1, except that it may sit after that date to hear and determine requests made under the provisions of subdivision (g)(2), below, when such requests are made within the time prescribed by law. From the time of its first meeting until its adjournment, the~~ The board shall meet at such times as it deems reasonably necessary to perform its statutory duties and to receive requests and hear the appeals of taxpayers under the provisions of ~~subdivision (g)(2), below.~~ this section.

(f) Notice of Meetings and Adjournment. -- A notice of the date, hours, place, and purpose of the first meeting of the board of equalization and review shall be published at least three times in some newspaper having general circulation in the county, the first publication to be at least 10 days prior to the first meeting. The notice shall also state the dates and hours on which the board will meet following its first meeting and the date on which it expects to adjourn; it shall also carry a statement that in the event of earlier or later adjournment, notice to that effect will be published in the same newspaper. Should a notice be required on account of earlier adjournment, it shall be published at least once in the newspaper in which the first notice was published, such publication to be at least five days prior to the date fixed for adjournment. Should a notice be required on account of later adjournment, it shall be published at least once in the newspaper in which the first notice was published, such publication to be prior to the date first announced for adjournment.

(g) Powers and Duties. -- The board of equalization and review has the following powers and duties:

(1) ~~Powers and Duties. -- It shall be the duty of the board of equalization and review to~~ Duty to Review Tax Lists. -- The board shall examine and review the tax lists of the county for the current year to the end that all taxable property shall be listed on the abstracts and tax records of the county and appraised according to the standard required by G.S. 105-283, and the board shall correct the abstracts and tax records to conform to the provisions of this Subchapter. In carrying out its responsibilities under this subdivision (g)(1), the board, on its own motion or on sufficient cause shown by any person, shall:

a. List, appraise, and assess any taxable real or personal property that has been omitted from the tax lists.

b. Correct all errors in the names of persons and in the description of properties subject to taxation.

c. Increase or reduce the appraised value of any property that, in the board's opinion, ~~shall have~~ has been listed and appraised at a figure that is below or above the appraisal required by G.S. 105-283; however, the board shall not change the appraised value of any real property from that at which it was appraised for the preceding year except in accordance with the terms of G.S. 105-286 and 105-287.

d. Cause to be done whatever else ~~shall be~~ is necessary to make the lists and tax records comply with the provisions of this Subchapter.

e. Embody actions taken under the provisions of subdivisions (g)(1)a through (g)(1)d, above, in appropriate orders and have the orders entered in the minutes of the board.

f. Give written notice to the taxpayer at ~~his~~ the taxpayer's last-known address in the event the ~~board shall,~~ board, by appropriate order, ~~increase~~ increases the appraisal of any property or ~~list~~ lists for taxation any property omitted from the tax lists under the provisions of this subdivision (g)(1).

(2) Duty to Hear Taxpayer Appeals. -- On request, the board of equalization and review shall hear any taxpayer who owns or controls property taxable in the county with respect to the listing or appraisal of ~~his~~ the taxpayer's property or the property of others.

a. A request for a hearing under this subdivision (g)(2) shall be made in writing to or by personal appearance before the board prior to its adjournment. However, if the taxpayer requests review of a decision made by the board under the provisions of subdivision (g)(1), above, notice of which was mailed fewer than 15 days prior to the board's adjournment, the request for a hearing thereon may be made within 15 days after the notice of the board's decision was mailed.

b. Taxpayers may file separate or joint requests for hearings under the provisions of this subdivision (g)(2) at their election.

c. At a hearing under provisions of this subdivision (g)(2), the board, in addition to the powers it may exercise under the provisions of subdivision (g)(3), below, shall hear any evidence offered by the appellant, the assessor, and other county officials that is pertinent to the decision of the appeal. Upon the request of an appellant, the board shall subpoena witnesses or documents if there is a reasonable

basis for believing that the witnesses have or the documents contain information pertinent to the decision of the appeal.

d. On the basis of its decision after any hearing conducted under this subdivision (g)(2), the board shall adopt and have entered in its minutes an order reducing, increasing, or confirming the appraisal appealed or listing or removing from the tax lists the property whose omission or listing has been appealed. The board shall notify the appellant by mail as to the action taken on ~~his~~ the appeal not later than 30 days after the board's adjournment.

(3) Powers in Carrying Out Duties. -- In the performance of its duties under subdivisions (g)(1) and (g)(2), above, the board of equalization and review may exercise the following powers:

a. It may appoint committees composed of its own members or other persons to assist it in making investigations necessary to its work. It may also employ expert appraisers in its discretion. The expense of the employment of committees or appraisers shall be borne by the county. The board may, in its discretion, require the taxpayer to reimburse the county for the cost of any appraisal by experts demanded by ~~him~~ the taxpayer if the appraisal does not result in material reduction of the valuation of the property appraised and if the appraisal is not subsequently reduced materially by the board or by the Department of Revenue.

b. The board, in its discretion, may examine any witnesses and documents. It may place any witnesses under oath administered by any member of the board. It may subpoena witnesses or documents on its own motion, and it must do so when a request is made under the provisions of subdivision (g)(2)c, above.

A subpoena issued by the board shall be signed by the ~~chairman~~ chair of the board, directed to the witness or to the person having custody of the document, and served by an officer authorized to serve subpoenas. Any person who willfully fails to appear or to produce documents in response to a subpoena or to testify when appearing in response to a subpoena shall be guilty of a Class 1 misdemeanor.

(4) Power to Submit Reports. -- Upon the completion of its other duties, the board may submit to the Department of Revenue a report outlining the quality of the reappraisal, any problems it encountered in the reappraisal process, the number of appeals submitted to the board and to the Property Tax Commission, the success rate of the appeals submitted, and the name of the firm

that conducted the reappraisal. A copy of the report should be sent by the board to the firm that conducted the reappraisal.

(5) Duty to Appoint Motor Vehicle Review Subcommittee. -- The chair of the board of equalization and review shall appoint a subcommittee at the board's first meeting of the calendar year. The subcommittee shall hear and decide all appeals relating to the appraisal, situs, and taxability of classified motor vehicles under G.S. 105-330.2(b) and may meet as needed to exercise this authority. The subcommittee shall consist of three board members and three alternate members, which may include the alternate board members. Three members shall constitute a quorum for the purpose of transacting business. A decision of the subcommittee shall be made by a majority of the members.

(6) Power to Designate Reappraisal Year Panels. -- In any reappraisal year, the chair of the board of equalization and review may divide the board into separate panels consisting of three members, which may include the alternate board members. The chair shall designate one member of each panel to serve as its chair and may change the members of the panels during the year. Three members of each panel shall constitute a quorum for the purpose of transacting business. A decision of the panel shall be made by a majority of the members. A decision of a panel constitutes a decision of the board of equalization and review.

(7) Duty to Change Abstracts and Records After Adjournment. -- Following adjournment upon completion of its duties under subdivisions (g)(1) and (g)(2) of this section, the board shall continue to meet to carry out the following duties:

a. To hear and decide all appeals relating to discovered property under G.S. 105-312(d) and (k).

b. To hear and decide all appeals relating to the appraisal, situs, and taxability of classified motor vehicles under G.S. 105-330.2(b), as provided in subdivision (g)(5) of this section.

c. To hear and decide all appeals relating to audits conducted under G.S. 105-296(j) and (l) of property classified at present-use value and property exempted or excluded from taxation."

Section 2. Two of the initial five appointees to the special board of equalization and review shall be appointed to serve a one-year term.

Section 3. This act applies only to Lincoln County.

Section 4. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 3

HOUSE BILL 1819*
Committee Substitute Favorable 6/14/00
Committee Substitute #2 Favorable 6/22/00

Short Title: Rural Redevelopment Authority. (Public)

Sponsors:

Referred to:

May 30, 2000

A BILL TO BE ENTITLED

AN ACT TO CREATE THE RURAL REDEVELOPMENT AUTHORITY TO FINANCE RURAL ECONOMIC DEVELOPMENT PROJECTS AND INVEST IN RURAL BUSINESS DEVELOPMENT.

The General Assembly of North Carolina enacts:

Section 1. Article 10 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 2D. North Carolina Rural Redevelopment Authority.

"**§ 143B-437.20. Short title and intent.**

This Part is the 'North Carolina Rural Redevelopment Authority Act'. The purpose of the North Carolina Redevelopment Authority is to finance rural economic development projects and invest in rural business development.

"**§ 143B-437.21. Definitions.**

The following definitions apply in this Part:

(1) Authority. -- The North Carolina Rural Redevelopment Authority.

(2) Board. -- The Board of Directors of the Authority.

(3) Development project. -- Any investment that enables or makes more likely the location or expansion of industrial and commercial businesses in rural counties, which may include sites and industrial parks or centers, together with improvements, such as shell buildings and internal infrastructure.

(4) Financial institution. -- A business that is (i) a bank holding company, as defined in the Bank Holding Company Act of 1956, 12 U.S.C. §§ 1841, et seq., or its wholly owned subsidiary, (ii) registered as a broker-dealer under the Securities Exchange Act of 1934, 15 U.S.C. §§ 78a, et seq., or its wholly owned subsidiary, (iii) an investment company as defined in the Investment Company Act of 1940, 15 U.S.C. §§ 80a-1, et seq., whether or not it is required to register under that act, (iv) a small business investment company as defined in the Small Business Investment Act of 1958, 15 U.S.C. §§ 661, et seq., (v) a pension or profit-sharing fund or trust, or (vi) a bank, savings institution, trust company, financial services company, or insurance company. The term does not include, however, a business that does not generally market its services to the public and is controlled by a business that is not a financial institution.

(5) Intermediate-term loan. -- A loan whose term does not exceed three years.

(6) Regional partnership. -- Any of the following:

a. The Western North Carolina Regional Economic Development Commission created in G.S. 158-8.1.

b. The Northeastern North Carolina Regional Economic Development Commission created in G.S. 158-8.2.

c. The Southeastern North Carolina Regional Economic Development Commission created in G.S. 158-8.3.

d. The Global TransPark Development Commission created in G.S. 158-33.

e. The Carolinas Partnership, Inc.

f. The Research Triangle Regional Partnership.

g. The Piedmont Triad Partnership.

(7) Revenues. -- The receipts of the Authority during an accounting period, including interest and dividends on investments, realized capital gains, income from lending and consulting activities, rent or lease income, appropriations from the General Assembly, grants from the Golden L.E.A.F. (Long-term Economic Advancement Foundation), Inc., and grants and gifts from public and private entities to further the purposes of the Authority.

(8) Rural county. -- A county in North Carolina with a density of fewer than 200 people per square mile based on the most recent United States decennial census.

(9) Small business investment company. -- A small business investment company as defined in the Small Business Investment Act of 1958, 15 U.S.C. §§ 661, et seq.

"**§ 143B-437.22. Creation of Authority and Board.**

(a) Creation. -- The North Carolina Rural Redevelopment Authority is created as a body corporate and politic with the powers and jurisdiction as provided under this Part or any other law. The Authority is a State agency created to perform essential governmental and public functions. The Authority is located within the Department of Commerce, but exercises all of its powers, including the power to employ, direct, and supervise all personnel, independently of the Secretary of Commerce and, notwithstanding any other provision of law, is subject to the direction and supervision of the Secretary of Commerce only with respect to the management functions of coordinating and reporting.

(b) Board of Directors. -- The Authority is governed by a Board of Directors, which consists of the following nine members:

(1) Three members appointed by the Governor, two of whom must be representatives of financial institutions and one of whom must be an elected official representing a local government of or in a rural county.

(2) Two members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, one of whom must be a representative of a regional partnership with a predominantly rural constituency and one of whom must be a representative of a financial institution.

(3) Two members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121, both of whom must be representatives of financial institutions.

(4) The Secretary of Commerce, who shall serve ex officio.

(5) The chief executive officer of the Authority.

(c) Oath. -- As the holder of an office, each member of the Board must take the oath required by Section 7 of Article VI of the North Carolina Constitution before assuming the duties of a Board member.

(d) Selection Criteria. -- In making appointments to the Board, the Governor and the General Assembly shall give consideration to the geographical representation of the State. In addition, members appointed representing financial institutions ideally would be experienced in areas such as commercial lending and commercial real estate lending, public finance, and economic development; work assignments or experiences in rural counties also would be desirable.

(e) Terms. -- The term of office of a member of the Board is three years, except that the Governor shall designate two of the initial members appointed under subdivision (b)(1) of this section to serve a term of one year, and the General Assembly shall designate one of the initial members appointed under subdivision (b)(2) of this section and one of the initial members appointed under subdivision (b)(3) of this section to serve a term of two years. The term of office for the chief executive officer of the Authority shall coincide with the officer's employment by the Board.

(f) Chair and Vice-Chair of the Board. -- The Governor shall designate one of the members appointed by the Governor as the Chair of the Board. The Governor shall convene the first meeting of the Board, at which time the members of the Board shall elect from their membership a Vice-Chair of the Board.

(g) Vacancies. -- All members of the Board shall remain in office until their successors are appointed and qualify. A vacancy in an appointment made by the Governor shall be filled by the Governor for the remainder of the unexpired term. A vacancy in an appointment made by the General Assembly shall be filled in accordance with G.S. 120-122. A person appointed to fill a vacancy must qualify in the same manner as a person appointed for a full term.

(h) Removal of Board Members. -- The Governor may remove any member of the Board for misfeasance, malfeasance, or nonfeasance in accordance with G.S. 143B-13(d). The Governor or the person who appointed a member of the Board may remove the member for using improper influence in accordance with G.S. 143B-13(c).

(i) Organization of the Board. -- The Board shall adopt bylaws with respect to the calling of meetings, quorums, voting procedures, the keeping of records, and other organizational and administrative matters as the Board may determine. A quorum shall consist of a majority of the members of the Board. No vacancy in the membership of the Board shall impair the right of a quorum to exercise all rights and to perform all the duties of the Board and the Authority.

(j) Compensation of the Board. -- No part of the revenues or assets of the Authority shall inure to the benefit of or be distributable to the members of the Board or officers or other private persons. The members of the Board other than the chief executive officer shall receive no salary for their services but may receive per diem and allowances in accordance with G.S. 138-5.

(k) Treasurer. -- The Board shall select the Authority's treasurer. The Board shall require a surety bond of the appointee in the amount as the Board may fix, and the premium shall be paid by the Authority as a necessary expense of the Authority.

(l) Chief Executive Officer and Other Employees. -- The Board shall appoint a full-time professional chief executive officer, whose salary shall be fixed by the Board, to serve at its pleasure. The chief executive officer or a person designated by the chief executive officer shall appoint, employ, dismiss, and, within the limits of available funding, fix the compensation of other employees as considered necessary.

(m) Office. -- The Board shall establish an office for the transaction of the Authority's business at the place the Board finds advisable or necessary to implement the provisions of this Part.

"**§ 143B-437.23. Powers of the Authority.**

(a) The Authority has all of the powers necessary to execute the provisions of this Part, including at least the following powers:

(1) The powers of a corporate body, including the power to sue and be sued, to make contracts, to adopt and use a common seal, and to alter the adopted seal as needed.

(2) To finance the purchase of real or personal property.

(3) To contract and enter into agreements with the State, local governments, other authorities of North Carolina, and other states for the interchange of business.

(4) To create and operate agencies and departments needed to implement this Part.

(5) To pay all necessary costs and expenses in the formation, organization, administration, and operation of the Authority.

(6) To apply for, accept, and administer grants of money from any federal agency, from the State or its political subdivisions, or from any other public or private sources available, and to expend the money in accordance with the requirements imposed by the donor.

(7) To adopt, alter, or repeal its own bylaws or rules implementing the provisions of this Part.

(8) To execute financing agreements, security documents, and other instruments necessary in exercising its power under this Part.

(9) To fix, charge, collect, pledge, or assign revenues of the Authority.

(10) To employ consulting engineers, architects, attorneys, real estate counselors, appraisers, and other consultants and employees as may be required in the judgment of the Board and to fix and pay their compensation from funds available to the Authority.

(11) To provide consulting and advisory services to government entities and to private, nonprofit entities.

(12) To procure and maintain adequate insurance or otherwise provide for adequate protection to indemnify the Authority and its officers, directors, agents, employees, adjoining property owners, or the general public against loss or liability resulting from any act or omission by or on behalf of the Authority.

(13) To exercise the powers granted counties and cities under G.S. 158-7.1(a).

(14) With the approval of any unit of local government, to use officers, employees, agents, and facilities of the unit of local government for the purposes and upon the terms as may be mutually agreeable.

(15) To receive and use appropriations from the State, including an appropriation from the proceeds of State general obligation bonds or notes.

(16) To create and administer the Rural Investment Fund and the Long-Term Rural Development Fund, as provided in this Part.

(17) To invest in securities of a small business investment company or in a limited partnership interest in a partnership that invests principally in companies in rural counties.

(18) To act as a regranting agency for government grants specifically designated for that purpose.

(b) To execute the powers provided in subsection (a) of this section, the Board shall determine the policies of the Authority by majority vote of the members of the

Board present and voting, a quorum having been established. Once a policy is determined, the Board shall communicate it to the chief executive officer, who has the exclusive authority to execute the policy of the Authority. No member of the Board is authorized to give operational directives to any employee of the Authority other than the chief executive officer.

(c) The Authority does not have the power of eminent domain or the power to levy any tax.

"**§ 143B-437.24:** Reserved.

"**§ 143B-437.25:** Reserved.

"**§ 143B-437.26. Authority funds.**

Funds of the Authority may be paid out only upon warrants signed by the treasurer or assistant treasurer of the Authority and countersigned by the Chair, the acting Chair, or the chief executive officer. No warrants may be drawn or issued disbursing any of the funds of the Authority except for a purpose authorized by this Part and unless the account or expenditure has been audited and approved by the Authority or its chief executive officer.

"**§ 143B-437.27. Rural Investment Fund.**

The Authority may create a revolving loan fund to be called the Rural Investment Fund. The Authority shall use monies in the Investment Fund only to make intermediate-term loans to government entities and to private, nonprofit entities for self-liquidating projects, such as shell buildings, in rural counties. The Authority shall adopt rules establishing interest rates, maximum loans, security requirements, eligibility standards, application procedures, award criteria, and award schedules, and otherwise providing for the administration of the Investment Fund. The Authority shall give priority to applications from regional partnerships.

"**§ 143B-437.28. Long-Term Rural Development Fund.**

(a) The Authority may create a fund to be known as the Long-Term Rural Development Fund. The Authority may invest and reinvest the assets of the Development Fund.

(b) The income derived from the investment or deposit of the Development Fund shall be used for the following purposes:

(1) To pay the administrative expenses of the Authority.

(2) To make intermediate-term loans and longer-term loans to government entities and to private, nonprofit entities for self-liquidating projects, such as shell buildings, in rural counties.

(3) To provide for the development of property for industrial sites and industrial parks in rural counties, including any of the following:

a. Providing water, sewer, gas, or electrical distribution lines or equipment for an industrial site or industrial park.

b. Providing road or railroad improvements for an industrial site or industrial park.

c. Providing fiber optic or coaxial cable, towers, and other infrastructure items to accommodate high-speed Internet access.

d. Providing air or water pollution control facilities.

(c) The Authority shall adopt rules establishing interest rates, maximum loans, security requirements, eligibility standards, application procedures, award criteria, and award schedules, and otherwise providing for the administration of the Development Fund. The Authority shall give priority to applications from regional partnerships.

"§ 143B-437.29. Contracting with minority businesses.

The Authority must comply with the policies regarding contracting with minority businesses as set out in G.S. 143-48, 143-128(f), and 143-135.5 and with any other applicable laws. The Authority is subject to Executive Order Number 150, issued April 20, 1999, regarding contracting with historically underutilized businesses.

"§ 143B-437.30. Conflicts of interest.

If any member, officer, or employee of the Authority is interested either directly or indirectly, or is an officer or employee of or has an ownership interest in any firm or corporation, not including units of local government, interested directly or indirectly, in any contract with the Authority, the member, officer, or employee must disclose the interest to the Board, which must set forth the disclosure in the minutes of the Board. The member, officer, or employee having an interest may not participate on behalf of the Authority in the authorization of any contract.

"§ 143B-437.31. Cooperation by other State agencies.

All State officers and agencies shall cooperate and may render services where appropriate to the Authority within their respective functions as may be requested by the Authority.

"§ 143B-437.32. Annual and quarterly reports.

The Authority must, promptly following the close of each fiscal year, submit an annual report of its activities for the preceding year to the Governor and the General Assembly. Each report must be accompanied by an audit of its books and accounts. The audit must be conducted by the State Auditor. The costs of all audits shall be paid from funds of the Authority.

Each annual report must be accompanied by data indicating the geographical distribution of development projects funded directly or indirectly by the Authority. Every three years, the Authority shall provide to the Governor and to the General Assembly an analysis of the data for the previous three-year period showing the extent to which the funding of development projects has been distributed among the rural counties of every geographical region in an equitable manner.

The Authority must submit quarterly reports to the Joint Legislative Commission on Governmental Operations. The reports must summarize the Authority's activities during the quarter and contain any information about the Authority's activities that is requested by the Commission.

"§ 143B-437.33. Dissolution.

Whenever the Board by resolution determines that the purposes for which the Authority was formed have been substantially fulfilled and that all obligations incurred by the Authority have been fully paid or satisfied, the Board may declare the Authority dissolved. On the effective date of the resolution, the title to all funds

and other property owned by the Authority at the time of the dissolution vests in the State and possession of the funds and other property must be delivered to the State."

Section 2. G.S. 120-123 is amended by adding a new subdivision to read:

"(70) The North Carolina Rural Redevelopment Authority created in Part 2D of Article 10 of Chapter 143B of the General Statutes."

Section 3. G.S. 126-5(c1) is amended by adding a new subdivision to read:

"(18) Employees of the North Carolina Rural Redevelopment Authority created in Part 2D of Article 10 of Chapter 143B of the General Statutes."

Section 4. G.S. 150B-21.1 is amended by adding a new subsection to read:

"(a7) Notwithstanding the provisions of subdivision (a)(2) of this section, an agency may adopt a temporary rule to implement the provisions of any of the following acts until all rules necessary to implement the provisions of the act have become effective as either temporary or permanent rules:

(1) Reserved.

(2) The North Carolina Rural Redevelopment Authority Act, Part 2D of Article 10 of Chapter 143B of the General Statutes."

Section 5. G.S. 150B-21.1(a7)(2), as enacted by Section 4 of this act, is repealed effective July 1, 2002.

Section 6. G.S. 66-58(b) is amended by adding a new subdivision to read:

"(21) The North Carolina Rural Redevelopment Authority or a lessee of the Authority."

Section 7. This act becomes effective July 1, 2000.

HOUSE BILL 1819:
Rural Redevelopment Authority Funds

BILL ANALYSIS

Committee: Senate Finance
Date: June 28, 2000
Version: Third Edition

Introduced by: Representative Tolson
Summary by: Kory Goldsmith, Staff Attorney, Karen Cochrane Brown, Committee Co-Counsel

SUMMARY:

HB 1819 creates the North Carolina Rural Redevelopment Authority to provide financing for rural economic development projects and to invest in rural business development. This proposal comes as a recommendation of the Rural Prosperity Task Force.

BILL ANALYSIS:

Section 1. - The bill adds a new Article 10 to Chapter 143B of the General Statutes.

G.S. 143B-437.20 – States the title of the act and sets-out the purpose of the Rural Redevelopment Authority.

G.S. 143B-437.21 – Provides definitions applicable to the act. A "**development project**" is an investment that enables or increases the possibility that an industrial expansion or location will occur in a rural county, including improvements such as shell buildings and internal infrastructure. An "**intermediate-term loan**" is a loan whose term does not exceed 3 years. A "**rural county**" is a county in North Carolina with a density of fewer than 200 people per square mile based on the most recent U.S. decennial census.

G.S. 143B-437.22 – Creates the Authority and the Board. The Authority is a body corporate and politic, and a State agency created to perform essential governmental and public functions. It is located in the Department of Commerce, but exercises its powers independently of the Secretary of Commerce. The Board of Directors is composed of 9 members.

- 3 appointed by the Governor – two must be representatives of financial institutions, one must be an elected official representing a local government in a rural county.
- 2 appointed by the House upon the recommendation of the Speaker – one must be a representative of a predominantly rural regional partnership and one must be representative of a financial institution.
- 2 appointed by the Senate upon the recommendation of the President Pro Tempore – both must be representatives of financial institutions.
- The Secretary of Commerce.
- The chief executive officer of the Authority.

Members serve 3-year terms except the chief executive officer's term coincides with his or her appointment by the Board. The authority that made the appointment fills vacancies. The Governor appoints one of the members as the Chair, and the Board elects a Vice-Chair.

G.S. 143B-437.23 – The Authority has the power to sue and be sued; contract with State and local governments; create and operate agencies and departments; pay necessary costs and expenses; apply for and administer grants; adopt and/or repeal bylaws; execute financing agreements; to employ professional consultants; to provide consulting and advisory services; to purchase insurance; to exercise the powers of local development provided to counties and cities under G.S. 158-7.1; to create and invest the monies of the Rural Investment Fund and the Long-Term Rural Development Fund; to invest in securities of a small business investment company; to act as a regranting agency.

G.S. 143B-437.26 – Funds of the Authority may only be paid upon warrants signed by the treasurer and counter signed by the Chair or the chief executive officer.

G.S. 143B-437.27 – Creates the Rural Investment Fund to be used to make intermediate-term loans to government entities and to private, nonprofit entities for self-liquidating projects. The Authority establishes the terms of the loans and shall give priority to applications from regional partnerships.

G.S. 143B-437.28 – Creates the Long-Term Rural Development Fund. The Authority shall invest the assets of the Development Fund and use the income from those investments to pay its administrative expenses, to make intermediate and long-term loans. The Authority establishes the terms of the loans and shall give priority to applications from regional partnerships.

G.S. 143B-437.29 – The Authority shall comply with existing laws and Executive Orders regarding minority businesses and historically under utilized businesses.

G.S. 143B-437.30 – Any member of the Board or officer or employee of the Authority who has a direct or indirect interest in firm or contract with the Authority shall disclose the interest and not participate on behalf of the Authority in the authorization of that contract.

G.S. 143B-437.31 – Other State agencies shall cooperate with the Authority.

G.S. 143B-437.32 – The Authority shall issue annual and quarterly reports to the General Assembly.

G.S. 143B-437.33 – Sets-out the provisions for dissolution of the Authority

Section 2. – Amends G.S. 120-123 to prohibit the appointment of members of the Legislature to the Board.

Section 3. – Amends G.S. 126-5(c1) to make the employees of the Authority exempt from the State Personnel Act.

Section 4. – Extends the amount of time during which the Authority may adopt temporary rules.

Section 5 – Sunsets, effective July 1, 2002, the temporary rule-making authority in Section 4.

Section 6 – Exempts the Authority and its lessees from the Umstead Act.

The Act becomes effective July 1, 2000.

FISCAL ANALYSIS MEMORANDUM

DATE: June 27, 2000

TO: Senate Finance

FROM: Linda Struyk Millsaps
Fiscal Research Division

RE: HB 1819 – Rural Development Authority Funds

FISCAL IMPACT

Yes ( ) **No (x)** **No Estimate Available ( )**

	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05
REVENUES					
General Fund			**No General Fund Impact**		
Local Government			*** See Assumptions and Methodology ***		
EXPENDITURES					
General Fund			*** See Assumptions and Methodology ***		

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Rural Development Authority, Department of Commerce.

EFFECTIVE DATE: July 1, 2000.

BILL SUMMARY: The bill creates the North Carolina Rural Redevelopment Authority. The purpose of the Authority is defined as financing " rural economic development projects and invest in rural business development". The bill outlines the structure, powers, and reporting requirements of the Authority and their governing board. It also defines the terms "development project", "rural county", and "intermediate-term loan". The legislation creates the Rural Investment and Long-term Rural Development Funds to make loans and investments. All property owned by the Authority is exempt from taxation.

ASSUMPTIONS AND METHODOLOGY: The bill has no direct fiscal impact on the state budget. An earlier version of the bill included an appropriation of $250,000 for the authority. That provision was removed from later editions of the bill, and the appropriated amount was moved into both the House and Senate Budgets (Senate Appropriations Committee Report page

H7, Item 25, House Appropriations Committee Report page H6 Item 23). However, a special provision in the budget places the $250,000 in a reserve. The special provision stipulates that the money is only available if H.B. 1819, S.B. 1516, or a substantially similar bill creating the North Carolina Rural Development Authority becomes law.

The bill could have a small fiscal impact on selected counties as it exempts Authority property from taxation. However, because the potential amount and location Authority property is unknown no fiscal estimate of the loss is possible.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 1624
Committee Substitute Favorable 6/5/00

Short Title: Streamlined Sales Tax System. (Public)

Sponsors:

Referred to:

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATION OF THE NATIONAL GOVERNORS' ASSOCIATION FOR A STREAMLINED SALES TAX COLLECTION SYSTEM AND TO OTHERWISE IMPROVE COLLECTION.

The General Assembly of North Carolina enacts:

Section 1. Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"§ 105-164.27. Direct pay certificate.

(a) Requirements. -- A person who purchases tangible personal property whose tax status cannot be determined at the time of the purchase because of one of the reasons listed below may apply to the Secretary for a direct pay certificate:

(1) The place of business where the property will be used is not known at the time of the purchase and a different tax consequence applies depending on where the property is used.

(2) The manner in which the property will be used is not known at the time of the purchase and one or more of the potential uses is taxable but others are not taxable.

(b) Procedure. -- An application for a direct pay certificate must be made on a form provided by the Secretary and contain the information required by the Secretary. The Secretary may grant the application if the Secretary finds that the applicant complies with the sales and use tax laws and that the applicant's compliance burden will be greatly reduced by use of the certificate.

(c) Effect. -- A direct pay certificate authorizes its holder to purchase any tangible personal property without paying tax to the seller and authorizes the seller to not collect any tax on a sale to the certificate holder. A person who purchases tangible personal property under a direct pay certificate is liable for use tax due on the purchase. The tax is payable when the property is placed in use. A direct pay certificate does not apply to taxes imposed under G.S. 105-164.4(a)(1f) or G.S. 105-164.4(a)(4a).

(d) Revocation. -- A direct pay certificate is valid until the holder returns it to the Secretary or it is revoked by the Secretary. The Secretary may revoke a direct pay certificate if the holder of the certificate does not file a sales and use tax return on time, does not pay sales and use on time, or otherwise fails to comply with the sales and use tax laws."

Section 2. Article 5 of Chapter 105 of the General Statutes is amended by adding the following new sections to read:

"**§ 105-164.43A. Certification of tax collector software and tax collector.**

(a) Software. -- The Secretary may certify a software program as a certified sales tax collection program if the Secretary determines that the program correctly determines all of the following and that the software can generate reports and returns required by the Secretary:

(1) The applicable combined State and local sales and use tax rate for a sale, based on a ship-to address.

(2) Whether or not an item is exempt from tax, based on a uniform product code or another method.

(3) Whether or not an exemption certificate offered by a purchaser is a valid certificate, based on the Department's registry of holders of exemption certificates.

(4) The amount of tax to be remitted for each taxpayer for a reporting period.

(5) Any other issue necessary for the application or calculation of sales and use tax due.

(b) Tax Collector. -- The Secretary may certify an entity as a Certified Sales Tax Collector if the entity meets all of the following requirements:

(1) The entity uses a certified sales tax collection program.

(2) The entity has agreed to update its program upon notification by the Secretary.

(3) The entity integrates its certified sales tax collection program with the system of a retailer for whom the entity collects tax so that the tax due on a sale is determined at the time of the sale.

(4) The entity remits the taxes it collects at the time and in the manner specified by the Secretary.

(5) The entity agrees to file sales and use tax returns on behalf of the retailers for whom it collects tax.

(6) The entity enters into a contract with the Secretary and agrees to comply with all the conditions of the contract.

"§ 105-164.43B. Contract with Certified Sales Tax Collector.

The Secretary may contract with a Certified Sales Tax Collector for the collection and remittance of sales and use taxes. The amount a Certified Sales Tax Collector charges under the contract is a cost of collecting the tax and is payable from the amount collected.

"§ 105-164.43C. Effect of contract.

(a) Retailer. -- A retailer may contract with a Certified Sales Tax Collector to collect and remit sales and use taxes payable to the State on sales made by the retailer. A retailer who contracts with a Certified Sales Tax Collector is not subject to audit by the State on the transactions it processes using the Collector's certified sales tax collection program. A retailer is subject to audit for transactions not processed by the Certified Sales Tax Collector.

The Department may review a retailer's procedures to determine if the certified sales tax collection program is functioning properly. A retailer who contracts with a Certified Sales Tax Collector is not liable for taxes due on sales processed using the program unless the retailer misrepresented the product it sells. A contract with a Certified Sales Tax Collector is not a factor in determining whether a person has nexus with this State for payment of any tax.

(b) Collector. -- A Certified Sales Tax Collector is the agent of a seller who contracts with the Certified Sales Tax Collector for collection and remittance of sales and use taxes payable to this State. As the seller's agent, the Certified Sales Tax Collector is liable for sales tax due on all sales transactions processed by the Certified Sales Tax Collector unless the seller misrepresented the type of property sold."

Section 3. G.S. 105-88(d) reads as rewritten:

"(d) A loan made by a person who does not comply with this section is not collectible at law ~~in the courts of this State in any case where the person making the loan has failed to pay the tax levied in this section or otherwise failed to comply with the provisions of this section.~~ under G.S. 105-269.13."

Section 4. G.S. 105-164.6A(b)(1) reads as rewritten:

"(b) Mandatory Provisions. -- The agreements must contain the following provisions:

(1) ~~The customer may elect to pay the use tax directly to the Secretary in accordance with law rather than to the seller.~~ The seller is not liable for use tax not paid to it by a customer."

Section 5. G.S. 105-164.13 is amended by adding a new subdivision to read:

"§ 105-164.13. Retail sales and use tax.

The sale at retail, the use, storage or consumption in this State of the following tangible personal property is specifically exempted from the tax imposed by this Article:

...

(16a) Tangible personal property sold to a person in the State but delivered to a person in another state."

....

Section 6. G.S. 105-164.28 reads as rewritten:

"**§ 105-164.28. Certificate of resale.**

(a) Seller's Responsibility. -- A seller who accepts a certificate of resale from a purchaser of tangible personal property has the burden of proving that the sale was not a retail sale unless all of the following conditions are met:

(1) ~~The seller acted in good faith in accepting the certificate of resale.~~ For a sale made in person, the certificate is signed by the purchaser, states the purchaser's name, address, and registration number, and describes the type of tangible personal property generally sold by the purchaser in the regular course of business.

(2) ~~The certificate is in the form required by the Secretary.~~ For a sale made in person, the purchaser is engaged in the business of selling tangible personal property of the type sold.

(3) ~~The certificate is signed by the purchaser, states the purchaser's name, address, and registration number, and describes the type of tangible personal property generally sold by the purchaser in the regular course of business.~~ For a sale made over the Internet or by other remote means, the sales tax registration number given by the purchaser matches the number on the Department's registry.

~~(4) The purchaser is licensed under this Article or under the law of another taxing jurisdiction.~~

~~(5) The purchaser is engaged in the business of selling tangible personal property of the type sold.~~

(b) Liabilities. -- A purchaser who does not resell property purchased under a certificate of resale is liable for any tax subsequently determined to be due on the sale. A seller of property sold under a certificate of resale is jointly liable with the purchaser of the property for any tax subsequently determined to be due on the sale only if the Secretary proves that the sale was a retail sale."

Section 7. G.S. 105-236(5a) reads as rewritten:

"(5a) Misuse of Exemption ~~Certificate of Resale.~~ Certificate. -- For misuse of ~~a certificate of resale~~ an exemption certificate by a purchaser, the Secretary shall assess a penalty equal to two hundred fifty dollars ($250.00). An exemption certificate is a certificate issued by the Secretary that authorizes a retailer to sell tangible personal property to the holder of the certificate and either collect tax at a preferential rate or not collect tax on the sale. Examples of an exemption certificate include a certificate of resale, a direct pay certificate, and a farmer's certificate."

Section 8. G.S. 105-259(b) is amended by adding a new subdivision to read:

"(b) Disclosure Prohibited. -- An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

. . .

(25) To provide public access to a database containing the names of retailers who are registered to collect sales and use taxes under Article 5 of this Chapter."

Section 9. Article 9 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-269.13. Debts not collectible under North Carolina law.**

(a) Debts Not Collectible. -- The following debts are not collectible and are not subject to execution under Article 28 of Chapter 1 of the General Statutes or any other provision of law:

(1) A loan made by a person who does not comply with G.S. 105-88.

(2) A debt owed to a retailer described in subsection (b) of this section as the result of the purchase of tangible personal property.

(b) Retailer. -- A debt owed to a retailer is subject to this section if all of the following applies to the retailer:

(1) The retailer meets one or more of the conditions in G.S. 105-164.8(b).

(2) The retailer is not registered to collect the use tax due under Article 5 of this Chapter on its sales delivered to an address in North Carolina.

(3) The retailer reported gross sales of at least five million dollars ($5,000,000) on its most recent federal income tax return."

Section 10. G.S. 105-269.14 is repealed.

Section 11. G.S. 105-164.16(d) reads as rewritten:

"(d) Use Tax on Out-of-State Purchases. -- ~~Use tax payable by~~ Notwithstanding subsection (b), an individual who purchases tangible personal property outside the State for a nonbusiness purpose ~~is due~~ shall file a use tax return on an annual basis. ~~For an individual who is not required to file an individual income tax return under Part 2 of Article 4 of this Chapter, the~~ The annual reporting period ends on the last day of the calendar ~~year and a use tax return is due by the following April 15. For an individual who is required to file an individual income tax return, the annual reporting period ends on the last day of the individual's income tax year, and the use tax must be paid on the income tax return as provided in G.S. 105-269.14.~~ year. The return is due by the due date, including any approved extensions, for filing the individual's income tax return."

Section 12. G.S. 105-466(c) reads as rewritten:

"(c) Collection of the tax, and liability therefor, shall begin and continue only on and after the first day of ~~a calendar month~~ the month of either January or July, as set by the board of county commissioners in the resolution levying the ~~tax, which shall in no case be~~ tax. In no event may the tax be imposed, or the tax rate changed, earlier than the first day of the second succeeding calendar month after the date of the adoption of the resolution. The county must give the Secretary at least 90 days advance notice of a new tax levy or tax rate change."

Section 13. Chapter 1096 of the 1967 Session Laws is amended by adding a new section to read:

"Section 10.3. Mecklenburg County must give the Secretary of Revenue at least 90 days advance notice of any tax rate change under this act. Any tax rate change under this act must become effective on the first day of the month of either January or July, as set by the board of county commissioners in the resolution levying the tax."

Section 14. G.S. 20-7(b1) reads as rewritten:

"(b1) Application. -- To obtain a drivers license from the Division, a person must complete an application form provided by the Division, present at least two forms of identification approved by the Commissioner, be a resident of this State, and demonstrate his or her physical and mental ability to drive safely a motor vehicle included in the class of license for which the person has applied. The Division may copy the identification presented or hold it for a brief period of time to verify its authenticity. To obtain an endorsement, a person must demonstrate his or her physical and mental ability to drive safely the type of motor vehicle for which the endorsement is required.

The application form must request all of the following ~~information:~~ information, and it must contain the disclosures concerning the request for an applicant's social security number required by section 7 of the federal Privacy Act of 1974, Pub. L. No. 93-579:

(1) The applicant's full name.
(2) The applicant's mailing address and residence address.
(3) A physical description of the applicant, including the applicant's sex, height, eye color, and hair color.
(4) The applicant's date of birth.
(5) The applicant's social security number. The Division shall not issue a license to an applicant who fails to provide the applicant's social security number. ~~The applicant's social security number shall not be printed on the license and may be released only to the Department of Health and Human Services, Child Support Enforcement Program, upon its request and for the purpose of establishing paternity or child support, or enforcing a child support order.~~
(6) The applicant's signature.

~~The application form must also contain the disclosures concerning the request for an applicant's social security number required by section 7 of the federal Privacy Act of 1974, Pub. L. No. 93-579.~~

(b2) Disclosure of Social Security Number. -- The social security number of an applicant is not a public record. The Division may not disclose an applicant's social security number except as allowed under federal law. A violation of the disclosure restrictions is punishable as provided in 42 U.S.C. § 408, and amendments to that law.

In accordance with 42 U.S.C. 405 and 42 U.S.C. 666, and amendments thereto, the Division may disclose a social security number obtained under ~~this subsection~~ subsection (b1) of this section only as follows:

(1) ~~for~~ For the purpose of administering the drivers license ~~laws or to~~ laws.

(2) To the Department of Health and Human Services, Child Support Enforcement Program for the purpose of ~~assist the State Child Support Enforcement Program in~~ establishing paternity or ~~establishing~~ child support or enforcing a child support order. ~~and may not disclose the social security number for any other purpose. The social security number of an applicant for a license or of a licensed driver is therefore not a public record. A violation of the disclosure restrictions is punishable as provided in 42 U.S.C. 408, and amendments thereto.~~

(3) To the Department of Revenue for the purpose of verifying taxpayer identity."

Section 15. G.S. 20-7(n)(7) reads as rewritten:

"(n) Format. -- A drivers license issued by the Division must be tamperproof and must contain all of the following information:

. . .

(7) ~~The license holder's social security number or another~~ An identifying number for the license holder assigned by the Division. The identifying number may not be the license holder's social security number."

. . . .

Section 16. Section 5.(a) of Chapter 341 of the 1999 Session Laws reads as rewritten:

"Section 5.(a) The Secretary of Revenue shall contract during the 1999-2001 fiscal biennium for the collection of delinquent tax debts owed by nonresidents and foreign entities. To implement this section, the Secretary may draw funds for the 1999-2000 fiscal year from net collections that would otherwise be credited to the General Fund under G.S. 105-269.14, enacted by Section 2 of this act. For the 2000-2001 fiscal year, the Secretary may retain the costs of implementing this section from the amounts collected pursuant to the contracts authorized by this section. The Secretary of Revenue shall report annually to the Revenue Laws Study Committee on its collections pursuant to this contract during the biennium."

Section 17. Section 6 of Chapter 341 of the 1999 Session Laws reads as rewritten:

"Section 6. The Department of Revenue shall conduct a study to identify and evaluate proposals for more efficient collection of taxes, including using electronic commerce and other technology to increase efficiency. The study shall include an analysis of the most efficient tax collection methods used in other states. The State Controller shall cooperate with the Department of Revenue in this study. The Department shall report the results of its study, including findings, recommendations,

and estimated revenue gains of each recommendation, to the Revenue Laws Study Committee by May 1, 2000. To implement this section, the Secretary of Revenue may draw up to fifty thousand dollars ($50,000) for the 1999-2000 fiscal year from net collections that would otherwise be credited to the General Fund under G.S. 105-269.14, enacted by Section 2 of this act. To implement the recommendations of this study, the Secretary may enter into a performance based contract and may draw up to five hundred thousand dollars ($500,000) for the 2000-2001 fiscal year from the revenue collected pursuant to Section 5 of this act to obtain assistance in developing a request for proposal for the performance based contract."

Section 18. Section 7 of this act becomes effective January 1, 2001. Sections 10 and 11 of this act become effective for taxable years beginning on or after January 1, 2003. The remainder of this act is effective when it becomes law.

FISCAL ANALYSIS MEMORANDUM

DATE: June 27, 2000

TO: House Finance Committee
FROM: Dave Crotts
Fiscal Research Division
RE: HB 1624 (With Senate Finance Amendment)
Streamlined Sales Tax System

FISCAL IMPACT

Yes (x) **No ( )** **No Estimate Available (x)**

GENERAL FUND REVENUE (STATE AND LOCAL): See "Assumptions and Methodology" section.
PRINCIPAL DEPARTMENT AFFECTED: The sales and use tax is collected by the Department of Revenue.
EFFECTIVE DATE: The sales tax exemption certificate provision becomes effective January 1, 2001. The remainder of the bill becomes effective when it becomes law.

ISSUE BACKGROUND: The objective of the proposal is to assist in the implementation of a system to simplify and streamline the sales and use tax collection system for remote and in-state retailers. This would be accomplished by shifting sales tax administration to a technology-oriented business model where the primary responsibility for calculating, collecting, reporting, and remitting the use tax lies with a "Certified Sales Tax Collector" instead of the remote retailer. The State would reimburse the Collector for the costs of integrating the system with a vendor's system and for operating the system. The costs of the system would be funded from the receipts collected and could be recovered through a flat transaction fee, a percentage rate, or some combination.

To participate in the program the Collector must use a certified software program to determine the state and local tax due on a transaction. The participating retailer will not be subject to state audit on the transactions it processes using the Collector's software. Finally, a contract with a Collector is not a factor in establishing nexus for state tax purposes.
EXPLANATION OF PROPOSAL: (1) Eliminates the "good faith" requirement when accepting an exemption certificate from a purchaser on a sale made over the Internet or by other remote means.

(2) Codifies a long-standing practice of the Department of Revenue to issue "direct pay certificates" to a person who is unsure how the property purchased should be taxed at the time of the acquisition.

(3) Provides that the penalty for misusing an exemption certificate applies not only to a resale certificate but also to a direct pay certificate and a farmer's certificate.

(4) Establishes a uniform sourcing rule that calculates tax due based on a "ship-to address".

(5) Provides that the customer of a retailer who takes part in the new system must pay the sa and use tax on the item purchased.

(6) Provides that local sales tax rate changes may be made no more than twice a year and at least 90 days notice must be given to the Department before a rate change can be made.

(7) Prohibits the use of state courts in North Carolina for debts owed to a retailer who is required to collect use tax for the State on a mail-order transaction but refuses to do so. The provision would apply only to retailers who report gross sales of at least $5 million on the most recent federal income tax return.

(8) Allows the Division of Motor Vehicles to disclose a social security number to the Department of Revenue for the purpose of verifying a taxpayer's identification.

(9) Provides funding for contracts for the collection of delinquent tax debts owed by nonresidents and foreign entities. Funds are provided by allowing the Secretary of Revenue to apply the amounts collected under the contract to the cost of the contract.

(10) Allows the Secretary of Revenue to retain as much as needed to develop a request for proposal for a more automated tax collection system. The earmarking shall come from the amounts derived during the 2000-01 fiscal year from the collection of delinquent debts owed by nonresidents and foreign entities.

(11) Requires certified sales tax collector to be bonded or have an irrevocable letter of credit in an amount set by the Secretary of Revenue.

(12) Provides that Department of Revenue may audit a retailer participating in steamlined sales tax system in the case of fraud.

ASSUMPTIONS AND METHODOLOGY: The provisions in the proposal represent implementation steps to achieving the objective of a simplified system of collecting sales and use taxes from remote and in-state retailers. Over the long-term a number of other actions will need to take place in North Carolina and other states to simplify the sales and use tax. Some examples include the development of common product definitions, local tax rate uniformity (numerous rates in other states), product return policies under the new system, joint audit procedures, and state/local tax exemption consistency. Thus, the current proposal is just the first step in a lengthy process.

A recent study by the Center for Business and Economic Research at the University of Tennessee estimates that by calendar year 2003 the incremental state and local revenue loss on e-commerce transactions would be $238 million. If the current revenue losses on catalog sales and e-commerce purchases are included, the maximum state and local revenue gain from the full implementation of the new system would be over $400 million by 2003.

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1624

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H1624-ARB-6.27

Page 1 of __

Date_____,2000

Comm. Sub. [yes]
Amends Title []
Second Edition

Senator D. Harris

moves to amend the bill on page 3, line 3, by adding the following immediately before the word "The": A Certified Sales Tax Collector must file with the Secretary a bond or an irrevocable letter of credit in the amount set by the Secretary. A bond must be conditioned upon compliance with the contract, be payable to the State, and be in the form required by the Secretary.";

and on page 3, line 9, by deleting "A" and substituting "In the absence of fraud, a";

and on page 3, lines 35 through 44, read as rewritten:

"Section 5. G.S. 105-164.13(14a) is recodified as G.S. 105-164.13(33a) and reads as rewritten:

'(33a) ~~Printed material which is sold by a printer~~ Tangible personal property sold by a retailer to a purchaser within or without this State, when ~~such printed material~~ the property is delivered in this State to a common carrier or to the United States Postal Service for delivery to the purchaser or the purchaser's designees outside this ~~State, if~~ State and the purchaser does not ~~thereafter~~ subsequently use the ~~printed material~~ property in this State. The retailer must send a list of the property purchased and delivered to an address outside this State to the Department on a quarterly basis. The Department must forward this information to the state to which the property was delivered. The list must

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1624

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(to be filled in by
Principal Clerk)

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include the purchaser's name, the address to which the property was delivered, the date of the purchase, a description of the property, and the value of the property.'";

and on page 5, lines 22 and 23, by adding the following new subsection between those lines to read:
"(c) Assignment. -- An assignment to a person of a debt listed in subsection (a) of this section is subject to the collection restrictions imposed by this section.";

and on page 8, lines 6 through 9, by rewriting the lines to read:
"this study, the Secretary may enter into a performance based contract and may withhold from the revenue collected pursuant to Section 5 of this act the amount needed to obtain assistance in developing a request for proposal for the performance based contract.".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

AMENDMENT TO HB 1624: Streamline Sales Tax System
H1624-ARB-6.24

The Committee raised several concerns when this bill was before it last Wednesday. This amendment addresses those concerns:

- **Bonding of Certified Sales Tax Collector: Sen. Harris raised this concern. The amendment would require a certified sales tax collector to have a bond or an irrevocable letter of credit in an amount set by the Secretary. The language is very similar to the bonding requirements for persons licensed as motor fuel distributors. PAGE 1, LINES 1 – 6 OF THE AMENDMENT**

- **Gifts: Sen. Rand raised this concern. The amendment clarifies that sales tax is owed when property is shipped to a person outside this State but is subsequently used in this State by the purchaser. PAGE 1, LINES 11 – 23 OF THE AMENDMENT**

- **Assignment of debt: Sen. Soles raised this concern. The amendment clarifies that the limitations on using the State's courts to collect a debt apply equally to a person to whom the debt is assigned. PAGE 1, LINE 25 – PAGE 2, LINE 3**

- **Money for RFP: Sen. Rand raised this concern. The amendment removes the $500,000 figure from the bill and provides that the department may retain the amount needed to obtain the assistance necessary to develop the RFP for its performance-based contract. This is the way Marvin Dorman suggested handling this concern. PAGE 2, LINES 5 - 10**

- **Limit scope of audit: The Department raised this concern. It clarifies that the Department may audit a retailer who participates in the streamline sales tax system if the retailer is fraudulent. PAGE 1, LINES 8 AND 9**

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1624

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

→H1624-ARB-6.~~27~~ 28

Page 1 of __

Date_____,2000

Comm. Sub. [yes]
Amends Title []
Second Edition

Senator_____

moves to amend the bill on page 3, line 3, by adding the following immediately before the word "The": A Certified Sales Tax Collector must file with the Secretary a bond or an irrevocable letter of credit in the amount set by the Secretary. A bond must be conditioned upon compliance with the contract, be payable to the State, and be in the form required by the Secretary.";

and on page 3, line 9, by deleting "A" and substituting "In the absence of fraud, a";

and on page 3, lines 35 through 44, read as rewritten:

"Section 5. G.S. 105-164.13(14a) is recodified as G.S. 105-164.13(33a) and reads as rewritten:

'(33a) ~~Printed material which is sold by a printer~~ Tangible personal property sold by a retailer to a purchaser within or without this State, when ~~such printed material~~ the property is delivered in this State to a common carrier or to the United States Postal Service for delivery to the purchaser or the purchaser's designees outside this ~~State, if~~ State and the purchaser does not ~~thereafter~~ subsequently use the ~~printed material~~ property in this State.'";

and on page 5, lines 22 and 23, by adding the following new subsection between those lines to read:

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1624

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H1624-ARB-6.2 Page 2 of __

"(c) Assignment. -- An assignment to a person of a debt listed in subsection (a) of this section is subject to the collection restrictions imposed by this section.";

and on page 8, lines 6 through 9, by rewriting the lines to read: "this study, the Secretary may enter into a performance based contract and may withhold from the revenue collected pursuant to Section 5 of this act the amount needed to obtain assistance in developing a request for proposal for the performance based contract.";

and on page 8, lines 9 and 10, by inserting between those lines a new section to read:

"Section 17.1. G.S. 105-164.3(15) reads as rewritten:

'**§ 105-164.3. Definitions.**

The following definitions apply in this Article, except when the context clearly indicates a different meaning:

...

(15) Sale or selling. -- The transfer of title or possession of tangible personal property, conditional or otherwise, in any manner or by any means whatsoever, for a consideration paid or to be paid. When the consumer is physically present in the retailer's place of business when the tangible personal property is purchased, the transfer of title and possession of tangible personal property is deemed to have occurred at that time, regardless of whether the property is subsequently delivered to an address outside this State.

The term includes the fabrication of tangible personal property for consumers by persons engaged in business who furnish either directly or indirectly the materials used in the fabrication work. The term also includes the furnishing or preparing for a consideration of any tangible personal property consumed on the premises of the person furnishing or preparing the property or consumed at the place at which the property is furnished or prepared. The term also includes a transaction in which the possession of the property is transferred but the seller retains

NORTH CAROLINA GENERAL ASSEMBLY
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House Bill 1624

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Principal Clerk)

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title or security for the payment of the consideration.

If a retailer engaged in the business of selling prepared food and drink for immediate or on-premises consumption also gives prepared food or drink to its patrons or employees free of charge, for the purposes of this Article the property given away is considered sold along with the property sold. If a retailer gives an item of inventory to a customer free of charge on the condition that the customer purchase similar or related property, the item given away is considered sold along with the item sold. In all other cases, property given away or used by any retailer or wholesale merchant is not considered sold, whether or not the retailer or wholesale merchant recovers its cost of the property from sales of other property.'".

SIGNED D. Harris
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

PLEASE PRESS HARD - 5 COPIES

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

withdrawn

EDITION No. _____

H. B. No. 1624-Amdt. ARB

DATE _____

S. B. No. _____

Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
) _____
Sen.)

moves to amend the bill on page 2 of the amendment, line 25 of the amendment

( ) WHICH CHANGES THE TITLE

by adding after "purchased," the phrase

"then for the purposes of this Article only,"

SIGNED _____

ADOPTED _____ FAILED _____ TABLED _____

PLEASE PRESS HARD - 5 COPIES

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 1624 Amdt BRB DATE _____

S. B. No. _____ Amendment No. _____
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.)
Sen.)

amdt

moves to amend the ~~bill~~ on page 2, line 12

( ) WHICH CHANGES THE TITLE

by through page 3, line 16, of amendment

~~do~~ by deleting that part of the amendment

SIGNED Daniel G. Clodfelter

ADOPTED ✓ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1624
Committee Substitute Favorable 6/5/00
Proposed Committee Substitute H1624-PCS5114-RB

Short Title: Streamlined Sales Tax System. (Public)

Sponsors:

Referred to:

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT THE RECOMMENDATION OF THE NATIONAL GOVERNORS' ASSOCIATION FOR A STREAMLINED SALES TAX COLLECTION SYSTEM AND TO OTHERWISE IMPROVE COLLECTION.

The General Assembly of North Carolina enacts:

Section 1. Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-164.27. Direct pay certificate.**

(a) Requirements. -- A person who purchases tangible personal property whose tax status cannot be determined at the time of the purchase because of one of the reasons listed below may apply to the Secretary for a direct pay certificate:

(1) The place of business where the property will be used is not known at the time of the purchase and a different tax consequence applies depending on where the property is used.

(2) The manner in which the property will be used is not known at the time of the purchase and one or more of the potential uses is taxable but others are not taxable.

(b) Procedure. -- An application for a direct pay certificate must be made on a form provided by the Secretary and contain the information required by the Secretary. The Secretary may grant the application if the Secretary finds that the applicant complies with the sales and use tax laws and that the applicant's compliance burden will be greatly reduced by use of the certificate.

(c) Effect. -- A direct pay certificate authorizes its holder to purchase any tangible personal property without paying tax to the seller and authorizes the seller to not collect any tax on a sale to the certificate holder. A person who purchases tangible personal property under a direct pay certificate is liable for use tax due on the purchase. The tax is payable when the property is placed in use. A direct pay certificate does not apply to taxes imposed under G.S. 105-164.4(a)(1f) or G.S. 105-164.4(a)(4a).

(d) Revocation. -- A direct pay certificate is valid until the holder returns it to the Secretary or it is revoked by the Secretary. The Secretary may revoke a direct pay certificate if the holder of the certificate does not file a sales and use tax return on time, does not pay sales and use on time, or otherwise fails to comply with the sales and use tax laws."

Section 2. Article 5 of Chapter 105 of the General Statutes is amended by adding the following new sections to read:

"**§ 105-164.43A. Certification of tax collector software and tax collector.**

(a) Software. -- The Secretary may certify a software program as a certified sales tax collection program if the Secretary determines that the program correctly determines all of the following and that the software can generate reports and returns required by the Secretary:

(1) The applicable combined State and local sales and use tax rate for a sale, based on a ship-to address.

(2) Whether or not an item is exempt from tax, based on a uniform product code or another method.

(3) Whether or not an exemption certificate offered by a purchaser is a valid certificate, based on the Department's registry of holders of exemption certificates.

(4) The amount of tax to be remitted for each taxpayer for a reporting period.

(5) Any other issue necessary for the application or calculation of sales and use tax due.

(b) Tax Collector. -- The Secretary may certify an entity as a Certified Sales Tax Collector if the entity meets all of the following requirements:

(1) The entity uses a certified sales tax collection program.

(2) The entity has agreed to update its program upon notification by the Secretary.

(3) The entity integrates its certified sales tax collection program with the system of a retailer for whom the entity collects tax so that the tax due on a sale is determined at the time of the sale.

(4) The entity remits the taxes it collects at the time and in the manner specified by the Secretary.

(5) The entity agrees to file sales and use tax returns on behalf of the retailers for whom it collects tax.

(6) The entity enters into a contract with the Secretary and agrees to comply with all the conditions of the contract.

"**§ 105-164.43B. Contract with Certified Sales Tax Collector.**

The Secretary may contract with a Certified Sales Tax Collector for the collection and remittance of sales and use taxes. A Certified Sales Tax Collector must file with the Secretary a bond or an irrevocable letter of credit in the amount set by the Secretary. A bond must be conditioned upon compliance with the contract, be payable to the State, and be in the form required by the Secretary. The amount a Certified Sales Tax Collector charges under the contract is a cost of collecting the tax and is payable from the amount collected.

"**§ 105-164.43C. Effect of contract.**

(a) Retailer. -- A retailer may contract with a Certified Sales Tax Collector to collect and remit sales and use taxes payable to the State on sales made by the retailer. In the absence of fraud, a retailer who contracts with a Certified Sales Tax Collector is not subject to audit by the State on the transactions it processes using the Collector's certified sales tax collection program. A retailer is subject to audit for transactions not processed by the Certified Sales Tax Collector.

The Department may review a retailer's procedures to determine if the certified sales tax collection program is functioning properly. A retailer who contracts with a Certified Sales Tax Collector is not liable for taxes due on sales processed using the program unless the retailer misrepresented the product it sells. A contract with a Certified Sales Tax Collector is not a factor in determining whether a person has nexus with this State for payment of any tax.

(b) Collector. -- A Certified Sales Tax Collector is the agent of a seller who contracts with the Certified Sales Tax Collector for collection and remittance of sales and use taxes payable to this State. As the seller's agent, the Certified Sales Tax Collector is liable for sales tax due on all sales transactions processed by the Certified Sales Tax Collector unless the seller misrepresented the type of property sold."

Section 3. G.S. 105-88(d) reads as rewritten:

"(d) A loan made by a person who does not comply with this section is not collectible at law ~~in the courts of this State in any case where the person making the loan has failed to pay the tax levied in this section or otherwise failed to comply with the provisions of this section.~~ under G.S. 105-269.13."

Section 4. G.S. 105-164.6A(b)(1) reads as rewritten:

"(b) Mandatory Provisions. -- The agreements must contain the following provisions:

(1) ~~The customer may elect to pay the use tax directly to the Secretary in accordance with law rather than to the seller.~~ The seller is not liable for use tax not paid to it by a customer."

Section 5. G.S. 105-164.13(14a) is recodified as G.S. 105-164.13(33a) and reads as rewritten:

"(33a) ~~Printed material which is sold by a printer~~ Tangible personal property sold by a retailer to a purchaser within or without this State, when ~~such printed material~~ the property is delivered in this State to a common carrier or to the United States Postal Service for delivery to the purchaser or the purchaser's designees outside

this ~~State, if~~ State and the purchaser does not ~~thereafter~~ subsequently use the ~~printed material~~ property in this State."

Section 6. G.S. 105-164.28 reads as rewritten:

"**§ 105-164.28. Certificate of resale.**

(a) Seller's Responsibility. -- A seller who accepts a certificate of resale from a purchaser of tangible personal property has the burden of proving that the sale was not a retail sale unless all of the following conditions are met:

(1) ~~The seller acted in good faith in accepting the certificate of resale.~~ For a sale made in person, the certificate is signed by the purchaser, states the purchaser's name, address, and registration number, and describes the type of tangible personal property generally sold by the purchaser in the regular course of business.

(2) ~~The certificate is in the form required by the Secretary.~~ For a sale made in person, the purchaser is engaged in the business of selling tangible personal property of the type sold.

(3) ~~The certificate is signed by the purchaser, states the purchaser's name, address, and registration number, and describes the type of tangible personal property generally sold by the purchaser in the regular course of business.~~ For a sale made over the Internet or by other remote means, the sales tax registration number given by the purchaser matches the number on the Department's registry.

~~(4) The purchaser is licensed under this Article or under the law of another taxing jurisdiction.~~

~~(5) The purchaser is engaged in the business of selling tangible personal property of the type sold.~~

(b) Liabilities. -- A purchaser who does not resell property purchased under a certificate of resale is liable for any tax subsequently determined to be due on the sale. A seller of property sold under a certificate of resale is jointly liable with the purchaser of the property for any tax subsequently determined to be due on the sale only if the Secretary proves that the sale was a retail sale."

Section 7. G.S. 105-236(5a) reads as rewritten:

"(5a) Misuse of Exemption ~~Certificate of Resale.~~ Certificate. -- For misuse of ~~a certificate of resale~~ an exemption certificate by a purchaser, the Secretary shall assess a penalty equal to two hundred fifty dollars ($250.00). An exemption certificate is a certificate issued by the Secretary that authorizes a retailer to sell tangible personal property to the holder of the certificate and either collect tax at a preferential rate or not collect tax on the sale. Examples of an exemption certificate include a certificate of resale, a direct pay certificate, and a farmer's certificate."

Section 8. G.S. 105-259(b) is amended by adding a new subdivision to read:

"(b) Disclosure Prohibited. -- An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the

State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

. . .

(25) To provide public access to a database containing the names of retailers who are registered to collect sales and use taxes under Article 5 of this Chapter."

Section 9. Article 9 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-269.13. Debts not collectible under North Carolina law.**

(a) Debts Not Collectible. -- The following debts are not collectible and are not subject to execution under Article 28 of Chapter 1 of the General Statutes or any other provision of law:

(1) A loan made by a person who does not comply with G.S. 105-88.

(2) A debt owed to a retailer described in subsection (b) of this section as the result of the purchase of tangible personal property.

(b) Retailer. -- A debt owed to a retailer is subject to this section if all of the following applies to the retailer:

(1) The retailer meets one or more of the conditions in G.S. 105-164.8(b).

(2) The retailer is not registered to collect the use tax due under Article 5 of this Chapter on its sales delivered to an address in North Carolina.

(3) The retailer reported gross sales of at least five million dollars ($5,000,000) on its most recent federal income tax return.

(c) Assignment. -- An assignment to a person of a debt listed in subsection (a) of this section is subject to the collection restrictions imposed by this section."

Section 10. G.S. 105-269.14 is repealed.

Section 11. G.S. 105-164.16(d) reads as rewritten:

"(d) Use Tax on Out-of-State Purchases. -- ~~Use tax payable by~~ Notwithstanding subsection (b), an individual who purchases tangible personal property outside the State for a nonbusiness purpose ~~is due~~ shall file a use tax return on an annual basis. ~~For an individual who is not required to file an individual income tax return under Part 2 of Article 4 of this Chapter, the~~ The annual reporting period ends on the last day of the calendar ~~year and a use tax return is due by the following April 15. For an individual who is required to file an individual income tax return, the annual reporting period ends on the last day of the individual's income tax year, and the use tax must be paid on the income tax return as provided in G.S. 105-269.14.~~ year. The return is due by the due date, including any approved extensions, for filing the individual's income tax return."

Section 12. G.S. 105-466(c) reads as rewritten:

"(c) Collection of the tax, and liability therefor, shall begin and continue only on and after the first day of ~~a calendar month~~ the month of either January or July, as set by the board of county commissioners in the resolution levying the ~~tax,which shall in no case be~~ tax. In no event may the tax be imposed, or the tax rate changed, earlier

than the first day of the second succeeding calendar month after the date of the adoption of the resolution. The county must give the Secretary at least 90 days advance notice of a new tax levy or tax rate change."

Section 13. Chapter 1096 of the 1967 Session Laws is amended by adding a new section to read:

"Section 10.3. Mecklenburg County must give the Secretary of Revenue at least 90 days advance notice of any tax rate change under this act. Any tax rate change under this act must become effective on the first day of the month of either January or July, as set by the board of county commissioners in the resolution levying the tax."

Section 14. G.S. 20-7(b1) reads as rewritten:

"(b1) Application. -- To obtain a drivers license from the Division, a person must complete an application form provided by the Division, present at least two forms of identification approved by the Commissioner, be a resident of this State, and demonstrate his or her physical and mental ability to drive safely a motor vehicle included in the class of license for which the person has applied. The Division may copy the identification presented or hold it for a brief period of time to verify its authenticity. To obtain an endorsement, a person must demonstrate his or her physical and mental ability to drive safely the type of motor vehicle for which the endorsement is required.

The application form must request all of the following ~~information:~~ information, and it must contain the disclosures concerning the request for an applicant's social security number required by section 7 of the federal Privacy Act of 1974, Pub. L. No. 93-579:

(1) The applicant's full name.

(2) The applicant's mailing address and residence address.

(3) A physical description of the applicant, including the applicant's sex, height, eye color, and hair color.

(4) The applicant's date of birth.

(5) The applicant's social security number. The Division shall not issue a license to an applicant who fails to provide the applicant's social security number. ~~The applicant's social security number shall not be printed on the license and may be released only to the Department of Health and Human Services, Child Support Enforcement Program, upon its request and for the purpose of establishing paternity or child support, or enforcing a child support order.~~

(6) The applicant's signature.

~~The application form must also contain the disclosures concerning the request for an applicant's social security number required by section 7 of the federal Privacy Act of 1974, Pub. L. No. 93-579.~~

(b2) Disclosure of Social Security Number. -- The social security number of an applicant is not a public record. The Division may not disclose an applicant's social security number except as allowed under federal law. A violation of the disclosure

restrictions is punishable as provided in 42 U.S.C. § 408, and amendments to that law.

In accordance with 42 U.S.C. 405 and 42 U.S.C. 666, and amendments thereto, the Division may disclose a social security number obtained under ~~this subsection~~ subsection (b1) of this section only as follows:

(1) ~~for~~ For the purpose of administering the drivers license ~~laws or to~~ laws.

(2) To the Department of Health and Human Services, Child Support Enforcement Program for the purpose of ~~assist the State Child Support Enforcement Program in~~ establishing paternity or ~~establishing~~ child support or enforcing a child support order. ~~and may not disclose the social security number for any other purpose. The social security number of an applicant for a license or of a licensed driver is therefore not a public record. A violation of the disclosure restrictions is punishable as provided in 42 U.S.C. 408, and amendments thereto.~~

(3) To the Department of Revenue for the purpose of verifying taxpayer identity."

Section 15. G.S. 20-7(n)(7) reads as rewritten:

"(n) Format. -- A drivers license issued by the Division must be tamperproof and must contain all of the following information:

. . .

(7) ~~The license holder's social security number or another~~ An identifying number for the license holder assigned by the Division. The identifying number may not be the license holder's social security number."

. . . .

Section 16. Section 5.(a) of Chapter 341 of the 1999 Session Laws reads as rewritten:

"Section 5.(a) The Secretary of Revenue shall contract during the 1999-2001 fiscal biennium for the collection of delinquent tax debts owed by nonresidents and foreign entities. To implement this section, the Secretary may draw funds for the 1999-2000 fiscal year from net collections that would otherwise be credited to the General Fund under G.S. 105-269.14, enacted by Section 2 of this act. For the 2000-2001 fiscal year, the Secretary may retain the costs of implementing this section from the amounts collected pursuant to the contracts authorized by this section. The Secretary of Revenue shall report annually to the Revenue Laws Study Committee on its collections pursuant to this contract during the biennium."

Section 17. Section 6 of Chapter 341 of the 1999 Session Laws reads as rewritten:

"Section 6. The Department of Revenue shall conduct a study to identify and evaluate proposals for more efficient collection of taxes, including using electronic commerce and other technology to increase efficiency. The study shall include an analysis of the most efficient tax collection methods used in other states. The State

Controller shall cooperate with the Department of Revenue in this study. The Department shall report the results of its study, including findings, recommendations, and estimated revenue gains of each recommendation, to the Revenue Laws Study Committee by May 1, 2000. To implement this section, the Secretary of Revenue may draw up to fifty thousand dollars ($50,000) for the 1999-2000 fiscal year from net collections that would otherwise be credited to the General Fund under G.S. 105-269.14, enacted by Section 2 of this act. To implement the recommendations of this study, the Secretary may enter into a performance-based contract and may withhold from the revenue collected pursuant to Section 5 of this act the amount needed to obtain assistance in developing a request for proposal for the performance-based contract."

Section 18. Section 7 of this act becomes effective January 1, 2001. Sections 10 and 11 of this act become effective for taxable years beginning on or after January 1, 2003. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 1290
Committee Substitute Favorable 6/24/99

Short Title: Limit Recycling Tax Incentives. (Public)

Sponsors:

Referred to:

April 19, 1999

A BILL TO BE ENTITLED

AN ACT TO REMOVE THE SPECIAL TAX TREATMENT FOR CERTAIN EQUIPMENT AND FACILITIES FOR RECYCLING, WASTE REDUCTION, OR RESOURCE RECOVERY WHEN ACQUIRED MORE THAN TWO YEARS PRIOR TO THE DATE OF APPLICATION FOR CERTIFICATION BY THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES AND TO LIMIT TO THREE YEARS THE CERTIFICATION FOR SPECIAL TAX TREATMENT FOR CERTAIN REAL PROPERTY USED FOR RECYCLING, WASTE REDUCTION, OR RESOURCE RECOVERY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-294(a)(3) reads as rewritten:

"(3) Develop and adopt rules to establish standards for qualification as a 'recycling, reduction or resource recovering facility' or as 'recycling, reduction or resource recovering equipment' for the purpose of special tax classifications or treatment, and to certify as qualifying those applicants which meet the established standards. The standards shall be developed to qualify only those facilities and equipment exclusively used in the actual waste recycling, reduction or resource recovering process and shall exclude any incidental or supportive facilities and ~~equipment;~~ equipment. The following limitations apply to an applicant that is not a large recycling facility or a major recycling facility, qualified under G.S. 105-129.26:

a. Facilities or equipment acquired by the applicant or a related person more than two years before the date application is made for certification under this subdivision shall not be certified as qualifying for special tax classification or treatment under this subdivision.

b. A certificate that qualifies real property for special tax classification or treatment under this subdivision is limited to three years after the date the certificate is issued and shall not be renewed or reissued for that applicant or a related person.

For purposes of this subdivision, 'related person' means a related person as determined under section 267(b) or 707(b) of the Internal Revenue Code."

Section 2. This act is effective for taxes imposed for taxable years beginning on or after July 1, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1290
Committee Substitute Favorable 6/24/99
Proposed Senate Committee Substitute H1290-PCS2447-SC001

Short Title: Revenue Laws Clarifying Changes. (Public)

Sponsors:

Referred to:

April 19, 1999

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE ADMINISTRATION OF THE TAX LAWS BY MAKING CLARIFYING AND CONFORMING CHANGES TO THE REVENUE AND RELATED LAWS.

The General Assembly of North Carolina enacts:

Section 1.(a) Section 10.2(3) of Chapter 13 of the Session Laws of the 1996 Second Extra Session, as amended by Section 1 of S.L. 1999-360, reads as rewritten:

"(3) Quality jobs and business expansion tax credits. -- Sections 3.5, 3.6, and 3.8 through 3.10 of Part III of this act become effective August 1, 1996. G.S. 105-129.11, as enacted by Part III of this act, becomes effective for taxable years beginning on or after January 1, 1997, and applies to training expenditures made on or after July 1, 1997. The remainder of Part III of this act is effective for taxable years beginning on or after January 1, 1996, and applies to jobs created on or after August 1, 1996, and property placed in service on or after August 1, 1996. Article 3A of Chapter 105 of the General Statutes is repealed ~~effective for applications for credits filed under G.S. 105-129.6 on or after January 1, 2006. G.S. 105-129.16 is repealed effective for business property placed in service on or after January 1, 2002. The remainder of~~ as provided in that Article. Article 3B of Chapter 105 of the General Statutes is

repealed ~~effective for buildings to which federal credits are allocated on or after January 1, 2006.~~ as provided in that Article. "

Section 1.(b) Section 4 of S.L. 1997-277, as amended by Section 18.1 of S.L. 1999-360, is recodified as G.S. 105-129.2A(b), (c), and (d).

Section 1.(c) G.S. 105-129.2A, as enacted by this act, reads as rewritten:

"**§ 105-129.2A. Sunset; studies.**

(a) Sunset. -- This Article is repealed effective for applications for credits filed under G.S. 105-129.6 on or after January 1, 2006.

(b) Equity Study. -- The Department of Commerce shall study the effect of the tax incentives provided in ~~the William S. Lee Quality Jobs and Business Expansion Act, codified as Article 3A of Chapter 105 of the General Statutes,~~ this Article on tax equity. This study shall include the following:

(1) Reexamining the formula in G.S. 105-129.3(b) used to define enterprise tiers, to include consideration of alternative measures for more equitable treatment of counties in similar economic circumstances.

(2) Considering whether the assignment of tiers and the applicable thresholds are equitable for smaller counties, for example those under 50,000 in population.

(3) Compiling any available data on whether expanding North Carolina businesses receive fewer benefits than out-of-State businesses that locate to North Carolina.

(c) Impact Study. -- The Department of Commerce shall study the effectiveness of the tax incentives provided in ~~the William S. Lee Quality Jobs and Business Expansion Act, codified as Article 3A of Chapter 105 of the General Statutes.~~ this Article. This study shall include:

(1) Study of the distribution of tax incentives across new and expanding industries.

(2) Examination of data on economic recruitment for the period 1994 through 2000 by county, by industry type, by size of investment, and by number of jobs, and other relevant information to determine the pattern of business locations and expansions before and after the enactment of the William S. Lee Act incentives.

(3) Measuring the direct costs and benefits of the tax incentives.

(4) Compiling available information on the current use of incentives by other states and whether that use is increasing or declining.

(d) Report. -- The Department of Commerce shall report the results of these studies and its recommendations to the 2001 General Assembly by April 1, 2001."

Section 1.(d) Article 3B of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-129.15A. Sunset.**

G.S. 105-129.16 is repealed effective for business property placed in service on or after January 1, 2002. The remainder of this Article is repealed effective January 1, 2006. The repeal of G.S. 105-129.16A applies to renewable energy property placed in

service on or after January 1, 2006. The repeal of G.S. 105-129.16B applies to buildings to which federal credits are allocated on or after January 1, 2006."

Section 2. Effective July 1, 2000, G.S. 105-88(e) reads as rewritten:

"(e) Counties, cities, and towns may levy a license tax on the business taxed under this ~~section not in excess of~~ section. Except as provided in G.S. 160A-211 and G.S. 153A-152, the tax may not exceed one hundred dollars ($100.00)."

Section 3. G.S. 105-113.82 reads as rewritten:

"**§ 105-113.82. Distribution of part of beer and wine taxes.**

(a) Amount, Method. -- The Secretary shall distribute annually the following percentages of the net amount of excise taxes collected on the sale of malt beverages and wine during the preceding 12-month period ending March 31, less the amount of the net proceeds credited to the Department of Agriculture and Consumer Services under G.S. 105-113.81A, to the counties and cities in which the retail sale of these beverages is ~~authorized.~~ authorized in the entire county or city:

(1) Of the tax on malt beverages levied under G.S. 105-113.80(a), twenty-three and three-fourths percent (23 3/4%);

(2) Of the tax on unfortified wine levied under G.S. 105-113.80(b), sixty-two percent (62%); and

(3) Of the tax on fortified wine levied under G.S. 105-113.80(b), twenty-two percent (22%).

If malt beverages, unfortified wine, or fortified wine may be licensed to be sold at retail in both a county and a city located in the county, both the county and city shall receive a portion of the amount distributed, that portion to be determined on the basis of population. If one of these beverages may be licensed to be sold at retail in a city located in a county in which the sale of the beverage is otherwise prohibited, only the city shall receive a portion of the amount distributed, that portion to be determined on the basis of population. The amounts distributed under subdivisions (1), (2), and (3) shall be computed separately.

~~(b) Reduction in Amount Distributed. -- Where the sale of malt beverages, unfortified wine, or fortified wine is prohibited in a defined area of a city or county in which the sale of the beverage is authorized, the amount that would otherwise be distributed to the city or county on the basis of population under subsection (a) shall be reduced in the same ratio that the area of the defined area bears to the total area of the city or county, unless the defined area is a city. If the defined area in a county is a city, the reduction in the amount that would otherwise be distributed to the county under subsection (a) shall be based on population instead of area.~~

(c) Exception. -- Notwithstanding subsection (a), in a county in which ABC stores have been established by petition, the revenue shall be distributed as though the entire county had approved the retail sale of a beverage whose retail sale is authorized in part of the county.

(d) Time. -- The revenue shall be distributed to cities and counties within 60 days after March 31 of each year.

(e) Population Estimates. -- To determine the population of a city or county for purposes of the distribution required by this section, the Secretary shall use the most recent annual estimate of population certified by the State Planning Officer.

(f) City Defined. -- As used in this section, the term "city" means a city as defined in G.S. 153A-1(1) or an urban service district defined by the governing body of a consolidated city-county.

(g) Use of Funds. -- Funds distributed to a county or city under this section may be used for any public purpose.

(h) Disqualification. -- No municipality may receive any funds under this section if it was incorporated with an effective date of on or after January 1, 2000, and is disqualified from receiving funds under G.S. 136-41.2. No municipality may receive any funds under this section, incorporated with an effective date on or after January 1, 2000, unless a majority of the mileage of its streets are open to the public. The previous sentence becomes effective with respect to distribution of funds on or after July 1, 1999."

Section 4. G.S. 105-119 and G.S. 105-120.1 are repealed.

Section 5. G.S. 105-114 reads as rewritten:

"**§ 105-114. Nature of taxes; definitions.**

(a) Nature of Taxes. -- The taxes levied in this Article upon persons and partnerships are for the privilege of engaging in business or doing the act named.

(a1) Scope. -- The taxes levied in this Article upon corporations are privilege or excise taxes levied upon:

(1) Corporations organized under the laws of this State for the existence of the corporate rights and privileges granted by their charters, and the enjoyment, under the protection of the laws of this State, of the powers, rights, privileges and immunities derived from the State by the form of such existence; and

(2) Corporations not organized under the laws of this State for doing business in this State and for the benefit and protection which these corporations receive from the government and laws of this State in doing business in this State.

~~If~~

(a2) Condition for Doing Business. -- If the corporation is organized under the laws of this State, the payment of the taxes levied by this Article ~~shall be~~ is a condition precedent to the right to continue in the corporate form of ~~organization; and if~~ organization. If the corporation is not organized under the laws of this State, payment of these taxes ~~shall be~~ is a condition precedent to the right to continue to engage in doing business in this State.

(a3) Tax Year. -- The taxes levied in this Article are for the fiscal year of the State in which the taxes become ~~due;~~ due, except that the taxes levied in G.S. 105-122 are for the income year of the corporation in which the taxes become due.

~~G.S. 105-122~~

(a4) No Double Taxation. -- G.S. 105-122 does not apply to ~~street transportation systems taxed under G.S. 105-120.1 or~~ holding companies taxed under G.S. 105-120.2.

G.S. 105-122 applies to a corporation taxed under another section of this Article only to the extent the taxes levied on the corporation in G.S. 105-122 exceed the taxes levied on the corporation in other sections of this Article.

(b) Definitions. -- The following definitions apply in this Article:

(1) City. -- Defined in G.S. 105-228.90.

(1a) Code. -- Defined in G.S. 105-228.90.

(2) Corporation. -- A domestic corporation, a foreign corporation, an electric membership corporation organized under Chapter 117 of the General Statutes or doing business in this State, or an association that is organized for pecuniary gain, has capital stock represented by shares, whether with or without par value, and has privileges not possessed by individuals or partnerships. The term includes a mutual or capital stock savings and loan association or building and loan association chartered under the laws of any state or of the United States. The term does not include a limited liability company.

(3) Doing business. -- Each and every act, power, or privilege exercised or enjoyed in this State, as an incident to, or by virtue of the powers and privileges granted by the laws of this State.

(4) Income year. -- Defined in G.S. 105-130.2(5)."

Section 6. G.S. 105-164.3(8a) reads as rewritten:

"(8a) 'Manufactured home' means a structure that is designed to be used as a dwelling and is manufactured in accordance with the specifications for manufactured homes issued by the United States Department of Housing and Urban Development. ~~and:~~

~~a. Is built on a permanent chassis;~~

~~b. Is transportable in one or more sections;~~

~~c. When transported, is at least eight feet wide or forty feet long; and~~

~~d. When erected on a site, has at least 320 square feet.~~"

Section 7.(a) G.S. 105-187.1 is amended by adding a new subdivision to read:

"(3a) Retailer. -- A retailer as defined in G.S. 105-164.3 who is engaged in the business of selling, leasing, or renting motor vehicles."

Section 7.(b) G.S. 105-187.5(a) reads as rewritten:

"(a) Election. -- A retailer ~~who is engaged in the business of leasing or renting motor vehicles~~ may elect not to pay the tax imposed by this Article at the rate set in G.S. 105-187.3 when applying for a certificate of title for a motor vehicle purchased by the retailer for lease or rental. A retailer who makes this election shall pay a tax on the gross receipts of the lease or rental of the vehicle. Like the tax imposed by G.S. 105-187.3, this alternate tax is a tax on the privilege of using the highways of this State. The tax is imposed on a retailer, but is to be added to the lease or rental price of a motor vehicle and thereby be paid by the person who leases or rents the vehicle."

Section 7.(c) G.S. 20-4.01(5) reads as rewritten:

"(5) Dealer. -- Every person engaged in the business of buying, selling, distributing, or exchanging motor vehicles, ~~trailers~~ trailers, or semitrailers in this State, and having an established place of business in this ~~State and being subject to the tax levied by G.S. 105-89.~~ State.

The terms 'motor vehicle dealer,' 'new motor vehicle dealer,' and 'used motor vehicle dealer' ~~shall~~ as used in Article 12 of this Chapter have the meaning set forth in G.S. 20-286."

Section 8. G.S. 105-259(b)(15) reads as rewritten:

"(b) Disclosure Prohibited. -- An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

. . .

(15) To exchange information concerning a tax imposed by Articles 2A, 2C, or 2D of this Chapter with one of the following agencies when the information is needed to fulfill a duty imposed on the Department or the agency:

a. The North Carolina Alcoholic Beverage Control Commission.

b. The Division of Alcohol Law Enforcement of the Department of Crime Control and Public Safety.

c. The Bureau of Alcohol, Tobacco, and Firearms of the United States Treasury Department.

d. Law enforcement agencies.

e. The Division of Adult Probation and Parole of the Department of Correction."

Section 9. G.S. 105-449.44 reads as rewritten:

"§ 105-449.44. How to determine the amount of fuel used in the State; presumption of amount used.

(a) Calculation. -- The amount of motor fuel or alternative fuel a motor carrier ~~carries~~ uses in its operations in this State for a reporting period is the ratio of the number of miles the motor carrier travels in this State during that period to the total number of miles the motor carrier travels inside and outside this State during that period, multiplied by the total amount of fuel the motor carrier uses in its operations inside and outside the State during that period.

(b) Presumption. -- The Secretary ~~shall~~ must check reports filed under this Article against the weigh station records and other records of the Division of Motor Vehicles of the Department of Transportation concerning motor carriers to determine if motor carriers that are operating in this State are filing the reports required by this Article. The Department may assess a motor carrier for the amount payable based on the presumed mileage. A motor carrier that does either of the following for a quarter is

presumed to have traveled in this State during that quarter the number of miles equal to 10 trips of 450 miles each for each of the motor carrier's vehicles:

(1) Fails to file a report for the quarter and the records of the Division indicate the carrier operated in this State during the quarter.

(2) Files a report for the quarter that, based on the records of the Division, understates by at least twenty-five percent (25%) the carrier's mileage in this State for the quarter.

(c) Vehicles. -- The number of vehicles of a motor carrier that is registered under this Article is the number of identification markers issued to the carrier. The number of vehicles of a carrier that is not registered under this Article is the number of vehicles registered by the motor carrier in the carrier's base state under the International Registration Plan. ~~The Department shall assess a motor carrier for the amount payable based on the presumed mileage.~~"

Section 10.(a) Effective July 1, 2000, G.S. 105-449.60(31) and (40) read as rewritten:

"**§ 105-449.60. Definitions.**

The following definitions apply in this Article:

. . .

(31) Supplier. -- Any of the following:

a. A position holder or a person who receives motor fuel pursuant to a two-party ~~transaction.~~ exchange.

b. A fuel alcohol provider.

. . .

(40) Two-party ~~transaction.~~ exchange. -- A transaction in which motor fuel is transferred ~~between two licensed suppliers as the motor fuel crosses the terminal rack as the result of an exchange agreement or a sale between the suppliers that requires the supplier that is the position holder~~ from one licensed supplier to another licensed supplier pursuant to an exchange agreement under which the supplier that is the position holder agrees to deliver motor fuel to the other supplier or the other supplier's customer at the rack of the terminal at which the delivering supplier is the position holder."

Section 10.(b) Effective July 1, 2000, G.S. 105-449.88 is amended by adding a new subdivision to read:

"**§ 105-449.88. Exemptions from the excise tax.**

The excise tax on motor fuel does not apply to the following:

. . .

(1a) Motor fuel removed by transport truck from a terminal for export if the motor fuel is removed by a licensed distributor or licensed exporter, the supplier that is the position holder for the motor fuel sells the motor fuel to another supplier as the motor fuel crosses the terminal rack, the purchasing supplier or its customer receives the motor fuel at the terminal rack for export, and the supplier

that is the position holder collects tax on the motor fuel at the rate of the motor fuel's destination state."

Section 11.(a) G.S. 105-449.60(41) reads as rewritten:

"**§ 105-449.60. Definitions.**

The following definitions apply in this Article:

. . .

(41) User. -- A person who owns or operates a licensed highway vehicle that has a registered gross vehicle weight of at last 10,001 pounds and who ~~and~~ does not maintain storage facilities for motor fuel."

Section 11.(b) G.S. 105-449.68 reads as rewritten:

"**§ 105-449.68. Restrictions on who can get a license as a distributor.**

A bulk-end user of motor fuel may not be licensed as a distributor unless the bulk-end user also acquires motor fuel from a supplier or from another distributor for subsequent sale. This restriction does not apply to a bulk-end user that was licensed as a distributor on January 1, 1996. If a distributor license held by a bulk-end user on January 1, 1996, is subsequently cancelled, the bulk-end user is subject to the restriction set in this section."

Section 11.(c) G.S. 105-449.97(c) reads as rewritten:

"(c) Percentage Discount. -- A supplier that sells motor fuel directly to an unlicensed distributor or to the bulk-end user, the retailer, or the user of the fuel may take the same percentage discount on the fuel that a licensed distributor may take under G.S. 105-449.93(b) when making deferred payments of tax to the supplier."

Section 12. G.S. 105-449.88(1) reads as rewritten:

"**§ 105-449.88. Exemptions from the excise tax.**

The excise tax on motor fuel does not apply to the following:

(1) Motor fuel removed, by transport truck or another means of transfer outside the terminal transfer system, from a terminal for export, if the motor fuel is removed by a licensed distributor or a licensed exporter and the supplier of the motor fuel collects tax on it at the rate of the motor fuel's destination state."

Section 13. The catch line of G.S. 105-449.105 reads as rewritten:

"**§ 105-449.105. Refunds upon application for tax paid on exempt fuel, lost fuel, and fuel unsalable for highway ~~use, and undyed diesel fuel used in boats.~~ use.**"

Section 14. G.S. 105-449.121(b)(2) reads as rewritten:

"(b) Inspection. -- The Secretary or a person designated by the Secretary may do any of the following to determine tax liability under this Article:

. . .

(2) Audit a ~~distributor~~ distributor, a retailer, a bulk-end user, or a motor fuel user that is not licensed under this Article."

Section 15.(a) G.S. 62A-5(d) reads as rewritten:

"(d) Any taxes due on 911 service provided by the service supplier will be billed to the local government subscribing to that service. ~~State and local taxes do not apply to 911 charges billed to subscribers under this Article.~~"

Section 15.(b) G.S. 105-120(c1) reads as rewritten:

"(c1) ~~Enhanced 911~~ Service ~~Charge.~~ Charges. -- Gross receipts of an entity that provides local telecommunications service do not include 911 charges imposed under G.S. 62A-5 and remitted to a local government under G.S. 62A-6, or wireless Enhanced 911 service charges imposed under G.S. 62A-23 and remitted to the Wireless Fund under G.S. 62A-24."

Section 15.(c) G.S. 105-130.5(b)(17) reads as rewritten:

"(17) The amount of 911 charges collected under G.S. 62A-5 and remitted to a local government under G.S. 62A-6, and the amount of wireless Enhanced 911 service charges collected under G.S. 62A-23 and remitted to the Wireless Fund under G.S. 62A-24."

Section 16. Except as otherwise provided in this act, this act is effective when it becomes law.

HOUSE BILL 1290 (PCS): Revenue Laws Clarifying Changes

BILL ANALYSIS

Committee: Senate Finance
Date: June 28, 2000
Version: PCS for 2nd ed.
(H1290-PCSSCX-001(6.27))

Introduced by: Representative Luebke
Summary by: Cindy Avrette, Staff Atty.
Mary Shuping, Rsch. Asst.

SUMMARY: ***The Proposed Committee Substitute for HB 1290 incorporates numerous changes to the revenue and related laws which were originally included in HB 1575. These changes were recommended by the Revenue Laws Study Committee. A section-by-section analysis of the bill is found in the table below.***

SECTION	*EXPLANATION*
1	Reorganizes the sunsets for the William S. Lee Act and the General Business Credits Act, so that the sunset language will be codified within each Act. Also codifies the William S. Lee study provisions with the sunset. Codifying the sunsets separates the two Acts' sunsets, which are currently in the same session law, and makes them easier for taxpayers to find. This section also clarifies the sunset of the Renewable Energy Tax Credits added to the General Business Credits Act in 1999.
2	Clarifies that the $100 local tax limitation enacted in 1999 for loan agencies and other related businesses does not repeal the pre-existing local authority to tax pawnbrokers up to $275 a year. This section becomes effective July 1, 2000.
3	Clarifies that a county or city does not share in the distribution of beer and wine tax if the only place where beer and wine sales are authorized in the county or city is a sports club. Also, repeals an obsolete subsection.
4	Repeals the special franchise taxes on telegraph companies and street bus companies. The Department of Revenue states that there are no taxpayers paying tax under these provisions. With repeal of these special taxes, the general corporate franchise tax will apply to any companies that might have otherwise fallen under the provisions of the special taxes.
5	Repeals a cross-reference to the special franchise tax street bus companies, repealed by Section 4, and reorganizes language of statute.
6	Changes the form of the definition of manufactured home in the sales tax law from a restatement of federal standards to a cross-reference to federal standards.
7	Clarifies that a retailer for purposes of Highway Use Tax must be engaged in the business of selling or leasing motor vehicles, and clarifies and updates definition language in Chapter 20 of the General Statutes.
8	Allows the Department of Revenue to exchange information with the Department of Correction Division of Probation and Parole to assist in collecting the controlled substances tax.

SECTION	EXPLANATION
9	Clarifies that assessments based on presumed mileage are used only if the Department considers the presumption reasonable, corrects incorrect terminology, and changes sentence order.
10	Effective July 1, 2000, changes the method by which tax on fuel is charged at the destination state's rate when the fuel is simultaneously sold from one supplier, to another supplier, to a customer who picks the fuel up at the rack for export. In 1998, S.L. 1998-146 attempted to address this situation by expanding the definition of two-party exchange to include buy-sell agreements as one type of two-party transaction for purposes of the definition of "supplier". That change created confusion and led to mismatches between terminal operator reports and supplier returns. This section changes back to the old, narrower definition of two-party exchange and then adds a specific provision allowing the destination state's tax rate to be paid when the fuel is transferred at the rack pursuant to a buy-sell agreement.
11	Restores to definition of "user" a provision that was inadvertently deleted, and makes conforming changes to reflect defined term. Users are subject to audit. Adding this vehicle weight threshold, formerly provided in G.S. 105-449.9 (repealed), limits the audit provision to larger vehicles.
12	Conforms exemption statute to reflect that an unlicensed exporter or distributor is liable for tax under G.S. 105-449.82(c). Thus, fuel is exempt only if removed by licensed distributor or licensed exporter.
13	Conforms the statute catchline by removing a reference to a repealed provision.
14	Restores a provision making fuel retailers and bulk-end users subject to audit by the Department of Revenue. S.L. 1999-438 repealed the requirement that retailers and bulk-end users obtain licenses. An unintended consequence of this repeal was elimination of the Department's audit authority over these users and sellers of motor fuel.
15	Moves tax exemption language from G.S. 62A-5 to the corporate income tax statutes, to make Articles 1 and 2 of Chapter 62A consistent.
16	Effective date. Unless otherwise provided, the act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 1290 (Senate Finance Committee Substitute)

SHORT TITLE: Revenue Laws Clarifying Changes

SPONSOR(S):

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05
REVENUES					
LOCAL GOVERNMENTS	See Assumptions and Methodology				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Local governments, Department of Revenue, Department of Correction

EFFECTIVE DATE: Section 2 (pawnbrokers) and Section 10 (fuel tax) are effective July 1, 2000. The remainder of the act is effective when it becomes law

BILL SUMMARY: This bill makes numerous technical and clarifying changes to the state revenue laws and related statutes.

ASSUMPTIONS AND METHODOLOGY:
Of the 16 sections in the bill, only section 2 has a fiscal impact. When the General Assembly approved Senate Bill 1112 (S.L. 1999-438), it inadvertently capped city and county privilege taxes on pawnbrokers at $100. Previous law (G.S. 105-50) allowed cities and counties to charge pawnbrokers up to $275 per year. In a 1996 survey conducted by the Fiscal Research Division of the General Assembly, 44 counties and 24 cities reported having a privilege tax on pawnbrokers ranging from $5 to $275. These local governments also reported FY 1995-96 tax revenues from pawnbrokers of $77,844. If all local governments changed their ordinance in response to SB 1112, then they would have experienced a loss of $47,993 based on the 1996 report. Passage of this bill would allow local governments to return their tax on pawnbrokers to previous levels and regain revenue lost due to SB 1112.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic

APPROVED BY:

DATE:

VISITOR REGISTRATION SHEET

SENATE FINANCE — **Name of Committee**

WEDNESDAY, JUNE 28, 2000 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Sara Singleton	Governor's Office
Bill Rowe	NCJCDC
[illegible]	Brisben Companies
Evelyn Hawthorne	UNC-CH
[illegible]	NC DOC
Jim Fain	NC DOC
Rick Carlisle	NC DOC
Bill Connolly	N.C Dept of Revenue
John Bain	" " "
Ron Aycock	Court Com. Assoc.
Joyce Peters	NAACP/NAACP

VISITOR REGISTRATION SHEET

SENATE FINANCE — **WEDNESDAY, JUNE 28, 2000**

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Andy Ellen	NCRMA
Fran Preston	NCRMA
Kathy Sawyer	Commerce
ELLIS HANKINS	NCLM
Ed Regan	N.C.A.C.C.
Julie Condrell	NCCBI
PERRI MORGAN	NFIB
Cam Cove	BPMHL
Ann Edmondson	NCRMA
David Simmons	Alley Assoc., Inc.
Frank Gray	N.C. Man. Housing

VISITOR REGISTRATION SHEET

SENATE FINANCE — **Name of Committee**

WEDNESDAY, JUNE 28, 2000 — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
D. Propes	NCDOT
Bill Hale	"
Natalie English	Charlotte Chamber
Boyd Cauble	City of Charlotte
Lisa Agnew	Commerce

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
John Kerr, Co-Chair
David Hoyle, Co-Chair

Wednesday, June 28, 2000

SENATOR KERR,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS #2)**1656** Lincoln County E & R Board.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #2)**1699** Insurance License Fees/Reciprocity/AB
Sequential Referral: None
Recommended Referral: None

H.B. **1730** Sugar Mountain Charter.
Sequential Referral: None
Recommended Referral: None

H.B.(CS #2)**1819** Rural Redevelopment Authority.
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1)**1624** Streamlined Sales Tax System.
Draft Number: PCS5114
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

TOTAL REPORTED: 5

Committee Clerk Comment: HB 1624 1656 1699 1730 1819

SENATE FINANCE COMMITTEE

THURSDAY, JUNE 29, 2000

9:00 AM - ROOM 1027

The Senate Finance Committee met on Thursday, June 29, 2000 at 9:00 AM in Room 1027 of the Legislative Building with Senator Hoyle presiding. There were 18 members of the committee present. Kelley White from Greenville, North Carolina, sponsored by Senator Warren, Rachel Evans from Fremont, North Carolina and Russell Jinnette from Goldsboro, North Carolina, both sponsored by Senator John Kerr served as pages for the meeting.

HB 1728 - SPRUCE PINE DEANNEXATION

Senator Moore was recognized to explain this bill for Representative Thompson. After a brief time, Senator Foxx moved for a "Favorable Report", motion passed. Copy of bill is included in the minutes.

SB 1364 - EXTEND CABARRUS E&R BOARD

Martha Walston, Committee Attorney, was recognized to explain the bill in the absence of Senator Hartsell. After a brief time, Senator Foxx moved for a "Favorable Report", motion passed. Copy of bill is included in the minutes.

HB 1520 - RESTRAINTS IN FACILITIES

Representative Insko was recognized to explain the bill. After a time of discussion, Senator Wellons moved to give the bill a "Favorable Report", motion passed. Copy of bill and supporting documents included in minutes.

NOTE: Senator Hoyle turned the meeting over to Senator Kerr so that he could explain the following bill.

HB 1340 - RESPIRATORY CARE PRACTICE ACT

Senator Hoyle was recognized to explain the bill. He moved for adoption of a proposed committee substitute, motion passed. After a time of discussion, Senator Hoyle offered a technical amendment to the bill and moved that it be adopted, motion passed. After further discussion, Senator Dannelly moved for a "Favorable Report" and that bill be rolled into a new committee substitute, motion passed.

SB 1192 - CRIM. RECORD CHECKS/LONG-TERM CARE

NOTE: Bill was withdrawn from the Agenda by Senator Rand

HB 1290 - REVENUE LAWS CLARIFYING CHANGES

Martha Walston, Committee Attorney, was recognized to explain the bill in the absence of Representative Luebke. After a time of discussion, Senator Clodfelter moved for a "Favorable Report", motion passed. Copy of bill and supporting documents included in minutes.

Meeting adjourned.

SENATE FINANCE COMMITTEE MEETS ON SENATE CHAMBER FLOOR

Senator Hoyle called the meeting to order.

HB 1803 - HUNTERSVILLE ANNEXATION AGREEMENT

After a brief discussion, Senator Weinstein moved for a "Favorable Report", motion passed. Copy of bill included in the minutes.

Meeting adjourned

David W. Hoyle, Co-Chairman

John H. Kerr, III, Co-Chairman

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

Visitors' Sign Up Sheet is Attachment #1
Committee Reports are Attachment #2 and #3

AGENDA

SENATE FINANCE COMMITTEE MEETING

THURSDAY, JUNE 29, 2000

9:00 AM – ROOM 1027 LB

MEETING CALLED TO ORDER – SENATOR HOYLE, PRESIDING

INTRODUCTION OF PAGES

BILLS TO BE CONSIDERED:

SB 1192 – Crim. Record Checks/Long-Term Care – Sen., Rand

SB 1364 –Extend Cabarrus E&R Board – Sen. Hartsell

HB 1290 (pcs) –Revenue Laws Clarifying Changes– Rep. Luebke

HB 1340 – Respiratory Care Practice Act – Rep. Tolson

HB 1520 – Restraints in Facilities – Rep. Insko

HB 1728 – Spruce Pine Deannexation – Rep. Thompson

MEETING ADJOURNED

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1728

Short Title: Spruce Pine Deannexation. (Local)

Sponsors: Representative Thompson.

Referred to: Finance.

May 25, 2000

A BILL TO BE ENTITLED

AN ACT TO REMOVE FROM THE CORPORATE LIMITS OF THE TOWN OF SPRUCE PINE A PARCEL RECENTLY IDENTIFIED AS BEING WITHIN THE TOWN LIMITS THAT HAD NEVER BEEN TREATED AS SUCH.

The General Assembly of North Carolina enacts:

Section 1. The corporate limits of the Town of Spruce Pine are reduced by removing Parcel number 0890-00-61-3155, owned by Mrs. Hortense Biddix.

Section 2. This act becomes effective January 1, 1997.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1364

Short Title: Extend Cabarrus E&R Board. (Local)

Sponsors: Senator Hartsell.

Referred to: Finance.

May 22, 2000

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CABARRUS BOARD OF EQUALIZATION AND REVIEW TO MEET AFTER ITS FORMAL ADJOURNMENT.

The General Assembly of North Carolina enacts:

Section 1. Section 3 of S.L. 1999-353 reads as rewritten:

"Section 3. Section 2 of this act applies only to ~~Stokes County.~~ Cabarrus and Stokes Counties."

Section 2. This act is effective when it becomes law.

Restraints

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H **4**

HOUSE BILL 1520*
Committee Substitute Favorable 6/21/00
Third Edition Engrossed 6/22/00
Senate Health Care Committee Substitute Adopted 6/28/00

Short Title: Restraints in Facilities. (Public)

Sponsors:

Referred to:

May 15, 2000

A BILL TO BE ENTITLED

AN ACT PERTAINING TO THE USE OF RESTRAINTS AND SECLUSION IN CERTAIN FACILITIES, REQUIRING THE REPORTING OF CERTAIN DEATHS IN CERTAIN FACILITIES, AND IMPOSING A PENALTY FOR FAILURE TO REPORT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 122C-60 reads as rewritten:

"**§ 122C-60. Use of physical restraints or seclusion.**

(a) Physical restraint or seclusion of a client shall be employed only when there is imminent danger of abuse or injury to ~~himself~~ the client or others, when substantial property damage is occurring, or when the restraint or seclusion is necessary as a measure of therapeutic treatment. All instances of restraint or seclusion and the detailed reasons for such action shall be documented in the client's record. Each client who is restrained or secluded shall be observed frequently, and a written notation of the observation shall be made in the client's record.

(a1) A facility that employs physical restraint or seclusion of a client shall collect data on the use of the restraints and seclusion. The data shall reflect for each incidence, the type of procedure used, the length of time employed, alternatives considered or employed, and the effectiveness of the procedure or alternative employed. The facility shall analyze the data on at least a quarterly basis to monitor effectiveness, determine trends, and take corrective action where necessary. The

facility shall make the data available to the Secretary upon request. Nothing in this subsection abrogates State or federal law or requirements pertaining to the confidentiality, privilege, or other prohibition against disclosure of information provided to the Secretary under this subsection. In reviewing data requested under this subsection, the Secretary shall adhere to State and federal requirements of confidentiality, privilege, and other prohibitions against disclosure and release applicable to the information received under this subsection.

(a2) Facilities shall implement policies and practices that emphasize the use of alternatives to physical restraint and seclusion. Physical restraint and seclusion may be employed only by staff who have been trained and have demonstrated competence in the proper use of and alternatives to these procedures. Facilities shall ensure that staff authorized to employ and terminate these procedures are retrained and have demonstrated competence at least annually.

(b) The Commission ~~may~~ shall adopt rules to implement this section. In adopting rules, the Commission shall take into consideration federal regulations and national accreditation standards. Rules adopted by the Commission shall include:

(1) Staff training and competence in:
   a. The use of positive behavioral supports.
   b. Communication strategies for defusing and deescalating potentially dangerous behavior.
   c. Monitoring vital indicators.
   d. Administration of CPR.
   e. Debriefing with client and staff.
   f. Methods for determining staff competence, including qualifications of trainers and training curricula.
   g. Other areas to ensure the safe and appropriate use of restraints and seclusion.

(2) Other matters relating to the use of physical restraint or seclusion of clients necessary to ensure the safety of clients and others.

The Department may investigate complaints and inspect a facility at any time to ensure compliance with this section."

Section 2.(a) G.S. 131D-10.5 reads as rewritten:

"**§ 131D-10.5. Powers and duties of the Commission.**

In addition to other powers and duties prescribed by law, the Commission shall exercise the following powers and duties:

(1) Adopt, amend and repeal rules consistent with the laws of this State and the laws and regulations of the federal government to implement the provisions and purposes of this Article;

(2) Issue declaratory rulings as may be needed to implement the provisions and purposes of this Article;

(3) Adopt rules governing procedures to appeal Department decisions pursuant to this Article granting, denying, suspending or revoking licenses; ~~and~~

(4) Adopt criteria for waiver of licensing rules adopted pursuant to this ~~Article.~~ Article;

(5) Adopt rules on documenting the use of physical restraint in residential child-care facilities; and

(6) Adopt rules establishing personnel and training requirements related to the use of physical restraints and time-out for staff employed in residential child-care facilities."

Section 2.(b) Article 1A of Chapter 131D of the General Statutes is amended by adding the following new section to read:

"**§ 131D-10.5A. Collection of data on use of restraints in residential child-care facilities.**

A residential child-care facility that employs physical restraint of a child shall collect data on the use of the restraint. The data shall reflect for each incidence, the type of procedure used, the length of time employed, alternatives considered or employed, and the effectiveness of the procedure or alternative employed. The facility shall analyze the data on at least a quarterly basis to monitor effectiveness, determine trends, and take corrective action where necessary. The facility shall make the data available to the Department upon request. Nothing in this subsection abrogates State or federal law or requirements pertaining to the confidentiality, privilege, or other prohibition against disclosure of information provided to the Department under this subsection. In reviewing data requested under this subsection, the Department shall adhere to State and federal requirements of confidentiality, privilege, and other prohibitions against disclosure and release applicable to the information received under this subsection."

Section 3.(a) Article 2 of Chapter 122C of the General Statutes is amended by adding the following new section to read:

"**§ 122C-31. Report required upon death of client.**

(a) A facility shall notify the Secretary immediately upon the death of any client of the facility that occurs within seven days of physical restraint or seclusion of the client, and shall notify the Secretary within three days of the death of any client of the facility resulting from violence, accident, suicide, or homicide. The Secretary may assess a civil penalty of not less than five hundred dollars ($500.00) and not more than one thousand dollars ($1,000) against a facility that fails to notify the Secretary of a death and the circumstances surrounding the death known to the facility. Chapter 150B of the General Statutes governs the assessment of a penalty under this section. A civil penalty owed under this section may be recovered in a civil action brought by the Secretary or the Attorney General. The clear proceeds of the penalty shall be remitted to the State Treasurer for deposit in accordance with State law.

(b) Upon receipt of notification from a facility in accordance with subsection (a) of this section, the Secretary shall notify the Governor's Advocacy Council for Persons With Disabilities that a person with a disability has died. The Secretary shall provide the Council access to the information about each death reported pursuant to subsection (a) of this section, including information resulting from any investigation of the death by the Department and from reports received from the Chief Medical

Examiner pursuant to G.S. 130A-385. The Council shall use the information in accordance with its powers and duties under G.S. 143B-403.1 and applicable federal law and regulations.

(c) If the death of a client of a facility occurs within seven days of the use of physical restraint or seclusion, then the Secretary shall initiate immediately an investigation of the death.

(d) An inpatient psychiatric unit of a hospital licensed under Chapter 131E of the General Statutes shall comply with this section.

(e) Nothing in this section abrogates State or federal law or requirements pertaining to the confidentiality, privilege, or other prohibition against disclosure of information provided to the Secretary or the Council. In carrying out the requirements of this section, the Secretary and the Council shall adhere to State and federal requirements of confidentiality, privilege, and other prohibitions against disclosure and release applicable to the information received under this section. A facility or provider that makes available confidential information in accordance with this section and with State and federal law is not liable for the release of the information.

(f) The Secretary shall establish a standard reporting format for reporting deaths pursuant to this section and shall provide to facilities subject to this section a form for the facility's use in complying with this section."

Section 3.(b) Article 1 of Chapter 122C of the General Statutes is amended by adding the following new section to read:

"**§ 122C-5. Report on restraint and seclusion.**

The Secretary shall report annually on October 1 to the Legislative Study Commission on Mental Health, Developmental Disabilities, and Substance Abuse Services on the following for the immediately preceding fiscal year:

(1) The level of compliance of each facility with applicable State and federal laws, rules, and regulations governing the use of restraints and seclusion. The information shall indicate areas of highest and lowest levels of compliance.

(2) The total number of facilities that reported deaths under G.S. 122C-31, the number of deaths reported by each facility, the number of deaths investigated pursuant to G.S. 122C-31, and the number found by the investigation to be related to the use of restraint or seclusion."

Section 4. G.S. 130A-385 is amended by adding the following new subsection to read:

"(f) If a death occurred in a facility licensed subject to Article 2 or Article 3 of Chapter 122C of the General Statutes, or Articles 1 or 1A of Chapter 131D of the General Statutes, and the deceased was a client or resident of the facility or a recipient of facility services at the time of death, then the Chief Medical Examiner shall forward a copy of the medical examiner's report to the Secretary of Health and Human Services within 30 days of receipt of the report from the medical examiner."

Section 5.(a) Article 1A of Chapter 131D of the General Statutes is amended by adding the following new section to read:

"**§ 131D-10.6B. Report of death.**

(a) A facility licensed under this Article shall notify the Department immediately upon the death of any resident of the facility that occurs within seven days of physical restraint of the resident, and shall notify the Department within three days of the death of any resident of the facility resulting from violence, accident, suicide, or homicide. The Department may assess a civil penalty of not less than five hundred dollars ($500.00) and not more than one thousand dollars ($1,000) against a facility that fails to notify the Department of a death and the circumstances surrounding the death known to the facility. Chapter 150B of the General Statutes governs the assessment of a penalty under this section. A civil penalty owed under this section may be recovered in a civil action brought by the Department or the Attorney General. The clear proceeds of the penalty shall be remitted to the State Treasurer for deposit in accordance with State law.

(b) Upon receipt of notification from a facility in accordance with subsection (a) of this section, the Department shall notify the Governor's Advocacy Council for Persons With Disabilities that a person with a disability has died. The Department shall provide the Council access to the information about each death reported to the Council pursuant to subsection (a) of this section, including information resulting from any investigation of the death by the Department, and from reports received from the Chief Medical Examiner pursuant to G.S. 130A-385. The Council shall use the information in accordance with its powers and duties under G.S. 143B-403.1 and applicable federal law and regulations.

(c) If the death of a resident of the facility occurs within seven days of the use of physical restraint, the Department shall initiate immediately an investigation of the death.

(d) Nothing in this section abrogates State or federal law or requirements pertaining to the confidentiality, privilege, or other prohibition against disclosure of information provided to the Department or the Council. In carrying out the requirements of this section, the Department and the Council shall adhere to State and federal requirements of confidentiality, privilege, and other prohibitions against disclosure and release applicable to the information received under this section. A facility or provider that makes available confidential information in accordance with this section and with State and federal law is not liable for the release of the information.

(e) The Secretary shall establish a standard reporting format for reporting deaths pursuant to this section and shall provide to facilities subject to this section a form for the facility's use in complying with this section."

Section 5.(b) G.S. 131D-10.6 is amended by adding the following new subdivision to read:

"(10) Report annually on October 1 to the Legislative Study Commission on Mental Health, Developmental Disabilities, and Substance Abuse Services the level of facility compliance with applicable

State law governing the use of restraint and time-out in residential child-care facilities. The report shall also include the total number of facilities that reported deaths under this section, the number of deaths reported by each facility, the number of deaths investigated pursuant to this section, and the number found by the investigation to be related to the use of physical restraint or time-out."

Section 6.(a) Article 3 of Chapter 131D of the General Statutes is amended by adding the following new section to read:

"**§ 131D-34.1. Report of death of resident.**

(a) An adult care home shall notify the Department of Health and Human Services immediately upon the death of any resident that occurs in the adult care home or that occurs within 24 hours of the resident's transfer to a hospital if the death occurred within seven days of the adult care home's use of physical restraint or physical hold of the resident, and shall notify the Department of Health and Human Services within three days of the death of any resident of the adult care home resulting from violence, accident, suicide, or homicide. The Department may assess a civil penalty of not less than five hundred dollars ($500.00) and not more than one thousand dollars ($1,000) against a facility that fails to notify the Department of a death and the circumstances surrounding the death known to the facility. Chapter 150B of the General Statutes governs the assessment of a penalty under this section. A civil penalty owed under this section may be recovered in a civil action brought by the Department or the Attorney General. The clear proceeds of the penalty shall be remitted to the State Treasurer for deposit in accordance with State law.

(b) Upon receipt of notification from an adult care home in accordance with subsection (a) of this section, the Department of Health and Human Services shall notify the Governor's Advocacy Council for Persons With Disabilities that a person with a disability has died. The Department shall provide the Council access to the information about each death reported pursuant to subsection (a) of this section, including information resulting from any investigation of the death by the Department and from reports received from the Chief Medical Examiner pursuant to G.S. 130A-385. The Council shall use the information in accordance with its powers and duties under G.S. 143B-403.1 and applicable federal law and regulations.

(c) If the death of a resident of the adult care home occurs within seven days of the adult care home's use of physical restraint or physical hold, the Department shall initiate immediately an investigation of the death.

(d) Nothing in this section abrogates State or federal law or requirements pertaining to the confidentiality, privilege, or other prohibition against disclosure of information provided to the Department or the Council. In carrying out the requirements of this section, the Department and the Council shall adhere to State and federal requirements of confidentiality, privilege, and other prohibitions against disclosure and release applicable to the information received under this section. A facility or provider that makes available confidential information in accordance with this section and with State and federal law is not liable for the release of the information.

(e) The Secretary shall establish a standard reporting format for reporting deaths pursuant to this section and shall provide to facilities subject to this section a form for the facility's use in complying with this section."

Section 6.(b) Article 5 of Chapter 131D of the General Statutes is amended by adding the following new section to read:

"**§ 131D-42. Report on use of restraint.**

The Department shall report annually on October 1 to the Legislative Study Commission on Mental Health, Developmental Disabilities, and Substance Abuse Services the following for the immediately preceding fiscal year:

(1) The level of compliance of each adult care home with applicable State law and rules governing the use of physical restraint and physical hold of residents. The information shall indicate areas of highest and lowest levels of compliance.

(2) The total number of adult care homes that reported deaths under G.S. 131D-34.1, the number of deaths reported by each facility, the number of deaths investigated pursuant to G.S. 131D-34.1, and the number found by the investigation to be related to the adult care home's use of physical restraint or physical hold."

Section 7. This act becomes effective January 1, 2001.

HOUSE BILL 1520:
Restraints in Facilities

BILL ANALYSIS

Committee:	Senate Health Care	**Introduced by:**	Rep. Verla Insko (Primary Sponsor)
Date:	June 28, 2000		
Version:	Third Edition	**Summary by:**	Linda Attarian Committee Counsel

SUMMARY: The proposed legislation:

- *requires data collection and analysis related to the use of physical restraint and seclusion in **mental health facilities and residential child care facilities**;*
- *requires **mental health facilities** to implement policies and practices that emphasize the use of alternatives to physical restraint or seclusion;*
- *requires reporting and investigation of all deaths occurring within seven days of the use of restraints and seclusion in **mental health facilities, residential child care facilities, and adult care homes** ;*
- *requires reporting of all deaths resulting from violence, accident, suicide, or homicide in **mental health facilities, residential child care facilities, and adult care homes** within three days of the death;*
- *limits the employment of restraint or seclusion in **mental health facilities** to only those staff members who have been properly trained;*
- *requires rule-making authorities to adopt rules on staff training and other matters relating to the use of physical restraint and seclusion necessary to ensure the safety of clients and others **in mental health facilities and residential child care facilities**; and*
- *requires DHHS to make annual reports concerning the use of restraints and seclusion and deaths related to the use of restraints and seclusion in **mental health facilities, residential child care facilities and adult care homes** to the Legislative Study Commission on MH/DD/SAS;*
- *does not abrogate State or federal law or requirements pertaining to the confidentiality, privilege or other prohibitions against disclosure of information provided to the Secretary or the Governor's Advocacy Council for Persons with Disabilities.*

The act becomes effective January 1, 2001.

CURRENT LAW: The use of physical restraints, seclusion, and time-out in mental health facilities, child placement facilities, and adult care homes are currently regulated by a combination of State and federal laws, rules and regulations. The proposed legislation adds additional requirements to this body of law.

BILL ANALYSIS:

Section 1. Current law (G.S. 122C-60) requires mental health facilities to document all instances of restraint or seclusion and record detailed reasons for such actions in the clients record. The bill amends this statute by requiring facilities to collect data on each incident of use of restraints and seclusion and analyze data. The data collected must include the type of procedure used; the length of time employed;

the alternatives considered or employed; and the effectiveness of the procedure or alternative employed. The facilities must analyze the data quarterly to monitor effectiveness, trends, and must take corrective action when necessary. The facility must make the data available to the Secretary on request in accordance with existing State and federal laws pertaining to the disclosure of patient records.

In addition, the section further amends G.S. 122C-60 to require:

Mental health facilities to implement policies and practices that emphasize use of alternatives to physical restraint and seclusion.

Only staff who have been trained and have demonstrated competence in proper use of and alternatives to the use of restraints and seclusion may employ restraints and seclusion. Staff must be retrained at least annually.

Mental Health Commission must adopt rules that provide for staff training and competence in several aspects of the use of restraints and seclusion and other matters relating to the use of physical restraints and seclusion necessary to ensure the safety of clients and others. The Commission must take into federal regulations and national accreditation standards in adopting the rules.

Applicability of this section:
- Psychiatric hospitals (10 facilities);
- Mental health group homes, day treatment and outpatient programs (3400 facilities); and
- Intermediate care facilities for the mentally retarded (332 facilities).

Section 2(a). This section adds a new section to Article 1A of Chapter 131D to require residential child care facilities to collect data on the use of restraint. The data must include the type of procedure used, the length of time employed, alternatives considered or employed, and the effectiveness of the procedure or alternative employed. The facilities must analyze the data to monitor the effectiveness, determine trends, and take corrective actions where necessary. Data must be made available to the Secretary on request.

Section 2(b). This section also requires the Social Services Commission to adopt rules regulating the use of physical restraint and to establish personnel and training requirements.

Applicability of this section: A residential child care facility is defined as a "staffed premise with paid or volunteer staff where children receive continuing full-time foster care. They include child-caring institutions, group homes, and children's camps which provide foster care (includes "wilderness camps").

Section 3 (a). Amends Chapter 122C to add a new section to require mental health facilities to immediately report to the Secretary of DHHS all deaths occurring within seven days of the use of physical restraint or seclusion. The Secretary shall initiate an investigation of such deaths immediately and notify the Governor's Advocacy Council for Persons with Disabilities.

This section further requires the Secretary to report annually to the Legislative Study Commission on MH/DD/SAS each October 1. Report must include:
1. The level of compliance among facilities;
2. Total number of faculties reporting any deaths;

3. The number of deaths reported by each facility;
4. The number of deaths investigated by the Secretary;
5. The number of deaths related to the use of seclusion.

Section 4. Requires the Chief Medical Examiner to forward copies of the medical examiner's report to DHHS in deaths of certain clients.

Section 5(a). Adds a new section to Article 1A of Chapter 131D to require residential childcare facilities to immediately notify DHHS of all deaths occurring within seven days of the use of physical restraint. The Secretary shall initiate an investigation of such deaths immediately and notify the Governor's Advocacy Council for Persons with Disabilities.

Section 5(b). Amends G.S. 131D-10.6 to require the Department to report annually on October 1 to the Legislative Study Commission on MH/DD/SAS. Report must include:
1. The level of compliance with applicable State law governing among facilities;
2. Total number of faculties reporting any deaths;
3. The number of deaths reported by each facility;
4. The number of deaths investigated by the Secretary;
5. The number of deaths related to the use of physical restraint or timeout.

Section 6(a). Amends Article 3 of Chapter 131D to require adult care homes to notify DHHS immediately of all deaths occurring in the adult care home or occurring within 24 hours of a transfer to a hospital from an adult care home, within seven days of the use of a physical restraint or physical hold. The Secretary shall initiate an investigation of such deaths immediately and notify the Governor's Advocacy Council for Persons with Disabilities.

Section 6(b).
The Department shall report annually on October 1 to the Legislative Study Commission on MH/DD/SAS. Report must include:
1. The level of compliance of each adult care home with applicable State law and rules governing the use of physical restraint and physical holds;
2. The number of facilities that reported deaths.
3. The number of deaths reported by each facility;
4. The number of deaths investigated by the Secretary;
5. The number of deaths related to the use of physical restraint or physical hold.

Section 7: The bill becomes effective January 1, 2001.

SUMMARY: The Fourth Edition of the bill includes all of the language in H1520, 3rd edition, and also a penalty provision for violation of the death reporting requirements provided for in the legislation. The Secretary of DHHS would be able to assess a single penalty of not less than $500.00, and not more than $1000.00 against a mental health facility, residential child-care facility or adult care home when it fails to report a death that occurs as a result of violence, accident, suicide, homicide or a death occurring within seven days of the use of restraint or seclusion, as required by the legislation. The civil penalty would be non-continuing. The penalty owed under this provision could be recovered in a civil action brought by the Secretary or the Attorney General.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HOUSE BILL 1520

SHORT TITLE: RESTRAINTS IN FACILITIES

SPONSOR(S): Representative Insko

FISCAL IMPACT

Yes () **No ( )** **No Estimate Available ( )**

	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05
REVENUES					
EXPENDITURES	$100,000	$100,000	$100,000	$100,000	$100,000
POSITIONS:	1.0	1.0	1.0	1.0	1.0

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Health & Human Services & local Area Mental Health Authorities

EFFECTIVE DATE: January 1, 2001

BILL SUMMARY: This bill amends various sections in the General Statutes to regulate the use of restraints and seclusion in facilities serving the mentally ill, developmental disabled and individuals receiving substance abuse services. The bill amends the statutes as follows:

Mental Health/Developmental Disabilities/Substance Abuse Services Facilities:

Amends G. S. 122C to specify the use of restraints and seclusion only when there is imminent risk of danger or harm to the client or others or when, under certain conditions, planned restrictive interventions are employed.

Prohibits the use of planned restrictive interventions except when (1) there is documented evidence that serious harm to the client or others will occur; (2) only as a last resort after other alternatives have been unsuccessful; (3) the intervention has been pre-approved by a physician or psychologist prior to implementation; (4) the client or his/her legally responsible adult has consented; and (5) the planned intervention will expire after 90 days unless a review indicates continuation is warranted. The bill specifies that the use of restraints or seclusion must be terminated when the client is no longer a danger to self or others.

Requires that in all cases the written order of a physician or psychologist must be obtained within one hour of the initiation of the restraint or seclusion.

The bill also requires continuous observation of clients while in restraint or seclusion and specifies that the requirements in the bill apply to all individuals and facilities providing services under G.S. 122C.

Finally, the bill requires all facilities to document and analyze data on the use of restraints.

Residential Child Care Facilities:

Amends G. S. 131D-10.5A to allow the use of physical restraints in residential child-care facilities when there is imminent risk of harm to the child or others. The following conditions must also be met: (1) continuous observation by facility staff; and (2) use of restraints restricted to trained staff.

The bill also allows the removal of a child to a separate unlocked room or area (also known as "time-out") and requires facilities to document the use of restraints.

Adult Care Homes:

Amends G.S. 131D-2 to regulate the use of restraints in adult care homes, in emergency situations, when medical symptoms warrant and the use of alternatives have failed. The following conditions must also be met: (1) continuous observation by facility staff; and (2) only trained staff wold employ restraints.

The bill prohibits the use of chemical restraints and requires facilities to document the use of restraints.

All Facilities:

The bill requires that all facilities licensed under G.S. 122C (all mental health, developmental disabilities and substance abuse services facilities), 131-D (residential child-care facilities); and G.S. 131D-2 (adult care homes) report all deaths to the Department of Health and Human Services and imposes a civil penalty for noncompliance.

The bill requires the Department of Health and Human Services to notify the Governor's Advocacy Council for Persons with Disabilities when a person with a disability (residing in a facility) dies and requires DHHS to provide access to information regarding the death.

Requires the Secretary of DHHS to investigate any death occurring within seven days after the use of restraints.

ASSUMPTIONS AND METHODOLOGY:

Several components of the bill directly impact on state and local government and other providers.

STATE:

1. Section 1(b) requires a facility to obtain the written order of a physician or licensed psychologist within one hour of initiating the use of physical restraint, mechanical restraint, protective behavioral device, seclusion, or isolation time-out.

Estimated Cost: The Department of Health and Human Services indicates that current institutional policies require on-call staff to meet this need, thus no additional cost is projected.

2. Section 1(e) requires a facility to ensure that each client in physical restraint, mechanical restraint, seclusion, or isolation time-out is observed continuously by facility staff.

Estimated Cost: The Department of Health and Human Services indicates that current institutional policies require continuous observation when restraints are used, thus no additional cost is projected.

3. Section 1(I) requires facilities to train staff authorized to employ restraints.

Estimated Costs: The DHHS estimates that additional training costs could be absorbed within the current institutional operating budgets with the exception of $100,000 in projected cost to develop training materials and establish one position to coordinate training for new and existing staff within the institutions.

4. Section 1(k) requires facilities to collect and analyze data on the use of restraints.

Estimated Cost: The DHHS estimates that additional data collection cost could be absorbed within the current institutional operating budgets.

5. Section 4 requires a facility to notify the Secretary of DHHS immediately upon the death of any client of the facility. Failure to comply with reporting requirements may result in a civil penalty.

Estimated Cost: The DHHS estimates that costs associated with mandatory death reporting could be absorbed within the current institutional operating budgets.

LOCAL GOVERNMENT AND OTHER PROVIDERS:

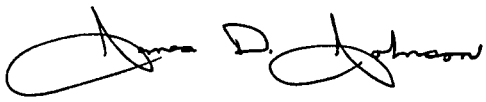
The previous sections discussed projected costs to state operated facilities. Currently local area mental health authorities, other local governments and other providers do not compile these data thus projections cannot be made. Anecdotal information suggests the bill may have a financial impact on various facilities however no data on the use of restraints in local government programs or private providers are available to project costs.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION 733-4910

PREPARED BY: Karen Hammonds-Blanks

APPROVED BY: James D. Johnson



DATE: June 20, 2000

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 3

HOUSE BILL 1340
Committee Substitute Favorable 6/23/99
Senate Health Care Committee Substitute Adopted 6/15/00

Short Title: Respiratory Care Practice Act. (Public)

Sponsors:

Referred to:

April 26, 1999

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE RESPIRATORY CARE PRACTICE ACT.

The General Assembly of North Carolina enacts:

Section 1. Chapter 90 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 38.

"Respiratory Care Practice Act.

"**§ 90-646. Short title.**

This Article may be cited as the 'Respiratory Care Practice Act'.

"**§ 90-647. Purpose.**

The General Assembly finds that the practice of respiratory care in the State of North Carolina affects the public health, safety, and welfare and that the mandatory licensure of persons who engage in respiratory care is necessary to ensure a minimum standard of competency. It is the purpose and intent of this Article to protect the public from the unqualified practice of respiratory care and from unprofessional conduct by persons licensed pursuant to this Article.

"**§ 90-648. Definitions.**

The following definitions apply in this Article:

(1) Board. -- The North Carolina Respiratory Care Board.

(2) Diagnostic testing. -- Cardiopulmonary procedures and tests performed on the written order of a physician licensed under Article 1 of this Chapter that provide information to the physician

to formulate a diagnosis of the patient's condition. The tests and procedures may include pulmonary function testing, electrocardiograph testing, cardiac stress testing, and sleep related testing.

(3) Direct supervision. -- The authority and responsibility to direct the performance of activities as established by policies and procedures for safe and appropriate completion of services.

(4) Individual. -- A human being.

(5) License. -- A certificate issued by the Board recognizing the person named therein as having met the requirements to practice respiratory care as defined in this Article.

(6) Licensee. -- A person who has been issued a license under this Article.

(7) Medical director. -- An appointed physician who is licensed under Article 1 of this Chapter and a member of the entity's medical staff, and who is granted the authority and responsibility for assuring and establishing policies and procedures and that the provision of such is provided to the quality, safety, and appropriateness standards as recognized within the defined scope of practice for the entity.

(8) Person. -- An individual, corporation, partnership, association, unit of government, or other legal entity.

(9) Physician. -- A doctor of medicine licensed by the State of North Carolina in accordance with Article 1 of this Chapter.

(10) Practice of respiratory care. -- As defined by the written order of a physician licensed under Article 1 of this Chapter, the observing and monitoring of signs and symptoms, general behavior, and general physical response to respiratory care treatment and diagnostic testing, including the determination of whether such signs, symptoms, reactions, behavior, or general response exhibit abnormal characteristics, and the performance of diagnostic testing and therapeutic application of:

a. Medical gases, humidity, and aerosols including the maintenance of associated apparatus, except for the purpose of anesthesia.

b. Pharmacologic agents related to respiratory care procedures, including those agents necessary to perform hemodynamic monitoring.

c. Mechanical or physiological ventilatory support.

d. Cardiopulmonary resuscitation and maintenance of natural airways, the insertion and maintenance of artificial airways under the direct supervision of a recognized medical director in a health care environment which identifies these

services within the scope of practice by the facility's governing board.

e. Hyperbaric oxygen therapy.

f. New and innovative respiratory care and related support activities in appropriately identified environments and under the training and practice guidelines established by the American Association of Respiratory Care.

The term also means the interpretation and implementation of a physician's written or verbal order pertaining to the acts described in this subdivision.

(11) Respiratory care. -- As defined by the written order of a physician licensed under Article 1 of Chapter 90, the treatment, management, diagnostic testing, and care of patients with deficiencies and abnormalities associated with the cardiopulmonary system.

(12) Respiratory care practitioner. -- A person who has been licensed by the Board to engage in the practice of respiratory care.

(13) Support activities. -- Procedures that do not require formal academic training, including the delivery, setup, and maintenance of apparatus. The term also includes giving instructions on the use, fitting, and application of apparatus, but does not include therapeutic evaluation and assessment.

"**§ 90-649. North Carolina Respiratory Care Board; creation.**

(a) The North Carolina Respiratory Care Board is created. The Board shall consist of 10 members as follows:

(1) Two members shall be respiratory care practitioners.

(2) Four members shall be physicians licensed to practice in North Carolina, and whose primary practice is Pulmonology, Anesthesiology, Critical Care Medicine, or whose specialty is Cardiothoracic Disorders.

(3) One member shall represent the NCHA.

(4) One member shall represent the North Carolina Association of Medical Equipment Services.

(5) Two members shall represent the public at large.

(b) Members of the Board shall be citizens of the United States and residents of this State. The respiratory care practitioner members shall have practiced respiratory care for at least five years and shall be licensed under this Article. The public members shall not be: (i) a respiratory care practitioner, (ii) an agent or employee of a person engaged in the profession of respiratory care, (iii) a health care professional licensed under this Chapter or a person enrolled in a program to become a licensed health care professional, (iv) an agent or employee of a health care institution, a health care insurer, or a health care professional school, (v) a member of an allied health profession or a person enrolled in a program to become a member

of an allied health profession, or (vi) a spouse of an individual who may not serve as a public member of the Board.

"**§ 90-650. Appointments and removal of Board members; terms and compensation.**

(a) The members of the Board shall be appointed as follows:

(1) The Governor shall appoint the public members described in G.S. 90-649(a)(5).

(2) The General Assembly, upon the recommendation of the Speaker of the House of Representatives, shall appoint one of the respiratory care practitioner members described in G.S. 90-649(a)(1) and one of the physician members described in G.S. 90-649(a)(2) in accordance with G.S. 120-121.

(3) The General Assembly, upon the recommendation of the President Pro Tempore of the Senate, shall appoint one of the respiratory care practitioner members described in G.S. 90-649(a)(1) and one of the physician members described in G.S. 90-649(a)(2) in accordance with G.S. 120-121.

(4) The North Carolina Medical Society shall appoint one of the physician members described in G.S. 90-649(a)(2).

(5) The Old North State Medical Society shall appoint one of the physician members described in G.S. 96-649(a)(2).

(6) The North Carolina Hospital Association shall appoint the member described in G.S. 90-649(a)(3).

(7) The North Carolina Association of Medical Equipment Services shall appoint the member described in G.S. 90-649(a)(4).

(b) Members of the Board shall take office on the first day of November immediately following the expired term of that office and shall serve for a term of three years and until their successors are appointed and qualified. No member shall serve on the Board for more than two consecutive terms.

(c) The Governor may remove members of the Board, after notice and an opportunity for hearing, for incompetence, neglect of duty, unprofessional conduct, conviction of any felony, failure to meet the qualifications of this Article, or committing any act prohibited by this Article.

(d) Any vacancy shall be filled by the authority originally filling that position, except that any vacancy in appointments by the General Assembly shall be filled in accordance with G.S. 120-122. Appointees to fill vacancies shall serve the remainder of the unexpired term and until their successors have been duly appointed and qualified.

(e) Members of the Board shall receive no compensation for their services but shall be entitled to travel, per diem, and other expenses authorized by G.S. 93B-5.

(f) Individual members shall be immune from civil liability arising from activities performed within the scope of their official duties.

"**§ 90-651. Election of officers; meetings of the Board.**

(a) The Board shall elect a chair and a vice-chair who shall hold office according to rules adopted pursuant to this Article, except that all officers shall be elected

annually by the Board for one-year terms and shall serve until their successors are elected and qualified.

(b) The Board shall hold at least two regular meetings each year as provided by rules adopted pursuant to this Article. The Board may hold additional meetings upon the call of the chair or any two Board members. A majority of the Board membership shall constitute a quorum.

"§ 90-652. Powers and duties of the Board.

The Board shall have the power and duty to:

(1) Determine the qualifications and fitness of applicants for licensure, renewal of licensure, and reciprocal licensure.

(2) Establish and adopt rules necessary to conduct its business, carry out its duties, and administer this Article.

(3) Adopt and publish a code of ethics.

(4) Deny, issue, suspend, revoke, and renew licenses in accordance with this Article.

(5) Conduct investigations, subpoena individuals and records, and do all other things necessary and proper to discipline persons licensed under this Article and to enforce this Article.

(6) Employ professional, clerical, investigative, or special personnel necessary to carry out the provisions of this Article and purchase or rent office space, equipment, and supplies.

(7) Adopt a seal by which it shall authenticate its proceedings, official records, and licenses.

(8) Conduct administrative hearings in accordance with Article 3A of Chapter 150B of the General Statutes.

(9) Establish certain reasonable fees as authorized by this Article for applications for examination, licensure, provisional licensure, renewal of licensure, and other services provided by the Board.

(10) Submit an annual report to the North Carolina Medical Board, the North Carolina Hospital Association, the North Carolina Society of Respiratory Care, the Governor, and the General Assembly of all the Board's official actions during the preceding year, together with any recommendations and findings regarding improvements of the practice of respiratory care.

(11) Publish and make available upon request the licensure standards prescribed under this Article and all rules adopted pursuant to this Article.

(12) Request and receive the assistance of State educational institutions or other State agencies.

(13) Establish and approve continuing education requirements for persons seeking licensure under this Article.

"§ 90-653. Licensure requirements; examination.

(a) Each applicant for licensure under this Article shall meet the following requirements:

(1) Submit a completed application as required by the Board.
(2) Submit any fees required by the Board.
(3) Submit to the Board written evidence, verified by oath, that the applicant has successfully completed the minimal requirements of a respiratory care education program as approved by the Commission for Accreditation of Allied Health Educational Programs.
(4) Submit to the Board written evidence, verified by oath, that the applicant has successfully completed the minimal requirements for Basic Cardiac Life Support as recognized by the American Heart Association.
(5) Pass the entry-level examination given by the National Board for Respiratory Care, Inc.

(b) At least three times each year, the Board shall cause the examination required in subdivision (5) of subsection (a) of this section to be given to applicants at a time and place to be announced by the Board. Any applicant who fails to pass the first examination may take additional examinations in accordance with rules adopted pursuant to this Article.

"**§ 90-654. Exemption from certain requirements.**

(a) The Board may issue a license to an applicant who, as of October 1, 2000, has passed the entry-level examination given by the National Board for Respiratory Care, Inc. An applicant applying for licensure under this subsection shall submit his or her application to the Board before October 1, 2002.

(b) The Board may grant a temporary license to an applicant who, as of October 1, 2000, does not meet the qualifications of G.S. 90-653 but, through written evidence verified by oath, demonstrates that he or she is performing the duties of a respiratory care practitioner within the State. The temporary license is valid until October 1, 2002, within which time the applicant shall be required to complete the requirements of G.S. 90-653(a)(5). A license granted under this subsection shall contain an endorsement indicating that the license is temporary and shall state the date the license was granted and the date it expires.

"**§ 90-655. Licensure by reciprocity.**

The Board may grant, upon application and the payment of proper fees, a license to a person who, at the time of application holds a valid license, certificate, or registration as a respiratory care practitioner issued by another state or a political territory or jurisdiction acceptable to the Board if, in the Board's determination, the requirements for that license, certificate, or registration are substantially the same as the requirements for licensure under this Article.

"**§ 90-656. Provisional license.**

The Board may grant a provisional license for a period not exceeding 12 months to any applicant who has successfully completed the education requirements under G.S. 90-653(a)(3) and has made application to take the examination required under G.S. 90-653(a)(5). A provisional license allows the individual to practice respiratory care under the supervision of a respiratory care practitioner and in accordance with rules

adopted pursuant to this Article. A license granted under this section shall contain an endorsement indicating that the license is provisional and stating the terms and conditions of its use by the licensee and shall state the date the license was granted and the date it expires.

"§ 90-657. Notification of applicant following evaluation of application.

After evaluation of the application and of any other evidence required from the applicant by the Board, the Board shall notify each applicant that the application and evidence submitted are satisfactory and accepted or unsatisfactory and rejected. If the application and evidence is rejected, the notice shall state the reasons for the rejection.

"§ 90-658. License as property of the Board; display requirement; renewal; inactive status.

(a) A license issued by the Board is the property of the Board and shall be surrendered by the licensee to the Board on demand.

(b) The licensee shall display the license in the manner prescribed by the Board.

(c) The licensee shall inform the Board of any change of the licensee's address.

(d) The license shall be renewed by the Board annually upon the payment of a renewal fee if, at the time of application for renewal, the applicant is not in violation of this Article and has fulfilled the current requirements regarding continuing education as established by rules adopted pursuant to this Article.

(e) The Board shall notify a licensee at least 30 days in advance of the expiration of his or her license. Each licensee is responsible for renewing his or her license before the expiration date. Licenses that are not renewed automatically lapse.

(f) The Board may provide for the late renewal of an automatically lapsed license upon the payment of a late fee. No late fee renewal may be granted more than five years after a license expires.

(g) In accordance with rules adopted pursuant to this Article, a licensee may request that his or her license be declared inactive and may thereafter apply for active status.

"§ 90-659. Suspension, revocation, and refusal to renew a license.

(a) The Board shall take the necessary actions to deny or refuse to renew a license, suspend or revoke a license, or to impose probationary conditions on a licensee or applicant if the licensee or applicant:

(1) Has engaged in any of the following conduct:

a. Employed fraud, deceit, or misrepresentation in obtaining or attempting to obtain a license or the renewal of a license.

b. Committed an act of malpractice, gross negligence, or incompetence in the practice of respiratory care.

c. Practiced respiratory care without a license.

d. Engaged in health care practices that are determined to be hazardous to public health, safety, or welfare.

(2) Was convicted of or entered a plea of guilty or nolo contendere to any crime involving moral turpitude.

(3) Was adjudicated insane or incompetent, until proof of recovery from the condition can be established.

(4) Engaged in any act or practice that violates any of the provisions of this Article or any rule adopted pursuant to this Article, or aided, abetted, or assisted any person in such a violation.

(b) Denial, refusal to renew, suspension, or revocation of a license, or imposition of probationary conditions upon a licensee may be ordered by the Board after a hearing held in accordance with Article 3A of Chapter 150B of the General Statutes and rules adopted pursuant to this Article. An application may be made to the Board for reinstatement of a revoked license if the revocation has been in effect for at least one year.

"**§ 90-660. Expenses; fees.**

(a) All salaries, compensation, and expenses incurred or allowed for carrying out the purposes of this Article shall be paid by the Board exclusively out of the fees received by the Board as authorized by this Article or funds received from other sources. In no case shall any salary, expense, or other obligations of the Board be charged against the State.

(b) All monies received by the Board pursuant to this Article shall be deposited in an account for the Board and shall be used for the administration and implementation of this Article. The Board shall establish fees in amounts to cover the cost of services rendered for the following purposes:

(1) For an initial application, a fee not to exceed twenty-five dollars ($25.00).

(2) For examination or reexamination, a fee not to exceed one hundred fifty dollars ($150.00).

(3) For issuance of any license, a fee not to exceed one hundred dollars ($100.00).

(4) For the renewal of any license, a fee not to exceed fifty dollars ($50.00).

(5) For the late renewal of any license, an additional late fee not to exceed fifty dollars ($50.00).

(6) For a license with a provisional or temporary endorsement, a fee not to exceed thirty-five dollars ($35.00).

(7) For copies of rules adopted pursuant to this Article and licensure standards, charges not exceeding the actual cost of printing and mailing.

"**§ 90-661. Requirement of license.**

After October 1, 2002, it shall be unlawful for any person who is not currently licensed under this Article to:

(1) Engage in the practice of respiratory care.

(2) Use the title 'respiratory care practitioner'.

(3) Use the letters 'RCP', 'RTT', 'RT', or any facsimile or combination in any words, letters, abbreviations, or insignia.

(4) Imply orally or in writing or indicate in any way that the person is a respiratory care practitioner or is otherwise licensed under this Article.

(5) Employ or solicit for employment unlicensed persons to practice respiratory care.

"**§ 90-662. Violation a misdemeanor.**

Any person who violates any provision of this Article shall be guilty of a Class 1 misdemeanor.

"**§ 90-663. Injunctions.**

The Board may apply to the superior court for an order enjoining violations of this Article, and upon a showing by the Board that any person has violated or is about to violate this Article, the court may grant an injunction or restraining order or take other appropriate action.

"**§ 90-664. Persons and practices not affected.**

The requirements of this Article shall not apply to:

(1) Any person registered, certified, credentialed, or licensed to engage in another profession or occupation or any person working under the supervision of a person registered, certified, credentialed, or licensed to engage in another profession or occupation in this State who is performing work incidental to or within the practice of that profession or occupation and does not represent himself or herself as a respiratory care practitioner.

(2) A student or trainee working under the direct supervision of a respiratory care practitioner while fulfilling an experience requirement or pursuing a course of study to meet requirements for licensure in accordance with rules adopted pursuant to this Article.

(3) A respiratory care practitioner serving in the armed forces or the Public Health Service of the United States or employed by the Veterans Administration when performing duties associated with that service or employment.

(4) A person who performs only support activities as defined in G.S. 90-648(13).

"**§ 90-665. Third-party reimbursement.**

Nothing in this Article shall be construed to require direct third-party reimbursements to persons licensed under this Article."

Section 2. G.S. 120-123 is amended by adding a new subdivision to read:

"(70) The North Carolina Respiratory Care Board as created by Article 37 of Chapter 90 of the General Statutes."

Section 3. The initial appointments to the North Carolina Respiratory Care Board, created in G.S. 90-649, as enacted in Section 1 of this act, shall be appointed no later than October 1, 2000. Notwithstanding the provisions of G.S. 90-649(b), as enacted in Section 1 of this act, the initial members of the North Carolina Respiratory Care Board who are appointed pursuant to G.S. 90-649(a)(1) must have

passed the entry-level examination administered by the National Board for Respiratory Care, Inc. Notwithstanding the provisions of G.S. 90-650(b), as enacted in Section 1 of this act, of the initial appointments to the North Carolina Respiratory Care Board, one of the members appointed by the General Assembly, upon the recommendation of the Speaker of the House of Representatives, and one of the members appointed by the General Assembly, upon the recommendation of the President Pro Tempore of the Senate, shall be appointed for three-year terms; one of the members appointed by the General Assembly, upon the recommendation of the Speaker of the House of Representatives, and one of the members appointed by the General Assembly, upon the recommendation of the President Pro Tempore of the Senate, shall be appointed for two-year terms; the public members appointed by the Governor shall be appointed for a one-year term; the physician member appointed by the North Carolina Medical Society shall be appointed for a one-year term; the physician member appointed by the Old North State Medical Society shall be appointed for a one-year term; and the members appointed by the North Carolina Hospital Association and the North Carolina Association of Medical Equipment Services shall be appointed for one-year terms.

Section 4. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1340
Committee Substitute Favorable 6/23/99
Senate Health Care Committee Substitute Adopted 6/15/00
Proposed Senate Committee Substitute H1340-PCS2452-LN001

Short Title: Respiratory Care Practice Act. (Public)

Sponsors:

Referred to:

April 26, 1999

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE RESPIRATORY CARE PRACTICE ACT, TO PROVIDE FOR THE PROMPT PAYMENT OF CLAIMS UNDER HEALTH BENEFIT PLANS, AND TO MAKE CONFORMING AMENDMENTS TO RELATED CLAIM PAYMENT LAWS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 90 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 38.

"Respiratory Care Practice Act.

"**§ 90-646. Short title.**

This Article may be cited as the 'Respiratory Care Practice Act'.

"**§ 90-647. Purpose.**

The General Assembly finds that the practice of respiratory care in the State of North Carolina affects the public health, safety, and welfare and that the mandatory licensure of persons who engage in respiratory care is necessary to ensure a minimum standard of competency. It is the purpose and intent of this Article to protect the public from the unqualified practice of respiratory care and from unprofessional conduct by persons licensed pursuant to this Article.

"**§ 90-648. Definitions.**

The following definitions apply in this Article:

(1) Board. -- The North Carolina Respiratory Care Board.

(2) Diagnostic testing. -- Cardiopulmonary procedures and tests performed on the written order of a physician licensed under Article 1 of this Chapter that provide information to the physician to formulate a diagnosis of the patient's condition. The tests and procedures may include pulmonary function testing, electrocardiograph testing, cardiac stress testing, and sleep related testing.

(3) Direct supervision. -- The authority and responsibility to direct the performance of activities as established by policies and procedures for safe and appropriate completion of services.

(4) Individual. -- A human being.

(5) License. -- A certificate issued by the Board recognizing the person named therein as having met the requirements to practice respiratory care as defined in this Article.

(6) Licensee. -- A person who has been issued a license under this Article.

(7) Medical director. -- An appointed physician who is licensed under Article 1 of this Chapter and a member of the entity's medical staff, and who is granted the authority and responsibility for assuring and establishing policies and procedures and that the provision of such is provided to the quality, safety, and appropriateness standards as recognized within the defined scope of practice for the entity.

(8) Person. -- An individual, corporation, partnership, association, unit of government, or other legal entity.

(9) Physician. -- A doctor of medicine licensed by the State of North Carolina in accordance with Article 1 of this Chapter.

(10) Practice of respiratory care. -- As defined by the written order of a physician licensed under Article 1 of this Chapter, the observing and monitoring of signs and symptoms, general behavior, and general physical response to respiratory care treatment and diagnostic testing, including the determination of whether such signs, symptoms, reactions, behavior, or general response exhibit abnormal characteristics, and the performance of diagnostic testing and therapeutic application of:

a. Medical gases, humidity, and aerosols including the maintenance of associated apparatus, except for the purpose of anesthesia.

b. Pharmacologic agents related to respiratory care procedures, including those agents necessary to perform hemodynamic monitoring.

c. Mechanical or physiological ventilatory support.

d. Cardiopulmonary resuscitation and maintenance of natural airways, the insertion and maintenance of artificial airways under the direct supervision of a recognized medical director in a health care environment which identifies these services within the scope of practice by the facility's governing board.

e. Hyperbaric oxygen therapy.

f. New and innovative respiratory care and related support activities in appropriately identified environments and under the training and practice guidelines established by the American Association of Respiratory Care.

The term also means the interpretation and implementation of a physician's written or verbal order pertaining to the acts described in this subdivision.

(11) Respiratory care. -- As defined by the written order of a physician licensed under Article 1 of Chapter 90, the treatment, management, diagnostic testing, and care of patients with deficiencies and abnormalities associated with the cardiopulmonary system.

(12) Respiratory care practitioner. -- A person who has been licensed by the Board to engage in the practice of respiratory care.

(13) Support activities. -- Procedures that do not require formal academic training, including the delivery, setup, and maintenance of apparatus. The term also includes giving instructions on the use, fitting, and application of apparatus, but does not include therapeutic evaluation and assessment.

"**§ 90-649. North Carolina Respiratory Care Board; creation.**

(a) The North Carolina Respiratory Care Board is created. The Board shall consist of 10 members as follows:

(1) Two members shall be respiratory care practitioners.

(2) Four members shall be physicians licensed to practice in North Carolina, and whose primary practice is Pulmonology, Anesthesiology, Critical Care Medicine, or whose specialty is Cardiothoracic Disorders.

(3) One member shall represent the NCHA.

(4) One member shall represent the North Carolina Association of Medical Equipment Services.

(5) Two members shall represent the public at large.

(b) Members of the Board shall be citizens of the United States and residents of this State. The respiratory care practitioner members shall have practiced respiratory care for at least five years and shall be licensed under this Article. The public members shall not be: (i) a respiratory care practitioner, (ii) an agent or employee of a person engaged in the profession of respiratory care, (iii) a health care professional licensed under this Chapter or a person enrolled in a program to become

a licensed health care professional, (iv) an agent or employee of a health care institution, a health care insurer, or a health care professional school, (v) a member of an allied health profession or a person enrolled in a program to become a member of an allied health profession, or (vi) a spouse of an individual who may not serve as a public member of the Board.

"**§ 90-650. Appointments and removal of Board members; terms and compensation.**

(a) The members of the Board shall be appointed as follows:

(1) The Governor shall appoint the public members described in G.S. 90-649(a)(5).

(2) The General Assembly, upon the recommendation of the Speaker of the House of Representatives, shall appoint one of the respiratory care practitioner members described in G.S. 90-649(a)(1) and one of the physician members described in G.S. 90-649(a)(2) in accordance with G.S. 120-121.

(3) The General Assembly, upon the recommendation of the President Pro Tempore of the Senate, shall appoint one of the respiratory care practitioner members described in G.S. 90-649(a)(1) and one of the physician members described in G.S. 90-649(a)(2) in accordance with G.S. 120-121.

(4) The North Carolina Medical Society shall appoint one of the physician members described in G.S. 90-649(a)(2).

(5) The Old North State Medical Society shall appoint one of the physician members described in G.S. 96-649(a)(2).

(6) The North Carolina Hospital Association shall appoint the member described in G.S. 90-649(a)(3).

(7) The North Carolina Association of Medical Equipment Services shall appoint the member described in G.S. 90-649(a)(4).

(b) Members of the Board shall take office on the first day of November immediately following the expired term of that office and shall serve for a term of three years and until their successors are appointed and qualified. No member shall serve on the Board for more than two consecutive terms.

(c) The Governor may remove members of the Board, after notice and an opportunity for hearing, for incompetence, neglect of duty, unprofessional conduct, conviction of any felony, failure to meet the qualifications of this Article, or committing any act prohibited by this Article.

(d) Any vacancy shall be filled by the authority originally filling that position, except that any vacancy in appointments by the General Assembly shall be filled in accordance with G.S. 120-122. Appointees to fill vacancies shall serve the remainder of the unexpired term and until their successors have been duly appointed and qualified.

(e) Members of the Board shall receive no compensation for their services but shall be entitled to travel, per diem, and other expenses authorized by G.S. 93B-5.

(f) Individual members shall be immune from civil liability arising from activities performed within the scope of their official duties.

"**§ 90-651. Election of officers; meetings of the Board.**

(a) The Board shall elect a chair and a vice-chair who shall hold office according to rules adopted pursuant to this Article, except that all officers shall be elected annually by the Board for one-year terms and shall serve until their successors are elected and qualified.

(b) The Board shall hold at least two regular meetings each year as provided by rules adopted pursuant to this Article. The Board may hold additional meetings upon the call of the chair or any two Board members. A majority of the Board membership shall constitute a quorum.

"**§ 90-652. Powers and duties of the Board.**

The Board shall have the power and duty to:

(1) Determine the qualifications and fitness of applicants for licensure, renewal of licensure, and reciprocal licensure.

(2) Establish and adopt rules necessary to conduct its business, carry out its duties, and administer this Article.

(3) Adopt and publish a code of ethics.

(4) Deny, issue, suspend, revoke, and renew licenses in accordance with this Article.

(5) Conduct investigations, subpoena individuals and records, and do all other things necessary and proper to discipline persons licensed under this Article and to enforce this Article.

(6) Employ professional, clerical, investigative, or special personnel necessary to carry out the provisions of this Article and purchase or rent office space, equipment, and supplies.

(7) Adopt a seal by which it shall authenticate its proceedings, official records, and licenses.

(8) Conduct administrative hearings in accordance with Article 3A of Chapter 150B of the General Statutes.

(9) Establish certain reasonable fees as authorized by this Article for applications for examination, licensure, provisional licensure, renewal of licensure, and other services provided by the Board.

(10) Submit an annual report to the North Carolina Medical Board, the North Carolina Hospital Association, the North Carolina Society of Respiratory Care, the Governor, and the General Assembly of all the Board's official actions during the preceding year, together with any recommendations and findings regarding improvements of the practice of respiratory care.

(11) Publish and make available upon request the licensure standards prescribed under this Article and all rules adopted pursuant to this Article.

(12) Request and receive the assistance of State educational institutions or other State agencies.

(13) Establish and approve continuing education requirements for persons seeking licensure under this Article.

"**§ 90-653. Licensure requirements; examination.**

(a) Each applicant for licensure under this Article shall meet the following requirements:

(1) Submit a completed application as required by the Board.

(2) Submit any fees required by the Board.

(3) Submit to the Board written evidence, verified by oath, that the applicant has successfully completed the minimal requirements of a respiratory care education program as approved by the Commission for Accreditation of Allied Health Educational Programs.

(4) Submit to the Board written evidence, verified by oath, that the applicant has successfully completed the minimal requirements for Basic Cardiac Life Support as recognized by the American Heart Association.

(5) Pass the entry-level examination given by the National Board for Respiratory Care, Inc.

(b) At least three times each year, the Board shall cause the examination required in subdivision (5) of subsection (a) of this section to be given to applicants at a time and place to be announced by the Board. Any applicant who fails to pass the first examination may take additional examinations in accordance with rules adopted pursuant to this Article.

"**§ 90-654. Exemption from certain requirements.**

(a) The Board may issue a license to an applicant who, as of October 1, 2000, has passed the entry-level examination given by the National Board for Respiratory Care, Inc. An applicant applying for licensure under this subsection shall submit his or her application to the Board before October 1, 2002.

(b) The Board may grant a temporary license to an applicant who, as of October 1, 2000, does not meet the qualifications of G.S. 90-653 but, through written evidence verified by oath, demonstrates that he or she is performing the duties of a respiratory care practitioner within the State. The temporary license is valid until October 1, 2002, within which time the applicant shall be required to complete the requirements of G.S. 90-653(a)(5). A license granted under this subsection shall contain an endorsement indicating that the license is temporary and shall state the date the license was granted and the date it expires.

"**§ 90-655. Licensure by reciprocity.**

The Board may grant, upon application and the payment of proper fees, a license to a person who, at the time of application holds a valid license, certificate, or registration as a respiratory care practitioner issued by another state or a political territory or jurisdiction acceptable to the Board if, in the Board's determination, the requirements for that license, certificate, or registration are substantially the same as the requirements for licensure under this Article.

"**§ 90-656. Provisional license.**

The Board may grant a provisional license for a period not exceeding 12 months to any applicant who has successfully completed the education requirements under G.S.

90-653(a)(3) and has made application to take the examination required under G.S. 90-653(a)(5). A provisional license allows the individual to practice respiratory care under the supervision of a respiratory care practitioner and in accordance with rules adopted pursuant to this Article. A license granted under this section shall contain an endorsement indicating that the license is provisional and stating the terms and conditions of its use by the licensee and shall state the date the license was granted and the date it expires.

"§ 90-657. Notification of applicant following evaluation of application.

After evaluation of the application and of any other evidence required from the applicant by the Board, the Board shall notify each applicant that the application and evidence submitted are satisfactory and accepted or unsatisfactory and rejected. If the application and evidence is rejected, the notice shall state the reasons for the rejection.

"§ 90-658. License as property of the Board; display requirement; renewal; inactive status.

(a) A license issued by the Board is the property of the Board and shall be surrendered by the licensee to the Board on demand.

(b) The licensee shall display the license in the manner prescribed by the Board.

(c) The licensee shall inform the Board of any change of the licensee's address.

(d) The license shall be renewed by the Board annually upon the payment of a renewal fee if, at the time of application for renewal, the applicant is not in violation of this Article and has fulfilled the current requirements regarding continuing education as established by rules adopted pursuant to this Article.

(e) The Board shall notify a licensee at least 30 days in advance of the expiration of his or her license. Each licensee is responsible for renewing his or her license before the expiration date. Licenses that are not renewed automatically lapse.

(f) The Board may provide for the late renewal of an automatically lapsed license upon the payment of a late fee. No late fee renewal may be granted more than five years after a license expires.

(g) In accordance with rules adopted pursuant to this Article, a licensee may request that his or her license be declared inactive and may thereafter apply for active status.

"§ 90-659. Suspension, revocation, and refusal to renew a license.

(a) The Board shall take the necessary actions to deny or refuse to renew a license, suspend or revoke a license, or to impose probationary conditions on a licensee or applicant if the licensee or applicant:

(1) Has engaged in any of the following conduct:

a. Employed fraud, deceit, or misrepresentation in obtaining or attempting to obtain a license or the renewal of a license.

b. Committed an act of malpractice, gross negligence, or incompetence in the practice of respiratory care.

c. Practiced respiratory care without a license.

d. Engaged in health care practices that are determined to be hazardous to public health, safety, or welfare.

(2) Was convicted of or entered a plea of guilty or nolo contendere to any crime involving moral turpitude.
(3) Was adjudicated insane or incompetent, until proof of recovery from the condition can be established.
(4) Engaged in any act or practice that violates any of the provisions of this Article or any rule adopted pursuant to this Article, or aided, abetted, or assisted any person in such a violation.

(b) Denial, refusal to renew, suspension, or revocation of a license, or imposition of probationary conditions upon a licensee may be ordered by the Board after a hearing held in accordance with Article 3A of Chapter 150B of the General Statutes and rules adopted pursuant to this Article. An application may be made to the Board for reinstatement of a revoked license if the revocation has been in effect for at least one year.

"**§ 90-660. Expenses; fees.**

(a) All salaries, compensation, and expenses incurred or allowed for carrying out the purposes of this Article shall be paid by the Board exclusively out of the fees received by the Board as authorized by this Article or funds received from other sources. In no case shall any salary, expense, or other obligations of the Board be charged against the State.

(b) All monies received by the Board pursuant to this Article shall be deposited in an account for the Board and shall be used for the administration and implementation of this Article. The Board shall establish fees in amounts to cover the cost of services rendered for the following purposes:

(1) For an initial application, a fee not to exceed twenty-five dollars ($25.00).
(2) For examination or reexamination, a fee not to exceed one hundred fifty dollars ($150.00).
(3) For issuance of any license, a fee not to exceed one hundred dollars ($100.00).
(4) For the renewal of any license, a fee not to exceed fifty dollars ($50.00).
(5) For the late renewal of any license, an additional late fee not to exceed fifty dollars ($50.00).
(6) For a license with a provisional or temporary endorsement, a fee not to exceed thirty-five dollars ($35.00).
(7) For copies of rules adopted pursuant to this Article and licensure standards, charges not exceeding the actual cost of printing and mailing.

"**§ 90-661. Requirement of license.**

After October 1, 2002, it shall be unlawful for any person who is not currently licensed under this Article to:

(1) Engage in the practice of respiratory care.
(2) Use the title 'respiratory care practitioner'.

(3) Use the letters 'RCP', 'RTT', 'RT', or any facsimile or combination in any words, letters, abbreviations, or insignia.

(4) Imply orally or in writing or indicate in any way that the person is a respiratory care practitioner or is otherwise licensed under this Article.

(5) Employ or solicit for employment unlicensed persons to practice respiratory care.

"**§ 90-662. Violation a misdemeanor.**

Any person who violates any provision of this Article shall be guilty of a Class 1 misdemeanor.

"**§ 90-663. Injunctions.**

The Board may apply to the superior court for an order enjoining violations of this Article, and upon a showing by the Board that any person has violated or is about to violate this Article, the court may grant an injunction or restraining order or take other appropriate action.

"**§ 90-664. Persons and practices not affected.**

The requirements of this Article shall not apply to:

(1) Any person registered, certified, credentialed, or licensed to engage in another profession or occupation or any person working under the supervision of a person registered, certified, credentialed, or licensed to engage in another profession or occupation in this State who is performing work incidental to or within the practice of that profession or occupation and does not represent himself or herself as a respiratory care practitioner.

(2) A student or trainee working under the direct supervision of a respiratory care practitioner while fulfilling an experience requirement or pursuing a course of study to meet requirements for licensure in accordance with rules adopted pursuant to this Article.

(3) A respiratory care practitioner serving in the armed forces or the Public Health Service of the United States or employed by the Veterans Administration when performing duties associated with that service or employment.

(4) A person who performs only support activities as defined in G.S. 90-648(13).

"**§ 90-665. Third-party reimbursement.**

Nothing in this Article shall be construed to require direct third-party reimbursements to persons licensed under this Article."

Section 2. G.S. 120-123 is amended by adding a new subdivision to read:

"(70) The North Carolina Respiratory Care Board as created by Article 37 of Chapter 90 of the General Statutes."

Section 3. The initial appointments to the North Carolina Respiratory Care Board, created in G.S. 90-649, as enacted in Section 1 of this act, shall be appointed no later than October 1, 2000. Notwithstanding the provisions of G.S. 90-

649(b), as enacted in Section 1 of this act, the initial members of the North Carolina Respiratory Care Board who are appointed pursuant to G.S. 90-649(a)(1) must have passed the entry-level examination administered by the National Board for Respiratory Care, Inc. Notwithstanding the provisions of G.S. 90-650(b), as enacted in Section 1 of this act, of the initial appointments to the North Carolina Respiratory Care Board, one of the members appointed by the General Assembly, upon the recommendation of the Speaker of the House of Representatives, and one of the members appointed by the General Assembly, upon the recommendation of the President Pro Tempore of the Senate, shall be appointed for three-year terms; one of the members appointed by the General Assembly, upon the recommendation of the Speaker of the House of Representatives, and one of the members appointed by the General Assembly, upon the recommendation of the President Pro Tempore of the Senate, shall be appointed for two-year terms; the public members appointed by the Governor shall be appointed for a one-year term; the physician member appointed by the North Carolina Medical Society shall be appointed for a one-year term; the physician member appointed by the Old North State Medical Society shall be appointed for a one-year term; and the members appointed by the North Carolina Hospital Association and the North Carolina Association of Medical Equipment Services shall be appointed for one-year terms.

Section 4.(a) Article 3 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-3-225. Prompt claim payments under health benefit plans.**

(a) As used in this section:

(1) 'Health benefit plan' means an accident and health insurance policy or certificate; a nonprofit hospital or medical service corporation contract; a health maintenance organization subscriber contract; a plan provided by a multiple employer welfare arrangement; or a plan provided by another benefit arrangement, to the extent permitted by the Employee Retirement Income Security Act of 1974, as amended, or by any waiver of or other exception to that act provided under federal law or regulation. 'Health benefit plan' does not mean any plan implemented or administered by the North Carolina or United States Department of Health and Human Services, or any successor agency, or its representatives. 'Health benefit plan' also does not mean any of the following kinds of insurance:

a. Credit.

b. Disability income.

c. Coverage issued as a supplement to liability insurance.

d. Hospital income or indemnity.

e. Insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability policy or equivalent self-insurance.

f. Long-term or nursing home care.

g. Medical payments under motor vehicle or homeowners' insurance policies.
h. Medicare supplement.
i. Short-term limited duration health insurance policies as defined in Part 144 of Title 45 of the Code of Federal Regulations.
j. Workers' compensation.

(2) 'Claimant' includes a health care provider or facility that is responsible or permitted under contract with the insurer or by valid assignment of benefits for directly making the claim with an insurer.

(3) 'Health care facility' means a facility that is licensed under Chapter 131E or Chapter 122C of the General Statutes or is owned or operated by the State of North Carolina in which health care services are provided to patients.

(4) 'Health care provider' means an individual who is licensed, certified, or otherwise authorized under Chapter 90 of the General Statutes to provide health care services in the ordinary course of business or practice of a profession or in an approved education or training program.

(5) 'Insurer' includes an insurance company subject to this Chapter, a service corporation organized under Article 65 of this Chapter, a health maintenance organization organized under Article 67 of this Chapter, or a multiple employer welfare arrangement subject to Article 49 of this Chapter, that writes a health benefit plan.

(b) An insurer shall, within 30 calendar days after receipt of a claim, send by electronic or paper mail to the claimant:

(1) Payment of the claim.
(2) Notice of denial of the claim.
(3) Notice that the proof of loss is inadequate or incomplete.
(4) Notice that the claim is not submitted on the form required by the health benefit plan, by the contract between the insurer and health care provider or health care facility, or by applicable law.
(5) Notice that coordination of benefits information is needed in order to pay the claim.
(6) Notice that the claim is pending based on nonpayment of fees or premiums.

For purposes of this section, an insurer is presumed to have received a written claim five business days after the claim has been placed first-class postage prepaid in the United States mail addressed to the insurer and an electronic claim transmitted to the insurer or a designated clearinghouse on the day the claim is electronically transmitted. The presumption may be rebutted by sufficient evidence that the claim was received on another day or not received at all.

(c) If the claim is denied, the notice shall include all of the specific good faith reason or reasons for the denial, including, without limitation, coordination of benefits, lack of eligibility, or lack of coverage for the services provided. If the claim is contested or cannot be paid because the proof of loss is inadequate or incomplete, or not paid pending receipt of requested coordination of benefits information, the notice shall contain the specific good faith reason or reasons why the claim has not been paid and an itemization or description of all of the information needed by the insurer to complete the processing of the claim. If all or part of the claim is contested or cannot be paid because of the application of a specific utilization management or medical necessity standard is not satisfied, the notice shall contain the specific clinical rationale for that decision or shall refer to specific provisions in documents that are made readily available through the insurer which provide the specific clinical rationale for that decision; however, if a notice of noncertification has already been provided under G.S. 58-50-61(h), then the specific clinical rationale for the decision is not required under this subsection. If the claim is contested or cannot be paid because of nonpayment of premiums, the notice shall contain a statement advising the claimant of the nonpayment of premiums. If a claim is not paid pending receipt of requested coordination of benefits information, the notice shall so specify. If a claim is denied or contested in part, the insurer shall pay the undisputed portion of the claim within 30 calendar days after receipt of the claim and send the notice of the denial or contested status within 30 days after receipt of the claim. If a claim is contested or cannot be paid because the claim was not submitted on the required form, the notice shall contain the required form, if the form is other than a UB or HCFA form, and instructions to complete that form. Upon receipt of additional information requested in its notice to the claimant, the insurer shall continue processing the claim and pay or deny the claim within 30 days after receiving the additional information.

(d) If an insurer requests additional information under subsection (c) of this section and the insurer does not receive the additional information within 90 days after the request was made, the insurer shall deny the claim and send the notice of denial to the claimant in accordance with subsection (c) of this section. The insurer shall include the specific reason or reasons for denial in the notice, including the fact that information that was requested was not provided. The insurer shall inform the claimant in the notice that the claim will be reopened if the information previously requested is submitted to the insurer within one year after the date of the denial notice closing the claim.

(e) Health benefit plan claim payments that are not made in accordance with this section shall bear interest at the annual percentage rate of eighteen percent (18%) beginning on the date following the day on which the claim should have been paid. If additional information was requested by the insurer under subsection (b) of this section, interest on health benefit claim payments shall begin to accrue on the 31st day after the insurer received the additional information. A payment is considered made on the date upon which a check, draft, or other valid negotiable instrument is placed in the United States Postal Service in a properly addressed, postpaid envelope,

or, if not mailed, on the date of the electronic transfer or other delivery of the payment to the claimant. This subsection does not apply to claims for benefits that are not covered by the health benefit plan; nor does this subsection apply to deductibles, co-payments, or other amounts for which the insurer is not liable.

(f) Insurers may require that claims be submitted within 180 days after the date of the provision of care to the patient by the health care provider and, in the case of health care provider facility claims, within 180 days after the date of the patient's discharge from the facility. However, an insurer may not limit the time in which claims may be submitted to fewer than 180 days. Unless otherwise agreed to by the insurer and the claimant, failure to submit a claim within the time required does not invalidate or reduce any claim if it was not reasonably possible for the claimant to file the claim within that time, provided that the claim is submitted as soon as reasonably possible and in no event, except in the absence of legal capacity of the insured, later than one year from the time submittal of the claim is otherwise required.

(g) If a claim for which the claimant is a health care provider or health care facility has not been paid or denied within 60 days after receipt of the initial claim, the insurer shall send a claim status report to the insured. Provided, however, that the claims status report is not required during the time an insurer is awaiting information requested under subsection (c) of this section. The report shall indicate that the claim is under review and the insurer is communicating with the health care provider or health care facility to resolve the matter. While a claim remains unresolved, the insurer shall send a claim status report to the insured with a copy to the provider 30 days after the previous report was sent.

(h) To the extent permitted by the contract between the insurer and the health care provider or health care facility, the insurer may recover overpayments made to the health care provider or health care facility by making demands for refunds and by offsetting future payments. Any such recoveries may also include related interest payments that were made under the requirements of this section. Recoveries by the insurer must be accompanied by the specific reason and adequate information to identify the specific claim. To the extent permitted by the contract between the insurer and the health care provider or health care facility, the health care provider or health care facility may recover underpayments or nonpayments by the insurer by making demands for refunds. Any such recoveries by the health care provider or health care facility of underpayments or nonpayment by the insurer may include applicable interest under this section. The period for which such recoveries may be made may be specified in the contract between the insurer and health care provider or health care facility.

(i) Every insurer shall maintain written or electronic records of its activities under this section, including records of when each claim was received, paid, denied, or pended, and the insurer's review and handling of each claim under this section, sufficient to demonstrate compliance with this section.

(j) A violation of this section by an insurer subjects the insurer to the sanctions in G.S. 58-2-70. The authority of the Commissioner under this subsection does not

impair the right of a claimant to pursue any other action or remedy available under law. With respect to a specific claim, an insurer paying statutory interest in good faith under this section is not subject to sanctions for that claim under this subsection.

(k) An insurer is not in violation of this section nor subject to interest payments under this section if its failure to comply with this section is caused in material part by (i) the person submitting the claim, or (ii) by matters beyond the insurer's reasonable control, including an act of God, insurrection, strike, fire, or power outages. In addition, an insurer is not in violation of this section or subject to interest payments to the claimant under this section if the insurer has a reasonable basis to believe that the claim was submitted fraudulently and notifies the claimant of the alleged fraud.

(l) This section does not apply to claims processed by an insurer on a claims adjudication system that was implemented prior to January 1, 1982, provided that the insurer:

(1) Verifies with the Commissioner that its claims adjudication system qualifies under this subsection; and

(2) Is implementing a new claims adjudication software system and is proceeding in good faith to move all claims to the new system as soon as possible and in any event no later than December 31, 2002.

This subsection expires January 1, 2003.

(m) Nothing in this section limits or impairs the patient's liability under existing law for payment of medical expenses."

Section 4.(b) G.S. 58-3-100(c) reads as rewritten:

"(c) The Commissioner may impose a civil penalty under G.S. 58-2-70 if an HMO, service corporation, MEWA, or insurer fails to acknowledge a claim within 30 days after receiving written or electronic notice of the claim, but only if the notice contains sufficient information for the insurer to identify the specific coverage involved. Acknowledgement of the claim shall be made to the claimant or his legal representative advising that the claim is being investigated; or shall be a payment of the claim; or shall be a bona fide written offer of settlement; or shall be a written denial of the claim. A claimant includes an insured, a health care provider, or a health care facility that is responsible for directly making the claim with an insurer. This subsection does not apply to insurers subject to G.S. 58-3-225."

Section 4.(c) G.S. 58-3-172(a) reads as rewritten:

"(a) For all claims denied for health care provider services under health benefit plans, written notification of the denied claim shall be given to the insured and to the health care provider submitting the claim if the health care provider would otherwise be eligible for payment. This subsection does not apply to insurers subject to G.S. 58-3-225."

Section 4.(d) G.S. 58-51-15(a)(7) reads as rewritten:

"(7) A provision in the substance of the following language:

PROOFS OF LOSS: Written proof of loss must be furnished to the insurer at its said office in the case of a claim for loss for which this policy provides any periodic payment contingent upon

continuing loss within ~~90~~ 180 days after the termination of the period for which the insurer is liable and in case of a claim for any other loss within ~~90~~ 180 days after the date of such loss. Failure to furnish such proof within the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within such time, provided such proof is furnished as soon as reasonably possible and in no event, except in the absence of legal ~~capacity,~~ capacity of the insured, later than one year from the time proof is otherwise required."

Section 5. Section 4 of this act becomes effective July 1, 2001, and applies to claims received on or after that date. The remainder of this act is effective when it becomes law.

HOUSE BILL 1340:
Respiratory Care Practice Act

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Representative Tolson
Date:	June 2 8, 2000	**Summary by:**	Martha K. Walston
Version:	H1340-PCS2452-LN001		Committee Counsel

SUMMARY: ***House Bill 1340 establishes the Respiratory Care Practice Act for the purpose of licensing respiratory care practitioners. The bill sets up the Respiratory Care Board, establishes licensure requirements, provides for the denial, suspension, and revocation of licenses, establishes fees, provides that a violation is a Class 1 misdemeanor, and exempts certain persons and practices from licensure. HB 1340 was given a favorable report in Senate Finance and re-referred to Senate Finance***

The PCS adds a new section to Article 3 of Chapter 58 to provide for prompt payment of claims under health benefit plans and to make conforming amendments to related claim payment laws. The changes are in Sections 4(a)-4(d) of the bill beginning on page 10. The new section is effective July 1, 2001.

The new section to the Insurance Chapter of the General Statutes does the following:

- Defines a health benefit plan
- Requires insurer that writes health benefit plan, within 30 days after receipt of claim, to do one of the following by sending electronic or paper mail to claimant: pay claim, deny claim, notify claimant that proof of loss is inadequate or incomplete, notify claimant that claim not submitted on proper form, notify claimant that coordination of benefits information is needed to pay claim, or notify claimant that claim is pending based on nonpayment of fees or premiums.
- If claim not paid, the notice must specify reasons.
- Upon receipt of additional information requested in the notice, the insurer must pay or deny claim within 30 days. If the insurer does not receive the necessary additional information within 90 days of its request, the insurer shall deny the claim, notify claimant of reasons for denial, and indicate that the claim will be reopened if the requested information is submitted within one year of the denial notice.
- **Requires the insurer to pay 18% annual interest on claim payments not made in accordance with the new section.**
- Insurers may not limit the time in which claims may be submitted to fewer than 180 days.
- Allows insurer, to extent permitted by contract between the insurer and provider or health care facility, to recover overpayments made to a health care provider or health care facility by making demands for refunds and by offsetting future payments.
- If an insurer violates the new section, he is subject to sanctions including monetary penalty of not less than $100 nor more than $1,000 or restitution.
- The new section does not apply to certain claims processed by an insurer on a claims adjudication system that was implemented prior to January 1, 1982

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 1340 (Second Edition)

SHORT TITLE: Respiratory Care Practice Act

SPONSOR(S):

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 1999-00	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04
REVENUES					
Special Fund	$307,625	$125,750	$128,250	$130,750	$133,250
EXPENDITURES					
Special Fund	To be determined by Board				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Respiratory Care Board

EFFECTIVE DATE: This act is effective when it becomes law.

BILL SUMMARY:

This bill establishes the Respiratory Care Practice Act. It creates an eight member NC Respiratory Care Board with powers and duties that include determining qualifications and fitness of applicants for licensure, renewal of licensure, reciprocal licensure, and suspension, revocation, and refusal to renew license. Provides that after Oct. 1, 2000, it is unlawful for person to engage in practice of respiratory care without license. The bill sets the following maximum fees: (1) initial application, $25; (2) examination or reexamination, $150; (3) issuance of license, $100; (4) renewal of license, $50; (5) late renewal of license, $50; and (6) license with provisional or temporary endorsement, $35. Violation of any provision of Article is a Class 1 misdemeanor.

ASSUMPTIONS AND METHODOLOGY:

The North Carolina Society for Respiratory Care identified approximately 2,100 respiratory care practitioners in North Carolina in 1995. This number has grown to 2,300 in 1999 based on 1) the state's Community College System graduates approximately 110 respiratory care students each year, and 2) it is estimated that 60 respiratory care professionals retire or leave the profession each year. This net gain of 50 respiratory care professionals is expected to continue into the near future.

The chart below estimates the number of applications, licenses, license endorsements, and license renewals handled by the new North Carolina Respiratory Care Board each fiscal year.

	FY 99-00	FY 00-01	FY 01-02	FY 02-03	FY 03-04
Applications	2,300	110	110	110	110
Initial Licenses	2,300	110	110	110	110
Temporary Endorsements	575				
License Renewal		2,240	2,290	2,340	2,390

This fiscal note assumes that the Board will be appointed during FY 1999-00 and that Board staff will be hired in time to receive applications and issue licenses to 2300 current respiratory care practitioners in the state in FY 1999-00. Approximately 75% of the current professionals have passed an exam given by the National Board for Respiratory Care (NBRC) and will be issued a license. The remaining 25% of existing professionals will receive a license with a temporary endorsement until they complete the NBRC exam. Since the NBRC exam is given in March, July and November, it is assumed that this group will take the exam in July 2000 to meet the October 2000 deadline. Future year license renewal assumes an attrition rate of 60 professionals each year and increase of 110 new applicants from the Community Colleges.

The next chart shows the anticipated revenue from the proposed fees. Respiratory care practitioners will pay a $25 application fee and a $100 license fee in their first year in the program. The annual license renewal fee is $50. A respiratory care practitioner that has not passed the NBRC exam must pay $25 application fee, a $100 license fee, and a $35 temporary endorsement fee. The fee for the NBRC exam is $150 and goes directly to the national board and is not kept by the state board. This exam is already given to all those graduating from Community College respiratory care programs.

	FY 99-00	FY 00-01	FY 01-02	FY 02-03	FY 03-04
Applications ($25)	$57,500	$2,750	$2,750	$2,750	$2,750
Initial Licenses ($100)	$230,000	$11,000	$11,000	$11,000	$11,000
Temporary Endorsement ($35)	$20,125				
License Renewal ($50)		$112,000	$114,500	$117,000	$119,500
Total Fee Revenue	$307,625	$125,750	$128,250	$130,750	$133,250

TECHNICAL CONSIDERATIONS:
GS 90-660(b) (2) does not identify the $150 exam fee as the cost of the exam given by the National Board for Respiratory Care (NBRC).

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic

APPROVED BY: Tom Covington

DATE: Tuesday, July 06, 1999

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1340
Committee Substitute Favorable 6/23/99
Senate Health Care Committee Substitute Adopted 6/15/00
Proposed Senate Committee Substitute H1340-PCS8215-LN001

Short Title: Respiratory Care Practice Act. (Public)

Sponsors:

Referred to:

April 26, 1999

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE RESPIRATORY CARE PRACTICE ACT, TO PROVIDE FOR THE PROMPT PAYMENT OF CLAIMS UNDER HEALTH BENEFIT PLANS, AND TO MAKE CONFORMING AMENDMENTS TO RELATED CLAIM PAYMENT LAWS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 90 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 38.

"Respiratory Care Practice Act.

"**§ 90-646. Short title.**

This Article may be cited as the 'Respiratory Care Practice Act'.

"**§ 90-647. Purpose.**

The General Assembly finds that the practice of respiratory care in the State of North Carolina affects the public health, safety, and welfare and that the mandatory licensure of persons who engage in respiratory care is necessary to ensure a minimum standard of competency. It is the purpose and intent of this Article to protect the public from the unqualified practice of respiratory care and from unprofessional conduct by persons licensed pursuant to this Article.

"**§ 90-648. Definitions.**

The following definitions apply in this Article:

(1) Board. -- The North Carolina Respiratory Care Board.

(2) Diagnostic testing. -- Cardiopulmonary procedures and tests performed on the written order of a physician licensed under Article 1 of this Chapter that provide information to the physician to formulate a diagnosis of the patient's condition. The tests and procedures may include pulmonary function testing, electrocardiograph testing, cardiac stress testing, and sleep related testing.

(3) Direct supervision. -- The authority and responsibility to direct the performance of activities as established by policies and procedures for safe and appropriate completion of services.

(4) Individual. -- A human being.

(5) License. -- A certificate issued by the Board recognizing the person named therein as having met the requirements to practice respiratory care as defined in this Article.

(6) Licensee. -- A person who has been issued a license under this Article.

(7) Medical director. -- An appointed physician who is licensed under Article 1 of this Chapter and a member of the entity's medical staff, and who is granted the authority and responsibility for assuring and establishing policies and procedures and that the provision of such is provided to the quality, safety, and appropriateness standards as recognized within the defined scope of practice for the entity.

(8) Person. -- An individual, corporation, partnership, association, unit of government, or other legal entity.

(9) Physician. -- A doctor of medicine licensed by the State of North Carolina in accordance with Article 1 of this Chapter.

(10) Practice of respiratory care. -- As defined by the written order of a physician licensed under Article 1 of this Chapter, the observing and monitoring of signs and symptoms, general behavior, and general physical response to respiratory care treatment and diagnostic testing, including the determination of whether such signs, symptoms, reactions, behavior, or general response exhibit abnormal characteristics, and the performance of diagnostic testing and therapeutic application of:

a. Medical gases, humidity, and aerosols including the maintenance of associated apparatus, except for the purpose of anesthesia.

b. Pharmacologic agents related to respiratory care procedures, including those agents necessary to perform hemodynamic monitoring.

c. Mechanical or physiological ventilatory support.

d. Cardiopulmonary resuscitation and maintenance of natural airways, the insertion and maintenance of artificial airways under the direct supervision of a recognized medical director in a health care environment which identifies these services within the scope of practice by the facility's governing board.
e. Hyperbaric oxygen therapy.
f. New and innovative respiratory care and related support activities in appropriately identified environments and under the training and practice guidelines established by the American Association of Respiratory Care.

The term also means the interpretation and implementation of a physician's written or verbal order pertaining to the acts described in this subdivision.

(11) Respiratory care. -- As defined by the written order of a physician licensed under Article 1 of Chapter 90, the treatment, management, diagnostic testing, and care of patients with deficiencies and abnormalities associated with the cardiopulmonary system.

(12) Respiratory care practitioner. -- A person who has been licensed by the Board to engage in the practice of respiratory care.

(13) Support activities. -- Procedures that do not require formal academic training, including the delivery, setup, and maintenance of apparatus. The term also includes giving instructions on the use, fitting, and application of apparatus, but does not include therapeutic evaluation and assessment.

"**§ 90-649. North Carolina Respiratory Care Board; creation.**

(a) The North Carolina Respiratory Care Board is created. The Board shall consist of 10 members as follows:

(1) Two members shall be respiratory care practitioners.
(2) Four members shall be physicians licensed to practice in North Carolina, and whose primary practice is Pulmonology, Anesthesiology, Critical Care Medicine, or whose specialty is Cardiothoracic Disorders.
(3) One member shall represent the NCHA.
(4) One member shall represent the North Carolina Association of Medical Equipment Services.
(5) Two members shall represent the public at large.

(b) Members of the Board shall be citizens of the United States and residents of this State. The respiratory care practitioner members shall have practiced respiratory care for at least five years and shall be licensed under this Article. The public members shall not be: (i) a respiratory care practitioner, (ii) an agent or employee of a person engaged in the profession of respiratory care, (iii) a health care professional licensed under this Chapter or a person enrolled in a program to become

a licensed health care professional, (iv) an agent or employee of a health care institution, a health care insurer, or a health care professional school, (v) a member of an allied health profession or a person enrolled in a program to become a member of an allied health profession, or (vi) a spouse of an individual who may not serve as a public member of the Board.

"**§ 90-650. Appointments and removal of Board members; terms and compensation.**

(a) The members of the Board shall be appointed as follows:

(1) The Governor shall appoint the public members described in G.S. 90-649(a)(5).

(2) The General Assembly, upon the recommendation of the Speaker of the House of Representatives, shall appoint one of the respiratory care practitioner members described in G.S. 90-649(a)(1) and one of the physician members described in G.S. 90-649(a)(2) in accordance with G.S. 120-121.

(3) The General Assembly, upon the recommendation of the President Pro Tempore of the Senate, shall appoint one of the respiratory care practitioner members described in G.S. 90-649(a)(1) and one of the physician members described in G.S. 90-649(a)(2) in accordance with G.S. 120-121.

(4) The North Carolina Medical Society shall appoint one of the physician members described in G.S. 90-649(a)(2).

(5) The Old North State Medical Society shall appoint one of the physician members described in G.S. 96-649(a)(2).

(6) The North Carolina Hospital Association shall appoint the member described in G.S. 90-649(a)(3).

(7) The North Carolina Association of Medical Equipment Services shall appoint the member described in G.S. 90-649(a)(4).

(b) Members of the Board shall take office on the first day of November immediately following the expired term of that office and shall serve for a term of three years and until their successors are appointed and qualified. No member shall serve on the Board for more than two consecutive terms.

(c) The Governor may remove members of the Board, after notice and an opportunity for hearing, for incompetence, neglect of duty, unprofessional conduct, conviction of any felony, failure to meet the qualifications of this Article, or committing any act prohibited by this Article.

(d) Any vacancy shall be filled by the authority originally filling that position, except that any vacancy in appointments by the General Assembly shall be filled in accordance with G.S. 120-122. Appointees to fill vacancies shall serve the remainder of the unexpired term and until their successors have been duly appointed and qualified.

(e) Members of the Board shall receive no compensation for their services but shall be entitled to travel, per diem, and other expenses authorized by G.S. 93B-5.

(f) Individual members shall be immune from civil liability arising from activities performed within the scope of their official duties.

"**§ 90-651. Election of officers; meetings of the Board.**

(a) The Board shall elect a chair and a vice-chair who shall hold office according to rules adopted pursuant to this Article, except that all officers shall be elected annually by the Board for one-year terms and shall serve until their successors are elected and qualified.

(b) The Board shall hold at least two regular meetings each year as provided by rules adopted pursuant to this Article. The Board may hold additional meetings upon the call of the chair or any two Board members. A majority of the Board membership shall constitute a quorum.

"**§ 90-652. Powers and duties of the Board.**

The Board shall have the power and duty to:

(1) Determine the qualifications and fitness of applicants for licensure, renewal of licensure, and reciprocal licensure.

(2) Establish and adopt rules necessary to conduct its business, carry out its duties, and administer this Article.

(3) Adopt and publish a code of ethics.

(4) Deny, issue, suspend, revoke, and renew licenses in accordance with this Article.

(5) Conduct investigations, subpoena individuals and records, and do all other things necessary and proper to discipline persons licensed under this Article and to enforce this Article.

(6) Employ professional, clerical, investigative, or special personnel necessary to carry out the provisions of this Article and purchase or rent office space, equipment, and supplies.

(7) Adopt a seal by which it shall authenticate its proceedings, official records, and licenses.

(8) Conduct administrative hearings in accordance with Article 3A of Chapter 150B of the General Statutes.

(9) Establish certain reasonable fees as authorized by this Article for applications for examination, licensure, provisional licensure, renewal of licensure, and other services provided by the Board.

(10) Submit an annual report to the North Carolina Medical Board, the North Carolina Hospital Association, the North Carolina Society of Respiratory Care, the Governor, and the General Assembly of all the Board's official actions during the preceding year, together with any recommendations and findings regarding improvements of the practice of respiratory care.

(11) Publish and make available upon request the licensure standards prescribed under this Article and all rules adopted pursuant to this Article.

(12) Request and receive the assistance of State educational institutions or other State agencies.

(13) Establish and approve continuing education requirements for persons seeking licensure under this Article.

"**§ 90-653. Licensure requirements; examination.**

(a) Each applicant for licensure under this Article shall meet the following requirements:

(1) Submit a completed application as required by the Board.

(2) Submit any fees required by the Board.

(3) Submit to the Board written evidence, verified by oath, that the applicant has successfully completed the minimal requirements of a respiratory care education program as approved by the Commission for Accreditation of Allied Health Educational Programs.

(4) Submit to the Board written evidence, verified by oath, that the applicant has successfully completed the minimal requirements for Basic Cardiac Life Support as recognized by the American Heart Association.

(5) Pass the entry-level examination given by the National Board for Respiratory Care, Inc.

(b) At least three times each year, the Board shall cause the examination required in subdivision (5) of subsection (a) of this section to be given to applicants at a time and place to be announced by the Board. Any applicant who fails to pass the first examination may take additional examinations in accordance with rules adopted pursuant to this Article.

"**§ 90-654. Exemption from certain requirements.**

(a) The Board may issue a license to an applicant who, as of October 1, 2000, has passed the entry-level examination given by the National Board for Respiratory Care, Inc. An applicant applying for licensure under this subsection shall submit his or her application to the Board before October 1, 2002.

(b) The Board may grant a temporary license to an applicant who, as of October 1, 2000, does not meet the qualifications of G.S. 90-653 but, through written evidence verified by oath, demonstrates that he or she is performing the duties of a respiratory care practitioner within the State. The temporary license is valid until October 1, 2002, within which time the applicant shall be required to complete the requirements of G.S. 90-653(a)(5). A license granted under this subsection shall contain an endorsement indicating that the license is temporary and shall state the date the license was granted and the date it expires.

"**§ 90-655. Licensure by reciprocity.**

The Board may grant, upon application and the payment of proper fees, a license to a person who, at the time of application holds a valid license, certificate, or registration as a respiratory care practitioner issued by another state or a political territory or jurisdiction acceptable to the Board if, in the Board's determination, the requirements for that license, certificate, or registration are substantially the same as the requirements for licensure under this Article.

"**§ 90-656. Provisional license.**

The Board may grant a provisional license for a period not exceeding 12 months to any applicant who has successfully completed the education requirements under G.S.

90-653(a)(3) and has made application to take the examination required under G.S. 90-653(a)(5). A provisional license allows the individual to practice respiratory care under the supervision of a respiratory care practitioner and in accordance with rules adopted pursuant to this Article. A license granted under this section shall contain an endorsement indicating that the license is provisional and stating the terms and conditions of its use by the licensee and shall state the date the license was granted and the date it expires.

"§ 90-657. Notification of applicant following evaluation of application.

After evaluation of the application and of any other evidence required from the applicant by the Board, the Board shall notify each applicant that the application and evidence submitted are satisfactory and accepted or unsatisfactory and rejected. If the application and evidence is rejected, the notice shall state the reasons for the rejection.

"§ 90-658. License as property of the Board; display requirement; renewal; inactive status.

(a) A license issued by the Board is the property of the Board and shall be surrendered by the licensee to the Board on demand.

(b) The licensee shall display the license in the manner prescribed by the Board.

(c) The licensee shall inform the Board of any change of the licensee's address.

(d) The license shall be renewed by the Board annually upon the payment of a renewal fee if, at the time of application for renewal, the applicant is not in violation of this Article and has fulfilled the current requirements regarding continuing education as established by rules adopted pursuant to this Article.

(e) The Board shall notify a licensee at least 30 days in advance of the expiration of his or her license. Each licensee is responsible for renewing his or her license before the expiration date. Licenses that are not renewed automatically lapse.

(f) The Board may provide for the late renewal of an automatically lapsed license upon the payment of a late fee. No late fee renewal may be granted more than five years after a license expires.

(g) In accordance with rules adopted pursuant to this Article, a licensee may request that his or her license be declared inactive and may thereafter apply for active status.

"§ 90-659. Suspension, revocation, and refusal to renew a license.

(a) The Board shall take the necessary actions to deny or refuse to renew a license, suspend or revoke a license, or to impose probationary conditions on a licensee or applicant if the licensee or applicant:

(1) Has engaged in any of the following conduct:

a. Employed fraud, deceit, or misrepresentation in obtaining or attempting to obtain a license or the renewal of a license.

b. Committed an act of malpractice, gross negligence, or incompetence in the practice of respiratory care.

c. Practiced respiratory care without a license.

d. Engaged in health care practices that are determined to be hazardous to public health, safety, or welfare.

(2) Was convicted of or entered a plea of guilty or nolo contendere to any crime involving moral turpitude.
(3) Was adjudicated insane or incompetent, until proof of recovery from the condition can be established.
(4) Engaged in any act or practice that violates any of the provisions of this Article or any rule adopted pursuant to this Article, or aided, abetted, or assisted any person in such a violation.

(b) Denial, refusal to renew, suspension, or revocation of a license, or imposition of probationary conditions upon a licensee may be ordered by the Board after a hearing held in accordance with Article 3A of Chapter 150B of the General Statutes and rules adopted pursuant to this Article. An application may be made to the Board for reinstatement of a revoked license if the revocation has been in effect for at least one year.

"**§ 90-660. Expenses; fees.**

(a) All salaries, compensation, and expenses incurred or allowed for carrying out the purposes of this Article shall be paid by the Board exclusively out of the fees received by the Board as authorized by this Article or funds received from other sources. In no case shall any salary, expense, or other obligations of the Board be charged against the State.

(b) All monies received by the Board pursuant to this Article shall be deposited in an account for the Board and shall be used for the administration and implementation of this Article. The Board shall establish fees in amounts to cover the cost of services rendered for the following purposes:

(1) For an initial application, a fee not to exceed twenty-five dollars ($25.00).
(2) For examination or reexamination, a fee not to exceed one hundred fifty dollars ($150.00).
(3) For issuance of any license, a fee not to exceed one hundred dollars ($100.00).
(4) For the renewal of any license, a fee not to exceed fifty dollars ($50.00).
(5) For the late renewal of any license, an additional late fee not to exceed fifty dollars ($50.00).
(6) For a license with a provisional or temporary endorsement, a fee not to exceed thirty-five dollars ($35.00).
(7) For copies of rules adopted pursuant to this Article and licensure standards, charges not exceeding the actual cost of printing and mailing.

"**§ 90-661. Requirement of license.**

After October 1, 2002, it shall be unlawful for any person who is not currently licensed under this Article to:

(1) Engage in the practice of respiratory care.
(2) Use the title 'respiratory care practitioner'.

(3) Use the letters 'RCP', 'RTT', 'RT', or any facsimile or combination in any words, letters, abbreviations, or insignia.

(4) Imply orally or in writing or indicate in any way that the person is a respiratory care practitioner or is otherwise licensed under this Article.

(5) Employ or solicit for employment unlicensed persons to practice respiratory care.

"**§ 90-662. Violation a misdemeanor.**

Any person who violates any provision of this Article shall be guilty of a Class 1 misdemeanor.

"**§ 90-663. Injunctions.**

The Board may apply to the superior court for an order enjoining violations of this Article, and upon a showing by the Board that any person has violated or is about to violate this Article, the court may grant an injunction or restraining order or take other appropriate action.

"**§ 90-664. Persons and practices not affected.**

The requirements of this Article shall not apply to:

(1) Any person registered, certified, credentialed, or licensed to engage in another profession or occupation or any person working under the supervision of a person registered, certified, credentialed, or licensed to engage in another profession or occupation in this State who is performing work incidental to or within the practice of that profession or occupation and does not represent himself or herself as a respiratory care practitioner.

(2) A student or trainee working under the direct supervision of a respiratory care practitioner while fulfilling an experience requirement or pursuing a course of study to meet requirements for licensure in accordance with rules adopted pursuant to this Article.

(3) A respiratory care practitioner serving in the armed forces or the Public Health Service of the United States or employed by the Veterans Administration when performing duties associated with that service or employment.

(4) A person who performs only support activities as defined in G.S. 90-648(13).

"**§ 90-665. Third-party reimbursement.**

Nothing in this Article shall be construed to require direct third-party reimbursements to persons licensed under this Article."

Section 2. G.S. 120-123 is amended by adding a new subdivision to read:

"(70) The North Carolina Respiratory Care Board as created by Article 37 of Chapter 90 of the General Statutes."

Section 3. The initial appointments to the North Carolina Respiratory Care Board, created in G.S. 90-649, as enacted in Section 1 of this act, shall be appointed no later than October 1, 2000. Notwithstanding the provisions of G.S. 90-

649(b), as enacted in Section 1 of this act, the initial members of the North Carolina Respiratory Care Board who are appointed pursuant to G.S. 90-649(a)(1) must have passed the entry-level examination administered by the National Board for Respiratory Care, Inc. Notwithstanding the provisions of G.S. 90-650(b), as enacted in Section 1 of this act, of the initial appointments to the North Carolina Respiratory Care Board, one of the members appointed by the General Assembly, upon the recommendation of the Speaker of the House of Representatives, and one of the members appointed by the General Assembly, upon the recommendation of the President Pro Tempore of the Senate, shall be appointed for three-year terms; one of the members appointed by the General Assembly, upon the recommendation of the Speaker of the House of Representatives, and one of the members appointed by the General Assembly, upon the recommendation of the President Pro Tempore of the Senate, shall be appointed for two-year terms; the public members appointed by the Governor shall be appointed for a one-year term; the physician member appointed by the North Carolina Medical Society shall be appointed for a one-year term; the physician member appointed by the Old North State Medical Society shall be appointed for a one-year term; and the members appointed by the North Carolina Hospital Association and the North Carolina Association of Medical Equipment Services shall be appointed for one-year terms.

Section 4.(a) Article 3 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"**§ 58-3-225. Prompt claim payments under health benefit plans.**

(a) As used in this section:

(1) 'Health benefit plan' means an accident and health insurance policy or certificate; a nonprofit hospital or medical service corporation contract; a health maintenance organization subscriber contract; a plan provided by a multiple employer welfare arrangement; or a plan provided by another benefit arrangement, to the extent permitted by the Employee Retirement Income Security Act of 1974, as amended, or by any waiver of or other exception to that act provided under federal law or regulation. 'Health benefit plan' does not mean any plan implemented or administered by the North Carolina or United States Department of Health and Human Services, or any successor agency, or its representatives. 'Health benefit plan' also does not mean any of the following kinds of insurance:

a. Credit.

b. Disability income.

c. Coverage issued as a supplement to liability insurance.

d. Hospital income or indemnity.

e. Insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability policy or equivalent self-insurance.

f. Long-term or nursing home care.

g. Medical payments under motor vehicle or homeowners' insurance policies.
h. Medicare supplement.
i. Short-term limited duration health insurance policies as defined in Part 144 of Title 45 of the Code of Federal Regulations.
j. Workers' compensation.

(2) 'Claimant' includes a health care provider or facility that is responsible or permitted under contract with the insurer or by valid assignment of benefits for directly making the claim with an insurer.

(3) 'Health care facility' means a facility that is licensed under Chapter 131E or Chapter 122C of the General Statutes or is owned or operated by the State of North Carolina in which health care services are provided to patients.

(4) 'Health care provider' means an individual who is licensed, certified, or otherwise authorized under Chapter 90 or 90B of the General Statutes to provide health care services in the ordinary course of business or practice of a profession or in an approved education or training program.

(5) 'Insurer' includes an insurance company subject to this Chapter, a service corporation organized under Article 65 of this Chapter, a health maintenance organization organized under Article 67 of this Chapter, or a multiple employer welfare arrangement subject to Article 49 of this Chapter, that writes a health benefit plan.

(b) An insurer shall, within 30 calendar days after receipt of a claim, send by electronic or paper mail to the claimant:

(1) Payment of the claim.
(2) Notice of denial of the claim.
(3) Notice that the proof of loss is inadequate or incomplete.
(4) Notice that the claim is not submitted on the form required by the health benefit plan, by the contract between the insurer and health care provider or health care facility, or by applicable law.
(5) Notice that coordination of benefits information is needed in order to pay the claim.
(6) Notice that the claim is pending based on nonpayment of fees or premiums.

For purposes of this section, an insurer is presumed to have received a written claim five business days after the claim has been placed first-class postage prepaid in the United States mail addressed to the insurer or an electronic claim transmitted to the insurer or a designated clearinghouse on the day the claim is electronically transmitted. The presumption may be rebutted by sufficient evidence that the claim was received on another day or not received at all.

(c) If the claim is denied, the notice shall include all of the specific good faith reason or reasons for the denial, including, without limitation, coordination of benefits, lack of eligibility, or lack of coverage for the services provided. If the claim is contested or cannot be paid because the proof of loss is inadequate or incomplete, or not paid pending receipt of requested coordination of benefits information, the notice shall contain the specific good faith reason or reasons why the claim has not been paid and an itemization or description of all of the information needed by the insurer to complete the processing of the claim. If all or part of the claim is contested or cannot be paid because of the application of a specific utilization management or medical necessity standard is not satisfied, the notice shall contain the specific clinical rationale for that decision or shall refer to specific provisions in documents that are made readily available through the insurer which provide the specific clinical rationale for that decision; however, if a notice of noncertification has already been provided under G.S. 58-50-61(h), then the specific clinical rationale for the decision is not required under this subsection. If the claim is contested or cannot be paid because of nonpayment of premiums, the notice shall contain a statement advising the claimant of the nonpayment of premiums. If a claim is not paid pending receipt of requested coordination of benefits information, the notice shall so specify. If a claim is denied or contested in part, the insurer shall pay the undisputed portion of the claim within 30 calendar days after receipt of the claim and send the notice of the denial or contested status within 30 days after receipt of the claim. If a claim is contested or cannot be paid because the claim was not submitted on the required form, the notice shall contain the required form, if the form is other than a UB or HCFA form, and instructions to complete that form. Upon receipt of additional information requested in its notice to the claimant, the insurer shall continue processing the claim and pay or deny the claim within 30 days after receiving the additional information.

(d) If an insurer requests additional information under subsection (c) of this section and the insurer does not receive the additional information within 90 days after the request was made, the insurer shall deny the claim and send the notice of denial to the claimant in accordance with subsection (c) of this section. The insurer shall include the specific reason or reasons for denial in the notice, including the fact that information that was requested was not provided. The insurer shall inform the claimant in the notice that the claim will be reopened if the information previously requested is submitted to the insurer within one year after the date of the denial notice closing the claim.

(e) Health benefit plan claim payments that are not made in accordance with this section shall bear interest at the annual percentage rate of eighteen percent (18%) beginning on the date following the day on which the claim should have been paid. If additional information was requested by the insurer under subsection (b) of this section, interest on health benefit claim payments shall begin to accrue on the 31st day after the insurer received the additional information. A payment is considered made on the date upon which a check, draft, or other valid negotiable instrument is placed in the United States Postal Service in a properly addressed, postpaid envelope,

or, if not mailed, on the date of the electronic transfer or other delivery of the payment to the claimant. This subsection does not apply to claims for benefits that are not covered by the health benefit plan; nor does this subsection apply to deductibles, co-payments, or other amounts for which the insurer is not liable.

(f) Insurers may require that claims be submitted within 180 days after the date of the provision of care to the patient by the health care provider and, in the case of health care provider facility claims, within 180 days after the date of the patient's discharge from the facility. However, an insurer may not limit the time in which claims may be submitted to fewer than 180 days. Unless otherwise agreed to by the insurer and the claimant, failure to submit a claim within the time required does not invalidate or reduce any claim if it was not reasonably possible for the claimant to file the claim within that time, provided that the claim is submitted as soon as reasonably possible and in no event, except in the absence of legal capacity of the insured, later than one year from the time submittal of the claim is otherwise required.

(g) If a claim for which the claimant is a health care provider or health care facility has not been paid or denied within 60 days after receipt of the initial claim, the insurer shall send a claim status report to the insured. Provided, however, that the claims status report is not required during the time an insurer is awaiting information requested under subsection (c) of this section. The report shall indicate that the claim is under review and the insurer is communicating with the health care provider or health care facility to resolve the matter. While a claim remains unresolved, the insurer shall send a claim status report to the insured with a copy to the provider 30 days after the previous report was sent.

(h) To the extent permitted by the contract between the insurer and the health care provider or health care facility, the insurer may recover overpayments made to the health care provider or health care facility by making demands for refunds and by offsetting future payments. Any such recoveries may also include related interest payments that were made under the requirements of this section. Recoveries by the insurer must be accompanied by the specific reason and adequate information to identify the specific claim. To the extent permitted by the contract between the insurer and the health care provider or health care facility, the health care provider or health care facility may recover underpayments or nonpayments by the insurer by making demands for refunds. Any such recoveries by the health care provider or health care facility of underpayments or nonpayment by the insurer may include applicable interest under this section. The period for which such recoveries may be made may be specified in the contract between the insurer and health care provider or health care facility.

(i) Every insurer shall maintain written or electronic records of its activities under this section, including records of when each claim was received, paid, denied, or pended, and the insurer's review and handling of each claim under this section, sufficient to demonstrate compliance with this section.

(j) A violation of this section by an insurer subjects the insurer to the sanctions in G.S. 58-2-70. The authority of the Commissioner under this subsection does not

impair the right of a claimant to pursue any other action or remedy available under law. With respect to a specific claim, an insurer paying statutory interest in good faith under this section is not subject to sanctions for that claim under this subsection.

(k) An insurer is not in violation of this section nor subject to interest payments under this section if its failure to comply with this section is caused in material part by (i) the person submitting the claim, or (ii) by matters beyond the insurer's reasonable control, including an act of God, insurrection, strike, fire, or power outages. In addition, an insurer is not in violation of this section or subject to interest payments to the claimant under this section if the insurer has a reasonable basis to believe that the claim was submitted fraudulently and notifies the claimant of the alleged fraud.

(l) This section does not apply to claims processed by an insurer on a claims adjudication system that was implemented prior to January 1, 1982, provided that the insurer:

(1) Verifies with the Commissioner that its claims adjudication system qualifies under this subsection; and

(2) Is implementing a new claims adjudication software system and is proceeding in good faith to move all claims to the new system as soon as possible and in any event no later than December 31, 2002.

This subsection expires January 1, 2003.

(m) Nothing in this section limits or impairs the patient's liability under existing law for payment of medical expenses."

Section 4.(b) G.S. 58-3-100(c) reads as rewritten:

"(c) The Commissioner may impose a civil penalty under G.S. 58-2-70 if an HMO, service corporation, MEWA, or insurer fails to acknowledge a claim within 30 days after receiving written or electronic notice of the claim, but only if the notice contains sufficient information for the insurer to identify the specific coverage involved. Acknowledgement of the claim shall be made to the claimant or his legal representative advising that the claim is being investigated; or shall be a payment of the claim; or shall be a bona fide written offer of settlement; or shall be a written denial of the claim. A claimant includes an insured, a health care provider, or a health care facility that is responsible for directly making the claim with an insurer. This subsection does not apply to insurers subject to G.S. 58-3-225."

Section 4.(c) G.S. 58-3-172(a) reads as rewritten:

"(a) For all claims denied for health care provider services under health benefit plans, written notification of the denied claim shall be given to the insured and to the health care provider submitting the claim if the health care provider would otherwise be eligible for payment. This subsection does not apply to insurers subject to G.S. 58-3-225."

Section 4.(d) G.S. 58-51-15(a)(7) reads as rewritten:

"(7) A provision in the substance of the following language:

PROOFS OF LOSS: Written proof of loss must be furnished to the insurer at its said office in the case of a claim for loss for which this policy provides any periodic payment contingent upon

continuing loss within ~~90~~ 180 days after the termination of the period for which the insurer is liable and in case of a claim for any other loss within ~~90~~ 180 days after the date of such loss. Failure to furnish such proof within the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within such time, provided such proof is furnished as soon as reasonably possible and in no event, except in the absence of legal ~~capacity,~~ capacity of the insured, later than one year from the time proof is otherwise required."

Section 5. Section 4 of this act becomes effective July 1, 2001, and applies to claims received on or after that date. The remainder of this act is effective when it becomes law.

HB 1340

PCS for Respuly Cam + Amos added to

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1340

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H1340-ALN-001

Date_____,2000

Comm. Sub. [yes]3rd ed.
Amends Title [yes]

Senator Hoyle

moves to amend the bill on page 1, line 2,
by deleting the word "ACT." and substituting the following:
"ACT, TO PROVIDE FOR THE PROMPT PAYMENT OF CLAIMS UNDER HEALTH BENEFIT PLANS, AND TO MAKE CONFORMING AMENDMENTS TO RELATED CLAIM PAYMENT LAWS."; and

further moves to amend the bill on page 10, line 18,
by rewriting the line to read:
"Section 4.(a) Article 3 of Chapter 58 of the General Statutes is amended by adding new sections to read:
'**§ 58-3-225. Prompt claim payments under health benefit plans.**
(a) As used in this section:
(1) "Health benefit plan" means an accident and health insurance policy or certificate; a nonprofit hospital or medical service corporation contract; a health maintenance organization subscriber contract; a plan provided by a multiple employer welfare arrangement; or a plan provided by another benefit arrangement, to the extent permitted by the Employee Retirement Income Security Act of 1974, as amended, or by any waiver of or other exception to that act provided under federal law or regulation. "Health benefit plan" does not mean any plan implemented or administered by the North Carolina or United States Department of Health and Human Services, or any successor agency, or its representatives. "Health benefit plan" also does not mean any of the following kinds of insurance:
a. Credit.
b. Disability income.
c. Coverage issued as a supplement to liability insurance.
d. Hospital income or indemnity.

e. Insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability policy or equivalent self-insurance.
f. Long-term or nursing home care.
g. Medical payments under motor vehicle or homeowners' insurance policies.
h. Medicare supplement.
i. Short-term limited duration health insurance policies as defined in Part 144 of Title 45 of the Code of Federal Regulations.
j. Workers' compensation.

(2) "Claimant" includes a health care provider or facility that is responsible or permitted under contract with the insurer or by valid assignment of benefits for directly making the claim with an insurer.

(3) "Health care facility" means a facility that is licensed under Chapter 131E or Chapter 122C of the General Statutes or is owned or operated by the State of North Carolina in which health care services are provided to patients.

(4) "Health care provider" means an individual who is licensed, certified, or otherwise authorized under Chapter 90 of the General Statutes to provide health care services in the ordinary course of business or practice of a profession or in an approved education or training program.

(5) "Insurer" includes an insurance company subject to this Chapter, a service corporation organized under Article 65 of this Chapter, a health maintenance organization organized under Article 67 of this Chapter, or a multiple employer welfare arrangement subject to Article 49 of this Chapter, that writes a health benefit plan.

(b) An insurer shall, within 30 calendar days after receipt of a claim, send by electronic or paper mail to the claimant:

(1) Payment of the claim.
(2) Notice of denial of the claim.
(3) Notice that the proof of loss is inadequate or incomplete, or
(4) Notice that the claim is not submitted on the form required by the health benefit plan, by the contract between the insurer and health care provider or health care facility, or by applicable law.

(5) Notice that coordination of benefits information is needed in order to pay the claim.

(6) Notice that the claim is pending based on nonpayment of fees or premiums.

For purposes of this section, an insurer is presumed to have received a written claim five business days after the claim has been placed first-class postage prepaid in the United States mail addressed to the insurer and an electronic claim transmitted to the insurer or a designated clearinghouse on the day the claim is electronically transmitted. The presumption may be rebutted by sufficient evidence that the claim was received on another day or not received at all.

(c) If the claim is denied, the notice shall include all of the specific good faith reason or reasons for the denial, including, without limitation, coordination of benefits, lack of eligibility, or lack of coverage for the services provided. If the claim is contested or cannot be paid because the proof of loss is inadequate or incomplete, or not paid pending receipt of requested coordination of benefits information, the notice shall contain the specific good faith reason or reasons why the claim has not been paid and an itemization or description of all of the information needed by the insurer to complete the processing of the claim. If all or part of the claim is contested or cannot be paid because of the application of a specific utilization management or medical necessity standard is not satisfied, the notice shall contain the specific clinical rationale for that decision or shall refer to specific provisions in documents that are made readily available through the insurer which provide the specific clinical rationale for that decision; however, if a notice of noncertification has already been provided under G.S. 58-50-61(h), then the specific clinical rationale for the decision is not required under this subsection. If the claim is contested or cannot be paid because of nonpayment of premiums, the notice shall contain a statement advising the claimant of the nonpayment of premiums. If a claim is not paid pending receipt of requested coordination of benefits information, the notice shall so specify. If a claim is denied or contested in part, the insurer shall pay the undisputed portion of the claim within 30 calendar days after receipt of the claim and send the notice of the denial or contested status within 30 days after receipt of the claim. If a claim is contested or cannot be paid because the claim was not submitted on the required form, the notice shall contain the required form, if the form is other than a UB or HCFA form, and instructions to complete that form. Upon receipt of additional information requested in its notice to the claimant, the insurer shall continue

processing the claim and pay or deny the claim within 30 days after receiving the additional information.

(d) If an insurer requests additional information under subsection (c) of this section and the insurer does not receive the additional information within 90 days after the request was made, the insurer shall deny the claim and send the notice of denial to the claimant in accordance with subsection (c) of this section. The insurer shall include the specific reason or reasons for denial in the notice, including the fact that information that was requested was not provided. The insurer shall inform the claimant in the notice that the claim will be reopened if the information previously requested is submitted to the insurer within one year after the date of the denial notice closing the claim.

(e) Health benefit plan claim payments that are not made in accordance with this section shall bear interest at the annual percentage rate of eighteen percent (18%) beginning on the date following the day on which the claim should have been paid. If additional information was requested by the insurer under subsection (b) of this section, interest on health benefit claim payments shall begin to accrue on the 31st day after the insurer received the additional information. A payment is considered made on the date upon which a check, draft, or other valid negotiable instrument is placed in the United States Postal Service in a properly addressed, postpaid envelope, or, if not mailed, on the date of the electronic transfer or other delivery of the payment to the claimant. This subsection does not apply to claims for benefits that are not covered by the health benefit plan; nor does this subsection apply to deductibles, co-payments, or other amounts for which the insurer is not liable.

(f) Insurers may require that claims be submitted within 180 days after the date of the provision of care to the patient by the health care provider and, in the case of health care provider facility claims, within 180 days after the date of the patient's discharge from the facility. However, an insurer may not limit the time in which claims may be submitted to fewer than 180 days. Unless otherwise agreed to by the insurer and the claimant, failure to submit a claim within the time required does not invalidate or reduce any claim if it was not reasonably possible for the claimant to file the claim within that time, provided that the claim is submitted as soon as reasonably possible and in no event, except in the absence of legal capacity of the insured, later than one year from the time submittal of the claim is otherwise required.

(g) If a claim for which the claimant is a health care provider or health care facility has not been paid or denied within 60 days after receipt of the initial claim, the insurer shall send a claim

status report to the insured. Provided, however, that the claims status report is not required during the time an insurer is awaiting information requested under subsection (c) of this section. The report shall indicate that the claim is under review and the insurer is communicating with the health care provider or health care facility to resolve the matter. While a claim remains unresolved, the insurer shall send a claim status report to the insured with a copy to the provider 30 days after the previous report was sent.

(h) To the extent permitted by the contract between the insurer and the health care provider or health care facility, the insurer may recover overpayments made to the health care provider or health care facility by making demands for refunds and by offsetting future payments. Any such recoveries may also include related interest payments that were made under the requirements of this section. Recoveries by the insurer must be accompanied by the specific reason and adequate information to identify the specific claim. To the extent permitted by the contract between the insurer and the health care provider or health care facility, the health care provider or health care facility may recover underpayments or nonpayments by the insurer by making demands for refunds. Any such recoveries by the health care provider or health care facility of underpayments or nonpayment by the insurer may include applicable interest under this section. The period for which such recoveries may be made may be specified in the contract between the insurer and health care provider or health care facility.

(i) Every insurer shall maintain written or electronic records of its activities under this section, including records of when each claim was received, paid, denied, or pended, and the insurer's review and handling of each claim under this section, sufficient to demonstrate compliance with this section.

(j) A violation of this section by an insurer subjects the insurer to the sanctions in G.S. 58-2-70. The authority of the Commissioner under this subsection does not impair the right of a claimant to pursue any other action or remedy available under law. With respect to a specific claim, an insurer paying statutory interest in good faith under this section is not subject to sanctions for that claim under this subsection.

(k) An insurer is not in violation of this section nor subject to interest payments under this section if its failure to comply with this section is caused in material part by (i) the person submitting the claim, or (ii) by matters beyond the insurer's reasonable control, including an act of God, insurrection, strike, fire, or power outages. In addition, an insurer is not in violation of this section or subject to interest payments to the claimant under this section if the insurer has a reasonable basis to believe that the

claim was submitted fraudulently and notifies the claimant of the alleged fraud.

(l) This section does not apply to claims processed by an insurer on a claims adjudication system that was implemented prior to January 1, 1982, provided that the insurer:

(1) Verifies with the Commissioner that its claims adjudication system qualifies under this subsection; and

(2) Is implementing a new claims adjudication software system and is proceeding in good faith to move all claims to the new system as soon as possible and in any event no later than December 31; 2002.

This subsection expires January 1, 2003.

(m) Nothing in this section limits or impairs the patient's liability under existing law for payment of medical expenses.'

Section 4.(b) G.S. 58-3-100(c) reads as rewritten:

'(c) The Commissioner may impose a civil penalty under G.S. 58-2-70 if an HMO, service corporation, MEWA, or insurer fails to acknowledge a claim within 30 days after receiving written or electronic notice of the claim, but only if the notice contains sufficient information for the insurer to identify the specific coverage involved. Acknowledgement of the claim shall be made to the claimant or his legal representative advising that the claim is being investigated; or shall be a payment of the claim; or shall be a bona fide written offer of settlement; or shall be a written denial of the claim. A claimant includes an insured, a health care provider, or a health care facility that is responsible for directly making the claim with an insurer. This subsection does not apply to insurers subject to G.S. 58-3-225.'

Section 4.(c) G.S. 58-3-172(a) reads as rewritten:

'(a) For all claims denied for health care provider services under health benefit plans, written notification of the denied claim shall be given to the insured and to the health care provider submitting the claim if the health care provider would otherwise be eligible for payment. This subsection does not apply to insurers subject to G.S. 58-3-225.'

Section 4.(d) G.S. 58-51-15(a)(7) reads as rewritten:

'(7) A provision in the substance of the following language:

PROOFS OF LOSS: Written proof of loss must be furnished to the insurer at its said office in the case of a claim for loss for which this policy provides any periodic payment contingent upon continuing loss within ~~90~~ 180 days after the termination of the period for which the insurer is

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1340

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H1340-ALN-001 Page 7 of __

liable and in case of a claim for any other loss within ~~90~~ 180 days after the date of such loss. Failure to furnish such proof within the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within such time, provided such proof is furnished as soon as reasonably possible and in no event, except in the absence of legal ~~capacity,~~ capacity of the insured, later than one year from the time proof is otherwise required.'

Section 5. This act is effective when it becomes law."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 1290
Committee Substitute Favorable 6/24/99

Short Title: Limit Recycling Tax Incentives. (Public)

Sponsors:

Referred to:

April 19, 1999

A BILL TO BE ENTITLED

AN ACT TO REMOVE THE SPECIAL TAX TREATMENT FOR CERTAIN EQUIPMENT AND FACILITIES FOR RECYCLING, WASTE REDUCTION, OR RESOURCE RECOVERY WHEN ACQUIRED MORE THAN TWO YEARS PRIOR TO THE DATE OF APPLICATION FOR CERTIFICATION BY THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES AND TO LIMIT TO THREE YEARS THE CERTIFICATION FOR SPECIAL TAX TREATMENT FOR CERTAIN REAL PROPERTY USED FOR RECYCLING, WASTE REDUCTION, OR RESOURCE RECOVERY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-294(a)(3) reads as rewritten:

"(3) Develop and adopt rules to establish standards for qualification as a 'recycling, reduction or resource recovering facility' or as 'recycling, reduction or resource recovering equipment' for the purpose of special tax classifications or treatment, and to certify as qualifying those applicants which meet the established standards. The standards shall be developed to qualify only those facilities and equipment exclusively used in the actual waste recycling, reduction or resource recovering process and shall exclude any incidental or supportive facilities and ~~equipment;~~ equipment. The following limitations apply to an applicant that is not a large recycling facility or a major recycling facility, qualified under G.S. 105-129.26:

a. Facilities or equipment acquired by the applicant or a related person more than two years before the date application is made for certification under this subdivision shall not be certified as qualifying for special tax classification or treatment under this subdivision.

b. A certificate that qualifies real property for special tax classification or treatment under this subdivision is limited to three years after the date the certificate is issued and shall not be renewed or reissued for that applicant or a related person.

For purposes of this subdivision, 'related person' means a related person as determined under section 267(b) or 707(b) of the Internal Revenue Code."

Section 2. This act is effective for taxes imposed for taxable years beginning on or after July 1, 2000.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1290
Committee Substitute Favorable 6/24/99
Proposed Senate Committee Substitute H1290-PCS2447-SC001

Short Title: Revenue Laws Clarifying Changes. (Public)

Sponsors:

Referred to:

April 19, 1999

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE ADMINISTRATION OF THE TAX LAWS BY MAKING CLARIFYING AND CONFORMING CHANGES TO THE REVENUE AND RELATED LAWS.

The General Assembly of North Carolina enacts:

Section 1.(a) Section 10.2(3) of Chapter 13 of the Session Laws of the 1996 Second Extra Session, as amended by Section 1 of S.L. 1999-360, reads as rewritten:

"(3) Quality jobs and business expansion tax credits. -- Sections 3.5, 3.6, and 3.8 through 3.10 of Part III of this act become effective August 1, 1996. G.S. 105-129.11, as enacted by Part III of this act, becomes effective for taxable years beginning on or after January 1, 1997, and applies to training expenditures made on or after July 1, 1997. The remainder of Part III of this act is effective for taxable years beginning on or after January 1, 1996, and applies to jobs created on or after August 1, 1996, and property placed in service on or after August 1, 1996. Article 3A of Chapter 105 of the General Statutes is repealed ~~effective for applications for credits filed under G.S. 105-129.6 on or after January 1, 2006. G.S. 105-129.16 is repealed effective for business property placed in service on or after January 1, 2002. The remainder of~~ as provided in that Article. Article 3B of Chapter 105 of the General Statutes is

repealed ~~effective for buildings to which federal credits are allocated on or after January 1, 2006.~~ as provided in that Article. "

Section 1.(b) Section 4 of S.L. 1997-277, as amended by Section 18.1 of S.L. 1999-360, is recodified as G.S. 105-129.2A(b), (c), and (d).

Section 1.(c) G.S. 105-129.2A, as enacted by this act, reads as rewritten:

"**§ 105-129.2A. Sunset; studies.**

(a) Sunset. -- This Article is repealed effective for applications for credits filed under G.S. 105-129.6 on or after January 1, 2006.

(b) Equity Study. -- The Department of Commerce shall study the effect of the tax incentives provided in ~~the William S. Lee Quality Jobs and Business Expansion Act, codified as Article 3A of Chapter 105 of the General Statutes,~~ this Article on tax equity. This study shall include the following:

(1) Reexamining the formula in G.S. 105-129.3(b) used to define enterprise tiers, to include consideration of alternative measures for more equitable treatment of counties in similar economic circumstances.

(2) Considering whether the assignment of tiers and the applicable thresholds are equitable for smaller counties, for example those under 50,000 in population.

(3) Compiling any available data on whether expanding North Carolina businesses receive fewer benefits than out-of-State businesses that locate to North Carolina.

(c) Impact Study. -- The Department of Commerce shall study the effectiveness of the tax incentives provided in ~~the William S. Lee Quality Jobs and Business Expansion Act, codified as Article 3A of Chapter 105 of the General Statutes.~~ this Article. This study shall include:

(1) Study of the distribution of tax incentives across new and expanding industries.

(2) Examination of data on economic recruitment for the period 1994 through 2000 by county, by industry type, by size of investment, and by number of jobs, and other relevant information to determine the pattern of business locations and expansions before and after the enactment of the William S. Lee Act incentives.

(3) Measuring the direct costs and benefits of the tax incentives.

(4) Compiling available information on the current use of incentives by other states and whether that use is increasing or declining.

(d) Report. -- The Department of Commerce shall report the results of these studies and its recommendations to the 2001 General Assembly by April 1, 2001."

Section 1.(d) Article 3B of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-129.15A. Sunset.**

G.S. 105-129.16 is repealed effective for business property placed in service on or after January 1, 2002. The remainder of this Article is repealed effective January 1, 2006. The repeal of G.S. 105-129.16A applies to renewable energy property placed in

service on or after January 1, 2006. The repeal of G.S. 105-129.16B applies to buildings to which federal credits are allocated on or after January 1, 2006."

Section 2. Effective July 1, 2000, G.S. 105-88(e) reads as rewritten:

"(e) Counties, cities, and towns may levy a license tax on the business taxed under this ~~section not in excess of~~ section. Except as provided in G.S. 160A-211 and G.S. 153A-152, the tax may not exceed one hundred dollars ($100.00)."

Section 3. G.S. 105-113.82 reads as rewritten:

"**§ 105-113.82. Distribution of part of beer and wine taxes.**

(a) Amount, Method. -- The Secretary shall distribute annually the following percentages of the net amount of excise taxes collected on the sale of malt beverages and wine during the preceding 12-month period ending March 31, less the amount of the net proceeds credited to the Department of Agriculture and Consumer Services under G.S. 105-113.81A, to the counties and cities in which the retail sale of these beverages is ~~authorized.~~ authorized in the entire county or city:

(1) Of the tax on malt beverages levied under G.S. 105-113.80(a), twenty-three and three-fourths percent (23 3/4%);

(2) Of the tax on unfortified wine levied under G.S. 105-113.80(b), sixty-two percent (62%); and

(3) Of the tax on fortified wine levied under G.S. 105-113.80(b), twenty-two percent (22%).

If malt beverages, unfortified wine, or fortified wine may be licensed to be sold at retail in both a county and a city located in the county, both the county and city shall receive a portion of the amount distributed, that portion to be determined on the basis of population. If one of these beverages may be licensed to be sold at retail in a city located in a county in which the sale of the beverage is otherwise prohibited, only the city shall receive a portion of the amount distributed, that portion to be determined on the basis of population. The amounts distributed under subdivisions (1), (2), and (3) shall be computed separately.

~~(b) Reduction in Amount Distributed. -- Where the sale of malt beverages, unfortified wine, or fortified wine is prohibited in a defined area of a city or county in which the sale of the beverage is authorized, the amount that would otherwise be distributed to the city or county on the basis of population under subsection (a) shall be reduced in the same ratio that the area of the defined area bears to the total area of the city or county, unless the defined area is a city. If the defined area in a county is a city, the reduction in the amount that would otherwise be distributed to the county under subsection (a) shall be based on population instead of area.~~

(c) Exception. -- Notwithstanding subsection (a), in a county in which ABC stores have been established by petition, the revenue shall be distributed as though the entire county had approved the retail sale of a beverage whose retail sale is authorized in part of the county.

(d) Time. -- The revenue shall be distributed to cities and counties within 60 days after March 31 of each year.

(e) Population Estimates. -- To determine the population of a city or county for purposes of the distribution required by this section, the Secretary shall use the most recent annual estimate of population certified by the State Planning Officer.

(f) City Defined. -- As used in this section, the term "city" means a city as defined in G.S. 153A-1(1) or an urban service district defined by the governing body of a consolidated city-county.

(g) Use of Funds. -- Funds distributed to a county or city under this section may be used for any public purpose.

(h) Disqualification. -- No municipality may receive any funds under this section if it was incorporated with an effective date of on or after January 1, 2000, and is disqualified from receiving funds under G.S. 136-41.2. No municipality may receive any funds under this section, incorporated with an effective date on or after January 1, 2000, unless a majority of the mileage of its streets are open to the public. The previous sentence becomes effective with respect to distribution of funds on or after July 1, 1999."

Section 4. G.S. 105-119 and G.S. 105-120.1 are repealed.

Section 5. G.S. 105-114 reads as rewritten:

"**§ 105-114. Nature of taxes; definitions.**

(a) Nature of Taxes. -- The taxes levied in this Article upon persons and partnerships are for the privilege of engaging in business or doing the act named.

(a1) Scope. -- The taxes levied in this Article upon corporations are privilege or excise taxes levied upon:

(1) Corporations organized under the laws of this State for the existence of the corporate rights and privileges granted by their charters, and the enjoyment, under the protection of the laws of this State, of the powers, rights, privileges and immunities derived from the State by the form of such existence; and

(2) Corporations not organized under the laws of this State for doing business in this State and for the benefit and protection which these corporations receive from the government and laws of this State in doing business in this State.

~~If~~

(a2) Condition for Doing Business. -- If the corporation is organized under the laws of this State, the payment of the taxes levied by this Article ~~shall be~~ is a condition precedent to the right to continue in the corporate form of ~~organization; and if~~ organization. If the corporation is not organized under the laws of this State, payment of these taxes ~~shall be~~ is a condition precedent to the right to continue to engage in doing business in this State.

(a3) Tax Year. -- The taxes levied in this Article are for the fiscal year of the State in which the taxes become ~~due;~~ due, except that the taxes levied in G.S. 105-122 are for the income year of the corporation in which the taxes become due.

~~G.S. 105-122~~

(a4) No Double Taxation. -- G.S. 105-122 does not apply to ~~street transportation systems taxed under G.S. 105-120.1 or~~ holding companies taxed under G.S. 105-120.2.

G.S. 105-122 applies to a corporation taxed under another section of this Article only to the extent the taxes levied on the corporation in G.S. 105-122 exceed the taxes levied on the corporation in other sections of this Article.

(b) Definitions. -- The following definitions apply in this Article:

(1) City. -- Defined in G.S. 105-228.90.

(1a) Code. -- Defined in G.S. 105-228.90.

(2) Corporation. -- A domestic corporation, a foreign corporation, an electric membership corporation organized under Chapter 117 of the General Statutes or doing business in this State, or an association that is organized for pecuniary gain, has capital stock represented by shares, whether with or without par value, and has privileges not possessed by individuals or partnerships. The term includes a mutual or capital stock savings and loan association or building and loan association chartered under the laws of any state or of the United States. The term does not include a limited liability company.

(3) Doing business. -- Each and every act, power, or privilege exercised or enjoyed in this State, as an incident to, or by virtue of the powers and privileges granted by the laws of this State.

(4) Income year. -- Defined in G.S. 105-130.2(5)."

Section 6. G.S. 105-164.3(8a) reads as rewritten:

"(8a) 'Manufactured home' means a structure that is designed to be used as a dwelling and is manufactured in accordance with the specifications for manufactured homes issued by the United States Department of Housing and Urban Development. ~~and:~~

~~a. Is built on a permanent chassis;~~

~~b. Is transportable in one or more sections;~~

~~c. When transported, is at least eight feet wide or forty feet long; and~~

~~d. When erected on a site, has at least 320 square feet.~~"

Section 7.(a) G.S. 105-187.1 is amended by adding a new subdivision to read:

"(3a) Retailer. -- A retailer as defined in G.S. 105-164.3 who is engaged in the business of selling, leasing, or renting motor vehicles."

Section 7.(b) G.S. 105-187.5(a) reads as rewritten:

"(a) Election. -- A retailer ~~who is engaged in the business of leasing or renting motor vehicles~~ may elect not to pay the tax imposed by this Article at the rate set in G.S. 105-187.3 when applying for a certificate of title for a motor vehicle purchased by the retailer for lease or rental. A retailer who makes this election shall pay a tax on the gross receipts of the lease or rental of the vehicle. Like the tax imposed by G.S. 105-187.3, this alternate tax is a tax on the privilege of using the highways of this State. The tax is imposed on a retailer, but is to be added to the lease or rental price of a motor vehicle and thereby be paid by the person who leases or rents the vehicle."

Section 7.(c) G.S. 20-4.01(5) reads as rewritten:

"(5) Dealer. -- Every person engaged in the business of buying, selling, distributing, or exchanging motor vehicles, ~~trailers~~ trailers, or semitrailers in this State, and having an established place of business in this ~~State and being subject to the tax levied by G.S. 105-89.~~ State.

The terms 'motor vehicle dealer,' 'new motor vehicle dealer,' and 'used motor vehicle dealer' ~~shall~~ as used in Article 12 of this Chapter have the meaning set forth in G.S. 20-286."

Section 8. G.S. 105-259(b)(15) reads as rewritten:

"(b) Disclosure Prohibited. -- An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

. . .

(15) To exchange information concerning a tax imposed by Articles 2A, 2C, or 2D of this Chapter with one of the following agencies when the information is needed to fulfill a duty imposed on the Department or the agency:

a. The North Carolina Alcoholic Beverage Control Commission.

b. The Division of Alcohol Law Enforcement of the Department of Crime Control and Public Safety.

c. The Bureau of Alcohol, Tobacco, and Firearms of the United States Treasury Department.

d. Law enforcement agencies.

e. The Division of Adult Probation and Parole of the Department of Correction."

Section 9. G.S. 105-449.44 reads as rewritten:

"§ 105-449.44. How to determine the amount of fuel used in the State; presumption of amount used.

(a) Calculation. -- The amount of motor fuel or alternative fuel a motor carrier ~~carries~~ uses in its operations in this State for a reporting period is the ratio of the number of miles the motor carrier travels in this State during that period to the total number of miles the motor carrier travels inside and outside this State during that period, multiplied by the total amount of fuel the motor carrier uses in its operations inside and outside the State during that period.

(b) Presumption. -- The Secretary ~~shall~~ must check reports filed under this Article against the weigh station records and other records of the Division of Motor Vehicles of the Department of Transportation concerning motor carriers to determine if motor carriers that are operating in this State are filing the reports required by this Article. The Department may assess a motor carrier for the amount payable based on the presumed mileage. A motor carrier that does either of the following for a quarter is

presumed to have traveled in this State during that quarter the number of miles equal to 10 trips of 450 miles each for each of the motor carrier's vehicles:

(1) Fails to file a report for the quarter and the records of the Division indicate the carrier operated in this State during the quarter.

(2) Files a report for the quarter that, based on the records of the Division, understates by at least twenty-five percent (25%) the carrier's mileage in this State for the quarter.

(c) Vehicles. -- The number of vehicles of a motor carrier that is registered under this Article is the number of identification markers issued to the carrier. The number of vehicles of a carrier that is not registered under this Article is the number of vehicles registered by the motor carrier in the carrier's base state under the International Registration Plan. ~~The Department shall assess a motor carrier for the amount payable based on the presumed mileage.~~"

Section 10.(a) Effective July 1, 2000, G.S. 105-449.60(31) and (40) read as rewritten:

"**§ 105-449.60. Definitions.**

The following definitions apply in this Article:

. . .

(31) Supplier. -- Any of the following:

a. A position holder or a person who receives motor fuel pursuant to a two-party ~~transaction.~~ exchange.

b. A fuel alcohol provider.

. . .

(40) Two-party ~~transaction.~~ exchange. -- A transaction in which motor fuel is transferred ~~between two licensed suppliers as the motor fuel crosses the terminal rack as the result of an exchange agreement or a sale between the suppliers that requires the supplier that is the position holder~~ from one licensed supplier to another licensed supplier pursuant to an exchange agreement under which the supplier that is the position holder agrees to deliver motor fuel to the other supplier or the other supplier's customer at the rack of the terminal at which the delivering supplier is the position holder."

Section 10.(b) Effective July 1, 2000, G.S. 105-449.88 is amended by adding a new subdivision to read:

"**§ 105-449.88. Exemptions from the excise tax.**

The excise tax on motor fuel does not apply to the following:

. . .

(1a) Motor fuel removed by transport truck from a terminal for export if the motor fuel is removed by a licensed distributor or licensed exporter, the supplier that is the position holder for the motor fuel sells the motor fuel to another supplier as the motor fuel crosses the terminal rack, the purchasing supplier or its customer receives the motor fuel at the terminal rack for export, and the supplier

that is the position holder collects tax on the motor fuel at the rate of the motor fuel's destination state."

Section 11.(a) G.S. 105-449.60(41) reads as rewritten:

"**§ 105-449.60. Definitions.**

The following definitions apply in this Article:

. . .

(41) User. -- A person who owns or operates a licensed highway vehicle that has a registered gross vehicle weight of at last 10,001 pounds and who ~~and~~ does not maintain storage facilities for motor fuel."

Section 11.(b) G.S. 105-449.68 reads as rewritten:

"**§ 105-449.68. Restrictions on who can get a license as a distributor.**

A bulk-end user of motor fuel may not be licensed as a distributor unless the bulk-end user also acquires motor fuel from a supplier or from another distributor for subsequent sale. This restriction does not apply to a bulk-end user that was licensed as a distributor on January 1, 1996. If a distributor license held by a bulk-end user on January 1, 1996, is subsequently cancelled, the bulk-end user is subject to the restriction set in this section."

Section 11.(c) G.S. 105-449.97(c) reads as rewritten:

"(c) Percentage Discount. -- A supplier that sells motor fuel directly to an unlicensed distributor or to the bulk-end user, the retailer, or the user of the fuel may take the same percentage discount on the fuel that a licensed distributor may take under G.S. 105-449.93(b) when making deferred payments of tax to the supplier."

Section 12. G.S. 105-449.88(1) reads as rewritten:

"**§ 105-449.88. Exemptions from the excise tax.**

The excise tax on motor fuel does not apply to the following:

(1) Motor fuel removed, by transport truck or another means of transfer outside the terminal transfer system, from a terminal for export, if the motor fuel is removed by a licensed distributor or a licensed exporter and the supplier of the motor fuel collects tax on it at the rate of the motor fuel's destination state."

Section 13. The catch line of G.S. 105-449.105 reads as rewritten:

"**§ 105-449.105. Refunds upon application for tax paid on exempt fuel, lost fuel, and fuel unsalable for highway ~~use, and undyed diesel fuel used in boats.~~ use.**"

Section 14. G.S. 105-449.121(b)(2) reads as rewritten:

"(b) Inspection. -- The Secretary or a person designated by the Secretary may do any of the following to determine tax liability under this Article:

. . .

(2) Audit a ~~distributor~~ distributor, a retailer, a bulk-end user, or a motor fuel user that is not licensed under this Article."

Section 15.(a) G.S. 62A-5(d) reads as rewritten:

"(d) Any taxes due on 911 service provided by the service supplier will be billed to the local government subscribing to that service. ~~State and local taxes do not apply to 911 charges billed to subscribers under this Article.~~"

Section 15.(b) G.S. 105-120(c1) reads as rewritten:

"(c1) ~~Enhanced 911~~ Service ~~Charge.~~ Charges. -- Gross receipts of an entity that provides local telecommunications service do not include 911 charges imposed under G.S. 62A-5 and remitted to a local government under G.S. 62A-6, or wireless Enhanced 911 service charges imposed under G.S. 62A-23 and remitted to the Wireless Fund under G.S. 62A-24."

Section 15.(c) G.S. 105-130.5(b)(17) reads as rewritten:

"(17) The amount of 911 charges collected under G.S. 62A-5 and remitted to a local government under G.S. 62A-6, and the amount of wireless Enhanced 911 service charges collected under G.S. 62A-23 and remitted to the Wireless Fund under G.S. 62A-24."

Section 16. Except as otherwise provided in this act, this act is effective when it becomes law.

HOUSE BILL 1290 (PCS): Revenue Laws Clarifying Changes

BILL ANALYSIS

Committee: Senate Finance
Date: June 28, 2000
Version: PCS for 2nd ed.
(H1290-PCSSCX-001(6.27))

Introduced by: Representative Luebke
Summary by: Cindy Avrette, Staff Atty.
Mary Shuping, Rsch. Asst.

SUMMARY: ***The Proposed Committee Substitute for HB 1290 incorporates numerous changes to the revenue and related laws which were originally included in HB 1575. These changes were recommended by the Revenue Laws Study Committee. A section-by-section analysis of the bill is found in the table below.***

SECTION	*EXPLANATION*
1	Reorganizes the sunsets for the William S. Lee Act and the General Business Credits Act, so that the sunset language will be codified within each Act. Also codifies the William S. Lee study provisions with the sunset. Codifying the sunsets separates the two Acts' sunsets, which are currently in the same session law, and makes them easier for taxpayers to find. This section also clarifies the sunset of the Renewable Energy Tax Credits added to the General Business Credits Act in 1999.
2	Clarifies that the $100 local tax limitation enacted in 1999 for loan agencies and other related businesses does not repeal the pre-existing local authority to tax pawnbrokers up to $275 a year. This section becomes effective July 1, 2000.
3	Clarifies that a county or city does not share in the distribution of beer and wine tax if the only place where beer and wine sales are authorized in the county or city is a sports club. Also, repeals an obsolete subsection.
4	Repeals the special franchise taxes on telegraph companies and street bus companies. The Department of Revenue states that there are no taxpayers paying tax under these provisions. With repeal of these special taxes, the general corporate franchise tax will apply to any companies that might have otherwise fallen under the provisions of the special taxes.
5	Repeals a cross-reference to the special franchise tax street bus companies, repealed by Section 4, and reorganizes language of statute.
6	Changes the form of the definition of manufactured home in the sales tax law from a restatement of federal standards to a cross-reference to federal standards.
7	Clarifies that a retailer for purposes of Highway Use Tax must be engaged in the business of selling or leasing motor vehicles, and clarifies and updates definition language in Chapter 20 of the General Statutes.
8	Allows the Department of Revenue to exchange information with the Department of Correction Division of Probation and Parole to assist in collecting the controlled substances tax.

SECTION	EXPLANATION
9	Clarifies that assessments based on presumed mileage are used only if the Department considers the presumption reasonable, corrects incorrect terminology, and changes sentence order.
10	Effective July 1, 2000, changes the method by which tax on fuel is charged at the destination state's rate when the fuel is simultaneously sold from one supplier, to another supplier, to a customer who picks the fuel up at the rack for export. In 1998, S.L. 1998-146 attempted to address this situation by expanding the definition of two-party exchange to include buy-sell agreements as one type of two-party transaction for purposes of the definition of "supplier". That change created confusion and led to mismatches between terminal operator reports and supplier returns. This section changes back to the old, narrower definition of two-party exchange and then adds a specific provision allowing the destination state's tax rate to be paid when the fuel is transferred at the rack pursuant to a buy-sell agreement.
11	Restores to definition of "user" a provision that was inadvertently deleted, and makes conforming changes to reflect defined term. Users are subject to audit. Adding this vehicle weight threshold, formerly provided in G.S. 105-449.9 (repealed), limits the audit provision to larger vehicles.
12	Conforms exemption statute to reflect that an unlicensed exporter or distributor is liable for tax under G.S. 105-449.82(c). Thus, fuel is exempt only if removed by licensed distributor or licensed exporter.
13	Conforms the statute catchline by removing a reference to a repealed provision.
14	Restores a provision making fuel retailers and bulk-end users subject to audit by the Department of Revenue. S.L. 1999-438 repealed the requirement that retailers and bulk-end users obtain licenses. An unintended consequence of this repeal was elimination of the Department's audit authority over these users and sellers of motor fuel.
15	Moves tax exemption language from G.S. 62A-5 to the corporate income tax statutes, to make Articles 1 and 2 of Chapter 62A consistent.
16	Effective date. Unless otherwise provided, the act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 1290 (Senate Finance Committee Substitute)

SHORT TITLE: Revenue Laws Clarifying Changes

SPONSOR(S):

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05
REVENUES					
LOCAL GOVERNMENTS	See Assumptions and Methodology				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Local governments, Department of Revenue, Department of Correction

EFFECTIVE DATE: Section 2 (pawnbrokers) and Section 10 (fuel tax) are effective July 1, 2000. The remainder of the act is effective when it becomes law

BILL SUMMARY: This bill makes numerous technical and clarifying changes to the state revenue laws and related statutes.

ASSUMPTIONS AND METHODOLOGY:

Of the 16 sections in the bill, only section 2 has a fiscal impact. When the General Assembly approved Senate Bill 1112 (S.L. 1999-438), it inadvertently capped city and county privilege taxes on pawnbrokers at $100. Previous law (G.S. 105-50) allowed cities and counties to charge pawnbrokers up to $275 per year. In a 1996 survey conducted by the Fiscal Research Division of the General Assembly, 44 counties and 24 cities reported having a privilege tax on pawnbrokers ranging from $5 to $275. These local governments also reported FY 1995-96 tax revenues from pawnbrokers of $77,844. If all local governments changed their ordinance in response to SB 1112, then they would have experienced a loss of $47,993 based on the 1996 report. Passage of this bill would allow local governments to return their tax on pawnbrokers to previous levels and regain revenue lost due to SB 1112.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic

APPROVED BY:

DATE:

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 1

HOUSE BILL 1803*

Short Title: Huntersville Annexation Agreement. (Local)

Sponsors: Representative Saunders.

Referred to: Finance.

May 25, 2000

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE TOWN OF HUNTERSVILLE TO AMEND AN AGREEMENT FOR PAYMENTS IN LIEU OF ANNEXATION.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding any applicable provision of the General Statutes or any other public or local law, the Town of Huntersville is granted certain contract powers as follows:

(1) The Town of Huntersville may amend the agreement authorized by S.L. 1997-266 ("Agreement") which provided that in consideration of certain payments to the Town in lieu of taxes, certain property described in the Agreement as the "McGuire Nuclear Station Property" would not be involuntarily annexed by the Town prior to December 31, 2027. The Agreement shall be amended by extending the term that the McGuire Nuclear Station Property may not be involuntarily annexed by the Town for 15 years until December 31, 2042, and by accelerating the tax equivalent payments required under Schedule 1 by Duke Power to Huntersville to reflect present value considerations as follows:

AMENDED SCHEDULE 1

Tax Equivalent Payments: The parties agree that Schedule 1 of the Agreement shall be deleted and this Amended Schedule 1 placed

in its stead. The tax equivalent payments required under Schedule 1 by Duke Power to Huntersville with respect to its McGuire Nuclear Station Property shall be accelerated under this Amended Schedule 1 to reflect the total and complete prepayment of the remaining tax equivalent payments based on present value considerations as follows:

Year	Payment
1996	0
1997	0
1998	$333,333(Paid)
1999	$333,333(Paid)
2000 [August 1, 2000]	$2,700,000
2000	$333,333
2001	$333,333
2002	$333,333
2003	$333,333
2004	$333,333

The parties further agree that tax equivalent payments required under Amended Schedule 1 may be further amended and accelerated upon mutual agreement of the parties to reflect future prepayments based upon present value considerations.

Except as herein amended, the Agreement shall remain in full force and effect and that certain property described in the Agreement as the "McGuire Nuclear Station Property" may not be involuntarily annexed by the Town prior to December 31, 2042. The Town of Huntersville shall not seek to repeal this act upon its approval by the General Assembly.

(2) The amendment to the Agreement entered into as provided in subdivision (1) of this section is specifically determined to be consistent with the public policy of the State of North Carolina.

(3) Any amendment to the Agreement entered into as provided in subdivision (1) of this section is binding on and enforceable against the current and future members of the Board of Commissioners of the Town of Huntersville during the full term of such Agreement and any extension thereof.

(4) The parties to any Agreement amended in accordance with subdivision (1) of this section shall be authorized by this section to further modify, amend, and extend such Agreement on mutual written consent, without the approval of the General Assembly, provided that any such modification or amendment does not materially alter the concept of the Agreement.

Section 2. The Town of Huntersville may accept, as consideration for such amendment, an accelerated schedule for payments in lieu of taxes.

Section 3. The Agreement and its amendment under Section 1 of this act shall apply to the McGuire Nuclear Station Property described as follows.

EXHIBIT A

Parcel 1: That certain tract of land containing 25.25 acres, more or less, beginning at a point in the easterly boundary of County Road NO. 2134 and running thence N 88-52-58 E 653.8 feet to a point; thence S 7-19-56E 237.1 feet to a point; thence S 77-32-50 E 1130.4 feet to a point; thence S 45-37-01 W 1310.6 feet to a point; thence N 30-20-20 W 1144.1 feet to a point; thence N 84-16-48 W 245.8 feet to a point in the easterly boundary of County Road No. 2134; thence with said Road N 4-25-22 W 372.1 feet to the point of Beginning and being shown as Tax Parcels Nos. 16, 17 and 18 on tax map recorded in Book 13 at page 13 of the Mecklenburg County Registry, Parcel 2: That certain tract of land containing 1,239.0 acres, more or less and being more particularly described as BEGINNING at a point in the Catawba River, said point being located in the Mecklenburg/Lincoln County line and running thence from said beginning point in a generally easterly direction with the boundary of the Cowans Ford Hydroelectric Project (Lake Norman) a distance of 13, 136 feet to a point; thence S 2-50-59 W 176.6 feet to a point; thence S 25-09-08 E 147.8 feet to a point; thence with the boundary of the Cowans Ford Hydroelectric Project (Lake Norman) a distance of 711.4 feet to a point; thence leaving the boundary of the Cowans Ford Hydroelectric Project S 11-37 E 47.9 feet to a point; thence S 4-55 W 85.1 feet to a point; thence S 25-41 W 63.9 feet to a point; thence N 74-37W 29.5 feet to an iron pipe; thence N 80-24 W 13.1 feet to a stake; thence S 1-11 E-291.7 feet to an iron pin; thence S 5-50 W-151.3 feet to the centerline of road 2182; thence S 5-50 W-120.8 feet to an iron; thence S 11-22 W-241.7 feet to an iron pin; thence S 16-54 W-241.7 feet to an iron pin; thence S 22-26 W-241.7 feet to an iron pin; thence S 27-58 W-128.8 feet to an iron pin; thence S 5-50 W-151.3 feet to the centerline of road 2182; thence N 61-15 E-489.9 feet to an iron pin; thence S 51-07 E-214.9 feet to an iron pipe; thence S 11-42 E-444.5 feet to an iron pin; thence S 12-54 E-40.2 feet to an iron pipe; thence S 12-14 E-173 feet to an iron pin; thence S 12-20 E-152.0 feet to an iron pipe; thence S 82-15 W-444.2 feet to an iron pipe; thence N 7-51 W-224.9 feet to an iron pipe; thence S 82-13 W-150.3 feet to an iron pipe; thence S 8-07 E-225.2 feet to an iron pipe; thence S 82-30 W-252.5 feet to an iron; thence crossing NC Hwy. 73; S 41-36 W-155.1 feet to an iron pipe; thence N 82-26 E-304.6 feet to a concrete monument; thence N 82-14 E-591.0 feet to an iron pipe; thence S 8-47 E-210.6 feet to an iron pipe; thence N 81-52 E-210.5 feet to an iron pin; thence S 12-37 W-527.1 feet to an iron pipe; thence N 67-05 E-99.0 feet to a stake; thence S 74-55 E 1082.5 feet to a stake; thence S 23-15 W-2128.0 feet to an iron pipe; thence S 87-51 W-341.6 feet to a stake; thence S 72-56 W-662.7 feet to a stake; thence N 13-47 W-363.2 feet to an iron pin; thence S 62-54 W-375.0 feet to an iron pin; thence S 59-08 W-797.9 feet to an iron pipe; thence S 17-17 W-1048.5 feet to an iron pin in an old road bed; thence

following the old road bed S-81-46 E-232.6 feet to an iron pin; thence S 88-02 E-614.5 feet to the centerline of Cashion Road; thence with Cashion Road S 41-23 W-42.5 feet to an iron pin; thence S 58-52 W-317.6 feet to an iron pin; thence S 55-13 W-212.0 feet to an iron pin; thence S 52-39 W-136.4 feet to an iron pin; thence S 39-21 W-115.4 feet to an iron pin; thence S 27-28 W-374.7 feet to an iron pin; thence S 33-29 W-191.2 feet to an iron pipe in the centerline of road; thence leaving Cashion Road S 79-04 W-1003.2 feet to a bolt; thence S 52-29' E-499.0 feet to a hickory; thence S 24-27 W-369.0 feet to a hickory; thence N 88-34 W 2484.4 feet to a point; thence S 4-24 E 488.0 feet to a point; thence S 4-24 E 488.0 feet to an iron pipe; thence S 31-08 W 33.5 feet to an iron pipe; thence S 31-08 W 33.5 feet to an iron pipe; thence S 26-31-50 E 81.29 feet to a point; thence S 11-18-01 E 140.80 feet to a point; thence S 36-40-59 E 85.20 feet to a point; thence S 54-46-13 E 99.3 feet to a point; thence S 48-26-06 E 165.1 feet to a point; thence S 78-47-39 W 44.3 feet to a point; thence N 70-23-55 W 64.0 feet to a point; thence N 62-38-07 W 119.2 feet to a point; thence N 46-16-58 W 115.6 feet to a point; thence S 20-53-48 W 64.2 feet to a point; thence S 72-56-18 W 69.8 feet to a point; thence N 17-25-07 W 60.8 feet to a point; thence N 41-16-04 W 90.8 feet to a point; thence S 31-08 W 117.0 feet to a point; thence S 6-57-15 E 121.0 feet to a point; thence S 38-21-58 E 154.8 feet to a point; thence S 31-49-57 E 128.6 feet to a point; thence S 21-44-01 E 150.1 feet to a point; thence S 24-46-05 E 163.0 feet to a point; thence S 20-00-04 E 152.5 feet to a point; thence S 13-33-03 E 115.1 feet to a point; thence S 10-37-00 E 135.7 feet to a point; thence S 3-15-45 W 80.3 feet to a point; thence S 1-48-59 E 87.7 feet to a point; thence S 81-27-08 E 141.3 feet to a point; thence S 86-05-51 E 126.8 feet to a point; thence N 35-45-45 E 77.0 feet to a point; thence N 4-18-05 W 95.6 feet to a point; thence N 28-03-50 W 120.2 feet to a point; thence N 34-32-57 W 142.6 feet to a point; thence N 7-27-12 W 208.3 feet to a point; thence S 74-55-06 E 128.4 feet to a point; thence N 70-39-55 E 214.3 feet to a point; thence S 34-57-12 E 85.2 feet to a point; thence S 14-09-08 W 120.9 feet to a point; thence S 36-38-57 W 142.8 feet to a point; thence S 43-56-01 E 90.8 feet to a point; thence S 09-24-14 E 135.5 feet to a point; thence S 05-20-06 E 81.2 feet to a point; thence S 26-38-06 W 102.7 feet to a point; thence S 6-48-38 E 40.9 feet to a point; thence S 58-54-04 E 211.7 feet to a point; thence S 88-34-13 E 102.0 feet to a point; thence S 38-39-48 E 73.8 feet to a point; thence S 1-21-43 E 85.0 feet to a point; thence S 62-52-04 E 149.1 feet to a point; thence S 4-42-28 E 27.3 feet to a point; thence S 87-41-57 W 2089.2 feet to a point in the Catawba River (Mecklenburg/Lincoln County Line); thence with the Mecklenburg/Lincoln County Line 12,055 feet to the point of BEGINNING.

Section 4. No portion of the McGuire Nuclear Station Property shall be subject to involuntary annexation, or designation as an urban tax district or otherwise subjected to the power of a municipal taxing authority by Huntersville or any other town or municipality or consolidated government during the term of the agreement referenced in Section 1 of this act.

Section 5. This act is effective when it becomes law.

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 6/29/100

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Beth Melcher	NAMI North Carolina
Lynda McDaniel	DHHS/DFS
L. H. Oswald	Dallas, TX
[illegible] Hale	NC DOI
Deschen Boyce	NC DOT
Barbara Morales Burke	NCDOI
Bill [illegible]	NCSRC
Robert Paschal	Young, Moore & Henderson, P.A.
Mike Herman	Health Insurance Association of America

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 6/29/100

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Hugh Tilson	NCHA
Bode John T.	Bode Call & Stroupe
Crissy Porter	Bow & Associates
Joe Donovan	NAMI - NC
[illegible]	CAC PD
Ali Sinec	NCCCS
[illegible]	Bow & Assoc.
[illegible]	NCAHP
Tara Larson	DMH/DD/SAS
Art Robarge	DMH/DD/SAS
Alice Garland	Electricities

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 6/29/100

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Anna Wulfsberg	NC Health Access Coalition, Raleigh NC
Stacy Flannery	NCHCFA
Steve Keene	NC Medical Society
Amy Jo Bain	NC MS
[illegible]	OJS
Lulonne Bamhart	NCAHP
Paul Mahoney	NC ASSN OF HEALTH PLANS
Bob Carpenter	NC Senate
Glen Allen	parent of child who died in restraint
Cynthia Lewicki	GACPD
Mari Swan	NCAHP

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David Hoyle, Co-Chair
Senator John Kerr, Co-Chair

REVISED

Thursday, June 29, 2000

SENATOR HOYLE,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(SCS #1) **1520** Restraints in Facilities
Sequential Referral: None
Recommended Referral: None

H.B. **1728** Spruce Pine Deannexation
Sequential Referral: None
Recommended Referral: None

S.B. **1364** Extend Cabarrus E&R Board
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1)**1290** Limit Recycling Tax Incentives
Draft Number: PCS2447
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

UNFAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 2

H.B.(SCS #1) **1340** Respiratory Care Practice Act
Draft Number: PCS8215
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 5

Committee Clerk Comment:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Thursday, June 29, 2000

SENATOR HOYLE,
submits the following with recommendations as to passage:

FAVORABLE

H.B. **1803** Huntersville Annexation Agreement.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comment:

SENATE FINANCE COMMITTEE

FRIDAY, JUNE 30, 2000

ON THE FLOOR
(RECESS DURING SESSION – 9:50 A.M.)

The Senate Finance Committee met on Friday, June 30, 2000, at 9:50 A.M. on the floor while session was in recess with Senator John Kerr presiding. All committee members present for session were in attendance.

HB 1748 – GRANVILLE/BANNER ELK TAX USE.

Senator Wellons moved to adopt new Senate Committee Sub for this Bill and the motion carried. Senator Moore explained the new Committee Sub and on motion by Senator Dalton, the Committee Sub was given a Favorable Report. Copy of Senate Committee Sub included in the minutes.

HB 1647 – CHARLOTTE ECONOMIC DEVELOPMENT QUICKTAKE.

Senator Clodfelter moved to adopt new Senate Committee Sub for this Bill and the motion carried. At he conclusion of Senator Clodfelter's explanation, the Committee Sub was given a Favorable Report on motion by Senator Phillips. Copy of Committee Sub and Explanation included in the minutes.

SB 1529 – REGISTER OF DEEDS FEE ADJUSTMENTS..

This Bill had been discussed at the June 21st Meeting and given a Favorable Report, as amended. The Bill was held on the direction of the Chairs and was not reported out. Senator Dalton moved that the Bill be re-considered and the motion carried. Senator Dalton moved to adopt a new Committee Sub for this Bill and the motion carried. At the conclusion of this explanation and on his motion, the Committee Sub was given a Favorable Report. Copy of Original Bill, Explanation, Fiscal Note. Committee Sub, Explanation for Committee Sub and Fiscal Note for Committee Sub included in the minutes. (Copy of Amendment not available.)

David W. Hoyle, Co-Chair
Senate Finance Committee

John H. Kerr, III, Co-Chair
Senate Finance Committee

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

Committee Report is Attachment # 1

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1748
Committee Substitute Favorable 6/22/00
Proposed Senate Committee Substitute H1748-PCSA264-LB1

Short Title: Granville/Banner Elk Tax Use. (Local)

Sponsors:

Referred to:

May 25, 2000

A BILL TO BE ENTITLED

AN ACT TO CHANGE THE PURPOSES FOR WHICH THE GRANVILLE COUNTY OCCUPANCY TAX CAN BE USED FOR A LIMITED PERIOD OF TIME, TO ESTABLISH A TOURISM DEVELOPMENT AUTHORITY, TO MAKE TECHNICAL CHANGES, TO CHANGE THE PURPOSES FOR WHICH THE BANNER ELK OCCUPANCY TAX MAY BE USED, AND TO MAKE CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 454 of the 1993 Session Laws reads as rewritten:

"Section 1. Occupancy tax.

(a) **Authorization and Scope.**

The Granville County Board of Commissioners may ~~by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy tax of ~~five percent (5%)~~ three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations. The combined occupancy tax rates for Granville County and any city or town that is located in Granville County and is authorized to levy a room occupancy tax may not exceed six percent (6%).

(b) **Administration.**

A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 153A-155. The penalties provided in G.S. 153A-155 apply to a tax levied under this section.

~~(b) Collection.~~

~~Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax.~~

~~(c) Administration.~~

~~The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.~~

~~A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

~~(d) Penalties.~~

~~A person, firm, corporation, or association who fails or refuses to file the return required by this section is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The board of commissioners has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.~~

(e) **Distribution and** Use of Tax Revenue.

~~Granville County shall use at least two-thirds of the proceeds of the tax revenue to promote travel and tourism and shall use the remaining tax proceeds for tourism-related expenditures. The term "promote travel and tourism" means to~~ The county shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Granville County Tourism Development Authority. The Authority may use up to two-thirds of the funds remitted to it under this subsection for the following tourism-related expenditures designed to attract tourists and business travelers from outside the county into the county: (i) developing facilities for fishing tournaments, skiing tournaments, and boating events; (ii) constructing facilities for festivals; (iii) constructing tournament grade multipurpose athletic facilities; and (iv) financing

other similar capital expenditures. The Authority shall use the remaining net proceeds to promote travel and tourism in Granville County.

The following definitions apply in this subsection:

(1) Net proceeds. -- Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the gross proceeds.

(2) Promote travel and tourism. -- To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the ~~county; the~~ county. The term includes administrative expenses incurred in engaging in the listed activities. ~~The term "tourism-related expenditures" means expenditures that~~

(3) Tourism-related expenditures. -- Expenditures that, in the judgment of the Authority, are designed to increase the use of lodging facilities in the county or to attract tourists or business travelers to the ~~county and expenditures by the county to administer and collect the tax; it~~ county. The term includes ~~expenditures for the construction or maintenance of a convention or meeting facility to be used primarily by individuals who are not residents of the county and for the construction or maintenance of a coliseum or a visitors' center, but does not include other~~ tourism-related capital expenditures.

~~(f) Effective Date of Levy.~~

~~A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.~~

~~(g) Repeal.~~

~~A tax levied under this section may be repealed by a resolution adopted by the Granville County Board of Commissioners. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.~~

Sec. 1.1. Granville Tourism Development Authority.

(a) **Appointment and Membership.**

The Board of County Commissioners shall adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The Authority shall be composed of five members who shall serve for staggered three-year terms. The members shall be appointed as follows: three appointed by the Granville County Board of Commissioners, one appointed by the Oxford City Council, and one appointed by the

Creedmoor City Council. One of the three members appointed by the Granville County Board of Commissioners must be an owner or manager of a Granville County hotel or motel. The remaining members must be individuals who are currently active in the promotion of travel and tourism in the county. Vacancies shall be filled in the same manner as original appointments, and members appointed to fill vacancies shall serve for the remainder of the unexpired term. The resolution shall determine the compensation, if any, to be paid to the members of the Authority.

At the first meeting of each calendar year, the membership of the Authority shall elect one member to serve as chair until the first meeting of the following year. The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Granville County shall be the ex officio finance officer of the Authority.

(b) **Duties.**

The Authority shall expend the net proceeds of the tax levied under this act for the purposes provided in this act. The Authority shall promote travel, tourism, and conventions in the county, sponsor tourist-related events and activities in the county, and finance tourist-related capital projects in the county.

(c) **Reports.**

The Authority shall report quarterly and at the close of the fiscal year to the Granville County Board of Commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

Sec. 2. This act is effective upon ratification."

Section 2. To achieve the staggered terms required on the Granville County Tourism Development Authority, as provided in Section 1 of this act, the initial terms of the members of the Authority shall be as follows: The initial term of the member who is an owner or manager of a hotel or motel shall be three years. The Granville County Board of Commissioners must designate one of its remaining appointees to serve an initial term of two years and the other to serve an initial term of one year. The remaining initial members shall serve terms of three years each. Thereafter, all terms shall be three years.

Section 3. Section 1(a) of Chapter 454 of the 1993 Session Laws, as amended by Section 1 of this act, reads as rewritten:

"(a) **Authorization and Scope.**

The Granville County Board of Commissioners may levy a room occupancy tax of ~~three percent (3%)~~ five percent (5%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations. The combined occupancy tax rates for Granville County and any city or town that is located in Granville County and is authorized to levy a room occupancy tax may not exceed six percent (6%)."

Section 4. Section 1(e) of Chapter 454 of the 1993 Session Laws, as amended by Section 1 of this act, reads as rewritten:

"(e) **Distribution and Use of Tax Revenue.**

The county shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Granville County Tourism Development Authority. The Authority ~~may~~ shall use ~~up to~~ at least two-thirds of the funds remitted to it under this subsection ~~for the following tourism-related expenditures designed to attract tourists and business travelers from outside the county into the county: (i) developing facilities for fishing tournaments, skiing tournaments, and boating events; (ii) constructing facilities for festivals; (iii) constructing tournament grade multi-purpose athletic facilities; and (iv) financing other similar capital expenditures. The Authority shall use the remaining net proceeds~~ to promote travel and tourism in Granville ~~County.~~ County and shall use the remainder for tourism-related expenditures.

The following definitions apply in this subsection:

(1) Net proceeds. -- Gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer, not to exceed three percent (3%) of the gross proceeds.

(2) Promote travel and tourism. -- To advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in similar promotional activities that attract tourists or business travelers to the county. The term includes administrative expenses incurred in engaging in the listed activities.

(3) Tourism-related expenditures. -- Expenditures that, in the judgment of the Authority, are designed to increase the use of lodging facilities in the county or to attract tourists or business travelers to the county. The term includes tourism-related capital expenditures."

Section 5. G.S. 153A-155(g) reads as rewritten:

"(g) This section applies only to Avery, Brunswick, Craven, Currituck, Davie, Granville, Madison, Nash, Person, Randolph, Scotland, and Transylvania Counties."

Section 6. Sections 1 through 6 of Chapter 318 of the 1989 Session Laws, as amended by Chapter 428 of the 1993 Session Laws, read as rewritten:

"**Section 1.** Occupancy Tax. The Town Council of Banner Elk may ~~by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto,~~ levy a room occupancy and tourism development tax. ~~Collection of the tax and liability therefor shall begin and continue only on and after the first day of a calendar month set by the Town Council of Banner Elk in the resolution levying the tax, which in no case may be earlier than the first day of the second succeeding calendar month after the date of adoption of the resolution.~~

The occupancy and tourism development tax that may be levied under this act shall be three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation in the Town of Banner Elk that is subject to sales tax imposed by the State under G.S. ~~105-164.4(3).~~ 105-164.4(a)(3). This tax is in addition to any State or local sales tax. The tax shall not apply to any room, lodging, or accommodation supplied to the same person for a period of 90 continuous days or

more or to sleeping rooms or lodging furnished by charitable, educational, or religious institutions or by nonprofit organizations.

"**Sec. 2.** Administration of Tax. (a) A tax levied under this section shall be levied, administered, collected, and repealed as provided in G.S. 160A-215. The penalties provided in G.S. 160A-215 apply to a tax levied under this section. ~~The Town of Banner Elk shall administer a tax levied under this act. A tax levied under this act is due and payable to the town in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, and association liable for the tax shall, on or before the 15th day of each month prepare and render a return on a form prescribed by the town. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A return filed with the county town under this act is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.~~

~~(b) Any person, firm, corporation, or association who fails or refuses to file the return required by this act is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The town council has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.~~

(c) All persons, firms, corporations, and associations who rent either their own dwelling or dwellings or rooms for other persons are required to submit to the town a list of all rented properties. This list shall include the owner's name and current address and the location of the rental property. The list shall be submitted semi-annually on or before November 30 and May 30. Failure to file this listing shall subject the person, firm, corporation, or association to a civil penalty of fifty dollars ($50.00).

"**Sec. 3.** Collection of Tax. ~~(a) Every operator of a business and every individual renting his or her own property subject to the tax levied pursuant to this act shall on and after the effective date of the levy of the tax, collect the three percent (3%) room occupancy tax. This tax shall be collected as part of the charge for furnishing any taxable accommodations. The tax shall be stated and charged separately from the sales records and shall be paid by the purchaser to the operator of the business as trustee for and on account of the Town of Banner Elk. It is the intent of this act that the room occupancy tax levied by the Town of Banner Elk shall be added to the sales price and that the tax shall be passed on to the purchaser instead of being borne by the operator of the business. The town shall design, print, and furnish to all appropriate businesses in the town the necessary forms for filing returns and instructions to ensure the full collection of the tax.~~

(b) Collection of the tax shall be the responsibility of the Banner Elk Tax Administrator. In his or her discretion, the tax administrator may proceed against an operator whose occupancy tax is delinquent employing all remedies for collection of tax as set out in G.S. 105-367, 105-368, 105-374, and 105-375. In employing the remedies under those statutes, the tax levied under this act shall be treated as a property tax on personal property. The Tax Administrator may audit occupancy tax

reports as he or she deems necessary utilizing information available to him or her in property tax matters.

~~"Sec. 4. Discount for Payment of Taxes When Due. Every operator who pays the occupancy tax imposed by this act may deduct from the amount of the tax for which he is liable and which he actually pays a discount equal to the discount the State allows the operator for collecting State sales and use taxes. Provided, however, the tax administrator may deny a taxpayer the benefit of this section for failure to pay the full tax when due as well as in cases of fraud, evasion, or failure to keep accurate and clear records as required. Provided, further, that in order to receive any discount allowed the taxpayer must deduct the discount at the time of making the monthly remittance of tax to the town.~~

"**Sec. 5.** Disposition of Taxes Collected. The town council shall use at least ~~two-thirds~~ one-third of the room occupancy tax proceeds to promote travel and tourism and shall use the remainder of the proceeds only for tourism-related expenditures. The term 'promote travel and tourism' means to advertise or market an area or activity, publish and distribute pamphlets and other materials, conduct market research, or engage in or sponsor similar promotional activities that attract tourists or business travelers to the area; the term includes administrative expenses incurred in engaging in the listed activities. The term 'tourism-related expenditures' means expenditures that are designed to increase the use of lodging ~~facilities~~ facilities, recreational facilities, and business establishments in the town or to attract tourists or business travelers to the ~~town~~ town, and expenditures incurred by the town in collecting the tax. The term includes expenditures to construct, maintain, operate, or market a convention or meeting facility, a visitors' center, ~~or a coliseum~~ a coliseum, sidewalks, or public parking areas, and other expenditures that, in the judgment of the town council, will facilitate and support tourism.

The town may retain its costs of collecting the tax, not to exceed seven percent (7%) of the amount collected.

~~"Sec. 6. Repeal of Levy. The Banner Elk Town Council may by resolution repeal the levy of the room occupancy tax in Banner Elk, but no repeal of taxes levied under this act shall be effective until the end of the fiscal year in which the repeal resolution was adopted. No liability for a tax levied under this act that attached prior to the date on which a levy is repealed shall be discharged as a result of the repeal, and no right to a refund of a tax that accrued prior to the effective date on which a levy is repealed shall be denied as a result of the repeal.~~"

Section 7. G.S. 160A-215 reads as rewritten:

"**§ 160A-215. Uniform provisions for room occupancy taxes.**

(a) Scope. -- This section applies only to municipalities the General Assembly has authorized to levy room occupancy taxes. For the purpose of this section, the term "city" means a municipality.

(b) Levy. -- A room occupancy tax may be levied only by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto. A room occupancy tax shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not

be earlier than the first day of the second month after the date the resolution is adopted.

(c) Collection. -- Every operator of a business subject to a room occupancy tax shall, on and after the effective date of the levy of the tax, collect the tax. The tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records and shall be paid by the purchaser to the operator of the business as trustee for and on account of the taxing city. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The taxing city shall design, print, and furnish to all appropriate businesses and persons in the city the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects a room occupancy tax may deduct from the amount remitted to the taxing city a discount equal to the discount the State allows the operator for State sales and use tax.

(d) Administration. -- The taxing city shall administer a room occupancy tax it levies. A room occupancy tax is due and payable to the city finance officer in monthly installments on or before the fifteenth day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the fifteenth day of each month, prepare and render a return on a form prescribed by the taxing city. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A room occupancy tax return filed with the city finance officer is not a public record and may not be disclosed except in accordance with G.S. 153A-148.1 or G.S. 160A-208.1.

(e) Penalties. -- A person, firm, corporation, or association who fails or refuses to file a room occupancy tax return or pay a room occupancy tax as required by law is subject to the civil and criminal penalties set by G.S. 105-236 for failure to pay or file a return for State sales and use taxes. The governing board of the taxing city has the same authority to waive the penalties for a room occupancy tax that the Secretary of Revenue has to waive the penalties for State sales and use taxes.

(f) Repeal or Reduction. -- A room occupancy tax levied by a city may be repealed or reduced by a resolution adopted by the governing body of the city. Repeal or reduction of a room occupancy tax shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the resolution was adopted. Repeal or reduction of a room occupancy tax does not affect a liability for a tax that was attached before the effective date of the repeal or reduction, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal or reduction.

(g) This section applies only to the Cities of Goldsboro, Greensboro, Lumberton, Mount Airy, Shelby, and Statesville, to the Towns of ~~Mooresville~~ Banner Elk, Mooresville, and St. Pauls, and to the municipalities in Brunswick County."

Section 8. Sections 3 and 4 of this act become effective October 1, 2007, and apply to taxes collected on or after that date. Section 6 of this act becomes effective on the first day of the first month after it becomes law and applies to taxes

collected on or after that date. Section 7 of this act is effective when it becomes law. The remainder of this act becomes effective October 1, 2000, and applies to taxes collected on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1647*
Committee Substitute Favorable 6/7/00
Committee Substitute #2 Favorable 6/22/00
Fourth Edition Engrossed 6/28/00
Proposed Senate Committee Substitute H1647-PCS8217-LB3

Short Title: Charlotte Economic Development Quicktake. (Local)

Sponsors:

Referred to:

May 22, 2000

A BILL TO BE ENTITLED

AN ACT TO ALLOW THE CITY OF CHARLOTTE TO USE THE PROCEDURES OF CHAPTER 136 OF THE GENERAL STATUTES FOR CONDEMNATION FOR ECONOMIC DEVELOPMENT PURPOSES WITHIN A DEFINED AREA.

The General Assembly of North Carolina enacts:

Section 1. Section 7.81 of the Charter of the City of Charlotte, being Session Law 2000-26, reads as rewritten:

"Section 7.81. **Powers and Procedures.** (a) Notwithstanding the provisions of G.S. 40A-1, in the exercise of its authority of eminent domain for the acquisition of property to be used for streets and highways, water supply and distribution systems, sewage collection and disposal systems, economic development purposes authorized by law within the territory described in subsection (c) of this section, and airports, the City is hereby authorized to use the procedure and authority prescribed in Article 9 of Chapter 136 of the General Statutes, as now or hereafter amended; provided further, that whenever therein any reference is made to the State of North Carolina or any agency thereof, such reference shall be deemed to include the City, and whenever therein any reference is made to any official of the state of North Carolina, such reference shall be deemed to include the City Manager; provided further that nothing herein shall be construed to enlarge the power of the City to condemn property already devoted to public use.

(b) The City shall have the power of eminent domain to acquire property to provide housing for low- and moderate-income persons but only to acquire: (i) vacant structures Boarded up as a result of housing code violations; (ii) structures that have been found to contain housing code violations that the property owner has failed or refused to correct within a reasonable time; and (iii) vacant properties rendered vacant as a result of a housing code enforcement demolition order. Provided that in the exercise of its authority of eminent domain to acquire property to provide housing for low- and moderate-income persons, the City shall follow the procedures prescribed in Chapter 40A of the General Statutes. Vesting of title to the property taken under this subsection, and right to possession shall occur pursuant to the provisions of G.S. 40A-42(b). The City may not file an eminent domain action to acquire property described in clauses (i) or (ii) of this subsection until the property owner has had 150 days from the date of the order finding violations of the City housing code to correct the violations. The Council must adopt a plan to use condemned property for low- or moderate-income housing prior to exercising the powers under this subsection.

(c) The area within which the City of Charlotte is authorized to use the procedure and authority prescribed in Article 9 of Chapter 136 of the General Statutes for economic development purposes by subsection (a) of this section is as follows: an area bounded on the east by Berryhill Road, on the south by the Norfolk Southern Railroad, on the north by Wilkinson Boulevard, and on the west by Billy Graham Parkway. The property may be conveyed at private sale as allowed by the exception in G.S. 160A-279(d), but otherwise following the procedures of G.S. 160A-279.

(d) Before the City of Charlotte may use the procedure and authority prescribed in Article 9 of Chapter 136 of the General Statutes for economic development purposes in the area defined in subsection (c) of this section, the City shall designate a not-for-profit corporation to which it may intend to convey the property at private sale as allowed by subsection (c) of this section, and that corporation must demonstrate to the City that the corporation has attempted to negotiate with the property owner in good faith for the purchase of the property.

(e) Before the City of Charlotte may use the procedure and authority prescribed in Article 9 of Chapter 136 of the General Statutes for economic development purposes in the area defined in subsection (c) of this section, the corporation designated under subsection (d) of this section must demonstrate to the City that as long as the use of the property is compatible with the development plan for the area, the corporation has used its best good faith efforts to relocate within the economic development project area any business displaced by the project."

Section 2. This act is effective when it becomes law.

HOUSE BILL 1647:
Charlotte Economic Development Quicktake

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Rep. McMahan
Date:	June 29, 2000	**Summary by:**	Martha K. Walston Committee Counsel
Version:	Proposed Senate Committee Substitute H1647-CSLB-3		

SUMMARY: ***House Bill 1647 amends the newly ratified Charlotte Charter (HB 1667) by allowing the City to use the condemnation procedure in Article 9 of Chapter 136 for economic development purposes within a defined area of the City. This defined area may be conveyed at private sale. The condemnation procedure in Article 9 of Chapter 136 is used by the Department of Transportation and provides a quicker way to acquire property than the condemnation procedure in Chapter 40A. The act is effective when it becomes law.***

CURRENT LAW: Under the current Charter of the City of Charlotte, the City has the power of eminent domain and may acquire property by condemnation under Chapter 40A. This Chapter sets forth the condemnation procedures for cities and counties, private condemnors, and certain other listed public condemnors. The Charter also authorizes the City to acquire property for streets and highways, water supply and distribution systems, sewage collection and disposal systems, and airports by using the condemnation procedure in Article 9 of Chapter 136 (Condemnation by the Department of Transportation). This procedure for condemnation vests title and right to immediate possession in the City upon the filing of the complaint for condemnation, the declaration of taking, and deposit in the court of the estimated compensation.

BILL ANALYSIS: House Bill 1647 amends the Charter of Charlotte as follows:

- The City may use the condemnation procedure in Article 9 of Chapter 136 for economic development purposes within a defined area of the City. The defined area may be conveyed at private sale
- Use of the condemnation procedure in Article 9 of Chapter 136 for economic development purposes in the defined area of the City, is conditioned on the following:
    1. The City must designate a not-for-profit corporation to which it may intend to convey the property at private sale.
    2. The not-for-profit corporation must demonstrate to the City that the corporation has attempted to negotiate with the property owner in good faith for the purchase of the property.
    3. The not-for-profit corporation must demonstrate to the City that as long as the use of the property is compatible with the development plan for the area, the corporation has used its best good faith efforts to relocate within the economic development project area any business displaced by the project.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 1

SENATE BILL 1529

Short Title: Register of Deeds Fee Adjustments. (Public)

Sponsors: Senator Dalton.

Referred to: Finance.

May 30, 2000

A BILL TO BE ENTITLED

AN ACT TO ADJUST AND ADD FEES CHARGED BY THE REGISTER OF DEEDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 47-21 reads as rewritten:

"**§ 47-21. Blank or master forms of mortgages, etc.; embodiment by reference in instruments later filed.**

It shall be lawful for any person, firm or corporation to have a blank or master form of mortgage, deed of trust, or other instrument conveying an interest in, or creating a lien on, real and/or personal property, filed, indexed and recorded in the office of the register of deeds. When any ~~such~~ blank or master form is filed with the register of deeds, ~~he~~ the register of deeds shall record ~~the same, and shall index the same~~ and index it in the manner now provided by law for the indexing of instruments recorded in his office, except that the name of the person, firm or corporation whose name appears on ~~such~~ the blank or master form shall be inserted in the indices as grantor and also as grantee. The fee for filing, recording and indexing ~~such~~ a blank or master form shall be ~~five dollars ($5.00).~~ fifty dollars ($50.00) for the first page, which page shall not exceed 8 1/2 inches by 14 inches, plus two dollars ($2.00) for each additional page or fraction thereof. A page exceeding 8 1/2 inches by 14 inches shall be considered two pages.

When any deed, mortgage, deed of trust, or other instrument conveying an interest in, or creating a lien on, real and/or personal property, refers to the provisions, terms, covenants, conditions, obligations, or powers set forth in any ~~such~~ blank or master form recorded as ~~herein authorized,~~ authorized by this section, and states the

office of recordation of ~~such~~ the blank or master form, book and page where ~~same~~ it is ~~recorded such~~ recorded, that reference shall be equivalent to setting forth in extenso in ~~such~~ the deed, mortgage, deed of trust, or other instrument conveying an interest in, or creating a lien on, real and/or personal property, the provisions, terms, covenants, conditions, obligations and powers set forth in ~~such~~ the blank or master form. Provided this section shall not apply to Alleghany, Ashe, Avery, Beaufort, Bladen, Camden, Carteret, Chowan, Cleveland, Columbus, Dare, Gates, Granville, Guilford, Halifax, Iredell, Jackson, Martin, Moore, Perquimans, Sampson, Stanly, Swain, Transylvania, Vance, Washington and Watauga Counties."

Section 2. G.S. 161-10(a) reads as rewritten:

"(a) Except as provided in G.S. 161-11.1 or 161-11.2, all fees collected under this section shall be deposited into the county general fund. ~~In the performance of his duties,~~ While performing the duties of the office, the register of deeds shall collect the following fees which shall be uniform throughout the State:

* * *

(8a) Vital Records Network. -- For obtaining access to the Vital Records Computer Network two dollars ($2.00).

* * *

(19) Miscellaneous Services. -- For performing miscellaneous services such as faxing documents, providing laminated copies of documents, expedited delivery of documents, and similar services, the cost of the service."

Section 3. This act becomes effective October 1, 2000.

SENATE BILL 1529:
Register of Deeds Fee Adjustments.

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Senator Dalton
Date:	June 21, 2000	**Summary by:**	Karen Cochrane Brown
Version:	First Edition		Committee Co-Counsel

SUMMARY:

Senate Bill 1529 increases the fee for filing, recording and indexing a blank or master form mortgage or deed of trust from $5.00 to $50.00 for the first page plus $2.00 for each additional page. The bill also authorizes the register of deeds to collect a fee of $2.00 for providing access to the Vital Records Computer Network and to collect the actual cost of providing miscellaneous services such as faxing documents, laminating documents, or providing expedited delivery.

CURRENT LAW:

Under current law, a person, firm or corporation may file a blank or master form mortgage, deed of trust or other instrument conveying an interest in, or creating a lien on real and/or personal property. A subsequent deed, mortgage, deed of trust or other instrument may refer to the provisions, terms, covenants, conditions, obligations, or powers set forth in the blank or master form and state the office of recordation, and the reference shall be the equivalent of setting forth the provisions of the blank or master form in full. The register of deeds is authorized to charge a fee of five dollars for filing, recording, and indexing a blank or master form. This provision does not apply to the following counties:

Alleghany, Ashe, Avery, Beaufort, Bladen, Camden, Carteret, Chowan, Cleveland, Columbus, Dare, Gates, Granville, Guilford, Halifax, Iredell, Jackson, Martin, Moore, Perquimans, Sampson, Stanly, Swain, Transylvania, Vance, Washington, and Watauga.

BILL ANALYSIS:

This bill authorizes the register of deeds to charge an increased fee for filing, recording and indexing a blank or master form document. The increase is from five dollars for the entire document to fifty dollars for the first page plus two dollars for each additional page.

In addition, the bill amends the law relating to uniform fees charged by registers of deeds by adding two additional services. The register of deeds may collect a two-dollar fee for obtaining access to the Vital Records Computer Network, and may also collect the cost of providing miscellaneous services such as faxing, laminating and expediting delivery.

This act becomes effective October 1, 2000.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 1529 (First Edition)

SHORT TITLE: Register of Deeds Fee Adjustments

SPONSOR(S): Senator Dalton

FISCAL IMPACT

Yes ( ) **No ( )** **No Estimate Available (X)**

	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05
REVENUES					
EXPENDITURES					
POSITIONS:					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: County Governments

EFFECTIVE DATE: This act is effective October 1, 2000.

BILL SUMMARY: This bill amends G.S. 47-21 to authorize the county Registers of Deeds to adjust the fee for filing, recording, and indexing a blank or master form of mortgage, deed of trust, or other instrument conveying a lien on real or personal property. The legislation allows them to raise the fee for this service from $5 to $50 for the first page, and $2 for each additional page or fraction thereof. This legislation does not apply to the following counties:

Alleghany, Ashe, Avery, Beaufort, Bladen, Camden, Carteret, Chowan, Cleveland, Columbus, Dare, Gates, Granville, Guilford, Halifax, Iredell, Jackson, Martin, Moore, Perquimans, Sampson, Stanly, Swain, Transylvania, Vance, Washington, and Watauga.

The second portion of this legislation amends G.S. 161-10 (a) to authorize the county Register of Deeds to collect a $2 access fee to the Vital Records Network, and to collect the cost of providing miscellaneous services.

ASSUMPTIONS AND METHODOLOGY: G.S. 47-21 that authorizes the collection of fees for the filing of blank or master forms for mortgages, deeds of trust, and other property liens was

first authorized in 1935, and was amended in 1971 to the current $5 rate. However, the convention of filing on blank or master forms is very rarely utilized in North Carolina anymore. According to the North Carolina Association of Registers of Deeds, on average, ten of these master forms are recorded and filed per year across the state. Of those filed, the documents are an average of six pages. This fiscal note assumes a yearly filing of ten of these master forms that contain six pages each. Therefore, upon the passing of this bill, the gross revenue for all counties will be approximately **$550** from this portion of the bill.

The second portion of this bill authorizes county Registers of Deeds to collect a $2 fee for access to the Vital Records Network, and to collect the costs of providing miscellaneous services. Currently, a North Carolina resident may, for a $10 fee, obtain an official birth certificate duplicate by travelling to Vital Records in Raleigh or waiting 6-8 weeks for the duplicate to arrive via the mail request system. Of this $10, $5 is directed to the state general fund and $5 to the State Automation Fund. A Vital Records Network that would allow residents to obtain an official birth certificate from any county in the state has been designed, and is being implemented. This system would allow North Carolina residents to obtain an official birth certificate from the Register of Deeds in their county of residence, without physically going to Vital Records in Raleigh or waiting 6-8 weeks for the mail request system. The test pilot for this Vital Records Network is scheduled for implementation in Harnett County in August of this year.

Under current legislation, Registers of Deeds are only authorized to collect $8 for access to this Vital Records Network. Of this $8, $5 is directed to the State Automation Fund, and $3 is directed to the state general fund. This situation creates a $2 discrepancy between obtaining a birth certificate via the network, and obtaining a certificate by the conventional means of mail request or travelling to Raleigh. Upon the passing of this legislation, the fee for obtaining a birth certificate duplicate would be the same regardless of which method is used. There is currently no estimate of the number of North Carolinians who will utilize the Vital Records Network service or the number of counties that will participate, until the performance of the test pilot is evaluated. Therefore, no estimate of the fiscal impact of this portion of the bill is available at this time. Yet given the time and expense of travel to Raleigh from other cities, and the time involved in a mail request, the majority of Registers of Deeds in the state feel that a vast majority of residents will choose to utilize the service.

The second portion of this bill also allows the county Register of Deeds to collect the costs of providing miscellaneous services that vary across counties. This portion of the bill is permissive, and authorizes the Registers of Deeds to charge a fee for the actual expenses incurred from providing such services such as lamination, faxing, expedited delivery, etc.. This legislation merely allows county Registers of Deeds to recoup the costs of these services, and therefore has no fiscal impact.

TECHNICAL CONSIDERATIONS:

PREPARED BY: Richard Bostic and Eugene Son (Research Assistant)

APPROVED BY:

DATE: June 19, 2000

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S D

SENATE BILL 1529
Proposed Committee Substitute S1529-PCS8675-LA001

Short Title: Register of Deeds Fee Adjustments. (Public)

Sponsors:

Referred to:

May 30, 2000

A BILL TO BE ENTITLED

AN ACT TO ADJUST AND ADD FEES CHARGED BY THE REGISTER OF DEEDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 161-10(a) reads as rewritten:

"(a) Except as provided in G.S. 161-11.1 or 161-11.2, all fees collected under this section shall be deposited into the county general fund. ~~In the performance of his duties,~~ While performing the duties of the office, the register of deeds shall collect the following fees which shall be uniform throughout the State:

. . .

(8a) Vital Records Network. -- For obtaining access to the Vital Records Computer Network, two dollars ($2.00).

. . .

(19) Miscellaneous Services. -- For performing miscellaneous services such as faxing documents, providing laminated copies of documents, expedited delivery of documents, and similar services, the cost of the service."

Section 2. This act becomes effective October 1, 2000.

SENATE BILL 1529:
Register of Deeds Fee Adjustments.

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Senator Dalton
Date:	June 30, 2000	**Summary by:**	Martha K. Walston and Karen Cochrane Brown Committee Co-Counsel
Version:	Proposed Committee Substitute		

SUMMARY:

The proposed committee substitute for Senate Bill 1529 authorizes the register of deeds to collect a fee of $2.00 for providing access to the Vital Records Computer Network and to collect the actual cost of providing miscellaneous services such as faxing documents, laminating documents, or providing expedited delivery. The original bill also increased the fee for filing, recording and indexing a blank or master form mortgage or deed of trust from $5.00 to $50.00 for the first page plus $2.00 for each additional page. The Proposed Committee Substitute keeps the fee at $5.00.

CURRENT LAW:

G.S. 161-10 sets out the uniform fees charged by registers of deeds. These fees are deposited into the county general fund with the following exceptions: (a) the uniform fees do not apply to armed forces discharge documents, and (b) $20 of each marriage license fee is credited to the Domestic Violence Center Fund.

BILL ANALYSIS:

The bill amends G.S. 161-10 by adding two additional services for which fees are to be collected. The register of deeds may collect a two-dollar fee for obtaining access to the Vital Records Computer Network, and may also collect the cost of providing miscellaneous services such as faxing, laminating and expediting delivery. These fees are deposited into the county general fund.

This act becomes effective October 1, 2000.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: SB 1529 (Senate Finance Committee Substitute)

SHORT TITLE: Register of Deeds Fee Adjustments

SPONSOR(S): Senator Dalton

FISCAL IMPACT

Yes ( ) **No ( )** **No Estimate Available (X)**

	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05
REVENUES					
EXPENDITURES					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: County Registers of Deeds

EFFECTIVE DATE: This act is effective October 1, 2000.

BILL SUMMARY:
This legislation amends G.S. 161-10 (a) to authorize county Registers of Deeds to collect a $2 access fee to the Vital Records Network and to collect the cost of providing miscellaneous services.

ASSUMPTIONS AND METHODOLOGY:
Section 2 of SB 1529 authorizes county Registers of Deeds to collect a $2 fee for access to the Vital Records Network. Currently, a North Carolina resident pays a $10 fee to obtain an official birth certificate duplicate by travelling to Vital Records in Raleigh or by waiting 6-8 weeks for the duplicate to arrive via the mail request system. Of this $10, $5 is directed to the state General Fund and $5 to the State Automation Fund. A Vital Records Network has been designed to allow North Carolina residents to obtain on-line access to official birth certificate duplicates from the Register of Deeds in their county of residence. The test pilot for this Vital Records Network is scheduled for implementation in Harnett County in August of this year.

Under current legislation, Registers of Deeds are only authorized to collect $8 for access to this Vital Records Network. Of this $8, $5 is directed to the State Automation Fund and $3 is directed to the state General Fund. This situation creates a $2 discrepancy between obtaining a birth certificate via the network and obtaining a certificate by the conventional means of mail

request or travel to Raleigh. Upon the passage of SB 1529, the fee for obtaining a birth certificate duplicate will be the same regardless of which method is used. Until the Harnett County pilot project is completed, there is no reliable estimate of the number of North Carolinians who will utilize the Vital Records Network. There is also no estimate of the number of counties that will participate in the program. Therefore, no estimate of the fiscal impact of this portion of the bill is available at this time. However, the majority of Registers of Deeds in the state feel that most residents will choose to utilize the Vital Records Network because of the time and expense of travel to Raleigh and the time involved in a mail request.

This bill also allows the county Register of Deeds to collect the costs of providing miscellaneous services. Under the bill, the Registers of Deeds may charge a fee for the actual expenses incurred from providing such services such as lamination, faxing, expedited delivery, etc. No estimate is available of the amount of uncompensated services provided by the 100 Registers of Deeds.

TECHNICAL CONSIDERATIONS:

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic and Eugene Son (Research Assistant)

APPROVED BY:

DATE:

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT

John Kerr, Co-Chair
David Hoyle, Co-Chair

Friday, June 30, 2000

SENATOR KERR,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO BILL, BUT FAVORABLE AS TO C.S. BILL

S.B. **1529** Register of Deeds Fee Adjustments.

Draft Number:	PCS8675
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2)**1647** Charlotte Economic Development Quicktake.

Draft Number:	PCS8217
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1, BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1)**1748** Change Granville Room Use Tax.

Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 3

Committee Clerk Comment: SB1529 HB1647 HB1748

SENATE FINANCE COMMITTEE

FRIDAY, JUNE 30, 2000

ON THE FLOOR
(RECESS DURING SESSION – 1:55 P.M.)

The Senate Finance Committee met on Friday, June 30, 2000, at 1:55 P.M. on the floor while session was in recess with Senator John Kerr presiding. All committee members present for session were in attendance.

HB 1508 – GUN PERMIT/DECREASE RENEWAL FEE.
Senator Odom was recognized to explain the Bill and at the conclusion of his explanation, Senator Gulley moved for a Favorable Report. The motion carried. Copy of Bill and Explanation included in the minutes.

David W. Hoyle, Co-Chair
Senate Finance Committee

John H. Kerr, III, Co-Chair
Senate Finance Committee

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

Committee Report is Attachment # 1

Public/Roll Call
Mitchell

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 1508
Committee Substitute Favorable 6/26/00

Short Title: Gun Permit/Decrease Renewal Fee. (Public)

Sponsors:

Referred to:

May 11, 2000

A BILL TO BE ENTITLED

AN ACT TO ELIMINATE THE FINGERPRINTING REQUIREMENT FOR RENEWAL OF A CONCEALED HANDGUN PERMIT WHERE DOING SO WOULD NOT IMPEDE CRIMINAL RECORD UPDATES; TO DECREASE THE FEE FOR RENEWAL OF A CONCEALED HANDGUN PERMIT; AND TO CLARIFY THAT THE RELEASE FORM SUBMITTED FOR A CONCEALED HANDGUN APPLICANT'S MENTAL HEALTH RECORDS MAY BE AN ORIGINAL OR PHOTOCOPIED FORM.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-415.16 reads as rewritten:

"**§ 14-415.16. Renewal of permit.**

The holder of a permit shall apply to renew the permit at least 30 days prior to its expiration date by filing with the sheriff of the county in which the person resides a renewal form provided by the sheriff's office, a notarized affidavit stating that the permittee remains qualified under the criteria provided in this Article, a newly administered full set of the permittee's fingerprints, and a renewal fee. Upon receipt of the completed renewal application, including the permittee's fingerprints, and the appropriate payment of fees, the sheriff shall determine if the permittee remains qualified to hold a permit in accordance with the provisions of G.S. 14-415.12. The permittee's criminal history shall be updated, and the sheriff may waive the requirement of taking another firearms safety and training course. If the permittee applies for a renewal of the permit within 30 days of its expiration date and if the permittee remains qualified to have a permit under G.S. 14-415.12, the sheriff shall

renew the permit. No fingerprints shall be required for a renewal permit if the applicant's fingerprints were submitted to the State Bureau of Investigation after June 30, 2001, on the Automated Fingerprint Information System (AFIS) as prescribed by the State Bureau of Investigation."

Section 2. G.S. 14-415.19 reads as rewritten:

"**§ 14-415.19. Fees.**

(a) The permit fees assessed under this Article are payable to the sheriff. The sheriff shall transmit the proceeds of these fees to the county finance officer to be remitted or credited by the county finance officer in accordance with the provisions of this subsection. The permit fees are as follows:

Application fee.....	$80.00
Renewal fee.....	~~$80.00~~ $75.00
Duplicate permit fee.....	$15.00

The county finance officer shall remit forty-five dollars ($45.00) of each new application fee ~~or~~ and forty dollars ($40.00) of each renewal fee to the North Carolina Department of Justice for the costs of State and federal criminal record checks performed in connection with processing applications and for the implementation of the provisions of this Article. The remaining thirty-five dollars ($35.00) of each application or renewal fee shall be used by the sheriff to pay the costs of administering this Article and for other law enforcement purposes. The county shall expend the restricted funds for these purposes only.

(b) An additional fee, not to exceed ten dollars ($10.00), shall be collected by the sheriff from an applicant for a permit to pay for the costs of processing the applicant's ~~fingerprints.~~ fingerprints, if fingerprints were required to be taken. This fee shall be retained by the sheriff."

Section 3. G.S. 14-415.14 is amended by adding a new subsection to read:

"(c) Any person or entity who is presented by the applicant or by the sheriff with an original or photocopied release form as described in G.S. 14-415.13(a)(5) shall promptly disclose to the sheriff any records concerning the mental health or capacity of the applicant who signed the form and authorized the release of the records."

Section 4. The Division of Mental Health, Developmental Disabilities, and Substance Abuse Services of the Department of Health and Human Services shall notify by United States mail, telefacsimile, or electronic mail all mental health clinics, hospitals, and licensed mental health professionals in North Carolina about the requirement in Section 3 of this act within 30 days after the effective date of this act.

Section 5. This act becomes effective July 1, 2000.

HOUSE BILL 1508:
Gun Permit/Decrease Renewal Fee

BILL ANALYSIS

Committee:	House Finance	**Introduced by:**	Representative Mitchell
Date:	June 27, 2000	**Summary by:**	Mary Shuping
Version:	2nd edition		Research Assistant

SUMMARY: ***House Bill 1508, 2nd edition, eliminates the fingerprint requirement for renewal of a concealed handgun permit in certain circumstances; decreases the fee for the renewal of a concealed handgun permit; and requires mental health authorities to disclose to the sheriff the mental health records of an applicant upon the presentation of an original or photocopied release form.***

CURRENT LAW & BILL ANALYSIS:

Section 1. Current law requires a person who holds a concealed handgun permit to apply for renewal at least 30 days prior to the expiration of the permit by filing the following information with the sheriff in the county where the person resides:

- Notarized affidavit stating the person remains qualified to carry a permit.
- Newly administered set of fingerprints (for criminal background checks and criminal records updates).
- Renewal fee.

Section 1 of the bill provides that a new set of fingerprints will not be required for the renewal of a permit if the applicant's fingerprints were submitted to the SBI after June 30, 2001 using the Automated Fingerprint Information System (AFIS).

Section 2 revises the fees for renewal as follows:

Type of Fee	Current Fee	Proposed Fee
Application Fee	$80.00 *($45 to DOJ & $35 to sheriff)*	No Change
Renewal Fee	$80.00 *($45 to DOJ & $35 to sheriff)*	$75.00 *($40 to DOJ & $35 to sheriff)*
Fingerprint Fee	$10.00	$10.00 *Only if new fingerprints are required*

Sections 3 and 4. Current law requires applicants to submit a release form, prescribed by the Administrative Office of the Courts, that authorizes and requires disclosure to the sheriff of any records concerning the applicant's mental health or capacity.

Section 3 requires any person or entity (i.e., mental health provider) who is presented with an original or photocopied release form as described above to promptly disclose the applicant's mental health records to the sheriff.

Section 4 requires the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services in DHHS, to notify all mental health providers in North Carolina of the requirement set forth above within 30 days of the effective date.

EFFECTIVE DATE: July 1, 2000.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
John Kerr, Co-Chair
David Hoyle, Co-Chair

Friday, June 30, 2000

SENATOR KERR,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS #1)**1508** Gun Permit/Decrease Renewal Fee.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comment: HB 1508

SENATE FINANCE COMMITTEE

THURSDAY, JULY 6, 2000

11:00 AM - ROOM 544

The Senate Finance Committee met on Thursday, July 6, 2000 at 11:00 AM in room 544 of the Legislative Office Building with Senator Hoyle presiding. There were 24 members of the committee present. Turner Harris from Kings Mountain, North Carolina, sponsored by Senator Hoyle, Jordan Pierce from Kernersville, North Carolina, sponsored by Senator Horton and Bethany Keegan from Whispering Pines, North Carolina, sponsored by Senator Kinnaird were introduced as the pages for the meeting.

SB 1192 - CRIM. RECORD CHECKS/LONG-TERM CARE

Senator Rand was recognized to explain the bill. Senator Rand moved for the adoption of a proposed committee substitute, motion passed. After a time of discussion, Senator Ballantine moved to give the bill a "Favorable Report", motion passed. Copy of bill and supporting document included in the minutes.

HB 1290 - REVENUE LAWS CLARIFYING CHANGES

Senator Kerr was recognized to explain the bill in the absence of Representative Luebke. Senator Kerr moved for adoption of a proposed committee substitute, motion passed. Martha Walston, Committee Attorney, was recognized to explain the changes in the bill. After a time of discussion, Senator Rand moved to give the bill a "Favorable Report", motion passed. Copy of bill and supporting documents included in minutes.

Meeting adjourned.

David W. Hoyle, Co-Chairman

John H. Kerr, III, Co-Chairman

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

Visitors' Sign Up Sheet is Attachment #1
Committee Report is Attachment #2

AGENDA

SENATE FINANCE COMMITTEE MEETING

THURSDAY, JULY 6, 2000

11:00 AM – ROOM 544 LOB

MEETING CALLED TO ORDER

INTRODUCTION OF PAGES

BILLS TO BE HEARD:

SB 1192 – Crim. Record Checks/Long-Term Care – Sen. Rand
HB 1290 – Revenue Laws Clarifying Changes – Rep. Luebke

ADJOURNMENT OF MEETING

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S 2

SENATE BILL 1192*
Judiciary I Committee Substitute Adopted 6/27/00

Short Title: Crim. Record Checks/Long-Term Care. (Public)

Sponsors:

Referred to:

May 10, 2000

A BILL TO BE ENTITLED

AN ACT TO REQUIRE CRIMINAL BACKGROUND CHECKS FROM STATE AND NATIONAL REPOSITORIES OF CRIMINAL HISTORY FOR CERTAIN APPLICANTS FOR EMPLOYMENT IN ADULT CARE HOMES, NURSING HOMES, HOME CARE AGENCIES, AND CERTAIN MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES FACILITIES; TO IMPOSE A CRIMINAL PENALTY FOR FALSIFYING INFORMATION ON EMPLOYMENT APPLICATIONS; AND TO REQUIRE CERTAIN DISCLOSURES BY NURSING HOMES.

The General Assembly of North Carolina enacts:

Section 1. Article 4 of Chapter 114 of the General Statutes is amended by adding the following new section to read:

"**§ 114-19.10. Criminal record checks for adult care homes, nursing homes, home care agencies, and area mental health, developmental disabilities, and substance abuse services authorities.**

The Department of Justice may provide to the following entities the criminal history from the State and National Repositories of Criminal Histories:

(1) Nursing homes or combination homes licensed under Chapter 131E of the General Statutes.

(2) Adult care homes licensed under Chapter 131D of the General Statutes.

(3) Home care agencies licensed under Chapter 131E of the General Statutes.

(4) Area mental health, developmental disabilities, and substance abuse services authorities licensed under Chapter 122C of the General Statutes, including a contract agency of an area authority that is subject to the provisions of Article 4 of that Chapter.

The criminal history shall be provided to nursing homes and home care agencies in accordance with G.S. 131E-265, to adult care homes in accordance with G.S. 131D-40, and to area mental health, developmental disabilities, and substance abuse services authorities in accordance with G.S. 122C-80. The requesting entity shall provide to the Department of Justice, along with the request, the fingerprints of the individual to be checked if a national criminal history record check is required, any additional information required by the Department of Justice, and a form signed by the individual to be checked consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories of Criminal Histories. If a national criminal history record check is required, the fingerprints of the individual shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. All information received by the entity shall be kept confidential in accordance with G.S. 131E-265, 131D-40, and 122C-80, as applicable. The Department of Justice shall charge a reasonable fee for conducting the checks authorized by this section. The fee for the State check may not exceed fourteen dollars ($14.00)."

Section 2.(a) Subsections (a) and (a1) of G.S. 131D-40 read as rewritten:

"(a) Requirement; Adult Care Home. -- An offer of employment by an adult care home licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned on consent to a criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. An adult care home shall not employ an applicant who refuses to consent to a criminal history record check required by this section. Within five business days of making the conditional offer of employment, an ~~An~~ adult care home shall submit a request to the Department of Justice under ~~G.S. 114-19.3~~ G.S. 114-19.10 to conduct a State or national criminal history record ~~check~~ check required by this section, or shall submit a request to a private entity to conduct a State criminal history record check required by this section. ~~within five business days of making the conditional offer of employment.~~ All criminal history information received by the home is confidential and may not be disclosed, except to the applicant as provided in subsection (b) of this section.

(a1) Requirement; Contract Agency of Adult Care Home. -- An offer of employment by a contract agency of an adult care home licensed under this Chapter

to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned upon consent to a criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. A contract agency of an adult care home shall not employ an applicant who refuses to consent to a criminal history record check required by this section. Within five business days of making the conditional offer of employment, a ~~A~~ contract agency of an adult care home shall submit a request to the Department of Justice under G.S. ~~114-19.3~~ 114-19.10 to conduct a State or national criminal history record check required by this section, or shall submit a request to a private entity to conduct a State criminal history record check required by this section. ~~criminal history record check within five business days of making the conditional offer of employment.~~ All criminal history information received by the contract agency is confidential and may not be disclosed, except to the applicant as provided by subsection (b) of this section."

Section 2.(b) G.S. 131D-40 is amended by adding the following new subsections to read:

"(e) Penalty for Furnishing False Information. -- Any applicant for employment who willfully furnishes, supplies, or otherwise gives false information on an employment application that is the basis for a criminal history record check under this section shall be guilty of a Class A1 misdemeanor.

(f) Conditional Employment. -- An adult care home may employ an applicant conditionally prior to obtaining the results of a criminal record check regarding the applicant if both of the following requirements are met:

(1) The adult care home shall not employ an applicant prior to obtaining the applicant's consent for a criminal record check as required in subsection (a) of this section or the completed fingerprint cards as required in G.S. 114-19.10.

(2) The adult care home shall submit the request for a criminal record check not later than five business days after the individual begins conditional employment.

(g) Immunity From Liability. -- An entity and officers and employees of an entity shall be immune from liability for failure to consider criminal history information not contained in the criminal history record check requested and received by the entity pursuant to this section."

Section 3.(a) Subsections (a) and (a1) of G.S. 131E-265 read as rewritten:

"(a) Requirement; Nursing Home or Home Care Agency. -- An offer of employment by a nursing home licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned on consent to a criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of

employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. An offer of employment by a home care agency licensed under this Chapter to an applicant to fill a position that requires entering the patient's home is conditioned on consent to a criminal history record check of the applicant. In addition, employment status change of a current employee of a home care agency licensed under this Chapter from a position that does not require entering the patient's home to a position that requires entering the patient's home shall be conditioned on consent to a criminal history record check of that current employee. If the applicant for employment or if the current employee who is changing employment status has been a resident of this State for less than five years, then the offer of employment or change in employment status is conditioned on consent to a State and national criminal history record check. The national criminal history record check shall include a check of the applicant's or current employee's fingerprints. If the applicant or current employee has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant or current employee applying for a change in employment status. A nursing home or a home care agency shall not employ an applicant who refuses to consent to a criminal history record check required by this section. In addition, a home care agency shall not change a current employee's employment status from a position that does not require entering the patient's home to a position that requires entering the patient's home who refuses to consent to a criminal history record check required by this section. Within five business days of making the conditional offer of employment, ~~A~~ a nursing home or home care agency shall submit a request to the Department of Justice under G.S. ~~114-19.3~~ 114.19.10 to conduct a ~~criminal history record check within five business days of making the conditional offer of employment.~~ State or national criminal history record check required by this section, or shall submit a request to a private entity to conduct a State criminal history record check required by this section. All criminal history information received by the home or agency is confidential and may not be disclosed, except to the applicant as provided in subsection (b) of this section.

(a1) Requirement; Contract Agency of Nursing Home or Home Care Agency. -- An offer of employment by a contract agency of a nursing home or home care agency licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned upon consent to a criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. A contract agency of a nursing home or home care agency shall not employ an

applicant who refuses to consent to a criminal history record check required by this section. Within five business days of making the conditional offer of employment, ~~A~~ a contract agency of a nursing home or home care agency shall submit a request to the Department of Justice under G.S. ~~114-19.3~~ 114-19.10 ~~to conduct a criminal history record check within five business days of making the conditional offer of employment.~~ to conduct a State or national criminal history record check required by this section, or shall submit a request to a private entity to conduct a State criminal history record check required by this section. All criminal history information received by the contract agency is confidential and may not be disclosed, except to the applicant as provided by subsection (b) of this section."

Section 3.(b) G.S. 131E-265 is amended by adding the following new subsections to read:

"(e) Penalty for Furnishing False Information. -- Any applicant for employment who willfully furnishes, supplies, or otherwise gives false information on an employment application that is the basis for a criminal history record check under this section shall be guilty of a Class A1 misdemeanor.

(f) Conditional Employment. -- A nursing home or home care agency may employ an applicant conditionally prior to obtaining the results of a criminal record check regarding the applicant if both of the following requirements are met:

(1) The nursing home or home care agency shall not employ an applicant prior to obtaining the applicant's consent for a criminal record check as required in subsection (a) of this section or the completed fingerprint cards as required in G.S. 114-19.10.

(2) The nursing home or home care agency shall submit the request for a criminal record check not later than five business days after the individual begins conditional employment.

(g) Immunity From Liability. -- An entity and officers and employees of an entity shall be immune from liability for failure to consider criminal history information not contained in the criminal history record check requested and received by the entity pursuant to this section."

Section 4. Chapter 122C of the General Statutes is amended by adding the following new Article to read:

"ARTICLE 3A.

"Miscellaneous Provisions.

"§ 122C-80. Criminal history record check required for certain applicants for employment.

(a) Definition. -- As used in this section, 'area authority' means an area mental health, developmental disabilities, and substance abuse services area authority, including a contract agency of an area authority that is subject to the provisions of Article 4 of this Chapter.

(b) Requirement. -- An offer of employment by an area authority licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned on consent to a State and national criminal history record check of the applicant. If the applicant has been a resident of

this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. An area authority shall not employ an applicant who refuses to consent to a criminal history record check required by this section. Within five business days of making the conditional offer of employment, an area authority shall submit a request to the Department of Justice under G.S. 114-19.10 to conduct a criminal history record check required by this section. All criminal history information received by the area authority is confidential and may not be disclosed, except to the applicant as provided in subsection (c) of this section.

(c) Action. -- If an applicant's criminal history record check reveals one or more convictions of a relevant offense, the area authority shall consider all of the following factors in determining whether to hire the applicant:

(1) The level and seriousness of the crime.

(2) The date of the crime.

(3) The age of the person at the time of the conviction.

(4) The circumstances surrounding the commission of the crime, if known.

(5) The nexus between the criminal conduct of the person and the job duties of the position to be filled.

(6) The prison, jail, probation, parole, rehabilitation, and employment records of the person since the date the crime was committed.

(7) The subsequent commission by the person of a relevant offense.

The fact of conviction of a relevant offense alone shall not be a bar to employment; however, the listed factors shall be considered by the area authority. If the area authority disqualifies an applicant after consideration of the relevant factors, then the area authority may disclose information contained in the criminal history record check that is relevant to the disqualification, but may not provide a copy of the criminal history record check to the applicant.

(d) Limited Immunity. -- An area authority and an officer or employee of an area authority that, in good faith, complies with this section shall be immune from liability for:

(1) The failure of the area authority to employ an individual on the basis of information provided in the criminal history record check of the individual.

(2) Failure to consider criminal history information not contained in the criminal history record check requested and received by the entity pursuant to this section.

(e) Relevant Offense. -- As used in this section, 'relevant offense' means a State crime, whether a misdemeanor or felony, that bears upon an individual's fitness to have responsibility for the safety and well-being of persons needing mental health, developmental disabilities, or substance abuse services. These crimes include the

criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. These crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

(f) Penalty for Furnishing False Information. -- Any applicant for employment who willfully furnishes, supplies, or otherwise gives false information on an employment application that is the basis for a criminal history record check under this section shall be guilty of a Class A1 misdemeanor.

(g) Conditional Employment. -- An area authority may employ an applicant conditionally prior to obtaining the results of a criminal record check regarding the applicant if both of the following requirements are met:

(1) The area authority shall not employ an applicant prior to obtaining the applicant's consent for criminal record check as required in subsection (b) of this section or the completed fingerprint cards as required in G.S. 114-19.10.

(2) The area authority shall submit the request for a criminal record check not later than five business days after the individual begins conditional employment."

Section 5. G.S. 114-19.3(a) reads as rewritten:

"(a) Authority. -- The Department of Justice may provide to any of the following entities a criminal record check of an individual who is employed by that entity, has applied for employment with that entity, or has volunteered to provide direct care on behalf of that entity:

(1) Hospitals licensed under Chapter 131E of the General Statutes.

~~(2) Nursing homes or combination homes licensed under Chapter 131E of the General Statutes.~~

~~(3) Adult care homes licensed under Chapter 131D of the General Statutes.~~

(4) ~~Home care agencies or hospices~~ Hospices licensed under Chapter 131E of the General Statutes.
(5) Child placing agencies licensed under Chapter 131D of the General Statutes.
(6) Residential child care facilities licensed under Chapter 131D of the General Statutes.
(7) Hospitals licensed under Chapter 122C of the General Statutes.
~~(8) Area mental health, developmental disabilities, and substance abuse authorities licensed under Chapter 122C of the General Statutes, including a contract agency of an area authority that is subject to the provisions of Article 4 of that Chapter.~~
(9) Licensed child care facilities and nonlicensed child care homes regulated by the State.
(10) Any other organization or corporation, whether for profit or nonprofit, that provides direct care or services to children, the sick, the disabled, or the elderly."

Section 6. Effective January 1, 2001, Part A of Article 6 of Chapter 131E of the General Statutes is amended by adding the following new section to read:

"**§ 131E-113. Special care units; disclosure of information required.**

(a) A nursing home or combination home licensed under this Part that provides special care for persons with Alzheimer's disease or other dementias in a special care unit shall make the following disclosures pertaining to the special care provided that distinguishes the special care unit as being especially designed for residents with Alzheimer's disease or other dementias. The disclosure shall be made annually, in writing, to all of the following:

(1) The Department, as part of its licensing procedures.
(2) Each person seeking placement within a special care unit, or the person's authorized representative, prior to entering into an agreement with the person to provide special care.

(b) Information that must be disclosed in writing shall include, but is not limited to, all of the following:

(1) A statement of the overall philosophy and mission of the licensed facility and how it reflects the special needs of residents with dementia.
(2) The process and criteria for placement, transfer, or discharge to or from the special care unit.
(3) The process used for assessment and establishment of the plan of care and its implementation, as required under State and federal law.
(4) Typical staffing patterns and how the patterns reflect the resident's need for increased care and supervision.
(5) Dementia-specific staff training.
(6) Physical environment features designed specifically for the special care unit.

(7) Alzheimer's disease and other dementia-specific programming.
(8) Opportunities for family involvement.
(9) Additional costs or fees to the resident for special care.

(c) As part of its license renewal procedures and inspections, the Department shall examine for accuracy the written disclosures made by each licensed facility subject to this section.

(d) Nothing in this section shall be construed as prohibiting a nursing home or combination home that does not offer a special care unit from admitting a person with Alzheimer's disease or other dementias. The disclosures required by this section apply only to a nursing home or combination home that advertises, markets, or otherwise promotes itself as providing a special care unit for persons with Alzheimer's disease or other dementias.

(e) As used in this section, the term 'special care unit' means a wing or hallway within a nursing home, or a program provided by a nursing home, that is designated especially for residents with Alzheimer's disease or other dementias, or other special needs disease or condition, as determined by the Medical Care Commission, which may include mental disabilities."

Section 7. Sections 1 through 5 of this act become effective October 1, 2001, and apply to offenses committed and offers of employment made on and after that date. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 1192*
Judiciary I Committee Substitute Adopted 6/27/00
Proposed Committee Substitute S1192-PCS2863-LN2

Short Title: Crim. Record Checks/Long-Term Care. (Public)

Sponsors:

Referred to:

May 10, 2000

A BILL TO BE ENTITLED

AN ACT TO REQUIRE CRIMINAL BACKGROUND CHECKS FROM STATE AND NATIONAL REPOSITORIES OF CRIMINAL HISTORY FOR CERTAIN APPLICANTS FOR EMPLOYMENT IN ADULT CARE HOMES, NURSING HOMES, HOME CARE AGENCIES, AND CERTAIN MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES FACILITIES; TO IMPOSE A CRIMINAL PENALTY FOR FALSIFYING INFORMATION ON EMPLOYMENT APPLICATIONS; TO REQUIRE CERTAIN DISCLOSURES BY NURSING HOMES; AND PERTAINING TO RULES FOR THE OPERATION OF THE ADULT CARE PORTION OF NURSING HOMES.

The General Assembly of North Carolina enacts:

Section 1. Article 4 of Chapter 114 of the General Statutes is amended by adding the following new section to read:

"**§ 114-19.10. Criminal record checks for adult care homes, nursing homes, home care agencies, and area mental health, developmental disabilities, and substance abuse services authorities.**

The Department of Justice may provide to the following entities the criminal history from the State and National Repositories of Criminal Histories:

(1) Nursing homes or combination homes licensed under Chapter 131E of the General Statutes.

(2) Adult care homes licensed under Chapter 131D of the General Statutes.
(3) Home care agencies licensed under Chapter 131E of the General Statutes.
(4) Area mental health, developmental disabilities, and substance abuse services authorities licensed under Chapter 122C of the General Statutes, including a contract agency of an area authority that is subject to the provisions of Article 4 of that Chapter.

The criminal history shall be provided to nursing homes and home care agencies in accordance with G.S. 131E-265, to adult care homes in accordance with G.S. 131D-40, and to area mental health, developmental disabilities, and substance abuse services authorities in accordance with G.S. 122C-80. The requesting entity shall provide to the Department of Justice, along with the request, the fingerprints of the individual to be checked if a national criminal history record check is required, any additional information required by the Department of Justice, and a form signed by the individual to be checked consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories of Criminal Histories. If a national criminal history record check is required, the fingerprints of the individual shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. All information received by the entity shall be kept confidential in accordance with G.S. 131E-265, 131D-40, and 122C-80, as applicable. The Department of Justice shall charge a reasonable fee for conducting the checks authorized by this section. The fee for the State check may not exceed fourteen dollars ($14.00)."

Section 2.(a) Subsections (a) and (a1) of G.S. 131D-40 read as rewritten:

"(a) Requirement; Adult Care Home. -- An offer of employment by an adult care home licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned on consent to a criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. An adult care home shall not employ an applicant who refuses to consent to a criminal history record check required by this section. Within five business days of making the conditional offer of employment, an ~~An~~ adult care home shall submit a request to the Department of Justice under ~~G.S. 114-19.3~~ G.S. 114-19.10 to conduct a State or national criminal history record ~~check~~ check required by this section, or shall submit a request to a private entity to conduct a State criminal history record check required by this section. ~~within five business days of making the conditional offer of employment.~~ All criminal history information received by the

home is confidential and may not be disclosed, except to the applicant as provided in subsection (b) of this section.

(a1) Requirement; Contract Agency of Adult Care Home. -- An offer of employment by a contract agency of an adult care home licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned upon consent to a criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. A contract agency of an adult care home shall not employ an applicant who refuses to consent to a criminal history record check required by this section. Within five business days of making the conditional offer of employment, a ~~A~~ contract agency of an adult care home shall submit a request to the Department of Justice under G.S. ~~114-19.3~~ 114-19.10 to conduct a State or national criminal history record check required by this section, or shall submit a request to a private entity to conduct a State criminal history record check required by this section. ~~criminal history record check within five business days of making the conditional offer of employment.~~ All criminal history information received by the contract agency is confidential and may not be disclosed, except to the applicant as provided by subsection (b) of this section."

Section 2.(b) G.S. 131D-40 is amended by adding the following new subsections to read:

"(e) Penalty for Furnishing False Information. -- Any applicant for employment who willfully furnishes, supplies, or otherwise gives false information on an employment application that is the basis for a criminal history record check under this section shall be guilty of a Class A1 misdemeanor.

(f) Conditional Employment. -- An adult care home may employ an applicant conditionally prior to obtaining the results of a criminal history record check regarding the applicant if both of the following requirements are met:

(1) The adult care home shall not employ an applicant prior to obtaining the applicant's consent for a criminal history record check as required in subsection (a) of this section or the completed fingerprint cards as required in G.S. 114-19.10.

(2) The adult care home shall submit the request for a criminal history record check not later than five business days after the individual begins conditional employment.

(g) Immunity From Liability. -- An entity and officers and employees of an entity shall be immune from liability for failure to consider criminal history information not contained in the criminal history record check requested and received by the entity pursuant to this section."

Section 3.(a) Subsections (a) and (a1) of G.S. 131E-265 read as rewritten:

"(a) Requirement; Nursing Home or Home Care Agency. -- An offer of employment by a nursing home licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned on consent to a criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. An offer of employment by a home care agency licensed under this Chapter to an applicant to fill a position that requires entering the patient's home is conditioned on consent to a criminal history record check of the applicant. In addition, employment status change of a current employee of a home care agency licensed under this Chapter from a position that does not require entering the patient's home to a position that requires entering the patient's home shall be conditioned on consent to a criminal history record check of that current employee. If the applicant for employment or if the current employee who is changing employment status has been a resident of this State for less than five years, then the offer of employment or change in employment status is conditioned on consent to a State and national criminal history record check. The national criminal history record check shall include a check of the applicant's or current employee's fingerprints. If the applicant or current employee has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant or current employee applying for a change in employment status. A nursing home or a home care agency shall not employ an applicant who refuses to consent to a criminal history record check required by this section. In addition, a home care agency shall not change a current employee's employment status from a position that does not require entering the patient's home to a position that requires entering the patient's home who refuses to consent to a criminal history record check required by this section. Within five business days of making the conditional offer of employment, ~~A~~ a nursing home or home care agency shall submit a request to the Department of Justice under G.S. ~~114-19.3~~ 114.19.10 to conduct a ~~criminal history record check within five business days of making the conditional offer of employment.~~ State or national criminal history record check required by this section, or shall submit a request to a private entity to conduct a State criminal history record check required by this section. All criminal history information received by the home or agency is confidential and may not be disclosed, except to the applicant as provided in subsection (b) of this section.

(a1) Requirement; Contract Agency of Nursing Home or Home Care Agency. -- An offer of employment by a contract agency of a nursing home or home care agency licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned upon consent to a criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a

State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. A contract agency of a nursing home or home care agency shall not employ an applicant who refuses to consent to a criminal history record check required by this section. Within five business days of making the conditional offer of employment, ~~A~~ a contract agency of a nursing home or home care agency shall submit a request to the Department of Justice under G.S. ~~114-19.3~~ 114-19.10 ~~to conduct a criminal history record check within five business days of making the conditional offer of employment.~~ to conduct a State or national criminal history record check required by this section, or shall submit a request to a private entity to conduct a State criminal history record check required by this section. All criminal history information received by the contract agency is confidential and may not be disclosed, except to the applicant as provided by subsection (b) of this section."

Section 3.(b) G.S. 131E-265 is amended by adding the following new subsections to read:

"(e) Penalty for Furnishing False Information. -- Any applicant for employment who willfully furnishes, supplies, or otherwise gives false information on an employment application that is the basis for a criminal history record check under this section shall be guilty of a Class A1 misdemeanor.

(f) Conditional Employment. -- A nursing home or home care agency may employ an applicant conditionally prior to obtaining the results of a criminal history record check regarding the applicant if both of the following requirements are met:

(1) The nursing home or home care agency shall not employ an applicant prior to obtaining the applicant's consent for a criminal history record check as required in subsection (a) of this section or the completed fingerprint cards as required in G.S. 114-19.10.

(2) The nursing home or home care agency shall submit the request for a criminal history record check not later than five business days after the individual begins conditional employment.

(g) Immunity From Liability. -- An entity and officers and employees of an entity shall be immune from liability for failure to consider criminal history information not contained in the criminal history record check requested and received by the entity pursuant to this section."

Section 4. Chapter 122C of the General Statutes is amended by adding the following new Article to read:

"ARTICLE 3A.

"Miscellaneous Provisions.

"§ 122C-80. Criminal history record check required for certain applicants for employment.

(a) Definition. -- As used in this section, 'area authority' means an area mental health, developmental disabilities, and substance abuse services area authority,

including a contract agency of an area authority that is subject to the provisions of Article 4 of this Chapter.

(b) Requirement. -- An offer of employment by an area authority licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned on consent to a State and national criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. An area authority shall not employ an applicant who refuses to consent to a criminal history record check required by this section. Within five business days of making the conditional offer of employment, an area authority shall submit a request to the Department of Justice under G.S. 114-19.10 to conduct a criminal history record check required by this section. All criminal history information received by the area authority is confidential and may not be disclosed, except to the applicant as provided in subsection (c) of this section.

(c) Action. -- If an applicant's criminal history record check reveals one or more convictions of a relevant offense, the area authority shall consider all of the following factors in determining whether to hire the applicant:

(1) The level and seriousness of the crime.
(2) The date of the crime.
(3) The age of the person at the time of the conviction.
(4) The circumstances surrounding the commission of the crime, if known.
(5) The nexus between the criminal conduct of the person and the job duties of the position to be filled.
(6) The prison, jail, probation, parole, rehabilitation, and employment records of the person since the date the crime was committed.
(7) The subsequent commission by the person of a relevant offense.

The fact of conviction of a relevant offense alone shall not be a bar to employment; however, the listed factors shall be considered by the area authority. If the area authority disqualifies an applicant after consideration of the relevant factors, then the area authority may disclose information contained in the criminal history record check that is relevant to the disqualification, but may not provide a copy of the criminal history record check to the applicant.

(d) Limited Immunity. -- An area authority and an officer or employee of an area authority that, in good faith, complies with this section shall be immune from liability for:

(1) The failure of the area authority to employ an individual on the basis of information provided in the criminal history record check of the individual.

(2) Failure to consider criminal history information not contained in the criminal history record check requested and received by the entity pursuant to this section.

(e) Relevant Offense. -- As used in this section, 'relevant offense' means a State crime, whether a misdemeanor or felony, that bears upon an individual's fitness to have responsibility for the safety and well-being of persons needing mental health, developmental disabilities, or substance abuse services. These crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. These crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

(f) Penalty for Furnishing False Information. -- Any applicant for employment who willfully furnishes, supplies, or otherwise gives false information on an employment application that is the basis for a criminal history record check under this section shall be guilty of a Class A1 misdemeanor.

(g) Conditional Employment. -- An area authority may employ an applicant conditionally prior to obtaining the results of a criminal history record check regarding the applicant if both of the following requirements are met:

(1) The area authority shall not employ an applicant prior to obtaining the applicant's consent for criminal history record check as required in subsection (b) of this section or the completed fingerprint cards as required in G.S. 114-19.10.

(2) The area authority shall submit the request for a criminal history record check not later than five business days after the individual begins conditional employment."

Section 5. G.S. 114-19.3(a) reads as rewritten:

"(a) Authority. -- The Department of Justice may provide to any of the following entities a criminal record check of an individual who is employed by that entity, has

applied for employment with that entity, or has volunteered to provide direct care on behalf of that entity:

(1) Hospitals licensed under Chapter 131E of the General Statutes.

~~(2) Nursing homes or combination homes licensed under Chapter 131E of the General Statutes.~~

~~(3) Adult care homes licensed under Chapter 131D of the General Statutes.~~

(4) ~~Home care agencies or hospices~~ Hospices licensed under Chapter 131E of the General Statutes.

(5) Child placing agencies licensed under Chapter 131D of the General Statutes.

(6) Residential child care facilities licensed under Chapter 131D of the General Statutes.

(7) Hospitals licensed under Chapter 122C of the General Statutes.

~~(8) Area mental health, developmental disabilities, and substance abuse authorities licensed under Chapter 122C of the General Statutes, including a contract agency of an area authority that is subject to the provisions of Article 4 of that Chapter.~~

(9) Licensed child care facilities and nonlicensed child care homes regulated by the State.

(10) Any other organization or corporation, whether for profit or nonprofit, that provides direct care or services to children, the sick, the disabled, or the elderly."

Section 6. Effective January 1, 2001, Part A of Article 6 of Chapter 131E of the General Statutes is amended by adding the following new section to read:

"**§ 131E-113. Special care units; disclosure of information required.**

(a) A nursing home or combination home licensed under this Part that provides special care for persons with Alzheimer's disease or other dementias in a special care unit shall make the following disclosures pertaining to the special care provided that distinguishes the special care unit as being especially designed for residents with Alzheimer's disease or other dementias. The disclosure shall be made annually, in writing, to all of the following:

(1) The Department, as part of its licensing procedures.

(2) Each person seeking placement within a special care unit, or the person's authorized representative, prior to entering into an agreement with the person to provide special care.

(b) Information that must be disclosed in writing shall include, but is not limited to, all of the following:

(1) A statement of the overall philosophy and mission of the licensed facility and how it reflects the special needs of residents with dementia.

(2) The process and criteria for placement, transfer, or discharge to or from the special care unit.

(3) The process used for assessment and establishment of the plan of care and its implementation, as required under State and federal law.
(4) Typical staffing patterns and how the patterns reflect the resident's need for increased care and supervision.
(5) Dementia-specific staff training.
(6) Physical environment features designed specifically for the special care unit.
(7) Alzheimer's disease and other dementia-specific programming.
(8) Opportunities for family involvement.
(9) Additional costs or fees to the resident for special care.

(c) As part of its license renewal procedures and inspections, the Department shall examine for accuracy the written disclosures made by each licensed facility subject to this section.

(d) Nothing in this section shall be construed as prohibiting a nursing home or combination home that does not offer a special care unit from admitting a person with Alzheimer's disease or other dementias. The disclosures required by this section apply only to a nursing home or combination home that advertises, markets, or otherwise promotes itself as providing a special care unit for persons with Alzheimer's disease or other dementias.

(e) As used in this section, the term 'special care unit' means a wing or hallway within a nursing home, or a program provided by a nursing home, that is designated especially for residents with Alzheimer's disease or other dementias, or other special needs disease or condition, as determined by the Medical Care Commission, which may include mental disabilities."

Section 6.1. G.S. 131E-104 reads as rewritten:

"**§ 131E-104. Rules and enforcement.**

(a) The Commission is authorized to adopt, amend, and repeal all rules necessary for the implementation of this Part.

(b) The Commission shall adopt rules for the operation of the adult care portion of a combination ~~home that are equal to the rules adopted by the Social Services Commission for the operation of freestanding adult care homes. The adult care portion of a combination home in existence on January 1, 1982, shall be exempt from physical plant minimum standards, unless the Department determines the exemption to be an imminent hazard to health, safety and welfare of the residents.~~ home. The rules shall provide that for each requirement applicable to freestanding adult care homes or freestanding nursing homes, the combination home may choose to operate the adult care portion of the home in compliance with either the requirement applicable to freestanding adult care homes or the higher standard applicable to freestanding nursing homes."

Section 7. Sections 1 through 5 of this act become effective January 1, 2001, and apply to offenses committed and offers of employment made on and after that date. The remainder of this act is effective when it becomes law.

SENATE BILL 1192:
Crim. Record Checks/Long-Term Care

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Sen. Rand
Date:	July 6, 2000	**Summary by:**	Gann Watson
Version:	S1192-PCS2863-LN2		Staff Attorney

CURRENT LAW: Current law only requires a State criminal history record check for employees of adult care homes, nursing homes, combination homes, home care agencies, and certain mental health, developmental disabilities, and substance abuse service facilities. These record checks are fingerprint-based but do no include a national criminal history record check conducted by the FBI.

Adult care homes are required to make the disclosures that this bill would require nursing homes and combination homes to make.

BILL ANALYSIS: The bill addresses three areas:

1. Requires that criminal history record checks be conducted for certain applicants for employment in nursing homes, adult care homes, home care agencies, and area mental health authorities and their contracting agencies.

- If applicant has been a resident of NC for less than 5 years, then the offer of employment is conditioned upon applicant's consent to both a State and federal fingerprint check.
- If applicant has been a resident for 5 years or longer, then the offer is conditioned upon consent to a State check (not fingerprint), which may be done by a private entity.
- It is a Class A1 misdemeanor for providing false information on an application.
- The facility may employ an applicant conditionally, pending results of the check.

The Department of Justice may charge a reasonable fee for the checks. The fee for the State may not exceed $14.

2. Requires nursing homes that offer special care units to disclose certain information about the services provided in the special care unit.

3. Authorizes the Medical Care Commission to adopt rules pertaining to the adult care portion of combination homes. Current law requires that the rules adopted by the Medical Care Commission be equal to the rules adopted by the Social Services Commission for freestanding adult care homes. Current law also exempts the adult care portion of combination homes in existence in 1982 from the physical plant minimum standards, unless the exemption would pose an imminent hazard to health, safety, and welfare of residents. This amendment allows the combination home to choose between rules applicable to nursing homes and those applicable to adult care homes, with respect to operation of the adult care portion of the combination home.

Effective date: Sections 1-5 (Criminal background check) and Section 6 (disclosure requirement) effective January 1, 2001. The remainder of the bill is effective immediately.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: S 1192 (Revised 7/6/00)

SHORT TITLE: Criminal Record Checks/Long-Term Care

SPONSOR(S): Senators Rand; Forrester, Hagan, Lucas, Metcalf, Phillips, and Purcell

FISCAL IMPACT

Yes (x) **No ( )** **No Estimate Available ( )**

	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05
REVENUES	1,080,000	1,440,000	1,440,000	1,440,000	1,440,000
EXPENDITURES	1,129,500	1,506,000	1,506,000	1,506,000	1,506,000
POSITIONS:	**n/a**				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Justice; State Bureau of Investigation

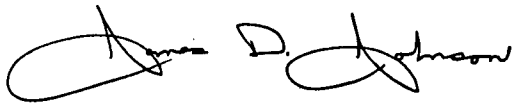
EFFECTIVE DATE: October 1, 2000

BILL SUMMARY: Requires national criminal history background checks on persons to be hired by adult care homes, nursing homes, home care agencies, and certain mental health, developmental disabilities and substance abuse services facilities in certain circumstances, in additional to the state background check currently required. Requires certain disclosures by nursing care homes. Imposes a criminal penalty for falsifying information on employment applications.

ASSUMPTIONS AND METHODOLOGY: As no data was available to indicate the percentage of affected applicants who have resided in the state less than five (5) years, the fiscal note provides an estimate of the maximum impact assuming that a national background check must be conducted on all applicants. FY 2000-01 impact is for three-quarters of the year since the proposed statute becomes effective October 1, 2000. **This revision incorporates the two-dollar ($2) processing cost associated with forwarding national background requests to and from the Federal Bureau of Investigation (FBI).**

TECHNICAL CONSIDERATIONS:
FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Denise Thomas

APPROVED BY: James D. Johnson



DATE: July 6, 2000

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 3

HOUSE BILL 1290
Committee Substitute Favorable 6/24/99
Senate Finance Committee Substitute Adopted 6/29/00

Short Title: Revenue Laws Clarifying Changes. (Public)

Sponsors:

Referred to:

April 19, 1999

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE ADMINISTRATION OF THE TAX LAWS BY MAKING CLARIFYING AND CONFORMING CHANGES TO THE REVENUE AND RELATED LAWS.

The General Assembly of North Carolina enacts:

Section 1.(a) Section 10.2(3) of Chapter 13 of the Session Laws of the 1996 Second Extra Session, as amended by Section 1 of S.L. 1999-360, reads as rewritten:

"(3) Quality jobs and business expansion tax credits. -- Sections 3.5, 3.6, and 3.8 through 3.10 of Part III of this act become effective August 1, 1996. G.S. 105-129.11, as enacted by Part III of this act, becomes effective for taxable years beginning on or after January 1, 1997, and applies to training expenditures made on or after July 1, 1997. The remainder of Part III of this act is effective for taxable years beginning on or after January 1, 1996, and applies to jobs created on or after August 1, 1996, and property placed in service on or after August 1, 1996. Article 3A of Chapter 105 of the General Statutes is repealed ~~effective for applications for credits filed under G.S. 105-129.6 on or after January 1, 2006. G.S. 105-129.16 is repealed effective for business property placed in service on or after January 1, 2002. The remainder of~~ as provided in that Article. Article 3B of Chapter 105 of the General Statutes is

repealed ~~effective for buildings to which federal credits are allocated on or after January 1, 2006.~~ as provided in that Article. "

Section 1.(b) Section 4 of S.L. 1997-277, as amended by Section 18.1 of S.L. 1999-360, is recodified as G.S. 105-129.2A(b), (c), and (d).

Section 1.(c) G.S. 105-129.2A, as enacted by this act, reads as rewritten:

"**§ 105-129.2A. Sunset; studies.**

(a) Sunset. -- This Article is repealed effective for applications for credits filed under G.S. 105-129.6 on or after January 1, 2006.

(b) Equity Study. -- The Department of Commerce shall study the effect of the tax incentives provided in ~~the William S. Lee Quality Jobs and Business Expansion Act, codified as Article 3A of Chapter 105 of the General Statutes,~~ this Article on tax equity. This study shall include the following:

(1) Reexamining the formula in G.S. 105-129.3(b) used to define enterprise tiers, to include consideration of alternative measures for more equitable treatment of counties in similar economic circumstances.

(2) Considering whether the assignment of tiers and the applicable thresholds are equitable for smaller counties, for example those under 50,000 in population.

(3) Compiling any available data on whether expanding North Carolina businesses receive fewer benefits than out-of-State businesses that locate to North Carolina.

(c) Impact Study. -- The Department of Commerce shall study the effectiveness of the tax incentives provided in ~~the William S. Lee Quality Jobs and Business Expansion Act, codified as Article 3A of Chapter 105 of the General Statutes.~~ this Article. This study shall include:

(1) Study of the distribution of tax incentives across new and expanding industries.

(2) Examination of data on economic recruitment for the period 1994 through 2000 by county, by industry type, by size of investment, and by number of jobs, and other relevant information to determine the pattern of business locations and expansions before and after the enactment of the William S. Lee Act incentives.

(3) Measuring the direct costs and benefits of the tax incentives.

(4) Compiling available information on the current use of incentives by other states and whether that use is increasing or declining.

(d) Report. -- The Department of Commerce shall report the results of these studies and its recommendations to the 2001 General Assembly by April 1, 2001."

Section 1.(d) Article 3B of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-129.15A. Sunset.**

G.S. 105-129.16 is repealed effective for business property placed in service on or after January 1, 2002. The remainder of this Article is repealed effective January 1, 2006. The repeal of G.S. 105-129.16A applies to renewable energy property placed in

service on or after January 1, 2006. The repeal of G.S. 105-129.16B applies to buildings to which federal credits are allocated on or after January 1, 2006."

Section 2. Effective July 1, 2000, G.S. 105-88(e) reads as rewritten:

"(e) Counties, cities, and towns may levy a license tax on the business taxed under this ~~section not in excess of~~ section. Except as provided in G.S. 160A-211 and G.S. 153A-152, the tax may not exceed one hundred dollars ($100.00)."

Section 3. G.S. 105-113.82 reads as rewritten:

"**§ 105-113.82. Distribution of part of beer and wine taxes.**

(a) Amount, Method. -- The Secretary shall distribute annually the following percentages of the net amount of excise taxes collected on the sale of malt beverages and wine during the preceding 12-month period ending March 31, less the amount of the net proceeds credited to the Department of Agriculture and Consumer Services under G.S. 105-113.81A, to the counties and cities in which the retail sale of these beverages is ~~authorized.~~ authorized in the entire county or city:

(1) Of the tax on malt beverages levied under G.S. 105-113.80(a), twenty-three and three-fourths percent (23 3/4%);

(2) Of the tax on unfortified wine levied under G.S. 105-113.80(b), sixty-two percent (62%); and

(3) Of the tax on fortified wine levied under G.S. 105-113.80(b), twenty-two percent (22%).

If malt beverages, unfortified wine, or fortified wine may be licensed to be sold at retail in both a county and a city located in the county, both the county and city shall receive a portion of the amount distributed, that portion to be determined on the basis of population. If one of these beverages may be licensed to be sold at retail in a city located in a county in which the sale of the beverage is otherwise prohibited, only the city shall receive a portion of the amount distributed, that portion to be determined on the basis of population. The amounts distributed under subdivisions (1), (2), and (3) shall be computed separately.

~~(b) Reduction in Amount Distributed. -- Where the sale of malt beverages, unfortified wine, or fortified wine is prohibited in a defined area of a city or county in which the sale of the beverage is authorized, the amount that would otherwise be distributed to the city or county on the basis of population under subsection (a) shall be reduced in the same ratio that the area of the defined area bears to the total area of the city or county, unless the defined area is a city. If the defined area in a county is a city, the reduction in the amount that would otherwise be distributed to the county under subsection (a) shall be based on population instead of area.~~

(c) Exception. -- Notwithstanding subsection (a), in a county in which ABC stores have been established by petition, the revenue shall be distributed as though the entire county had approved the retail sale of a beverage whose retail sale is authorized in part of the county.

(d) Time. -- The revenue shall be distributed to cities and counties within 60 days after March 31 of each year.

(e) Population Estimates. -- To determine the population of a city or county for purposes of the distribution required by this section, the Secretary shall use the most recent annual estimate of population certified by the State Planning Officer.

(f) City Defined. -- As used in this section, the term "city" means a city as defined in G.S. 153A-1(1) or an urban service district defined by the governing body of a consolidated city-county.

(g) Use of Funds. -- Funds distributed to a county or city under this section may be used for any public purpose.

(h) Disqualification. -- No municipality may receive any funds under this section if it was incorporated with an effective date of on or after January 1, 2000, and is disqualified from receiving funds under G.S. 136-41.2. No municipality may receive any funds under this section, incorporated with an effective date on or after January 1, 2000, unless a majority of the mileage of its streets are open to the public. The previous sentence becomes effective with respect to distribution of funds on or after July 1, 1999."

Section 4. G.S. 105-119 and G.S. 105-120.1 are repealed.

Section 5. G.S. 105-114 reads as rewritten:

"**§ 105-114. Nature of taxes; definitions.**

(a) Nature of Taxes. -- The taxes levied in this Article upon persons and partnerships are for the privilege of engaging in business or doing the act named.

(a1) Scope. -- The taxes levied in this Article upon corporations are privilege or excise taxes levied upon:

(1) Corporations organized under the laws of this State for the existence of the corporate rights and privileges granted by their charters, and the enjoyment, under the protection of the laws of this State, of the powers, rights, privileges and immunities derived from the State by the form of such existence; and

(2) Corporations not organized under the laws of this State for doing business in this State and for the benefit and protection which these corporations receive from the government and laws of this State in doing business in this State.

~~If~~

(a2) Condition for Doing Business. -- If the corporation is organized under the laws of this State, the payment of the taxes levied by this Article ~~shall be~~ is a condition precedent to the right to continue in the corporate form of ~~organization; and if~~ organization. If the corporation is not organized under the laws of this State, payment of these taxes ~~shall be~~ is a condition precedent to the right to continue to engage in doing business in this State.

(a3) Tax Year. -- The taxes levied in this Article are for the fiscal year of the State in which the taxes become ~~due;~~ due, except that the taxes levied in G.S. 105-122 are for the income year of the corporation in which the taxes become due.

~~G.S. 105-122~~

(a4) No Double Taxation. -- G.S. 105-122 does not apply to ~~street transportation systems taxed under G.S. 105-120.1 or~~ holding companies taxed under G.S. 105-120.2.

G.S. 105-122 applies to a corporation taxed under another section of this Article only to the extent the taxes levied on the corporation in G.S. 105-122 exceed the taxes levied on the corporation in other sections of this Article.

(b) Definitions. -- The following definitions apply in this Article:

(1) City. -- Defined in G.S. 105-228.90.

(1a) Code. -- Defined in G.S. 105-228.90.

(2) Corporation. -- A domestic corporation, a foreign corporation, an electric membership corporation organized under Chapter 117 of the General Statutes or doing business in this State, or an association that is organized for pecuniary gain, has capital stock represented by shares, whether with or without par value, and has privileges not possessed by individuals or partnerships. The term includes a mutual or capital stock savings and loan association or building and loan association chartered under the laws of any state or of the United States. The term does not include a limited liability company.

(3) Doing business. -- Each and every act, power, or privilege exercised or enjoyed in this State, as an incident to, or by virtue of the powers and privileges granted by the laws of this State.

(4) Income year. -- Defined in G.S. 105-130.2(5)."

Section 6. G.S. 105-164.3(8a) reads as rewritten:

"(8a) 'Manufactured home' means a structure that is designed to be used as a dwelling and is manufactured in accordance with the specifications for manufactured homes issued by the United States Department of Housing and Urban Development. ~~and:~~

~~a. Is built on a permanent chassis;~~

~~b. Is transportable in one or more sections;~~

~~c. When transported, is at least eight feet wide or forty feet long; and~~

~~d. When erected on a site, has at least 320 square feet.~~"

Section 7.(a) G.S. 105-187.1 is amended by adding a new subdivision to read:

"(3a) Retailer. -- A retailer as defined in G.S. 105-164.3 who is engaged in the business of selling, leasing, or renting motor vehicles."

Section 7.(b) G.S. 105-187.5(a) reads as rewritten:

"(a) Election. -- A retailer ~~who is engaged in the business of leasing or renting motor vehicles~~ may elect not to pay the tax imposed by this Article at the rate set in G.S. 105-187.3 when applying for a certificate of title for a motor vehicle purchased by the retailer for lease or rental. A retailer who makes this election shall pay a tax on the gross receipts of the lease or rental of the vehicle. Like the tax imposed by G.S. 105-187.3, this alternate tax is a tax on the privilege of using the highways of this State. The tax is imposed on a retailer, but is to be added to the lease or rental price of a motor vehicle and thereby be paid by the person who leases or rents the vehicle."

Section 7.(c) G.S. 20-4.01(5) reads as rewritten:

"(5) Dealer. -- Every person engaged in the business of buying, selling, distributing, or exchanging motor vehicles, ~~trailers~~ trailers, or semitrailers in this State, and having an established place of business in this ~~State and being subject to the tax levied by G.S. 105-89.~~ State.

The terms 'motor vehicle dealer,' 'new motor vehicle dealer,' and 'used motor vehicle dealer' ~~shall~~ as used in Article 12 of this Chapter have the meaning set forth in G.S. 20-286."

Section 8. G.S. 105-259(b)(15) reads as rewritten:

"(b) Disclosure Prohibited. -- An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

. . .

(15) To exchange information concerning a tax imposed by Articles 2A, 2C, or 2D of this Chapter with one of the following agencies when the information is needed to fulfill a duty imposed on the Department or the agency:

a. The North Carolina Alcoholic Beverage Control Commission.

b. The Division of Alcohol Law Enforcement of the Department of Crime Control and Public Safety.

c. The Bureau of Alcohol, Tobacco, and Firearms of the United States Treasury Department.

d. Law enforcement agencies.

e. The Division of Adult Probation and Parole of the Department of Correction."

Section 9. G.S. 105-449.44 reads as rewritten:

"**§ 105-449.44. How to determine the amount of fuel used in the State; presumption of amount used.**

(a) Calculation. -- The amount of motor fuel or alternative fuel a motor carrier ~~carries~~ uses in its operations in this State for a reporting period is the ratio of the number of miles the motor carrier travels in this State during that period to the total number of miles the motor carrier travels inside and outside this State during that period, multiplied by the total amount of fuel the motor carrier uses in its operations inside and outside the State during that period.

(b) Presumption. -- The Secretary ~~shall~~ must check reports filed under this Article against the weigh station records and other records of the Division of Motor Vehicles of the Department of Transportation concerning motor carriers to determine if motor carriers that are operating in this State are filing the reports required by this Article. The Department may assess a motor carrier for the amount payable based on the presumed mileage. A motor carrier that does either of the following for a quarter is

presumed to have traveled in this State during that quarter the number of miles equal to 10 trips of 450 miles each for each of the motor carrier's vehicles:

(1) Fails to file a report for the quarter and the records of the Division indicate the carrier operated in this State during the quarter.

(2) Files a report for the quarter that, based on the records of the Division, understates by at least twenty-five percent (25%) the carrier's mileage in this State for the quarter.

(c) Vehicles. -- The number of vehicles of a motor carrier that is registered under this Article is the number of identification markers issued to the carrier. The number of vehicles of a carrier that is not registered under this Article is the number of vehicles registered by the motor carrier in the carrier's base state under the International Registration Plan. ~~The Department shall assess a motor carrier for the amount payable based on the presumed mileage.~~"

Section 10.(a) Effective July 1, 2000, G.S. 105-449.60(31) and (40) read as rewritten:

"**§ 105-449.60. Definitions.**

The following definitions apply in this Article:

. . .

(31) Supplier. -- Any of the following:

a. A position holder or a person who receives motor fuel pursuant to a two-party ~~transaction.~~ exchange.

b. A fuel alcohol provider.

. . .

(40) Two-party ~~transaction.~~ exchange. -- A transaction in which motor fuel is transferred ~~between two licensed suppliers as the motor fuel crosses the terminal rack as the result of an exchange agreement or a sale between the suppliers that requires the supplier that is the position holder~~ from one licensed supplier to another licensed supplier pursuant to an exchange agreement under which the supplier that is the position holder agrees to deliver motor fuel to the other supplier or the other supplier's customer at the rack of the terminal at which the delivering supplier is the position holder."

Section 10.(b) Effective July 1, 2000, G.S. 105-449.88 is amended by adding a new subdivision to read:

"**§ 105-449.88. Exemptions from the excise tax.**

The excise tax on motor fuel does not apply to the following:

. . .

(1a) Motor fuel removed by transport truck from a terminal for export if the motor fuel is removed by a licensed distributor or licensed exporter, the supplier that is the position holder for the motor fuel sells the motor fuel to another supplier as the motor fuel crosses the terminal rack, the purchasing supplier or its customer receives the motor fuel at the terminal rack for export, and the supplier

that is the position holder collects tax on the motor fuel at the rate of the motor fuel's destination state."

Section 11.(a) G.S. 105-449.60(41) reads as rewritten:

"**§ 105-449.60. Definitions.**

The following definitions apply in this Article:

. . .

(41) User. -- A person who owns or operates a licensed highway vehicle that has a registered gross vehicle weight of at last 10,001 pounds and who ~~and~~ does not maintain storage facilities for motor fuel."

Section 11.(b) G.S. 105-449.68 reads as rewritten:

"**§ 105-449.68. Restrictions on who can get a license as a distributor.**

A bulk-end user of motor fuel may not be licensed as a distributor unless the bulk-end user also acquires motor fuel from a supplier or from another distributor for subsequent sale. This restriction does not apply to a bulk-end user that was licensed as a distributor on January 1, 1996. If a distributor license held by a bulk-end user on January 1, 1996, is subsequently cancelled, the bulk-end user is subject to the restriction set in this section."

Section 11.(c) G.S. 105-449.97(c) reads as rewritten:

"(c) Percentage Discount. -- A supplier that sells motor fuel directly to an unlicensed distributor or to the bulk-end user, the retailer, or the user of the fuel may take the same percentage discount on the fuel that a licensed distributor may take under G.S. 105-449.93(b) when making deferred payments of tax to the supplier."

Section 12. G.S. 105-449.88(1) reads as rewritten:

"**§ 105-449.88. Exemptions from the excise tax.**

The excise tax on motor fuel does not apply to the following:

(1) Motor fuel removed, by transport truck or another means of transfer outside the terminal transfer system, from a terminal for export, if the motor fuel is removed by a licensed distributor or a licensed exporter and the supplier of the motor fuel collects tax on it at the rate of the motor fuel's destination state."

Section 13. The catch line of G.S. 105-449.105 reads as rewritten:

"**§ 105-449.105. Refunds upon application for tax paid on exempt fuel, lost fuel, and fuel unsalable for highway ~~use, and undyed diesel fuel used in boats.~~ use.**"

Section 14. G.S. 105-449.121(b)(2) reads as rewritten:

"(b) Inspection. -- The Secretary or a person designated by the Secretary may do any of the following to determine tax liability under this Article:

. . .

(2) Audit a ~~distributor~~ distributor, a retailer, a bulk-end user, or a motor fuel user that is not licensed under this Article."

Section 15.(a) G.S. 62A-5(d) reads as rewritten:

"(d) Any taxes due on 911 service provided by the service supplier will be billed to the local government subscribing to that service. ~~State and local taxes do not apply to 911 charges billed to subscribers under this Article.~~"

Section 15.(b) G.S. 105-120(c1) reads as rewritten:

"(c1) ~~Enhanced 911~~ Service ~~Charge.~~ Charges. -- Gross receipts of an entity that provides local telecommunications service do not include 911 charges imposed under G.S. 62A-5 and remitted to a local government under G.S. 62A-6, or wireless Enhanced 911 service charges imposed under G.S. 62A-23 and remitted to the Wireless Fund under G.S. 62A-24."

Section 15.(c) G.S. 105-130.5(b)(17) reads as rewritten:

"(17) The amount of 911 charges collected under G.S. 62A-5 and remitted to a local government under G.S. 62A-6, and the amount of wireless Enhanced 911 service charges collected under G.S. 62A-23 and remitted to the Wireless Fund under G.S. 62A-24."

Section 16. Except as otherwise provided in this act, this act is effective when it becomes law.

SENATE
COMMITTEE SUBSTITUTE
JUL 6 2000
ADOPTED

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

HOUSE BILL 1290
Committee Substitute Favorable 6/24/99
Senate Finance Committee Substitute Adopted 6/29/00
Proposed Senate Committee Substitute H1290-PCS5119-RB

Short Title: Revenue Laws Clarifying Changes. (Public)

Sponsors:

Referred to:

April 19, 1999

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE ADMINISTRATION OF THE TAX LAWS BY MAKING CLARIFYING AND CONFORMING CHANGES TO THE REVENUE AND RELATED LAWS.

The General Assembly of North Carolina enacts:

Section 1.(a) Section 10.2(3) of Chapter 13 of the Session Laws of the 1996 Second Extra Session, as amended by Section 1 of S.L. 1999-360, reads as rewritten:

"(3) Quality jobs and business expansion tax credits. -- Sections 3.5, 3.6, and 3.8 through 3.10 of Part III of this act become effective August 1, 1996. G.S. 105-129.11, as enacted by Part III of this act, becomes effective for taxable years beginning on or after January 1, 1997, and applies to training expenditures made on or after July 1, 1997. The remainder of Part III of this act is effective for taxable years beginning on or after January 1, 1996, and applies to jobs created on or after August 1, 1996, and property placed in service on or after August 1, 1996. Article 3A of Chapter 105 of the General Statutes is repealed ~~effective for applications for credits filed under G.S. 105-129.6 on or after January 1, 2006. G.S. 105-129.16 is repealed effective for business property placed in service on or after January 1, 2002. The remainder of~~ as provided

2006. The repeal of G.S. 105-129.16A applies to renewable energy property placed in service on or after January 1, 2006. The repeal of G.S. 105-129.16B applies to buildings to which federal credits are allocated on or after January 1, 2006."

Section 2. Effective July 1, 2001, G.S. 105-88(e) reads as rewritten:

"(e) Counties, cities, and towns may levy a license tax on the business taxed under this ~~section not in excess of~~ section. Except as provided in G.S. 160A-211 and G.S. 153A-152, the tax may not exceed one hundred dollars ($100.00)."

Section 3. G.S. 105-113.82 reads as rewritten:

"**§ 105-113.82. Distribution of part of beer and wine taxes.**

(a) Amount, Method. -- The Secretary shall distribute annually the following percentages of the net amount of excise taxes collected on the sale of malt beverages and wine during the preceding 12-month period ending March 31, less the amount of the net proceeds credited to the Department of Agriculture and Consumer Services under G.S. 105-113.81A, to the counties and cities in which the retail sale of these beverages is ~~authorized.~~ authorized in the entire county or city:

(1) Of the tax on malt beverages levied under G.S. 105-113.80(a), twenty-three and three-fourths percent (23 3/4%);

(2) Of the tax on unfortified wine levied under G.S. 105-113.80(b), sixty-two percent (62%); and

(3) Of the tax on fortified wine levied under G.S. 105-113.80(b), twenty-two percent (22%).

If malt beverages, unfortified wine, or fortified wine may be licensed to be sold at retail in both a county and a city located in the county, both the county and city shall receive a portion of the amount distributed, that portion to be determined on the basis of population. If one of these beverages may be licensed to be sold at retail in a city located in a county in which the sale of the beverage is otherwise prohibited, only the city shall receive a portion of the amount distributed, that portion to be determined on the basis of population. The amounts distributed under subdivisions (1), (2), and (3) shall be computed separately.

~~(b) Reduction in Amount Distributed. -- Where the sale of malt beverages, unfortified wine, or fortified wine is prohibited in a defined area of a city or county in which the sale of the beverage is authorized, the amount that would otherwise be distributed to the city or county on the basis of population under subsection (a) shall be reduced in the same ratio that the area of the defined area bears to the total area of the city or county, unless the defined area is a city. If the defined area in a county is a city, the reduction in the amount that would otherwise be distributed to the county under subsection (a) shall be based on population instead of area.~~

(c) Exception. -- Notwithstanding subsection (a), in a county in which ABC stores have been established by petition, the revenue shall be distributed as though the entire county had approved the retail sale of a beverage whose retail sale is authorized in part of the county.

(d) Time. -- The revenue shall be distributed to cities and counties within 60 days after March 31 of each year.

Section 5. G.S. 105-113.85 reads as rewritten:

"**§ 105-113.85. Discount.**

Each wholesaler or importer who remits the excise taxes on malt beverages or wine may deduct from the amount payable by him a discount of four percent (4%). This discount covers losses due to spoilage and breakage, expenses incurred in preparing the records and reports required by this Article, and the expense of furnishing a bond. ~~No discount is allowed on taxpaid beverages given as free goods for advertising.~~"

Section 6. G.S. 105-113.88 reads as rewritten:

"**§ 105-113.88. ~~Record keeping~~ Record-keeping requirements.**

~~(a) Requirement. -- Every person licensed under this Article shall maintain complete and accurate records of all purchases and sales of alcoholic beverages taxable under this Article. These records shall be kept separate from all other records the person keeps. Each person shall also maintain copies of all reports filed with the Secretary and invoices, sales tickets, and other data that substantiate those reports.~~

~~(b) Length of Time Records Shall Be Kept. -- Every person licensed under this Article shall keep the records, reports, and other information required by this section for three years.~~

A person who is required to file a report or return under this Article must keep a record of all documents used to determine information the person provides in a report or return. The records must be kept for three years from the due date of the report or return to which the records apply."

Section 7. G.S. 105-119 and G.S. 105-120.1 are repealed.

Section 8. G.S. 105-114 reads as rewritten:

"**§ 105-114. Nature of taxes; definitions.**

(a) Nature of Taxes. -- The taxes levied in this Article upon persons and partnerships are for the privilege of engaging in business or doing the act named.

(a1) Scope. -- The taxes levied in this Article upon corporations are privilege or excise taxes levied upon:

(1) Corporations organized under the laws of this State for the existence of the corporate rights and privileges granted by their charters, and the enjoyment, under the protection of the laws of this State, of the powers, rights, privileges and immunities derived from the State by the form of such existence; and

(2) Corporations not organized under the laws of this State for doing business in this State and for the benefit and protection which these corporations receive from the government and laws of this State in doing business in this State.

~~If~~

(a2) Condition for Doing Business. -- If the corporation is organized under the laws of this State, the payment of the taxes levied by this Article ~~shall be~~ is a condition precedent to the right to continue in the corporate form of ~~organization; and if~~ organization. If the corporation is not organized under the laws of this State,

Section 10.(a) G.S. 105-187.1 is amended by adding a new subdivision to read:

"(3a) Retailer. -- A retailer as defined in G.S. 105-164.3 who is engaged in the business of selling, leasing, or renting motor vehicles."

Section 10.(b) G.S. 105-187.5(a) reads as rewritten:

"(a) Election. -- A retailer ~~who is engaged in the business of leasing or renting motor vehicles~~ may elect not to pay the tax imposed by this Article at the rate set in G.S. 105-187.3 when applying for a certificate of title for a motor vehicle purchased by the retailer for lease or rental. A retailer who makes this election shall pay a tax on the gross receipts of the lease or rental of the vehicle. Like the tax imposed by G.S. 105-187.3, this alternate tax is a tax on the privilege of using the highways of this State. The tax is imposed on a retailer, but is to be added to the lease or rental price of a motor vehicle and thereby be paid by the person who leases or rents the vehicle."

Section 10.(c) G.S. 20-4.01(5) reads as rewritten:

"(5) Dealer. -- Every person engaged in the business of buying, selling, distributing, or exchanging motor vehicles, ~~trailers~~ trailers, or semitrailers in this State, and having an established place of business in this ~~State and being subject to the tax levied by G.S. 105-89.~~ State.

The terms 'motor vehicle dealer,' 'new motor vehicle dealer,' and 'used motor vehicle dealer' ~~shall~~ as used in Article 12 of this Chapter have the meaning set forth in G.S. 20-286."

Section 11. G.S. 105-259(b)(15) reads as rewritten:

"(b) Disclosure Prohibited. -- An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person unless the disclosure is made for one of the following purposes:

. . .

(15) To exchange information concerning a tax imposed by Articles 2A, 2C, or 2D of this Chapter with one of the following agencies when the information is needed to fulfill a duty imposed on the Department or the agency:

a. The North Carolina Alcoholic Beverage Control Commission.

b. The Division of Alcohol Law Enforcement of the Department of Crime Control and Public Safety.

c. The Bureau of Alcohol, Tobacco, and Firearms of the United States Treasury Department.

d. Law enforcement agencies.

e. The Division of Adult Probation and Parole of the Department of Correction."

Section 12. G.S. 105-449.44 reads as rewritten:

the other supplier or the other supplier's customer at the rack of the terminal at which the delivering supplier is the position holder."

Section 13.(b) Effective July 1, 2000, G.S. 105-449.88 is amended by adding a new subdivision to read:

"**§ 105-449.88. Exemptions from the excise tax.**

The excise tax on motor fuel does not apply to the following:

. . .

(1a) Motor fuel removed by transport truck from a terminal for export if the motor fuel is removed by a licensed distributor or licensed exporter, the supplier that is the position holder for the motor fuel sells the motor fuel to another supplier as the motor fuel crosses the terminal rack, the purchasing supplier or its customer receives the motor fuel at the terminal rack for export, and the supplier that is the position holder collects tax on the motor fuel at the rate of the motor fuel's destination state."

Section 14.(a) G.S. 105-449.60(41) reads as rewritten:

"**§ 105-449.60. Definitions.**

The following definitions apply in this Article:

. . .

(41) User. -- A person who owns or operates a licensed highway vehicle that has a registered gross vehicle weight of at last 10,001 pounds and who ~~and~~ does not maintain storage facilities for motor fuel."

Section 14.(b) G.S. 105-449.68 reads as rewritten:

"**§ 105-449.68. Restrictions on who can get a license as a distributor.**

A bulk-end user of motor fuel may not be licensed as a distributor unless the bulk-end user also acquires motor fuel from a supplier or from another distributor for subsequent sale. This restriction does not apply to a bulk-end user that was licensed as a distributor on January 1, 1996. If a distributor license held by a bulk-end user on January 1, 1996, is subsequently cancelled, the bulk-end user is subject to the restriction set in this section."

Section 14.(c) G.S. 105-449.97(c) reads as rewritten:

"(c) Percentage Discount. -- A supplier that sells motor fuel directly to an unlicensed distributor or to the bulk-end user, the retailer, or the user of the fuel may take the same percentage discount on the fuel that a licensed distributor may take under G.S. 105-449.93(b) when making deferred payments of tax to the supplier."

Section 15. G.S. 105-449.88(1) reads as rewritten:

"**§ 105-449.88. Exemptions from the excise tax.**

The excise tax on motor fuel does not apply to the following:

(1) Motor fuel removed, by transport truck or another means of transfer outside the terminal transfer system, from a terminal for export, if the motor fuel is removed by a licensed distributor or a licensed exporter and the supplier of the motor fuel collects tax on it at the rate of the motor fuel's destination state."

of wireless Enhanced 911 service charges collected under G.S. 62A-23 and remitted to the Wireless Fund under G.S. 62A-24."

Section 20. Except as otherwise provided in this act, this act is effective when it becomes law.

HOUSE BILL 1290:
Revenue Laws Clarifying Changes

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Rep. Luebke
Date:	July 6, 2000	**Summary by:**	Cindy Avrette, Staff Atty. &
Version:	PCS for the 3rd edition		Mary Shuping, Rsch. Asst.

CHANGES IN THE PCS

- **MODIFIES SECTION 2:** The PCS changes the effective date for Section 2 from July 1, 2000 to July 1, 2001.
- **ADDS SECTION 5:** The Department plans to administer the excise tax on tobacco products and the excise taxes on beer, wine, and liquor through the same computer program. The change requested by the Department seeks to conform the discount statutes for these excise taxes so that they are uniform. The PCS removes the language that the discount is not allowed on taxpaid beverages given as free goods for advertising because similar language is not included in the tobacco product article. These changes were requested by the Department of Revenue and included in HB 1575, 2nd edition.
- **ADDS SECTION 4 & SECTION 6:** The PCS eliminates the requirement that resident breweries, resident wineries, and nonresident vendors file an invoice with the Secretary and that two copies of the invoice be given to wholesalers and importers. The person will still be required to file a report that contains the information required by the Secretary. These businesses have to keep records of the information needed to file reports and returns for three years. The amendment allows the businesses to keep the information in a format that is useful to them by not restricting them to invoices. These changes were requested by the Department of Revenue and included in HB 1575, 2nd edition.
- **MODIFIES SECTION 9:** This section changes the form of the definition of manufactured home in the sales tax law from a restatement of federal standards to a cross-reference to federal standards. The PCS also codifies an administrative application of the sales tax definition for manufactured homes to include modular homes that are built on a permanent chassis and are transportable in one or more sections.
- **ADDS SECTION 17:** The PCS incorporates a change concerning "locked pumps" made by the federal law, effective June 30, 1998. The federal change already applies in North Carolina, the amendment simply codifies the change and clarifies that a distributor is still eligible for a refund of the excise taxes paid on kerosene if the pump meets the requirements of federal law. A locked pump is one that is kept locked by the retailer and must be unlocked by the retailer for each sale of kerosene. The distributor may currently apply for a refund if the dispensing device for the kerosene is not suitable for use in fueling a highway vehicle. This change was requested by the Department of Revenue and included in HB 1575, 2nd edition.
- The PCS also clarifies that the distributor is liable for any overpayments of a refund, even if the action of the retailer contributed to the overpayment. One action of a retailer that could contribute to an overpayment is that the retailer does not keep the pump locked as required. Under current law, any taxpayer is liable for any overpayment of a refund. This change was requested by the Department of Revenue and included in HB 1575, 2nd edition.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 1290 (Senate Finance Committee Substitute)

SHORT TITLE: Revenue Laws Clarifying Changes

SPONSOR(S):

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05
REVENUES					
LOCAL GOVERNMENTS	See Assumptions and Methodology				

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Local governments, Department of Revenue, Department of Correction

EFFECTIVE DATE: Section 2 (pawnbrokers) and Section 10 (fuel tax) are effective July 1, 2000. The remainder of the act is effective when it becomes law

BILL SUMMARY: This bill makes numerous technical and clarifying changes to the state revenue laws and related statutes.

ASSUMPTIONS AND METHODOLOGY:
Of the 16 sections in the bill, only section 2 has a fiscal impact. When the General Assembly approved Senate Bill 1112 (S.L. 1999-438), it inadvertently capped city and county privilege taxes on pawnbrokers at $100. Previous law (G.S. 105-50) allowed cities and counties to charge pawnbrokers up to $275 per year. In a 1996 survey conducted by the Fiscal Research Division of the General Assembly, 44 counties and 24 cities reported having a privilege tax on pawnbrokers ranging from $5 to $275. These local governments also reported FY 1995-96 tax revenues from pawnbrokers of $77,844. If all local governments changed their ordinance in response to SB 1112, then they would have experienced a loss of $47,993 based on the 1996 report. Passage of this bill would allow local governments to return their tax on pawnbrokers to previous levels and regain revenue lost due to SB 1112.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic

APPROVED BY: James D. Johnson

DATE: June 29, 2000

(Attachment #1)

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 7/06/2000

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Stacy Flannery	NCHCFA
Steve Hamm	Wood Dixie
Danny Jones	Wood Dixie
Doug Howey	NCPMA
John Cyrus	N.C. State Grange
Steve Woodson	NC Farm Bureau
Patti Seawell	NC DOR
Sharon Miller	CUCA
Larry Dix	OSJ
Ruffin Poole	DOJ
Roger Bone	Bone Assoc.
Crissy Porter	Bone & Associates

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 7/06/2000

Name of Committee — Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Lucius PULLEN	ATTORNEY
Sabra Faires	DOR
Fred Allen	NC Aggregates Assn.
R. Paul Wilms	NCHBA
Mike Carpenter	NCHBA
Gary Harris	NCPMA

(Attachment #2)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Thursday, July 06, 2000

SENATOR HOYLE,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2

S.B.(CS #1)**1192** Crim. Record Checks/Long-Term Care

Draft Number:	PCS2863
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

UNFAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL NO. 2

H.B.(SCS #1) **1290** Revenue Laws Clarifying Changes

Draft Number:	PCS5119
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	No

TOTAL REPORTED: 2

Committee Clerk Comment:

SENATE FINANCE COMMITTEE

FRIDAY, JULY 7, 2000

ON THE FLOOR
(RECESS DURING SESSION)

The Senate Finance Committee met on Friday, July 7, 2000, on the floor while session was in recess with Senator John Kerr presiding. All committee members present for session were in attendance.

HB 1853 – UNC NONAPPROPRIATED CAPITAL/REV. BONDS.

Senator Kerr presided and explained the Bill. At the conclusion of his explanation, Senator Lee moved for a Favorable Report. The motion carried. Copy of Bill and Fiscal Note included in the minutes.

David W. Hoyle, Co-Chair
Senate Finance Committee

John H. Kerr, III, Co-Chair
Senate Finance Committee

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

Committee Report is Attachment # 1

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 3

HOUSE BILL 1853*
Committee Substitute Favorable 6/20/00
Committee Substitute #2 Favorable 7/5/00

Short Title: UNC Nonappropriated Capital/Rev. Bonds. (Public)

Sponsors:

Referred to:

May 30, 2000

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE CONSTRUCTION AND THE FINANCING, WITHOUT APPROPRIATIONS FROM THE GENERAL FUND, OF CERTAIN CAPITAL IMPROVEMENTS PROJECTS OF THE CONSTITUENT INSTITUTIONS OF THE UNIVERSITY OF NORTH CAROLINA AND TO AMEND THE LAWS REGARDING CERTAIN REVENUE BONDS THAT MAY BE ISSUED BY THE BOARD OF GOVERNORS.

The General Assembly of North Carolina enacts:

Section 1. The purpose of this act is (i) to authorize the construction by The University of North Carolina, of the capital improvements projects listed in the act for the respective institutions, and (ii) to authorize the financing of these projects with funds available to the institutions from gifts, grants, receipts, self-liquidating indebetedness, or other funds, or any combination of these funds, but not including funds appropriated from the General Fund of the State.

Section 2. The capital improvements projects, and their respective costs, authorized by this act to be constructed and financed as provided in Section 1 of this act, are as follows:

1. **Appalachian State University**

New Dining Hall - Supplement	$ 9,569,744
Steam Distribution/Return System-Reconstruction	$ 3,109,200

2. **East Carolina University**	
Diabetes Building - Planning	$ 500,000
West End Dining Hall - Supplement	$ 5,089,700
3. **North Carolina School of the Arts**	
Technology Infrastructure - Residence Halls	$ 1,000,000
4. **North Carolina State University**	
Expansion of Parking Facilities	$ 9,000,000
Centennial Campus Infrastructure	$18,780,000
Centennial Campus Tenant Upfits	$ 6,750,000
5. **The University of North Carolina at Asheville**	
New Residence Hall - Supplement	$ 3,720,800
6. **The University of North Carolina at Chapel Hill**	
Sonja H. Stone Black Cultural Center	$ 9,000,000
7. **The University of North Carolina at Charlotte**	
Alumni Center	$ 3,300,000
8. **The University of North Carolina at Greensboro**	
Parking Deck	$11,000,000
9. **The University of North Carolina at Pembroke**	
Dining Hall Addition	$ 750,000.

Section 3. At the request of the Board of Governors of The University of North Carolina and upon determining that it is in the best interest of the State to do so, the Director of the Budget may authorize an increase or decrease in the cost of, or a change in the method of, funding the projects authorized by this act. In determining whether to authorize a change in cost or funding, the Director of the Budget may consult with the Joint Legislative Commission on Governmental Operations.

Section 4. G.S. 116-189(4) reads as rewritten:

"(4) The word 'institution' shall mean each of the institutions enumerated in G.S. 116-2, ~~and~~ the University of North Carolina ~~Hospitals at Chapel Hill~~ Health Care System, and the University of North Carolina General Administration."

Section 5. G.S. 116-189(5) is amended as follows:

"(5) ~~The word "project" shall mean and shall include any one or more buildings or facilities for (i) the housing, health, welfare, recreation and convenience of students, (ii) the housing of faculty, (iii) adult or continuing education, (iv) revenue producing parking decks or~~

~~structures, and (v) education, research, patient care and community services at the University of North Carolina Hospitals at Chapel Hill, of any size or type approved by the Board and the Director of the Budget and any enlargements, improvements or additions so approved of or to any such buildings or facilities now or hereafter existing, including, but without limiting the generality thereof, dormitories and other student, faculty and adult or continuing education housing, dining facilities, student centers, gymnasiums, field houses and other physical education and recreation buildings, structures and facilities, infirmaries and other health care buildings, structures and facilities, academic facilities for adult or continuing education, and necessary land and interests in land, furnishings, equipment and parking facilities. Any project comprising a building or buildings for student activities or adult or continuing education or any enlargement or improvement thereof or addition thereto may include, without limiting the generality thereof, facilities for services such as lounges, restrooms, lockers, offices, stores for books and supplies, snack bars, cafeterias, restaurants, laundries, cleaning, postal, banking and similar services, offices, rooms and other facilities for guests and visitors and facilities for meetings and for recreational, cultural and entertainment activities.~~ The word 'project' shall mean and shall include any one or more buildings, structures, or facilities of any size or type now or hereafter existing for (i) the housing, health, welfare, recreation, and convenience of students, (ii) the housing of faculty, (iii) academic, research, patient care, and community services, and (iv) parking at an institution or institutions, that has been approved by the Board and the Director of the Budget and any improvements or additions so approved to any such buildings, structures, or facilities, including, but without limiting the generality thereof, dormitories and other student, faculty, and adult or continuing education housing, dining facilities, student centers, gymnasiums, field houses and other physical education and recreation buildings, infirmaries and other health care buildings, academic facilities, furnishings, equipment, parking facilities, and necessary land and interest in land. Any project may include, without limiting the generality thereof, facilities for services such as lounges, restrooms, lockers, offices, stores for books and supplies, snack bars, cafeterias, restaurants, laundries, cleaning, postal, banking and similar services, rooms and other facilities for guests and visitors, and facilities for meetings and for recreational, cultural, and entertainment activities."

Section 6. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 1853 (House Finance Committee Substitute)

SHORT TITLE: UNC Nonappropriated Capital/Rev. Bonds

SPONSOR(S): Representative Miller & Hurley

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05
REVENUES		No Fiscal Impact			
EXPENDITURES					
General Fund		$113,179	$195,153	$310,973	$323,907
POSITIONS:		3	3	5	5

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: The University of North Carolina – General Administration

EFFECTIVE DATE: This act is effective when it becomes law.

BILL SUMMARY: The bill authorizes the construction and financing, without appropriations from the General Fund, of capital improvements projects of the constituent institutions of the University of North Carolina. The bill amends the definition of "institution" to include the UNC Health Care System and UNC General Administration. The bill also amends the definition of the term "project."

ASSUMPTIONS AND METHODOLOGY: The 13 projects listed in this bill are being constructed with funds other than the state General Fund (see attached chart). However, there are two projects that the institutions will request a General Fund appropriation for operating expenses. Operating expenses includes both salary and benefits for new personnel and non-personnel items such as utilities. The data provided by the UNC-General Administration includes a 3% increase per year for salaries and benefits and a 5% increase per years for non-personnel items and utilities.

House Bill 1853: UNC Nonapprop[illegible]d Capital/Revenue Bonds

Campus	Project	Amo[illegible]	Source of Funds	Increase in Annual Operating Costs	Source of Operating Costs
Appalachian State University	New Central Dinning Hall - Supplement	$9,569,744	Dining receipts	$330,180	Dining funds
Appalachian State University	Steam Distribution/Return System Reconstruction	$3,109,200	ASU Utilities Operating Reserves	$89,362	ASU Utilities Operating Reserves
East Carolina University	West End Dining Hall - Supplement	$5,089,700	Dining and housing receipts	$162,808	Dining and housing receipts
East Carolina University	Diabetes Research & Education Center - Planning	$500,000	Gifts		
N.C. School of the Arts	Technology Infrastructure - Residence Halls	$1,000,000	Housing receipts	$0	
NC State University	Expansion of Parking Facilities	$9,000,000	Parking receipts	$68,669	Parking receipts
NC State University	Centennial Campus Infrastructure	$18,780,000	Campus maintenance & operation receipts	$112,979	Campus maintenance & operation receipts
NC State University	Centennial Campus Tenant Upfits	$6,750,000	Campus maintenance & operation receipts	$459,926	Campus maintenance & operation receipts
UNC- Asheville	New Residence Hall - Supplement	$3,720,800	Housing receipts	$348,065	Housing receipts
UNC-Chapel Hill	Sonja H. Stone Black Cultural Center	$9,000,000	Gifts	$211,632	General Fund
UNC-Charlotte	Alumni Center	$3,300,000	Gifts	$117,773	General Fund
UNC-Greensboro	Parking Deck	$11,000,000	Parking receipts	$116,202	Parking receipts
UNC-Pembroke	Dining Hall Addition	$750,000	Food service receipts	$19,495	Food service receipts
Total		$81,569,444		$329,405 $1,707,686	(General Fund) (General Fund)

Notes: The chart lists the annual operating costs of each project in the first five years of year-round operation.

TECHNICAL CONSIDERATIONS:

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic

APPROVED BY: James D. Johnson

DATE: June 20, 2000

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
John Kerr, Co-Chair
David Hoyle, Co-Chair

Friday, July 07, 2000

SENATOR KERR,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS #2)**1853** UNC Nonappropriated Capital/Rev. Bonds.
Sequential Referral: None
Recommended Referral: None

TOTAL REPORTED: 1

Committee Clerk Comment: HB 1853

SENATE FINANCE COMMITTEE

TUESDAY, JULY 11, 2000

11:00 AM - ROOM 544

The Senate Finance Committee met on Tuesday, July 11, 2000 at 11:00 AM in Room 544 of the Legislative Office Building with 24 members of the committee present and Senator Hoyle presiding. Jim Caldwell, Allison Avery and Brandon Carpenter all sponsored by Senator Hoyle along with Charles Gaylor sponsored by Senator Kerr were introduced as the pages for the meeting.

HB 1583 - NONHAZ. DRY-CLEANING TECHNOLOGY INCENTIVE

Senator Odom was recognized to explain the bill for Representative Gibson. After a time of discussion, Senator Kerr sent forth an amendment to the bill and moved that it be adopted, motion passed. Discussion continued and then Senator Albertson moved to give the bill a "Favorable Report" and be rolled into a committee substitute, motion passed. Copy of bill and supporting documents included in the minutes.

HB 1566 - TEMP. MV LIEN FILING

Representative Cole was recognized to explain the bill. Senator Kerr offered an amendment to the bill and moved that it be adopted, motion passed. After a time of discussion, Senator Cooper had a technical change to the bill suggestion and staff was instructed to draft the amendment. Senator Cooper sent forth the amendment and moved that it be adopted, motion passed. Senator Larry Shaw moved to give the bill a "Favorable Report" and be rolled into a committee substitute, motion passed. Copy of bill and supporting document included in the minutes.

HB 1768 - ORANGE OMNIBUS ACT

Senator Kinnaird was recognized to explain the bill for Representative Insko. After a time of discussion, Senator Ballantine sent forth an amendment to add Carteret and Pender Counties to the bill and moved that amendment be adopted, motion passed. Senator Rand moved to give the bill a "Favorable Report" and be rolled into a committee substitute, motion passed. Copy of bill and supporting documents included in the minutes.

BILL ADDED TO THE AGENDA AT THE REQUEST OF SENATOR HOYLE

HB 677 - CERTAIN COUNTIES DELINQUENT TAXES

Senator Hoyle came to explain the bill and after a brief discussion, Senator Dannelly moved to give the bill a "Favorable Report", motion passed. Copy of bill and supporting documents included in the minutes.

Meeting adjourned.

David W. Hoyle, Co-Chairman

John H. Kerr, III, Co-Chairman

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

Visitors' Sign Up Sheet is Attachment #1
Committee Report is Attachment #2

AGENDA

SENATE FINANCE COMMITTEE MEETING

TUESDAY, JULY 11, 2000

11:00 AM – ROOM 544

Meeting Called to Order – Senator Hoyle, Presiding

Introduction of Pages

BILLS TO BE HEARD:

SB 1554 - Pass-Through Entity/Housing Tax Credit-Sen. Hoyle
HB 1566 – Temp. MV Lien Filing – Rep. Cole
HB 1583 – Nonhaz. Dry-Cleaning Technology Incentive – Rep. Gibson
HB 1768 – Orange Omnibus Act. – Rep. Insko

BILL ADDED TO AGENDA

HB 677 - Certain Counties Delinquent Taxes

Adjournment of Meeting

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 3

HOUSE BILL 1583*
Committee Substitute Favorable 6/20/00
Committee Substitute #2 Favorable 6/30/00

Short Title: Nonhaz. Dry-Cleaning Technology Incentive. (Public)

Sponsors:

Referred to:

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO PROVIDE A NEW TAX CREDIT AS AN INCENTIVE FOR INVESTING IN DRY-CLEANING EQUIPMENT THAT DOES NOT USE HAZARDOUS SUBSTANCES, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Article 3B of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-129.16C. Credit for investing in dry-cleaning equipment that does not use a hazardous substance.**

(a) Credit. -- If a taxpayer that has purchased or leased qualified dry-cleaning equipment, places it in service in this State for commercial purposes during the taxable year, the taxpayer is allowed a credit equal to twenty percent (20%) of the cost of the equipment. To support the credit allowed by this section, the taxpayer must file with the tax return for the taxable year in which the credit is claimed a certification by the Department of Environment and Natural Resources that the equipment purchased or leased by the taxpayer is qualified dry-cleaning equipment.

(b) Restrictions. -- No credit is allowed under this section to the extent the cost of the equipment was paid with public funds. A taxpayer that claims any other credit allowed under this Chapter with respect to qualified dry-cleaning equipment may not take the credit allowed in this section with respect to the same equipment.

(c) Definitions. -- The following definitions apply only in this section:

(1) Hazardous solvent. -- A solvent, any portion of which consists of a chlorine-based solvent, a hydrocarbon-based solvent, a hazardous substance as defined in G.S. 130A-310(2), or any substance determined by the Administrator of the Environmental Protection Agency or the Director of the National Institute of Occupational Safety and Health to possess carcinogenic potential to humans.

(2) Qualified dry-cleaning equipment. -- Equipment that is designed and used primarily to dry-clean clothing and other fabric and does not use any hazardous solvent or any other substance that the Department of Environment and Natural Resources determines to pose a threat to human health or the environment."

Section 2. This act is effective for taxable years beginning on or after July 1, 2001.

HOUSE BILL 1583:
Nonhazardous Dry Cleaning Tech. Incentive

BILL ANALYSIS

Committee:	Senate Finance	**Sponsor:**	Representative Pryor Gibson
Date:	July 7, 2000	**Analysis by:**	Rick Zechini, Staff Attorney
Version:	Third Edition		

SUMMARY: ***House Bill 1583 provides a tax credit for commercial dry-cleaners who invest in environmentally friendly dry-cleaning equipment, effective July 1, 2001. The credit is equal to 20% of the cost of the equipment. (An earlier version of the bill allowed a 35% credit.) House Bill 1583 was heard in House Finance and House Environment. The Environmental Review Commission recommended this proposal to the 2000 Regular Session of the 1999 General Assembly for its consideration.***

BILL ANALYSIS: House Bill 1583 adds a new section to Article 3B of Chapter 105 of the General Statutes, which currently provides tax credits for investing in general business property, renewable energy property, and low-income housing. The new section provides a tax credit for commercial dry-cleaners who buy or lease "qualified dry-cleaning equipment." "Qualified dry-cleaning equipment" is defined as dry-cleaning equipment that does not use any of the following:

- A chlorine-based solvent.
- A hydrocarbon-based solvent.
- A solvent that contains a hazardous substance as defined in the federal Comprehensive Environmental Response, Compensation, and Liability Act.
- A solvent that contains a substance determined by the Environmental Protection Agency or the National Institute of Occupational Safety and Health to possess carcinogenic potential to humans.
- A substance that the Department of Environment and Natural Resources (DENR) determines to pose a threat to human health or the environment.

It is estimated that 99% of the State's dry-cleaners currently use chlorine-based or hydrocarbon-based solvent. Use of these solvents has led to soil and groundwater contamination.

The new credit, which is similar to the renewable energy credit that was enacted in 1999, provides a credit for equipment placed in service in this State equal to 20% of the taxpayer's cost. Like the other credits in Article 3B, it may be taken against corporate or individual income tax or corporate franchise tax, at the taxpayer's choice; it may not exceed 50% of the taxpayer's tax liability in any given year; and any excess over this limit may be carried forward for up to five years. Article 3B requires the taxpayer to maintain and make available in case of audit any records necessary to determine and verify the amount of the credit to which the taxpayer is entitled. A taxpayer claiming the credit allowed under the new section must file with the tax return a certification by DENR that the equipment purchased or leased by the taxpayer is "qualified dry-cleaning equipment."

This new tax credit will sunset January 1, 2006, the date that Article 3B is repealed.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 1583 (House Finance Committee Substitute)

SHORT TITLE: Nonhazardous Dry-Cleaning Technology Incentive

SPONSOR(S):

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available ( )**

	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05
REVENUES					
General Fund		($584,100)	($423,000)	($507,600)	($625,200)
EXPENDITURES					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Revenue

EFFECTIVE DATE: This act is effective for taxable years beginning on or after July 1, 2001.

BILL SUMMARY: This bill provides a tax credit equal to 20% of the cost of purchasing or leasing nonhazardous dry cleaning equipment. To qualify as nonhazardous, the equipment must not use chlorine-based solvents, hydrocarbon-based solvents, or any other substance deemed hazardous by the Environmental Protection Agency or the Director of the National Institute of Occupational Safety and Health. In addition to not using any hazardous solvent, the equipment must be designed primarily to dry-clean clothes.

ASSUMPTIONS AND METHODOLOGY:

SOLVENTS

Hazardous dry cleaning solvents include hydrocarbon or petroleum based products and chlorine based solvents such as perchloroethylene. According to the National Institute of Environmental Health Sciences, 80% to 85% of the dry cleaners in the U.S. use perchloroethylene (commonly called perc). The Executive Director of the North Carolina Association of Launderers and Cleaners estimates that 84% of the dry cleaners in this state use perc and 15% use petroleum products. The remaining 1% of the state's dry cleaners use nonhazardous materials such as liquid carbon dioxide, Rynex, silicon based Green Earth, and water (wet cleaning). Although regulated as a hazardous material by the EPA, perc has been the solvent of choice because it can be used on all common textiles and fibers without risk of fabric shrinkage or faded dyes. Perc is also very

effective at removing fats, oils and grease out of clothes. While remaining the dominant dry cleaning solvent, perc use has declined 70% over the past decade due to innovations in equipment design, better operation and maintenance of equipment, and better training of employees.

NC DRYCLEANING MARKET

Growth in the dry cleaning industry was stagnant in the 1990's and is not expected to improve in the next five years. Economic census reports reveal that from 1992 to 1997, the number of dry cleaning plants in NC grew .56% a year. Meanwhile, the state's population grew 1.75% a year in the same five-year period. An analyst with the International Fabricare Institute said there were too many cleaners in the industry making the business very competitive. This was confirmed by the EPA Office of Compliance Sector Notebook Project: Profile of the Dry Cleaning Industry when it reported in September 1995 that "commercial dry cleaning is not a high profit business and many dry cleaners are barely able to stay in business." Sixty three percent of dry cleaners in 1993 had annual revenue of $113,000 or less. Sole proprietorship returns in 1997, showed that 74.3 % of dry cleaners were profitable and the net income for dry cleaners was $12,432 a year (Summer 1999 SOI Bulletin).

In 1997, the US Census Bureau published an Economic Census for North Carolina that listed 696 dry cleaning plants in the state. The Executive Director of the North Carolina Association of Launderers and Cleaners estimates that the average number of dry cleaning machines per facility is 1.1 due to the large number of small operations. Using the 696 plants reported in 1997 times 1.1 machines per facility equals 766 dry cleaning machines in North Carolina. The estimated life span of these machines is 12 to 15 years. Assuming an equal number of machines are retired each year, then between 51 (every 12 years) and 64 machines (every 15 years) will be purchased. This projection is in line with the Association of Launderers and Cleaners' estimate that 50 to 60 dry cleaning machines will be replaced in each of the next five years. Some of the replacement equipment may go into large central operations as the result of consolidation among smaller shops.

SWITCH TO NONHAZARDOUS SOLVENTS

As mentioned above, nonhazardous dry cleaners make up about 1% of the dry cleaning market. A Raleigh dry cleaner is one of 32 test sites in the world for silicone based Green Earth solution. Micell Technologies uses liquid carbon dioxide in its Hangers franchises in Wilmington, Morrisville, and Greensboro. Under a license agreement with Global Technologies, Sail Star USA will begin assembly of carbon dioxide dry cleaning machines in Charlotte this year. No advance orders have been received from North Carolina dry cleaning plants.

While nonhazardous dry cleaning machines are available, there has been no stampede to invest in the new technologies. Price is one obstacle. Given the low profit margins of many dry cleaning operations, many cannot afford the new technology. The cost of a new perc machine can range from $35,000 to $60,000, with an average of $50,000 for a 50 pound load machine. The carbon dioxide machines offered by Micell Technologies have an average cost of $165,000 plus a franchise requirement that cost $25,000 and a pledge of 5% of gross revenue as a royalty. The carbon dioxide machines built by Sail Star USA will cost between $80,000 to $120,000, but can be purchased without franchise obligations. Green Earth machines are not yet in full production but are estimated to cost between $40,000 to $60,000. (Hydrocarbon machines can be retrofitted to use Green Earth solution for less than $5000.)

Another obstacle to conversion to new technologies is the reluctance to invest in a technology that does not have a proven track record. Dr. Manfred Wentz, visiting professor at N.C. State University College of Textiles, said the new technologies have not reached maturity and that skeptics abound in the dry cleaning industry. A dry cleaning equipment dealer in Raleigh said the new technologies need a two or three year "shake out period" and that many dry cleaning operators may wait to see if the prices go down. The CEO of the Neighborhood Cleaners Institute said that carbon dioxide machines "have promise", but that the technology is "not all there yet". Some cleaners use wet cleaning in conjunction with their dry cleaning operation. Research by the International Fabricare Institute found "that up to 40 percent of garments could be wetcleaned quite readily but that it takes a serious commitment to proper training of employees to clean 60 to 80 percent of all garments." Wet cleaning machines can clean most garments but cannot adequately dissolve lipophilic stains such as oils, greases, fats and waxes.

Another hurdle to conversion in the short run is that many dry cleaning operators have invested in new perc machines in response to EPA regulations on hazardous solvents. These operators will get the maximum use of these machines before buying a new one. These new machines have reduced solvent use while providing the operators with the best and most consistent cleaner.

TAX CREDIT

In the short run, Micell Technologies seems to be the only nonhazardous solvent dry cleaning equipment company in position to capture a share of the new and replacement market of dry cleaning machines. Micell Technologies has estimated that it will sell 10 machines in North Carolina in 2001, 8 in 2002, and 7 in 2003 without the tax credit. With the tax credit, the company expects a 50% boost in sales to 15 in 2001, 12 in 2002, and 11 in 2003. Bank of America's announcement on April 22, 2000 that it would finance the purchase of Hangers franchises in conjunction with the Small Business Administration should make Micell's market projections more achievable.

By 2003 and 2004, the other nonhazardous solvent equipment manufacturers will have completed several years of tests and should produce enough machines to be more price competitive with perc and petroleum machines. Sail Star USA in Charlotte projects total production for the US market will increase from 150 units in year 2000 to maximum of 4,000 units in 2003. By 2003, the cost of each Sail Star unit could be as low as $60,000, a price competitive with perc. By 2003, Green Earth machines will have had three to four years of market experience and if the results are positive, the machine's $50,000 price tag will make it competitive in the market place.

This fiscal note assumes that 60 dry cleaning machines will be purchased each year from 2000 to 2005. The note assumes that Micell machines will be the only nonhazardous solvent machines sold until 2003. Beginning in 2003, it is assumed that all new and replacement dry cleaning machines will use nonhazardous solvents due to EPA and state environmental regulations. It is assumed that half of these dry cleaning machines will be purchased in the first six months of the fiscal year and half will be purchased in the second half of the fiscal year. (The exception is in 2001 when dry cleaners can be expected to delay purchase of Micell equipment until July 1 to get the 20% credit and use 100% of the credit in the tax year and fiscal year.) The dry cleaning companies will deduct the 20% tax credit from quarterly estimated income tax payments. In order to calculate fiscal year impact, it is assumed that 45% of the tax credit will be taken within the first 6 months (two quarters) of the purchase and 55% in the following two quarters. It is

assumed that the companies purchasing Micell equipment and Hangers franchise will be able to use the full tax credit in the year the equipment is purchased or leased. (For leased property, the tax credit is applied to eight times the annual rental rate.) For those purchasing or leasing other equipment, primarily replacement machines, it is assumed that they will be small businesses that do not have sufficient income to absorb the full tax credit and thus the credit will be carried forward for five years. To calculate the impact by fiscal year, the credit is divided equally over a five-year period. The chart below shows how the fiscal impact is calculated.

		FY 2000-01		FY 2001-02		FY 2002-03	
		July-Dec 2000	Jan - June 2001	July-Dec 2001	Jan - June 2002	July-Dec 2002	Jan - June 2003
Micell							
Cost/ #machines	$165,000	0	0	15	6	6	6
20% tax credit	$33,000			$495,000	$198,000	$198,000	$198,000
Estimated payments				$495,000	$89,100	$198,000	$198,000
Green Earth/ Sail Star/other							
Cost/ #machines	$60,000	0	0	0	0	0	25
20% tax credit	$12,000						$300,000
Estimated payments							$135,000
5 year carry forward							$27,000
Sum				$495,000	$89,100	$198,000	$225,000
Fiscal Year Total					$584,100		$423,000

	FY 2003-04		FY 2004-05		FY 2005-06	
	July-Dec 2003	Jan - June 2004	July-Dec 2004	Jan - June 2005	July-Dec 2005	Jan - June 2006
Micell						
#machines	5	6	5	6	5	6
20% tax credit	$165,000	$198,000	$165,000	$198,000	$165,000	$198,000
Estimated payments	$183,150	$179,850	$183,150	$179,850	$183,150	$179,850
Green Earth/ Sail Star/other						
#machines	24	25	24	25	24	25
20% tax credit	$288,000	$300,000	$288,000	$300,000	$288,000	$300,000
Estimated payments	$294,600	$293,400	$294,600	$293,400	$294,600	$293,400
5 year carry forward		$27,000		$27,000		$27,000
	$58,920		$58,920		$58,920	
		$58,680		$58,680		$58,680
			$58,920		$58,920	
				$58,680		$58,680
					$58,920	
						$58,680
Sum	$242,070	$265,530	$300,990	$324,210	$359,910	$382,890
Fiscal Year Total		$507,600		$625,200		$742,800

TECHNICAL CONSIDERATIONS:

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Richard Bostic

APPROVED BY:

DATE:

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1583

AMENDMENT NO._____
(to be filled in by
Principal Clerk)

H1583-ALC-7/11 Page 1 of __

Date_____, 200__

Comm. Sub. [YES]
Amends Title [YES]
Third Edition

Sen._____

moves to amend the bill on page 1, lines 2 - 5,
by rewriting the lines to read:
"AN ACT TO PROVIDE AN INCENTIVE FOR INVESTING IN DRY-CLEANING EQUIPMENT THAT DOES NOT USE HAZARDOUS SUBSTANCES AND TO MODIFY THE AUTHORIZATION FOR INVESTING STATE FUNDS IN RURAL NORTH CAROLINA.";

and on page 2, lines 12 - 13,
by rewriting the lines to read:

"Section 2. G.S. 147-69.2(b)(9) and (10) read as rewritten:
'(b) It shall be the duty of the State Treasurer to invest the cash of the funds enumerated in subsection (a) of this section in excess of the amount required to meet the current needs and demands on such funds, selecting from among the following:

. . .

(9) Obligations and securities of The North Carolina Enterprise Corporation, of the North Carolina Economic Opportunities Fund, or of a limited partnership in which The North Carolina Enterprise Corporation or the North Carolina Economic Opportunities Fund is the only general partner, not to exceed twenty million dollars ($20,000,000) from all ~~funds.~~

~~(10)~~ ~~A~~ funds; and a limited partnership interest in a partnership whose primary purpose is to invest in venture capital or corporate buyout transactions, not to exceed thirty million dollars ($30,000,000) from all funds. These maximum dollar amounts do not apply to or restrict the reinvestment in accordance with this subdivision of any income from these

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1583

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

H1583-ALC-7/11 Page 2 of __

investments.'

Section 3. Section 1 of this act is effective for taxable years beginning on or after July 1, 2001. The remainder of this act is effective when it becomes law."

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1583*
Committee Substitute Favorable 6/20/00
Committee Substitute #2 Favorable 6/30/00
Proposed Senate Committee Substitute H1583-PCS8219-LC

Short Title: Nonhaz. Dry-Cleaning Incentive/Investment. (Public)

Sponsors:

Referred to:

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO PROVIDE AN INCENTIVE FOR INVESTING IN DRY-CLEANING EQUIPMENT THAT DOES NOT USE HAZARDOUS SUBSTANCES AND TO MODIFY THE AUTHORIZATION FOR INVESTING STATE FUNDS IN RURAL NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. Article 3B of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-129.16C. Credit for investing in dry-cleaning equipment that does not use a hazardous substance.**

(a) Credit. -- If a taxpayer that has purchased or leased qualified dry-cleaning equipment, places it in service in this State for commercial purposes during the taxable year, the taxpayer is allowed a credit equal to twenty percent (20%) of the cost of the equipment. To support the credit allowed by this section, the taxpayer must file with the tax return for the taxable year in which the credit is claimed a certification by the Department of Environment and Natural Resources that the equipment purchased or leased by the taxpayer is qualified dry-cleaning equipment.

(b) Restrictions. -- No credit is allowed under this section to the extent the cost of the equipment was paid with public funds. A taxpayer that claims any other credit allowed under this Chapter with respect to qualified dry-cleaning equipment may not take the credit allowed in this section with respect to the same equipment.

(c) Definitions. -- The following definitions apply only in this section:

(1) Hazardous solvent. -- A solvent, any portion of which consists of a chlorine-based solvent, a hydrocarbon-based solvent, a hazardous substance as defined in G.S. 130A-310(2), or any substance determined by the Administrator of the Environmental Protection Agency or the Director of the National Institute of Occupational Safety and Health to possess carcinogenic potential to humans.

(2) Qualified dry-cleaning equipment. -- Equipment that is designed and used primarily to dry-clean clothing and other fabric and does not use any hazardous solvent or any other substance that the Department of Environment and Natural Resources determines to pose a threat to human health or the environment."

Section 2. G.S. 147-69.2(b)(9) and (10) read as rewritten:

"(b) It shall be the duty of the State Treasurer to invest the cash of the funds enumerated in subsection (a) of this section in excess of the amount required to meet the current needs and demands on such funds, selecting from among the following:

. . .

(9) Obligations and securities of The North Carolina Enterprise Corporation, of the North Carolina Economic Opportunities Fund, or of a limited partnership in which The North Carolina Enterprise Corporation or the North Carolina Economic Opportunities Fund is the only general partner, not to exceed twenty million dollars ($20,000,000) from all ~~funds.~~

~~(10)~~ ~~A~~ funds; and a limited partnership interest in a partnership whose primary purpose is to invest in venture capital or corporate buyout transactions, not to exceed thirty million dollars ($30,000,000) from all funds. These maximum dollar amounts do not apply to or restrict the reinvestment in accordance with this subdivision of any income from these investments."

Section 3. Section 1 of this act is effective for taxable years beginning on or after July 1, 2001. The remainder of this act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 4

HOUSE BILL 1566
Committee Substitute Favorable 6/26/00
Committee Substitute #2 Favorable 6/30/00
Fourth Edition Engrossed 7/6/00

Short Title: Temp. MV Lien Filing. (Public)

Sponsors:

Referred to:

May 17, 2000

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR A PROCEDURE FOR CREATION OF A TEMPORARY LIEN ON A MOTOR VEHICLE WHEN A MANUFACTURER'S STATEMENT OF ORIGIN OR AN EXISTING CERTIFICATE OF TITLE ON A MOTOR VEHICLE IS UNAVAILABLE AND TO MAKE OTHER CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-52.1 reads as rewritten:

"**§ 20-52.1. Manufacturer's certificate of transfer of new motor vehicle.**

(a) Any manufacturer transferring a new motor vehicle to another shall, at the time of the transfer, supply the transferee with a manufacturer's certificate of origin assigned to the transferee.

(b) Any dealer transferring a new vehicle to another dealer shall, at the time of transfer, give such transferee the proper manufacturer's certificate assigned to the transferee.

(c) Upon sale of a new vehicle by a dealer to a consumer-purchaser, the dealer shall execute in the presence of a person authorized to administer oaths an assignment of the manufacturer's certificate of origin for the vehicle, including in such assignment the name and address of the transferee and no title to a new motor vehicle acquired by a dealer under the provisions of subsections (a) and (b) of this

section shall pass or vest until such assignment is executed and the motor vehicle delivered to the transferee.

Any dealer transferring title to, or an interest in, a new vehicle shall deliver the manufacturer's certificate of origin duly assigned in accordance with the foregoing provision to the transferee at the time of delivering the vehicle, except that where a security interest is obtained in the motor vehicle from the transferee in payment of the purchase price or otherwise, the transferor shall deliver the manufacturer's certificate of origin to the lienholder and the lienholder shall forthwith forward the manufacturer's certificate of origin together with the transferee's application for certificate of title and necessary fees to the Division. Any person who delivers or accepts a manufacturer's certificate of origin assigned in blank shall be guilty of a Class 2 ~~misdemeanor.~~ misdemeanor, unless done in accordance with subsection (d) of this section.

(d) When a manufacturer's statement of origin or an existing certificate of title on a motor vehicle is unavailable, a motor vehicle dealer licensed under Article 12 of this Chapter may also transfer title to another by certifying in writing in a sworn statement to the Division that all prior perfected liens on the vehicle have been paid and that the motor vehicle dealer, despite having used reasonable diligence, is unable to obtain the vehicle's statement of origin or certificate of title. The Division is authorized to develop a form for this purpose. The filing of a false sworn certification with the Division pursuant to this subsection shall constitute a Class H felony."

Section 2. G.S. 20-58 reads as rewritten:

"**§ 20-58. Perfection by indication of security interest on certificate of title.**

(a) Except as provided in G.S. 20-58.8, a security interest in a vehicle of a type for which a certificate of title is required shall be perfected only as hereinafter provided.

(1) If the vehicle is not registered in this State, the application for notation of a security interest shall be the application for certificate of title provided for in G.S. 20-52.

(2) If the vehicle is registered in this State, the application for notation of a security interest shall be in the form prescribed by the Division, signed by the debtor, and contain the date of application of each security interest, and name and address of the secured party from whom information concerning the security interest may be obtained. The application must be accompanied by the existing certificate of title unless in the possession of a prior secured party. If there is an existing certificate of title issued by this or any other jurisdiction in the possession of a prior secured party, the application for notation of the security interest shall in addition contain the name and address of such prior secured party. An application for notation of a security interest may be signed by the secured party instead of the debtor when the application is accompanied by documentary evidence of the applicant's security interest in that motor vehicle signed by the debtor and by affidavit

of the applicant stating the reason the debtor did not sign the application. In the event the certificate cannot be obtained for recordation of the security interest, when title remains in the name of the debtor, the Division shall cancel the certificate and issue a new certificate of title listing all the respective security interests.

(3) If the application for notation of security interest is made in order to continue the perfection of a security interest perfected in another jurisdiction, it may be signed by the secured party instead of the debtor. Such application shall be accompanied by documentary evidence of a perfected security interest. No such application shall be valid unless an application for a certificate of title has been made in North Carolina. The security interest perfected herein shall be subject to the provisions set forth in G.S. 20-58.5.

(b) When a manufacturer's statement of origin or an existing certificate of title on a motor vehicle is unavailable, a first lienholder who holds a valid license as a motor vehicle dealer issued by the Commissioner under Article 12 of this Chapter or his designee may file a notarized copy of an instrument creating and evidencing a security interest in the motor vehicle with the Division of Motor Vehicles. A filing pursuant to this subsection shall constitute constructive notice to all persons of the security interest in the motor vehicle described in the filing. The constructive notice shall be effective from the date of the filing if the filing is made within 20 days after the date of the security agreement. The constructive notice shall date from the date of the filing with the Division if it is made more than 20 days after the date of the security agreement. The notation of a security interest created under this subsection shall automatically expire 60 days after the date of the creation of the security interest, or upon perfection of the security interest as provided in subsection (a) of this section. A security interest notation made under this subsection and then later perfected under subsection (a) of this section shall be presumed to have been perfected on the date of the earlier filing. The Division may charge a fee not to exceed ten dollars ($10.00) for each notation of security interest filed pursuant to this subsection. A false filing with the Division pursuant to this subsection shall constitute a Class H felony."

Section 3. G.S. 20-63(h) reads as rewritten:

"(h) Commission Contracts for Issuance of Plates and Certificates. -- All registration plates, registration certificates and certificates of title issued by the Division, outside of those issued from the Raleigh offices of the said Division and those issued and handled through the United States mail, shall be issued insofar as practicable and possible through commission contracts entered into by the Division for the issuance of such plates and certificates in localities throughout North Carolina with persons, firms, corporations or governmental subdivisions of the State of North Carolina and the Division shall make a reasonable effort in every locality, except as hereinbefore noted, to enter into a commission contract for the issuance of such plates and certificates and a record of these efforts shall be maintained in the

Division. In the event the Division is unsuccessful in making commission contracts as hereinbefore set out it shall then issue said plates and certificates through the regular employees of the Division. Whenever registration plates, registration certificates and certificates of title are issued by the Division through commission contract arrangements, the Division shall provide proper supervision of such distribution. Commission contracts entered under this subsection shall provide for the payment of compensation for all transactions as set forth below. Nothing contained in this subsection will allow or permit the operation of fewer outlets in any county in this State than are now being operated.

A transaction is any of the following activities:

(1) Issuance of a registration plate, a registration card, a registration renewal sticker, or a certificate of title.

(2) Issuance of a handicapped placard or handicapped identification card.

(3) Acceptance of an application for a personalized registration plate.

(4) Acceptance of a surrendered registration plate, registration card, or registration renewal sticker, or acceptance of an affidavit stating why a person cannot surrender a registration plate, registration card, or registration renewal sticker.

(5) Cancellation of a title because the vehicle has been junked.

(6) Acceptance of an application for, or issuance of, a refund for a fee or a tax, other than the highway use tax.

(7) Receipt of the civil penalty imposed by G.S. 20-309 for a lapse in financial responsibility or receipt of the restoration fee imposed by that statute.

(8) Acceptance of a notice of failure to maintain financial responsibility for a motor vehicle.

(8a) Collection of civil penalties imposed for violations of G.S. 20-183.8A.

(8b) Sale of one or more inspection stickers in a single transaction to a licensed inspection station.

(9) Collection of the highway use tax.

(10) Acceptance of a temporary lien filing.

Performance at the same time of any combination of the items that are listed within each subdivision or are listed within subdivisions (1) through (8b) of this section is a single transaction for which a dollar and thirty-five cent ($1.35) compensation shall be paid. Performance of the item listed in subdivision (9) of this subsection in combination with any other items listed in this subsection is a separate transaction for which a one dollar and twenty cent ($1.20) compensation shall be paid."

Section 4. G.S. 20-72(b) reads as rewritten:

"(b) In order to assign or transfer title or interest in any motor vehicle registered under the provisions of this Article, the owner shall execute in the presence of a person authorized to administer oaths an assignment and warranty of title on the

reverse of the certificate of title in form approved by the Division, including in such assignment the name and address of the transferee; and no title to any motor vehicle shall pass or vest until such assignment is executed and the motor vehicle delivered to the transferee. The provisions of this section shall not apply to any foreclosure or repossession under a chattel mortgage or conditional sales contract or any judicial sale.

When a manufacturer's statement of origin or an existing certificate of title on a motor vehicle is unavailable, a motor vehicle dealer licensed under Article 12 of this Chapter may also transfer title to another by certifying in writing in a sworn statement to the Division that all prior perfected liens on the vehicle have been paid and that the motor vehicle dealer, despite having used reasonable diligence, is unable to obtain the vehicle's statement of origin or certificate of title. The Division is authorized to develop a form for this purpose. The filing of a false sworn certification with the Division pursuant to this paragraph shall constitute a Class H felony.

Any person transferring title or interest in a motor vehicle shall deliver the certificate of title duly assigned in accordance with the foregoing provision to the transferee at the time of delivering the vehicle, except that where a security interest is obtained in the motor vehicle from the transferee in payment of the purchase price or otherwise, the transferor shall deliver the certificate of title to the lienholder and the lienholder shall forward the certificate of title together with the transferee's application for new title and necessary fees to the Division within 20 days. Any person who delivers or accepts a certificate of title assigned in blank shall be guilty of a Class 2 misdemeanor.

The title to a salvage vehicle shall be forwarded to the Division as provided in G.S. 20-109.1."

Section 5. G.S. 20-79.1(h) reads as rewritten:

"(h) Temporary registration plates or markers shall expire and become void upon the receipt of the annual registration plates from the Division, or upon the rescission of a contract to purchase a motor vehicle, or upon the expiration of 30 days from the date of issuance, depending upon whichever event shall first occur. No refund or credit or fees paid by dealers to the Division for temporary registration plates or markers shall be allowed, except in the event that the Division discontinues the issuance of temporary registration plates or markers or unless the dealer discontinues business. In this event the unissued registration plates or markers with the unissued registration certificates shall be returned to the Division and the dealer may petition for a refund. Upon the expiration of the 30 days from the date of issuance, a second 30-day temporary registration plate or marker may be issued by the dealer upon showing the vehicle has been sold, a temporary lien has been filed as provided in G.S. 20-58, and that the dealer, having used reasonable diligence, is unable to obtain the vehicle's statement of origin or certificate of title so that the lien may be perfected."

Section 6. This act becomes effective May 1, 2001, and applies to offenses occurring on or after that date.

HOUSE BILL 1566:
Temp. MV Lien Filing

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Representative Cole; and Fox
Date:	July 10, 2000	**Summary by:**	Wendy L. Graf, Staff Attorney, Karen Cochrane Brown, Committee Co-Counsel
Version:	Fourth Edition		

SUMMARY: ***House Bill 1566 creates a procedure by which a first lienholder or his designee may file an application with the DMV for a temporary lien on a motor vehicle in cases where a manufacturer's statement of origin or an existing certificate of title on a motor vehicle is unavailable.DMV is authorized to charge a fee of up to $10.00 for filing the notation of security interest. Filing a false statement under this provision constitutes a Class H felony. The act becomes effective May 1, 2001.***

CURRENT LAW: Under current law (G.S. 20-58) there are three ways to perfect a security interest in a vehicle for which a certificate of title is required. In order to perfect a security interest by any of these methods, G.S. 20-58.2 requires that the DMV be provided with the application for notation of security interest within 20 days after the date of the security agreement in order for the date of perfection to relate back to the date of the execution of the security agreement. Otherwise, the interest is perfected when the application is delivered to the DMV. Therefore, if a manufacturer's statement of origin or certificate of title on a motor vehicle is unavailable until after that 20 day period has passed, a first lienholder's interest would not be perfected until he was able to provide that paper work to the DMV.

BILL ANALYSIS: House Bill 1566 changes the current law by adding a subsection to G.S. 20-58 which would allow a first lienholder to provide the DMV with an instrument, other than the manufacturer's statement of origin or certificate of title, evidencing a security interest in a motor vehicle within 20 days after the date of the security agreement. This would create a temporary notation of a security interest that would automatically expire 60 days after the security interest was created, or upon perfection of the security interest by any of the methods existing under current law. Perfection of a security interest under this subsection would also relate back to the date of the execution of the security agreement.

The bill also authorizes DMV to charge a fee of up to $10.00 for each notation of security interest filed. A false filing with DMV constitutes a Class H felony.

The bill also makes conforming changes to other sections of the General Statutes that would be affected by the changes made to G.S. 20-58. Those changes include:

* G.S. 20-72(b) allows a dealer to transfer title on a motor vehicle by certifying in writing to the DMV that all prior perfected liens have been paid and that the dealer is unable to obtain the vehicles statement of origin or certificate of title.

* G.S. 20-52.1 provides a procedure by which a dealer may transfer title to another when he is unable to obtain the vehicle's statement of origin or certificate of title, without being subject to the criminal penalty that one who delivers or accepts a certificate of origin assigned in blank would otherwise be guilty of.

* G.S. 20-79.1(h) allows the dealer to issue a second temporary registration plate, upon expiration of the first, upon showing that a temporary lien has been properly filed.

* G.S. 20-63(h) adds the issuance of a second temporary plate to the list of transactions for which commission contracts may be entered into by the DMV.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

DRAFT

BILL NUMBER: H.B. 1566, 4th Edition

SHORT TITLE: Temporary Motor Vehicle Lien Filing

SPONSOR(S): Rep. Cole

FISCAL IMPACT

Yes (X) **No ( )** **No Estimate Available (X)**

	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05
REVENUES					
Highway Fund	325,000	780,000	780,000	780,000	780,000
EXPENDITURES					
Highway Fund	305,066	129,290	129,290	129,290	129,290

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: The Department of Transportation, Motor Vehicles Division. The Department of Correction. The Administrative Office of the Courts.

EFFECTIVE DATE: February 1, 2001.

BILL SUMMARY: Under current law a manufacturer's statement of origin or a certificate of title is needed when transferring ownership in a vehicle. The bill provides alternative methods of transfer when the manufacturer's statement of origin or an existing certificate of title is not available in a timely fashion. Under the bill, when these documents are not available, a licensed motor vehicle dealer can transfer title by certifying in writing to DMV that 1) all prior perfect liens on the vehicle have been paid and 2) despite "reasonable diligence" these documents are unavailable. Similarly, a dealer who is the first lienholder may file a notarized copy of an instrument creating and evidencing a security interest in the vehicle with the DMV. **The 4th Edition specifies that the filing of a false sworn certification in these instances is a Class H felony**. The notation of security interest is time limited. The DMV can charge a fee of up to $10.00 for each notation of security interest filed. Finally the bill authorizes a dealer to issue a second thirty day temporary plate if the vehicle has been sold, a temporary lien has been filed, and the dealer is unable to obtain the vehicle's statement of origin or certificate of title, making the dealer unable to perfect the lien.

ASSUMPTIONS AND METHODOLOGY: Under federal law titles and statements of origin must be transferred within 20 days to remain valid and enforceable. According to industry experts, automobile dealers and others transferring a vehicle are often unable to transfer the appropriate paperwork within that time period. The temporary lien system in the bill is an attempt to address this issue.
Tennessee has a temporary lien program similar to that developed in the bill. The Tennessee Secretary of State's office that administers the program estimates that they process between 200 and 250 temporary lien applications a day, or approximately 52,000 to 65,000 per year. According to the U.S. Department of Transportation, North Carolina has approximately 50% more registered vehicles than Tennessee. Using this percentage as a proxy suggests that North Carolina could expect to see approximately 300-375 temporary lien applications each day. The lower estimate of 300 per day or 78,000 per year is used for a revenue estimate.

Assuming the $10.00 fee is charged for each application, the bill will generate approximately $780,000 annually.

The Division of Motor Vehicles believes they will need one additional staff person (Grade 57) to implement the provisions of the bill. They also suggest that a high-speed scanner, personal computer, software and associated hardware are needed. The MIS Division also estimates that three (3) additional FTEs will be needed in 2000-01 to rewrite their STARS database, plus $14,880 to cover ITS charges. DMV's total estimated costs are as follows:

	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05
DMV Personnel	9996	23990	23990	23990	23990
Scanner & other software and equipment	60315				
MIS Personnel	176000				
ITS Charges	14880				
TOTAL	261191	23990	23990	23990	23990

In addition, DMV reports that they would contract with the local tag agents to process the applications. The Department believes they will pay the tag agents $1.35 per temporary lien or $105,300 per year.

The overall anticipated revenues and expenditures are as follows:

	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05
Revenues					
Application Fees @ $10.00 each	325,000	780,000	780,000	780,000	780,000
Expenditures					
DMV and MIS Start-up Combined	261,191	23990	23990	23990	23990
Tag Agent Fees	43,875	105300	105300	105300	105300
Total Expenditures	305,066	129290	129290	129290	129290
NET REVENUES	19,934	650,710	650,710	650,710	650,710

While Tennessee's permanent personnel costs are significantly higher (their program uses twelve full time equivalents) Fiscal Research Appropriations staff believes North Carolina's use of tag agents makes the lower personnel cost estimates from DMV reasonable.

Criminal Penalty

The 4th Edition of HB 1566 specifies a Class H felony for a motor vehicle dealer filing a false sworn certification with the Division of Motor Vehicles for certain specified transactions.

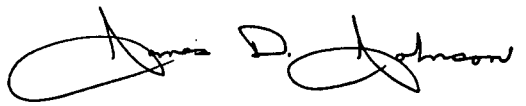
Dept of Correction/Judicial Branch

Because this would be a new offense, there are no historical data from which to estimate an impact. However, there are several reasons to believe convictions for this new offense would be infrequent and the Fiscal Research Division believes any impact can be absorbed. There is no data to suggest dealers would not comply with the law. Under current law, obtaining property by false pretenses is already a Class H felony for values less than $100,000. In many cases (if the false statement causes something of value to be obtained), filing of false sworn certification could be prosecuted under this broader statute. To the extent that is true, the penalty specified in HB 1566 would have no impact on the Judicial Branch or the Department of Correction. While it is possible that the specification of a new penalty could increase the likelihood of prosecution and that there will be some cases that fall outside the state outlawing obtaining property by false pretenses, there is no data to suggest the effect would be significant. The Judicial Branch notes that it would be a similar offense to altering/forging certificates of title, registration cards, or applications, under GS 20-71(a). During 1999, 17 defendants were charged with this Class I felony offense, and 7 defendants were convicted of it. They believe any new trials would be infrequent and the impact of this individual bill could be absorbed.

For any new Class H felony, if there were 25 convictions, the Sentencing Commission estimates that there would be a need for 7 new prison beds in the first year and an additional 7 in the second year. Because Sentencing Commission projections indicate no available prison beds in future years, any new inmate would increase the costs of the Department of Correction. The annual operating cost for a medium security inmate is $23,842.

FISCAL RESEARCH DIVISION 733-4910
PREPARED BY: Linda Struyk Millsaps, Bob Weiss and Elisa Wolper

APPROVED BY: James D. Johnson



DATE: July 10, 2000

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 1566

AMENDMENT NO. #1
(to be filled in by
Principal Clerk)

H1566-ARO-002

Page 1 of __

Date _____,2000

Comm. Sub. [YES]
Amends Title []
Fourth Edition

Senator _____

moves to amend the bill on page 3, line 32, by rewriting the line to read:
"subsection. The fee shall be credited to the Highway Fund. A false filing with the Division pursuant to this subsection shall constitute'";

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 4th Editing

H. B. No. 1566 DATE

S. B. No. Amendment No. #2
(to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE

Rep.)
) Cooper
Sen.)

moves to amend the bill on page 3, line 28

( ) WHICH CHANGES THE TITLE

by rewriting the line to read:

"this section whichever occurs first. A Security interest notation made under this subsection and then later".

SIGNED

ADOPTED FAILED TABLED

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1566
Committee Substitute Favorable 6/26/00
Committee Substitute #2 Favorable 6/30/00
Fourth Edition Engrossed 7/6/00
Proposed Senate Committee Substitute H1566-PCS5121-RB

Short Title: Temp. MV Lien Filing. (Public)

Sponsors:

Referred to:

May 17, 2000

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR A PROCEDURE FOR CREATION OF A TEMPORARY LIEN ON A MOTOR VEHICLE WHEN A MANUFACTURER'S STATEMENT OF ORIGIN OR AN EXISTING CERTIFICATE OF TITLE ON A MOTOR VEHICLE IS UNAVAILABLE AND TO MAKE OTHER CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-52.1 reads as rewritten:

"**§ 20-52.1. Manufacturer's certificate of transfer of new motor vehicle.**

(a) Any manufacturer transferring a new motor vehicle to another shall, at the time of the transfer, supply the transferee with a manufacturer's certificate of origin assigned to the transferee.

(b) Any dealer transferring a new vehicle to another dealer shall, at the time of transfer, give such transferee the proper manufacturer's certificate assigned to the transferee.

(c) Upon sale of a new vehicle by a dealer to a consumer-purchaser, the dealer shall execute in the presence of a person authorized to administer oaths an assignment of the manufacturer's certificate of origin for the vehicle, including in such assignment the name and address of the transferee and no title to a new motor vehicle acquired by a dealer under the provisions of subsections (a) and (b) of this

section shall pass or vest until such assignment is executed and the motor vehicle delivered to the transferee.

Any dealer transferring title to, or an interest in, a new vehicle shall deliver the manufacturer's certificate of origin duly assigned in accordance with the foregoing provision to the transferee at the time of delivering the vehicle, except that where a security interest is obtained in the motor vehicle from the transferee in payment of the purchase price or otherwise, the transferor shall deliver the manufacturer's certificate of origin to the lienholder and the lienholder shall forthwith forward the manufacturer's certificate of origin together with the transferee's application for certificate of title and necessary fees to the Division. Any person who delivers or accepts a manufacturer's certificate of origin assigned in blank shall be guilty of a Class 2 ~~misdemeanor.~~ misdemeanor, unless done in accordance with subsection (d) of this section.

(d) When a manufacturer's statement of origin or an existing certificate of title on a motor vehicle is unavailable, a motor vehicle dealer licensed under Article 12 of this Chapter may also transfer title to another by certifying in writing in a sworn statement to the Division that all prior perfected liens on the vehicle have been paid and that the motor vehicle dealer, despite having used reasonable diligence, is unable to obtain the vehicle's statement of origin or certificate of title. The Division is authorized to develop a form for this purpose. The filing of a false sworn certification with the Division pursuant to this subsection shall constitute a Class H felony."

Section 2. G.S. 20-58 reads as rewritten:

"**§ 20-58. Perfection by indication of security interest on certificate of title.**

(a) Except as provided in G.S. 20-58.8, a security interest in a vehicle of a type for which a certificate of title is required shall be perfected only as hereinafter provided.

(1) If the vehicle is not registered in this State, the application for notation of a security interest shall be the application for certificate of title provided for in G.S. 20-52.

(2) If the vehicle is registered in this State, the application for notation of a security interest shall be in the form prescribed by the Division, signed by the debtor, and contain the date of application of each security interest, and name and address of the secured party from whom information concerning the security interest may be obtained. The application must be accompanied by the existing certificate of title unless in the possession of a prior secured party. If there is an existing certificate of title issued by this or any other jurisdiction in the possession of a prior secured party, the application for notation of the security interest shall in addition contain the name and address of such prior secured party. An application for notation of a security interest may be signed by the secured party instead of the debtor when the application is accompanied by documentary evidence of the applicant's security interest in that motor vehicle signed by the debtor and by affidavit

of the applicant stating the reason the debtor did not sign the application. In the event the certificate cannot be obtained for recordation of the security interest, when title remains in the name of the debtor, the Division shall cancel the certificate and issue a new certificate of title listing all the respective security interests.

(3) If the application for notation of security interest is made in order to continue the perfection of a security interest perfected in another jurisdiction, it may be signed by the secured party instead of the debtor. Such application shall be accompanied by documentary evidence of a perfected security interest. No such application shall be valid unless an application for a certificate of title has been made in North Carolina. The security interest perfected herein shall be subject to the provisions set forth in G.S. 20-58.5.

(b) When a manufacturer's statement of origin or an existing certificate of title on a motor vehicle is unavailable, a first lienholder who holds a valid license as a motor vehicle dealer issued by the Commissioner under Article 12 of this Chapter or his designee may file a notarized copy of an instrument creating and evidencing a security interest in the motor vehicle with the Division of Motor Vehicles. A filing pursuant to this subsection shall constitute constructive notice to all persons of the security interest in the motor vehicle described in the filing. The constructive notice shall be effective from the date of the filing if the filing is made within 20 days after the date of the security agreement. The constructive notice shall date from the date of the filing with the Division if it is made more than 20 days after the date of the security agreement. The notation of a security interest created under this subsection shall automatically expire 60 days after the date of the creation of the security interest, or upon perfection of the security interest as provided in subsection (a) of this section, whichever occurs first. A security interest notation made under this subsection and then later perfected under subsection (a) of this section shall be presumed to have been perfected on the date of the earlier filing. The Division may charge a fee not to exceed ten dollars ($10.00) for each notation of security interest filed pursuant to this subsection. The fee shall be credited to the Highway Fund. A false filing with the Division pursuant to this subsection shall constitute a Class H felony."

Section 3. G.S. 20-63(h) reads as rewritten:

"(h) Commission Contracts for Issuance of Plates and Certificates. -- All registration plates, registration certificates and certificates of title issued by the Division, outside of those issued from the Raleigh offices of the said Division and those issued and handled through the United States mail, shall be issued insofar as practicable and possible through commission contracts entered into by the Division for the issuance of such plates and certificates in localities throughout North Carolina with persons, firms, corporations or governmental subdivisions of the State of North Carolina and the Division shall make a reasonable effort in every locality, except as hereinbefore noted, to enter into a commission contract for the issuance of such

plates and certificates and a record of these efforts shall be maintained in the Division. In the event the Division is unsuccessful in making commission contracts as hereinbefore set out it shall then issue said plates and certificates through the regular employees of the Division. Whenever registration plates, registration certificates and certificates of title are issued by the Division through commission contract arrangements, the Division shall provide proper supervision of such distribution. Commission contracts entered under this subsection shall provide for the payment of compensation for all transactions as set forth below. Nothing contained in this subsection will allow or permit the operation of fewer outlets in any county in this State than are now being operated.

A transaction is any of the following activities:

(1) Issuance of a registration plate, a registration card, a registration renewal sticker, or a certificate of title.

(2) Issuance of a handicapped placard or handicapped identification card.

(3) Acceptance of an application for a personalized registration plate.

(4) Acceptance of a surrendered registration plate, registration card, or registration renewal sticker, or acceptance of an affidavit stating why a person cannot surrender a registration plate, registration card, or registration renewal sticker.

(5) Cancellation of a title because the vehicle has been junked.

(6) Acceptance of an application for, or issuance of, a refund for a fee or a tax, other than the highway use tax.

(7) Receipt of the civil penalty imposed by G.S. 20-309 for a lapse in financial responsibility or receipt of the restoration fee imposed by that statute.

(8) Acceptance of a notice of failure to maintain financial responsibility for a motor vehicle.

(8a) Collection of civil penalties imposed for violations of G.S. 20-183.8A.

(8b) Sale of one or more inspection stickers in a single transaction to a licensed inspection station.

(9) Collection of the highway use tax.

(10) Acceptance of a temporary lien filing.

Performance at the same time of any combination of the items that are listed within each subdivision or are listed within subdivisions (1) through (8b) of this section is a single transaction for which a dollar and thirty-five cent ($1.35) compensation shall be paid. Performance of the item listed in subdivision (9) of this subsection in combination with any other items listed in this subsection is a separate transaction for which a one dollar and twenty cent ($1.20) compensation shall be paid."

Section 4. G.S. 20-72(b) reads as rewritten:

"(b) In order to assign or transfer title or interest in any motor vehicle registered under the provisions of this Article, the owner shall execute in the presence of a

person authorized to administer oaths an assignment and warranty of title on the reverse of the certificate of title in form approved by the Division, including in such assignment the name and address of the transferee; and no title to any motor vehicle shall pass or vest until such assignment is executed and the motor vehicle delivered to the transferee. The provisions of this section shall not apply to any foreclosure or repossession under a chattel mortgage or conditional sales contract or any judicial sale.

When a manufacturer's statement of origin or an existing certificate of title on a motor vehicle is unavailable, a motor vehicle dealer licensed under Article 12 of this Chapter may also transfer title to another by certifying in writing in a sworn statement to the Division that all prior perfected liens on the vehicle have been paid and that the motor vehicle dealer, despite having used reasonable diligence, is unable to obtain the vehicle's statement of origin or certificate of title. The Division is authorized to develop a form for this purpose. The filing of a false sworn certification with the Division pursuant to this paragraph shall constitute a Class H felony.

Any person transferring title or interest in a motor vehicle shall deliver the certificate of title duly assigned in accordance with the foregoing provision to the transferee at the time of delivering the vehicle, except that where a security interest is obtained in the motor vehicle from the transferee in payment of the purchase price or otherwise, the transferor shall deliver the certificate of title to the lienholder and the lienholder shall forward the certificate of title together with the transferee's application for new title and necessary fees to the Division within 20 days. Any person who delivers or accepts a certificate of title assigned in blank shall be guilty of a Class 2 misdemeanor.

The title to a salvage vehicle shall be forwarded to the Division as provided in G.S. 20-109.1."

Section 5. G.S. 20-79.1(h) reads as rewritten:

"(h) Temporary registration plates or markers shall expire and become void upon the receipt of the annual registration plates from the Division, or upon the rescission of a contract to purchase a motor vehicle, or upon the expiration of 30 days from the date of issuance, depending upon whichever event shall first occur. No refund or credit or fees paid by dealers to the Division for temporary registration plates or markers shall be allowed, except in the event that the Division discontinues the issuance of temporary registration plates or markers or unless the dealer discontinues business. In this event the unissued registration plates or markers with the unissued registration certificates shall be returned to the Division and the dealer may petition for a refund. Upon the expiration of the 30 days from the date of issuance, a second 30-day temporary registration plate or marker may be issued by the dealer upon showing the vehicle has been sold, a temporary lien has been filed as provided in G.S. 20-58, and that the dealer, having used reasonable diligence, is unable to obtain the vehicle's statement of origin or certificate of title so that the lien may be perfected."

Section 6. This act becomes effective May 1, 2001, and applies to offenses occurring on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 3

HOUSE BILL 1768
Committee Substitute Favorable 6/30/00
Third Edition Engrossed 7/6/00

Short Title: Orange Omnibus Act. (Local)

Sponsors:

Referred to:

May 25, 2000

A BILL TO BE ENTITLED

AN ACT MAKING OMNIBUS CHANGES TO CERTAIN GENERAL AND LOCAL LAWS AFFECTING ORANGE COUNTY.

The General Assembly of North Carolina enacts:

PART I. ORANGE COUNTY ADDED TO THOSE COUNTIES USING ATTACHMENT AND GARNISHMENT IN THE COLLECTION OF AMBULANCE SERVICE FEES

Section 1. G.S. 44-51.8 reads as rewritten:

"**§ 44-51.8. Counties to which Article applies.**

The provisions of this Article shall apply only to Alamance, Alexander, Alleghany, Anson, Ashe, Beaufort, Bladen, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Caswell, Catawba, Chatham, Cherokee, Chowan, Cleveland, Columbus, Craven, Cumberland, Dare, Davidson, Davie, Duplin, Durham, Edgecombe, Forsyth, Franklin, Gaston, Graham, Granville, Greene, Guilford, Halifax, Harnett, Haywood, Henderson, Hertford, Hoke, Hyde, Iredell, Johnston, Jones, Lee, Lenoir, Lincoln, McDowell, Macon, Madison, Mecklenburg, Mitchell, Montgomery, Moore, Nash, New Hanover, Onslow, Orange, Pasquotank, Person, Pitt, Polk, Randolph, Richmond, Robeson, Rockingham, Rowan, Rutherford, Sampson, Scotland, Stanly, Stokes, Surry, Swain, Transylvania, Tyrrell, Union, Vance, Wake, Warren, Washington, Watauga, Wilkes, Wilson, Yadkin and Yancey Counties."

PART II. REGULATION OF OPEN BURNING

Section 2. G.S. 153A-136 reads as rewritten:

"**§ 153A-136. Regulation of solid wastes.**

(a) A county may by ordinance regulate the storage, collection, transportation, use, disposal, and other disposition of solid wastes. Such an ordinance may:

(1) Regulate the activities of persons, firms, and corporations, both public and private.

(2) Require each person wishing to commercially collect or dispose of solid wastes to secure a license from the county and prohibit any person from commercially collecting or disposing of solid wastes without a license. A fee may be charged for a license.

(3) Grant a franchise to one or more persons for the exclusive right to commercially collect or dispose of solid wastes within all or a defined portion of the county and prohibit any other person from commercially collecting or disposing of solid wastes in that area. The board of commissioners may set the terms of any franchise, except that no franchise may be granted for a period exceeding 30 years, nor may any franchise by its terms impair the authority of the board of commissioners to regulate fees as authorized by this section.

(4) Regulate the fees, if any, that may be charged by licensed or franchised persons for collecting or disposing of solid wastes.

(5) Require the source separation of materials prior to collection of solid waste for disposal.

(6) Require participation in a recycling program by requiring separation of designated materials by the owner or occupant of the property prior to disposal. An owner of recovered materials as defined by G.S. 130A-290(a)(24) retains ownership of the recovered materials until the owner conveys, sells, donates, or otherwise transfers the recovered materials to a person, firm, company, corporation, or unit of local government. A county may not require an owner to convey, sell, donate, or otherwise transfer recovered materials to the county or its designee. If an owner places recovered materials in receptacles or delivers recovered materials to specific locations, receptacles, and facilities that are owned or operated by the county or its designee, then ownership of these materials is transferred to the county or its designee.

(7) Include any other proper matter.

(b) Any ordinance adopted pursuant to this section shall be consistent with and supplementary to any rules adopted by the Commission for Health Services or the Department of Environment and Natural Resources.

(c) The board of commissioners of a county shall consider alternative sites and socioeconomic and demographic data and shall hold a public hearing prior to selecting or approving a site for a new sanitary landfill that receives residential solid waste that is located within one mile of an existing sanitary landfill within the State. The distance between an existing and a proposed site shall be determined by measurement between the closest points on the outer boundary of each site. The definitions set out in G.S. 130A-290 apply to this subsection. As used in this subsection:

(1) "Approving a site" refers to prior approval of a site under G.S. 130A-294(a)(4).

(2) "Existing sanitary landfill" means a sanitary landfill that is in operation or that has been in operation within the five-year period immediately prior to the date on which an application for a permit is submitted.

(3) "New sanitary landfill" means a sanitary landfill that includes areas not within the legal description of an existing sanitary landfill as set out in the permit for the existing sanitary landfill.

(4) "Socioeconomic and demographic data" means the most recent socioeconomic and demographic data compiled by the United States Bureau of the Census and any additional socioeconomic and demographic data submitted at the public hearing.

(d) As used in this section, "solid waste" means nonhazardous solid waste, that is, solid waste as defined in G.S. 130A-290 but not including hazardous waste.

(e) A county may, as a condition of approval of any permit for a subdivision, clearing, and development of land or construction of buildings within the planning jurisdiction of the county, regulate and prohibit the open burning of trees, limbs, stumps, and construction debris associated with the permitted activity. Agricultural, horticultural, and silvacultural activities which are exempt by law from requirements of a county permit for subdivision, clearing, and development of land or construction of buildings within the planning jurisdiction of the county are not made subject to such permitting by this subsection."

PART III. APPLICABILITY AND EFFECTIVE DATE

Section 3. This act applies to Orange County only, except that Section 2 of this act does not apply to Carr and Cheeks Precincts.

Section 4. This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 3rd

H. B. No. 1768 DATE

S. B. No. Amendment No. (to be filled in by Principal Clerk)

COMMITTEE SUBSTITUTE ✓

Rep.) Ballantine

Sen.)

moves to amend the bill on page 1, line 3

( ) WHICH CHANGES THE TITLE

by rewriting the line to read:

"LOCAL LAWS AFFECTING CARTERET, ORANGE, AND PENDER COUNTIES.",

on page 1, line 6, by rewriting the line to read:

"PART I. CARTERET, ORANGE, AND PENDER COUNTIES ADDED TO THOSE COUNTIES USING",

on page 1, line 13 by adding "Carteret," at the end of the line;

On page 1, line 19 by inserting the word "Pender," between the words "Pasquotank," and "Person,";

and on page 3, lines 35 and 36, by rewriting the lines to read:

"Section 3. Section 1 of this act applies to Carteret, Orange, and Pender Counties only. Section 2 of this act applies to Orange County only, except that it does not apply to Carr and Cheeks Precincts."

SIGNED Patrick J. Ballantine

ADOPTED FAILED TABLED

GA-33-A

PRINCIPAL CLERK'S OFFICE (FOR ENGROSSMENT)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1768
Committee Substitute Favorable 6/30/00
Third Edition Engrossed 7/6/00
Proposed Senate Committee Substitute H1768-PCS4340

Short Title: Orange Omnibus Act. (Local)

Sponsors:

Referred to:

May 25, 2000

A BILL TO BE ENTITLED

AN ACT MAKING OMNIBUS CHANGES TO CERTAIN GENERAL AND LOCAL LAWS AFFECTING CARTERET, ORANGE, AND PENDER COUNTIES.

The General Assembly of North Carolina enacts:

PART I. CARTERET, ORANGE, AND PENDER COUNTIES ADDED TO THOSE COUNTIES USING ATTACHMENT AND GARNISHMENT IN THE COLLECTION OF AMBULANCE SERVICE FEES

Section 1. G.S. 44-51.8 reads as rewritten:

"**§ 44-51.8. Counties to which Article applies.**

The provisions of this Article shall apply only to Alamance, Alexander, Alleghany, Anson, Ashe, Beaufort, Bladen, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Carteret, Caswell, Catawba, Chatham, Cherokee, Chowan, Cleveland, Columbus, Craven, Cumberland, Dare, Davidson, Davie, Duplin, Durham, Edgecombe, Forsyth, Franklin, Gaston, Graham, Granville, Greene, Guilford, Halifax, Harnett, Haywood, Henderson, Hertford, Hoke, Hyde, Iredell, Johnston, Jones, Lee, Lenoir, Lincoln, McDowell, Macon, Madison, Mecklenburg, Mitchell, Montgomery, Moore, Nash, New Hanover, Onslow, Orange, Pasquotank, Pender, Person, Pitt, Polk, Randolph, Richmond, Robeson, Rockingham, Rowan, Rutherford, Sampson, Scotland, Stanly,

Stokes, Surry, Swain, Transylvania, Tyrrell, Union, Vance, Wake, Warren, Washington, Watauga, Wilkes, Wilson, Yadkin and Yancey Counties."

PART II. REGULATION OF OPEN BURNING

Section 2. G.S. 153A-136 reads as rewritten:

"**§ 153A-136. Regulation of solid wastes.**

(a) A county may by ordinance regulate the storage, collection, transportation, use, disposal, and other disposition of solid wastes. Such an ordinance may:

(1) Regulate the activities of persons, firms, and corporations, both public and private.

(2) Require each person wishing to commercially collect or dispose of solid wastes to secure a license from the county and prohibit any person from commercially collecting or disposing of solid wastes without a license. A fee may be charged for a license.

(3) Grant a franchise to one or more persons for the exclusive right to commercially collect or dispose of solid wastes within all or a defined portion of the county and prohibit any other person from commercially collecting or disposing of solid wastes in that area. The board of commissioners may set the terms of any franchise, except that no franchise may be granted for a period exceeding 30 years, nor may any franchise by its terms impair the authority of the board of commissioners to regulate fees as authorized by this section.

(4) Regulate the fees, if any, that may be charged by licensed or franchised persons for collecting or disposing of solid wastes.

(5) Require the source separation of materials prior to collection of solid waste for disposal.

(6) Require participation in a recycling program by requiring separation of designated materials by the owner or occupant of the property prior to disposal. An owner of recovered materials as defined by G.S. 130A-290(a)(24) retains ownership of the recovered materials until the owner conveys, sells, donates, or otherwise transfers the recovered materials to a person, firm, company, corporation, or unit of local government. A county may not require an owner to convey, sell, donate, or otherwise transfer recovered materials to the county or its designee. If an owner places recovered materials in receptacles or delivers recovered materials to specific locations, receptacles, and facilities that are owned or operated by the county or its designee, then ownership of these materials is transferred to the county or its designee.

(7) Include any other proper matter.

(b) Any ordinance adopted pursuant to this section shall be consistent with and supplementary to any rules adopted by the Commission for Health Services or the Department of Environment and Natural Resources.

(c) The board of commissioners of a county shall consider alternative sites and socioeconomic and demographic data and shall hold a public hearing prior to selecting or approving a site for a new sanitary landfill that receives residential solid waste that is located within one mile of an existing sanitary landfill within the State. The distance between an existing and a proposed site shall be determined by measurement between the closest points on the outer boundary of each site. The definitions set out in G.S. 130A-290 apply to this subsection. As used in this subsection:

(1) "Approving a site" refers to prior approval of a site under G.S. 130A-294(a)(4).

(2) "Existing sanitary landfill" means a sanitary landfill that is in operation or that has been in operation within the five-year period immediately prior to the date on which an application for a permit is submitted.

(3) "New sanitary landfill" means a sanitary landfill that includes areas not within the legal description of an existing sanitary landfill as set out in the permit for the existing sanitary landfill.

(4) "Socioeconomic and demographic data" means the most recent socioeconomic and demographic data compiled by the United States Bureau of the Census and any additional socioeconomic and demographic data submitted at the public hearing.

(d) As used in this section, "solid waste" means nonhazardous solid waste, that is, solid waste as defined in G.S. 130A-290 but not including hazardous waste.

(e) A county may, as a condition of approval of any permit for a subdivision, clearing, and development of land or construction of buildings within the planning jurisdiction of the county, regulate and prohibit the open burning of trees, limbs, stumps, and construction debris associated with the permitted activity. Agricultural, horticultural, and silvacultural activities which are exempt by law from requirements of a county permit for subdivision, clearing, and development of land or construction of buildings within the planning jurisdiction of the county are not made subject to such permitting by this subsection."

PART III. APPLICABILITY AND EFFECTIVE DATE

Section 3. Section 1 of this act applies to Carteret, Orange, and Pender Counties only. Section 2 of this act applies to Orange County only, except that it does not apply to Carr and Cheeks Precincts.

Section 4. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 3

HOUSE BILL 677
Committee Substitute Favorable 4/23/99
Third Edition Engrossed 4/28/99

Short Title: Certain Counties Delinquent Taxes. (Local)

Sponsors:

Referred to:

March 29, 1999

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CHEROKEE, GRAHAM, HAYWOOD, JACKSON, MADISON, POLK, AND SWAIN COUNTIES TO REQUIRE THE PAYMENT OF DELINQUENT PROPERTY TAXES BEFORE RECORDING DEEDS CONVEYING PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. Article 2 of Chapter 161 of the General Statutes is amended by adding a new section to read:

"**§ 161-31. Tax certification.**

The board of commissioners of a county may, by resolution, require the register of deeds not to accept any deed for registration unless the county tax collector has certified that no delinquent ad valorem county taxes, ad valorem municipal taxes, or taxes with which the collector is charged are a lien on the property described in the deed."

Section 2. This act applies only to Cherokee, Graham, Haywood, Jackson, Madison, Polk, and Swain Counties.

Section 3. This act is effective when it becomes law.

HOUSE BILL 677:
Certain Counties Delinquent Taxes

BILL ANALYSIS

Committee: Senate Finance
Date: June 19, 2000
Version: 3rd Edition

Introduced by: Rep. Haire
Summary by: Martha K. Walston
Committee Counsel

SUMMARY: ***House Bill 677 is a local bill that authorizes the Counties of Cherokee, Graham, Haywood, Jackson, Polk, and Swain to require the payment of delinquent property taxes before a deed conveying property can be recorded. The bill has been reviewed in House Local Government II and House Rules. The bill was received from the House on April 29, 1999. House Bill 677 is effective when it becomes law.***

BILL ANALYSIS: House Bill 677 authorizes the boards of commissioners of the Counties of Cherokee, Graham, Haywood, Jackson, Madison, Polk, and Swain to pass a resolution requiring the register of deeds in each of these counties to refuse to accept any deed for registration if there are delinquent property taxes owing on the property described in the deed or if there are any taxes that are a lien on the property. The county tax collector must first certify that there are no delinquent taxes.

BACKGROUND: S.L. 1993-657 requires payment of delinquent taxes in Ashe County before recording deeds.

S.L 1987-537 authorizes Mitchell County to direct its register of deeds not to record any deed unless the county tax collector certifies that all delinquent county and municipal taxes have been paid with respect to the property described in the deed. If the deed describes property located in the Town of Spruce Pine, then the deed must be accompanied by a certificate from the tax collector of that Town stating that all municipal taxes with respect to the property have been paid.

S.L. 1999-326 adds the Town of Bakersville to the certification requirement.

HOUSE BILL 677:
Certain Counties Delinquent Taxes

BILL ANALYSIS

Committee:	Senate Finance	**Introduced by:**	Rep. Haire
Date:	July 10, 2000	**Summary by:**	Martha K. Walston
Version:	3rd Edition		Committee Counsel

SUMMARY: ***House Bill 677 is a local bill that authorizes the Counties of Cherokee, Graham, Haywood, Jackson, Madison, Polk, and Swain to require the payment of delinquent property taxes before a deed conveying property can be recorded. The bill has been reviewed in House Local Government II and House Rules. The bill was received from the House on April 29, 1999. House Bill 677 is effective when it becomes law.***

BILL ANALYSIS: House Bill 677 authorizes the boards of commissioners of the Counties of Cherokee, Graham, Haywood, Jackson, Madison, Polk, and Swain to pass a resolution requiring the register of deeds in each of these counties to refuse to accept any deed for registration if there are delinquent property taxes owing on the property described in the deed or if there are any taxes that are a lien on the property. The county tax collector must first certify that there are no delinquent taxes.

BACKGROUND: S.L. 1993-657 requires payment of delinquent taxes in Ashe County before recording deeds.

S.L 1987-537 authorizes Mitchell County to direct its register of deeds not to record any deed unless the county tax collector certifies that all delinquent county and municipal taxes have been paid with respect to the property described in the deed. If the deed describes property located in the Town of Spruce Pine, then the deed must be accompanied by a certificate from the tax collector of that Town stating that all municipal taxes with respect to the property have been paid.

S.L. 1999-326 adds the Town of Bakersville to the certification requirement.

(Attachment #1)

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 7/11/'00

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Holly Franklin	
Susan Harrison	WCPSS
Ed Regan	N.C.A.C.C.
Patrice Roesler	NCACC
Mr. Mr. Joo	NCACC
Lennie Colvin	NC Dept of Revenue
JIM QUINN	NC HSG FINANCE AGENCY
Susie Howard	DNR
Roger Bone	Bone & Assoc.
Ruth Sappie	NCDOT
Sarah Sands	WCSR

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 7/11/'00

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
SAM JOHNSON	ATTY
ROBERT GLAZER	NC AUTO DEALERS ASSN
[illegible]	Pappas + Associates
D Duck	
[illegible]	NCBA
Andy Romanet	NCLM
Ron Aycock	NCACC
Jim Blackburn	County Commissioners
Alan Wiles	Bailey & Dixon LLP
[illegible]	Smith
BILL SCOGGIN	KCLH

VISITOR REGISTRATION SHEET

SENATE FINANCE COMMITTEE — 4/11/'00

Name of Committee — **Date**

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
David Ferrell	Hyer, McNamara Goodman et al
Willie Riddick	DOR
[illegible]	[illegible]
John Leaston	PRC
Charlie Diehl	NC Trucking Assoc.

(Attachment #2)

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator David Hoyle, Co-Chair
Senator John Kerr, Co-Chair

Tuesday, July 11, 2000

SENATOR HOYLE,
submits the following with recommendations as to passage:

FAVORABLE

H.B.(CS #1)**677** Certain Counties Delinquent Taxes
Sequential Referral: None
Recommended Referral: None

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2)**1566** Temp. MV Lien Filing
Draft Number: PCS5121
Sequential Referral: None
Recommended Referral: None
Long Title Amended: No

H.B.(CS #2)**1583** Nonhaz. Dry-Cleaning Technology Incentive
Draft Number: PCS8219
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1)**1768** Orange Omnibus Act
Draft Number: PCS4340
Sequential Referral: None
Recommended Referral: None
Long Title Amended: Yes

TOTAL REPORTED: 4

Committee Clerk Comment:

SENATE FINANCE COMMITTEE

WEDNESDAY, JULY 12, 2000

ROOM 1027 – 4:15 P.M.
(RECESS DURING SESSION)

The Senate Finance Committee met on Wednesday, July 12, 2000, in Room 1027 while session was in recess with Senator John Kerr presiding. All committee members present for session were in attendance.

HB 1630 – TOLL ROADS.

Senator Gulley was recognized to explain this Bill and on motion by Senator Rand, a Committee Sub was adopted by the committee. At the conclusion of Senator Gulley's explanation, there was a general discussion on this Bill with questions from the committee members answered by Senator Gulley and by DOT. Senator Larry Shaw requested during the interim that Transportation look at I-95. Senator Dannelly moved for a Favorable Report for the Committee Sub and the motion carried. Copy of Bill, Committee Sub, Explanation and Fiscal Note included in the minutes.

David W. Hoyle, Co-Chair
Senate Finance Committee

John H. Kerr, III, Co-Chair
Senate Finance Committee

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

Committee Report is Attachment # 1

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 3

HOUSE BILL 1630
Committee Substitute Favorable 6/15/00
Committee Substitute #2 Favorable 6/28/00

Short Title: Toll Roads. (Public)

Sponsors:

Referred to:

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CONSTRUCTION OF A PILOT PRIVATELY FUNDED TOLL ROAD OR BRIDGE PROJECT AND TO DIRECT THE DEPARTMENT OF TRANSPORTATION TO STUDY THE FEASIBILITY OF STATE-OWNED AND OPERATED TOLL ROADS OR BRIDGES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 136 of the General Statutes is amended by adding a new Article 6G to read:

"ARTICLE 6G.

"Private Pilot Toll Project.

"§ 136-89.168. Private Pilot Toll Project.

(a) Authority to License. -- The Department of Transportation is authorized to issue a license to an applicant to finance, design, construct, maintain, improve, own, or operate, or any combination thereof, a pilot toll transportation project within the State of North Carolina. Any license authorized by this section must be issued on or before July 1, 2005.

(b) Requirement for Finding of Need. -- Prior to the issuance of any license under this section, the Department shall make a written determination that the proposed project is necessary and in the public interest.

(c) Submission of Financial Data. -- A person applying for a license to construct a project under this section shall submit detailed financial data to the Department

concerning the ability of applicant to finance the proposed project. The Department shall independently analyze the data submitted for each project proposal.

(d) Terms of License. -- Additional terms and conditions of any license issued pursuant to this section shall be within the discretion of the Department of Transportation, and shall include, in addition to any other requirements:

(1) Provisions establishing minimum design and construction standards for the project.

(2) Provisions establishing minimum maintenance standards for the project.

(3) Provisions requiring that appropriate traffic signs and other traffic control devices be erected and maintained on the project.

(4) Provisions establishing the rights and duties of the parties regarding infrastructure improvements and connections between the project and the State highway system.

(5) Provisions regarding any type of access control, if any, that may be required for the project.

(6) Provisions establishing the relative responsibilities of the licensee and the Department of Transportation to keep the completed project open and accessible to the public.

(7) Provisions concerning location of the project.

(e) Acquisition of Project Property. -- A person licensed to construct a project under this section shall acquire all right-of-way interests required for the project through private negotiation.

(f) Applicability of Other Laws. -- For the purpose of entering into contractual licensing agreements under this section, the Department of Transportation is exempted from any provision of the General Statutes that conflicts with the purposes of this section, specifically including G.S. 136-28.1 and G.S. 143-52. A project licensed under this section shall not be included in the distribution formula under G.S. 136-17.2A but shall require approval of the Board of Transportation under G.S. 143B-350(f)(4). A licensee under this section shall endeavor to comply with the provisions of G.S. 136-28.4 concerning participation by disadvantaged businesses.

(g) Applicability of Motor Vehicle Laws. -- Any project licensed by the Department of Transportation under the authority granted in this section shall be considered a 'highway' as defined in G.S. 20-4.01(13) and a 'public vehicular area' as defined in G.S. 20-4.01(32). All law enforcement and emergency personnel, including the State Highway Patrol and the Division of Motor Vehicles, shall have the same powers and duties on such projects as on any other highway or public vehicular area.

(h) Resolution of Support Required. -- The Department shall not license any project under this section prior to receiving a resolution of support for the project approved by the county commissioners of each county in which the project will be located.

(i) Exclusive License. -- Upon the issuance of a license by the Department of Transportation, no further license of any type may be required by the State or local government body for the ownership, construction, or operation of the project.

(j) Definitions. -- The following definitions apply as used in this section:

(1) 'Person' means any natural person, partnership, corporation, trust, association, sole proprietorship, or any other legal entity other than the State or its agencies, institutions, or political subdivisions.

(2) 'Project' means a privately constructed, maintained, and operated toll highway, road, bridge, or other transportation-related facility.

(3) 'License' means a person authorized through a contractual agreement with the Department of Transportation to finance, design, construct, maintain, improve, own, or operate, or any combination thereof, a project.

(k) Report. -- The Department shall report to the Joint Legislative Transportation Oversight Committee and to the Transportation Appropriations Subcommittee by February 1, 2001, and every year thereafter, on any toll project planning, construction, or operation commenced pursuant to the provisions of this Article."

Section 2. The Department shall study the feasibility of construction of State-owned and operated toll roads and the areas where any State-owned and operated toll roads are proposed and report its findings to the Joint Legislative Transportation Oversight Committee and to the Transportation Appropriations Subcommittee by February 1, 2001.

Section 3. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1630
Committee Substitute Favorable 6/15/00
Committee Substitute #2 Favorable 6/28/00
Proposed Senate Committee Substitute H1630-PCSA268-LA001

Short Title: Toll Roads. (Public)

Sponsors:

Referred to:

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE CONSTRUCTION OF PILOT PRIVATELY FUNDED ROAD OR BRIDGE PROJECTS FUNDED BY TOLLS OR OTHER ALTERNATE FINANCING METHODS, AND TO DIRECT THE DEPARTMENT OF TRANSPORTATION TO STUDY THE FEASIBILITY OF STATE-OWNED AND STATE-OPERATED TOLL ROADS OR BRIDGES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 136 of the General Statutes is amended by adding a new Article 6G to read:

"ARTICLE 6G.

"Private Pilot Toll Project.

"**§ 136-89.168. Legislative findings.**

It is hereby declared that the existing State road system is becoming increasingly congested and overburdened with traffic in many areas of the State; that the sharp surge of vehicle miles traveled is overwhelming the State's ability to build and pay for adequate road improvements; and that an adequate answer to this challenge will require the State to be innovative and utilize several new approaches to transportation improvements in North Carolina. It is the purpose of this Article to authorize the construction of no more than two private toll road projects as pilots. In doing this, the Department of Transportation is directed to focus on using toll roads

to alleviate commuter traffic congestion. It is the intent that there be no toll on existing State roads.

"**§ 136-89.169. Private Pilot Toll Project.**

(a) Authority to License. -- The Department of Transportation is authorized to issue a license to an applicant to finance, design, construct, maintain, improve, own, or operate, or any combination thereof, either solely from private resources or using a combination of private or public resources, up to two pilot toll transportation projects within the State of North Carolina. Any license authorized by this section must be issued on or before July 1, 2003.

(b) Requirement for Finding of Need. -- Prior to the issuance of any license under this section, the Department shall make a written determination that the proposed project is necessary and in the public interest.

(c) Submission of Financial Data. -- A person applying for a license to construct a project under this section shall submit detailed financial data to the Department concerning the ability of applicant to finance the proposed project. The Department shall independently analyze the data submitted for each project proposal.

(d) License Period. -- A license issued under this section shall not exceed 50 years from beginning of the operations of the road or bridge. A license may be renewed for an additional 50-year term at the discretion of the Department and in conformity with this Article.

(e) State Use for Other Purposes. -- A license issued pursuant to this section shall reserve unto the State or its designee the authority to enter and utilize the project right-of-way for other transportation or utility-related purposes, as long as those purposes do not interfere with the use by the licensee.

(f) Terms of License. -- Additional terms and conditions of any license issued pursuant to this section shall be within the discretion of the Department of Transportation, and shall include, in addition to any other requirements:

(1) Provisions establishing minimum design and construction standards for the project.

(2) Provisions establishing minimum maintenance standards for the project and the responsibility for such maintenance.

(3) Provisions requiring that appropriate traffic signs and other traffic control devices be erected and maintained on the project.

(4) Provisions establishing the rights and duties of the parties regarding infrastructure improvements and connections between the project and the State highway system.

(5) Provisions regarding any type of access control, if any, that may be required for the project.

(6) Provisions establishing the relative responsibilities of the licensee and the Department of Transportation to keep the completed project open and accessible to the public.

(7) Provisions requiring that the State of North Carolina, its agencies, officials, and employees be indemnified and held harmless by the

licensee for any liability incurred on the project in connection with project construction, maintenance, or operation.

(8) Provisions concerning location of the project.

(9) Provisions concerning reasonable restrictions that would prevent the State or the Department from constructing competitive transportation facilities during the term of the license.

(g) Department Powers. -- The Department may exercise any power possessed by it with respect to the development and construction of State transportation projects to facilitate the development and construction of transportation projects pursuant to this Article.

(h) Acquisition of Project Property. -- A person licensed to construct a project under this section shall make all reasonable efforts to acquire all right-of-way interests required for the project through private negotiation. The Department is authorized to exercise its power of eminent domain to acquire property rights necessary for construction and maintenance of the project only as to those property interests that cannot be acquired by the licensee at a reasonable price through private negotiation. A licensee requesting that the Department exercise its power of eminent domain shall be required to reimburse the Department in the full amount of its costs incurred in acquiring the necessary property interests for the private portion of the project, including any negotiated settlement or jury verdict, and any attorneys' fees that may be awarded. The acquisition of property interests necessary for inclusion in a project licensed under this section is hereby declared to be for a public transportation purpose.

(i) Transfer of Department Property to Licensee. -- Notwithstanding the provisions of G.S. 136-19, should the Department determine that a licensed project require property interests held by the Department, such interests as the Department determines to be necessary may be conveyed to the licensee for fair market value.

(j) Applicability of Other Laws. -- For the purpose of entering into contractual licensing agreements under this section, the Department of Transportation is exempted from any provision of the General Statutes that conflicts with the purposes of this section, specifically including G.S. 136-28.1 and G.S. 143-52. A project licensed under this section shall not be included in the distribution formula under G.S. 136-17.2A but shall require approval of the Board of Transportation under G.S. 143B-350(f)(4). A licensee under this section shall endeavor to comply with the provisions of G.S. 136-28.4 concerning participation by disadvantaged businesses.

(k) Applicability of Motor Vehicle Laws. -- Any project licensed by the Department of Transportation under the authority granted in this section shall be considered a 'highway' as defined in G.S. 20-4.01(13) and a 'public vehicular area' as defined in G.S. 20-4.01(32). All law enforcement and emergency personnel, including the State Highway Patrol and the Division of Motor Vehicles, shall have the same powers and duties on such projects as on any other highway or public vehicular area.

(l) Exclusive License. -- Upon the issuance of a license by the Department of Transportation, no further license of any type may be required by the State or local government body for the ownership, construction, or operation of the project.

(m) Definitions. -- The following definitions apply as used in this section:

(1) 'Person' means any natural person, partnership, corporation, trust, association, sole proprietorship, or any other legal entity other than the State or its agencies, institutions, or political subdivisions.

(2) 'Project' means a privately constructed, maintained, and operated toll highway, road, bridge, or other transportation-related facility funded through tolls or other alternative financing methods.

(3) 'Licensee' means a person authorized through a contractual agreement with the Department of Transportation to finance, design, construct, maintain, improve, own, or operate, or any combination thereof, a project.

(n) Report. -- The Department shall report to the Joint Legislative Transportation Oversight Committee and to the Joint Transportation Appropriations Subcommittee by February 1, 2001, and every year thereafter, on any toll project planning, construction, or operation commenced pursuant to the provisions of this Article."

Section 2. The Department shall study the feasibility of construction of State-owned and State-operated toll roads and the areas where any State-owned and State-operated toll roads are proposed and report its findings to the Joint Legislative Transportation Oversight Committee and to the Joint Transportation Appropriations Subcommittee by February 1, 2001.

Section 3. This act is effective when it becomes law.

HOUSE BILL 1630:
Toll Roads

BILL ANALYSIS

Committee: House Finance
Date: July 10, 2000
Version: Third Edition

Introduced by: Rep. Crawford
Summary by: Cindy Avrette
Committee Counsel

Summary: ***House Bill 1630 authorizes the construction and operation of one private toll projects in North Carolina and requires the Department of Transportation to study the feasibility of State-owned and operated toll roads. An earlier version of the bill would have authorized the construction and operation of three private toll projects, would have allowed the Department to exercise its power of eminent domain to acquire property rights for the private toll project, and would have allowed the Department to transfer its property interest in property to the licensee.***

Bill Analysis:

The Department of Transportation may issue a license to a person to finance, design, construct, maintain, improve, own, or operate a toll highway, road, bridge, or other transportation-related facility. A license authorized by the act must be issued on or before July 1, 2005.

Requirements for Issuance of License

- DOT must make a written determination that the proposed project is necessary and is in the public interest.
- The applicant must submit detailed financial data to DOT showing its ability to finance the project.
- DOT must receive a resolution of support for the project approved by the county commissioners of each county in which the project will be located.

Terms of License – DOT is granted discretion to include conditions in the license issued under this section, but is required to include provisions concerning design, maintenance, connections to the existing highway system, and location of the project.

Methods of Acquiring Project Property – A licensee must acquire all right-of–way interests required for the project through private negotiation.

Exemptions -- DOT is exempted from conflicting laws (bidding requirements and advertisement) for the purpose of entering into contractual licensing agreements.

Motor Vehicle laws would apply on a project licensed under this section. The Highway Patrol and Division of Motor Vehicles would have the same powers on a project licensed under this section as any other road.

Reporting Requirements – DOT must report to the Joint Legislative Transportation Oversight Committee and to the Transportation Appropriations Subcommittee by February 1, 2001, and every year thereafter on any toll project.

Giles Perry, Counsel to the Transportation Committee, contributed substantially to this summary.

FISCAL ANALYSIS MEMORANDUM

DATE: July 11, 2000

TO: Senate Finance Committee

FROM: Evan Rodewald
Fiscal Research Division

RE: House Bill 1630 (Third Edition) – Toll Roads

FISCAL IMPACT

Yes ( ) **No ( )** **No Estimate Available (x)**

	FY 2000-01	FY 2001-02	FY 2002-03	FY 2003-04	FY 2004-05
REVENUES					
EXPENDITURES					
POSITIONS:					

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Transportation

EFFECTIVE DATE: When bill becomes law

BILL SUMMARY:

House Bill 1630 authorizes the construction and operation of a pilot toll project.

Private Toll Projects

The Department of Transportation may issue a license to persons to finance, design, construct, maintain, improve, own, or operate a toll highway, road, bridge, or other transportation-related facility.

Requirements for Issuance of License

- DOT must make written determination that proposed project is necessary, in the public interest.
- Applicant must submit detailed financial data to DOT showing ability to finance the project

DOT must receive a resolution of support for the project approved by the county commissioners of each county in which the project will be located.

Terms of License – DOT is granted discretion to include conditions in any license issued under this section, but is required to include provisions concerning design, maintenance, connections to the existing highway system, and location of the project.

Methods of Acquiring Project Property – A licensee must acquire all right-of–way interests required for the project through private negotiation.

Exemptions -- DOT is exempted from conflicting laws (bidding requirements and advertisement) for the purpose of entering into contractual licensing agreements.

Motor Vehicle laws -- would apply on any project licensed under this section. The Highway Patrol and Division of Motor Vehicles would have the same powers on a project licensed under this section as any other road.

Reporting Requirements – DOT must report to Joint Legislative Transportation Oversight Committee and to the Transportation Appropriations Subcommittee by February 1, 2001 and every year thereafter on any toll project.

State-Owned and Operated Toll Projects

DOT shall study the feasibility of Stateowned and operated toll roads and report its findings to the Joint Legislative Transportation Oversight Committee.

ASSUMPTIONS AND METHODOLOGY:

A private toll road built under this law would be funded by private sources, and would not require construction funds from the State. Consequently, a private toll road would have no direct fiscal impact on the State. Over time, a private toll road could impact the State budget indirectly. For example, a private toll road could lead to more travelling from motorists, higher fuel consumption and increased gas tax revenues. Similarly, an additional road could result in a need for more law enforcement personnel to patrol the road. The indirect fiscal impact of a private toll road would be complex and would depend on the specifics of the road built, such as its length and the amount of traffic it carried. Because we have no way of anticipating these specifics, we cannot estimate the fiscal impact of this bill.

TECHNICAL CONSIDERATIONS: None

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
John Kerr, Co-Chair
David Hoyle, Co-Chair

Wednesday, July 12, 2000

SENATOR KERR,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 2,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #2)**1630** Toll Roads.

Draft Number:	PCSA268
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment: HB 1630

SENATE FINANCE COMMITTEE

THURSDAY, JULY 13, 2000

ON THE FLOOR
(RECESS DURING SESSION)

The Senate Finance Committee met on Thursday, July 13, 2000, at 7:30 P.M. on the floor while session was in recess with Senator John Kerr presiding. All committee members present for session were in attendance.

HB 1184 – HOSPITAL GOVERNING AUTHORITY.

Senator Rand was recognized to explain this Bill and on motion by Senator Lee, a Committee Sub was adopted by the committee. At the conclusion of Senator Rand's explanation, there was a general discussion on this Bill. Senator Lee moved for a Favorable Report for the Committee Sub and the motion carried. Copy of Bill and Committee Sub included in the minutes.

David W. Hoyle, Co-Chair
Senate Finance Committee

John H. Kerr, III, Co-Chair
Senate Finance Committee

Penny N. Williams, Clerk

Evelyn S. Hartsell, Clerk

Committee Report is Attachment # 1

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H 2

HOUSE BILL 1184*
Committee Substitute Favorable 4/27/99

Short Title: Hospital Governing Authority. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE MEMBERS OF A HOSPITAL AUTHORITY BOARD ARE A PUBLIC BODY AND HAVE THE RIGHT TO SUE AND BE SUED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131E-9 is amended by adding the following new subsection to read:

"(d) The members of an office, board, or other municipal agency established by a municipality pursuant to subsection (a) of this section, or a hospital authority established by a county board of commissioners pursuant to subsection (b) of this section, are a public body and a body corporate and politic and have the right to sue and be sued."

Section 2. This act is effective when it becomes law.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H D

HOUSE BILL 1184*
Committee Substitute Favorable 4/27/99
Proposed Senate Committee Substitute H1184-PCSA270-LA001

Short Title: Amend Certificate of Need. (Public)

Sponsors:

Referred to:

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE DEFINITION OF "NEW INSTITUTIONAL HEALTH SERVICES" IN ARTICLE 9 OF CHAPTER 131E OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131E-176(16) is amended by adding the following new sub-subdivision to read:

"t. The relocation or expansion of part or all of an ambulatory surgical facility which requires a new license under Part D of Article 6 of this Chapter, or the relocation and addition of part or all of a hospital operating room to a building other than one within which it is currently located."

Section 2. This act is effective when it becomes law and is repealed effective July 1, 2001. This act shall not apply to a party involved in litigation pending on or before the effective date of this act.

NORTH CAROLINA GENERAL ASSEMBLY
SENATE

FINANCE COMMITTEE REPORT
Senator Kerr, Co-Chair
Senator Hoyle, Co-Chair

CORRECTED REPORT

Thursday, July 13, 2000

SENATOR KERR,
submits the following with recommendations as to passage:

UNFAVORABLE AS TO COMMITTEE SUBSTITUTE BILL NO. 1,
BUT FAVORABLE AS TO SENATE COMMITTEE SUBSTITUTE BILL

H.B.(CS #1)**1184** Hospital Governing Authority.

Draft Number:	PCSA270
Sequential Referral:	None
Recommended Referral:	None
Long Title Amended:	Yes

TOTAL REPORTED: 1

Committee Clerk Comment: HB1184