

2001-2002

**HOUSE
AGRICULTURE**

MINUTES

**HOUSE COMMITTEE ON AGRICULTURE
2001-2002 SESSION**

MEMBER	ASSISTANT	PHONE	OFFICE
Hill, Dewey, Chair	Thurlow, Gennie	733-5830	1309
Bell, Larry, Vice Chair	Edwards, Carolyn	733-5863	531
Cox, Leslie, Jr., Vice Chair	Stainback, Ferebee	733-5746	1220
Teague, W. B., Jr., Vice Chair	Kidd, Anna	733-5530	1017
Warwick, Nurham, Vice Chair	Uzzle, Linda	715-3003	419C
Baker, Rex	Misenheimer, Anne	733-5787	608
Bonner, Donald	Cameron, Phyllis	733-5803	1313
Buchanan, Charles	Jones, Glenda	733-5825	536
Coates, Lorene	Lennon, Melissa	733-5784	1218
Culp, Arlie	Lord, Waneta	733-5865	1010
Davis, Don	Pickett, Ellen	715-6707	504
Eddins, Rick	Monroe, Dorie	733-5800	1319
Fox, Stanley	Capps, Mary	733-5758	2123
Hilton, Mark	Corbett, Ester	733-5609	1409
Kiser, Joe	Holder, Marilyn	733-5782	1317
Mitchell, Frank	West, Susan	733-5931	513
Nye, Edd	Bobbitt, Jo	733-5477	639
Owens, Bill	Johnson, Linda A.	733-0010	632

Page 2 Agriculture Committee Membership

Rogers, Gene	Gillis, Sally	715-3023	416A
Russell, Carolyn	Brothers, Susan	715-0873	1213
Tolson, Joe	Christian, Gayle	715-3024	402
Tucker, Russell	Henderson, Surena	715-3015	417C
Underhill, Alice	Phillips, Marian	733-5776	1219
Warren, Edith	Willis, Nancy	715-3019	417A
Weatherly, John	Garriss, Nancy	733-4838	502
Wilson, Gene	Jones-Cooper, Rebecca	733-7727	1109
Yongue, Douglas	Umstead, Jenny	733-5821	1303

NORTH CAROLINA GENERAL ASSEMBLY

AGRICULTURE 2001 – 2002 SESSION



Rep. Hill
Chair



Rep. Bell
Vice-Chair



Rep. Cox
Vice-Chair



Rep. Teague
Vice-Chair



Rep. Warwick
Vice-Chair



Rep. Allred



Rep. Baker



Rep. Bonner



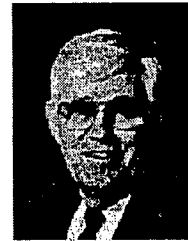
Rep. Buchanan



Rep. Coates



Rep. Culp



Rep. Davis



Rep. Eddins



Rep. Fox



Rep. Hilton



Rep. Kiser



Rep. Mitchell



Rep. Nye



Rep. Rogers



Rep. Russell

NORTH CAROLINA GENERAL ASSEMBLY

AGRICULTURE 2001 – 2002 SESSION



Rep. Tolson



Rep. Tucker



Rep. Underhill



Rep. Warren



Rep. Weatherly



Rep. Wilson, G.



Rep. Yongue

ATTENDANCE

DATES	2/20	2/27
Rep. Dewey L. Hill, Chairman	✓	✓
Rep. Larry Bell, Vice Chair	✓	
Rep. Leslie Cox, Vice Chair	✓	✓
Rep. W. B. Teague, Jr. Vice Chair	✓	✓
Rep. Nurham Warwick, Vice Chair	✓	✓
Rep. Gary Alfred		
Rep. Rex Baker	✓	✓
Rep. Donald Bonner	✓	✓
Rep. Charles Buchanan		
Rep. Lorene T. Coates	✓	✓
Rep. Arlie Culp	✓	✓
Rep. Don Davis	✓	✓
Rep. Rick Eddins	✓	
Rep. Stanley H. Fox	✓	✓
Rep. Mark K. Hilton	✓	✓
Rep. Joe Kiser	✓	✓
Rep. Frank Mitchell	✓	
Rep. Edd Nye	✓	
Rep. Gene Rogers	✓	✓
Rep. Carolyn Russell	✓	✓
Rep. Joe Tolson	✓	
Rep. Russell Tucker	✓	✓
Rep. Alice G. Underhill	✓	✓
Rep. Edith Warren		✓
Rep. John H. Weatherly	✓	✓
Rep. Gene Wilson	✓	✓
Rep. Douglas Yongue	✓	✓
<i>O'Brien</i>		✓

Ed L

ATTENDANCE

AGRICULTURE COMMITTEE

DATES	3/6	3/20	3/22*	3/27	4/3	4/3	4/4	4/10	4/17	4/19	4/24	5/1	6/19	7/3	7/10
Rep. Dewey L. Hill, Chairman	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Rep. Larry Bell, Vice Chair	-	✓	✓	✓	✓	✓	✓	-	✓	-	✓	✓	✓	✓	✓
Rep. Leslie Cox, Vice Chair	✓	✓	✓	✓	✓	-	-	-	✓	✓	✓	✓	✓	✓	✓
Rep. W. B. Teague, Jr. Vice Chair	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	E
Rep. Nurham Warwick, Vice Chair	✓	✓	✓	✓	✓	✓	✓	-	✓	✓	✓	-	✓	✓	✓
Rep. Rex Baker	✓	✓	✓	✓	✓	✓	✓	✓	✓	-	✓	✓	✓	✓	✓
Rep. Donald Bonner	✓	✓	✓	✓	✓	✓	-	✓	✓	-	✓	✓	✓	-	✓
Rep. Charles Buchanan	✓	✓	-	✓	✓	✓	-	-	✓	✓	✓	✓	✓	-	✓
Rep. Lorene T. Coates	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Rep. Arlie Culp	✓	✓	✓	✓	✓	✓	✓	✓	✓	-	-	✓	✓	✓	✓
Rep. Don Davis	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	-	-	-	✓	✓
Rep. Rick Eddins	-	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Rep. Stanley H. Fox	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Rep. Mark K. Hilton	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Rep. Joe Kiser	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Rep. Frank Mitchell	✓	✓	✓	✓	✓	-	✓	✓	✓	✓	✓	✓	-	-	✓
Rep. Edd Nye	✓	✓	-	✓	-	-	-	✓	✓	-	✓	-	-	✓	✓
Rep. Bill Owens	✓	-	✓	✓	-	✓	-	✓	✓	-	-	-	-	✓	E
Rep. Gene Rogers	-	-	-	✓	✓	✓	-	✓	-	✓	-	-	-	-	✓
Rep. Carolyn Russell	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Rep. Joe Tolson	✓	✓	✓	✓	✓	✓	-	✓	✓	✓	✓	✓	✓	✓	✓
Rep. Russell Tucker	✓	✓	✓	✓	✓	✓	-	✓	✓	✓	✓	✓	✓	✓	✓
Rep. Alice G. Underhill	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Rep. Edith Warren	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	-	✓	✓	✓
Rep. John H. Weatherly	✓	✓	✓	✓	✓	✓	-	✓	✓	-	✓	-	✓	✓	✓
Rep. Gene Wilson	✓	✓	✓	✓	✓	✓	-	✓	✓	✓	✓	✓	✓	✓	✓
Rep. Douglas Yongue	-	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓

* 3/22 meeting was a joint meeting of Agriculture + Environment + Natural Resources regarding bird + mouth disease

4/24 5/1

Rep. Philip Baddour

Rep. Joe Hackney

Rep. Pete Cunningham

Rep. Andrew Dedmon

Rep. Beverly Earle

✓

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Age Group	Percentage of Respondents
18-29	85%
30-49	80%
50-69	75%
70+	70%

[illegible]

Rep. Philip Baddour

Rep. Joe Hackney

Rep. Pete Cunningham

Rep. Andrew Dedmon

Rep. Beverly Earle

MINUTES
HOUSE AGRICULTURE COMMITTEE
February 20, 2001

The House Agriculture Committee held its first meeting of the 2001-02 Legislative Session on Tuesday, February 20, 2001 in Room 1425 of the Legislative Building, with Representative Dewey Hill, Chairman, presiding.

Members in attendance were Chairman Hill; Vice Chairmen Larry Bell, Leslie Cox, W. B. Teague, Jr., Nurham Warwick; Representatives Rex Baker, Donald Bonner, Lorene Coates, Arlie Culp, Don Davis, Rich Eddins, Stanley Fox, Mark Hilton, Joe Kiser, Frank Mitchell, Edd Nye, Gene Rogers, Carolyn Russell, Joe Tolson, Russell Tucker, Alice Underhill, John Weatherly, Gene Wilson, and Douglas Yongue.

The Chairman called the meeting to order at 10:05 a.m. He welcomed the Committee members and visitors and introduced the pages and Committee Counsel Erika Churchill and Barbara Riley. He recognized former Representative Vernon James who chaired the House Agriculture Committee for many years when he served in the Legislature. Mr. James made some comments to the Committee.

Chairman Hill asked each member of the Committee to introduce him/herself and tell what District he/she serves.

Chairman Hill addressed the members and cited how the Committee will work in carrying out its responsibilities. He then introduced the newly elected Commissioner of Agriculture, Meg Scott Phipps, to speak on the programs and services provided by the Department of Agriculture and the ideals she brings with her in her new role. Among items of interest Commissioner Phipps brought to the Committee were:

- (a) agriculture is the State's leading industry, but receives only one-half of one percent (1/2 of 1%) of the State budget,
- (b) the tremendous changes in the family farm in the past 50 years,
- (c) tobacco and swine are big business in North Carolina and "big" publicity,
- (d) the need to aid farmers and promote other major crops, such as sweet potatoes, turkeys, cucumbers, turf grass, and the fishing industry,
- (e) the issue of agriculture in the environmental protection picture,
- (f) an aggressiveness in marketing North Carolina products abroad, and
- (g) making sure that farmers have a good return on their investments.

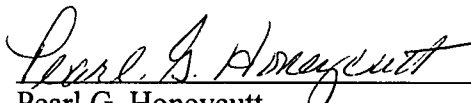
North Carolina presently ranks third in total agricultural diversity in the United States. The Department will work to further diversify agriculture in order to better serve the public. A team has been established in the Department to work on agribusiness development to foster business growth within the agricultural industry. This team is charged with the responsibility of assisting farmers across the State in an effort to put to best advantage the farm industry best suited for that area. An example is the big demand for herbal products, both in the United States and abroad, i.e., ginseng. Cultivated ginseng would sell for \$250/pound. The Department will be looking at ways to assist herbal growers in the western part of the State in an effort to provide a profit. In other areas of the State, they will assist farmers in getting the best return for their investment.

Major goals of the Commissioner include keeping North Carolina farmland in production and agriculture's rights to water access. She stressed the need to keep agriculture in the forefront so North Carolina farmers can help feed the world; we cannot afford to lose our family farms; we must not regulate our farmers out of business.

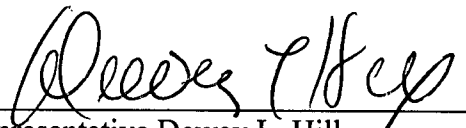
Representative Warwick stated that many of her comments related to other State agencies. He feels it is essential that the agencies work together. Commissioner Phipps responded that she was scheduled to meet with the Secretaries of two of the State agencies.

Several Committee members requested that Commissioner Phipps return at a later date to provide further information, hear their comments, and answer questions. (That request has been followed up with the Commissioner and she responded that she would be happy to return. She will be scheduled for an upcoming meeting in the near future).

The meeting was adjourned at 10:55, to meet again Tuesday, February 27, 2001 at 10:00 a.m.



Pearl G. Honeycutt
Acting Committee Clerk



Representative Dewey L. Hill
Chairman

Attachments:

- #1 – Agenda
- #2 – Visitor Registration Sheet
- #3 – Commissioner Phipps' Comments

*Attachment # 1
2/20/01 mjs*

AGRICULTURE COMMITTEE

AGENDA

Tuesday, February 20, 2001

Room 1425 LB

10:00a.m.

Welcome: Representative Dewey L. Hill, Chairman

Introduction of Pages

Introduction and Address by Commissioner of Agriculture Meg Scott Phipps

Other Business

Adjourn

#2 attachment
2/20/01 mts.

VISITOR REGISTRATION SHEET

AGRICULTURE

February 20, 2001

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Terry Harkesby	NC. Park Assoc. I
Vernor Jamn	NC State Grange
Doug Lassiter	NC Septic Tank Assoc.
Jamy Bewley	NC Turfgrass Assoc.
David Knight	NC Sierra, NC Wildlife Fed
Bob Spelman	NC Forestry Association
David McLeod	NCDA + CS
Walter Cherry	NC Pork
Crissie P. Porter	Bone and Associates
Roger Bone	" "
David McLeod	NC State Grange
Lee Ann Coe	NC Agribusiness Council, Inc.

VISITOR REGISTRATION SHEET

AGRICULTURE

February 20, 2001

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Stacey Ofsunko
Alan Swart

New Hanover County Partnership for
Children

Melissa Lennon

Rep. Coates, LA

Maria Lundberg

WNC-TV

***Save Our State
1/18/01***

I appreciate the opportunity to be here with you today, and I want to thank you for the time, energy and resources you have put into focusing attention on the challenges and opportunities for North Carolina's agriculture in this new century.

I stand before you as your new Commissioner of Agriculture. I am humbled by the honor and responsibilities which have been placed upon me. I have large shoes to fill-size 15 ½ to be exact-and I want to publicly say how much I appreciate Jim Graham's 36 years of leadership.

It is a great department, and I look forward to being part of its future. It's ironic to me, that with agriculture leading the state in industry, that our department receives only ½ of one percent of the total state budget.

I am learning quickly just how large this state is and especially how complex the issues surrounding agriculture are. Your program theme today, "Agriculture in the 21st Century - Hogs, Tobacco and Beyond" is very appropriate.

Many of the issues before us seem easy to address in casual conversation, but difficult to implement in reality. Tobacco and swine are big business and grab headlines.

However, change to these industries not only impacts the nameless investor--every change to production quotas, management practices or record keeping are changes that directly impact the family farms, and the profitability of that farming enterprise.

During my tenure, we will focus a lot of energy on Profitability and Preservation-two keys to continued success of farming.

This is because the family farm has greatly

changed in the past 50 years. No longer does a farmer grow a little corn, tobacco and wheat and has a few pigs, cows, a horse, eight chickens and a rooster.

Farmers and other rural citizens should not be expected to live in a shack, use an outhouse or exist in poverty. The living conditions of rural North Carolina during my Grandfather's time are not acceptable today. One of the legacies of my Grandfather was the farm to market roads program. That went a long way toward helping rural North Carolinians gain prosperity.

As a child, I learned from my family that as a citizen we have the responsibility to serve our state and nation. As Commissioner of Agriculture I recognize the heritage of our rural lifestyles but know we need to address the conflicts of a changing state and a changing agriculture.

And the N.C. Department of Agriculture and Consumer Services must keep pace and be a leader in these changing times.

I do not feel that profitable agricultural management on the farm is inconsistent with strong environmental protection.

One of my greatest concerns is national environmental groups bringing focus on North Carolina's agriculture with the intent to "save the world" by cleaning up our farms. And they're bringing in big names and lots of money, trying to buy public opinion.

Farmers want to be good stewards of the environment, and in general take excellent care of their property. There is a lot of focus on eliminating swine lagoons as the cure-all to end our state's waste problems. There is a much larger picture, which includes eliminating septic tanks and fields,

shows you that we try and stay ahead of the curve of environmental concerns.

We operate the Center for Environmental Farming Systems in Goldsboro at the Cherry Farm, where we look at sustainable agriculture, organic agriculture, alternative waste handling and more. This farm employs cutting edge technology and leads the state in looking at new technology for farmers.

And I want to take a moment to bring you information on the efforts of our Department to diversify agriculture and to better serve the public.

We've established in the Division of Marketing a team to work on Agribusiness Development to foster business growth within the agricultural industry. We will be

moving from one employee spending part of his time to three full-time employees concentrating on business growth. Their goal will be to work with our county governments, our Small Business and Technological Development Centers associated with our community colleges, with Ag Extension, with commodity groups to look at the development of agribusiness incubators throughout our state.

These are centers which will provide assistance to our small family farmers with processing, marketing, environmental management, and technology to help them to learn how to be a part getting their product sold, not just getting it grown.

We've looked at a similar program in Maryland, which has a 20 yr success rate with this, and we'll be working with agricultural leaders from that state before we launch our program.

An example of this might be in Graham County, in the far western end of the state. I was there this past weekend, and farmers are looking for a chance to diversify, even though many are farming only a few acres. An agricultural incubator would serve as a hub for agricultural production-a place where farmers could share knowledge, processing, distribution and marketing.

We already have the rudimentary stages of incubators already in place in the state. In Elizabeth City, our department has a marketing office to help growers find markets for the produce which grows so well in that corner of the state. Marketing specialists work to find “homes” for all the white potatoes, broccoli, onions and other truck crops grown in the region-since there is more produce than the local economy can absorb.

The original thought for Elizabeth City was a farmers’ market, but studies showed a

greater need for marketing assistance rather than for an end market. This is the kind of thinking that will lead to aggressive growth for agriculture and restoration of profitability.

That marketing office has helped growers establish markets in Canada, up and down the eastern seaboard and even with the Department of Defense for our troops.

It is my hope that the incubator concept will have a dramatic effect on the future of agribusiness development in North Carolina.

And within the Department we strive to assist farmers in managing their resources. Helping manage their soils, giving them assistance in developing crops and looking worldwide for new marketplaces are just the tip of the iceberg of services we offer.

I mentioned I spent some time touring farms

in the western part of the state. Specifically, I wanted to meet with growers about the botanical medicine market. For decades - perhaps I could even say "centuries" - buyers from around the world have sought out herbs such as ginseng that are grown in North Carolina.

There is tremendous demand for herbal products, as you know, here and abroad, and we must take advantage of this opportunity. We have Plant Industry specialists who can help identify these plants and work with growers through the growing and harvesting phases. We're now looking at cultivating, rather than just collecting these plants. If we can do this, and the research shows that we can, we can begin to prevent the scavaging and poaching that goes on in our national forests and we can begin to provide a new source of profit to our farmers in the west.

I intend to be more aggressive in marketing North Carolina agricultural products abroad. As an attorney, I am particularly interested in making sure that international marketing agreements, such as European Union regulations, do not restrict the access of North Carolina farmers to lucrative foreign markets. This is not an easy task, but I will be talking with members of our congressional delegation and establishing contacts at the United States Department of Agriculture so North Carolina concerns can be heard.

A major topic will be revamping the Farm Bill to better represent the interest of farmers in North Carolina and our neighbors in the southeast. We have suffered under a mid-western oriented Farm Bill that has boosted production of grain crops and eliminated profit from our farms for too long, and it's time to stand up and be represented in the next Farm Bill.

The N.C. Department of Agriculture and Consumer Services has focused on providing science-based recommendations to our farmers. This begins with the testing of seeds for their success in germination. It continues, as we inspect fertilizer to insure that its content is correctly stated on the label.

Our Agronomic Services Division offers testing services to help farmers utilize their resources in ways that are more environmentally friendly, as well as economically practical. Literally hundreds of thousands of soil tests, waste analyses and solution analyses are performed annually. This information allows farmers to fine-tune their nutrient and lime applications, giving them optimum yields while lessening the threat of run-off.

We also have to adapt to the reality that

North Carolina is now predominately an animal agriculture state, a change we've seen in the past 10 years.

Our Veterinarians are personally and professionally committed to the maintenance and enhancement of animal health. We have conquered numerous diseases that plague animal agriculture in North Carolina, like eradication of brucellosis, elimination of hog cholera and termination of pseudorabies in swine.

Do you care about this? Should you? The answer is a definite yes. Look at the "Mad Cow" scare rippling through Europe to see how a disease outbreak can cripple if not ruin an entire country's reputation for safe, wholesome products. We can't and won't let that happen here.

Services and regulation extend from the laboratory to the farm to the meat and poultry processing facility. Our efforts go

one step further with the implementation of the Food and Drug laws to insure that these products sold in North Carolina are wholesome. This thoroughness gives us trade and production advantages that many do not realize.

We administer the PETF-The Pesticide Environmental Trust Fund, which collects money from the sale of pesticides and uses those funds to sponsor pesticide container recycling programs, pesticide education and other outreach programs to help reduce the impact of pesticides outside their targeted use.

International and domestic markets for commodities and specialty items are addressed through our Marketing Division. We emphasize that "Goodness Grows in North Carolina". We want our Goodness Grows label to be recognized around the world as a mark of quality, as a mark of a safe food product.

As mentioned, tobacco and hogs get top publicity. And they get plenty of negative publicity.

But we are so much more. Did you know that we are number one in sweet potatoes, turkeys and farm forest products, number two in Christmas trees, cucumbers for pickles and mountain trout. And we grow alligators and bottle more types of barbecue sauce than anyone has ever seen before!

N.C. agriculture has undergone a great deal of diversification in the past 35 years. In 1964, tobacco accounted for 46% of ag income. Today it's only about 10%. Our nursery, turfgrass, commercial cut flowers, all making up the "green and growing" industry, now ranks third in North Carolina. You may be surprised to hear that 34% of our agricultural acreage in North Carolina is in managed turfgrass. This includes those

golf courses some of you live on.

We rank third in total agricultural diversity in the United States, behind only California and Florida. The only reason Florida tops us is that they divide out their citrus crop into different categories. This is something we can be very proud of.

The name of the Department is AGRICULTURE AND CONSUMER SERVICES. It is our role to preserve the traditions of the farm but it is also our duty to protect and serve all our citizens.

I believe in a clean environment and I also believe that we must protect the rights of the landowners. I am looking for opportunities to symbolically place the white hat back on the farmer and recognize the opportunities that our great state has to offer its citizens, when we work together to find solutions to these common problems. Profitability for

the farmer and preservation of our open spaces and air and water quality are not mutually exclusive goals. Protecting farms without allowing profitability is a counter productive.

Protecting farmland from development, buying conservation easements to protect farmland from urban encroachment are just a couple of the ways we can reach our common goal of preserving our natural resources. We are in the process of distributing \$1.5 million for just this purpose to farms from the coast to the mountains.

A major goal that I support is to keep North Carolina farmland in production. Contrary to the feelings of some of the development community, agriculture is the best and highest use of the land, not subdivisions and strip malls. To this end I have and will continue to work with a wide variety of conservation organizations who will seek the long term protection of the land while

preserving the necessary flexibility to maintain a way of life.

Another area of great concern to me is agriculture's rights to water access. I want to be out in front of future problems with increasing demands for water by municipalities, industry and the growing population. This problem is here, and here to stay, if we don't address it. This is a problem affecting all of us.

I do not intend to stand by and let agriculture be the whipping boy for water use problems which leads to water use restrictions applicable only to agriculture while the rest of us continue to water our lawns and wash our cars, not recognizing that we are all a part of this problem. I intend to call for a comprehensive study of our water sources, and maybe even formation of a Commission on N.C. Water Use, looking 10, 20, even 30 years down the road. And let me stress this should be a

commission of experts and policy makers,
not politicians.

If you remember anything else I have said today, please remember that the farmer is not the enemy. The farmer that I know cares just as much as you do about clean water and air. But that farmer needs and deserves to make an honest return on his investment.

We have to work hard to keep agriculture our number one industry so our farmers can be in a position to help feed a growing world population.

If we don't, the food you buy will not come from North Carolina or from the United States but from anywhere in the world, anywhere where the regulations and testing and research are not as stringent as here, where pesticide use is not regulated, and where meat and poultry are not inspected,

and where products are not tested as they are here.

We cannot afford to lose our family farms. And that is happening at too rapid a rate. In the genuine and sincere interest of those professing to clean up the environment, we cannot afford to regulate our farmers out of business. And that is what's happening.

Let me leave you with this last thought:

There's an age-old question. If a tree falls in the forest and no one is around to hear it fall, does it make a sound? Do we even notice until the entire forest is gone? Our farmers are falling one by one. Have you noticed? Do you even really care? Will you notice when our entire food supply no longer comes from our own soil?

I was elected to listen, to hear, and to care. It is my job to promote, protect, and preserve the family farm and a high quality

food and fiber supply. I intend to fulfill those responsibilities. But I need your help. Let's work together. Let's make sure that "Save Our State" also means saving one of North Carolina's greatest natural resources, the family farm.

Thank you again for the opportunity to meet with you here today and I look forward to a clean and prosperous future for all North Carolinians.

MINUTES
HOUSE AGRICULTURE COMMITTEE
February 27, 2001

The House Agriculture Committee met on Tuesday, February 27, 2001, in Room 1425 of the Legislative Building, with Representative Dewey Hill, Chairman, presiding. Chairman Hill called the meeting to order at 10:05 a.m. He welcomed the members, pages, staff, and new member Representative Bill Owens. Representative Owens had been appointed to serve on the Committee, replacing Representative Cary Allred.

Members present were Chairman Hill; Vice Chairmen Leslie Cox, W. B. Teague, Jr., Nurham Warwick; Representatives Rex Baker, Donald Bonner, Lorene Coates, Arlie Culp, Don Davis, Stanley Fox, Mark Hilton, Joe Kiser, Bill Owens, Gene Rogers, Carolyn Russell, Russell Tucker, Alice Underhill, Edith Warren, John Weatherly, Gene Wilson, and Douglas Yongue.

Several bills, which Chairman Hill is sponsoring, were passed around so that any interested in signing on as a co-sponsor could do so.

Chairman Hill introduced Mr. Tom Ellis, Director of Aquaculture & Natural Resources, North Carolina Department of Agriculture. Using slides, Mr. Ellis explained how the North Carolina Department of Agriculture works to promote the aquaculture program and assist the State's farmers in this field of work.

Aquaculture is the fastest growing segment of U. S. Agriculture, with an estimated value of \$900 million.

He discussed the production of Mountain trout and rainbow trout. North Carolina produces about 10% of the trout grown in the United States. Most of the trout are sold to processors, with about five percent sold directly to restaurants and retailers. Mr. Ellis discussed the cost to the farmer and the returns.

The next slides were of the catfish industry in North Carolina. Nearly all catfish farms are located in the eastern part of the State. Catfish production accounts for 60% of U. S. aquaculture sales. Good quality water is vital for fish farming. Most catfish farms use well water, even though the cost to them is greater. They feel it is necessary because it is a more dependable source of quality water. He explained the processing procedure and discussed the costs involved in the initial investment and the returns. There is a big processing plant in Ayden and many North Carolina-grown catfish are shipped to other countries, especially Japan and Germany.

The bass industry slides were next. North Carolina has more hybrid striped bass farmers than any other state. Hybrid striped bass farms are usually about two acres, but some are as big as six acres. The growing time to market size is about 18 months.

The next slides were crawfish. Crawfish production accounts for about 40 percent of the total U. S. aquaculture industry. North Carolina total production is less than one percent of the total production. North Carolina crawfish farms are usually about 15 acres and are all in the coastal plain.

He next showed slides pertaining to the clam and oyster industry. Clams and oysters are grown on sea bottom, which has been leased from the State through the Division of Marine Fisheries. Annually about 10,000 bushels of clams and 4500 bushels of oysters are harvested, at an estimated value of \$600,000 to \$1 million to the farmer. Most of the small growers sell to local fish and shellfish wholesalers. A few sell to local seafood stores and restaurants. Medium and large growers usually ship directly to northern markets. Both the small and larger growers may also sell directly to consumers. Mr. Ellis discussed the costs of production versus the sale price, which varies during the year. It takes about three years for clams to reach market size.

Mr. Ellis stated that the Department of Agriculture has workers across the State. They work with landowners and have a good working relationship with other State agencies. They work with the NC State University Agricultural Extension Service and with community colleges. Brunswick County Technical Community College and Brunswick County high schools were mentioned as schools with aquaculture programs.

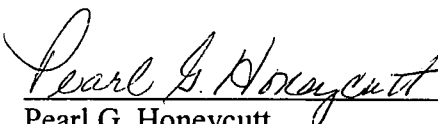
Another fish that is harvested in North Carolina is the tilapia. It is credited with being the fish that Christ used to feed the masses. It is known as a source of protein.

Mr. Ellis stated that Indiana has opened plants that use North Carolina aquaculture products.

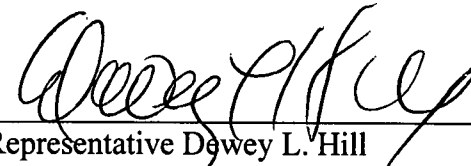
Representative Rogers asked how many acres the State has leased out for oysters. The answer was about 2,000.

Representative Russell asked how much catfish sold for in Japan and Germany. Mr. Ellis said they sold for \$25/pound in Germany.

Chairman Hill thanked Mr. Ellis for his presentation and the meeting was adjourned, to meet again on Tuesday, March 6.



Pearl G. Honeycutt
Acting Committee Clerk



Representative Dewey L. Hill
Chairman

Attachments:

- #1 – Meeting Agenda
- #2 – Visitor Registration Sheet
- #3 – NCDA handout (because of its bulk, it will be held in a separate folder)

*Attachment #1
2/27/01 mts.*

AGRICULTURE COMMITTEE

Agenda

Tuesday, February 27, 2001

Room 1425 LB

10:00 a.m.

Welcome: Representative Dewey L. Hill, Chairman

Introduction of Pages

Introduction and Presentation by Tom Ellis

**Director of Aquaculture & Natural Resources
N. C. Department of Agriculture**

Other Business

Adjourn

VISITOR REGISTRATION SHEET

AGRICULTURE

FEBRUARY 27, 2001

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

B. L. Gentry

NC Horse Council

Doug Lassiter

NC Septic Tank Assoc.

John Cyrus

N.C. State Grange

Walter Cherry

NC Pork Council

JOHN GOODMAN

LIMWOOD MERCER & Assoc.

TERRY HARDESTY

NC Pork Council

JIM CUMMINGS

NCDA & CS

Crissy P. Porter

Bone & Associates

Kelli Hulme

Du Pont

AS

NCFB

MINUTES
AGRICULTURE COMMITTEE MEETING
March 6, 2001

The House Agriculture Committee met on Tuesday, March 6, 2001, in Room 1425 of the Legislative Building, with Representative Dewey Hill, Chairman, presiding. Chairman Hill called the meeting to order at 10:05 a.m. He welcomed the members and staff and introduced Kara Finch-Rowan and Dion Donaldson, pages serving the committee.

Members present were Chairman Hill; Vice Chairmen Leslie Cox, W. B. Teague, Jr., Nurham Warwick; Representatives Rex Baker, Donald Bonner, Charles Buchanan, Lorene Coates, Arlie Culp, Don Davis, Stanley Fox, Mark Hilton, Joe Kiser, Frank Mitchell, Edd Nye, Bill Owens, Carolyn Russell, Joe Tolson, Russell Tucker, Alice Underhill, Edith Warren, John Weatherly, and Gene Wilson.

Vice Chairman Warwick was recognized to present House Bill #416, "AN ACT TO CREATE AN INCOME TAX CREDIT FOR TAXPAYERS INVESTING IN AGRIBUSINESS ENTERPRISES THAT ADD VALUE TO RAW, NORTH CAROLINA GROWN AGRICULTURAL COMMODITIES". Staff Attorney Barbara Riley was recognized and explained the Bill.

This Bill provides an income tax credit of 25% of the total investment in a North Carolina qualified added value business. It would help to enable the farming industry to remain profitable and keep farmers on the farm. It provides an income tax credit for those who want to invest in a small agricultural business that increases their market profit. The maximum amount of credits that will be available each year is \$2,000,000. The tax credit is going more to the investor than the farmer, and the farmer benefits from the investment. The Secretary of Agriculture has laid out what must be provided in order to claim the credit.

Representative Cox asked if there is a fiscal note. Ms. Reilly said that with a \$2,000,000 cap it would not cost the State in excess of that amount each year. It would be an investment that provides a break on income tax.

Representative Kiser asked who determines the value added and how this would be calculated in the tax return. Ms. Reilly said you would not be calculating the value added, you would be looking at the actual dollar amount of the investment made. Rep. Kiser asked if this included the amount of equipment that is put in an operation? Ms. Riley said the investment may be in cash, equipment, facilities, and things of that nature.

Representative Mitchell asked if a dairy that bottles milk would qualify. Ms. Riley said it would qualify as an investor. Representative Culp asked for other examples that would qualify. Mr. Weldon Denny, Assistant Commissioner of Agriculture, mentioned a chilling business that takes the heat out of vegetables, corn in particular.

There was discussion and consensus that on page 2, line 6 of the bill there should be a technical change to replace the word "gross" with the word "net".

Representative Baker moved to give the Bill a favorable report, as amended, and that it be re-referred to the Committee on Finance; seconded by Representative Russell, and passed unanimously. (The Bill was rolled over into a Committee Substitute, incorporating the change approved by the Committee).

Chairman Hill introduced Dr. Richard Reich, Director of the Agronomics Services Division of the North Carolina Department of Agriculture. Dr. Reich gave a slide presentation of the services of that Division. The Division was established in 1938 as the Soil Testing Laboratory. In 1973 the services were expanded and the Division was renamed to its present name. Their mandate is to provide all citizens with diagnostic and advisory services that help to improve crop productivity, production efficiency, promote responsible land management and in the process to safeguard our environment.

He presented the four primary areas of service that the Division is charged with carrying providing:

(1) Soil Testing: They presently test about 300,000 samples per year. They provide fertilizer and lime recommendations for specific crops and fields. They have recently been able to provide internet access to enter data on line for soil testing materials. A person can go to the site, pull up an information sheet, fill out the information sheet, and submit it electronically. It is hoped that ability will be available in the other areas of their services sometime later this year.

(2) Plant, Waste and Solution Analysis: The Division personnel perform 18,000 to 19,000 waste samples per year from lagoons, dairies, hog and poultry litter, as well as waste samples from municipalities and industries.

(3) Nematode Assay: They perform about 33,000 samples per year. They use microscopic analyses to identify plant-parasitic nematodes in field soil samples and count the number and determine the hazards for the next crop.

(4) Field Services: There are 14 regional agronomists who provide on-site assistance to farmers, advise, work closely with, and assist farmers, agri-businesses, homeowners, and other citizens.

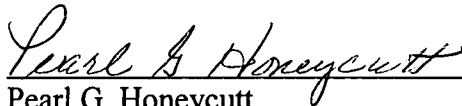
Their agronomists have worked to help farmers who are moving on to crops other than tobacco, such as soybeans, tomatoes, fruits, vegetables, and flowers. And they continue to work with traditional farmers growing strawberries, corn, and cotton. Cotton production has increased greatly in the past few years.

Representative Culp asked what the fees were for their sample analyses. There is a \$4 fee for all plant, waste and solution analyses, a \$2 fee for all nematode analyses, but there is no charge for soil samples. These fees have not been changed since 1989.

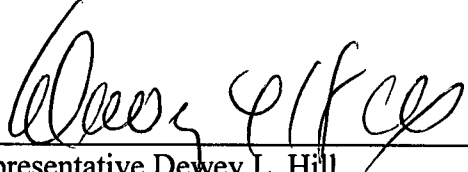
Representative Tolson asked if the Division's budget allowed for incorporation of new technology. (There is currently a bill in that would help upgrade their equipment).

There was discussion of hog lagoons and the roles of both Agriculture and the Department of Human Resources in their inspections. Representative Warwick said he thought farmers are over-analyzed in some categories. Dr. Reich said they must sample more than they think is needed because of requirements of other agencies.

Chairman Hill thanked Dr. Reich and adjourned the meeting at 10:50 a.m.



Pearl G. Honeycutt
Acting Committee Clerk



Representative Dewey L. Hill
Chairman

Attachments:

- (1) Meeting Agenda
- (2) Visitor Registration Sheet
- (3) House Bill #416 & Bill Analysis
- (4) House Bill #416 Committee Substitute

A G E N D A
AGRICULTURE COMMITTEE

Tuesday, March 6, 2001

Room 1425 LB

10:00 a.m.

OPENING REMARKS – REPRESENTATIVE HILL

INTRODUCTION OF PAGES

House Bill # 419 – Credit for Value-Added Ag Business

**INTRODUCTION & PRESENTATION BY DR. RICHARD REICH, DIRECTOR
AGRONOMICS SERVICE DIVISION
NCDA**

CLOSING REMARKS AND ADJOURNMENT

Last Will of Mr. Farmer

I Leave: To My Wife: My overdrafts at the bank. Maybe she can explain it.
To My Banker: My soul. He has the mortgage on it anyway.
To My Neighbor: My clown suit. He'll need it if he continues to farm as he has in the past.
To The ASCS: My grain bin. I was planning to let them take it next year anyway.
To the County Agent: Fifty bushels of corn to see if he can hit the market. I never could.
To the Junk Man: All my machinery. He's had his eye on it for years.
To My undertaker a Special Request: I want six implement and fertilizer dealers for my pallbearers. They are used to carrying me.
To The Weatherman: Rain and sleet and snow for the funeral. Please: no sense in having good weather now.
To The Grave Digger: Don't bother. The hole I'm in should be big enough.

VISITOR REGISTRATION SHEET

AGRICULTURE

March 6, 2001

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Walter Cherry	NCPC
Jerry Harkley	NCPC
David Meredith	NC state Grange
John Cymus	N.C. State Grange
RS	NC H
Grady McCallin	N.C. Conservation Network
Doug Lassiter	NC Septic Tank Assoc.
Larry Bandy	NCLA
Ann Denson	Phillip Morris
Lee Ann Coe	NC AgriBusiness Council
Crissy Porter	Born and Associates

VISITOR REGISTRATION SHEET

AGRICULTURE

Name of Committee

March 6, 2001

Date _____

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME _____

FIRM OR AGENCY AND ADDRESS

Rogers

Bone & Assoc -

Steve Woodson

NC Farm Bureau Federation

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

H

1

HOUSE BILL 416*

Short Title: Credit for Value-Added Ag Business.

(Public)

Sponsors: Representatives Hill; Edwards, Kiser, Teague, Warren, Alexander, and Morris.

Referred to: Agriculture, if favorable, Finance.

March 1, 2001

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE AN INCOME TAX CREDIT FOR TAXPAYERS INVESTING
3 IN AGRIBUSINESS ENTERPRISES THAT ADD VALUE TO RAW, NORTH
4 CAROLINA GROWN AGRICULTURAL COMMODITIES.

5 The General Assembly of North Carolina enacts:

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

8 "Article 3E.

9 "Value-Added Agribusiness Tax Credit.

10 "§ 105-129.40. Credit for investment in value-added agribusiness.

11 (a) A taxpayer who invests in a qualified North Carolina value-added
12 agribusiness shall be entitled to a credit against the income tax imposed under Article 4
13 of this Chapter in the amount of twenty-five percent (25%) of the amount invested.
14 Investments in a qualified North Carolina value-added agribusiness may include cash
15 and in-kind contributions of machinery and equipment, real property, or facilities. To be
16 eligible for the credit, contributions of machinery and equipment, real property, or
17 facilities shall be directly related to the agribusiness.

18 (b) The amount of the credit allowed shall not exceed fifty percent (50%) of the
19 tax against which it is claimed for the taxable year, or fifty thousand dollars (\$50,000),
20 reduced by the sum of all credits allowed against the tax except tax payments made by
21 or on behalf of the taxpayer. This limitation applies to the cumulative amount of credit,
22 including carryforwards claimed by the taxpayer under this Article against the tax for
23 the taxable year. Any unused portion of the credit may be carried forward for the
24 succeeding 10 years.

25 (c) The following definitions apply in this Article:

(1) 'Commercial entity' means (i) an agricultural marketing cooperative established pursuant to Subchapter V of Chapter 54 of the General Statutes or (ii) a person producing raw agricultural products.

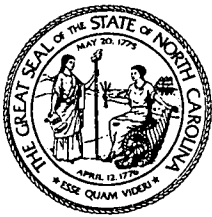
(2) 'Person' means a natural person, partnership, or corporation that earns less than two hundred fifty thousand dollars (\$250,000) in annual gross income from the production of raw agricultural products.

(3) 'Qualified North Carolina value-added agribusiness' means a commercial entity operating in this State that uses, processes, refines, or packages raw agricultural products in a manner that increases the value of the raw agricultural products on the market.

(d) To claim a credit allowed by this Article, the taxpayer shall provide any information required by the Secretary of Revenue. Every taxpayer claiming a credit under this Article shall maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving eligibility for the credit and the amount of the credit shall rest upon the taxpayer, and no credit shall be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection.

(e) The total amount of all tax credits allowed to taxpayers under this section for contributions made in a calendar year may not exceed two million dollars (\$2,000,000). The Secretary must calculate the total amount of tax credits claimed from the applications filed under this section. If the total amount of tax credits claimed for contributions made in a calendar year exceeds two million dollars (\$2,000,000), the Secretary must allow a portion of the credits claimed by allocating a total of two million dollars (\$2,000,000) in tax credits in proportion to the size of the credit claimed by each taxpayer. If a credit is reduced pursuant to this subsection, the Secretary must notify the taxpayer of the amount of the reduction of the credit on or before December 31 of the year the application was filed. The Secretary's allocations based on applications filed pursuant to this section are final and will not be adjusted to account for credits applied for but not claimed."

Section 2. This act is effective for taxable years beginning on or after January 1, 2001.



HB 416: Credit for Value-Added Ag Business

BILL ANALYSIS

Committee: House Agriculture
Date: March 5, 2001
Version: 1st Edition

Introduced by: Representative. Hill
Summary by: Barbara Riley
Committee Counsel

SUMMARY:

House Bill 416 was recommended to the General Assembly by the Agriculture and Forestry Awareness Study Commission. The bill creates an income tax credit for taxpayers who invest in small, North Carolina agribusiness that add value to raw North Carolina grown agricultural commodities.

BILL ANALYSIS:

House Bill 416 adds a new Article 3E to Chapter 105 of the General Statutes. The new Article provides an income tax credit in the amount of 25% of the amount invested in a qualified North Carolina value-added agribusiness. The types of investment include cash and in-kind contributions, such as facilities or equipment. The credit may not exceed 50% of the tax against which it is claimed for the taxable year or \$50,000.

A qualified North Carolina agribusiness is defined as commercial entity operating in the State that uses, processes, refines, or packages raw agricultural products in a manner that increases their value on the market. A commercial entity means either an agricultural marketing cooperative or a person, partnership or corporation earning less than \$250,000 in annual gross income from the production of raw agricultural products.

To claim the credit the taxpayer must provide such information to the Department of Revenue as the Secretary of Revenue requires and must keep and maintain records the Department considers necessary for it to determine and verify the amount of the credit that may be claimed.

The total amount of credits that will be available each year may not exceed \$2,000,000. If the total amount of credits claimed exceeds this amount, the credits shall be reduced in proportion to the size of the credit claimed.

The act is effective for taxable years beginning on or after January 1, 2001.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

H

2

HOUSE BILL 416*
Committee Substitute Favorable 3/7/01

Short Title: Credit for Value-Added Ag Business.

(Public)

Sponsors:

Referred to:

March 1, 2001

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE AN INCOME TAX CREDIT FOR TAXPAYERS INVESTING
3 IN AGRIBUSINESS ENTERPRISES THAT ADD VALUE TO RAW, NORTH
4 CAROLINA GROWN AGRICULTURAL COMMODITIES.

5 The General Assembly of North Carolina enacts:

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

8 "Article 3E.

9 "Value-Added Agribusiness Tax Credit.

10 "**§ 105-129.40. Credit for investment in value-added agribusiness.**

11 (a) A taxpayer who invests in a qualified North Carolina value-added
12 agribusiness shall be entitled to a credit against the income tax imposed under Article 4
13 of this Chapter in the amount of twenty-five percent (25%) of the amount invested.
14 Investments in a qualified North Carolina value-added agribusiness may include cash
15 and in-kind contributions of machinery and equipment, real property, or facilities. To be
16 eligible for the credit, contributions of machinery and equipment, real property, or
17 facilities shall be directly related to the agribusiness.

18 (b) The amount of the credit allowed shall not exceed fifty percent (50%) of the
19 tax against which it is claimed for the taxable year, or fifty thousand dollars (\$50,000),
20 reduced by the sum of all credits allowed against the tax except tax payments made by
21 or on behalf of the taxpayer. This limitation applies to the cumulative amount of credit,
22 including carryforwards claimed by the taxpayer under this Article against the tax for
23 the taxable year. Any unused portion of the credit may be carried forward for the
24 succeeding 10 years.

25 (c) The following definitions apply in this Article:

26 (1) 'Commercial entity' means (i) an agricultural marketing cooperative
27 established pursuant to Subchapter V of Chapter 54 of the General
28 Statutes or (ii) a person producing raw agricultural products.

(2) 'Person' means a natural person, partnership, or corporation that earns less than two hundred fifty thousand dollars (\$250,000) in annual net income from the production of raw agricultural products.

(3) 'Qualified North Carolina value-added agribusiness' means a commercial entity operating in this State that uses, processes, refines, or packages raw agricultural products in a manner that increases the value of the raw agricultural products on the market.

(d) To claim a credit allowed by this Article, the taxpayer shall provide any information required by the Secretary of Revenue. Every taxpayer claiming a credit under this Article shall maintain and make available for inspection by the Secretary of Revenue any records the Secretary considers necessary to determine and verify the amount of the credit to which the taxpayer is entitled. The burden of proving eligibility for the credit and the amount of the credit shall rest upon the taxpayer, and no credit shall be allowed to a taxpayer that fails to maintain adequate records or to make them available for inspection.

(e) The total amount of all tax credits allowed to taxpayers under this section for contributions made in a calendar year may not exceed two million dollars (\$2,000,000). The Secretary must calculate the total amount of tax credits claimed from the applications filed under this section. If the total amount of tax credits claimed for contributions made in a calendar year exceeds two million dollars (\$2,000,000), the Secretary must allow a portion of the credits claimed by allocating a total of two million dollars (\$2,000,000) in tax credits in proportion to the size of the credit claimed by each taxpayer. If a credit is reduced pursuant to this subsection, the Secretary must notify the taxpayer of the amount of the reduction of the credit on or before December 31 of the year the application was filed. The Secretary's allocations based on applications filed pursuant to this section are final and will not be adjusted to account for credits applied for but not claimed."

SECTION 2. This act is effective for taxable years beginning on or after January 1, 2001.

MINUTES
HOUSE AGRICULTURE COMMITTEE
March 20, 2001

The House Agriculture committee met on March 20, 2001 in Room 1425 of the Legislative Building, with Representative Dewey Hill, Chairman, presiding.

Members in attendance were: Chairman Hill; Vice Chairmen Larry Bell, Leslie Cox, W. B. Teague, Jr., Nurham Warwick; Rex Baker, Donald Bonner, Lorene Coates, Arlie Culp, Don Davis, Rick Eddins, Stanley Fox, Mark Hilton, Joe Kiser, Frank Mitchell, Edd Nye, Carolyn Russell, Joe Tolson, Russell Tucker, Alice Underhill, Edith Warren, John Weatherly, and Douglas Yongue.

Chairman Hill called the meeting to order at 10:10 a.m. He welcomed the Committee members and visitors and introduced the pages and staff members. The Chair was turned over to Vice Chair Teague and he in turn recognized Representative Hill.

Representative Hill explained House bill #218, "Treble Damages for Injury to Ag Crops", and recognized Mr. Glenn Jernigan. Mr. Jernigan, representing the Agricultural Alliance of North Carolina, speaking in support of the bill said that more than 20 states have enacted similar legislation. He introduced the following persons who stated their support for the bill: Pat Gaskin, North Carolina Christmas Tree Association; David Rouzer, Commodity Relations CALS, NC State University; Steve Woodson, North Carolina Farm Bureau; John Cooper, Carolina Cotton Growers Cooperatives; John Cyrus, North Carolina State Grange; and Lu-Ann Coe, North Carolina Agribusiness Council.

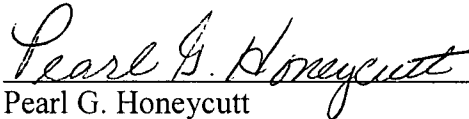
There was discussion of the bill, with questions and comments from Committee members. Two or more members wished to send forth amendments to the bill. Because of the number of amendments and the time element, Chairman Hill postponed further discussion of the bill and announced that it would be brought up again at the next meeting.

Commissioner of Agriculture Meg Scott Phipps was recognized. She told the Committee that the Department of Agriculture is working extensively on the hoof and mouth disease problem. She introduced Dr. David Marshall, State Veterinarian. Dr. Marshall gave an informative presentation about the disease and the role of the North Carolina Department of Agriculture. Hoof and mouth disease is different from mad cow disease. Meat from hoof and mouth disease does not affect people or the food supply. It is entirely a livestock viral disease of cloven animals and is hard to eradicate. There is no treatment and no approved vaccine.

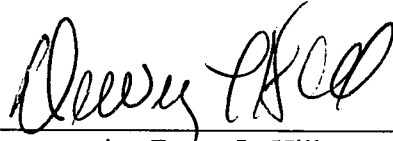
In the North Carolina Department of Agriculture a web site has been set up, non-essential visits to swine farms have been suspended, manuals have been distributed to assist the Department's meat inspectors, Departmental employee responsibilities have been reorganized in order to devote more concentration of personnel to the problem, food

and mouth disease training is provided to employees, and they are participating in the North Carolina Emergency Management food and mouth disease workshops.

The meeting was adjourned, with request to Commissioner Phipps and Dr. Marshall that they provide updated information to the Committee in the near future. (They appeared before a joint meeting of the Agriculture and Environment and Natural Resources committees on Thursday, March 22, 2001 with a detailed presentation by Dr. Marshall.)



Pearl G. Honeycutt
Acting Committee Clerk



Representative Dewey L. Hill
Chairman

Attachments:

- #1 – Agenda
- #2 – Visitor Registration Sheet
- #3 – House Bill #218 with summary

**AGENDA
AGRICULTURE COMMITTEE**

Tuesday, March 20, 2001

Room 1425 LB

10:00 a.m.

OPENING REMARKS – REPRESENTATIVE HILL

INTRODUCTION OF PAGES

House Bill #218 – Treble Damages for Injury to Agricultural Crops

Dr. David Marshall, State Veterinarian – Comments and updates on Hoof and Mouth Disease and Mad Cow Disease

CLOSING REMARKS AND ADJOURNMENT

VISITOR REGISTRATION SHEET

Name of Committee

Date _____

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME _____

FIRM OR AGENCY AND ADDRESS

[illegible]

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H

1

HOUSE BILL 218

Short Title: Treble Damages for Injury to Agricultural Crops. (Public)

Sponsors: Representatives Hill; Alexander, Barbee, Church, Coates, Cox, Creech, Davis, Edwards, Gray, Jarrell, McLawhorn, Owens, Redwine, Teague, Tolson, Tucker, Underhill, Warren, G. Wilson, and Wright.

Referred to: Agriculture, if favorable, Judiciary I.

February 22, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR TREBLE DAMAGES FOR THE INJURY TO, OR THE DESTRUCTION OF, AGRICULTURAL CROPS AND PLANTS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 43 of Chapter 1 of the General Statutes is amended by adding a new section to read:

"§ 1-539.2B. Treble damages for injury to agricultural crops and plants; additional damages for certain agricultural crops and plants.

(a) Any person who willfully injures or destroys any other person's agricultural crops or agricultural plants is liable for three times the value of the crops or plants injured or destroyed.

(b) For purposes of this section, the value of agricultural crops or agricultural plants that are grown for educational, testing, or research purposes include all of the following:

(1) The diminution in market value of the crops or plants when the crops or plants were grown for sale and the plaintiff is the entity who sold the crops or plants or would have sold the crops or plants but for their injury or destruction.

(2) Costs to the plaintiff for research and development of the injured or destroyed crops or plants.

(3) Other incidental and consequential damages proven to have been incurred by the plaintiff."

SECTION 2. This act becomes effective October 1, 2001, and applies to acts that occur on or after that date.



HB 218: Treble Damages for Injury to Agricultural Crops.

BILL ANALYSIS

Committee: House Agriculture
Date: March 6, 2001
Version: First Edition

Introduced by: Representative Hill
Summary by: R. Erika Churchill
Committee Counsel

SUMMARY: *The bill would create an action in civil court for treble damages when agricultural crops or agricultural plants are willfully injured or destroyed, effective for acts on or after October 1, 2001.*

BILL ANALYSIS: The bill would create a civil cause of action for the collection of treble damages when any person willfully injures or destroys agricultural crops or agricultural plants. Any person who willfully injures or destroys the crops is liable for three times the value of the crops or plants injured or destroyed. The value of the crop or plant includes:

- The diminution in market value of the crops or plants, if the crop or plant was grown for sale and the plaintiff is the party who sold the crop or plant (or would have sold them but for the injury or destruction).
- Costs to the plaintiff for research and development of the injured or destroyed crop or plant.
- Other incidental and consequential damages proven to have been incurred by the plaintiff.

EFFECTIVE DATE: The act would become effective October 1, 2001, and apply to acts that occur on or after that date.

MINUTES
HOUSE AGRICULTURE COMMITTEE
March 20, 2001

The House Agriculture committee met on March 20, 2001 in Room 1425 of the Legislative Building, with Representative Dewey Hill, Chairman, presiding.

Members in attendance were: Chairman Hill; Vice Chairmen Larry Bell, Leslie Cox, W. B. Teague, Jr., Nurham Warwick; Rex Baker, Donald Bonner, Lorene Coates, Arlie Culp, Don Davis, Rick Eddins, Stanley Fox, Mark Hilton, Joe Kiser, Frank Mitchell, Edd Nye, Carolyn Russell, Joe Tolson, Russell Tucker, Alice Underhill, Edith Warren, John Weatherly, and Douglas Yongue.

Chairman Hill called the meeting to order at 10:10 a.m. He welcomed the Committee members and visitors and introduced the pages and staff members. The Chair was turned over to Vice Chair Teague and he in turn recognized Representative Hill.

Representative Hill explained House bill #218, "Treble Damages for Injury to Ag Crops", and recognized Mr. Glenn Jernigan. Mr. Jernigan, representing the Agricultural Alliance of North Carolina, speaking in support of the bill said that more than 20 states have enacted similar legislation. He introduced the following persons who stated their support for the bill: Pat Gaskin, North Carolina Christmas Tree Association; David Rouzer, Commodity Relations CALS, NC State University; Steve Woodson, North Carolina Farm Bureau; John Cooper, Carolina Cotton Growers Cooperatives; John Cyrus, North Carolina State Grange; and Lu-Ann Coe, North Carolina Agribusiness Council.

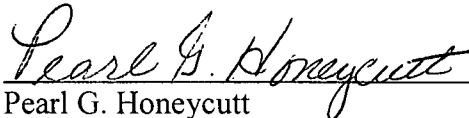
There was discussion of the bill, with questions and comments from Committee members. Two or more members wished to send forth amendments to the bill. Because of the number of amendments and the time element, Chairman Hill postponed further discussion of the bill and announced that it would be brought up again at the next meeting.

Commissioner of Agriculture Meg Scott Phipps was recognized. She told the Committee that the Department of Agriculture is working extensively on the hoof and mouth disease problem. She introduced Dr. David Marshall, State Veterinarian. Dr. Marshall gave an informative presentation about the disease and the role of the North Carolina Department of Agriculture. Hoof and mouth disease is different from mad cow disease. Meat from hoof and mouth disease does not affect people or the food supply. It is entirely a livestock viral disease of cloven animals and is hard to eradicate. There is no treatment and no approved vaccine.

In the North Carolina Department of Agriculture a web site has been set up, non-essential visits to swine farms have been suspended, manuals have been distributed to assist the Department's meat inspectors, Departmental employee responsibilities have been reorganized in order to devote more concentration of personnel to the problem, food

and mouth disease training is provided to employees, and they are participating in the North Carolina Emergency Management food and mouth disease workshops.

The meeting was adjourned, with request to Commissioner Phipps and Dr. Marshall that they provide updated information to the Committee in the near future. (They appeared before a joint meeting of the Agriculture and Environment and Natural Resources committees on Thursday, March 22, 2001 with a detailed presentation by Dr. Marshall.)



Pearl G. Honeycutt
Acting Committee Clerk



Representative Dewey L. Hill
Chairman

Attachments:

- #1 – Agenda
- #2 – Visitor Registration Sheet
- #3 – House Bill #218 with summary

**AGENDA
AGRICULTURE COMMITTEE**

Tuesday, March 27, 2001

Room 1425 LB

10:00 a.m.

OPENING REMARKS – REPRESENTATIVE HILL

INTRODUCTION OF PAGES

House Bill 218—Treble Damages for Injury to Agricultural Crops

CLOSING REMARKS AND ADJOURNMENT

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 1

H. B. No. _____

S. B. No. _____

COMMITTEE SUBSTITUTE _____

DATE 3/27/01

Amendment No. 1

(to be filled in by
Principal Clerk)

Rep.) Bullock

Sen.) _____

1 moves to amend the bill on page 1, line 25 & 26

2 () WHICH CHANGES THE TITLE

3 by adding a new subsection (C) to

4 the title.

5 "(C) To read: 'The term 'agriculture'

6 shall include any crop, ^{tree} plants, or

7 product of any such crop, tree, or plant,

8 or any product thereof.

9 _____

10 _____

11 _____

12 _____

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17 _____

18 _____

19 _____

SIGNED [Signature]

ADOPTED _____ FAILED _____ TABLED _____

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H

1

HOUSE BILL 218

Short Title: Treble Damages for Injury to Agricultural Crops. (Public)

Sponsors: Representatives Hill; Alexander, Barbee, Church, Coates, Cox, Creech, Davis, Edwards, Gray, Jarrell, McLawhorn, Owens, Redwine, Teague, Tolson, Tucker, Underhill, Warren, G. Wilson, and Wright.

Referred to: Agriculture, if favorable, Judiciary I.

February 22, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR TREBLE DAMAGES FOR THE INJURY TO, OR THE DESTRUCTION OF, AGRICULTURAL CROPS AND PLANTS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 43 of Chapter 1 of the General Statutes is amended by adding a new section to read:

"§ 1-539.2B. Treble damages for injury to agricultural crops and plants; additional damages for certain agricultural crops and plants.

(a) Any person who willfully injures or destroys any other person's agricultural crops or agricultural plants is liable for three times the value of the crops or plants injured or destroyed.

(b) For purposes of this section, the value of agricultural crops or agricultural plants that are grown for educational, testing, or research purposes include all of the following:

(1) The diminution in market value of the crops or plants when the crops or plants were grown for sale and the plaintiff is the entity who sold the crops or plants or would have sold the crops or plants but for their injury or destruction.

(2) Costs to the plaintiff for research and development of the injured or destroyed crops or plants.

(3) Other incidental and consequential damages proven to have been incurred by the plaintiff."

SECTION 2. This act becomes effective October 1, 2001, and applies to acts that occur on or after that date.

ANIMAL DISEASE ISSUES
Veterinary Services Division
North Carolina Department of Agriculture and Consumer Services

1. Authority Issues

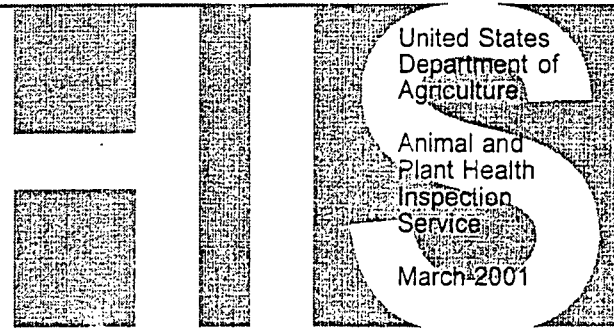
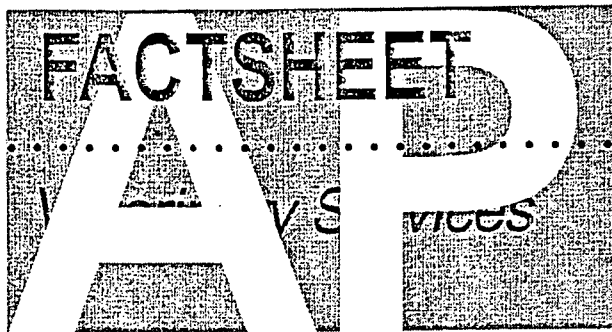
- The Commissioner of Agriculture and the State Veterinarian already have the authority to quarantine any animal affected with or exposed to a contagious disease. However, we do not have the authority to quarantine areas. General Statute 106-401 should be amended to give the Commissioner or the State Veterinarian authority to quarantine areas in addition to individual premises.
- Enact legislation authorizing the Commissioner of Agriculture to prohibit public assembly or exhibition of livestock when necessary to prevent the spread of disease.

2. Foot and Mouth Disease Issues

- The Field Services Section operating budget needs to be increased immediately by \$100,000 for travel and to purchase and store core equipment and supplies to deal with the sudden outbreak of a highly infectious disease. In the face of an emergency, authority is needed to obtain items outside the normal state purchasing process.
- Establish a \$500,000 reserve fund so that emergency expenditures could be made in the event of a disease outbreak. The fund would bridge the gap between the division's normal operating budget and emergency action by the Governor or the General Assembly.
- Increase the amount budgeted for reimbursing local, private veterinarians to provide final disposition services on retained animals at state inspected slaughter plants (\$10,000).
- Maintain the cell phones currently used in the Veterinary Services Division.
- An additional veterinarian position is needed for public outreach and producer education efforts (\$100,000 salary, benefits, and overhead).
- Additional funding is needed to provide all VMOs formal training in USDA Foreign Animal Disease diagnosis (\$17,500).
- The department needs relief in the amount of \$500,000 from the amount targeted for reversion in the current budget year.
- Provide funding to assist the State Animal Response Team (SART).

3. Other Issues with Respect to Animal Diseases

- A Level 3 Bio-Security Laboratory is needed to augment the efforts of the Division of Public Health (DHHS) in West Nile Virus surveillance (cost of package lab estimated between \$600,000 and \$750,000).
- Additional funds are needed in the Rollins Animal Disease Diagnostic Laboratory system to replace old equipment, repair deteriorating facilities, implement new technologies for animal disease diagnosis, and replenish the laboratory supply and operating budgets (\$800,000).
- Because of the difficulty in attracting and retaining veterinarians, a complete review of the salary structure of all veterinarian positions in the division is needed (immediate funding when study is completed).



Foot-and-Mouth Disease

Foot-and-mouth disease (FMD) is a severe, highly communicable viral disease of cattle and swine. It also affects sheep, goats, deer, and other cloven-hooved ruminants. FMD is not recognized as a zoonotic disease.

This country has been free of FMD since 1929, when the last of nine U.S. outbreaks was eradicated.

The disease is characterized by fever and blister-like lesions followed by erosions on the tongue and lips, in the mouth, on the teats, and between the hooves. Many affected animals recover, but the disease leaves them debilitated. It causes severe losses in the production of meat and milk.

Because it spreads widely and rapidly and because it has grave economic as well as clinical consequences, FMD is one of the animal diseases that livestock owners dread most.

What Causes It

The disease is caused by a virus. The virus survives in lymph nodes and bone marrow at neutral pH, but destroyed in muscle when in pH<6.0 i.e. after rigor mortis. The virus can persist in contaminated fodder and the environment for up to one month, depending on the temperature and pH conditions.

There are at least seven separate types and many subtypes of the FMD virus. Immunity to one type does not protect an animal against other types.

How It Spreads

FMD viruses can be spread by animals, people, or materials that bring the virus into physical contact with susceptible animals. An outbreak can occur when:

- People wearing contaminated clothes or footwear or using contaminated equipment pass the virus to susceptible animals.
- Animals carrying the virus are introduced into susceptible herds.
- Contaminated facilities are used to hold susceptible animals.

- Contaminated vehicles are used to move susceptible animals.
- Raw or improperly cooked garbage containing infected meat or animal products is fed to susceptible animals.
- Susceptible animals are exposed to materials such as hay, feedstuffs, hides, or biologics contaminated with the virus.
- Susceptible animals drink common source contaminated water.
- A susceptible cow is inseminated by semen from an infected bull.

Signs

Vesicles (blisters) followed by erosions in the mouth or on the feet and the resulting excessive salivating or lameness are the best known signs of the disease. Often blisters may not be observed because they easily rupture, leading to erosions. Some of these other signs may appear in affected animals during an FMD outbreak:

- Temperatures rise markedly, then usually fall in about 2 to 3 days.
- Ruptured vesicles discharge either clear or cloudy fluid and leave raw, eroded areas surrounded by ragged fragments of loose tissue.
- Sticky, foamy, stringy saliva is produced.
- Consumption of feed is reduced because of painful tongue and mouth lesions.
- Lameness with reluctance to move is often observed.
- Abortions often occur.
- Milk flow of infected cows drops abruptly.
- Conception rates may be low.
- FMD can lead to myocarditis (inflammation of the muscular walls of the heart) and death, especially in newborn animals.

Animals do not normally regain lost weight for many months. Recovered cows seldom produce milk at their former rates.

Confusion With Other Diseases

FMD can be confused with several similar, but less harmful, diseases, such as vesicular stomatitis, bluetongue, bovine viral diarrhea, and foot rot in cattle, vesicular exanthema of swine, and swine

vesicular disease. Whenever mouth or feet blisters or other typical signs are observed and reported, laboratory tests must be completed to determine whether the disease causing them is FMD.

Where FMD Occurs

While the disease is widespread around the world, North America, Central America, Australia, New Zealand, Chile, and some countries in Europe are considered free of FMD. Various types of FMD virus have been identified in Africa, South America, Asia, and part of Europe.

Prevention and Control

FMD is one of the most difficult animal infections to control. Because the disease occurs in many parts of the world, there is always a chance of its accidental introduction into the United States.

Animals and animal byproducts from areas known to be infected are prohibited entry into this country.

Livestock animals in this country are highly susceptible to FMD viruses. If an outbreak occurred in the United States, this disease could spread rapidly to all sections of the country by routine livestock movements unless it was detected early and eradicated immediately.

If FMD were to spread unchecked, the economic impact could reach billions of dollars in the first year. Deer and wildlife populations could become infected rapidly and could be a source for reinfection of livestock.

What You Can Do

You can support U.S. efforts against FMD by:

- Watching for excessive salivating, lameness, and other signs of FMD in your herd; and
- Immediately reporting any unusual or suspicious signs of disease to your veterinarian, to State or Federal animal disease control officials, or to your county agricultural agent.

If FMD should appear in your animals, your report will set in motion an effective State and Federal eradication program.

Your participation is vital. Both the early recognition of disease signs and the prompt notification of veterinary officials are essential if

eradication is to be carried out successfully. Your warning may prevent FMD from becoming established in the United States, or, if it does spread, reduce the time and money needed to wipe it out.

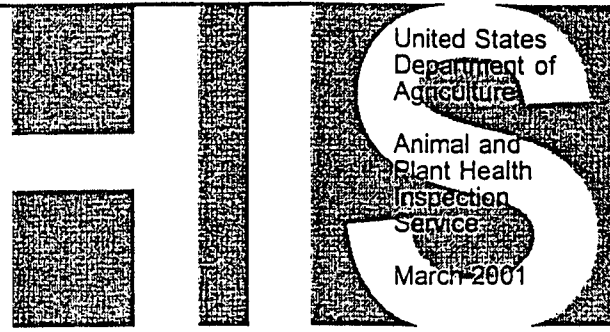
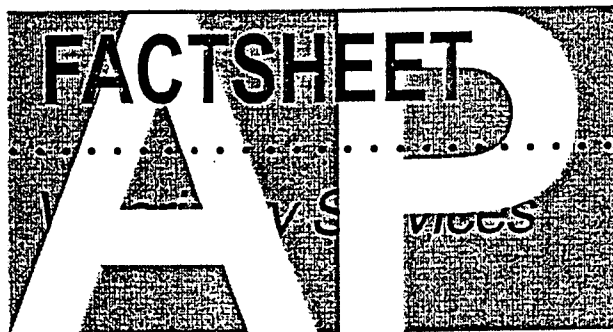
Additional Information

For more information about FMD, contact
USDA, APHIS, Veterinary Services
Emergency Programs
4700 River Road, Unit 41
Riverdale, MD 20737-1231
Telephone (301) 734-8073
Fax (301) 734-7817

Current information on animal diseases and suspected outbreaks is also available on the Internet at <http://www.aphis.usda.gov>.

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Foot-and-mouth disease Q's and A's

Q: What is foot-and-mouth disease (FMD)?

A: FMD is a highly contagious and economically devastating disease of cattle and swine. It also affects sheep, goats, deer, and other cloven-hooved ruminants. Many affected animals recover, but the disease leaves them debilitated. FMD causes severe losses in the production of meat and milk. Because it spreads widely and rapidly and because it has grave economic as well as physical consequences, FMD is one of the animal diseases that livestock owners dread most. The disease does not affect food safety or humans.

Q: What are the potential economic ramifications of an FMD outbreak in the United States?

A: An FMD outbreak in the United States could potentially cost the U.S. livestock industry billions of dollars in losses in the first year.

Q: Can people get the disease from animals?

A: It is not believed to readily affect humans. There was one recorded case in Britain in 1966. The effects of the disease for that person were similar to flu with some blisters. The disease has no implications for the human food chain. People, however, can spread the virus to animals because it can remain in human nasal passages for as long as 28 hours.

Q: How do you get rid of foot-and-mouth disease?

A: The virus can be killed off by heat, low humidity, or some disinfectants. It is only rarely fatal, although it is more likely to kill very young animals. There is no cure for the disease, and it usually runs its course in 2 or 3 weeks with most animals recovering, although some animals take up to 6 months to fully recover.

Q: If most animals don't die, why go to such great lengths to eradicate it?

A: The disease is highly contagious with nearly 100 percent of exposed animals becoming infected. If the disease became widespread in any country there would be disastrous economic consequences. For example, the most serious effects of the disease in dairy cattle are loss of milk and yield.

Q: What is the U.S. Department of Agriculture (USDA) doing to protect the United States from foot-and-mouth disease?

A: In order to protect U.S. livestock from the introduction of FMD, USDA implemented an interim rule on February 21, prohibiting or restricting the importation into the United States of live swine and ruminants and any fresh swine or ruminant meat (chilled or frozen) or products from Great Britain or Northern Ireland. USDA's FMD policy has been to be proactive and preventative. As a result, the interim rule is effective retroactively. Products dated after January 14 are not permitted entry into the United States. This rule has not yet been published in the *Federal Register*.

Q: What is USDA doing to prevent travelers from bringing FMD into the United States?

A: There is no change in the regulation regarding U.S. surveillance measures of travelers for FMD. However, ports of entry have been notified to enhance surveillance of travelers coming from Europe, particularly the United Kingdom (UK) because that area is now considered to be at high risk for FMD.

Q: What should travelers do if they are planning to visit a farm or are in contact with livestock while abroad?

A: All international travelers must state on their Customs declaration form whether or not they have been on a farm or in contact with livestock and if they are bringing any meat or dairy products from their travels back with them. APHIS officials will inspect the baggage of all travelers who indicate they have been on a farm or in contact with livestock. Any soiled footwear must be disinfected with detergent

and bleach. If travelers are around livestock in the UK and they have livestock at home in the United States, they should avoid contact with their animals for 5 days after returning. In addition, soiled clothing must be washed and disinfected prior to returning to the United States.

Q: Can travelers bring animal products back to the United States from Europe?

A: Any ruminant or swine products (cattle, sheep, goats, deer, and other cloven-hooved animals included), with the exception of hard cheeses and canned products with a shelf life, will be confiscated.

Q: How can farmers support USDA in its efforts to prevent FMD in the United States?

A: As always, farmers can support U.S. efforts against FMD by watching for excessive salivating, lameness, and other signs of FMD in their herd and immediately reporting any unusual or suspicious signs of disease to their veterinarian, State or Federal animal disease control officials, or their county agricultural agent. Garbage feeders are encouraged to fully cook their feed before giving it to livestock.

Additional Information

For more information about FMD, contact:

USDA, APHIS, Veterinary Services
Emergency Programs
4700 River Road, Unit 41
Riverdale, MD 20737-1231
Telephone (301) 734-8073
Fax (301) 734-7817

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Family](#)[News Release
Archives](#)[Jan. - Dec. 2000](#)[Jan. - Dec. 1999](#)[April - Dec. 1998](#)**FOR IMMEDIATE RELEASE
MONDAY, MARCH 5, 2001****NCDA&CS officials monitoring European
foot-and-mouth disease situation**

RALEIGH - Animal health officials in the Veterinary Division of the N.C. Department of Agriculture and Consumer Services are closely monitoring the recent outbreak of foot-and-mouth disease (FMD) in Britain. The disease was originally discovered in 27 pigs at a slaughterhouse in England on Feb. 19 and has since spread to Ireland and continental Europe.

"Over the weekend, foot-and-mouth disease was discovered in animals in Belgium and France," said Agriculture Commissioner Meg Scott Phipps. "Because the disease is easily transmitted to animals through clothes and shoes, it is possible the disease may be introduced in the U.S. The disease is not a threat to humans but would be a serious threat to the livestock industry in our state."

FMD is a severe, highly contagious viral disease of cattle, swine, sheep, goats, and deer characterized by blister-like lesions on the mouth, lips, tongue, teats, and between the hooves. There is no treatment for the disease and infected or exposed animals must be slaughtered, burned or buried, and all premises and equipment must be cleaned and disinfected. Vaccine can only be used in the face of an outbreak to help control the spread.

The last outbreak of FMD in the United States was in 1929. The virus has been active recently in Asia, Europe, Africa and South America. Mechanical transfer of the virus on the clothing, shoes, and other personal items of international travelers is a possible source of introduction. In 1999, 16.4 million passengers arrived in the U.S. on direct flights from the U.K. Smuggled meat and food items that elude USDA quarantine monitoring inspections are of particular concern.

The importation of affected animals or animal products from the U.K. has been addressed through a series of restrictions. The previous ban on British cattle and bovine meat products, in place since 1989 as the result of mad cow disease, was expanded on Jan. 29 to include swine, and products derived from swine, unless those products were processed in such a manner as to inactivate the FMD virus. Pork products that had already arrived in the U.S. from the U.K. are being quarantined at U.S. ports.

N.C. livestock producers are advised to strengthen farm biosecurity measures. Producers and farmers should be cautious and limit potential sources of introduction to their farms. Officials from the NCDA& CS Veterinary Division are advising farmers to be wary of used farm equipment that may have originated overseas, herd

additions of unknown origin, and people or employees who may have traveled internationally in recent months or who have relatives visiting from overseas. In addition, they should contact their veterinarian if livestock exhibit any symptoms of FMD including blister like lesions, excessive salivation, reluctance to eat, or lameness.

-2,3

Contact: Dr. David Marshall, state veterinarian, N.C. Department of Agriculture and Consumer Services, (919) 733-7601.

Subject: [Fwd: Foot-and Mouth Alert]

Date: Tue, 06 Mar 2001 12:36:45 -0500

From: Dianne Whitman <Dianne.Whitman@ncmail.net>

Organization: NCDA&CS

To: goatmon <goatmon@aol.com>, lowderwc <lowderwc@ncfb.com>, NIAA <NIAA2000@aol.com>, Brinton_Hopkins <Brinton_Hopkins@ncsu.edu>, tmickey <tmickey@ibm.net>, mprasor <mprasor@cs.com>, nasda <nasda@patriot.net>, bundy <bundy@nccattle.com>, usaha <usaha@usaha.org>, James Knight <James.Knight@ncmail.net>, Jim Kubiak <Jim_Kubiak@ncsu.edu>, Karen Post <Karen.Post@ncmail.net>, Lee Hunter <Lee.Hunter@ncmail.net>, Linda Kooistra <Linda.Kooistra@ncmail.net>, Mandy Moody <Mandy.Moody@ncmail.net>, Margie Rhodes <wlkabout@intrex.net>, Mary Porterfield <Mary.Porterfield@ncmail.net>, "R.J. Meyer" <RMHORSEDOC@AOL.COM>, Richard Mansmann <ccep@mindspring.com>, Robert Mowrey <Bob_Mowrey@ncsu.edu>, Robin Smith <Robin.Smith@ncmail.net>, Sally Vivrette <Sally_Vivrette@ncsu.edu>, Sam Jones <Sam_Jones@ncsu.edu>, steve mobley <steve.mobley@ncmail.net>, Todd McPherson <Todd.McPherson@ncmail.net>, Marion Sykes <rsqueal@esn.net>, "nicholas.carter" <nicholas.carter@seymourjohnson.af.mil>, melanderje <melandarje@bragg.army.mil>, "todd.weaver" <todd.weaver@pope.af.mil>, Jay Donecker <donecker@netmcr.com>, rjones <rjones@eastlink.net>, dclahdvm <dclahdvm@msn.com>, Betty Herring <Betty.Herring@ncmail.net>, Carol Woodlief <Carol.Woodlief@ncmail.net>, Clint Nygaard <Clint.Nygaard@ncmail.net>, Dan Wilson <Daniel.Wilson@ncmail.net>, Don Underwood <Donald.Underwood@ncmail.net>, Earl Sheppard <Earl.Sheppard@ncmail.net>, Eugene Richmond <Eugene.J.Richmond@usda.gov>, Fred Kirkland <Fred.Kirkland@ncmail.net>, Garland Wells <Garland.Wells@ncmail.net>, James Kittrell <James.Kittrell@ncmail.net>, James Lee <James.Lee@ncmail.net>, Jimmy Tickel <Jimmy.Tickel@ncmail.net>, Lynne Riley <Lynne.J.Riley@usda.gov>, Michael Wooten <Michael.D.Wooten@usda.gov>, Pat Sholar <Pat.Sholar@ncmail.net>, Robert Fulghum <Robert.Fulghum@ncmail.net>, Terry Clark <Terry.W.Clark@usda.gov>, Weldon Denny <Weldon.Denny@ncmail.net>, Wendy Lane <Wendy.Lane@ncmail.net>, William Groce <William.T.Groce@usda.gov>, Lee Hunter <Lee.Hunter@ncmail.net>, Stephanie Kordick <Stephanie.Kordick@ncmail.net>, meg phipps <meg.phipps@ncmail.net>, David Smith <David.Smith@ncmail.net>, David McLeod <David.McLeod@ncmail.net>, steven wells <steven.wells@ncmail.net>, bruce shankle <bruce.shankle@ncmail.net>, chuck miller <chuck.miller@ncmail.net>, Beth Yongue <Beth.Yongue@ncmail.net>, wilsonrc <wilsonrc@mail.wildlife.state.nc.us>, JoAnna Quinn <JoAnna.Quinn@ncmail.net>, Bob Ivey <bivey@gmcom.net>, Mike Miller <millerm@carrollsfoods.com>, Roland Scheiber <RolandScheiber@BrownsofCarolina.com>, Terry Coffey <tcoffey@murphyfarms.com>, Luc DuFresne <l_dufresne@hotmail.com>, zackm <zackm@prestagefarms.com>, coharie <coharie@intrstar.net>, Monte McCaw <monte_mccaw@ncsu.edu>, morgan morrow <morgan_morrow@ncsu.edu>.

Cecil Brownie <cecil_brownie@ncsu.edu>, "Edwin.Jones" <Edwin.Jones@ncsu.edu>,
roger_mccraw <roger_mccraw@ncsu.edu>,
"ken.esbensshade" <ken.esbensshade@ncsu.edu>,
oscar_fletcher <oscar_fletcher@ncsu.edu>

Subject: Foot-and Mouth Alert

Date: Tue, 06 Mar 2001 08:54:32 -0800

From: David Marshall <David.Marshall@ncmail.net>

Organization: NCDA&CS

To: Dianne Whitman <Dianne.Whitman@ncmail.net>

FOR IMMEDIATE RELEASE

LIVESTOCK PRODUCERS ADVISED TO BE WARY
OF FOOT-AND-MOUTH DISEASE

Dr.David Marshall, North Carolina's state veterinarian, is cautioning livestock industry representatives and other citizens to aid in the effort to prevent the introduction of Foot-and Mouth disease (FMD) into the country.

Foot-and-Mouth disease is a highly contagious viral disease that affects all cloven hoofed animals, including swine, cattle, sheep, goats, and deer. Clinical signs include blisters and sores on the mouth, tongue, lips, teats, and between and around the claws. While not always fatal, animals that survive become debilitated, lose production capacity, and can serve as viral shedders in spreading the disease. Humans are not infected, and there is no treatment or approved vaccine for animal use.

"Foot-and mouth disease is probably considered as the most devastating of all livestock diseases, primarily because of it's highly infectious nature and the ability to infect multiple species," said Marshall. "We are extremely concerned here in North Carolina for a variety of reasons. Our large swine population, as well as the presence of numerous military bases puts us at high risk. In addition, a fair amount of our population travel overseas and we have a widespread international trade presence in meat and meat food items, as well as other agricultural products. The contagious nature of it is evident as we have seen it spread from one source premises in England on February 19th to the entirety of the United Kingdom, Belgium, and suspected cases in France and Denmark in a matter of weeks"

While the USDA has issued a ban on the importation of animals and animal related products from all countries with FMD, there are a variety of ways that it could enter the country. The virus can be mechanically transmitted on people's shoes, clothes, other personal effects, and equipment. It can remain airborne and spread up to a radius of approximately 40 miles. In addition, the feeding of contaminated food items and waste food products is a major source of spread. "I am particularly concerned with the introduction of the virus by animals and products originating in FMD affected countries entering the US secondarily through non infected countries," said Marshall. "It would be prudent to be wary of any imported agricultural or meat food product during this high risk period."

The North Carolina Department of Agriculture and Consumer Services is recommending the following precautions as an aid in preventing introduction:

- Increase farm biosecurity measures by limiting traffic and personal access of persons not directly affiliated with farm operations.
- Be aware of the international travel status of farm employees and restrict access if they have traveled overseas within the past 30 days.
- Limit introductions of new additions to the herd. If necessary, be

aware of the background and health status of the additions, isolating and observing them for a period of 10-14 days prior to introduction.
---Refrain from feeding to animals any garbage or waste food products of any type.

---Educate farm employees not to receive any gifts or products, particularly food or meat items, from relatives that may reside overseas.

---Restrict the purchase or use of feed, forage, hay, vaccines, and medications to those produced domestically. Purchase or lease no used farm equipment unless confident of it's domestic origin.

"While a safety net is in place to aid in the prevention of the introduction of this virus, the nature of this disease makes it vitally important that all North Carolinians, particularly those who travel internationally and are involved in the agricultural industry, become educated and aid in the effort on the local level," said Marshall. "This is a situation to be overly cautious and not take anything for granted."

Livestock owners are asked to be especially observant of the health status of their animals and investigate any animal showing clinical signs suggestive of FMD. Signs include blisters or sores on the muzzle, feet, teats, or mouth; lameness associated with foot lesions; or lack of appetite or excessive slobbering associated with mouth lesions. While other diseases can cause similar clinical signs, anything suspicious should be pursued through veterinary examination. Producers and veterinarians are encouraged to report any suspicious case to the NCDA&CS, Veterinary Division at (919) 733-7601.

FOOT AND MOUTH DISEASE PRECAUTIONARY UPDATE

March 17, 2001

North Carolina Department of Agriculture and Consumer Services animal health officials are continuing to advise livestock producers and citizens to take all precautions necessary as we continue to attempt to prevent the introduction of Foot and Mouth Disease (FMD) into our country.

As of this date, the outbreak in the United Kingdom has enveloped large portions of England, Wales, and Scotland, and has crossed the English Channel with one confirmed case in France. While endemic in much of the world over recent years, this latest event is particularly troubling because of the large amount of international trade and passenger movement between the U.S. and the affected area. The disease has not been detected in the U.S. since 1929.

FMD, while not infectious to humans, is one of the most devastating of livestock diseases because of its extremely contagious nature. Susceptible animals include most cloven (split) hoofed animals, including cattle, swine, sheep, goats, and deer. Horses are not affected. The disease causes blisters and sores around the feet, muzzle, mouth, and teats of infected animals. Animals that do not die become severely debilitated and lose production capacity.

There is no treatment for FMD, and vaccine is only authorized in the face of an outbreak when other eradication methods have failed. Animals become infected by direct contact with the virus, which can be carried in the air for distances up to 40 miles. The most common means of spread is mechanically through the movement of animals from one premise to another, or on farm equipment, bedding, feed, food items, waste, vehicles, or people's shoes, clothes, or other personal effects.

"Much has been accomplished over the past three weeks in an effort to prevent FMD from entering North Carolina, but we cannot afford to let our guard down," said Dr. David T. Marshall, State Veterinarian. "The financial repercussions could run in the billions of dollars if it were to emerge and gain a foothold in our country." Among the actions taken by the department include:

--Distribution of a FMD clinical signs manual with color photos to all meat inspection slaughter

--Agreed to suspend routine nonessential NCDA&CS veterinarian and inspector swine farm visits in an effort to tighten biosecurity.

--Jointly conducting a FMD Emergency Response Workshop and tabletop exercise on March 29, in cooperation with NC Emergency Management

(NCEM), SART (State Animal Response Team), the NCSU College of Veterinary Medicine, the Division of Motor Vehicles, the State Highway Patrol, and the N.C. National Guard.

--Developed a "FMD Alert" web site section, including links to NCDA&CS press releases, other sites, and an interactive FMD training module for veterinarians and producers. The site is located at www.ncagr.com/vet on the division's home page.

"North Carolinians are again reminded to be extremely diligent in their efforts to prevent introduction

of this disease," said Commissioner of Agriculture Meg Scott Phipps. "While we cannot guarantee prevention, we all can work together to minimize the risk as much as humanly possible." Efforts to accomplish this goal include:

--Producers and veterinarians should become as familiar as possible with the disease by utilizing the previously mentioned training module on the department web site.

--Producers should observe their stock closely for symptoms and immediately contact their veterinarian if clinical signs are seen.

--New herd additions should be minimized or suspended. If new animals must be added, they should be limited to those of known background and isolated and observed for illness for 2 weeks prior to introduction.

--Refrain from feeding farm animals any garbage or waste food products of any type.

--Restrict the purchase of feed, forage, hay, or bedding materials to those of known domestic or local origin. If used equipment must be purchased, limit it to that of known local origin and thoroughly sanitize it prior to bringing on to the farm.

✓ --Restrict the entry of any non- farm employee. Clean and disinfect shoes and clothing prior allowing entry of personnel to the animal holding areas of the premise.

✓ --Thoroughly investigate the international travel status of farm employees. Prohibit them from accessing the premise for at least 7 days after returning from abroad. All clothing and personal items should be washed and disinfected upon reentry.

--Prohibit employees from receiving any gifts or food products from relatives residing overseas.

--Discontinue the practice of allowing free ranging dogs or pets on the farm premise. Limit wildlife entry to the farm as much as possible.

FOR MORE INFORMATION visit the Veterinary Division's web site at www.ncagr.com/vet. The division is also interested in learning of concerns or potential threats that require investigation. They can be reached at (919)733-7601 or by e-mail at david.marshall@ncmail.net.

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- Distribution of a FMD clinical signs manual with color photos to all meat inspection slaughter inspectors.
- Temporary reorganization of the Veterinary Division administrative structure by detailing Dr. Beth Yongue, Asst. Director of Meat Inspection, to full time FMD activities.
- Conferring with representatives of the major swine companies at the Pseudorabies Task Force meeting to discuss prevention strategies.
- Scheduling FMD refresher training for all Field Forces inspectors and veterinarians, to be conducted on March 20 and 22.
- Rescheduling the quarterly Meat and Poultry Inspection Service supervisors meeting to the week of March 29 to provide personnel with FMD training.
- Notified all state inspected and Talmadge-Aiken slaughter plants by formal letter of increased FMD surveillance and inspection activities on all animals presented to the plant for processing.
- NCDA&CS veterinarians visited both Raleigh-Durham and Charlotte International Airports and monitored incoming direct flights from England. U.S. Customs and USDA, APHIS (Animal Plant Health Inspection Service) disease prevention inspection protocols were observed for effectiveness.
- Dr. Marshall and N. David Smith, Deputy Commissioner, met with the USDA, APHIS, PPQ (Plant Protection and Quarantine) state director and conveyed their concerns and suggestions for improving the surveillance and prevention protocols at airports, seaports, and military bases.
- Scheduling visits, beginning the week of March 19, to all four N.C. military bases receiving incoming international flights.
- Distributed FMD fact sheets for posting at all livestock markets, and have instructed NCDA&CS livestock inspectors to increase their presence and educational efforts at these markets.

--Agreed to suspend routine nonessential NCDA&CS veterinarian and inspector swine farm visits in an effort to tighten biosecurity.

--Jointly conducting a FMD Emergency Response Workshop and tabletop exercise on March 29, in cooperation with NC Emergency Management (NCEM), SART (State Animal Response Team), the NCSU College of Veterinary Medicine, the Division of Motor Vehicles, the State Highway Patrol, and the N.C. National Guard.

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Aggriculture

Name of Committee

3/27/2001
Date

Date _____

NAME _____

FIRM OR AGENCY AND ADDRESS

Nancy Thompson	UNCIC
Dianne Beasley	Forest Resources
Bob Stoumen	NC Forestry Association
Ju-Ann Coe	NC Agribusiness Council, Inc
Mr. Green Shields	Kangaroo, USA
W. Cherry	Bone & Assoc.
Kelli Kukura	DuPont
Pat B. Gaslin	NC Christmas Tree Assoc (grower)
PA	ncfb
Michelle Cook	Weyerhaeuser
Doug Lassiter	NC Septic Tank Assoc.
John Cozzie	n.c. state glauze
Crissy Porter	Bone and Associates
Roger Bone	" " "

MINUTES
HOUSE AGRICULTURE COMMITTEE
Tuesday, April 3, 2001

The House Agriculture committee met on Tuesday, April 3, 2001, in Room 1425 of the Legislative Building, with Chairman Dewey Hill presiding. Members in attendance were Chairman Hill; Vice Chairmen Larry Bell, W. B. Teague, Jr., and Nurham Warwick; members Rex Baker, Donald Bonner, Charles Buchanan, Lorene Coates, Arlie Culp, Don Davis, Rick Eddins, Stanley Fox, Mark Hilton, Joe Kiser, Bill Owens, Gene Rogers, Carolyn Russell, Joe Tolson, Russell Tucker, Alice Underhill, Edith Warren, John Weatherly, Gene Wilson and Douglas Yongue.

Chairman Hill called the meeting to order at 3:35 p.m. House committee Substitute Bill #965, "AN ACT TO STRENGTHEN THE STATE VETERINARIAN'S AUTHORITY TO PREVENT AND CONTROL AN OUTBREAK OF FOOT AND MOUTH DISEASE AND ANY OTHER CONTAGIOUS ANIMAL DISEASE AND TO MAKE OTHER TECHNICAL AND CONFORMING CHANGES", had been referred to the Agriculture Committee during today's House Session, and because of its urgent nature, a recess was called during the Session so the Bill could be heard and legislation put in place at the earliest possible moment. The Bill is to be heard, reported out, and taken up on the House floor at 4:10 today. Representative Baker moved to adopt the Proposed Committee Substitute, seconded, and passed unanimously.

Chairman Hill presented the Proposed Committee Substitute and advised that it contained only two changes: (1) a sunset, from April 2, 1002 and expiring April 1, 2003, and (2) a technical change of two or three words that had been left out of the draft bill. Representative Kiser expressed concern about giving the State Veterinarian the broad authority of search without a warrant. Representative Joe Hackney was introduced. He explained about search and seizure as it relates to North Carolina law and as spelled out in the Proposed Committee Substitute Bill – citing page 2, line 22, "that there is an imminent threat". He pointed out the three listings in the Bill where a warrantless inspection is allowed. He addressed line 24 which reads "or" and it was his opinion that consideration should be given to changing the "or" to "and". Representative Warwick said the word "and" was purposely used.

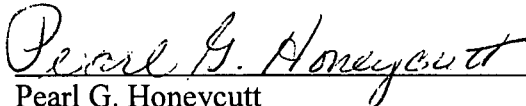
Representative Kiser asked about "private roads" on line 27, page 2 of the Bill. Dr. David Marshall, State Veterinarian, responding to the inquiry, said there were other portions of the Bill allowing them to go on someone's property that might supercede the need to have "private roads" in the Bill.

Representative Underhill addressing page 1, line 21, the section "implemented under", felt that a better choice of words would be "developed under". Commissioner Phipps said this line would require them to give written notice to the media of the quarantine. When the media got the news of the recent suspect incident prior to the Department having test results, it affected the livestock and grain market nationally for

that time period. If they had been provided notice of the quarantine the day before, the national livestock and grain market would have been affected 24 hours prior to that. She would favor a change in wording from "implemented" to "developed". Rep. Warwick called attention to line 25 that says, "as determined by the State Veterinarian".

In an effort to get the bill through promptly, it was decided that no amendments would be accepted. Representative Baker moved to give House Committee Substitute Bill #965 a favorable report, unfavorable to original bill. Motion passed.

The meeting was adjourned.



Pearl G. Honeycutt
Acting Committee Clerk



Representative Dewey Hill
Chairman

Attachment:

- #1 – Visitor Registration Sheet
- #2 - House Committee Substitute Bill #965

attachment #1
4/3/01
p.m.

VISITOR REGISTRATION SHEET

AGRICULTURE

APRIL 3, 2001 - P.M.

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
TD Damico	W-S Journal
R ROGERS	DENR
Laura DeVito	DENV
JERRY HARDESTY	NY-PORK Council
Sharon Kostrowa	Czp. Adv.
EL Thompson	AP
Henry Jones	Attorney - Raleigh
W Cherry	Bene & Assoc
Lu-Ann Coe	DC Agribusiness
Cissy Porter	B & A

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

H

2

HOUSE BILL 965*
Committee Substitute Favorable 4/3/01

Short Title: Control Foot & Mouth/Animal Disease Outbreaks. (Public)

Sponsors:

Referred to:

April 3, 2001

A BILL TO BE ENTITLED
AN ACT TO STRENGTHEN THE STATE VETERINARIAN'S AUTHORITY TO
PREVENT AND CONTROL AN OUTBREAK OF FOOT AND MOUTH
DISEASE AND ANY OTHER CONTAGIOUS ANIMAL DISEASE AND TO
MAKE OTHER TECHNICAL AND CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

**PART I. PROVISIONS TO STRENGTHEN THE AUTHORITY OF THE STATE
VETERINARIAN.**

SECTION 1. Part 9 of Article 34 of Chapter 106 of the General Statutes is
amended by adding two new sections to read:

**"§ 106-399.4. Imminent threat of contagious animal disease; emergency measures
and procedures.**

(a) When determined by the State Veterinarian, in consultation with the
Commissioner of Agriculture, that there is an imminent threat within the State of a
contagious animal disease that has the potential for very serious and rapid spread, is of
serious socioeconomic and public health consequence, or is of major importance in the
international trade of animals and animal products, the State Veterinarian or an
authorized representative may develop and implement any emergency measures and
procedures that the State Veterinarian determines necessary to prevent and control the
animal disease.

(b) Written notice of emergency procedures and measures implemented under
this section, including an identification of the disease threat and a description of any
potentially infected area and animal, shall be mailed or delivered to news media, farm
organizations, agriculture agencies, and any other interested or affected parties as
determined by the State Veterinarian. Such emergency procedures and measures may
include, but are not limited to, restrictions on the transportation of any potentially
infected animals, restrictions on the transportation of agriculture products and other
commodities into and out of potentially infected areas, restrictions on access to
potentially infected areas, quarantines under G.S. 106-401(a), emergency disinfectant

1 and other control measures at all portals of entry into the State, including airports, ports,
2 and other transportation corridors, and any other measures necessary to prevent and
3 control the threat of disease infection.

4 (c) All State agencies and political subdivisions of the State shall cooperate with
5 the implementation of the emergency procedures and measures developed under this
6 section. All State agencies and political subdivisions of the State shall comply with the
7 emergency procedures and measures developed under this section.

8 (d) When determined by the State Veterinarian, in consultation with the
9 Commissioner of Agriculture, that there is an imminent threat within the State of a
10 contagious animal disease that has the potential for very serious and rapid spread, is of
11 serious socioeconomic and public health consequence, or is of major importance in the
12 international trade of animals and animal products, the State Veterinarian or an
13 authorized representative may enter any property in the State to examine any animal
14 that the State Veterinarian has reasonable grounds to believe is infected with or exposed
15 to a contagious animal disease. The owner or operator of the premises on which the
16 animal is located shall permit entry on the premises by the State Veterinarian or an
17 authorized representative and shall cooperate with the State Veterinarian or an
18 authorized representative. The provisions of G.S. 106-401(a) with respect to obtaining
19 an emergency order do not apply to this subsection.

20 **"§ 106-399.5. Warrantless inspections.**

21 When determined by the State Veterinarian, in consultation with the Commissioner
22 of Agriculture, that there is an imminent threat within the State of a contagious animal
23 disease that has the potential for very serious and rapid spread, is of serious
24 socioeconomic and public health consequence, or is of major importance in the
25 international trade of animals and animal products, the State Veterinarian or an
26 authorized representative may stop and inspect without a warrant any individual or any
27 motor vehicle on a public or private road that is moving:

- 28 (1) Into the State from any other country, to determine whether the
29 individual or motor vehicle is carrying any animal or any article that is
30 capable of introducing or spreading the animal disease.
31 (2) In interstate commerce, upon probable cause to believe that the
32 individual or motor vehicle is carrying any animal or any article that is
33 capable of introducing or spreading the animal disease.
34 (3) In intrastate commerce from any other portion of the State or from any
35 premises or area quarantined under G.S. 106-401, upon probable cause
36 to believe that the individual or motor vehicle is carrying any animal
37 or any article that is capable of introducing or spreading the animal
38 disease."

39 **SECTION 2. G.S. 106-401 reads as rewritten:**

40 **"§ 106-401. State Veterinarian authorized to quarantine.**

41 (a) The State Veterinarian or hisan authorized representative is authorized to go
42 upon or may enter any property in the State, or to State or stop any motor vehicle on a

1 public or private road to examine any animal ~~which he~~ that the State Veterinarian has
2 reasonable grounds to believe is affected with or exposed to a contagious animal
3 disease. If ~~such the~~ person refuses to consent to ~~such the~~ entry and examination after the
4 State Veterinarian or ~~his an~~ authorized representative ~~shall have~~ has notified, in writing,
5 the owner or person in whose custody ~~such animal or animals are~~ the animal is found, of
6 ~~his the~~ intention to enter ~~such the~~ property and conduct ~~such the~~ examination, the State
7 Veterinarian or ~~his an~~ authorized representative may petition the district court in the
8 county where ~~such animal or animals are~~ the animal is found for an emergency order
9 authorizing ~~such the~~ entry and examination. The State Veterinarian or ~~his an~~ authorized
10 representative may quarantine any animal affected with or exposed to a contagious
11 disease, or injected with or otherwise exposed to any material capable of producing a
12 contagious disease and shall give public notice of ~~such the~~ quarantine by posting or
13 placarding with a suitable quarantine sign the entrance to any part of the premises on
14 which ~~such the~~ animal is held. ~~Such The animal is to~~ shall be maintained by the owner of
15 the animal or person in charge as provided in G.S. 106-400 through 106-405 ~~the owner~~
16 or operator of the premises in accordance with this Part at the owner's or person's in
17 charge expense. ~~expense of the owner of the animal or the owner or operator of the~~
18 premises. No animal under quarantine shall be removed from the place of quarantine
19 ~~except upon a written permit from~~ unless permitted by the State Veterinarian or ~~his an~~
20 authorized ~~representative.~~ Such representative in writing. The quarantine shall remain in
21 effect until cancelled by official written notice from the State Veterinarian or ~~his an~~
22 authorized ~~representative and such~~ representative, and the quarantine shall not be
23 cancelled until any sick or diseased animal has been properly disposed of and the
24 premises have been properly cleaned and disinfected.

25 (b) When determined by the State Veterinarian, in consultation with the
26 Commissioner of Agriculture, that there is an imminent threat within the State of a
27 contagious animal disease that has the potential for very serious and rapid spread, is of
28 serious socioeconomic and public health consequence, or is of major importance in the
29 international trade of animals and animal products, the State Veterinarian or an
30 authorized representative may quarantine areas within the State. As part of the
31 quarantine under this subsection, the State Veterinarian or an authorized representative
32 may enter any property in the State to examine any animal, to obtain blood and tissue
33 samples for testing for the animal disease, and for any other reason directly related to
34 preventing or controlling the animal disease, and may stop motor vehicles on a public or
35 private road. The provisions of subsection (a) of this section with respect to obtaining an
36 emergency order do not apply to this subsection. Written notice of the quarantine,
37 including a description of the area and the type of animal affected by the disease, shall
38 be mailed or delivered to news media, farm organizations, agriculture agencies, and
39 other entities reasonably calculated to give notice of the quarantine to affected animal
40 owners, to the owners or operators of affected premises, and to the public. No animal
41 subject to the quarantine shall be moved to any other premises unless permitted by the
42 State Veterinarian or an authorized representative in writing."

SECTION 3. Part 9 of Article 34 of Chapter 106 of the General Statutes is amended by adding the following section:

"§ 106-402.1. Movement of animals prohibited; destruction of animals to control animal disease authorized.

(a) When determined by the State Veterinarian, in consultation with the Commissioner of Agriculture, that there is an imminent threat within the State of a contagious animal disease that has the potential for very serious and rapid spread, is of serious socioeconomic and public health consequence, or is of major importance in the international trade of animals and animal products or that it is necessary to control a contagious animal disease, the State Veterinarian or an authorized representative may prohibit the movement of any animal to or from any premises used for shows, sales, markets, fairs, exhibitions, processing or rendering facilities, or other public or private assembly or may prohibit commingling of animals. Written notice of the prohibition under this subsection shall be mailed, delivered, or otherwise provided to the owner or operator of the premises by any means reasonably calculated to give notice. The owner or operator of the premises shall not permit any animal to enter or remain on the premises in violation of this section.

(b) When determined by the State Veterinarian, in consultation with the Commissioner of Agriculture, that there is an imminent threat within the State of a contagious animal disease that has the potential for very serious and rapid spread, is of serious socioeconomic and public health consequence, or is of major importance in the international trade of animals and animal products or that it is necessary to control a contagious animal disease, the State Veterinarian may order the destruction of any animal and, after consulting with the State Health Director, the proper disposal of the animal. G.S. 106-403 does not apply to the disposal of animals under this subsection. The order shall be in writing and shall include the manner in which the destruction of the animal will be carried out. The order shall be delivered to the owner of the animal and the owner or operator of the premises on which the animal is located by certified mail or any other means reasonably calculated to give the owner of the animal and the owner or operator of the premises notice. In the event the owner of the animal and the owner or operator of the premises cannot be notified, the State Veterinarian or an authorized representative may seize and destroy the animal. The owner or operator of the premises on which the animal is located shall permit entry on the premises by the State Veterinarian or an authorized representative and shall cooperate with the State Veterinarian or an authorized representative. The provisions of G.S. 106-401(a) with respect to obtaining an emergency order do not apply to this subsection.

(c) When determined by the State Veterinarian, in consultation with the Commissioner of Agriculture, that there is an imminent threat within the State of a contagious animal disease that has the potential for very serious and rapid spread, is of serious socioeconomic and public health consequence, or is of major importance in the international trade of animals and animal products or that it is necessary to control a contagious animal disease, the State Veterinarian may require the Executive Director of

1 the Wildlife Resources Commission to develop a plan to address the movement of
2 wildlife and the destruction of wildlife."

3 **SECTION 4.** G.S. 106-405 reads as rewritten:

4 **"§ 106-405. ~~Violation made misdemeanor.~~ Prohibited acts; penalties.**

5 (a) ~~Any~~ Except as provided in G.S. 106-404, any person ~~or persons~~ who shall
6 knowingly and willfully ~~violate~~ violates any provision of G.S. ~~106-400 to 106-403~~ shall
7 ~~be this Part~~ is guilty of a Class 2 misdemeanor.

8 (b) It is prohibited that any person knowingly and willfully:

9 (1) Hide or conceal any animals that are subject to a quarantine under this
10 Part.

11 (2) Fail to report the occurrence of an animal disease for which a
12 quarantine under this Part is in effect.

13 (c) Any person who has committed an act that is prohibited under subsection (b)
14 of this section shall be subject to an administrative penalty not to exceed ten thousand
15 dollars (\$10,000) per violation. Each act in violation of subsection (b) of this section is a
16 separate violation."

17 **PART II. OTHER TECHNICAL AND CONFORMING CHANGES.**

18 **SECTION 5.** G.S. 106-400 reads as rewritten:

19 **"§ 106-400. ~~Permit from State Veterinarian for sale, transportation, etc.,~~ Sale or**
20 **transportation of animals affected with disease. ~~disease prohibited.~~**

21 No person ~~or persons~~ shall sell, trade, offer for sale or trade, or transport by ~~truck or~~
22 ~~other conveyance~~ motor vehicle on any public road or other public place within the State
23 any animal ~~or animals~~ affected with a contagious ~~or infectious~~ animal disease, ~~except~~
24 ~~upon a written permit of unless permitted by the State Veterinarian in writing and in~~
25 ~~accordance with the provisions of said the permit. The State Veterinarian, or his~~
26 ~~authorized representative, is hereby empowered to~~ State Veterinarian or an authorized
27 ~~representative may examine any livestock that are~~ animal that is being transported or
28 moved, sold, traded, or offered for sale or trade on any ~~highway~~ public road or other
29 public place within the State for the purpose of determining if ~~said animals are~~ the
30 ~~animal is~~ affected with a contagious ~~or infectious~~ disease, ~~or are~~ animal disease or is
31 being transported or offered for sale or trade in violation of G.S. ~~106-400 to 106-~~
32 ~~405.~~ this Part. If the ~~animals are~~ animal is found to be diseased or ~~are~~ is being moved,
33 sold, offered for sale or trade in violation of G.S. ~~106-400 to 106-405,~~ they this Part, it
34 shall be placed under quarantine ~~in accordance with the provisions of G.S. 106-400 to~~
35 ~~106-405~~ under G.S. 106-401 in a place to be determined by the State Veterinarian or his
36 an authorized representative. Any animal ~~or animals~~ shipped or otherwise moved into
37 this State in violation of federal laws or regulations shall be handled in accordance with
38 the provisions of G.S. ~~106-400 to 106-405~~ this Part."

39 **SECTION 6.** G.S. 106-400.1 reads as rewritten:

40 **"§ 106-400.1. Swine disease testing.**

41 In order to control or prevent the spread of swine diseases, the Board of Agriculture
42 may adopt rules authorizing the State Veterinarian or ~~his~~ an authorized representative to

1 enter, at reasonable times, the premises where swine are kept and to examine the swine
2 and obtain blood or tissue samples for testing purposes. The State Veterinarian shall
3 ~~also have the authority to~~may quarantine swine ~~which that~~ have not been properly
4 tested."

5 SECTION 7. G.S. 106-401.1 reads as rewritten:

6 "**§ 106-401.1. Inspection and quarantine of poultry.**

7 The State Veterinarian, ~~or his Veterinarian or an~~ authorized representative, is hereby
8 ~~authorized to go upon or~~representative may enter any property in the State, ~~or to State or~~
9 stop any motor vehicle, ~~to vehicle~~ to examine any poultry ~~which he that~~ the State
10 Veterinarian has reason to believe ~~are is~~ affected with or exposed to a contagious animal
11 disease. ~~He or his~~The State Veterinarian or an authorized representative is ~~authorized~~
12 ~~to~~may quarantine any poultry affected with or exposed to a contagious disease,
13 ~~or disease or~~ injected with or otherwise exposed to any material capable of producing a
14 contagious disease and ~~to~~ give public notice of ~~such the~~ quarantine by posting or
15 placarding with a suitable quarantine sign the entrance to or any part of the premises on
16 which ~~such the~~ poultry ~~are is~~ held. Said ~~The~~ poultry ~~are to~~shall be maintained by the
17 poultry owner or person in charge as provided for in G.S. 106-400 to 106-405 at the
18 owner's expense. ~~the owner or operator of the premises in accordance with this Part at~~
19 ~~the expense of the poultry owner or the owner or operator of the premises.~~ The
20 quarantine ~~provision hereof shall under this section does not~~ apply to those diseases
21 ~~which that~~ are endemic in the State and for which adequate preventive and control
22 measures are not available. No poultry under quarantine shall be moved from the place
23 of quarantine ~~except upon a written permit from the State Veterinarian or his authorized~~
24 ~~representative.~~ Said quarantine, unless permitted by the State Veterinarian or an
25 authorized representative in writing. The quarantine shall remain in effect until
26 cancelled by official written notice from the State Veterinarian or ~~his an~~ authorized
27 representative and shall not be released or cancelled until the sick or dead poultry have
28 been properly disposed of and the premises have been properly cleaned and
29 disinfected."

30 SECTION 8. G.S. 106-402 reads as rewritten:

31 "**§ 106-402. Confinement and isolation of diseased animals required.**

32 Any animal, ~~animals animal~~ or poultry affected with or exposed to a contagious ~~or~~
33 infectious animal disease shall be confined by the owner ~~or person in charge of said~~
34 animal, ~~animals of the animal~~ or poultry ~~or the owner or operator of the premises~~ in such
35 a manner, by penning or otherwise securing and actually isolating ~~same the animal or~~
36 poultry from the approach or contact with other animals or poultry not so affected; ~~they~~
37 it shall not have access to any ditch, canal, branch, creek, river, or other ~~watercourse~~
38 ~~which surface water that passes beyond the premises of the owner or person in charge of~~
39 ~~said animals or poultry, affected premises, or to any public road, or to the premises of~~
40 any other person."

41 SECTION 9. G.S. 106-403 reads as rewritten:

42 "**§ 106-403. Disposition of dead domesticated animals.**

1 It shall be ~~is~~ the duty of the owner ~~or person in charge of any of his domesticated~~
2 ~~animal~~ of domesticated animals that die from any cause and the ~~owner, lessee, or~~
3 ~~person in charge of any land owner or operator of the premises~~ upon which any
4 domesticated animals die, to bury the ~~same animals~~ to a depth of at least three feet
5 beneath the surface of the ground within 24 hours after knowledge of the death of said
6 ~~the domesticated animals~~, or to otherwise dispose of the ~~same domesticated animals~~ in a
7 manner approved by the State Veterinarian. It ~~shall be~~ is a violation of this statute
8 section to bury any dead domesticated animal closer than 300 feet to any flowing stream
9 or public body of water. It ~~shall be~~ is unlawful for any person to remove the carcasses of
10 dead domesticated animals from ~~his the person's~~ premises to the premises of any other
11 person without the written permission of the person having charge of ~~such the other~~
12 premises and without burying ~~said the carcasses as above provided~~ provided under this
13 section. The governing body of each municipality shall designate some appropriate
14 person whose duty it shall be to provide for the removal and disposal, according to the
15 provisions of this section, of any dead domesticated animals located within the limits of
16 the municipality when the owner ~~or owners of said animal~~ of the animals cannot be
17 determined. The board of commissioners of each county shall designate some
18 appropriate person whose duty it shall be to provide for the removal and ~~disposal,~~
19 ~~according to the provisions of disposal under~~ this section, of any dead domesticated
20 animals located within the limits of the county, but without the limits of any
21 municipality, when the owner ~~or owners of said of the~~ animals cannot be determined.
22 All costs incurred by a municipality or county in the removal of a dead domesticated
23 ~~animal animals~~ shall be recoverable from the owner of ~~such animal the animals~~ upon
24 admission of ownership or conviction. 'Domesticated animal' as used ~~herein shall~~
25 include in this section includes poultry."

26 SECTION 10. G.S. 106-404 reads as rewritten:

27 "§ 106-404. Animals affected with glanders to be killed.

28 If the owner of any animal having the glanders or farcy ~~shall omit or refuse, omits or~~
29 refuses, upon discovery or knowledge of its condition, to ~~deprive the same of life~~ destroy
30 the animal at once, ~~he shall be~~ that person is guilty of a Class 3 misdemeanor."

31 SECTION 11. This act is effective when it becomes law and expires 1 April
32 2003.

MINUTES
HOUSE AGRICULTURE COMMITTEE
Tuesday, April 3, 2001

The House Agriculture Committee met on Tuesday, April 3, 2001, in Room 1425 of the Legislative Building, with Representative Dewey Hill, presiding. Chairman Hill called the meeting to order at 10:05 a.m. Members in attendance were Chairman Hill; Vice Chairmen Larry Bell, Leslie Cox, W. B. Teague, Jr., Nurham Warwick; members Rex Baker, Donald Bonner, Charles Buchanan, Lorene T. Coates, Arlie Culp, Don Davis, Rick Eddins, Stanley Fox, Mark Hilton, Joe Kiser, Frank Mitchell, Gene Rogers, Carolyn Russell, Joe Tolson, Russell Tucker, Alice Underhill, Edith Warren, John Weatherly, Gene Wilson, and Douglas Yongue.

Chairman Hill announced that House Bill #218 on today's agenda would be displaced because of the urgency for the committee to consider the issue of the possibility of an outbreak in North Carolina of the foot-and-mouth disease. Chairman Hill and others have been working for some time to bring a bill forward, at the request of the Speaker of the House and the President Pro-Tem of the Senate. The purpose of the Bill is to give the State Veterinarian authority to perform warrantless inspections and to seize and destroy suspect animals without a warrant.

Representative Warwick was recognized and explained Draft Bill #965, "AN ACT TO STRENGTHEN THE STATE VETERINARIAN'S AUTHORITY TO PREVENT AND CONTROL AN OUTBREAK OF FOOT AND MOUTH DISEASE AND ANY OTHER CONTAGIOUS ANIMAL DISEASE AND TO MAKE OTHER TECHNICAL AND CONFORMING CHANGES". The State Veterinarian, Dr. David Marshall, was introduced and asked to comment on the Bill. The purpose of the Bill is to give the State Veterinarian authority to move if there is a disaster. Due to the widespread outbreak of foot-and-mouth disease in livestock in England and other countries, and a scare in North Carolina last week, legislation is needed to establish who has the authority to act in the event of an imminent threat within the State of foot-and-mouth or other contagious animal disease. This Bill gives the State Veterinarian, in consultation with the State Commissioner of Agriculture, the authority to immediately take animals, develop a plan and carry out the plan for destroying the animals in a way to stop the disease. There must be a real cause to carry this out – an eminent threat. The State Veterinarian would also consult with the State Health Director before animals would be destroyed. The Department of Agriculture presently has the authority to quarantine a farm, but authority to quarantine an area is needed. There is a \$10,000 fine for persons who might hide the disease.

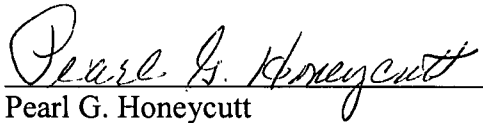
Indemnity for loss of animals would be up to the USDA and they have available funds. A national emergency would be declared and costs for the burial or burning of animal carcasses would be covered by FEMA funds.

Due to the scare over the past few days of possible contamination in North Carolina and the amount of time before test results were available, Representative Eddins asked how to prevent the spread of the disease while awaiting test results. Dr. Marshall advised that the suspect animals had been confined until the negative test results were known; people who had been around them were let go after precautions were taken.

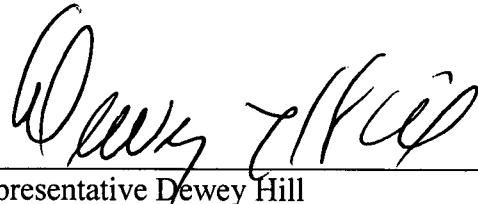
There was discussion of what other State or local agencies might be called upon to assist in carrying out this plan. They are working with North Carolina Emergency Management who enforces the quarantine. A strong emergency plan is in place. The plan needs more work and they are working hard with other local and state agencies to come up with the best plan.

Some members felt that the governor should be included in those making decisions and plans and question was raised as to who would speak for him if he were unavailable at the time.

Chairman Hill announced that the Committee would meet again during a recess in today's House session and adjourned the meeting.



Pearl G. Honeycutt
Acting Committee Clerk



Representative Dewey Hill
Chairman

Attachment:

- #1 – Visitor Registration Sheet
- #2 – Draft Bill #965
- #3 – Legislative Fiscal Note
- #4 – Handout by NCDA “Animal Disease Issues”
- #5 – Handout by NCDA OIE List of transmissible diseases

10 a.m.

Agriculture
Name of Committee

Name of Committee

4/2³/01
Date

Date

NAME _____

FIRM OR AGENCY AND ADDRESS

W. Cherry

Bone & Assoc

NC 10

Yu-Ann Coe

NC ABC

Steve Woodson

North Carolina Farm Bureau Federation, Inc.

PRESTON HOWARD

MCIC

Juliusz Kostrzewa

Cap. Adv.

LAURA DEVINO

DENR..

Roger Bone

Bone + Ascor

Paine Meyer

N GACC

John Cyrus

N.C. State Charge

2000

Ag. Alex. G. N. C.

F. Carlyle Haynes

Co-op Council of SC

4/3
10 a.m.
9/65
Attachment #2
4/3/01
D

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

H

HOUSE DRH3295-LD-76A* (03/22)

Short Title: Control Foot & Mouth/Animal Disease Outbreaks. (Public)

Sponsors: Representatives Warwick and Hill.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO STRENGTHEN THE STATE VETERINARIAN'S AUTHORITY TO
3 PREVENT AND CONTROL AN OUTBREAK OF FOOT AND MOUTH
4 DISEASE AND ANY OTHER CONTAGIOUS ANIMAL DISEASE AND TO
5 MAKE OTHER TECHNICAL AND CONFORMING CHANGES.

6 The General Assembly of North Carolina enacts:

7 **PART I. PROVISIONS TO STRENGTHEN THE AUTHORITY OF THE**
8 **STATE VETERINARIAN.**

9 **SECTION 1.** Part 9 of Article 34 of Chapter 106 of the General Statutes is
10 amended by adding two new sections to read:

11 **"§ 106-399.4. Imminent threat of contagious animal disease; emergency measures**
12 **and procedures.**

13 (a) When determined by the State Veterinarian, in consultation with the
14 Commissioner of Agriculture, that there is an imminent threat within the State of a
15 contagious animal disease that has the potential for very serious and rapid spread, is of
16 serious socio-economic and public health consequence, or is of major importance in the
17 international trade of animals and animal products, the State Veterinarian or an
18 authorized representative may develop and implement any emergency measures and
19 procedures that the State Veterinarian determines necessary to prevent and control the
20 animal disease.

21 (b) Written notice of emergency procedures and measures implemented under
22 this section, including an identification of the disease threat and a description of any
23 potentially infected area and animal, shall be mailed or delivered to news media, farm
24 organizations, agriculture agencies, and any other interested or affected parties as
25 determined by the State Veterinarian. Such emergency procedures and measures may
26 include, but are not limited to, restrictions on the transportation of any potentially
27 infected animals, restrictions on the transportation of agriculture products and other

1 commodities into and out of potentially infected areas, restrictions on access to
2 potentially infected areas, quarantines under G.S. 106-401(a), emergency disinfectant
3 and other control measures at all portals of entry into the State, including airports, ports,
4 and other transportation corridors, and any other measures necessary to prevent and
5 control the threat of disease infection.

6 (c) All State agencies and political subdivisions of the State shall cooperate with
7 the implementation of the emergency procedures and measures developed under this
8 section. All State agencies and political subdivisions of the State shall comply with the
9 emergency procedures and measures developed under this section.

10 (d) When determined by the State Veterinarian, in consultation with the
11 Commissioner of Agriculture, that there is an imminent threat within the State of a
12 contagious animal disease that has the potential for very serious and rapid spread, is of
13 serious socio-economic and public health consequence, or is of major importance in the
14 international trade of animals and animal products, the State Veterinarian or an
15 authorized representative may enter any property in the State to examine any animal
16 that the State Veterinarian has reasonable grounds to believe is infected with or exposed
17 to a contagious animal disease. The owner or operator of the premises on which the
18 animal is located shall permit entry on the premises by the State Veterinarian or an
19 authorized representative and shall cooperate with the State Veterinarian or an
20 authorized representative. The provisions of G.S. 106-401(a) with respect to obtaining
21 an emergency order do not apply to this subsection.

22 **"§ 106-399.5. Warrantless inspections.**

23 When determined by the State Veterinarian, in consultation with the Commissioner
24 of Agriculture, that there is an imminent threat within the State of a contagious animal
25 disease that has the potential for very serious and rapid spread, is of serious socio-
26 economic and public health consequence, or is of major importance in the international
27 trade of animals and animal products, the State Veterinarian or an authorized
28 representative may stop and inspect without a warrant any individual or any motor
29 vehicle on a public or private road that is moving:

- 30 (1) Into the State from any other country, to determine whether the
31 individual or motor vehicle is carrying any animal or any article that is
32 capable of introducing or spreading the animal disease.
33 (2) In interstate commerce, upon probable cause to believe that the
34 individual or motor vehicle is carrying any animal or any article that is
35 capable of introducing or spreading the animal disease.
36 (3) In intrastate commerce from any other portion of the State or from any
37 premises or area quarantined under G.S. 106-401, upon probable cause
38 to believe that the individual or motor vehicle is carrying any animal
39 or any article that is capable of introducing or spreading the animal
40 disease."

41 **SECTION 2.** G.S. 106-401 reads as rewritten:

42 **"§ 106-401. State Veterinarian authorized to quarantine.**

43 (a) The State Veterinarian or hisan authorized representative is authorized to go
44 upon or may enter any property in the State, or to State or stop any motor vehicle on a

1 public or private road to examine any animal ~~which he~~ that the State Veterinarian has
2 reasonable grounds to believe is affected with or exposed to a contagious animal
3 disease. If ~~such the~~ person refuses to consent to ~~such the~~ entry and examination after the
4 State Veterinarian or ~~his an~~ authorized representative ~~shall have~~ has notified, in writing,
5 the owner or person in whose custody ~~such animal or animals are~~ the animal is found, of
6 ~~his the~~ intention to enter ~~such the~~ property and conduct ~~such the~~ examination, the State
7 Veterinarian or ~~his an~~ authorized representative may petition the district court in the
8 county where ~~such animal or animals are~~ the animal is found for an emergency order
9 authorizing ~~such the~~ entry and examination. The State Veterinarian or ~~his an~~ authorized
10 representative may quarantine any animal affected with or exposed to a contagious
11 disease, or injected with or otherwise exposed to any material capable of producing a
12 contagious disease and shall give public notice of ~~such the~~ quarantine by posting or
13 placarding with a suitable quarantine sign the entrance to any part of the premises on
14 which ~~such the~~ animal is held. ~~Such The animal is to~~ shall be maintained by the owner of
15 the animal or person in charge as provided in G.S. 106-400 through 106-405 the owner
16 or operator of the premises in accordance with this Part at the ~~owner's or person's in~~
17 ~~charge expense~~ expense of the owner of the animal or the owner or operator of the
18 premises. No animal under quarantine shall be removed from the place of quarantine
19 ~~except upon a written permit from~~ unless permitted by the State Veterinarian or ~~his an~~
20 authorized representative. ~~Such representative in writing.~~ The quarantine shall remain in
21 effect until cancelled by official written notice from the State Veterinarian or ~~his an~~
22 authorized representative ~~and such representative,~~ and the quarantine shall not be
23 cancelled until any sick or diseased animal has been properly disposed of and the
24 premises have been properly cleaned and disinfected.

25 (b) When determined by the State Veterinarian, in consultation with the
26 Commissioner of Agriculture, that there is an imminent threat within the State of a
27 contagious animal disease that has the potential for very serious and rapid spread, is of
28 serious socio-economic and public health consequence, or is of major importance in the
29 international trade of animals and animal products, the State Veterinarian or an
30 authorized representative may quarantine areas within the State. As part of the
31 quarantine under this subsection, the State Veterinarian or an authorized representative
32 may enter any property in the State to examine any animal, to obtain blood and tissue
33 samples for testing for the animal disease, and for any other reason directly related to
34 preventing or controlling the animal disease, and may stop motor vehicles on a public or
35 private road. The provisions of subsection (a) of this section with respect to obtaining an
36 emergency order do not apply to this subsection. Written notice of the quarantine,
37 including a description of the area and the type of animal affected by the disease, shall
38 be mailed or delivered to news media, farm organizations, agriculture agencies, and
39 other entities reasonably calculated to give notice of the quarantine to affected animal
40 owners, to the owners or operators of affected premises, and to the public. No animal
41 subject to the quarantine shall be moved to any other premises unless permitted by the
42 State Veterinarian or an authorized representative in writing."

43 **SECTION 3.** Part 9 of Article 34 of Chapter 106 of the General Statutes is
44 amended by adding the following section:

1 **"§ 106-402.1. Movement of animals prohibited; destruction of animals to control**
2 **animal disease authorized. .**

3 (a) When determined by the State Veterinarian, in consultation with the
4 Commissioner of Agriculture, that there is an imminent threat within the State of a
5 contagious animal disease that has the potential for very serious and rapid spread, is of
6 serious socio-economic and public health consequence, or is of major importance in the
7 international trade of animals and animal products or that it is necessary to control a
8 contagious animal disease, the State Veterinarian or an authorized representative may
9 prohibit the movement of any animal to or from any premises used for shows, sales,
10 markets, fairs, exhibitions, processing or rendering facilities, or other public or private
11 assembly or may prohibit commingling of animals. Written notice of the prohibition
12 under this subsection shall be mailed, delivered, or otherwise provided to the owner or
13 operator of the premises by any means reasonably calculated to give notice. The owner
14 or operator of the premises shall not permit any animal to enter or remain on the
15 premises in violation of this section.

16 (b) When determined by the State Veterinarian, in consultation with the
17 Commissioner of Agriculture, that there is an imminent threat within the State of a
18 contagious animal disease that has the potential for very serious and rapid spread, is of
19 serious socio-economic and public health consequence, or is of major importance in the
20 international trade of animals and animal products or that it is necessary to control a
21 contagious animal disease, the State Veterinarian may order the destruction of any
22 animal and, after consulting with the State Health Director, the proper disposal of the
23 animal. G.S. 106-403 does not apply to the disposal of animals under this subsection.
24 The order shall be in writing and shall include the manner in which the destruction of
25 the animal will be carried out. The order shall be delivered to the owner of the animal
26 and the owner or operator of the premises on which the animal is located by certified
27 mail or any other means reasonably calculated to give the owner of the animal and the
28 owner or operator of the premises notice. In the event the owner of the animal and the
29 owner or operator of the premises cannot be notified, the State Veterinarian or an
30 authorized representative may seize the animal. The owner or operator of the premises
31 on which the animal is located shall permit entry on the premises by the State
32 Veterinarian or an authorized representative and shall cooperate with the State
33 Veterinarian or an authorized representative. The provisions of G.S. 106-401(a) with
34 respect to obtaining an emergency order do not apply to this subsection.

35 (c) When determined by the State Veterinarian, in consultation with the
36 Commissioner of Agriculture, that there is an imminent threat within the State of a
37 contagious animal disease that has the potential for very serious and rapid spread, is of
38 serious socio-economic and public health consequence, or is of major importance in the
39 international trade of animals and animal products or that it is necessary to control a
40 contagious animal disease, the State Veterinarian may require the Executive Director of
41 the Wildlife Resources Commission to develop a plan to address the movement of
42 wildlife and the destruction of wildlife."

43 **SECTION 4. G.S. 106-405 reads as rewritten:**

44 **"§ 106-405. Violation made misdemeanor. Prohibited acts; penalties.**

1 (a) ~~Any Except as provided in G.S. 106-404, any person or persons who shall~~
2 knowingly and willfully ~~violate-violates~~ any provision of G.S. 106-400 to 106-403 shall
3 ~~be this Part is~~ guilty of a Class 2 misdemeanor.

4 (b) It is prohibited that any person knowingly and willfully:

5 (1) Hide or conceal any animals that are subject to a quarantine under this
6 Part.

7 (2) Fail to report the occurrence of an animal disease for which a
8 quarantine under this Part is in effect.

9 (c) Any person who has committed an act that is prohibited under subsection (b)
10 of this section shall be subject to an administrative penalty not to exceed ten thousand
11 dollars (\$10,000) per violation. Each act in violation of subsection (b) of this section is a
12 separate violation."

13 PART II. OTHER TECHNICAL AND CONFORMING CHANGES.

14 SECTION 5. G.S. 106-400 reads as rewritten:

15 "**§ 106-400. Permit from State Veterinarian for sale, transportation, etc., Sale or**
16 **transportation of animals affected with disease.disease prohibited.**

17 No person ~~or persons~~ shall sell, trade, offer for sale or trade, or transport by ~~truck or~~
18 ~~other conveyance~~ motor vehicle on any public road or other public place within the State
19 any animal ~~or animals~~ affected with a contagious ~~or infectious~~ animal disease, ~~except~~
20 ~~upon a written permit of unless permitted by the State Veterinarian in writing and in~~
21 accordance with the provisions of ~~said the~~ permit. The ~~State Veterinarian, or his~~
22 ~~authorized representative, is hereby empowered to~~ State Veterinarian or an authorized
23 representative may examine any livestock ~~that are~~ animal that is being transported or
24 moved, sold, traded, or offered for sale or trade on any ~~highway~~ public road or other
25 public place within the State for the purpose of determining if ~~said animals are the~~
26 animal is affected with a contagious ~~or infectious~~ disease, ~~or are~~ animal disease or is
27 being transported or offered for sale or trade in violation of G.S. ~~106-400 to 106-~~
28 ~~405.~~ this Part. If the ~~animals are~~ animal is found to be diseased or ~~are is~~ being moved,
29 sold, offered for sale or trade in violation of G.S. 106-400 to 106-405, ~~they~~ this Part, it
30 shall be placed under quarantine ~~in accordance with the provisions of G.S. 106-400 to~~
31 ~~106-405~~ under G.S. 106-401 in a place to be determined by the State Veterinarian or his
32 an authorized representative. Any animal ~~or animals~~ shipped or otherwise moved into
33 this State in violation of federal laws or regulations shall be handled in accordance with
34 the provisions of G.S. 106-400 to 106-405 this Part."

35 SECTION 6. G.S. 106-400.1 reads as rewritten:

36 "**§ 106-400.1. Swine disease testing.**

37 In order to control or prevent the spread of swine diseases, the Board of Agriculture
38 may adopt rules authorizing the State Veterinarian or ~~his~~ an authorized representative to
39 enter, at reasonable times, the premises where swine are kept and to examine the swine
40 and obtain blood or tissue samples for testing purposes. The State Veterinarian ~~shall~~
41 ~~also have the authority to~~ may quarantine swine ~~which that~~ have not been properly
42 tested."

43 SECTION 7. G.S. 106-401.1 reads as rewritten:

44 "**§ 106-401.1. Inspection and quarantine of poultry.**

1 The State Veterinarian, or his Veterinarian or an authorized representative, is hereby
2 ~~authorized to go upon or representative may~~ enter any property in the State, or to State or
3 stop any motor vehicle, ~~to vehicle to~~ examine any poultry which ~~hethat~~ the State
4 Veterinarian has reason to believe ~~are is~~ affected with or exposed to a contagious animal
5 disease. ~~He or his~~ The State Veterinarian or an authorized representative is ~~authorized~~
6 ~~to may~~ quarantine any poultry affected with or exposed to a contagious disease,
7 ~~or disease or~~ injected with or otherwise exposed to any material capable of producing a
8 contagious disease and ~~to give~~ public notice of ~~such the~~ quarantine by posting or
9 placarding with a suitable quarantine sign the entrance to or any part of the premises on
10 which ~~such the~~ poultry ~~are is~~ held. ~~Said The~~ poultry ~~are to shall~~ be maintained by the
11 poultry owner or person in charge as provided for in G.S. 106-400 to 106-405 at the
12 owner's expense. ~~the owner or operator of the premises in accordance with this Part at~~
13 ~~the expense of the poultry owner or the owner or operator of the premises.~~ The
14 quarantine provision hereof ~~shall under this section does not~~ apply to those diseases
15 ~~which that~~ are endemic in the State and for which adequate preventive and control
16 measures are not available. No poultry under quarantine shall be moved from the place
17 of quarantine except upon a written permit from the State Veterinarian or his authorized
18 representative. ~~Said quarantine, unless permitted by the State Veterinarian or an~~
19 ~~authorized representative in writing.~~ The quarantine shall remain in effect until
20 cancelled by official written notice from the State Veterinarian or ~~his an~~ authorized
21 representative and shall not be released or cancelled until the sick or dead poultry have
22 been properly disposed of and the premises have been properly cleaned and
23 disinfected."

24 SECTION 8. G.S. 106-402 reads as rewritten:

25 "**§ 106-402. Confinement and isolation of diseased animals required.**

26 Any animal, ~~animals animal~~ or poultry affected with or exposed to a contagious or
27 infectious animal disease shall be confined by the owner or person in charge of said
28 animal, ~~animalsof the animal~~ or poultry ~~or the owner or operator of the premises~~ in such
29 a manner, by penning or otherwise securing and actually isolating ~~same the animal or~~
30 poultry from the approach or contact with other animals or poultry not so affected; ~~they~~
31 ~~it shall not have access to any ditch, canal, branch, creek, river, or other watercourse~~
32 ~~which surface water that passes beyond the premises of the owner or person in charge of~~
33 ~~said animals or poultry, affected premises, or to any public road, or to the premises of~~
34 any other person."

35 SECTION 9. G.S. 106-403 reads as rewritten:

36 "**§ 106-403. Disposition of dead domesticated animals.**

37 It shall ~~be is~~ the duty of the owner or person in charge of any of his domesticated
38 animalsof domesticated animals that die from any cause and the owner, lessee, or
39 person in charge of any land owner or operator of the premises upon which any
40 domesticated animals die, to bury ~~the same animals~~ to a depth of at least three feet
41 beneath the surface of the ground within 24 hours after knowledge of the death of said
42 the domesticated animals, or to otherwise dispose of the ~~same domesticated animals~~ in a
43 manner approved by the State Veterinarian. It ~~shall be is~~ a violation of this statute
44 section to bury any dead domesticated animal closer than 300 feet to any flowing stream

1 or public body of water. It ~~shall be~~ unlawful for any person to remove the carcasses of
2 dead domesticated animals from ~~his~~ the person's premises to the premises of any other
3 person without the written permission of the person having charge of ~~such~~ the other
4 premises and without burying ~~said~~ the carcasses as ~~above provided~~ provided under this
5 section. The governing body of each municipality shall designate some appropriate
6 person whose duty it shall be to provide for the removal and disposal, according to the
7 provisions of this section, of any dead domesticated animals located within the limits of
8 the municipality when the owner ~~or owners of said animals~~ of the animals cannot be
9 determined. The board of commissioners of each county shall designate some
10 appropriate person whose duty it shall be to provide for the removal and ~~disposal,~~
11 ~~according to the provisions of~~ disposal under this section, of any dead domesticated
12 animals located within the limits of the county, but without the limits of any
13 municipality, when the owner ~~or owners of said~~ of the animals cannot be determined.
14 All costs incurred by a municipality or county in the removal of a dead domesticated
15 ~~animal~~ animals shall be recoverable from the owner of ~~such animal~~ the animals upon
16 admission of ownership or conviction. 'Domesticated animal' as used ~~herein~~ shall
17 ~~include in this section~~ includes poultry."

18 **SECTION 10.** G.S. 106-404 reads as rewritten:

19 **"§ 106-404. Animals affected with glanders to be killed.**

20 If the owner of any animal having the glanders or farcy ~~shall omit or refuse, omits or~~
21 refuses, upon discovery or knowledge of its condition, to ~~deprive the same of life~~ destroy
22 the animal at once, ~~he shall be~~ that person is guilty of a Class 3 misdemeanor."

23 **SECTION 11.** This act is effective when it becomes law.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 965 (First Edition)

SHORT TITLE: Control Foot and Mouth/Animal Disease Outbreaks

SPONSOR(S): Representatives Warwick and Hill

FISCAL IMPACT

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

FY 2001-02 FY 2002-03 FY 2003-04 FY 2004-05 FY 2005-06

REVENUES

EXPENDITURES

See Assumptions and Methodology

POSITIONS:

PRINCIPAL DEPARTMENT(S) &

PROGRAM(S) AFFECTED: Department of Agriculture and Consumer Services

EFFECTIVE DATE: When the Act becomes law.

BILL SUMMARY: House Bill 965 strengthens the State Veterinarian's authority to prevent and control an outbreak of foot and mouth disease and any other contagious animal diseases.

ASSUMPTIONS AND METHODOLOGY: This bill provides the State Veterinarian (within the Department of Agriculture and Consumer Services) with the authority to develop and implement emergency procedures and measures determined necessary to prevent the outbreak of an infectious animal disease. These measures include permission to enter property in order to examine animals suspected of infection, permission to stop and inspect - without a warrant - individuals or motor vehicles moving into the State from foreign countries, in interstate commerce, and in intrastate commerce upon probable cause that the individual or vehicle is carrying an animal or article suspected of carrying an infectious animal disease. The bill further allows the State Veterinarian, in consult with the Commissioner of Agriculture and Consumer Services, to quarantine areas in the State if there is determined to be an imminent threat of a contagious animal disease that could potentially spread very rapidly (previously the State Veterinarian could only quarantine animals). The State Veterinarian may also prohibit the assembly of animals from shows, sales, exhibitions, etc, and require the Executive Director of the Wildlife Resources

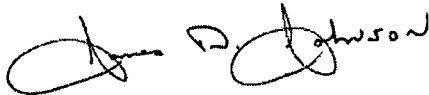
Commission to develop a plan to address the movement and destruction of wildlife should an imminent threat of an infectious animal disease be determined. All of the new powers and authorities delegated to the State Veterinarian in this bill are permissive in nature and as such, do not require him to implement emergency measures and procedures. Any costs arising from immediate emergency measures and procedures that may be taken can be borne by the Department of Agriculture and Consumer Services.

TECHNICAL CONSIDERATIONS: The Department of Agriculture and Consumer Services has made a number of appearances before legislative committees concerning foot and mouth disease. On those occasions, the Department has provided members with a list of possible future (FY 01-03 biennium) appropriations to related to the disease. It is anticipated that discussions will continue to take place on these appropriations and be referred to the appropriate legislative committee for consideration.

FISCAL RESEARCH DIVISION 733-4910

PREPARED BY: Jennifer H. Willis

APPROVED BY: James D. Johnson

A handwritten signature in black ink, appearing to read "James D. Johnson", with a stylized, cursive script.

DATE: April 3, 2001

Attachment #4
Ag Comm. mtg.
4/9/01

ANIMAL DISEASE ISSUES
Veterinary Services Division
North Carolina Department of Agriculture and Consumer Services

1. Authority Issues

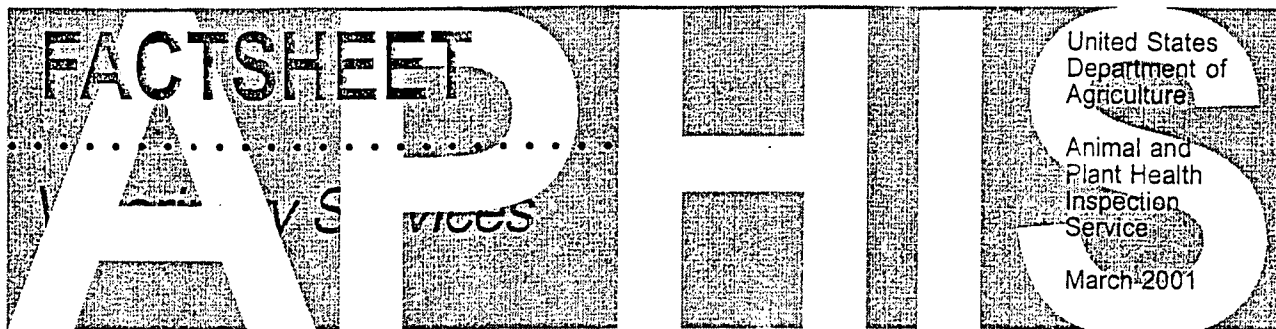
- The Commissioner of Agriculture and the State Veterinarian already have the authority to quarantine any animal affected with or exposed to a contagious disease. However, we do not have the authority to quarantine areas. General Statute 106-401 should be amended to give the Commissioner or the State Veterinarian authority to quarantine areas in addition to individual premises.
- Enact legislation authorizing the Commissioner of Agriculture to prohibit public assembly or exhibition of livestock when necessary to prevent the spread of disease.

2. Foot and Mouth Disease Issues

- The Field Services Section operating budget needs to be increased immediately by \$100,000 for travel and to purchase and store core equipment and supplies to deal with the sudden outbreak of a highly infectious disease. In the face of an emergency, authority is needed to obtain items outside the normal state purchasing process.
- Establish a \$500,000 reserve fund so that emergency expenditures could be made in the event of a disease outbreak. The fund would bridge the gap between the division's normal operating budget and emergency action by the Governor or the General Assembly.
- Increase the amount budgeted for reimbursing local, private veterinarians to provide final disposition services on retained animals at state inspected slaughter plants (\$10,000).
- Maintain the cell phones currently used in the Veterinary Services Division.
- An additional veterinarian position is needed for public outreach and producer education efforts (\$100,000 salary, benefits, and overhead).
- Additional funding is needed to provide all VMOs formal training in USDA Foreign Animal Disease diagnosis (\$17,500).
- The department needs relief in the amount of \$500,000 from the amount targeted for reversion in the current budget year.
- Provide funding to assist the State Animal Response Team (SART).

3. Other Issues with Respect to Animal Diseases

- A Level 3 Bio-Security Laboratory is needed to augment the efforts of the Division of Public Health (DHHS) in West Nile Virus surveillance (cost of package lab estimated between \$600,000 and \$750,000).
- Additional funds are needed in the Rollins Animal Disease Diagnostic Laboratory system to replace old equipment, repair deteriorating facilities, implement new technologies for animal disease diagnosis, and replenish the laboratory supply and operating budgets (\$800,000).
- Because of the difficulty in attracting and retaining veterinarians, a complete review of the salary structure of all veterinarian positions in the division is needed (immediate funding when study is completed).



Foot-and-Mouth Disease

Foot-and-mouth disease (FMD) is a severe, highly communicable viral disease of cattle and swine. It also affects sheep, goats, deer, and other cloven-hooved ruminants. FMD is not recognized as a zoonotic disease.

This country has been free of FMD since 1929, when the last of nine U.S. outbreaks was eradicated.

The disease is characterized by fever and blister-like lesions followed by erosions on the tongue and lips, in the mouth, on the teats, and between the hooves. Many affected animals recover, but the disease leaves them debilitated. It causes severe losses in the production of meat and milk.

Because it spreads widely and rapidly and because it has grave economic as well as clinical consequences, FMD is one of the animal diseases that livestock owners dread most.

What Causes It

The disease is caused by a virus. The virus survives in lymph nodes and bone marrow at neutral pH, but destroyed in muscle when in pH < 6.0 i.e. after rigor mortis. The virus can persist in contaminated fodder and the environment for up to one month, depending on the temperature and pH conditions.

There are at least seven separate types and many subtypes of the FMD virus. Immunity to one type does not protect an animal against other types.

How It Spreads

FMD viruses can be spread by animals, people, or materials that bring the virus into physical contact with susceptible animals. An outbreak can occur when:

- People wearing contaminated clothes or footwear or using contaminated equipment pass the virus to susceptible animals.
- Animals carrying the virus are introduced into susceptible herds.
- Contaminated facilities are used to hold susceptible animals.

- Contaminated vehicles are used to move susceptible animals.
- Raw or improperly cooked garbage containing infected meat or animal products is fed to susceptible animals.
- Susceptible animals are exposed to materials such as hay, feedstuffs, hides, or biologics contaminated with the virus.
- Susceptible animals drink common source contaminated water.
- A susceptible cow is inseminated by semen from an infected bull.

Signs

Vesicles (blisters) followed by erosions in the mouth or on the feet and the resulting excessive salivating or lameness are the best known signs of the disease. Often blisters may not be observed because they easily rupture, leading to erosions. Some of these other signs may appear in affected animals during an FMD outbreak:

- Temperatures rise markedly, then usually fall in about 2 to 3 days.
- Ruptured vesicles discharge either clear or cloudy fluid and leave raw, eroded areas surrounded by ragged fragments of loose tissue.
- Sticky, foamy, stringy saliva is produced.
- Consumption of feed is reduced because of painful tongue and mouth lesions.
- Lameness with reluctance to move is often observed.
- Abortions often occur.
- Milk flow of infected cows drops abruptly.
- Conception rates may be low.
- FMD can lead to myocarditis (inflammation of the muscular walls of the heart) and death, especially in newborn animals.

Animals do not normally regain lost weight for many months. Recovered cows seldom produce milk at their former rates.

Confusion With Other Diseases

FMD can be confused with several similar, but less harmful, diseases, such as vesicular stomatitis, bluetongue, bovine viral diarrhea, and foot rot in cattle, vesicular exanthema of swine, and swine

vesicular disease. Whenever mouth or feet blisters or other typical signs are observed and reported, laboratory tests must be completed to determine whether the disease causing them is FMD.

Where FMD Occurs

While the disease is widespread around the world, North America, Central America, Australia, New Zealand, Chile, and some countries in Europe are considered free of FMD. Various types of FMD virus have been identified in Africa, South America, Asia, and part of Europe.

Prevention and Control

FMD is one of the most difficult animal infections to control. Because the disease occurs in many parts of the world, there is always a chance of its accidental introduction into the United States.

Animals and animal byproducts from areas known to be infected are prohibited entry into this country.

Livestock animals in this country are highly susceptible to FMD viruses. If an outbreak occurred in the United States, this disease could spread rapidly to all sections of the country by routine livestock movements unless it was detected early and eradicated immediately.

If FMD were to spread unchecked, the economic impact could reach billions of dollars in the first year. Deer and wildlife populations could become infected rapidly and could be a source for reinfection of livestock.

What You Can Do

You can support U.S. efforts against FMD by:

- Watching for excessive salivating, lameness, and other signs of FMD in your herd; and
- Immediately reporting any unusual or suspicious signs of disease to your veterinarian, to State or Federal animal disease control officials, or to your county agricultural agent.

If FMD should appear in your animals, your report will set in motion an effective State and Federal eradication program.

Your participation is vital. Both the early recognition of disease signs and the prompt notification of veterinary officials are essential if

eradication is to be carried out successfully. Your warning may prevent FMD from becoming established in the United States, or, if it does spread, reduce the time and money needed to wipe it out.

Additional Information

For more information about FMD, contact
USDA, APHIS, Veterinary Services
Emergency Programs
4700 River Road, Unit 41
Riverdale, MD 20737-1231
Telephone (301) 734-8073
Fax (301) 734-7817

Current information on animal diseases and suspected outbreaks is also available on the Internet at <http://www.aphis.usda.gov>.

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To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer.

Attachment # 5
4/3/01

1 OIE List A diseases are those transmissible diseases which have the potential for very serious and rapid spread, are of serious socio-economic or public health consequence, and are of major importance in the international trade of animals and animal products. They include avian influenza, Newcastle disease, Rift Valley fever, foot and mouth disease, swine vesicular disease, vesicular stomatitis, classical swine fever, African horse sickness, African swine fever, bluetongue, contagious bovine pleuropneumonia, lumpy skin disease, peste des petits ruminants, rinderpest, and sheep and goat pox.

MINUTES
HOUSE AGRICULTURE COMMITTEE
April 4, 2001

The House Agriculture Committee held a called meeting on Wednesday, April 4, 2001 in Room 1425 of the Legislative Office Building. In attendance were Chairman Dewey Hill; Vice Chairmen Larry Bell, Nurham Warwick; Members Rex Baker, Lorene Coates, Arlie Culp, Don Davis, Rick Eddins, Stanley Fox, Mark Hilton, Joe Kiser, Frank Mitchell, Carolyn Russell, Alice Underhill, Edith Warren, and Douglas Yongue.

The purpose of the meeting was to hear and expedite passage of Proposed House Committee Substitute to Senate Bill #779, "AN ACT TO STRENGTHEN THE STATE VETERINARIAN'S AUTHORITY TO PREVENT AND CONTROL AN OUTBREAK OF FOOT AND MOUTH DISEASE AND ANY OTHER CONTAGIOUS ANIMAL DISEASE AND TO MAKE OTHER TECHNICAL AND CONFORMING CHANGES". Chairman Hill called the meeting to order at 12 o'clock noon. He explained the Proposed Committee Substitute and the urgency to get the bill out. He advised the Committee members that it is of utmost importance to get it through the House, that it is sent to the Senate, and that it is passed out of both Houses today. Legislation needs to be in place that gives the State Veterinarian the authority to develop and implement emergency procedures should there be an outbreak of hoof-and-mouth or other contagious livestock diseases. The Senate Bill has made two changes to the House Bill: (1) removes the sunset, which the Senate members think might weaken the bill, and (2) changes the language in yesterday's amendment to "the State Veterinarian, in consultation with the governor or his designee, and the Department of Agriculture".

Some members approved taking the sunset out. Representative Eddins was recognized and stated that he thought if the sunset was taken out that there would be the same scenario as when heard on the House floor the day before. He thinks that it may get through Committee, but believes if the sunset is taken out, members can look for another long day on the floor of the House. He believes the Bill will be passed only if it contains a sunset.

Chairman Hill referred to comments made on the floor the previous day about illegal search and seizure. David McLeod, staff attorney with the Department of Agriculture, said federal officials have the authority to act in this type of emergency, and if there were an outbreak the USDA would be in North Carolina and North Carolina needs authorization to assist them.

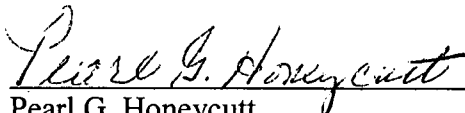
There was discussion on the wording "in consultation with" versus "with the approval of" the governor. Some Committee members were of the opinion that too much authority was being given to the State Veterinarian, and that the governor should approve any action taken. Norma Mills, Legal Counsel for Senator Basnight was introduced and explained their position. Their concern was that requiring the State Veterinarian to actually receive the approval of the governor could delay the ability to act quickly. There

was discussion about whether anyone besides the governor could declare a state emergency. Staff counsel Erika Churchill said that if the governor left a specific person in charge, that person could.

Ms. Mills said that the Senate had also had concerns that the State Veterinarian was being given too much authority. However, further research shows that in other similar circumstances, State officials are given authority to enter private property and carry out their duties without a warrant. Handouts were provided by the NCDA personnel (Attachments #3 and #4) of examples supporting this.

Representative Eddins moved to amend the Bill to include a four-year sunset, thinking that it would pass in the House quicker. Representative Yongue seconded the motion. Motion was passed.

Representative Baker moved to give the Proposed House Committee Substitute to Senate Bill #779 a favorable report, as amended, seconded by Representative Warwick, and passed. (The Bill, as amended, will be rolled over into a new Proposed House Committee Substitute).



Pearl G. Honeycutt
Acting Committee Clerk



Representative Dewey Hill
Chairman

Attachments:

- #1 - Visitor Registration Sheet
- #2 - House Committee Substitute Bill #965
- #3 - Examples of NC Warrantless Entries Authorized under General Statutes
- #4 - US Regulations Allowing Inspections and Seizures without a Warrant

VISITOR REGISTRATION SHEET

AGRICULTURE

APRIL 4, 2001

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

JS	NCFB
Shirley K	Cap. Adv.
Damico	W-S Journal
John, Cyrus	n.c. state exchange
W Chung	Dore & Assoc
Terry Rhodes	NC. Park Council
Lyn Ann Lee	NC AgriBusiness
F. Vail	Freedom
FRED Taylor	WKAL

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

S

D

SENATE BILL 779*
Agriculture/Environment/Natural Resources
Committee Substitute Adopted 4/3/01
Rules Suspended; Passed Second and Third Readings
PROPOSED HOUSE COMMITTEE SUBSTITUTE S779*-PCS4115-LD-3

Short Title: Control Foot & Mouth/Animal Disease Outbreaks.

(Public)

Sponsors:

Referred to:

April 2, 2001

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN THE STATE VETERINARIAN'S AUTHORITY TO
PREVENT AND CONTROL AN OUTBREAK OF FOOT AND MOUTH
DISEASE AND ANY OTHER CONTAGIOUS ANIMAL DISEASE AND TO
MAKE OTHER TECHNICAL AND CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

**PART I. PROVISIONS TO STRENGTHEN THE AUTHORITY OF THE STATE
VETERINARIAN.**

SECTION 1. Part 9 of Article 34 of Chapter 106 of the General Statutes is
amended by adding two new sections to read:

**"§ 106-399.4. Imminent threat of contagious animal disease; emergency measures
and procedures.**

(a) When determined by the State Veterinarian, in consultation with the
Commissioner of Agriculture and in consultation with the Governor or the Governor's
designee, that there is an imminent threat within the State of a contagious animal
disease that has the potential for very serious and rapid spread, is of serious
socioeconomic and public health consequence, or is of major importance in the
international trade of animals and animal products, the State Veterinarian or an
authorized representative may develop and implement any emergency measures and
procedures that the State Veterinarian determines necessary to prevent and control the
animal disease.

(b) Written notice of emergency procedures and measures implemented under
this section, including an identification of the disease threat and a description of any
potentially infected area and animal, shall be mailed or delivered to news media, farm
organizations, agriculture agencies, and any other interested or affected parties as
determined by the State Veterinarian. Such emergency procedures and measures may

1 include, but are not limited to, restrictions on the transportation of any potentially
2 infected animals, restrictions on the transportation of agriculture products and other
3 commodities into and out of potentially infected areas, restrictions on access to
4 potentially infected areas, quarantines under G.S. 106-401(a), emergency disinfectant
5 and other control measures at all portals of entry into the State, including airports, ports,
6 and other transportation corridors, and any other measures necessary to prevent and
7 control the threat of disease infection.

8 (c) All State agencies and political subdivisions of the State shall cooperate with
9 the implementation of the emergency procedures and measures developed under this
10 section. All State agencies and political subdivisions of the State shall comply with the
11 emergency procedures and measures developed under this section.

12 (d) When determined by the State Veterinarian, in consultation with the
13 Commissioner of Agriculture and in consultation with the Governor or the Governor's
14 designee, that there is an imminent threat within the State of a contagious animal
15 disease that has the potential for very serious and rapid spread, is of serious
16 socioeconomic and public health consequence, or is of major importance in the
17 international trade of animals and animal products, the State Veterinarian or an
18 authorized representative may enter any property in the State to examine any animal
19 that the State Veterinarian has reasonable grounds to believe is infected with or exposed
20 to a contagious animal disease. The owner or operator of the premises on which the
21 animal is located shall permit entry on the premises by the State Veterinarian or an
22 authorized representative and shall cooperate with the State Veterinarian or an
23 authorized representative. The provisions of G.S. 106-401(a) with respect to obtaining
24 an emergency order do not apply to this subsection.

25 **"§ 106-399.5. Warrantless inspections.**

26 When determined by the State Veterinarian, in consultation with the Commissioner
27 of Agriculture and in consultation with the Governor or the Governor's designee, that
28 there is an imminent threat within the State of a contagious animal disease that has the
29 potential for very serious and rapid spread, is of serious socioeconomic and public
30 health consequence, or is of major importance in the international trade of animals and
31 animal products, the State Veterinarian or an authorized representative may stop and
32 inspect without a warrant any individual or any motor vehicle on a public or private
33 road that is moving:

- 34 (1) Into the State from any other country, to determine whether the
35 individual or motor vehicle is carrying any animal or any article that is
36 capable of introducing or spreading the animal disease.
37 (2) In interstate commerce, upon probable cause to believe that the
38 individual or motor vehicle is carrying any animal or any article that is
39 capable of introducing or spreading the animal disease.
40 (3) In intrastate commerce from any other portion of the State or from any
41 premises or area quarantined under G.S. 106-401, upon probable cause
42 to believe that the individual or motor vehicle is carrying any animal

1 or any article that is capable of introducing or spreading the animal
2 disease."

3 SECTION 2. G.S. 106-401 reads as rewritten:

4 **"§ 106-401. State Veterinarian authorized to quarantine.**

5 (a) ~~The State Veterinarian or his~~an ~~authorized representative is authorized to go~~
6 ~~upon or may enter any property in the State, or to State or stop any motor vehicle on a~~
7 ~~public or private road to examine any animal which he that the State Veterinarian has~~
8 ~~reasonable grounds to believe is affected with or exposed to a contagious animal~~
9 ~~disease. If such the person refuses to consent to such the entry and examination after the~~
10 ~~State Veterinarian or his~~an ~~authorized representative shall have~~has ~~notified, in writing,~~
11 ~~the owner or person in whose custody such animal or animals are the animal is found, of~~
12 ~~his the intention to enter such the property and conduct such the examination, the State~~
13 ~~Veterinarian or his~~an ~~authorized representative may petition the district court in the~~
14 ~~county where such animal or animals are the animal is found for an emergency order~~
15 ~~authorizing such the entry and examination. The State Veterinarian or his~~an ~~authorized~~
16 ~~representative may quarantine any animal affected with or exposed to a contagious~~
17 ~~disease, or injected with or otherwise exposed to any material capable of producing a~~
18 ~~contagious disease and shall give public notice of such the quarantine by posting or~~
19 ~~placarding with a suitable quarantine sign the entrance to any part of the premises on~~
20 ~~which such the animal is held. Such The animal is to~~shall ~~be maintained by the owner of~~
21 ~~the animal or person in charge as provided in G.S. 106-400 through 106-405 the owner~~
22 ~~or operator of the premises in accordance with this Part at the owner's or person's in~~
23 ~~charge expense expense of the owner of the animal or the owner or operator of the~~
24 ~~premises. No animal under quarantine shall be removed from the place of quarantine~~
25 ~~except upon a written permit from unless permitted by the State Veterinarian or his~~an
26 ~~authorized representative. Such representative in writing. The quarantine shall remain in~~
27 ~~effect until cancelled by official written notice from the State Veterinarian or his~~an
28 ~~authorized representative and such representative, and the quarantine shall not be~~
29 ~~cancelled until any sick or diseased animal has been properly disposed of and the~~
30 ~~premises have been properly cleaned and disinfected.~~

31 (b) When determined by the State Veterinarian, in consultation with the
32 Commissioner of Agriculture and in consultation with the Governor or the Governor's
33 designee, that there is an imminent threat within the State of a contagious animal
34 disease that has the potential for very serious and rapid spread, is of serious
35 socioeconomic and public health consequence, or is of major importance in the
36 international trade of animals and animal products, the State Veterinarian or an
37 authorized representative may quarantine areas within the State. As part of the
38 quarantine under this subsection, the State Veterinarian or an authorized representative
39 may enter any property in the State to examine any animal, to obtain blood and tissue
40 samples for testing for the animal disease, and for any other reason directly related to
41 preventing or controlling the animal disease, and may stop motor vehicles on a public or
42 private road. The provisions of subsection (a) of this section with respect to obtaining an

1 emergency order do not apply to this subsection. Written notice of the quarantine,
2 including a description of the area and the type of animal affected by the disease, shall
3 be mailed or delivered to news media, farm organizations, agriculture agencies, and
4 other entities reasonably calculated to give notice of the quarantine to affected animal
5 owners, to the owners or operators of affected premises, and to the public. No animal
6 subject to the quarantine shall be moved to any other premises unless permitted by the
7 State Veterinarian or an authorized representative in writing."

8 **SECTION 3.** Part 9 of Article 34 of Chapter 106 of the General Statutes is
9 amended by adding the following section:

10 **"§ 106-402.1. Movement of animals prohibited; destruction of animals to control**
11 **animal disease authorized.**

12 (a) When determined by the State Veterinarian, in consultation with the
13 Commissioner of Agriculture and in consultation with the Governor or the Governor's
14 designee, that there is an imminent threat within the State of a contagious animal
15 disease that has the potential for very serious and rapid spread, is of serious
16 socioeconomic and public health consequence, or is of major importance in the
17 international trade of animals and animal products or that it is necessary to control a
18 contagious animal disease, the State Veterinarian or an authorized representative may
19 prohibit the movement of any animal to or from any premises used for shows, sales,
20 markets, fairs, exhibitions, processing or rendering facilities, or other public or private
21 assembly or may prohibit commingling of animals. Written notice of the prohibition
22 under this subsection shall be mailed, delivered, or otherwise provided to the owner or
23 operator of the premises by any means reasonably calculated to give notice. The owner
24 or operator of the premises shall not permit any animal to enter or remain on the
25 premises in violation of this section.

26 (b) When determined by the State Veterinarian, in consultation with the
27 Commissioner of Agriculture and in consultation with the Governor or the Governor's
28 designee, that there is an imminent threat within the State of a contagious animal
29 disease that has the potential for very serious and rapid spread, is of serious
30 socioeconomic and public health consequence, or is of major importance in the
31 international trade of animals and animal products or that it is necessary to control a
32 contagious animal disease, the State Veterinarian may order the destruction of any
33 animal and, after consulting with the State Health Director, the proper disposal of the
34 animal. G.S. 106-403 does not apply to the disposal of animals under this subsection.
35 The order shall be in writing and shall include the manner in which the destruction of
36 the animal will be carried out. The order shall be delivered to the owner of the animal
37 and the owner or operator of the premises on which the animal is located by certified
38 mail or any other means reasonably calculated to give the owner of the animal and the
39 owner or operator of the premises notice. In the event the owner of the animal and the
40 owner or operator of the premises cannot be notified, the State Veterinarian or an
41 authorized representative may seize and destroy the animal. The owner or operator of
42 the premises on which the animal is located shall permit entry on the premises by the

1 State Veterinarian or an authorized representative and shall cooperate with the State
2 Veterinarian or an authorized representative. The provisions of G.S. 106-401(a) with
3 respect to obtaining an emergency order do not apply to this subsection.

4 (c) When determined by the State Veterinarian, in consultation with the
5 Commissioner of Agriculture and in consultation with the Governor or the Governor's
6 designee, that there is an imminent threat within the State of a contagious animal
7 disease that has the potential for very serious and rapid spread, is of serious
8 socioeconomic and public health consequence, or is of major importance in the
9 international trade of animals and animal products or that it is necessary to control a
10 contagious animal disease, the State Veterinarian may require the Executive Director of
11 the Wildlife Resources Commission to develop a plan to address the movement of
12 wildlife and the destruction of wildlife."

13 SECTION 4. G.S. 106-405 reads as rewritten:

14 "**§ 106-405. Violation made misdemeanor. Prohibited acts; penalties.**

15 (a) Any Except as provided in G.S. 106-404, any person or persons who shall
16 knowingly and willfully violate violates any provision of G.S. 106-400 to 106-403 shall
17 be this Part is guilty of a Class 2 misdemeanor.

18 (b) It is prohibited that any person knowingly and willfully:

19 (1) Hide or conceal any animals that are subject to a quarantine under this
20 Part.

21 (2) Fail to report the occurrence of an animal disease for which a
22 quarantine under this Part is in effect.

23 (c) Any person who has committed an act that is prohibited under subsection (b)
24 of this section shall be subject to an administrative penalty not to exceed ten thousand
25 dollars (\$10,000) per violation. Each act in violation of subsection (b) of this section is a
26 separate violation."

27 **PART II. OTHER TECHNICAL AND CONFORMING CHANGES.**

28 SECTION 5. G.S. 106-400 reads as rewritten:

29 "**§ 106-400. Permit from State Veterinarian for sale, transportation, etc., Sale or**
30 **transportation of animals affected with disease. disease prohibited.**

31 No person or persons shall sell, trade, offer for sale or trade, or transport by truck or
32 other conveyance motor vehicle on any public road or other public place within the State
33 any animal or animals affected with a contagious or infectious animal disease, except
34 upon a written permit of unless permitted by the State Veterinarian in writing and in
35 accordance with the provisions of said the permit. The State Veterinarian, or his
36 authorized representative, is hereby empowered to State Veterinarian or an authorized
37 representative may examine any livestock that are animal that is being transported or
38 moved, sold, traded, or offered for sale or trade on any highway public road or other
39 public place within the State for the purpose of determining if said animals are the
40 animal is affected with a contagious or infectious disease, or are animal disease or is
41 being transported or offered for sale or trade in violation of G.S. 106-400 to 106-
42 405. this Part. If the animals are animal is found to be diseased or are is being moved,

1 sold, offered for sale or trade in violation of G.S. ~~106-400 to 106-405~~, ~~they~~this Part, it
2 shall be placed under quarantine ~~in accordance with the provisions of G.S. 106-400 to~~
3 ~~106-405~~under G.S. 106-401 in a place to be determined by the State Veterinarian or ~~his~~
4 an authorized representative. Any animal ~~or animals~~ shipped or otherwise moved into
5 this State in violation of federal laws or regulations shall be handled in accordance with
6 the provisions of G.S. ~~106-400 to 106-405~~this Part."

7 **SECTION 6. G.S. 106-400.1 reads as rewritten:**

8 **"§ 106-400.1. Swine disease testing.**

9 In order to control or prevent the spread of swine diseases, the Board of Agriculture
10 may adopt rules authorizing the State Veterinarian or ~~his~~an authorized representative to
11 enter, at reasonable times, the premises where swine are kept and to examine the swine
12 and obtain blood or tissue samples for testing purposes. The State Veterinarian ~~shall~~
13 ~~also have the authority to~~may quarantine swine ~~which~~that have not been properly
14 tested."

15 **SECTION 7. G.S. 106-401.1 reads as rewritten:**

16 **"§ 106-401.1. Inspection and quarantine of poultry.**

17 The State ~~Veterinarian, or his~~Veterinarian or an authorized representative, ~~is hereby~~
18 ~~authorized to go upon or~~representative may enter any property in the State, ~~or to~~State or
19 stop any motor ~~vehicle, to~~vehicle to examine any poultry ~~which~~hethat the State
20 Veterinarian has reason to believe ~~are~~is affected with or exposed to a contagious animal
21 disease. ~~He or his~~The State Veterinarian or an authorized representative is ~~authorized~~
22 ~~to~~may quarantine any poultry affected with or exposed to a contagious disease,
23 ~~or~~disease or injected with or otherwise exposed to any material capable of producing a
24 contagious disease and ~~to~~give public notice of ~~such~~the quarantine by posting or
25 placarding with a suitable quarantine sign the entrance to or any part of the premises on
26 which ~~such~~the poultry ~~are~~is held. ~~Said~~The poultry ~~are~~to ~~shall~~be maintained by the
27 poultry owner or person in charge ~~as provided for in G.S. 106-400 to 106-405 at the~~
28 ~~owner's expense. the owner or operator of the premises in accordance with this Part at~~
29 the expense of the poultry owner or the owner or operator of the premises. The
30 quarantine ~~provision hereof shall~~under this section does not apply to those diseases
31 ~~which~~that are endemic in the State and for which adequate preventive and control
32 measures are not available. No poultry under quarantine shall be moved from the place
33 of quarantine ~~except upon a written permit from the State Veterinarian or his~~authorized
34 ~~representative. Said~~quarantine, unless permitted by the State Veterinarian or an
35 authorized representative in writing. The quarantine shall remain in effect until
36 cancelled by official written notice from the State Veterinarian or ~~his~~an authorized
37 representative and shall not be released or cancelled until the sick or dead poultry have
38 been properly disposed of and the premises have been properly cleaned and
39 disinfected."

40 **SECTION 8. G.S. 106-402 reads as rewritten:**

41 **"§ 106-402. Confinement and isolation of diseased animals required.**

1 Any animal, ~~animals~~ animal or poultry affected with or exposed to a contagious or
2 infectious ~~animal~~ disease shall be confined by the owner or person in charge of said
3 animal, ~~animals~~ of the animal or poultry or the owner or operator of the premises in such
4 a manner, by penning or otherwise securing and actually isolating ~~same~~ the animal or
5 poultry from the approach or contact with other animals or poultry not so affected; they
6 it shall not have access to any ditch, canal, branch, creek, river, or other watercourse
7 which surface water that passes beyond the premises of the owner or person in charge of
8 said animals or poultry, affected premises, or to any public road, or to the premises of
9 any other person."

10 SECTION 9. G.S. 106-403 reads as rewritten:

11 "§ 106-403. Disposition of dead domesticated animals.

12 It shall be ~~is~~ the duty of the owner or person in charge of any of his domesticated
13 animals of domesticated animals that die from any cause and the owner, lessee, or
14 person in charge of any land owner or operator of the premises upon which any
15 domesticated animals die, to bury the ~~same~~ animals to a depth of at least three feet
16 beneath the surface of the ground within 24 hours after knowledge of the death of said
17 the domesticated animals, or to otherwise dispose of the ~~same~~ domesticated animals in a
18 manner approved by the State Veterinarian. It shall be ~~is~~ a violation of this statute
19 section to bury any dead domesticated animal closer than 300 feet to any flowing stream
20 or public body of water. It shall be ~~is~~ unlawful for any person to remove the carcasses of
21 dead domesticated animals from his the person's premises to the premises of any other
22 person without the written permission of the person having charge of such the other
23 premises and without burying said the carcasses as above provided provided under this
24 section. The governing body of each municipality shall designate some appropriate
25 person whose duty it shall be to provide for the removal and disposal, according to the
26 provisions of this section, of any dead domesticated animals located within the limits of
27 the municipality when the owner or owners of said animals of the animals cannot be
28 determined. The board of commissioners of each county shall designate some
29 appropriate person whose duty it shall be to provide for the removal and disposal,
30 according to the provisions of disposal under this section, of any dead domesticated
31 animals located within the limits of the county, but without the limits of any
32 municipality, when the owner or owners of said of the animals cannot be determined.
33 All costs incurred by a municipality or county in the removal of a dead domesticated
34 animal animals shall be recoverable from the owner of such animal the animals upon
35 admission of ownership or conviction. 'Domesticated animal' as used herein shall
36 include in this section includes poultry."

37 SECTION 10. G.S. 106-404 reads as rewritten:

38 "§ 106-404. Animals affected with glanders to be killed.

39 If the owner of any animal having the glanders or farcy shall omit or refuse, omits or
40 refuses, upon discovery or knowledge of its condition, to deprive the same of life destroy
41 the animal at once, he shall be that person is guilty of a Class 3 misdemeanor."

1 **SECTION 11.** This act is effective when it becomes law and expires April 1,
2 2005.

**Examples of Warrantless Entries Authorized under the
North Carolina General Statutes**

Response to Emergencies

Local Government Emergency Powers G.S. 14-288.12; 14-288.13

Authorizes local governments to enact ordinances to impose restrictions and prohibitions during a state of emergency.

Powers are broad and include:

"(b) The ordinances authorized by this section may permit prohibitions and restrictions:

- (1) Of movements of people in public places;
- (2) Of the operation of offices, business establishments, and other places to or from which people may travel or at which they may congregate;
- (3) Upon the possession, transportation, sale, purchase, and consumption of alcoholic beverages;
- (4) Upon the possession, transportation, sale, purchase, storage, and use of dangerous weapons and substances, and gasoline; and
- (5) Upon other activities or conditions the control of which may be reasonably necessary to maintain order and protect lives or property during the state of emergency.

The ordinances may delegate to the mayor of the municipality the authority to determine and proclaim the existence of a state of emergency, and to impose those authorized prohibitions and restrictions appropriate at a particular time."

Search and arrest without a warrant during a state of emergency for violation of a condition of the emergency control measures (i.e., a curfew) was upheld. *State V. Dobbins*, 277 N.C. 484 (1971)

Communicable Diseases G.S. 130A-144

Requires that physicians and hospitals must allow entry to and inspection of medical records by local or State Health Director of patients infected with, exposed to or suspected of being exposed to a communicable disease.

Fire Departments G.S. 58-82-1

Members and employees of fire departments have authority to "do all acts reasonably necessary to extinguish fires and protect life and property from fire. Any person, including the owner of the property which is burning, who shall willfully interfere in any manner with firemen engaged in the performance of their duties shall be guilty of a Class 1 misdemeanor."

While firemen are present at a fire and engaged in any continuing activity to bring under or to control or extinguish a fire, or prevent reignition, a search for the possible presence of accelerants on the premises may be reasonably conducted without a search warrant and without regard to how or why any accelerants may have been placed or stored on the premises. The fruits of such searches are admissible as evidence against any person charged with an unlawful burning of or upon the premises. *State v. Langley*, 64 N.C. App. 674 (1983), cert. denied, 310 N.C. 310 (1984).

Gubernatorial State of Emergency Disaster Declaration G.S. 166A-5; 166A-6

The Governor is given broad police powers to respond to a disaster or emergency when a state of disaster has been declared. These powers include:

"1) To direct and compel the evacuation of all or part of the population from any stricken or threatened area within the State, to prescribe routes, modes of transportation, and destinations in connection with evacuation; and to control ingress and egress of a disaster area, the movement of persons within the area, and the occupancy of premises therein."

Control of Hazardous Materials G.S. 166A-25

When there has been an uncontrolled leak of hazardous materials or the threat of such leak, the regional response team ("hazmat team") is authorized to "enter onto any public or private property on which the release has occurred or on which there is an imminent threat of such release. A regional response team may also enter, under such circumstances, any adjacent or surrounding property in order to respond to the release or threatened release of hazardous material or to monitor, control, and contain

the release or perform any other action in mitigation of a hazardous materials incident."

Inspections

Alcohol Control G.S. 18B-502

Alcohol law enforcement agents, employees of the ABC Commission, local ABC officers and other local law enforcement officers are authorized as necessary to enforce ABC laws to "to make inspections that include viewing the entire premises, and to examine the books and records of the permittee. The inspection authorized by this section may be made at any time it reasonably appears that someone is on the premises. Alcohol law enforcement agents are also authorized to be on the premises to the extent necessary to enforce the provisions of [the ABC laws]." Refusal of an owner or employee to permit ABC officers to enter a premise is punishable by revocation of the permittee's ABC permit and a Class 2 misdemeanor.

Adult Care Home Residents' Protection G.S. 131D-26; 131D-34(d)

Departments of social services are required to enforce statutes that protect the rights of adult care home patients, and to investigate allegations of abuse or neglect of patients. Any adult care home facility that refuses to allow an authorized representative of a department of social services to conduct an inspection of the premises and to examine records is subject to a civil penalty.

Farm Products G.S. 106-194

Department of Agriculture agents and employees are authorized to inspect and monitor farm products in the state. In carrying out this duty, agents and employees of the Department are "authorized to enter in any business day, during the hours of business, any storehouse, warehouse, cold storage plant, packing house, stockyard, railroad car, or any other building or place where farm products are kept or stored by any person engaged in the business of marketing farm products." Any person who fails to comply with this provision or who willfully interferes with the agents' execution of their duties is guilty of a Class 3 misdemeanor.

Animal Waste Management Systems G.S. 143-215.10F

The Division of Water Quality is required to conduct annual inspections of permitted facilities to ensure compliance with permit conditions (this inspection duty necessarily requires entry onto the property).

Eradication of Boll Weevil G.S. 106-65.71

The Commissioner of Agriculture is authorized to enter property and conduct inspections of cotton fields and other outdoor premises, and to take actions necessary to prevent the spread of and to eradicate the boll weevil, including destruction of contaminated crops. This authority to enter premises and destroy crops specifically extends to situations where the property owner refuses permission to enter the property – "such inspections may be conducted without a warrant with respect to any outdoor premises, if conducted between the hours of sunrise and sunset."

Workplace Safety G.S. 97-76

The Industrial Commission is authorized to enter the premises places of employment to determine whether employees are subject to exposure to asbestosis and/or silicosis. Any employer, or officer or agent of the employer, who prevents or obstructs any such examinations, is guilty of a Class 1 misdemeanor.

Control of Hazardous Chemicals G.S. 95-195

The Commissioner of Labor is given the "right of entry into any facility at reasonable times to inspect and investigate complaints" of the laws controlling the storage of hazardous chemicals and toxic substances.

Restaurant Inspections G.S. 130A-249

Health inspectors "may enter any establishment that is subject to [regulations of sanitation in food and lodging establishments] for the purposes of making inspections . . . The person responsible for the management or control of an establishment shall permit the Secretary to inspect every part of the establishment and shall render all aid and assistance necessary for the inspection."

Fire Inspections G.S. 58-79-20

The Commissioner of Insurance (or local fire department chief, local building inspector, electrical inspector, heating inspector or fire prevention inspector) is authorized to enter any buildings and premises under their jurisdiction for the purpose of determining whether there exists a violation of

laws controlling occupancy limits (overcrowding), storage of combustible material or other flammable conditions on the premises. The Commissioner or other authorized officials may order immediate actions to remedy violations of said laws, including the immediate removal of flammable or combustible materials, and the owner or occupant of the building or premises shall immediately comply with the Commissioner's order.

Attachment #4
4/04/01

21 USC 134d

21 § 134d

Ch. 4 ANIMALS, MEATS, DAIRY PRODUCTS

§ 134c. Regulations for movement of animals affected or exposed to communicable disease

The Secretary is authorized to promulgate regulations prohibiting or regulating the movement into the United States of any animals which are or have been affected with or exposed to any communicable animal disease, or which have been vaccinated or otherwise treated for any such disease, or which he finds would otherwise be likely to introduce or disseminate any such disease, when he determines that such action is necessary to protect the livestock or poultry of the United States.

(Pub.L. 87-518, § 4, July 2, 1962, 76 Stat. 130.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports
1962 Acts. House Report No. 1516, see
1962 U.S. Code Cong. and Adm. News, p.
1822.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

Notes of Decisions

Injunctions 1

1. Injunctions

Horse owner was not entitled to temporary restraining order or preliminary injunction against order requiring her to dispose of certain horses either by removing horses from United States or by destroying them, where Secretary of Agriculture has broad powers to prevent livestock and poultry disease and is given

great power to remove horses imported contrary to regulations, threat of harm to public if plaintiff were allowed to keep the horses, was possible contagious equine metritis epidemic, and there was an adequate remedy at law as plaintiff could recover fair market value of horses if she did not know the horses were brought into the United States illegally. *Barton v. U. S. Dept. of Agriculture*, S.D.Ill.1981, 523 F.Supp. 1019.

§ 134d. Inspections and seizures; issuance of warrants

Employees of the Department of Agriculture designated by the Secretary for the purpose, when properly identified, shall have authority (1) to stop and inspect, without a warrant, any person or means of conveyance, moving into the United States from a foreign country, to determine whether such person or means of conveyance is carrying any animal, carcass, product, or article regulated or subject to disposal under any law or regulation administered by the Secretary for prevention of the introduction or dissemination of any communicable animal disease; (2) to stop and inspect, without a warrant, any means of conveyance moving interstate upon probable cause to believe that such means of conveyance is carrying any animal, carcass, product, or article regulated or subject to disposal

21 § 134d**FOOD AND DRUGS Ch. 4**

under any law or regulation administered by the Secretary for the prevention of the introduction or dissemination of any communicable animal disease; and (3) to enter upon, with a warrant, any premises for the purpose of making inspections and seizures necessary under such laws and regulations. Any Federal judge, or any judge of a court of record in the United States, or any United States commissioner, may, within his jurisdiction, upon proper oath or affirmation indicating probable cause to believe that there is on certain premises any animal, carcass, product, or article regulated or subject to disposal under any law or regulation administered by the Secretary for the prevention of the introduction or dissemination of any communicable animal disease, issue warrants for the entry upon such premises and for inspections and seizures necessary under such laws and regulations. Such warrants may be executed by any authorized employee of the Department of Agriculture.

(Pub.L. 87-518, § 5, July 2, 1962, 76 Stat. 130; Pub.L. 90-578, Title IV, § 402(b)(2), Oct. 17, 1968, 82 Stat. 1118; Pub.L. 101-650, Title III, § 321, Dec. 1, 1990, 104 Stat. 5117.)

HISTORICAL AND STATUTORY NOTES**Revision Notes and Legislative Reports**

1962 Acts. House Report No. 1516, see 1962 U.S. Code Cong. and Adm. News, p. 1822.

Change of Name

References to United States commissioners to be deemed references to United States magistrates, see Pub.L. 90-578, Title IV, § 402, Oct. 17, 1968, 82 Stat. 1118, which provided that, within each district, references in previously enacted statutes and previously promulgated rules and regulations to United States commissioners are to be deemed, within such district, references to United States magistrates duly appointed under § 631 of Title 28 as soon as the first United States

magistrate assumes office within that district or on Oct. 17, 1971, whichever is earlier. See Applicable Law note under § 631 of Title 28, Judiciary and Judicial Procedure.

United States magistrate appointed under section 631 of Title 28, Judiciary and Judicial Procedure, to be known as United States magistrate judge after Dec. 1, 1990, with any reference to United States magistrate or magistrate in Title 28, in any other Federal statute, etc., deemed a reference to United States magistrate judge appointed under section 631 of Title 28, see section 321 of Pub.L. 101-650, set out as a note under section 631 Title 28.

LIBRARY REFERENCES**Texts and Treatises**

Food, Drugs, and Cosmetics, 13 Fed. Proc. L. Ed. §§ 35:433, 434.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

§ 134e. Enforcement provisions**(a) Criminal and civil penalties**

(1) Whoever knowingly violates any regulation promulgated pursuant to the provisions of sections 134 through 134d of this title shall

MINUTES HOUSE AGRICULTURE COMMITTEE

Tuesday, April 10, 2001

The House Agriculture Committee met on Tuesday, April 10, 2001, in Room 1425 of the Legislative Building, with Representative Dewey Hill, Chairman, presiding. Chairman Hill called the meeting to order at 10:05 a.m. Members in attendance were Chairman Hill; Vice Chairman W. B. Teague, Jr.; Members Rex Baker, Donald Bonner, Lorene Coates, Arlie Culp, Don Davis, Rick Eddins, Stanley Fox, Mark Hilton, Joe Kiser, Frank Mitchell, Edd Nye, Bill Owens, Gene Rogers, Carolyn Russell, Joe Tolson, Russell Tucker, Alice Underhill, Edith Warren, John Weatherly, Gene Wilson, and Douglas Yongue.

Chairman Hill introduced the pages and thanked the Committee members for their help in getting out the foot-and-mouth disease Bill the previous week.

The gavel was turned over to Chairman Teague, who in turn recognized Representative Hill to present his Bill, #769, "AN ACT TO ESTABLISH THE AGRICULTURAL FAIRS ADVISORY COUNCIL AND TO APPROPRIATE FUNDS FOR GRANTS FOR LOCAL AGRICULTURAL FAIRS". Barbara Riley, staff attorney, explained the Bill. The Bill would establish Agricultural Fairs Advisory Council, consisting of 15 members appointed by the Commissioner of Agriculture. The purpose of the Council will be to advise the Commissioner on the distribution of grants to local agricultural fairs. It would require an appropriation of \$300,000 for the 2002-2003 fiscal year.

Representative Bonner sent forth an amendment to insert the phrase "...representing all geographic regions of the State...". Representative Baker sent forth an amendment changing "may appoint" the members to "shall" appoint, and changing the word "co-chair on Page 1, Lines 15 and 16 to "Chair".

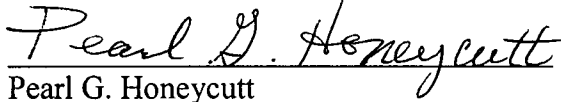
Representative Owens had concerns that it would be difficult to come up with that amount of money, and wondered if the Council could first get established and then work up.

To know how much money would possibly be allocated to each fair, the Committee wished to know how many local fairs we have in North Carolina. There was not a representative from the Department of Agriculture to answer that and other questions posed by Committee members. Representative Mitchell sent forth an amendment to add to the Bill, "No grants to an individual local agriculture fair shall exceed \$7,500.

Comments from members: Representative Russell: "Why is there a need to establish a Council"?; Representative Tolson: "I don't see the need for a Council"; Representative Weatherly: "We don't have enough information to make a decision".

Representative Yongue agreed that there was need for representation from the Department of Agriculture. He made a motion that the Bill be postponed until the next meeting. Representative Hill said he did not have a problem with doing that. The motion passed.

The meeting was adjourned.



Pearl G. Honeycutt
Acting Committee Clerk



Dewey L. Hill
Chairman

Attachments:

- #1 – Meeting Agenda
- #2 - House Bill #769
- #3 – Representative Bonner's Amendment
- #4 – Representative Baker's Amendment
- #5 – Representative Mitchell's Amendment

A G E N D A
HOUSE AGRICULTURE COMMITTEE

Tuesday, April 10, 2001

10:00 a.m., Room 1425

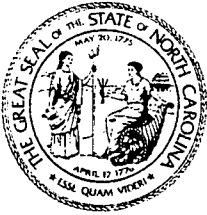
CALL TO ORDER Rep. Dewey L. Hill, Chairman

INTRODUCTION OF PAGES

BILLS TO BE DISCUSSED:

H.B. # 769 – AGRIC. FAIRS ADVISORY COUNCIL/GRANT FUNDS

ADJOURNMENT: Chairman Hill



4/10

HB 769: Ag. Fairs Advisory Council/Grant Funds

BILL ANALYSIS

Committee: House Agriculture Committee
Date: April 9, 2001
Version: 1st Edition

Introduced by: Representative Hill
Summary by: Barbara Riley
Committee Counsel

SUMMARY:

Pursuant to Part 4 of Article 45 of Chapter 106 of the General Statutes, the Commissioner of Agriculture is authorized to adopt rules governing the licensing and operation of agricultural fairs. G.S. 106-520.3. A "fair" is defined as an exhibition designed and operated to promote, encourage, and improve agriculture, horticulture, livestock, poultry, dairy products, and 4H and FFA activities by offering premiums and awards for the best exhibits. G.S. 106-520.1.

House Bill 769 would establish an Agricultural Fairs Advisory Council. The Council would consist of up to 15 members appointed by the Commissioner who would represent local and county fairs, commodity associations, farm organizations, and persons with an interest in agricultural fairs. The purpose of the Council shall be to advise the Commissioner on the distribution of grants to local agricultural fairs licensed under Article 45.

House Bill 769 also provides for a \$300,000 appropriation for the 2002-2003 fiscal year to be used for grants to local agricultural fairs.

The act becomes effective July 1, 2001.

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 1st

H. B. No. 769

DATE 4-

S. B. No. _____

Amendment No. _____

COMMITTEE SUBSTITUTE _____

(to be filled in by
Principal Clerk)

Rep.) BONNER

Sen.) _____

1 moves to amend the bill on page 1, line 11

2 () WHICH CHANGES THE TITLE

3 by deleting the word "may" and inserting the word "shall"
 4 deleting the phrase "who shall represent" and inserting
 5 the phrase "representing all geographic locations across
 6 the state and representing" regions of

7 _____

8 _____

9 _____

10 _____

11 _____

12 _____

13 _____

14 _____

15 _____

16 _____

17 _____

18 _____

19 _____

SIGNED Donald D. Bonner

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 769

DATE 4/10/01

S. B. No. _____

Amendment No. _____

(to be filled in by
Principal Clerk)

COMMITTEE SUBSTITUTE _____

Rep.) Baker
)
 Sen.)

1 moves to amend the bill on page 1, line 10 and 11

2 () WHICH CHANGES THE TITLE

3 by changing the word "may" to "shall"

4 _____

5 and on p1, lines 15 & 16 by

6 _____

7 changing the word "CoChair" to "Chair"

8 _____

9 ✓

10 _____

11 _____

12 _____

13 _____

14 _____

15 _____

16 _____

17 _____

18 _____

19 _____

SIGNED [Signature]

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. 769

H. B. No. _____

DATE 4/10/01

S. B. No. _____

Amendment No. _____

COMMITTEE SUBSTITUTE _____

(to be filled in by
Principal Clerk)

Rep.) Mitchell
Sen.) _____

1 moves to amend the bill on page 1, line 24

2 () WHICH CHANGES THE TITLE

3 by adding after the period a new

4 sentence to read

5 No

6 "Grants to ^{our} individual local agricultural

7 fair shall ~~not~~ exceed \$7,500."

8 _____

9 _____

10 _____

11 _____

12 _____

13 _____

14 _____

15 _____

16 _____

17 _____

18 _____

19 _____

SIGNED W.F. Mitchell

ADOPTED _____ FAILED _____ TABLED _____

MINUTES
HOUSE AGRICULTURE COMMITTEE
April 17, 2001

The House Agriculture Committee met on Tuesday, April 17, 2001 in Room 1425 of the Legislative Building. Chairman Hill called the meeting to order at 10:00 a.m. He introduced the pages. Members in attendance were: Chairman Hill, Vice Chairmen Larry Bell, Leslie Cox, W. B. Teague, Jr., Nurham Warwick; Members Rex Baker, Donald Bonner, Charles Buchanan, Arlie Culp, Don Davis, Rick Eddins, Stanley Fox, Mark Hilton, Joe Kiser, Frank Mitchell, Edd Nye, Bill Owens, Carolyn Russell, Joe Tolson, Russell Tucker, Alice Underhill, Edith Warren, John Weatherly, Gene Wilson, and Douglas Yongue.

Representative Arlie Culp was recognized and explained House Bill #1111, "An Act to Expand the Duties of the Soil and Water Conservation Commission to Include Developing a Program Regarding the Approval of Technical Specialists and the Development and Approval of Certain Best Management Practices". Representative Davis moved to give the bill a favorable report. Motion was passed unanimously.

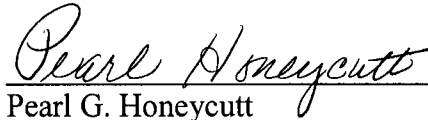
Senator Fletcher Hartsell, Jr. was recognized and explained Senate Bill #162, "An Act to Amend Various Property Tax Laws". The change to the current tax laws is not substantial and applies only one time. County commissioners have no problem with the bill. Representative Russell Tucker moved to give the bill a favorable report and re-refer to Finance. Motion passed, with one dissenting vote.

Representative Hill moved to adopt Proposed Committee Substitute to House Bill #218, "An Act to Provide for Treble Damages for Injury to Agricultural Crops". This bill was brought to the committee at two prior meetings, resulting in a number of amendments sent forth and adopted. These amendments have been rolled over into the Proposed Committee Substitute. Mr. Glenn Jernigan, Governmental Affairs Consultants, was introduced and spoke in support of the bill. There were some concerns expressed, and David McLeod, attorney for the Department of Agriculture, responded to each. Representative Tolson moved to give the Proposed Committee Substitute a favorable report, unfavorable to original bill. (The bill was reported out, Favorable to Committee Substitute, unfavorable to Original Bill, and re-refer to Judiciary I.).

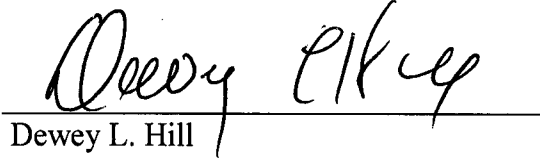
The gavel was turned over to Vice Chairman Warwick, who in turn recognized Representative Hill to explain House Bill 769, "An Act to Establish the Agricultural Fairs Advisory Council and to Appropriate Funds for Grants for Local Agricultural Fairs". The bill had been discussed in committee the previous week, but a vote on the bill had been postponed in order to have representation from North Carolina Department of Agriculture personnel to answer questions that had been raised. There are 47 local fairs in addition to the State fairs in Raleigh and Asheville. Council members will not be reimbursed for mileage. Representative Russell questioned the need for establishing this Council since she believed the Commissioner of Agriculture could handle it. Weldon

Denny, Deputy Commissioner of the Department, said they wanted to have input from other sources. Representative Owens moved to roll the three amendments from the previous week's meeting into a Committee Substitute, give a favorable report, and re-refer to Appropriations. The motion was passed unanimously.

Chairman Hill adjourned the meeting.



Pearl G. Honeycutt
Committee Clerk



Dewey L. Hill
Chairman

Attachments:

- (1) Visitor Registration Sheet
- (2) House Bill #1111 and Handout
- (3) Senate Bill #162; Bill Digest; Bill Analysis
- (4) House Bill #218 Proposed Committee Substitute
- (5) House Bill #769 and Proposed Committee Substitute

VISITOR REGISTRATION SHEET

Agriculture
Name of Committee

4-17-2001
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

<u>John Hartwell</u>	<u>N.C. State</u>
<u>Weld & Rorery</u>	<u>NCDA & CS</u>
<u>Bill McLean</u>	<u>NCDA & CS</u>
<u>Blaine R. Jones</u>	<u>American crop Protection Assn</u>
<u>David McLeod</u>	<u>NCDA & CS</u>
<u>John Cyrus</u>	<u>N.C. State Grange</u>
<u>John Faith</u>	<u>N.C. D.O.R.</u>
<u>John Haskins</u>	<u>NC Park Council</u>
<u>Doug Lyster</u>	<u>NC Septic Tank Assoc.</u>
<u>Bob Slocum</u>	<u>NC Forestry Assoc</u>
<u>Lu-Anne Lee</u>	<u>NC Agribusiness Council</u>
<u>Tim Minter</u>	<u>NC Home Builders Assn</u>
<u>Erin Culbreth</u>	<u>Turfgrass Council</u>
<u>A. JAMI CRAIG</u>	<u>LCA</u>
<u>W. Cherry</u>	<u>Bone & Assoc</u>
<u>Robert Bone</u>	<u>" "</u>
<u>Shirley Warden</u>	<u>NCFB</u>
<u>Bruce Parker</u>	<u>Bone & Assoc.</u>
<u>F. Carlyle Teague</u>	<u>Co-op Council of NC</u>
<u>David Meredith</u>	<u>NC State Grange</u>
<u>Quinn J. Brumfield</u>	<u>NS</u>
<u>Wish Culbreth</u>	<u>Turfgrass Council</u>
<u>Melissa Deaton</u>	<u>NC House</u>

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

H

1

HOUSE BILL 1111

Short Title: Soil & Water Conservation Commission Duties. (Public)

Sponsors: Representatives Culp; Kiser, Lucas, Mitchell, Tolson, Tucker, Warwick, Weatherly, and West.

Referred to: Agriculture.

April 11, 2001

A BILL TO BE ENTITLED

AN ACT TO EXPAND THE DUTIES OF THE SOIL AND WATER
CONSERVATION COMMISSION TO INCLUDE DEVELOPING A PROGRAM
REGARDING THE APPROVAL OF TECHNICAL SPECIALISTS AND THE
DEVELOPMENT AND APPROVAL OF CERTAIN BEST MANAGEMENT
PRACTICES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 139-4(d) is amended by adding the following new
subdivision to read:

"(11) To develop a program for the approval of technical specialists and for
the development and approval of best management practices for use in
the water quality protection programs of the Department of
Environment and Natural Resources and to adopt temporary rules to
implement this subdivision."

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

§ 139-4. Powers and duties of Soil and Water Conservation Commission generally.

(a) through (c) Repealed by Session Laws 1973, c. 1262, s. 38.

(d) In addition to the duties and powers hereinafter conferred upon the Soil and Water Conservation Commission, it shall have the following duties and powers:

§139-5

ART. 1. GENERAL PROVISIONS

§139-5

- (1) To offer such assistance as may be appropriate to the supervisors of soil and water conservation districts, organized as provided hereinafter, in the carrying out of any of their powers and programs.
- (2) To keep the supervisors of each of the several districts organized under the provisions of this Chapter informed of the activities and experience of all other districts organized hereunder, and to facilitate an interchange of advice and experience between such districts and cooperation between them.
- (3) To coordinate the programs of the several soil and water conservation districts organized hereunder so far as this may be done by advice and consultation.
- (4) To secure the cooperation and assistance of the United States and any of its agencies, and of agencies of this State, in the work of such districts.
- (5) To disseminate information throughout the State concerning the activities and programs of the soil and water conservation districts organized hereunder, and to encourage the formation of such districts in areas where their organization is desirable.
- (6) Upon the filing of a petition signed by all of the district supervisors of any one or more districts requesting a change in the boundary lines of said district or districts, the Commission may change such lines in such manner as in its judgment would best serve the interests of the occupiers of land in the area affected thereby.
- (7) To receive, review and approve or disapprove applications for planning assistance under the provisions of Public Law 566 (83rd Congress, as amended), and recommend priorities on such applications.
- (8) To supervise and review small watershed work plans pursuant to G.S. 139-41.2 and 139-47.
- (9) To create, implement, and supervise the Agriculture Cost Share Program for Nonpoint Source Pollution Control pursuant to G.S. 143-215.74.
- (10) To review and approve or disapprove the application of a district supervisor for a grant under the Agriculture Cost Share Program for Nonpoint Source Pollution Control as provided by G.S. 139-8(13).
- (e) A member of the Commission may apply for and receive a grant under the Agriculture Cost Share Program for Nonpoint Source Pollution Control if:
 - (1) The member does not vote on the application or attempt to influence the outcome of any action on the application; and
 - (2) The application is approved by the Secretary of Environment and Natural Resources. (1937, c. 393, s. 4; 1947, c. 131, s. 3; 1953, c. 255; 1957, c. 1374, s. 1; 1959, c. 781, s. 5; 1961, c. 746, s. 2; 1965, c. 582, s. 2; c. 932; 1971, c. 396; 1973, c. 1262, s. 38; 1981, c. 326, s. 1; 1995, c. 519, s. 1; 1997-443, s. 11A.119(a).)

State Government Reorganization. — The Soil and Water Conservation Committee (now Soil and Water Conservation Commission) was transferred to the Department of Natural and Economic Resources (now Depart-

ment of Environment, Health and Natural Resources) by former § 143A-124, enacted by Session Laws 1971, c. 864 and repealed by Session Laws 1973, c. 1262, and remains a part of the Department under § 143B-279.3(b)(21).

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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2

SENATE BILL 162
Second Edition Engrossed 3/7/01

Short Title: Property Tax Amendments.

(Public)

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

Referred to: Finance.

February 19, 2001

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND VARIOUS PROPERTY TAX LAWS.
3 The General Assembly of North Carolina enacts:

4 SECTION 1. G.S. 105-282.1 reads as rewritten:

5 "§ 105-282.1. Applications for property tax exemption or ~~exclusion~~. exclusion;
6 annual review of property exempted or excluded from property tax.

7 (a) Application. - Every owner of property claiming exemption or exclusion
8 from property taxes under the provisions of this Subchapter has the burden of
9 establishing that the property is entitled thereto. ~~Except as provided below, an owner~~
10 ~~claiming exemption or exclusion shall annually file an application for exemption or~~
11 ~~exclusion during the listing period. to it.~~ If the property for which the exemption or
12 exclusion is claimed is appraised by the Department of Revenue, the application shall be
13 filed with the Department. Otherwise, the application shall be filed with the assessor of
14 the county in which the property is situated. An application must contain a complete and
15 accurate statement of the facts that entitle the property to the exemption or exclusion
16 and must indicate the municipality, if any, in which the property is located. Each
17 application filed with the Department of Revenue or an assessor shall be submitted on a
18 form approved by the Department. Application forms shall be made available by the
19 assessor and the Department, as appropriate.

20 (1) ~~The United States government, the State of North Carolina and the~~
21 ~~counties and municipalities of the State are exempted from the~~
22 ~~requirement that owners file applications for exemption.~~

23 (2) ~~Owners of the special classes of property excluded from taxation under~~
24 ~~G.S. 105-275(5), (15), (16), (26), (31), (32a), (33), (34), or (40), or~~
25 ~~exempted under G.S. 105-278.2 are not required to file applications for~~
26 ~~the exclusion or exemption of that property.~~

27 (3) ~~After an owner of property entitled to exemption under G.S. 105-~~
28 ~~278.3, 105-278.4, 105-278.5, 105-278.6, 105-278.7, or 105-278.8 or~~

1 ~~exclusion under G.S. 105-275(3), (7), (8), (12), (17) through (19), (21)~~
2 ~~or (39), G.S. 105-277.1, or G.S. 105-278 has applied for exemption or~~
3 ~~exclusion and the exemption or exclusion has been approved, the~~
4 ~~owner is not required to file an application in subsequent years except~~
5 ~~in the following circumstances:~~

- 6 a. ~~New or additional property is acquired or improvements are~~
7 ~~added or removed, necessitating a change in the valuation of~~
8 ~~the property; or~~
9 b. ~~There is a change in the use of the property or the~~
10 ~~qualifications or eligibility of the taxpayer necessitating a~~
11 ~~review of the exemption or exclusion.~~
- 12 (4) ~~After an owner of property entitled to exclusion under G.S. 105-277.10~~
13 ~~has applied for the exclusion and the exclusion has been approved, the~~
14 ~~owner is not required to apply for the exclusion in subsequent years so~~
15 ~~long as the classified property, including classified property acquired~~
16 ~~after the application is approved, is used or held for use directly in~~
17 ~~manufacturing or processing as part of industrial machinery.~~
- 18 (5) ~~Upon a showing of good cause by the applicant for failure to make a~~
19 ~~timely application, an application for exemption or exclusion filed~~
20 ~~after the close of the listing period may be approved by the~~
21 ~~Department of Revenue, the board of equalization and review, the~~
22 ~~board of county commissioners, or the governing body of a~~
23 ~~municipality, as appropriate. An untimely application for exemption or~~
24 ~~exclusion approved under this subdivision applies only to property~~
25 ~~taxes levied by the county or municipality in the calendar year in~~
26 ~~which the untimely application is filed.~~

27 Except as provided below, an owner claiming an exemption or exclusion from
28 property taxes must file an application for the exemption or exclusion annually during
29 the listing period.

- 30 (1) No application required. – Owners of the following exempt or
31 excluded property do not need to file an application for the exemption
32 or exclusion to be entitled to receive it:
- 33 a. Property exempt from taxation under G.S. 105-278.1 or G.S.
34 105-278.2.
- 35 b. Special classes of property excluded from taxation under G.S.
36 105-275(15), (16), (26), (31), (32a), (33), (34), (37), (40), or
37 (42).
- 38 c. Property classified for taxation at a reduced valuation under
39 G.S. 105-277(g) or G.S. 105-277.9.
- 40 (2) Single application required. – An owner of one or more of the
41 following properties eligible to be exempted or excluded from taxation
42 must file an application for exemption or exclusion to receive it. Once
43 the application has been approved, the owner does not need to file an
44 application in subsequent years unless new or additional property is

1 acquired or improvements are added or removed, necessitating a
2 change in the valuation of the property, or there is a change in the use
3 of the property or the qualifications or eligibility of the taxpayer
4 necessitating a review of the exemption or exclusion:

- 5 a. Property exempted from taxation under G.S. 105-278.3, 105-
6 278.4, 105-278.5, 105-278.6, 105-278.7, or 105-278.8.
7 b. Special classes of property excluded from taxation under G.S.
8 105-275(3), (7), (8), (12), (17), (18), (19), (20), (21), (35), (36),
9 (38), (39), or (41) or under G.S. 131A-21.
10 c. Special classes of property classified for taxation at a reduced
11 valuation under G.S. 105-277(h), 105-277.1, 105-277.10, 105-
12 277.13, or 105-278.
13 d. Property owned by a nonprofit homeowners' association but
14 where the value of the property is included in the appraisals of
15 property owned by members of the association under G.S. 105-
16 277.8.

17 (a1) Late Application. – Upon a showing of good cause by the applicant for failure
18 to make a timely application, an application for exemption or exclusion filed after the
19 close of the listing period may be approved by the Department of Revenue, the board of
20 equalization and review, the board of county commissioners, or the governing body of a
21 municipality, as appropriate. An untimely application for exemption or exclusion
22 approved under this subsection applies only to property taxes levied by the county or
23 municipality in the calendar year in which the untimely application is filed.

24 (b) Approval and Appeal Process. – The Department of Revenue or the assessor
25 to whom an application for exemption or exclusion is submitted shall must review the
26 application and either approve or deny the application. Approved applications shall be
27 filed and made available to all taxing units in which the exempted or excluded property
28 is situated. If the Department denies an application for exemption or exclusion, it shall
29 notify the taxpayer, who may appeal the denial to the Property Tax Commission.

30 If an assessor denies an application for exemption or exclusion, he shall the assessor
31 must notify the owner of his the decision in time for him and the owner may to appeal
32 the decision to the board of equalization and review or the board of county
33 commissioners, as appropriate, and from the county board to the Property Tax
34 Commission. If the notice of denial covers property located within a municipality, the
35 assessor shall send a copy of the notice and a copy of the application to the governing
36 body of the municipality. The municipal governing body shall then advise the owner
37 whether it will adopt the decision of the county board or require the owner to file a
38 separate appeal with the municipal governing body. In the event the owner is required to
39 appeal to the municipal governing body and that body renders an adverse decision, the
40 owner may appeal to the Property Tax Commission. Nothing in this section subsection
41 shall prevent the governing body of a municipality from denying an application which
42 has been approved by the assessor or by the county board provided the owner's rights to
43 notice and hearing are not abridged. Applications handled separately by a municipality

1 shall be filed in the office of the person designated by the governing body, or in the
2 absence of such designation, in the office of the chief fiscal officer of the municipality.

3 (c) Discovery of Property. – When an owner of property that may be eligible for
4 exemption or exclusion neither lists the property nor files an application for exemption
5 or exclusion, the assessor or the Department of Revenue, as appropriate, shall proceed
6 to discover the property. If, upon appeal, the owner demonstrates that the property
7 meets the conditions for exemption or exclusion, the body hearing the appeal may
8 approve the exemption or exclusion. Discovery of the property by the Department or the
9 county shall automatically constitute a discovery by any taxing unit in which the
10 property has a taxable situs.

11 (d) Roster of Exempted and Excluded Property. – The ~~county~~ assessor shall
12 prepare and maintain a roster of all property in the county that is granted tax relief
13 through classification or exemption. On or before November 1 of each year, the assessor
14 must send a report to the Department of Revenue summarizing the information
15 contained in the roster. The report must be in the format required by the Department.
16 The assessor must also send the Department a copy of the roster upon the request of the
17 Department. As to affected real and personal property, the roster shall set forth:

18 (1) The name of the owner of the property.

19 (2) A brief description of the property.

20 (3) A statement of the use to which the property is put.

21 (4) A statement of the value of the property.

22 (5) The total value of exempt property in the county and in each
23 municipality therein.

24 (e) Annual Review of Exempted or Excluded Property. – Pursuant to G.S. 105-
25 296(1), the assessor must annually review at least one-eighth of the parcels in the county
26 exempted or excluded from taxation to verify that the parcels qualify for the exemption
27 or exclusion. ~~A duplicate copy of the roster shall be forwarded to the Department of~~
28 ~~Revenue on or before November 1, 1974. In subsequent years, on or before November~~
29 ~~1, a report shall be filed with the Department of Revenue showing all changes since the~~
30 ~~last report."~~

31 **SECTION 2.** G.S. 105-287(a) reads as rewritten:

32 "(a) In a year in which a general reappraisal or horizontal adjustment of real
33 property in the county is not made, the assessor shall increase or decrease the appraised
34 value of real property, as determined under G.S. 105-286, ~~to accomplish any one or~~
35 ~~more of the following:~~ to recognize a change in the property's value resulting from one
36 or more of the reasons listed in this subsection. The reason necessitating a change in the
37 property's value need not be under the control of or at the request of the owner of the
38 affected property.

39 (1) Correct a clerical or mathematical error.

40 (2) Correct an appraisal error resulting from a misapplication of the
41 schedules, standards, and rules used in the county's most recent general
42 reappraisal or horizontal adjustment.

43 (2a) Recognize an increase or decrease in the value of the property
44 resulting from a conservation or preservation agreement subject to

Article 4 of Chapter 121 of the General Statutes, the Conservation and Historic Preservation Agreements Act.

(2b) Recognize an increase or decrease in the value of the property resulting from a physical change to the land or to the improvements on the land, other than a change listed in subsection (b) of this section.

(2c) Recognize an increase or decrease in the value of the property resulting from a change in the legally permitted use of the property.

(3) Recognize an increase or decrease in the value of the property resulting from a factor other than one listed in subsection (b)."

SECTION 3. G.S. 105-296(j) reads as rewritten:

"(j) The assessor shall annually review one eighth of the parcels in the county classified for taxation at present-use value to verify that these parcels qualify for the classification. By this method, the assessor shall review the eligibility of all parcels classified for taxation at present-use value in an eight-year period. The assessor may require the owner of classified property to submit any information needed by the assessor to verify that the property continues to qualify for present-use value taxation. The assessor may require the owner of the classified property to submit any information needed by the assessor to verify that the property continues to qualify for present-use valuation. The owner has 30 days from the date a written request for the information is made to submit the information to the assessor. If the information is not made available to the assessor in the time allowed, the property may lose its present-use value classification and the property's deferred taxes become due and payable as provided in G.S. 105-277.4(c). The assessor must reinstate the property's present-use value classification when the owner submits the requested information unless the information discloses that the property no longer qualifies for present-use value classification."

SECTION 4. G.S. 105-296(l) reads as rewritten:

"(l) The assessor shall annually review at least one-eighth of the parcels in the county exempted or excluded from taxation to verify that these parcels qualify for the exemption or exclusion. By this method, the assessor shall review the eligibility of all parcels exempted or excluded from taxation in an eight-year period. The assessor may require the owner of exempt or excluded property to make available for inspection any information reasonably needed by the assessor to verify that the property continues to qualify for the exemption or exclusion. The owner has 30 days from the date a written request for the information is made to make the information available for inspection. If the information is not made available to the assessor in the time allowed, the property may lose its exemption or exclusion. The assessor must reinstate the property's exemption or exclusion when the owner makes the requested information available unless the information discloses that the property is no longer eligible for the exemption or exclusion."

SECTION 5. G.S. 105-296 is amended by adding a new subsection to read:

"(m) The assessor shall annually review the transportation corridor official maps and amendments to them filed with the register of deeds pursuant to Article 2E of Chapter 136 of the General Statutes. The assessor must indicate on all tax maps maintained by the county or city that portion of the properties embraced within a transportation

1 corridor and must note any variance granted for the property for such period as the
2 designation remains in effect. The assessor must tax the property within a transportation
3 corridor as required under G.S. 105-277.9."

4 **SECTION 6.** G.S. 105-322(e) reads as rewritten:

5 "(e) Time of Meeting. – Each year the board of equalization and review shall hold
6 its first meeting not earlier than the first Monday in April and not later than the first
7 Monday in May. In years in which a county does not conduct a real property
8 revaluation, the board shall complete its duties on or before the third Monday following
9 its first meeting unless, in its opinion, a longer period of time is necessary or expedient
10 to a proper execution of its responsibilities. ~~In no event shall~~ Except as provided in
11 subdivision (g)(5) of this section, the board may not sit later than July 1 except to hear
12 and determine requests made under the provisions of subdivision (g)(2), below, when
13 such requests are made within the time prescribed by law. In the year in which a county
14 conducts a real property revaluation, the board shall complete its duties on or before
15 December 1, except that it may sit after that date to hear and determine requests made
16 under the provisions of subdivision (g)(2), below, when such requests are made within
17 the time prescribed by law. From the time of its first meeting until its adjournment, the
18 board shall meet at such times as it deems reasonably necessary to perform its statutory
19 duties and to receive requests and hear the appeals of taxpayers under the provisions of
20 subdivision (g)(2), below."

21 **SECTION 7.** G.S. 105-322(g) reads as rewritten:

22 "(g) Powers and Duties. – The board of equalization and review has the following
23 powers and duties:

24 (1) ~~Powers and Duties.~~ ~~It shall be the duty of the board of equalization~~
25 ~~and review to~~ Duty to Review Tax Lists. – The board shall examine
26 and review the tax lists of the county for the current year to the end
27 that all taxable property shall be listed on the abstracts and tax records
28 of the county and appraised according to the standard required by G.S.
29 105-283, and the board shall correct the abstracts and tax records to
30 conform to the provisions of this Subchapter. In carrying out its
31 responsibilities under this subdivision (g)(1), the board, on its own
32 motion or on sufficient cause shown by any person, shall:

- 33 a. List, appraise, and assess any taxable real or personal property
34 that has been omitted from the tax lists.
35 b. Correct all errors in the names of persons and in the description
36 of properties subject to taxation.
37 c. Increase or reduce the appraised value of any property that, in
38 the board's opinion, ~~shall have~~ has been listed and appraised at a
39 figure that is below or above the appraisal required by G.S. 105-
40 283; however, the board shall not change the appraised value of
41 any real property from that at which it was appraised for the
42 preceding year except in accordance with the terms of G.S. 105-
43 286 and 105-287.

- 1 d. Cause to be done whatever else ~~shall be~~ is necessary to make
2 the lists and tax records comply with the provisions of this
3 Subchapter.
4 e. Embody actions taken under the provisions of subdivisions
5 (g)(1)a through (g)(1)d, above, in appropriate orders and have
6 the orders entered in the minutes of the board.
7 f. Give written notice to the taxpayer at ~~his~~ the taxpayer's last
8 known address in the event the ~~board~~ shall, board, by
9 appropriate order, ~~increase~~ increases the appraisal of any
10 property or ~~list~~ lists for taxation any property omitted from the
11 tax lists under the provisions of this subdivision (g)(1).

12 (2) Duty to Hear Taxpayer Appeals. – On request, the board of
13 equalization and review shall hear any taxpayer who owns or controls
14 property taxable in the county with respect to the listing or appraisal of
15 ~~his~~ the taxpayer's property or the property of others.

- 16 a. A request for a hearing under this subdivision (g)(2) shall be
17 made in writing to or by personal appearance before the board
18 prior to its adjournment. However, if the taxpayer requests
19 review of a decision made by the board under the provisions of
20 subdivision (g)(1), above, notice of which was mailed fewer
21 than 15 days prior to the board's adjournment, the request for a
22 hearing thereon may be made within 15 days after the notice of
23 the board's decision was mailed.
24 b. Taxpayers may file separate or joint requests for hearings under
25 the provisions of this subdivision (g)(2) at their election.
26 c. At a hearing under provisions of this subdivision (g)(2), the
27 board, in addition to the powers it may exercise under the
28 provisions of subdivision (g)(3), below, shall hear any evidence
29 offered by the appellant, the assessor, and other county officials
30 that is pertinent to the decision of the appeal. Upon the request
31 of an appellant, the board shall subpoena witnesses or
32 documents if there is a reasonable basis for believing that the
33 witnesses have or the documents contain information pertinent
34 to the decision of the appeal.
35 d. On the basis of its decision after any hearing conducted under
36 this subdivision (g)(2), the board shall adopt and have entered
37 in its minutes an order reducing, increasing, or confirming the
38 appraisal appealed or listing or removing from the tax lists the
39 property whose omission or listing has been appealed. The
40 board shall notify the appellant by mail as to the action taken on
41 ~~his~~ the taxpayer's appeal not later than 30 days after the board's
42 adjournment.

(3) Powers in Carrying Out Duties. – In the performance of its duties under subdivisions (g)(1) and (g)(2), above, the board of equalization and review may exercise the following powers:

a. It may appoint committees composed of its own members or other persons to assist it in making investigations necessary to its work. It may also employ expert appraisers in its discretion. The expense of the employment of committees or appraisers shall be borne by the county. The board may, in its discretion, require the taxpayer to reimburse the county for the cost of any appraisal by experts demanded by ~~him~~ the taxpayer if the appraisal does not result in material reduction of the valuation of the property appraised and if the appraisal is not subsequently reduced materially by the board or by the Department of Revenue.

b. The board, in its discretion, may examine any witnesses and documents. It may place any witnesses under oath administered by any member of the board. It may subpoena witnesses or documents on its own motion, and it must do so when a request is made under the provisions of subdivision (g)(2)c, above.

A subpoena issued by the board shall be signed by the ~~chairman~~ chair of the board, directed to the witness or to the person having custody of the document, and served by an officer authorized to serve subpoenas. Any person who willfully fails to appear or to produce documents in response to a subpoena or to testify when appearing in response to a subpoena shall be guilty of a Class 1 misdemeanor.

(4) Power to Submit Reports. – Upon the completion of its other duties, the board may submit to the Department of Revenue a report outlining the quality of the reappraisal, any problems it encountered in the reappraisal process, the number of appeals submitted to the board and to the Property Tax Commission, the success rate of the appeals submitted, and the name of the firm that conducted the reappraisal. A copy of the report should be sent by the board to the firm that conducted the reappraisal.

(5) Duty to Change Abstracts and Records After Adjournment. – Following adjournment upon completion of its duties under subdivisions (g)(1) and (g)(2) of this subsection, the board may continue to meet to carry out the following duties:

a. To hear and decide all appeals relating to discovered property under G.S. 105-312(d) and (k).

b. To hear and decide all appeals relating to the appraisal, situs, and taxability of classified motor vehicles under G.S. 105-330.2(b).

c. To hear and decide all appeals relating to audits conducted under G.S. 105-296(j) and relating to audits conducted under G.S. 105-296(j) and (l) of property classified at present-use value and property exempted or excluded from taxation."

SECTION 8. G.S. 105-330.4(b) reads as rewritten:

"(b) Subject to the provisions of G.S. 105-395.1, interest on unpaid taxes on classified motor vehicles listed pursuant to G.S. 105-330.3(a)(1) accrues at the rate of ~~three-fourths of one percent (3/4%) per month beginning~~ two percent (2%) for the first month following the date the taxes were due and three-fourths percent (3/4%) for each month thereafter until the taxes are paid, unless the tax notice required by G.S. 105-330.5 is prepared after the date the taxes are due. In that circumstance, the interest accrues beginning the second month following the date of the notice until the taxes are paid. Subject to the provisions of G.S. 105-395.1, interest on delinquent taxes on classified motor vehicles listed pursuant to G.S. 105-330.3(a)(2) accrues as provided in G.S. 105-360(a) and discounts shall be allowed as provided in G.S. 105-360(c)."

SECTION 9. G.S. 105-375(i) reads as rewritten:

"(i) Issuance of Execution. – At any time after ~~six~~ three months and before two years from the indexing of the judgment as provided in subsection (b), above, execution shall be issued at the request of the tax collector in the same manner as executions are issued upon other judgments of the superior court, and the real property shall be sold by the sheriff in the same manner as other real property is sold under execution with the following exceptions:

(1) No debtor's exemption shall be allowed.

(2) In lieu of personal service of notice on the owner of the property, registered or certified mail notice shall be mailed to the listing owner ~~(and to the current owner if notice was required to be mailed to him pursuant to subsection (c), above)~~ at this [his] the listing owner's last known address at least 30 days prior to the day fixed for the sale. The notice must also be mailed to the current owner by registered or certified mail if notice was required to be mailed to the current owner pursuant to subsection (c) of this section.

(3) The sheriff shall add to the amount of the judgment as costs of the sale any postage expenses incurred by the tax collector and the sheriff in foreclosing under this section.

(4) In any advertisement or posted notice of sale under execution, the sheriff may (and at the request of the governing body shall) combine the advertisements or notices for properties to be sold under executions against the properties of different taxpayers in favor of the same taxing unit or group of units; however, the property included in each judgment shall be separately described and the name of the listing taxpayer specified in connection with each.

1 The purchaser at the execution sale shall acquire title to the property in fee simple
2 free and clear of all claims, rights, interests, and liens except the liens of other taxes or
3 special assessments not paid from the purchase price and not included in the judgment."

4 **SECTION 10.** G.S. 131A-21 reads as rewritten:

5 **"§ 131A-21. Tax exemption.**

6 The exercise of the powers granted by this Chapter will be in all respects for the
7 benefit of the people of the State and will promote their health and welfare. If bonds or
8 notes are issued by the Commission to provide or improve a health care facility, then
9 until the bonds or notes are retired, the facility for which bonds or notes are issued is
10 exempt from property taxes to the extent provided in this section. If refunding bonds or
11 notes are issued to refund bonds or notes issued to provide or improve a health care
12 facility, the facility will continue to be exempt from property taxes as provided in this
13 section until such time as the refunding bonds or notes are retired, provided that the
14 final maturity of the refunding bonds or notes does not extend beyond the final maturity
15 of the original bonds or notes.

16 Property may be exempt from property taxes as provided in this section if a timely
17 application for the exemption is filed with the assessor of the county in which the
18 property is located as required under G.S. 105-282.1. The property tax exemption under
19 this section shall not exceed the lesser of the original principal amount of the bonds or
20 notes or the assessed value for ad valorem tax purposes of the facility. If bonds or notes
21 are issued to finance more than one health care facility, only that portion of the principal
22 amount of the bonds or notes used to provide or improve the particular facility,
23 including any allocable reserves and financing costs, may be considered for the purpose
24 of determining the amount of the exemption allowable under this section. The
25 exemption authorized by this section shall begin with the first full tax year of the
26 taxpayer following the issuance of the bonds and notes. This section does not affect a
27 health care facility's eligibility for a property tax exemption under Subchapter II of
28 Chapter 105 of the General Statutes.

29 Any bonds or notes issued by the Commission under the provisions of this Chapter
30 shall at all times be free from taxation by the State or any local unit or political
31 subdivision or other instrumentality of the State, excepting inheritance, estate, or gift
32 taxes, income taxes on the gain from the transfer of the bonds and notes, and franchise
33 taxes. The interest on the bonds and notes is not subject to taxation as income."

34 **SECTION 11.** Section 2 of this act becomes effective for taxes imposed for
35 taxable years beginning on or after July 1, 2002. Section 9 of this act becomes effective
36 July 1, 2001, and applies to an in rem foreclosure proceeding begun on or after that
37 date. Section 8 of this act becomes effective for taxes imposed for taxable years
38 beginning on or after July 1, 2001. The remainder of this act is effective when it
39 becomes law.

February 19, 2001

S 162. PROPERTY TAX AMENDMENTS. TO AMEND VARIOUS PROPERTY TAX LAWS.

Amendments to application for property tax exemption statute (GS 105-282.1). Deletes from list of property exempt from application property covered by GS 105-275(5) (vehicles US gov't provides to disabled veterans). Adds following classes of property to group requiring only a single application for exemption: property covered by GS 105-275, subsections (20) (certain properties owned by charities engaged in training and rehabilitation for the disabled), (35) (certain severable development rights), (36) (property of the NC Low-Level Radioactive Waste Mgt. Authority), (38) (property of the NC Hazardous Waste Mgt. Comm'n), (39) (certain properties held by nonprofits for public use by local gov't), and (41) art held by the NC Art Society); property classified for taxation at a reduced valuation under GS 105-277(h) (private water companies) and GS 105-277.13 (brownfield improvements); and property owned by a nonprofit homeowner's ass'n but whose value is included in the appraisals of members' property under GS 105-277.8. Requires that assessor, on or before Nov. 1 of each year, send a report to the Dep't of Revenue summarizing the roster of property granted tax relief through classification or exemption (now, must send a duplicate copy of roster). Requires that assessor annually review at least one-eighth of exempted parcels in the county to verify that they qualify for exemption. Adds labeling phrases to subsections of the statute, and makes other technical and conforming amendments.

Amendments to statute providing for changing real property appraised value in years with no general reappraisal or horizontal adjustment. Effective for taxes imposed for taxable years beginning on or after July 1, 2002, amends GS 105-287(a) to clarify that the reason necessitating change in value need not be under the control of, or at the request of, the owner. Adds two items to list of permitted reasons for change in appraisal value: (1) a change in property value resulting from a physical change to the land or improvement other than those specified by subsection (b) of the statute, and (2) a change in value resulting from a change in the legally permitted use of the property.

Changes in powers and duties of tax assessor (GS 105-296). Revises 105-296 (j) (annual review of parcels to verify classification at present-use value) to permit assessor to require property owner to submit information needed to verify qualification for present-use valuation. Gives owner 30 days to respond, permits removal of present-use value classification if response is inadequate, and provides for reinstatement of that classification. Provides similar process of owner response for subsection (l) (annual review of parcels to verify exemptions). Adds new subsection (m), requiring assessor to annually review transportation corridor maps and label and tax property according to GS Ch. 136, Art. 2E and GS 105-277.9.

Changes in authority of county board of equalization and review (GS 105-322). Adds new subsection (g)(5) permitting board to take following actions after adjournment: (1) handling appeals related to discovered property, (2) handling appeals related to appraisal, situs and taxability of certain motor vehicles, and (3) handling appeals related to certain audits. Makes conforming amendment permitting board to meet later than July 1 to carryout these duties. Makes other technical changes.

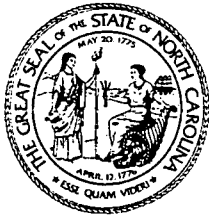
Other changes. Effective for taxable years beginning on or after July 1, 2001, amends GS 105-330.4(b) (unpaid taxes on classified motor vehicles) to change interest on unpaid taxes to 2% for the first month following tax due date, and $\frac{3}{4}$ % for each month after that (now, $\frac{3}{4}$ % throughout). Effective for proceedings begun on or after July 1, 2001, amends GS 105-375(i) (execution in in rem forfeiture) to permit execution after three months from indexing (now, after six months). Also adds requirement that notice be mailed by registered or certified mail if notice required by subsection (c) of statute. Amends GS 131A-21 (tax exemption) to provide that exemption is permitted if a timely application for exemption is filed as required by statute.

Intro. by Hartsell, Dalton, Hoyle, Kerr, Webster.

Ref. to Finance	GS 105, 131A
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March 7, 2001

S 162. PROPERTY TAX AMENDMENTS. Intro. 2/19/01. Senate amendment makes the following changes to 1st edition. Adds health care facilities exempted from property tax under GS 131A-21 to list of exempt property for which a single application (instead of an annual application) is required under proposed GS 105-282.1(a)(2).



SENATE BILL 162: Property Tax Amendments

BILL ANALYSIS

Committee: House Agriculture
Date: March 6, 2001
Version: 1st Edition

Introduced by: Sen. Hartsell
Summary by: Cindy Avrette
Committee Counsel

SUMMARY: *Senate Bill 162 is a recommendation of the Revenue Laws Study Committee. It makes several changes to the property tax laws recommended by the Department of Revenue, the Institute of Government, and the North Carolina Association of Assessing Officers. Except as otherwise noted in the summary, the changes become effective when they become law.*

- *It clarifies the application process for property tax exemptions and exclusions.*
- *It gives the assessor the authority to remove a property's preferential tax classification if the taxpayer does not provide the assessor with the information requested to verify the property's qualifications for the preferential tax classification.*
- *It gives all boards of equalization and review the authority to meet after its adjournment date to hear use value, exempt property, discoveries, and motor vehicle valuation cases.*
- *It clarifies the changes allowed in a non-reappraisal year.*
- *It shortens the waiting period for en rem foreclosures.*
- *It conforms the interest rate on unpaid motor vehicle taxes to the interest rate due on other unpaid property taxes.*

BILL ANALYSIS:

Exemption and Exclusion Application Provisions

Section 1 clarifies when an application for a property tax exemption or exclusion must be made. As a general rule, property tax exemptions and exclusions, and preferential property tax rates and values, must be applied for annually. However, some exemptions and exclusions may apply automatically, while others need to be applied for only once. The Department of Revenue, Property Tax Division, undertook a thorough examination of the exemptions and exclusions and their application process. This section represents its suggestion of the appropriate application time period for all of the property tax exemptions and exclusions. In most instances, the time period remains the same. However, in a few instances, annual application classifications are moved to a single application requirement: severable development rights; real and personal property belonging to the NC Low-Level Radioactive Waste Management Authority or to the NC Hazardous Waste management Commission; objects of art held by the NC Art Society; property of private water companies; and Brownfields property. In four instances, the application period is changed so that the preferential classification attaches automatically without the property owner needing to apply at all: poultry, livestock, and feed used in the production of poultry and livestock; vehicles subject to the gross receipts tax on short-term rentals; buildings equipped with a solar energy heating or cooling system; real property that lies within a transportation corridor.

Sections 1 and 10 clarify that the tax exemption for health care facilities financed with Medical Care Commission bonds must be applied for in a timely manner on an annual basis. *The amendment would provide that health care facilities financed with Medical Care Commission bonds would need to apply for the property tax exclusion once.* The life of the bonds may extend for 30 years. An annual application would be cumbersome and unnecessary. The property loses its eligibility for the exclusion once the bonds are retired. The amount of the exclusion may not exceed the lesser of the original principal amount of the bonds

SENATE BILL 162

Page 2

or the assessed value of the facility for property tax purposes.

Clarify Changes Allowed in a Non-revaluation Year

Effective for taxes imposed for taxable years beginning on or after July 1, 2002, Section 2 provides additional reasons the assessor may increase or decrease a property's value during a non-revaluation year:

- A change in value resulting from a physical change to the land or to the improvements on the land, such as an addition to a structure.
- A change in value resulting from a change in the legally permitted use of the property, such as a zoning change.

Annual Review of Property with Preferential Tax Treatment

Sections 3 and 4 provides that property may lose its preferential tax status if the owner of the property does not make information necessary to determine the property's preferential treatment available to the tax assessor when asked to do so. Under current law, the assessor must annually review 1/8 of the properties exempt or excluded from taxation to verify that they continue to qualify for their exemption or exclusion. Likewise, the assessor must annually review 1/8 of the properties classified for present-use value to verify that they qualify for the preferential tax value. The law requires the owner to provide the information requested by the assessor to determine the property's qualifications for the exemption or exclusion. However, the current law does not provide a consequence if the owner fails to give the requested information to the assessor. These sections seek to give the assessor a means to obtain the information that is needed to verify the property's preferential tax classification when the owner is not willing to cooperate.

Section 5 requires the assessor to annually review the transportation corridor official maps and amendments to them. These properties are currently taxed at 20% of the general tax rate.

Allow E&R Board to Meet After Adjournment to Hear Use Value, Exempt Property, Discoveries, and Motor Vehicle Cases

Sections 6 and 7 provide that a county board of equalization and review may meet after its adjournment date to hear appeals relating to motor vehicle property taxes, discoveries, and property reviewed annually to determine its continued qualification for exemption or exclusion. Currently, Cabarrus, Lincoln, and Stokes Counties have this local authority.

Interest Rate on Unpaid Motor Vehicle Taxes

Section 8 conforms the interest rate due on unpaid motor vehicle taxes to the interest rate due on other unpaid property taxes: 2% for the first month following the date the taxes were due and ¾% for each month thereafter. Under current law, the amount of interest due on unpaid motor vehicle taxes is ¾% per month. This amount is not enough to encourage people to pay their tax in a timely manner. This change in the law becomes effective for taxes imposed for taxable years beginning on or after July 2, 2001.

Shorten Waiting Period in En Rem Foreclosures

Section 9 shortens the waiting period in en rem foreclosures from six month to three months. Current law allows a property tax judgment to be executed at any time after six months and before two years from the indexing of the judgment. This change would allow the judgment to be acted upon within three months of the date the judgment is indexed. This change becomes effective July 1, 2001, and applies to en rem foreclosure proceedings begun on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

H

D

HOUSE BILL 218
PROPOSED COMMITTEE SUBSTITUTE H218-CSST-14 [v.2]

4/13/2001 8:30:29 AM

Short Title: Injury to Commodities or Production Systems.

(Public)

Sponsors:

Referred to:

February 22, 2001

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR TREBLE DAMAGES FOR THE INJURY TO, OR THE
3 DESTRUCTION OF, AGRICULTURAL COMMODITIES OR PRODUCTION
4 SYSTEMS.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. Article 43 of Chapter 1 of the General Statutes is amended by
7 adding a new section to read:

8 "§ 1-539.2B. Treble damages for injury to agricultural commodities or production
9 systems; additional damages for certain agricultural commodities or
10 production systems.

11 (a) Any person who willfully injures or destroys any other person's agricultural
12 commodities or production system is liable for three times the value of the commodities
13 or production system injured or destroyed.

14 (b) For purposes of this section, the value of agricultural commodities that are
15 grown for educational, testing, or research purposes include all of the following:

16 (1) The diminution in market value of the commodities when the
17 commodities were grown for sale and the plaintiff is the entity who
18 sold the commodities or would have sold the commodities but for their
19 injury or destruction.

20 (2) Costs to the plaintiff for research and development of the injured or
21 destroyed commodities.

22 (3) Other incidental and consequential damages proven to have been
23 incurred by the plaintiff.

24 (c) For the purpose of this section the following definitions apply:

25 (1) 'Agricultural Commodities' means commodities produced from the
26 cultivation of soil or hydroponics or any other method of production
27 for production of crops, including fruits, vegetables, flowers and
28 ornamental plants, the planting and production of trees, timber, forests
29 or forest products, and the raising of livestock and poultry and eggs.

1 for individual and public use, consumption and marketing. The term
2 'agricultural commodities' also includes seed, genetic material, tissue
3 cultures and any research and development materials, information and
4 records. Further, for the purposes of this section, aquaculture is
5 considered a form of agriculture pursuant to G.S. 106-758.

6 (2) 'Production Systems' means land, buildings, and equipment used in the
7 production of agricultural commodities."

8 **SECTION 2.** This act becomes effective October 1, 2001, and applies to acts
9 that occur on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

H

2

HOUSE BILL 218
Committee Substitute Favorable 4/19/01

Short Title: Injury to Commodities or Production Systems.

(Public)

Sponsors:

Referred to:

February 22, 2001

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR TREBLE DAMAGES FOR THE INJURY TO, OR THE
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15 grown for educational, testing, or research purposes includes all of the following:

16 (1) The diminution in market value of the commodities when the
17 commodities were grown for sale and the plaintiff is the entity who
18 sold the commodities or would have sold the commodities but for their
19 injury or destruction.

20 (2) Costs to the plaintiff for research and development of the injured or
21 destroyed commodities.

22 (3) Other incidental and consequential damages proven to have been
23 incurred by the plaintiff.

24 (c) For the purpose of this section, the following definitions apply:

25 (1) 'Agricultural commodities' means commodities produced from the
26 cultivation of soil or hydroponics or any other method of production
27 for production of crops, including fruits, vegetables, flowers and
28 ornamental plants, the planting and production of trees, timber, forests
29 or forest products, and the raising of livestock and poultry and eggs,

1 for individual and public use, consumption, and marketing. The term
2 'agricultural commodities' also includes seed, genetic material, tissue
3 cultures and any research and development materials, information, and
4 records. Further, for the purposes of this section, aquaculture is
5 considered a form of agriculture pursuant to G.S. 106-758.

6 (2) 'Production systems' means land, buildings, and equipment used in the
7 production of agricultural commodities."

8 **SECTION 2.** This act becomes effective October 1, 2001, and applies to acts
9 that occur on or after that date.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

H

D

HOUSE BILL 769
PROPOSED COMMITTEE SUBSTITUTE H769-PCS3398-RF-12

Short Title: Agric. Fairs Advisory Council/Grant Funds.

(Public)

Sponsors:

Referred to:

March 26, 2001

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH THE AGRICULTURAL FAIRS ADVISORY COUNCIL
AND TO APPROPRIATE FUNDS FOR GRANTS FOR LOCAL
AGRICULTURAL FAIRS.

The General Assembly of North Carolina enacts:

SECTION 1. Part 4 of Article 45 of Chapter 106 of the General Statutes is amended by adding a new section to read:

"§ 106-520.8. Agricultural Fairs Advisory Council.

The Agricultural Fairs Advisory Council is created. The Commissioner of Agriculture shall appoint the members of the Agricultural Fairs Advisory Council. The Advisory Council shall consist of up to 15 members, representing all geographic regions of the State and representing local and county agricultural fairs, commodity associations, farm organizations, or persons having an interest in agricultural fairs. The members of the Agricultural Fairs Advisory Council shall serve at the pleasure of the Commissioner of Agriculture. The Commissioner or the Commissioner's designee shall serve as Chair of the Advisory Council. The Advisory Council shall meet at the call of the Chair for the purpose of advising the Commissioner of Agriculture on the distribution of grants to local agricultural fairs licensed under this Article from funds appropriated by the General Assembly for this purpose."

SECTION 2. There is appropriated from the General Fund to the Department of Agriculture and Consumer Services the sum of three hundred thousand dollars (\$300,000) for the 2002-2003 fiscal year to be used for grants to local agricultural fairs licensed under Article 45 of Chapter 106 of the General Statutes and to be distributed by the Commissioner of Agriculture. No grant to an individual local agricultural fair shall exceed seven thousand five hundred dollars (\$7,500). The Commissioner of Agriculture may seek advice on the distribution of these grants from the Agricultural Fairs Advisory Council, created in G.S. 106-520.8, as enacted in Section 1 of this act.

SECTION 3. This act becomes effective July 1, 2001.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

H

1

HOUSE BILL 769

Short Title: Agric. Fairs Advisory Council/Grant Funds.

(Public)

Sponsors: Representatives Hill; Wainwright and Barefoot.

Referred to: Agriculture, if favorable, Appropriations.

March 26, 2001

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH THE AGRICULTURAL FAIRS ADVISORY COUNCIL
3 AND TO APPROPRIATE FUNDS FOR GRANTS FOR LOCAL
4 AGRICULTURAL FAIRS.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. Part 4 of Article 45 of Chapter 106 of the General Statutes is
7 amended by adding a new section to read:

8 "**§ 106-520.8. Agricultural Fairs Advisory Council.**

9 The Agricultural Fairs Advisory Council is created. The Commissioner of
10 Agriculture may appoint the members of the Agricultural Fairs Advisory Council. The
11 Advisory Council may consist of up to 15 members, who shall represent local and
12 county agricultural fairs, commodity associations, farm organizations, or persons having
13 an interest in agricultural fairs. The members of the Agricultural Fairs Advisory Council
14 shall serve at the pleasure of the Commissioner of Agriculture. The Commissioner or
15 the Commissioner's designee shall serve as Cochair of the Advisory Council. The
16 Advisory Council shall meet at the call of the Cochair for the purpose of advising the
17 Commissioner of Agriculture on the distribution of grants to local agricultural fairs
18 licensed under this Article from funds appropriated by the General Assembly for this
19 purpose."

20 SECTION 2. There is appropriated from the General Fund to the
21 Department of Agriculture and Consumer Services the sum of three hundred thousand
22 dollars (\$300,000) for the 2002-2003 fiscal year to be used for grants to local
23 agricultural fairs licensed under Article 45 of Chapter 106 of the General Statutes and to
24 be distributed by the Commissioner of Agriculture. The Commissioner of Agriculture
25 may seek advice on the distribution of these grants from the Agricultural Fairs Advisory
26 Council, created in G.S. 106-520.8, as enacted in Section 1 of this act.

27 SECTION 3. This act becomes effective July 1, 2001.

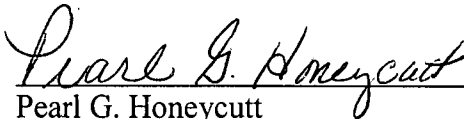
MINUTES
HOUSE AGRICULTURE COMMITTEE

April 19, 2001

The House Agriculture Committee met on Thursday, April 19, 2001 in Room 425 of the Legislative Office Building. Chairman Hill called the meeting to order at 10:00 a.m. Members in attendance were: Chairman Hill; Vice Chairmen Leslie Cox, W. B. Teague, Jr., Nurham Warwick; members Charles Buchanan, Lorene Coates, Don Davis, Rick Eddins, Stanley Fox, Mark Hilton, Joe Kiser, Frank Mitchell, Gene Rogers, Carolyn Russell, Joe Tolson, Russell Tucker, Alice Underhill, Edith Warren, Gene Wilson, and Douglas Yongue.

Chairman Hill called on Representative Warwick to explain House Bill 1318, "Farm Machinery Franchise Law". A major flaw has been found in the Bill on page 8, lines 28-37. This will be corrected in a Committee Substitute Bill and brought back to the Committee. Roger Bone and Walter Cherry, lobbyists, were recognized and spoke on the Bill. The language has been agreed on with manufacturers and similar legislation passed in other states. HB 1318 is patterned after the Tennessee Bill. It addresses the issue of the manufacturer repurchasing from the local franchise supplier all inventory that remains unsold when a local dealer has to declare bankruptcy. To this time, there has been no protection for local dealers in such an instance. There were questions from Representative Fox as to the extent of what would be covered for repurchase.

Chairman Hill told the committee that a Committee Substitute would be prepared and on the agenda for the next meeting. He adjourned the meeting at 10:45 a.m.



Pearl G. Honeycutt
Committee Clerk



Dewey L. Hill
Chairman

Attachments:

1. Committee Meeting Notice
2. Visitor Registration Sheet
3. House Bill #1318
4. Bill Summary

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE
2001-2002 SESSION**

You are hereby notified that the Committee on **AGRICUL^TURE** will meet as follows:

DAY & DATE: THURSDAY, APRIL 19, 2001

TIME: 10:00 a.m.

LOCATION: ROOM 425 LOB

The following bills will be considered (Bill # & Short Title & Bill Sponsor):

**HOUSE BILL #1318 FARM MACHINERY FRANCHISE LAW - Representatives
Warwick, Cole, Culpepper, and Brubaker**

Respectfully,

Representatives Dewey L. Hill
Co-chairs

I hereby certify this notice was filed by the committee clerk at the following offices at
2:35 p.m. on April 18, 2001.

____Principal Clerk
____Reading Clerk - House Chamber

Pearl Honeycutt (Committee Assistant)

VISITOR REGISTRATION SHEET

AGRICULTURE

Name of Committee

APRIL 19, 2001

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

LeCherry

Bone & Assoc

Robert Bone

Bone & Assoc

David Muddick

N L State Grange

4/19

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

H

1

HOUSE BILL 1318

Short Title: Farm Machinery Franchise Law.

(Public)

Sponsors: Representatives Warwick, Cole, Culpepper, Brubaker (Primary Sponsors); Smith, Thompson, Mitchell, and Cox.

Referred to: Agriculture.

April 12, 2001

A BILL TO BE ENTITLED
AN ACT TO AMEND AND CLARIFY THE FARM MACHINERY FRANCHISE
LAW.

The General Assembly of North Carolina enacts:

SECTION 1. Article 26 of Chapter 66 of the General Statutes reads as rewritten:

"Article 26.

"Farm Machinery ~~Franchises~~. Agreements.

"§ 66-180. Definitions.

As used in this Article, unless the context requires otherwise:

- (1) "Agreement" means a written or oral contract or agreement between a dealer and a wholesaler, manufacturer, or distributor by which the dealer is granted the right to sell or distribute goods or services, or use a trade name, trademark, service mark, logo type, or advertising or other commercial symbol.
- (2) "Current model" means a model listed in the wholesaler's, manufacturer's, or distributor's current sales manual or any supplements thereto.
- (4)(3) "Current net price" means the price listed in the supplier's price list or catalog in effect at the time the franchise agreement is terminated, less any applicable discounts allowed.
- (2)(4) "Dealer" means a person engaged in the business of selling at retail farm, utility or industrial, equipment, implements, machinery, attachments, outdoor power equipment, or repair parts.
- (5) "Family member" means a spouse, child, son-in-law or daughter-in-law, or a lineal descendant of the dealer or principal owner of the dealership.

- (3) ~~"Franchise agreement" means a written or oral contract or agreement between a dealer and a wholesaler, manufacturer, or distributor by which the dealer is granted the right to sell or distribute goods or services, or use a trade name, trademark, service mark, logo type, or advertising or other commercial symbol.~~
- (6) "Good cause" means failure by a dealer to comply with requirements imposed upon the dealer by the retail agreement if the requirements are not different from those imposed on other dealers similarly situated in this State.
- (4)(7) ~~"Inventory" means farm, utility, or industrial equipment, implements, machinery, farm implements and machinery, construction, utility and industrial equipment, consumer products, outdoor power equipment, attachments, or repair parts. These terms do not include heavy construction equipment.~~
- (5)(8) "Net cost" means the price the dealer paid the supplier for the inventory, less all applicable discounts allowed, plus the amount the dealer paid for freight costs from the supplier's location to the dealer's location, plus reasonable cost of assembly or disassembly performed by the dealer.
- (6)(9) "Supplier" means a wholesaler, manufacturer, ~~or distributor~~ distributor, or any purchaser of assets or stock of any surviving corporation resulting from a merger of liquidation, any receiver or assignee, or any trustee of the original manufacturer, wholesaler, or distributor who enters into a franchise an agreement with a dealer.
- (10) "Superseded part" means any part that will provide the same function as a currently available part as of the date of cancellation.
- (7)(11) ~~"Termination" of a franchise an~~ agreement means the termination, cancellation, nonrenewal, or noncontinuance of the agreement.

§ 66-181. Usage of trade.

The terms "utility" and "industrial", when used to refer to equipment, implements, machinery, attachments, or repair parts, shall have the meaning commonly used and understood among dealers and suppliers of farm equipment as a usage of trade in accordance with G.S. 25-1-205(2)."

§ 66-182. Notice of termination of franchise agreements.

(a) ~~Notwithstanding any agreement to the contrary, a supplier who terminates a franchise agreement with a dealer shall notify the dealer of the termination not less than 90 days prior to the effective date of the termination; however, the supplier may immediately terminate the agreement at any time after the occurrence of any of the following events: No supplier, directly or through an officer, agent, or employee may terminate, cancel, fail to review, or substantially change the competitive circumstances of a retail agreement without good cause. "Good cause" means failure by a dealer to comply with the requirements imposed upon the dealer by the agreement if those requirements are not different from those imposed on other dealers similarly situated in this State. In addition, good cause exists in any of the following circumstances:~~

- 1 (1) A petition under bankruptcy or receivership law has been filed against
2 the ~~dealer~~; dealer.
- 3 (2) The dealer has made an intentional misrepresentation with the intent to
4 defraud the ~~supplier~~; supplier.
- 5 (3) Default by the dealer under a chattel mortgage or other security
6 agreement between the dealer and the ~~supplier~~; supplier or there has
7 been a revocation or discontinuance of a guarantee of a present or
8 future obligation of the retailer to the supplier.
- 9 (4) Closeout or sale of a substantial part of the dealer's business related to
10 the handling of goods; the commencement or dissolution or liquidation
11 of the dealer if the dealer is a partnership or corporation; or a change,
12 without the prior written approval of the ~~supplier~~; supplier (which shall
13 not be unreasonably withheld), in the location of the dealer's principal
14 place of business or added locations under the ~~agreement~~; agreement.
- 15 (5) Withdrawal of an individual proprietor, partner, major shareholder, or
16 manager of the dealership, or a substantial reduction in interest of a
17 partner or major shareholder, without the prior written consent of the
18 ~~supplier~~; or supplier.
- 19 (6) Revocation or discontinuance of any guarantee of the dealer's present
20 or future obligations to the supplier.
- 21 (7) The equipment dealer has failed to operate in the normal course of
22 business for seven consecutive days or has otherwise abandoned the
23 business.
- 24 (8) The dealer has pleaded guilty to or has been convicted of a felony
25 affecting the relationship between the dealer and the supplier.
- 26 (9) The dealer transfers an interest in the dealership, or a person with a
27 substantial interest in the ownership or control of the dealership,
28 including an individual proprietor, partner, or major shareholder,
29 withdraws from the dealership or dies, or a substantial reduction
30 occurs in the interest of a partner or major shareholder in the
31 dealership. However, good cause does not exist if the supplier consents
32 to an action described in this subdivision.

33 (b) Notwithstanding any agreement to the contrary, a dealer who terminates a an
34 agreement with a supplier shall notify the supplier of the termination not less than ~~30~~ 90
35 days prior to the effective date of the termination.

36 (b1) A supplier shall provide a dealer with at least 90 days' written notice of
37 termination of the agreement and a 60-day right-to-cure the deficiency. If the deficiency
38 is cured within the allotted time, the notice is void. In the case where cancellation is
39 enacted due to market penetration, a minimum 12-month period of time shall have
40 existed where the supplier has worked with the dealer to gain the desired market share.
41 The notice shall state all reasons constituting good cause of action. The notice is not
42 required if the reason for termination is violation under the provisions of subsection (a)
43 of this section.

(c) Notification under this section shall be in writing and shall be by certified mail or personally delivered to the recipient. It shall contain:

- (1) A statement of intention to terminate the ~~franchise, dealership;~~
- (2) A statement of the reasons for the ~~termination;~~ termination; and
- (3) The date on which the termination takes effect.

"§ 66-183. Supplier's duty to repurchase.

(a) Whenever a dealer enters into a ~~franchise~~ an agreement in which the dealer agrees to maintain an inventory, and the agreement is terminated by either party, the supplier shall repurchase the dealer's inventory as provided in this Article unless the dealer chooses to keep the inventory. If the dealer has any outstanding debts to the supplier, then the repurchase amount may be set off or credited to the retailer's account.

(b) Whenever a dealer enters into a ~~franchise~~ an agreement in which the dealer agrees to maintain an inventory, and the dealer or the majority stockholder of the dealer, if the dealer is a corporation, dies or becomes incompetent, the supplier shall, at the option of the heir, personal representative, or guardian of the dealer, or the person who succeeds to the stock of the majority stockholder, repurchase the inventory as if the agreement had been terminated. The heir, personal representative, guardian, or succeeding stockholder has one year from the date of the death of the dealer or majority stockholder to exercise the option under this Article.

"§ 66-184. Repurchase terms.

(a) The supplier shall repurchase from the dealer within 90 days after termination of the ~~franchise~~ agreement all inventory previously purchased from the supplier that remains unsold on the date of termination of the agreement.

(b) The supplier shall pay the dealer: *current net price*

- (1) One hundred percent (100%) of the current net ~~cost~~ price of all new, unused, unsold, undamaged, and complete farm, utility, and industrial equipment, implements, machinery, outdoor power equipment, and attachments, ~~less a reasonable allowance for deterioration attributable to weather conditions at the dealer's location; attachments;~~
- (2) Ninety percent (90%) of the current net price of all new, unused, superseded, undamaged repair parts; and
- (3) ~~Eighty five percent (85%) of the current net price of all new, unused, undamaged, superseded repair parts.~~
Seventy-five percent (75%) of the net cost of all specialized repair tools purchased in the previous three years and fifty percent (50%) of the net cost of all specialized repair tools purchased in the previous four through six years pursuant to the requirements of the supplier and held by the dealer on the date of termination. Such specialized repair tools shall be unique to the supplier's product line and shall be in complete and resalable condition. Farm implements, machinery, utility and industrial equipment, and outdoor power equipment used in demonstrations, including equipment leased primarily for demonstration or lease, shall also be subject to repurchase under this

1 section at its agreed depreciated value, provided the equipment is in
2 new condition and has not been damaged; and

3 (4) At its amortized value, the price of any specific data processing
4 hardware and software and telecommunications equipment that the
5 supplier required the dealer to purchase within the past five years.

6 (e) The supplier may, within 90 days after the date of termination of the franchise
7 agreement, audit the dealer's books or records to verify the eligibility of the inventory
8 for repurchase.

9 (d) The supplier shall pay the cost of shipping the inventory from the dealer's
10 location and shall pay the dealer five percent (5%) ten percent (10%) of the current net
11 price of all new, unused, undamaged repair parts returned, to cover the cost of handling,
12 packing, and loading. The supplier may perform the handling, packing, and loading
13 instead of paying the five percent (5%) ten percent (10%) for the services. The dealer
14 and the supplier may each furnish a representative to inspect all parts and certify their
15 acceptability when packed for shipment.

16 (e) The supplier shall pay the full repurchase amount to the dealer not later than
17 30 days after receipt of the inventory. If the dealer has any outstanding debts to the
18 supplier, then the repurchase amount may be credited to the dealer's account.

19 (f) Upon payment of the repurchase amount to the dealer, the title and right of
20 possession to the repurchased inventory shall transfer to the supplier. Annually, at the
21 end of each calendar year, after termination or cancellation, the dealer's reserve account
22 for recourse, retail sale, or lease contracts shall not be debited by a supplier or lender for
23 any deficiency unless the dealer or the heirs of the dealer have been given at least seven
24 business days' notice by certified or registered United States mail, return receipt
25 requested, of any proposed sale of the equipment financed and an opportunity to
26 purchase the equipment. The former dealer or the heirs of the dealer shall be given
27 quarterly status reports on any remaining outstanding recourse contracts. As the
28 recourse contracts are reduced, any reserve account funds shall be returned to the dealer
29 or the heirs of the dealer in direct proportion to the liabilities outstanding.

30 (g) In the event of the death of the dealer or the majority stockholder of a
31 corporation operating as a dealer, the supplier shall, at the option of the heir, repurchase
32 the inventory from the heir of the dealer or majority stockholder as if the supplier had
33 terminated the agreement. The heir shall have one year from the date of the death of the
34 dealer or majority stockholder to exercise the heir's options under this section. Nothing
35 in this section shall require the repurchase of any inventory if the heir and the supplier
36 enter into a new agreement to operate the retail dealership.

37 (h) A supplier shall have 90 days in which to consider and make a determination
38 upon a request by a family member to enter into a new agreement to operate the
39 dealership. In the event the supplier determines that the requesting family member is not
40 acceptable, the supplier shall provide the family member with a written notice of its
41 determination with the stated reasons for nonacceptance. This section does not entitle an
42 heir, personal representative, or family member to operate a dealership without the
43 specific written consent of the supplier.

*current
the dealer
needs to
be looked
at*

(i) Notwithstanding the provisions of this section, in the event that a supplier and a dealer have executed an agreement concerning succession rights prior to the dealer's death, and if the agreement has not been revoked, that agreement shall be enforced even if it designates someone other than the surviving spouse or heir of the decedent as the successor.

"§ 66-185. Exceptions to repurchase requirement.

This Article does not require the repurchase from a dealer of:

- (1) A repair part with a limited storage life or otherwise subject to deterioration, such as gaskets or batteries, except for industrial "press on" or industrial pneumatic tires;
- (2) A single repair part that is priced as a set of two or more items;
- (3) A repair part that, because of its condition, is not resalable as a new part without repackaging or reconditioning;
- (3a) Any repair part that is not in new, unused, undamaged condition;
- (4) An item of inventory for which the dealer does not have title free of all claims, liens, and encumbrances other than those of the supplier;
- (5) Any inventory that the dealer chooses to keep;
- (6) Any inventory that was ordered by the dealer after either party's receipt of notice of termination of the franchise agreement; and
- (6a) Any farm implements and machinery, construction, utility and industrial equipment, outdoor power equipment, and attachments that are not current models or that are not in new, unused, undamaged, complete condition, provided that the equipment used in demonstrations or leased, as provided in G.S. 66-184, shall be considered new and unused;
- (6b) Any farm implements and machinery, construction, utility and industrial equipment, outdoor power equipment, and attachments that were purchased more than 36 months prior to notice of termination of the agreement; and *a new model of the 36 3 up.*
- (7) Any inventory that was acquired by the dealer from a source other than the supplier.

"§ 66-186. Uniform commercial practice.

(a) This Article does not affect a security interest of the supplier in the inventory of the dealer.

(b) A repurchase of inventory under this Article shall not be subject to the bulk sales provisions of Article 6 of Chapter 25 of the General Statutes.

(c) The dealer and supplier shall furnish representatives to inspect all parts and certify their acceptability when packed for shipment. Failure of the supplier to provide a representative within 60 days shall result in automatic acceptance by the supplier of all returned items.

"§ 66-187. Warranty obligations.

(a) Whenever a supplier and a dealer enter into a ~~franchise~~ an agreement, the supplier shall pay any warranty claim made by the dealer for warranty parts or service within 30 days after its approval. The supplier shall approve or disapprove a warranty

1 claim within 30 days after its receipt. If a claim is disapproved, the manufacturer,
2 wholesaler, or distributor shall notify the dealer within 30 days stating the specific
3 grounds upon which the disapproval is based. If a claim is not specifically disapproved
4 in writing within 30 days after its receipt it is approved and payment must follow within
5 30 days.

6 (b) Whenever a supplier and a dealer enter into a ~~franchise~~ an agreement, the
7 supplier shall indemnify and hold harmless the dealer against any judgment for damages
8 or any settlement agreed to by the supplier, including court costs and a reasonable
9 attorney's fee, arising out of a complaint, claim, or lawsuit including negligence, strict
10 liability, misrepresentation, breach of warranty, or rescision of the sale, to the extent the
11 judgment or settlement relates to the manufacture, assembly, or design of inventory, or
12 other conduct of the supplier beyond the dealer's control.

13 (b1) If, after termination of an agreement, the dealer submits a claim to the
14 manufacturer, wholesaler, or distributor for warranty work performed prior to the
15 effective date of the termination, the manufacturer, wholesaler, or distributor shall
16 accept or reject the claim within 30 days of receipt.

17 (c) If a claim is not paid within the time allowed under this section, interest shall
18 accrue at the maximum lawful interest rate.

19 (d) Warranty work performed by the dealer shall be compensated in accordance
20 with the reasonable and customary amount of time required to complete the work,
21 expressed in hours and fractions thereof. The cost of the work shall be computed by
22 multiplying the time required to complete the work by the dealer's established customer
23 hourly retail labor rate. The dealer shall inform the manufacturer, wholesaler, or
24 distributor for whom the dealer is performing warranty work of the dealer's established
25 customer hourly retail labor rate before the dealer performs any work.

26 (e) Expenses expressly excluded under the warranty of the manufacturer,
27 wholesaler, or distributor to the customer shall neither be included nor required to be
28 paid for warranty work performed, even if the dealer requests compensation for the
29 work performed.

30 (f) All parts used by the dealer in performing the warranty work shall be paid to
31 the dealer in the amount equal to the dealer's net price for the parts, plus a minimum of
32 fifteen percent (15%). The additional amount is to reimburse the dealer for the
33 reasonable cost of doing business in performing the warranty service on behalf of the
34 manufacturer, wholesaler, or distributor, including freight and handling costs incurred.

35 (g) The manufacturer, wholesaler, or distributor has a right to adjust
36 compensation for errors discovered during an audit and, if necessary, to adjust claims
37 paid in error.

38 (h) The dealer shall have the right to accept the reimbursement terms and
39 conditions of the manufacturer, wholesaler, or distributor in lieu of the terms and
40 conditions of this section.

41 **"§ 66-187.1. Prohibited acts.**

42 No supplier shall:

43 (1) Coerce any dealer to accept delivery of equipment, parts, or
44 accessories which the dealer has not ordered voluntarily, except as

1 required by any applicable law, or unless the parts or accessories are
2 safety parts or accessories required by the supplier;

3 (2) Condition the sale of additional equipment to a dealer upon a
4 requirement that the dealer also purchase other goods or services,
5 except that a supplier may require the dealer to purchase those parts
6 reasonably necessary to maintain the quality of operation in the field of
7 the equipment used in the trade area;

8 (3) Coerce a dealer into refusing to purchase equipment manufactured by
9 another supplier; or

10 (4) Terminate, cancel, or fail to renew or substantially change the
11 competitive circumstances of the retail agreement based on the results
12 of any circumstance beyond the dealer's control, including a natural
13 disaster such as a sustained drought, high unemployment in the
14 dealership market area, or a labor dispute.

15 **"§ 66-188. Failure to repurchase; civil remedy.**

16 (a) If a supplier fails or refuses to repurchase any inventory covered under the
17 provisions of this Article within the time periods established in G.S. 66-184, the
18 supplier is civilly liable for one hundred percent (100%) of the current net price of the
19 inventory, any freight charges paid by the dealer, the dealer's reasonable attorney's fee
20 and court costs, and interest on the current net price of the inventory computed at the
21 legal rate of interest from the 91st day after termination of the franchise agreement.

22 (b) Notwithstanding any agreement to the contrary, and in addition to any other
23 legal remedies available, any person who suffers monetary loss due to a violation of this
24 Article or because he refuses to accede to a proposal for an arrangement that, if
25 consummated, is in violation of this Article, may bring a civil action to enjoin further
26 violations and to recover damages sustained by him together with the costs of the suit,
27 including a reasonable attorney's fee.

28 (b1) The provisions of this Article shall apply to all contracts and shall apply to all
29 agreements in effect which have no expiration date and are a continuing contract and
30 shall apply to all other contracts entered into, amended, extended, ratified, or renewed
31 after October 1, 1985. The provisions of this section shall apply to and be binding upon
32 all suppliers, all successors in interest or purchasers of assets or stock of suppliers, and
33 all receivers, trustees, or assignees of suppliers. Any contractual term restricting the
34 procedural or substantive rights of a dealer under this Article, including a choice of law
35 or choice of forum clause, is void.

36 (b2) The provisions of this section shall not be waivable in any contract or
37 agreement, and any such attempted waiver shall be null and void.

38 (c) A civil action commenced under the provisions of this Article shall be
39 brought within four years after the violation complained of is or reasonably should have
40 been discovered, whichever occurs first."

41 **SECTION 2.** This act becomes effective October 1, 2001.

HB 1318

Short Title: Farm Machinery Franchise Law

Bill Summary

To: Members of the House Agriculture Committee

From: Rep. Nurham Warwick

General:

1. This bill amends and updates North Carolina law that was passed in 1985.
2. It basically clarifies the responsibility of manufacturers, wholesalers or distributors to local dealerships with which there is a franchise type agreement in the event that the dealership closes.
3. It also clarifies the warranty obligations that suppliers have to dealerships with which they have a franchise agreement.
4. It also spells out certain acts that are prohibited by suppliers.
5. This bill will effect approximately 100 dealers in North Carolina with an average inventory of approximately \$2.5 million (NC, VA, MD, SC, WV, DL) and annual sales of \$5 million (same 6 states)
6. This act applies to all contracts executed after October 1, 1985 (page 8; lines 28-35)

Major New Provisions:

1. No supplier may terminate an agreement without "Good Cause" (page 2; line 39)
2. Supplier shall provide dealer with at least 90 days notice of termination and a 60 day right-to-cure (page 3; line 36)
3. Repurchase terms: (page 4; lines 20-43 and page 5; lines 1-5)
 - a. 100% of the current net price of all new, unused, unsold, undamaged and complete farm, utility and industrial equipment, implements, machinery, outdoor power equipment (lawn mowers, lawn & garden tractors, etc.) and attachments.
 - b. 90% of current net price of all new, unused, superseded, undamaged repair parts
 - c. 75% of the net cost of all specialized tools required by the supplier and of certain demonstration equipment
 - d. Amortized value of data processing hardware and software and telecommunications equipment that was required by the supplier.

- e. The supplier shall pay the dealer 10% of the current net price of returned goods to cover the cost of handling unless the supplier chooses to pack and handle the returned goods.(page 5; line 10)
 - f. After termination or cancellation, the dealer's reserve account may not be debited without prior notice. 9page 5; lines 19-29)
 - g. In the event of death of a dealer, the heirs have the same rights as if the agreement had been terminated by the supplier and the right to succession are also covered (page 5; lines 30-43)
4. Warranty Obligation: (page 7; lines 1-40)
- a. If a warranty claim is disapproved, the supplier must notify the dealer why the claim was disapproved.
 - b. Parts used by the dealer in warranty work shall be paid at the dealer net price plus a minimum of 15% to cover the cost of doing business.
5. Prohibited Acts: (page 7; lines 43-44 & page 8; lines 1-14)
- a. Suppliers shall not coerce dealers as a condition of doing business or maintaining an agreement

MINUTES
HOUSE AGRICULTURE COMMITTEE
April 24, 2001

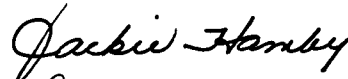
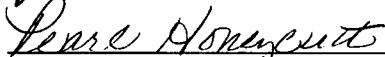
The House Agriculture Committee met on Tuesday, April 24, 2001 in Room 1425 of the Legislative Building at 9:30 a.m. with Chairman Dewey Hill presiding. Chairman Hill called the meeting to order and introduced the pages of the day and Jackie Hamby, Recording Committee Clerk for the meeting. Members in attendance were: Chairman Hill; Vice Chairmen Larry Bell, Leslie Cox, W. B. Teague, Jr., Nurham Warwick; Members Rex Baker, Donald Bonner, Charles Buchanan, Lorene T. Coates, Rick Eddins, Stanley Fox, Mark Hilton, Joe Kiser, Frank Mitchell, Edd Nye, Carolyn Russell, Joe Tolson, Russell Tucker, Alice Underhill, Edith Warren, John Weatherly, and Gene Wilson.

Representative Baker moved to adopt Proposed Committee Substitute for House Bill #1318, "Farm Machinery Franchise Law", seconded, and passed. Representative Warwick was recognized and explained the Proposed Committee Substitute. Committee Counsel Erika Churchill explained the subsections that had been removed from the original Bill.

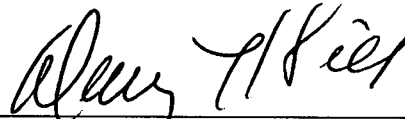
Representative Baker moved to delete portions of the language in Proposed Committee Substitute #1 and give a new, revised Committee Substitute a favorable report, unfavorable to original bill. The motion carried.

Representative Baker presented a draft, "Amend Use Value Statutes" – April 17, 2001 8:42:05 PM and responded to questions and comments from Committee members. A vote will not be taken today. The draft bill will come before the committee again at a later meeting for further discussion.

Chairman Hill announced that Representative Baker's draft bill will be on the agenda at the next meeting and adjourned the meeting at 10:15 a.m.

Jackie Hamby, Recording Clerk for
Pearl Honeycutt, Committee Clerk



Dewey L. Hill
Chairman

Attachments:

- #1 – Visitor Registration Sheet
- #2 – House Bill #1318 Proposed Committee Substitute #1
- #3 - Committee Report
- #4 – Draft Bill "Amend Use Value Statutes"

VISITOR REGISTRATION SHEET

AGRICULTURE

APRIL ²⁴ 19, 2001

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Crisse Porter	Bone & Associates
Steve Woodson	NCFB
John Cyrus	n.c. State Grange
Progenitor	Bone Assoc.
W Cherry	Bone & Assoc
Tony Adams	NC Outdoor Advertising Assoc.
ROBBIE MOORE	EASTERN OUTDOOR, INC.
Bob Skarner	NC Treaty Association
Doug Cassiter	NC STA

Item #1
H Bill 1318

Attachment #2
4/24/2001

Agreement
Rep. Warrick's #1
P.C.S.
4-24-01
to be revised to
P.C.S. #2 D

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

H

HOUSE BILL 1318
PROPOSED COMMITTEE SUBSTITUTE H1318-CSST-23 [v.5]

4/20/2001 11:41:13 AM

Short Title: Farm Machinery Franchise Law. (Public)

Sponsors:

Referred to:

April 12, 2001

A BILL TO BE ENTITLED
AN ACT TO AMEND AND CLARIFY THE FARM MACHINERY AGREEMENT
LAW; AND AUTHORIZE THE LEGISLATIVE RESEARCH COMMISSION TO
STUDY THE IMPACT FARM MACHINERY AGREEMENTS ON DEALERS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 26 of Chapter 66 of the General Statutes reads as
rewritten:

"Article 26.

"Farm Machinery ~~Franchises~~. Agreements.

"§ 66-180. Definitions.

As used in this Article, unless the context requires otherwise:

- (1) "Agreement" means a written or oral contract or agreement between a dealer and a wholesaler, manufacturer, or distributor by which the dealer is granted one or more of the following rights:
 - a. to sell or distribute goods or services.
 - b. to use a trade name, trademark, service mark, logo type, or advertising or other commercial symbol.
- (2) "Current model" means a model listed in the wholesaler's, manufacturer's, or distributor's current sales manual or any supplements.
- (1)(3) "Current net price" means the price listed in the supplier's price list or catalog in effect at the time the franchise agreement is terminated, less any applicable discounts allowed.
- (2)(4) "Dealer" means a person engaged in the business of selling at retail farm, construction, utility or industrial, equipment, implements, machinery, attachments, outdoor power equipment, or repair parts.
- (5) "Family member" means a spouse, brother, sister, parent, grandparent, child, grandchild, mother-in-law, father-in-law, daughter-in-law, son-

1 in-law, stepparent, or stepchild, or a lineal descendant of the dealer or
2 principal owner of the dealership.

3 (3) "Franchise agreement" means a written or oral contract or agreement
4 between a dealer and a wholesaler, manufacturer, or distributor by
5 which the dealer is granted the right to sell or distribute goods or
6 services, or use a trade name, trademark, service mark, logo type, or
7 advertising or other commercial symbol.

8 (6) "Good cause" means failure by a dealer to comply with requirements
9 imposed upon the dealer by the agreement if the requirements are not
10 different from those imposed on other dealers similarly situated in this
11 State. In addition, good cause exists in any of the following
12 circumstances:

13 a. A petition under bankruptcy or receivership law has been filed
14 against the dealer.

15 b. The dealer has made an intentional misrepresentation with the
16 intent to defraud the supplier.

17 c. Default by the dealer under a chattel mortgage or other security
18 agreement between the dealer and the supplier or a revocation
19 or discontinuance of a guarantee of a present or future
20 obligation of the retailer to the supplier.

21 d. Closeout or sale of a substantial part of the dealer's business
22 related to the handling of goods; the commencement or
23 dissolution or liquidation of the dealer if the dealer is a
24 partnership or corporation; or a change, without the prior
25 written approval of the supplier, which shall not be
26 unreasonably withheld, in the location of the dealer's principal
27 place of business or additional locations set forth in the
28 agreement.

29 e. Withdrawal of an individual proprietor, partner, major
30 shareholder, or manager of the dealership, or a substantial
31 reduction in interest of a partner or major shareholder, without
32 the prior written consent of the supplier.

33 f. Revocation or discontinuance of any guarantee of the dealer's
34 present or future obligations to the supplier.

35 g. The dealer has failed to operate in the normal course of business
36 for seven consecutive business days or has otherwise
37 abandoned the business.

38 h. The dealer has pleaded guilty to or has been convicted of a
39 felony affecting the relationship between the dealer and the
40 supplier.

41 i. The dealer transfers an interest in the dealership, or a person
42 with a substantial interest in the ownership or control of the

dealership, including an individual proprietor, partner, or major shareholder, withdraws from the dealership or dies, or a substantial reduction occurs in the interest of a partner or major shareholder in the dealership.

(4)(7) "Inventory" means farm, utility, or industrial equipment, implements, machinery, farm implements and machinery, construction, utility and industrial equipment, consumer products, outdoor power equipment, attachments, or repair parts. These terms do not include heavy construction equipment.

(5)(8) "Net cost" means the price the dealer paid the supplier for the inventory, less all applicable discounts allowed, plus the amount the dealer paid for freight costs from the supplier's location to the dealer's location, plus reasonable cost of assembly or disassembly performed by the dealer.

(6)(9) "Supplier" means a wholesaler, manufacturer, or distributor, or any purchaser of assets or stock of any surviving corporation resulting from a merger or liquidation, any receiver or assignee, or any trustee of the original manufacturer, wholesaler, or distributor who enters into a franchise agreement with a dealer.

(10) "Superseded part" means any part that will provide the same function as a currently available part as of the date of cancellation.

(7)(11) "Termination" of a franchise agreement means the termination, cancellation, nonrenewal, or noncontinuance of the agreement.

"§ 66-181. Usage of trade.

The terms "utility" and "industrial", when used to refer to equipment, implements, machinery, attachments, or repair parts, shall have the meaning commonly used and understood among dealers and suppliers of farm equipment as a usage of trade in accordance with G.S. 25-1-205(2)."

"§ 66-182. Notice of termination of franchise agreements.

(a) Notwithstanding any agreement to the contrary, a supplier who terminates a franchise agreement with a dealer shall notify the dealer of the termination not less than 90 days prior to the effective date of the termination; however, the supplier may immediately terminate the agreement at any time after the occurrence of any of the following events:

- (1) A petition under bankruptcy or receivership law has been filed against the dealer;
- (2) The dealer has made an intentional misrepresentation with the intent to defraud the supplier;
- (3) Default by the dealer under a chattel mortgage or other security agreement between the dealer and the supplier;
- (4) Closeout or sale of a substantial part of the dealer's business related to the handling of goods; the commencement or dissolution or liquidation

1 of the dealer if the dealer is a partnership or corporation; or a change,
2 without the prior written approval of the supplier, in the location of the
3 dealer's principal place of business under the agreement;

4 (5) ~~Withdrawal of an individual proprietor, partner, major shareholder, or~~
5 ~~manager of the dealership, or a substantial reduction in interest of a~~
6 ~~partner or major shareholder, without the prior written consent of the~~
7 ~~supplier; or~~

8 (6) ~~Revocation or discontinuance of any guarantee of the dealer's present~~
9 ~~or future obligations to the supplier.~~

10 No supplier, directly or through an officer, agent, or employee may terminate,
11 cancel, fail to renew, or substantially change the competitive circumstances of an
12 agreement without good cause.

13 (b) Notwithstanding any agreement to the contrary, a dealer who terminates a an
14 agreement with a supplier shall notify the supplier of the termination not less than ~~30~~ 90
15 days prior to the effective date of the termination.

16 (b1) A supplier shall provide a dealer with at least 90 days' written notice of
17 termination of the agreement and a 60-day right-to-cure the deficiency. If the deficiency
18 is cured within the allotted time, the notice is void. In the case where cancellation of an
19 agreement is based upon the dealers failure to capture the share of the market required
20 in the agreement, a minimum 12-month period of time shall have existed where the
21 supplier has worked with the dealer to gain the desired market share. The notice shall
22 state all reasons constituting good cause.

23 (c) Notification under this section shall be in writing and shall be by certified
24 mail or personally delivered to the recipient. It shall contain all of the following:

25 (1) A statement of intention to terminate the ~~franchise,~~ dealership.

26 (2) A statement of the reasons for the ~~termination, and~~ termination.

27 (3) The date on which the termination takes effect.

28 "**§ 66-183. Supplier's duty to repurchase.**

29 (a) Whenever a dealer enters into a ~~franchise-an~~ agreement evidenced by a
30 written or oral contract in which the dealer agrees to maintain an inventory, and the
31 agreement is terminated by either party, the supplier shall repurchase the dealer's
32 inventory as provided in this Article unless the dealer chooses to keep the inventory. If
33 the dealer has any outstanding debts to the supplier, then the repurchase amount may be
34 set off or credited to the retailer's account.

35 (b) Whenever a dealer enters into a ~~franchise-an~~ agreement in which the dealer
36 agrees to maintain an inventory, and the dealer or the majority stockholder of the dealer,
37 if the dealer is a corporation, dies or becomes incompetent, the supplier shall, at the
38 option of the heir, personal representative, or guardian of the dealer, or the person who
39 succeeds to the stock of the majority stockholder, repurchase the inventory as if the
40 agreement had been terminated. The heir, personal representative, guardian, or
41 succeeding stockholder has one year from the date of the death of the dealer or majority
42 stockholder to exercise the option under this Article.

1 "§ 66-184. Repurchase terms.

2 (a) The supplier shall repurchase from the dealer within 90 days after termination
3 of the franchise agreement all inventory previously purchased from the supplier that
4 remains unsold on the date of termination of the agreement.

5 (b) The supplier shall pay the dealer:

6 (1) One hundred percent (100%) of the current net cost-price of all new,
7 unused, unsold, undamaged, and complete farm, construction, utility,
8 and industrial equipment, implements, machinery, outdoor power
9 equipment, and attachments, less a reasonable allowance for
10 deterioration attributable to weather conditions at the dealer's location;
11 attachments.

12 (2) Ninety percent (90%) of the current net price of all new, unused, and
13 undamaged repair parts; and superseded parts.

14 (3) ~~Eighty-five percent (85%) of the current net price of all new, unused,~~
15 ~~undamaged, superseded repair parts.~~

16 Seventy-five percent (75%) of the net cost of all specialized repair
17 tools purchased in the previous three years and fifty percent (50%) of
18 the net cost of all specialized repair tools purchased in the previous
19 four through six years pursuant to the requirements of the supplier and
20 held by the dealer on the date of termination. Such specialized repair
21 tools shall be unique to the supplier's product line and shall be in
22 complete and resalable condition. Farm implements, machinery, utility
23 and industrial equipment, and outdoor power equipment used in
24 demonstrations, including equipment leased primarily for
25 demonstration or lease, shall also be subject to repurchase under this
26 section at its agreed depreciated value, provided the equipment is in
27 new condition and has not been damaged.

28 (4) At its amortized value, the price of any specific data processing
29 hardware and software and telecommunications equipment that the
30 supplier required the dealer to purchase within the past five years.

31 (c) ~~The supplier may, within 90 days after the date of termination of the franchise~~
32 ~~agreement, audit the dealer's books or records to verify the eligibility of the inventory~~
33 ~~for repurchase.~~

34 (d) The supplier shall pay the cost of shipping the inventory from the dealer's
35 location and shall pay the dealer ~~five percent (5%)~~ ten percent (10%) of the current net
36 price of all new, unused, undamaged repair parts returned, to cover the cost of handling,
37 packing, and loading. The supplier may perform the handling, packing, and loading
38 instead of paying the ~~five percent (5%)~~ ten percent (10%) for the services. The dealer
39 and the supplier may each furnish a representative to inspect all parts and certify their
40 acceptability when packed for shipment.

(e) The supplier shall pay the full repurchase amount to the dealer not later than 30 days after receipt of the inventory. If the dealer has any outstanding debts to the supplier, then the repurchase amount may be credited to the dealer's account.

(f) Upon payment of the repurchase amount to the dealer, the title and right of possession to the repurchased inventory shall transfer to the supplier. Annually, at the end of each calendar year, or after termination or cancellation, the dealer's reserve account for recourse, retail sale, or lease contracts shall not be debited by a supplier or lender for any deficiency unless the dealer or the heirs of the dealer have been given at least seven business days' notice by certified or registered United States mail, return receipt requested, of any proposed sale of the equipment financed and an opportunity to purchase the equipment. The former dealer or the heirs of the dealer shall be given quarterly status reports on any remaining outstanding recourse contracts. As the recourse contracts are reduced, any reserve account funds shall be returned to the dealer or the heirs of the dealer in direct proportion to the liabilities outstanding.

(g) In the event of the death of the dealer or the majority stockholder of a corporation operating as a dealer, the supplier shall, at the option of the heir, repurchase the inventory from the heir of the dealer or majority stockholder as if the supplier had terminated the agreement. The heir shall have one year from the date of the death of the dealer or majority stockholder to exercise the heir's options under this section. Nothing in this section shall require the repurchase of any inventory if the heir and the supplier enter into a new agreement to operate the retail dealership.

(h) A supplier shall have 90 days in which to consider and make a determination upon a request by a family member to enter into a new agreement to operate the dealership. In the event the supplier determines that the requesting family member is not acceptable, the supplier shall provide the family member with a written notice of its determination with the stated reasons for nonacceptance. This section does not entitle an heir, personal representative, or family member to operate a dealership without the specific written consent of the supplier.

(i) Notwithstanding the provisions of this section, in the event that a supplier and a dealer have executed an agreement concerning succession rights prior to the dealer's death, and if the agreement has not been revoked, that agreement shall be enforced even if it designates someone other than the surviving spouse or heir of the decedent as the successor.

"§ 66-185. Exceptions to repurchase requirement.

This Article does not require the repurchase from a dealer of:

- (1) A repair part with a limited storage life or otherwise subject to deterioration, such as gaskets or batteries, except for industrial "press on" or industrial pneumatic ~~tires~~; tires.
- (2) A single repair part that is priced as a set of two or more ~~items~~; items.
- (3) A repair part that, because of its condition, is not resalable as a new part without repackaging or ~~reconditioning~~; reconditioning.
- (3a) Any repair part that is not in new, unused, undamaged condition.

- 1 (4) An item of inventory for which the dealer does not have title free of all
2 claims, liens, and encumbrances other than those of the
3 ~~supplier; supplier.~~
4 (5) Any inventory that the dealer chooses to ~~keep; keep.~~
5 (6) Any inventory that was ordered by the dealer after either party's
6 receipt of notice of termination of the ~~franchise agreement;~~
7 ~~and agreement.~~
8 (6a) Any farm implements and machinery, construction, utility and
9 industrial equipment, outdoor power equipment, and attachments that
10 are not current models or that are not in new, unused, undamaged,
11 complete condition, provided that the equipment used in
12 demonstrations or leased, as provided in G.S. 66-184, shall be
13 considered new and unused.
14 (6b) Any farm implements and machinery, construction, utility and
15 industrial equipment, outdoor power equipment, and attachments that
16 were purchased more than 36 months prior to notice of termination of
17 the agreement.
18 (7) Any inventory that was acquired by the dealer from a source other than
19 the supplier.

20 **"§ 66-186. Uniform commercial practice.**

21 (a) This Article does not affect a security interest of the supplier in the inventory
22 of the dealer.

23 (b) A repurchase of inventory under this Article shall not be subject to the bulk
24 sales provisions of Article 6 of Chapter 25 of the General Statutes.

25 (c) The dealer and supplier shall furnish representatives to inspect all parts and
26 certify their acceptability when packed for shipment. Failure of the supplier to provide a
27 representative within 60 days shall result in automatic acceptance by the supplier of all
28 returned items.

29 **"§ 66-187. Warranty obligations.**

30 (a) Whenever a supplier and a dealer enter into a ~~franchise~~ an agreement, the
31 supplier shall pay any warranty claim made by the dealer for warranty parts or service
32 within 30 days after its approval. The supplier shall approve or disapprove a warranty
33 claim within 30 days after its receipt. If a claim is disapproved, the manufacturer,
34 wholesaler, or distributor shall notify the dealer within 30 days stating the specific
35 grounds upon which the disapproval is based. If a claim is not specifically disapproved
36 in writing within 30 days after its receipt it is approved and payment must follow within
37 30 days.

38 (b) Whenever a supplier and a dealer enter into a ~~franchise~~ an agreement, the
39 supplier shall indemnify and hold harmless the dealer against any judgment for damages
40 or any settlement agreed to by the supplier, including court costs and a reasonable
41 attorney's fee, arising out of a complaint, claim, or lawsuit including negligence, strict
42 liability, misrepresentation, breach of warranty, or ~~rescission~~ rescission of the sale, to the

1 extent the judgment or settlement relates to the manufacture, assembly, or design of
2 inventory, or other conduct of the supplier beyond the dealer's control.

3 (b1) If, after termination of an agreement, the dealer submits a claim to the
4 manufacturer, wholesaler, or distributor for warranty work performed prior to the
5 effective date of the termination, the manufacturer, wholesaler, or distributor shall
6 accept or reject the claim within 30 days of receipt.

7 (c) If a claim is not paid within the time allowed under this section, interest shall
8 accrue at the maximum lawful interest rate.

9 (d) Warranty work performed by the dealer shall be compensated in accordance
10 with the reasonable and customary amount of time required to complete the work,
11 expressed in hours and fractions thereof. The cost of the work shall be computed by
12 multiplying the time required to complete the work by the dealer's established customer
13 hourly retail labor rate. The dealer shall inform the manufacturer, wholesaler, or
14 distributor for whom the dealer is performing warranty work of the dealer's established
15 customer hourly retail labor rate before the dealer performs any work.

16 (e) Expenses expressly excluded under the warranty of the manufacturer,
17 wholesaler, or distributor to the customer shall neither be included nor required to be
18 paid for warranty work performed, even if the dealer requests compensation for the
19 work performed.

20 (f) The dealer shall be paid for all parts used by the dealer in performing
21 warranty work. Payment shall in an amount equal to the dealer's net price for the parts,
22 plus a minimum of fifteen percent (15%).

23 (g) The manufacturer, wholesaler, or distributor has a right to adjust
24 compensation for errors discovered during an audit and, if necessary, to adjust claims
25 paid in error.

26 (h) The dealer shall have the right to accept the reimbursement terms and
27 conditions of the manufacturer, wholesaler, or distributor in lieu of the terms and
28 conditions of this section.

29 **"§ 66-187.1. Prohibited acts.**

30 No supplier shall do any of the following:

31 (1) Coerce any dealer to accept delivery of equipment, parts, or
32 accessories which the dealer has not ordered voluntarily, except as
33 required by any applicable law, or unless the parts or accessories are
34 safety parts or accessories required by the supplier.

35 (2) Condition the sale of additional equipment to a dealer upon a
36 requirement that the dealer also purchase other goods or services,
37 except that a supplier may require the dealer to purchase those parts
38 reasonably necessary to maintain the quality of operation in the field of
39 the equipment used in the trade area.

40 (3) Coerce a dealer into refusing to purchase equipment manufactured by
41 another supplier.

(4) Terminate, cancel, or fail to renew or substantially change the competitive circumstances of the retail agreement based on the results of any circumstance beyond the dealer's control, including a natural disaster such as a sustained drought, high unemployment in the dealership market area, or a labor dispute.

"§ 66-188. Failure to repurchase; civil remedy.

(a) If a supplier fails or refuses to repurchase any inventory covered under the provisions of this Article within the time periods established in G.S. 66-184, the supplier is civilly liable for one hundred percent (100%) of the current net price of the inventory, any freight charges paid by the dealer, the dealer's reasonable attorney's fee and court costs, and interest on the current net price of the inventory computed at the legal rate of interest from the 91st day after termination of the franchise agreement.

(b) Notwithstanding any agreement to the contrary, and in addition to any other legal remedies available, any person who suffers monetary loss due to a violation of this Article or because he refuses to accede to a proposal for an arrangement that, if consummated, is in violation of this Article, may bring a civil action to enjoin further violations and to recover damages sustained by him together with the costs of the suit, including a reasonable attorney's fee.

(b1) The provisions of this Article shall apply to all contracts and shall apply to all agreements in effect which have no expiration date and are a continuing contract and shall apply to all other contracts entered into, amended, extended, ratified, or renewed after October 1, 1985. The provisions of this section shall apply to and be binding upon all suppliers, all successors in interest or purchasers of assets or stock of suppliers, and all receivers, trustees, or assignees of suppliers. Any contractual term restricting the procedural or substantive rights of a dealer under this Article, including a choice of law or choice of forum clause, is void.

(b2) The provisions of G.S. 66-182 through G.S. 66-187.1 shall not be waivable in any contract or agreement, and any such attempted waiver shall be null and void.

(c) A civil action commenced under the provisions of this Article shall be brought within four years after the violation complained of is or reasonably should have been discovered, whichever occurs first."

SECTION 2. The Legislative Research Commission may study the laws relating to farm machinery agreements and their impact on dealers to determine whether or not those laws need to be amended, updated, or otherwise modified. The Legislative Research Commission may make an interim report to the 2002 Regular Session of the 2001 General Assembly and shall make a final report to the 2003 General Assembly. There is appropriated from the General Fund to the General Assembly the sum of twenty-five thousand dollars (\$25,000) for the 2001-2002 fiscal year to implement this provision.

SECTION 3. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given

1 effect without the invalid provisions or application, and to this end the provisions of this
2 ac are severable.

3 **SECTION 4.** Section 1 of this act becomes effective October 1, 2001 and
4 applies to agreements entered into, modified, transferred or renewed on or after that
5 date. The remainder of this act is effective when it becomes law.
6

**2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

*File
minutes
Attachment # 3*

The following report(s) from standing committee(s) is/are presented:

By Representative **Hill** (Chair) for the Committee on **AGRICULTURE**.

☐ Committee Substitute for

H.B. 1318 A BILL TO BE ENTITLED AN ACT TO AMEND AND CLARIFY THE FARM
MACHINERY FRANCHISE LAW.

☐ With a favorable report.

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

☐ With a favorable report, as amended.

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

☒ With a favorable report as to committee substitute bill, ☐ ~~which changes the title,~~
unfavorable as to original bill.

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

☐ With an unfavorable report.

☐ With recommendation that the House concur.

☐ With recommendation that the House do not concur.

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

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

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

☐ Without prejudice.

☐ With an indefinite postponement report.

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

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

2/15/01

*item #2
Rep. Baker's draft*

*Signature mty.
Rep. Baker
April 24, 2001*

attachment #4

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

H

D

2001-ST-26 [v.3] (03/28) 2001-ST-26 [v.2] (03/28)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
4/17/2001 8:42:05 PM

Short Title: Amend Use Value Statutes. (Public)

Sponsors: Representative Baker.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE MISCELLANEOUS CHANGES TO THE DEFINITIONS USED
3 FOR AGRICULTURAL, HORTICULTURAL, AND FORESTRY LAND; TO
4 PERMIT A CHANGE OF OWNERSHIP WITH CONTINUED QUALIFICATION
5 FOR DEFERRED TAX STATUS; TO PROVIDE AN OPTION FOR PRE-
6 PAYMENT OF ANY DEFERRED TAXES; TO CREATE A STUDY; AND TO
7 MAKE CONFORMING CHANGES.

8 The General Assembly of North Carolina enacts:

9 SECTION 1. G.S. 105-277.2 reads as rewritten:

10 "§ 105-277.2. Agricultural, horticultural, and forestland – Definitions.

11 The following definitions apply in G.S. 105-277.3 through G.S. 105-277.7:

12 (1) Agricultural land. – Land that is a part of a farm unit that is actively
13 engaged in the ~~commercial~~ production or growing of crops, plants, or
14 animals under a sound management program. Agricultural land
15 includes all woodland and wasteland ~~that is a part of in~~ the farm unit,
16 but the woodland and wasteland included in the unit shall be appraised
17 under the use-value schedules as woodland or wasteland. A farm unit
18 may consist of more than one tract of agricultural land, but at least one
19 of the tracts must meet the requirements in G.S. 105-277.3(a)(1), and
20 each tract must be under a sound management program.

21 (1a) Business entity. – A corporation, a general partnership, a limited
22 partnership, or a limited liability company.

23 (2) Forestland. – Land that is a part of a forest unit that is actively engaged
24 in the ~~commercial~~ growing of trees under a ~~sound~~ forestland
25 management program. Forestland includes wasteland that is a part of
26 the forest unit, but the wasteland included in the unit shall be appraised
27 under the use-value schedules as wasteland. A forest unit may consist

of more than one tract of forestland, but at least one of the tracts must meet the requirements in G.S. 105-277.3(a)(3), and each tract must be under a ~~sound forestland~~ management program.

(3) Horticultural land. – Land that is a part of a horticultural unit that is actively engaged in the ~~commercial~~ production or growing of fruits or vegetables or nursery or floral products under a sound management program. Horticultural land includes all woodland and wasteland ~~that is a part of in~~ the horticultural unit, but the woodland and wasteland included in the unit shall be appraised under the use-value schedules as woodland or wasteland. A horticultural unit may consist of more than one tract of horticultural land, but at least one of the tracts must meet the requirements in G.S. 105-277.3(a)(2), and each tract must be under a sound management program.

(4) Individually owned. – Owned by one of the following:

a. A natural person. For the purpose of this section, a natural person who is an income beneficiary of a trust that owns land may elect to treat the person's beneficial share of the land as owned by that person. If the person's beneficial interest is not an identifiable share of land but can be established as a proportional interest in the trust income, the person's beneficial share of land is a percentage of the land owned by the trust that corresponds to the beneficiary's proportional interest in the trust income. For the purpose of this section, a natural person who is a member of a business entity, other than a corporation, that owns land may elect to treat the person's share of the land as owned by that person. The person's share is a percentage of the land owned by the business entity that corresponds to the person's percentage of ownership in the entity.

b. A business entity having as its principal business one of the activities described in subdivisions (1), (2), and (3) and whose members are all natural persons who meet one or more of the following conditions:

1. The member is actively engaged in the business of the entity.
2. The member is a relative of a member who is actively engaged in the business of the entity.
3. The member is a relative of, and inherited the membership interest from, a decedent who met one or both of the preceding conditions after the land qualified for classification in the hands of the business entity.

c. A trust that was created by a natural person who transferred the land to the trust and each of whose beneficiaries who is

currently entitled to receive income or principal meets one of the following conditions:

1. Is the creator of the trust or the creator's relative.
2. Is a second trust whose beneficiaries who are currently entitled to receive income or principal are all either the creator of the first trust or the creator's relatives.

d. A testamentary trust that meets all of the following conditions:

1. It was created by a natural person who transferred to the trust land that qualified in that person's hands for classification under G.S. 105-277.3.
2. At the time of the creator's death, the creator had no relatives as defined in this section as of the date of death.
3. The trust income, less reasonable administrative expenses, is used exclusively for educational, scientific, literary, cultural, charitable, or religious purposes as defined in G.S. 105-278.3(d).

(4a) Member. – A shareholder of a corporation, a partner of a general or limited partnership, or a member of a limited liability company.

(5) Present-use value. – The value of land in its current use as agricultural land, horticultural land, or forestland, based solely on its ability to produce income, using a rate of nine percent (9%) to capitalize the expected net income of the property and assuming an average level of management.

(5a) Relative. – Any of the following:

- a. A spouse or the spouse's lineal ancestor or descendant.
- b. A lineal ancestor or a lineal descendant.
- c. A brother or sister, or the lineal descendant of a brother or sister. For the purposes of this sub-subdivision, the term brother or sister includes stepbrother or stepsister.
- d. An aunt or an uncle.
- e. A spouse of a person listed in paragraphs a. through d.

For the purpose of this subdivision, an adoptive or adopted relative is a relative and the term "spouse" includes a surviving spouse.

(6) Sound management program. – A program of production-agricultural or horticultural practices designed to ~~obtain the greatest net return from the land consistent with its conservation and long term improvement.~~ maintain the long term productivity and conservation of the land.

SECTION 2. G.S. 105-277.3 reads as rewritten:

"§ 105-277.3. **Agricultural, horticultural, and forestland – Classifications.**

(a) Classes Defined. – The following classes of property are designated special classes of property under authority of Section 2(2) of Article V of the North Carolina

1 Constitution and shall be appraised, assessed, and taxed as provided in G.S. 105-277.2
2 through G.S. 105-277.7.

3 (1) Agricultural land. – Individually owned agricultural land consisting of
4 one or more tracts, one of which consists of at least 10 acres that are in
5 actual production and that, for the three years preceding January 1 of
6 the year for which the benefit of this section is claimed, have produced
7 an average gross income or average value of production or a
8 combination thereof of at least one thousand dollars (\$1,000). Gross
9 income includes income from the sale of the agricultural products
10 produced from the land and any payments received under a
11 governmental soil conservation or land retirement program. Value of
12 production includes the market value of agricultural products actually
13 produced on the land. Land in actual production includes land under
14 improvements used in the ~~commercial~~ production or growing of crops,
15 plants, or animals.

16 (2) Horticultural land. – Individually owned horticultural land consisting
17 of one or more tracts, one of which consists of at least five acres that
18 are in actual production and that, for the three years preceding January
19 1 of the year for which the benefit of this section is claimed, have met
20 the applicable minimum gross income requirement. Land in actual
21 production includes land under improvements used in the ~~commercial~~
22 production or growing of fruits or vegetables or nursery or floral
23 products. Land that has been used to produce evergreens intended for
24 use as Christmas trees must have met the minimum gross income
25 requirements established by the Department of Revenue for the land.
26 All other horticultural land must have produced an average gross
27 income or average value of production or a combination thereof of at
28 least one thousand dollars (\$1,000). Gross income includes income
29 from the sale of the horticultural products produced from the land and
30 any payments received under a governmental soil conservation or land
31 retirement program. Value of production includes the market value of
32 horticultural products actually produced on the land.

33 (3) Forestland. – Individually owned forestland consisting of one or more
34 tracts, one of which consists of at least ~~20~~10 acres that are in actual
35 production and are not included in a farm unit.

36 (a1) For purposes of determining whether the one thousand dollar (\$1,000)
37 threshold is met under subsection (a) of this section, an affidavit signed by the
38 landowner is prima facie evidence of average income and average value of production.

39 (b) Natural Person Ownership Requirements. – In order to come within a
40 classification described in subsection (a) of this section, the land must, if owned by a
41 natural person, also satisfy one of the following conditions:

42 (1) It is the owner's place of residence.

(2) It has been owned by the current owner or a relative of the current owner for the four years preceding January 1 of the year for which the benefit of this section is claimed.

(3) At the time of transfer to the current owner, it qualified for classification in the hands of a business entity or trust that transferred the land to the current owner who was a member of the business entity or a beneficiary of the trust, as appropriate.

(b1) Entity Ownership Requirements. – In order to come within a classification described in subsection (a) of this section, the land must, if owned by a business entity or trust, have been owned by the business entity or trust or by one or more of its members or creators, respectively, for the four years immediately preceding January 1 of the year for which the benefit of this section is claimed.

(b2) Exception to Ownership Requirements. – G.S. 105-277.4(c) provides that deferred taxes are payable if land fails to meet any condition or requirement for classification. Accordingly, if land fails to meet an ownership requirement due to a change of ownership, G.S. 105-277.4(c) applies. Despite this failure and the resulting liability for taxes under G.S. 105-277.4(c), the land may qualify for classification in the hands of the new owner if both of the following conditions are met, even if the new owner does not meet all of the ownership requirements of subsections (b) and (b1) of this section with respect to the land:

(1) The land was appraised at its present use value or was eligible for appraisal at its present use value at the time title to the land passed to the new owner.

(2) At the time title to the land passed to the new owner, the new owner continues to use the land for the purposes it was owned ~~other land~~ classified under subsection (a) (a) of this section while under previous ownership.

(c) Repealed by Session Laws 1995, c. 454, s. 2.

(d) Exception for Conservation Reserve Program. – Land enrolled in the federal Conservation Reserve Program authorized by 16 U.S.C. § 1381 is considered to be in actual production, and income derived from participation in the federal Conservation Reserve Program may be used in meeting the minimum gross income requirements of this section either separately or in combination with income from actual production. Land enrolled in the federal Conservation Reserve Program shall be assessed as agricultural land if it is planted in vegetation other than trees, or as forestland if it is planted in trees.

(e) Exception for Turkey Disease. – Agricultural land that meets all of the following conditions is considered to be in actual production and to meet the minimum gross income requirements:

(1) The land was in actual production in turkey growing within the preceding two years and qualified for present use value treatment while it was in actual production.

(2) The land was taken out of actual production in turkey growing solely for health and safety considerations due to the presence of Poultry Enteritis Mortality Syndrome among turkeys in the same county or a neighboring county.

(3) The land is otherwise eligible for present use value treatment."

SECTION 3. G.S. 105-277.4 is amended by adding a new subsection to read:

"(f) Prepayment. - All or part of the deferred taxes and accrued interest may be paid to the tax collector at any time. Any partial payment is applied first to accrued interest."

SECTION 4. The Revenue Laws Study Committee shall study the deferred taxation of the agricultural, horticultural and forest land, and report its findings with any recommended legislation, to the 2003 General Assembly upon its convening. The Revenue Laws Study Committee may study:

(1) The implementation and application of the current statutes.

(2) Other tax credits, including adjustments to and credits for ad valorem taxes, to encourage production of affordable housing.

(3) The treatment of raw land in ad valorem tax.

(4) Other issues related to the taxation of agricultural, horticultural and forest land.

SECTION 5. This act is effective for taxes imposed for taxable years beginning on or after July 1, 2001.

1318

H.B. _____

SESSION LAW _____

A BILL TO BE ENTITLED

AN ACT TO AMEND AND CLARIFY THE FARM MACHINERY FRANCHISE LAW.

Introduced by Representative(s): Warwick, Cole, and CulpepperND (Primary Sponsors). *A. Bluebaker (primary)*

<i>Mitchell</i>	<i>Smith</i>	<i>Bluebaker</i>	
<i>Cox</i>			

Principal Clerk's Use Only

PASSED 1st READING
APR 12 2001
AND REFERRED TO COMMITTEE
ON... [Signature]

**MINUTES
HOUSE COMMITTEE ON AGRICULTURE**

May 1, 2001

The House Committee on Agriculture met on Tuesday, May 1, 2001, at 10:00 a.m. in Room 1425 of the Legislative Building. The following members were present: Chairman Dewey Hill; Vice Chairmen Larry Bell, Leslie Cox, W. B. Teague, Jr.; Representatives Baker, Bonner, Buchanan, Coates, Culp, Eddins, Fox, Hilton, Kiser, Mitchell, Russell, Tolson, Tucker, Underhill, Wilson, and Yongue. The Visitor Registration Sheet is attached and made part of these minutes. (Attachment 1)

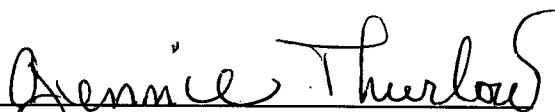
Chairman Hill presided and opened the meeting with an introduction of the Pages serving the Agriculture Committee this week. He reminded the members that May 2 is Agribusiness Day at the Legislature and extended an invitation to all to attend the annual Strawberry Festival in Chadbourn.

Representative Baker was recognized to continue discussion of his draft bill, AMEND USE VALUE STATUTES. A revised version of the draft from last week's meeting (v.5) was distributed for consideration. (Attachment 2) Following discussion of the draft, Representative Baker stated that it was his intention to introduce the draft as a committee bill from the Standing Committee on Agriculture before the May 2 deadline. (All Public bills which under Rule 38 would be required to be re-referred to Finance, but not to Appropriations, must be submitted to Bill Drafting no later than 4:00 p.m. on Wednesday, May 2, 2001.) After consulting with the Rules Chairman and if there is a problem with introduction of the draft bill as a committee bill, then the primary sponsors would be solicited.

Representative Buchanan made a motion for approval of the draft bill and its introduction as a committee bill, following approval of the Rules Chairman. The motion carried. The Committee Report – Bill Introduction is attached. (Attachment 3)

There being no other bills before the committee, the meeting was adjourned at 10:40 a.m.


Representative Dewey Hill, Chairman


Gennie Thurlow, Committee Assistant

Attachments

- (1) Visitor Registration Sheet
- (2) Revised draft bill (V-5) AMEND USE VALUE STATUTES
- (3) Committee Report – Bill Introduction

VISITOR REGISTRATION SHEET

Name of Committee

Date _____

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME _____

FIRM OR AGENCY AND ADDRESS

John K. K. K.	N.C. Park Council
W. Cherry	Bone & Assoc
Thomas Bone	" "
John Jordan	Jordan, Price
Thelma Riddick	DOR
	NC 78
John Cyrus	N.C. State Grange
David M. M. M.	N.C. State Grange
Mark W. W.	Capital Grange
David D. D. D.	Wilhelm, T. T. T. T.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

2001-ST-26 [v.4] (03/28) [v.5] (03/28)

D

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

4/17/2001 8:42:05 PM

Short Title: Amend Use Value Statutes.

(Public)

Sponsors:

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MAKE MISCELLANEOUS CHANGES TO THE DEFINITIONS USED FOR AGRICULTURAL, HORTICULTURAL, AND FORESTRY LAND; TO PERMIT A CHANGE OF OWNERSHIP WITH CONTINUED QUALIFICATION FOR DEFERRED TAX STATUS; TO PROVIDE AN OPTION FOR PRE-PAYMENT OF ANY DEFERRED TAXES; TO CREATE A STUDY; AND TO MAKE CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-277.2 reads as rewritten:

"§ 105-277.2. Agricultural, horticultural, and forestland – Definitions.

The following definitions apply in G.S. 105-277.3 through G.S. 105-277.7:

- (1) Agricultural land. – Land that is a part of a farm unit that is actively engaged in the ~~commercial~~ production or growing of crops, plants, or animals under a sound management program. Agricultural land includes all woodland and wasteland ~~that is a part of in~~ the farm unit, but the woodland and wasteland included in the unit shall be appraised under the use-value schedules as woodland or wasteland. A farm unit may consist of more than one tract of agricultural land, but at least one of the tracts must meet the requirements in G.S. 105-277.3(a)(1), and each tract must be under a sound management program.
- (1a) Business entity. – A corporation, a general partnership, a limited partnership, or a limited liability company.
- (2) Forestland. – Land that is a part of a forest unit that is actively engaged in the ~~commercial~~ growing of trees under a ~~sound~~ forestland management program. Forestland includes wasteland that is a part of the forest unit, but the wasteland included in the unit shall be appraised under the use-value schedules as wasteland. A forest unit may consist

of more than one tract of forestland, but at least one of the tracts must meet the requirements in G.S. 105-277.3(a)(3), and each tract must be under a ~~sound~~ forestland management program.

(3) Horticultural land. – Land that is a part of a horticultural unit that is actively engaged in the ~~commercial~~ production or growing of fruits or vegetables or nursery or floral products under a sound management program. Horticultural land includes all woodland and wasteland ~~that is a part of in~~ the horticultural unit, but the woodland and wasteland included in the unit shall be appraised under the use-value schedules as woodland or wasteland. A horticultural unit may consist of more than one tract of horticultural land, but at least one of the tracts must meet the requirements in G.S. 105-277.3(a)(2), and each tract must be under a sound management program.

(4) Individually owned. – Owned by one of the following:

a. A natural person. For the purpose of this section, a natural person who is an income beneficiary of a trust that owns land may elect to treat the person's beneficial share of the land as owned by that person. If the person's beneficial interest is not an identifiable share of land but can be established as a proportional interest in the trust income, the person's beneficial share of land is a percentage of the land owned by the trust that corresponds to the beneficiary's proportional interest in the trust income. For the purpose of this section, a natural person who is a member of a business entity, other than a corporation, that owns land may elect to treat the person's share of the land as owned by that person. The person's share is a percentage of the land owned by the business entity that corresponds to the person's percentage of ownership in the entity.

b. A business entity having as its principal business one of the activities described in subdivisions (1), (2), and (3) and whose members are all natural persons who meet one or more of the following conditions:

1. The member is actively engaged in the business of the entity.
2. The member is a relative of a member who is actively engaged in the business of the entity.
3. The member is a relative of, and inherited the membership interest from, a decedent who met one or both of the preceding conditions after the land qualified for classification in the hands of the business entity.

c. A trust that was created by a natural person who transferred the land to the trust and each of whose beneficiaries who is

currently entitled to receive income or principal meets one of the following conditions:

1. Is the creator of the trust or the creator's relative.
2. Is a second trust whose beneficiaries who are currently entitled to receive income or principal are all either the creator of the first trust or the creator's relatives.

d. A testamentary trust that meets all of the following conditions:

1. It was created by a natural person who transferred to the trust land that qualified in that person's hands for classification under G.S. 105-277.3.
2. At the time of the creator's death, the creator had no relatives as defined in this section as of the date of death.
3. The trust income, less reasonable administrative expenses, is used exclusively for educational, scientific, literary, cultural, charitable, or religious purposes as defined in G.S. 105-278.3(d).

(4a) Member. – A shareholder of a corporation, a partner of a general or limited partnership, or a member of a limited liability company.

(5) Present-use value. – The value of land in its current use as agricultural land, horticultural land, or forestland, based solely on its ability to produce income, using a rate of nine percent (9%) to capitalize the expected net income of the property and assuming an average level of management.

(5a) Relative. – Any of the following:

- a. A spouse or the spouse's lineal ancestor or descendant.
- b. A lineal ancestor or a lineal descendant.
- c. A brother or sister, or the lineal descendant of a brother or sister. For the purposes of this sub-subdivision, the term brother or sister includes stepbrother or stepsister.
- d. An aunt or an uncle.
- e. A spouse of a person listed in paragraphs a. through d.

For the purpose of this subdivision, an adoptive or adopted relative is a relative and the term "spouse" includes a surviving spouse.

(6) Sound management program. – A program of production-agricultural or horticultural practices designed to obtain the greatest net return from the land consistent with its conservation and long-term improvement. maintain the long term productivity and conservation of the land.

SECTION 2. G.S. 105-277.3 reads as rewritten:

"§ 105-277.3. Agricultural, horticultural, and forestland – Classifications.

(a) Classes Defined. – The following classes of property are designated special classes of property under authority of Section 2(2) of Article V of the North Carolina

1 Constitution and shall be appraised, assessed, and taxed as provided in G.S. 105-277.2
2 through G.S. 105-277.7.

3 (1) Agricultural land. – Individually owned agricultural land consisting of
4 one or more tracts, one of which consists of at least 10 acres that are in
5 actual production and that, for the three years preceding January 1 of
6 the year for which the benefit of this section is claimed, have produced
7 an average gross income or average value of production or a
8 combination thereof of at least one thousand dollars (\$1,000). Gross
9 income includes income from the sale of the agricultural products
10 produced from the land and any payments received under a
11 governmental soil conservation or land retirement program. Value of
12 production includes the market value of agricultural products actually
13 produced on the land. Land in actual production includes land under
14 improvements used in the ~~commercial~~ production or growing of crops,
15 plants, or animals.

16 (2) Horticultural land. – Individually owned horticultural land consisting
17 of one or more tracts, one of which consists of at least five acres that
18 are in actual production and that, for the three years preceding January
19 1 of the year for which the benefit of this section is claimed, have met
20 the applicable minimum gross income requirement. Land in actual
21 production includes land under improvements used in the ~~commercial~~
22 production or growing of fruits or vegetables or nursery or floral
23 products. Land that has been used to produce evergreens intended for
24 use as Christmas trees must have met the minimum gross income
25 requirements established by the Department of Revenue for the land.
26 All other horticultural land must have produced an average gross
27 income or average value of production or a combination thereof of at
28 least one thousand dollars (\$1,000). Gross income includes income
29 from the sale of the horticultural products produced from the land and
30 any payments received under a governmental soil conservation or land
31 retirement program. Value of production includes the market value of
32 horticultural products actually produced on the land.

33 (3) Forestland. – Individually owned forestland consisting of one or more
34 tracts, one of which consists of at least 2010 acres that are in actual
35 production and are not included in a farm unit.

36 (a) For purposes of determining whether the one thousand dollar (\$1,000)
37 threshold is met under subsection (a) of this section, an affidavit signed by the
38 landowner is prima facie evidence of average income and average value of production.

39 (b) Natural Person Ownership Requirements. – In order to come within a
40 classification described in subsection (a) of this section, the land must, if owned by a
41 natural person, also satisfy one of the following conditions:

42 (1) It is the owner's place of residence.

(2) It has been owned by the current owner or a relative of the current owner for the four years preceding January 1 of the year for which the benefit of this section is claimed.

(3) At the time of transfer to the current owner, it qualified for classification in the hands of a business entity or trust that transferred the land to the current owner who was a member of the business entity or a beneficiary of the trust, as appropriate.

(b1) Entity Ownership Requirements. – In order to come within a classification described in subsection (a) of this section, the land must, if owned by a business entity or trust, have been owned by the business entity or trust or by one or more of its members or creators, respectively, for the four years immediately preceding January 1 of the year for which the benefit of this section is claimed.

(b2) Exception to Ownership Requirements. – G.S. 105-277.4(c) provides that deferred taxes are payable if land fails to meet any condition or requirement for classification. Accordingly, if land fails to meet an ownership requirement due to a change of ownership, G.S. 105-277.4(c) applies. Despite this failure and the resulting liability for taxes under G.S. 105-277.4(c), the land may qualify for classification in the hands of the new owner if both of the following conditions are met, even if the new owner does not meet all of the ownership requirements of subsections (b) and (b1) of this section with respect to the land:

(1) The land was appraised at its present use value or was eligible for appraisal at its present use value at the time title to the land passed to the new owner.

(2) At the time title to the land passed to the new owner, the new owner continues to use the land for the purposes it was owned ~~other land~~ classified under subsection ~~(a)~~ (a) of this section while under previous ownership.

(c) Repealed by Session Laws 1995, c. 454, s. 2.

(d) Exception for Conservation Reserve Program. – Land enrolled in the federal Conservation Reserve Program authorized by 16 U.S.C. § 1381 is considered to be in actual production, and income derived from participation in the federal Conservation Reserve Program may be used in meeting the minimum gross income requirements of this section either separately or in combination with income from actual production. Land enrolled in the federal Conservation Reserve Program shall be assessed as agricultural land if it is planted in vegetation other than trees, or as forestland if it is planted in trees.

(e) Exception for Turkey Disease. – Agricultural land that meets all of the following conditions is considered to be in actual production and to meet the minimum gross income requirements:

(1) The land was in actual production in turkey growing within the preceding two years and qualified for present use value treatment while it was in actual production.

(2) The land was taken out of actual production in turkey growing solely for health and safety considerations due to the presence of Poulter Enteritis Mortality Syndrome among turkeys in the same county or a neighboring county.

(3) The land is otherwise eligible for present use value treatment."

SECTION 3. G.S. 105-277.4 is amended by adding a new subsection to read:

"(f) Prepayment. - All or part of the deferred taxes and accrued interest may be paid to the tax collector at any time. Any partial payment is applied first to accrued interest."

SECTION 4. The Revenue Laws Study Committee shall study the deferred taxation of the agricultural, horticultural and forest land, and report its findings with any recommended legislation, to the 2003 General Assembly upon its convening. The Revenue Laws Study Committee may study:

(1) The implementation and application of the current statutes.

(2) Other tax credits, including adjustments to and credits for ad valorem taxes, to encourage agricultural, forestry, and horticultural use of land.

(3) The treatment of raw land in ad valorem tax.

(4) The possibility of tax incentives to encourage conservation and environmental protection of land.

(4) Other issues related to the taxation of agricultural, horticultural and forest land.

SECTION 5. This act is effective for taxes imposed for taxable years beginning on or after July 1, 2001.

2001 HOUSE OF REPRESENTATIVES
COMMITTEE REPORT - BILL INTRODUCTION

The following report(s) from standing committee(s) is/are presented:

Representative Dewey Hill, for the Committee on Agriculture
(Committee Chair's Name) (Committee Name)

submits the following bill with a favorable report for introduction.

AN ACT TO MAKE MISCELLANEOUS CHANGES TO THE DEFINITIONS USED FOR AGRICULTURAL, HORTICULTURAL, AND FORESTRY LAND; TO PERMIT A CHANGE OF OWNERSHIP WITH CONTINUED QUALIFICATION FOR DEFERRED TAX STATUS; TO PROVIDE AN OPTION FOR PREPAYMENT OF ANY DEFERRED TAXES; TO CREATE A STUDY; AND TO MAKE CONFORMING CHANGES.

(FOR JOURNAL USE ONLY)

Pursuant to Rule 31(a), the bill is filed, assigned the number H. B. _____ and placed on the Calendar for its _____ reading.

**MINUTES
HOUSE COMMITTEE ON AGRICULTURE**

June 19, 2001


The House Committee on Agriculture met on Tuesday, June 19, 2001, at 10:00 a.m. in Room 1425 of the Legislative Building. The following members were present: Chairman Dewey Hill; Vice Chairmen Larry Bell, Leslie Cox, W. B. Teague, Jr., Nurham Warwick; Representatives Baker, Bonner, Buchanan, Culp, Eddins, Fox, Hilton, Kiser, Tolson, Tucker, Underhill, Warren, Weatherly, Wilson, and Yongue. The Visitor Registration Sheet is attached and made part of these minutes. (Attachment 1)

Chairman Hill presided and opened the meeting with an introduction of the Sergeant-at-Arms and Pages serving the Agriculture Committee this week. Chairman Hill explained that HB 984 Landscape/Irrigation Contractors was not ready to be heard and was withdrawn from the agenda.


Dr. Charles E. Hamner, President and CEO, and Mr. W. Steven Burke, Senior Vice President, Corporate Affairs and External Relations, North Carolina Biotechnology Center, were recognized. Mr. Burke gave a slide presentation, entitled "Strengthening North Carolina's Agricultural Biotechnology Endeavor." (Attachment 2)

At the conclusion of the presentation, Dr. Hamner spoke briefly. The members of the Agriculture Committee had an opportunity to ask questions.

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



Representative Dewey Hill, Chairman



Gennie Thurlow, Committee Assistant

Attachments

- (1) Visitor Registration Sheet
- (2) Presentation

VISITOR REGISTRATION SHEET

AGRICULTURE

Name of Committee

6/19/01

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

John Cyrus	N.C. State Orange
Agnes Bone	Bone Assoc.
Charles Hammer	N.C. Biotech. Cnt.
Sam Taylor	NCBIO
Carole Lawler	EGHS
F. Carlyle Teague	Co-op Council of NC
PG	NCFB
Bob Slocum	NC Forestry Assoc



PRESENTATION SLIDES

*Strengthening North Carolina's Agricultural
Biotechnology Endeavor*

Agriculture Committee,
North Carolina General Assembly
19 June 2001

•

Charles E. Hamner, DVM, PhD • President and CEO

W. Steven Burke
Senior Vice President, Corporate Affairs and External Relations

North Carolina Biotechnology Center
PO Box 13547 • 15 T. W. Alexander Drive
Research Triangle Park, NC 27709 USA
Telephone: 919-541-9366
Telefax: 919-990-9544
Email: steven_burke@ncbiotech.org
Internet: www.ncbiotech.org

Strengthening North Carolina's Agricultural Biotechnology Endeavor



NORTH CAROLINA BIOTECHNOLOGY CENTER



History and Characteristics of the Center



The Process of Technology Development



Introduction to Agricultural Biotechnology

NORTH CAROLINA BIOTECHNOLOGY CENTER

North Carolina Biotechnology Center: History and Characteristics

Premise:
North Carolina
can benefit from
targeted
attention to
biotechnology.

1981



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North Carolina Biotechnology Center: History and Characteristics

Premise:
North Carolina
can benefit from
targeted
attention to
biotechnology.

1981



Result:
Very strong
economic and
societal gain
to North
Carolina.

20??

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North Carolina Biotechnology Center: History and Characteristics

Premise:
Benefit

Requirement:
Long-term
commitment,
imagination,
and a strong
community.

Result:
Very strong
economic and
societal gain
to North
Carolina.

1981



20??

NORTH CAROLINA BIOTECHNOLOGY CENTER

North Carolina Biotechnology Center: History and Characteristics

Explore the Premise:
State Government
Commission.

What kind of initiative
can move from premise
to results over time?

Premise

1981




1982-1984

Result

20??

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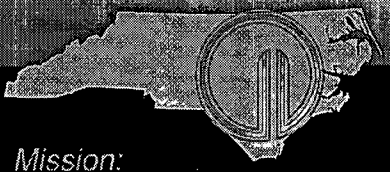
Establishment of the North Carolina Biotechnology Center:

What kind of initiative?

The first state-based biotechnology endeavor in America or Europe.

1982-84 → 1984

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Mission:

Long-term economic benefit statewide from development and commercialization of biotechnology.

→ 1984 →

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Funding:

Permanent funding from the Legislature of North Carolina.

\$135 million has been committed since 1984.

→ 1984 →

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Characteristics:

Four effective and distinctive characteristics combine strategy and philosophy to address biotechnology development.

→ 1984 →

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Effective and distinctive characteristics:


1 - A private non-profit corporation.

Reason:

This structure permits more neutral and innovative approaches.

→ 1984 →

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Effective and distinctive characteristics:

2 - The Center does not do research.

Reason:

Universities and other organizations are better qualified, and the expense is great.

→ 1984 →

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Effective and distinctive characteristics:

- 3 • Activities do not duplicate any other organization.

Reason:

Duplication is wasteful . . . and does not make friendly partners.

1984 -

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Effective and distinctive characteristics:

- 4 • Activities *assist* all participants in biotechnology development.

Reason:

Helping existing resources is better strategy than attempting all tasks.

1984 -

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This initiative, like the technology, was new and innovative.

In the absence of a blueprint or model, the Center has since 1984 evolved philosophy, approach, and programs.

1984 -

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Phase I: Commitment and Foundation

1985-89

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Phase I: Commitment and Foundation

- Long-term, non-political state commitment assured.

1985-89

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Phase I: Commitment and Foundation

- Long-term, non-political state commitment assured.
- *Emphasis:* strengthen university capabilities.

1985-89

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Phase I: Commitment and Foundation

- Long-term, non-political state commitment assured.
- *Emphasis:* strengthen university capabilities.
- Industry very small: 5-10 companies.

1985-89

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Phase I: Commitment and Foundation

- Long-term, non-political state commitment assured.
- *Emphasis:* strengthen university capabilities.
- Industry very small: 5-10 companies.
- Biotechnology community begins to form.

1985-89


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Phase 2: Visible Results and Birth of Industry

1985-89 1989-1996

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Phase 2: Visible Results and Birth of Industry

- *Emphasis:* company development, 75+.

1985-89 1989-1996

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Phase 2: Visible Results and Birth of Industry

- *Emphasis:* company development, 75+.
- Need for a comprehensive approach is clearly seen.

1985-89 1989-1996

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Phase 2: Visible Results and Birth of Industry

- *Emphasis:* company development, 75+.
- Need for a comprehensive approach is clearly seen.
- Technology transfer catalyzed.

1985-89 1989-1996

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Phase 2: Visible Results and Birth of Industry

- Emphasis: company development, 75+.
- Need for a comprehensive approach is clearly seen.
- Technology transfer catalyzed.
- Interactive, growing community.

1985-89 1989-1996

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Phase 3: Strategic Evolution and Targeted Responses

85-89 1989-96 1996 -

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Phase 3: Strategic Evolution and Targeted Responses

- Bioscience Investment Fund

85-89 1989-96 1996 -

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Phase 3: Strategic Evolution and Targeted Responses

- Bioscience Investment Fund
- Worker training

85-89 1989-96 1996 -

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Phase 3: Strategic Evolution and Targeted Responses

- Bioscience Investment Fund
- Worker training
- North Rhine – Westfalia Collaboration

85-89 1989-96 1996 -

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Phase 3: Strategic Evolution and Targeted Responses

- Bioscience Investment Fund
- Worker training
- North Rhine – Westfalia Collaboration
- Biomanufacturing

85-89 1989-96 1996 -

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Phase 3: Strategic Evolution and Targeted Responses

- Bioscience Investment Fund
- Worker training
- North Rhine – Westfalia Collaboration
- Biomanufacturing
- Value-added crops

85-89 1989-96 1996 -

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Phase 3: Strategic Evolution and Targeted Responses

- Bioscience Investment Fund
- Worker training
- North Rhine – Westfalia Collaboration
- Biomanufacturing
- Value-added crops
- Forest biotechnology

85-89 1989-96 1996 -

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Phase 3: Strategic Evolution and Targeted Responses

- Bioscience Investment Fund
- Worker training
- North Rhine – Westfalia Collaboration
- Biomanufacturing
- Value-added crops
- Forest biotechnology
- Genomics and bioinformatics

85-89 1989-96 1996 -

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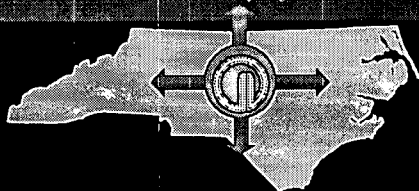
Phase 3: Strategic Evolution and Targeted Responses

Anticipating and charting future.

85-89 1989-96 1996 -

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The Functional Reality of a Center



The functioning reality of being a statewide *center* shapes approach and philosophy.

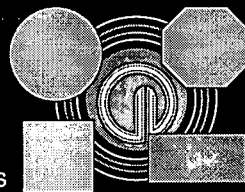
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The Functional Reality of a Center

To develop biotechnology, the Center must be in the middle of, assist, and address:

Partners and participants

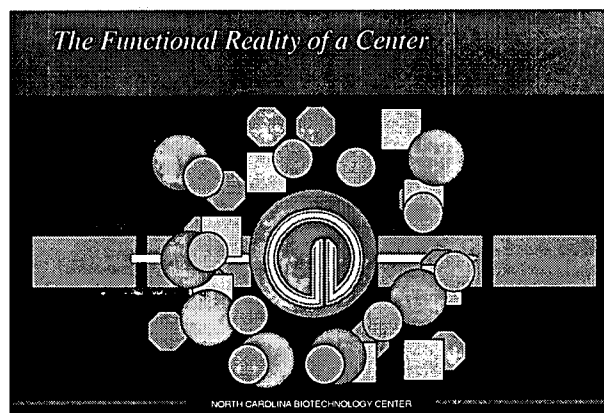
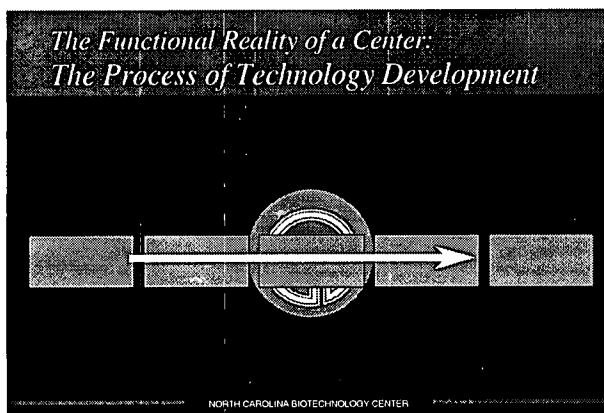
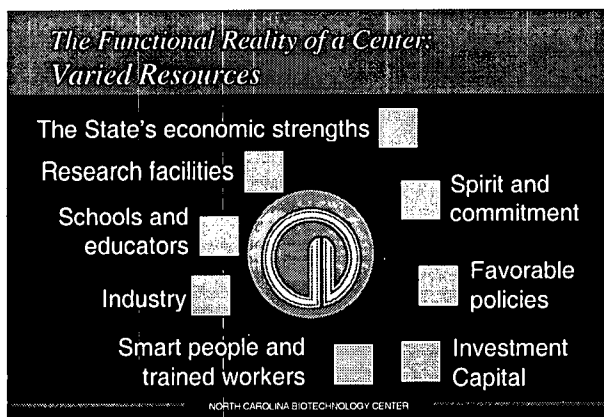
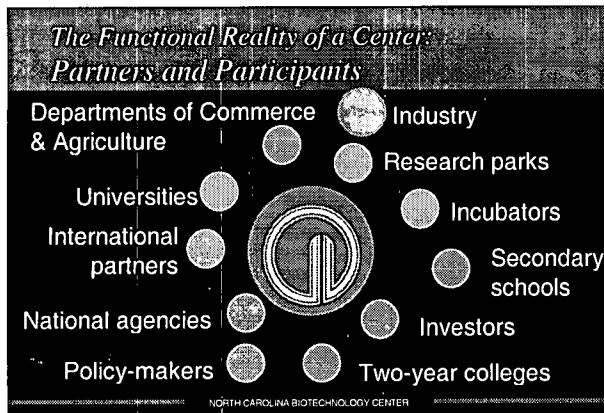
Resources



Issues

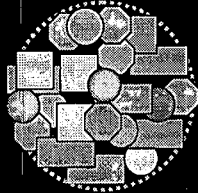
The process of technology development

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*Practical and Sensible Conclusions:
The Process of Technology Development*

This is the complicated, interactive
world of biotechnology.



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History and Characteristics of the
Center



*The Process of Technology
Development*



Introduction to Agricultural
Biotechnology

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*Practical and Sensible Conclusions:
The Process of Technology Development*

The *process* of technology
development must be understood.



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The Process of Technology Development

Technology development is a
continuum, from idea to product.



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The Process of Technology Development

Broadly, the continuum breaks
down into three main phases:

Discovery Development Application



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The Process of Technology Development

Discovery Development Application

Science Industry Society



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The movement is complicated, long-term, sequential, and deliberate.

Science Industry Society



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The Process of Technology Development

The movement is a combination of:

- Stages
- Participants and Resources
- Issues



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Stages

The process involves *many* different steps. Each has different requirements and characteristics.



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The Process of Technology Development

Eleven stages are key, to be addressed by a combination of resources, policy, funding, and interaction.



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The Process of Technology Development

science
and
research



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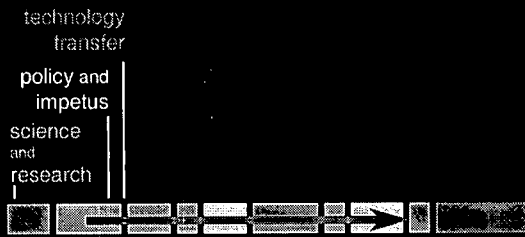
The Process of Technology Development

policy and
impetus
science
and
research



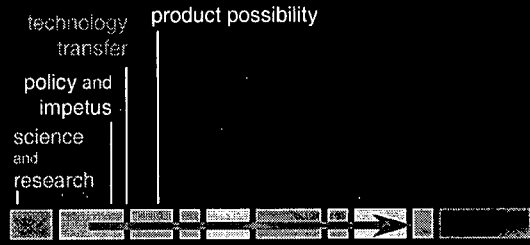
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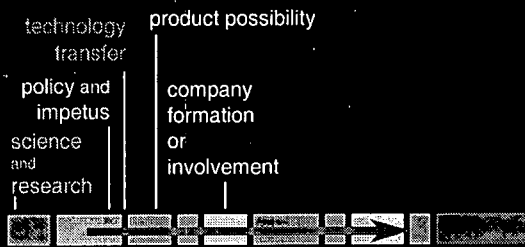
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The Process of Technology Development



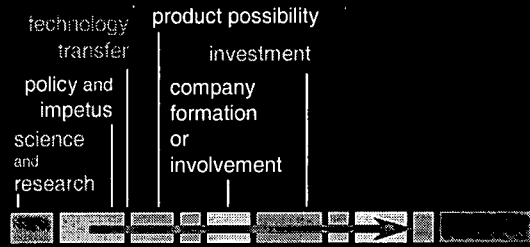
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The Process of Technology Development



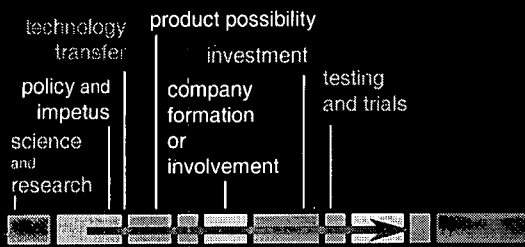
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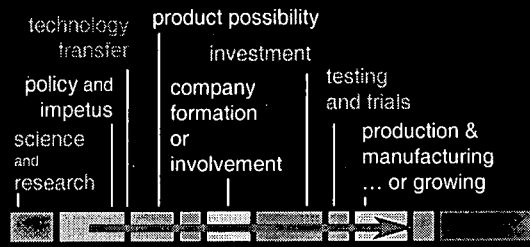
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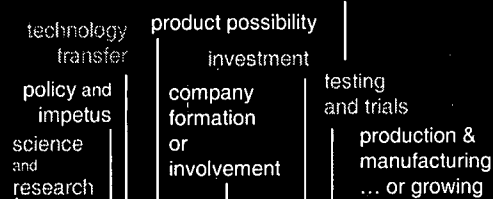
The Process of Technology Development



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The Process of Technology Development

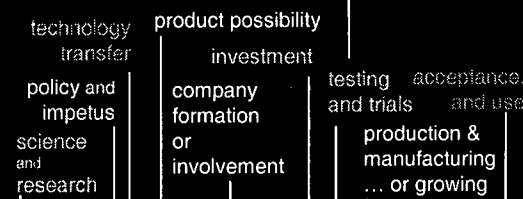
adoption by existing companies or intermediates



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The Process of Technology Development

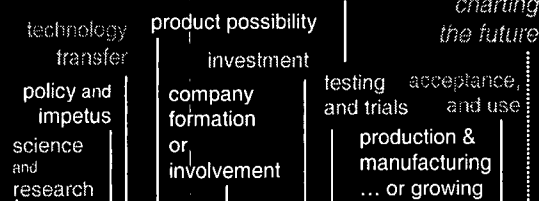
adoption by existing companies or intermediates



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adoption by existing companies or intermediates



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The Process of Technology Development

Participants and Resources

The process is moved along and shaped by varied persons and entities, private and public.



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The Process of Technology Development

Some participants are directly and always *required* for the movement from science to product.



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The Process of Technology Development

Some participants are directly and always *required*.



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The Process of Technology Development

Some participants are directly and always *required*.

universities
and laboratories
researchers



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The Process of Technology Development

Some participants are directly and always *required*.

small and large companies
universities
and laboratories
researchers



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The Process of Technology Development

Some participants are directly and always *required*.

small and large companies
universities
and laboratories
researchers entrepreneurs



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The Process of Technology Development

Some participants are directly and always *required*.

small and large companies
universities
and laboratories
researchers investors entrepreneurs



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The Process of Technology Development

Some participants are directly and always *required*.

small and large companies
investors
universities
and laboratories
researchers regulators entrepreneurs



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Some participants are directly and always *required*.

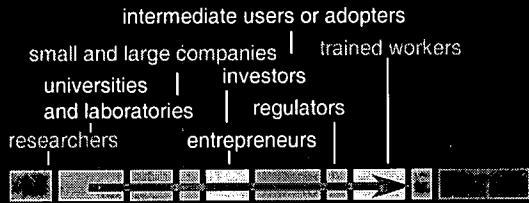
intermediate users or adopters
small and large companies
investors
universities
and laboratories
researchers regulators entrepreneurs



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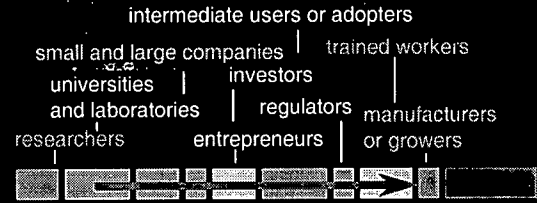
Some participants are directly and always required.



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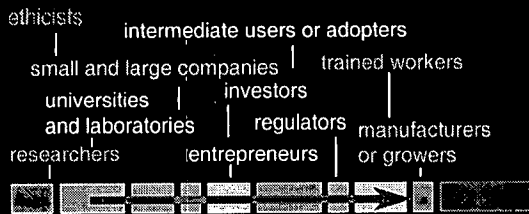
The Process of Technology Development

Some participants are directly and always required.



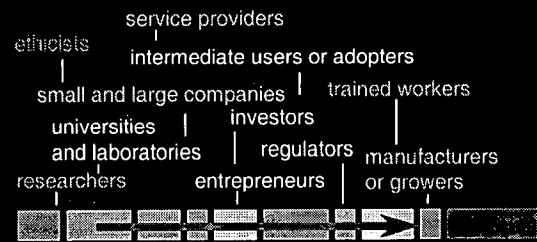
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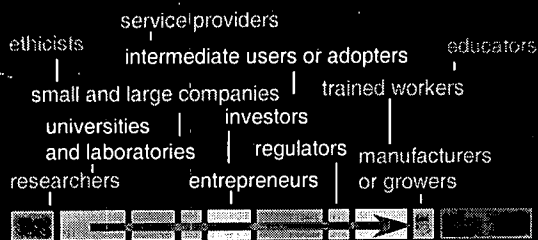
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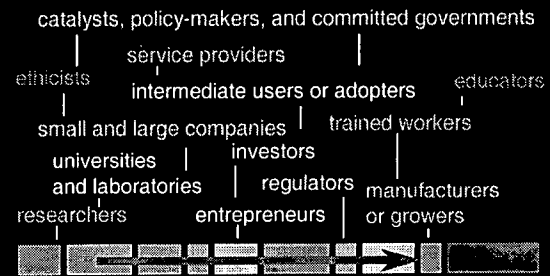
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Issues

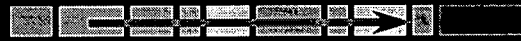
Issues are intrinsic to the process. Some are expected, and some are totally new. They vary by stage and by participant point of view.



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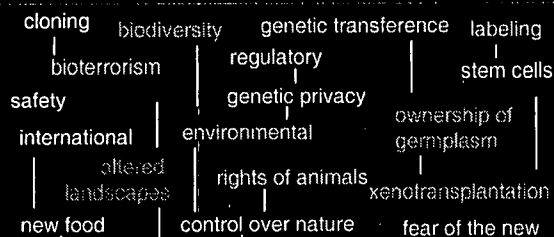
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Issues are societal or policy, ethical or personal – or, in most cases, an overlapping mixture.



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To be a strong leader in biotechnology . . .



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To be a strong leader in biotechnology . . . to have a comprehensive biotechnology endeavor . . .



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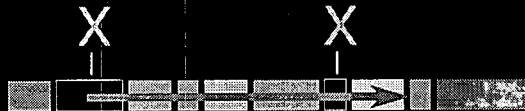
To be a strong leader in biotechnology . . . to have a comprehensive biotechnology endeavor . . . a place must have *in place* all main participants and must address all steps.



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The Process of Technology Development

Lack of appropriate resources and participants at any step can slow – or even stop – the process.



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The Process of Technology Development

Lack of appropriate resources and participants at any step can slow – or even stop – the process.

Excellent
researchers

Risk-taking
companies



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The combination of *Stages*, *Participants*, and *Issues* operates at three levels.



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The Process of Technology Development

The movement is the same for:

- 1 • The entire technology itself.



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The Process of Technology Development

The movement is the same for:

- 1 • The entire technology itself.
- 2 • A sector: forestry, or pharmaceuticals, or genomics



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The Process of Technology Development

The movement is the same for:

- 1 • The entire technology itself.
- 2 • A sector: forestry, or pharmaceuticals, or genomics
- 3 • A single product.



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The Process of Technology Development

Biotechnology has application in three broad key areas:

- 1 • Human health



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The Process of Technology Development

Biotechnology has application in three broad key areas:

- 1 • Human health
- 2 • Environmental remediation



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The Process of Technology Development

Biotechnology has application in three broad key areas:

- 1 • Human health
- 2 • Environmental remediation
- 3 • Agriculture



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History and Characteristics of the Center



The Process of Technology Development



Introduction to Agricultural Biotechnology

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Biotechnology changes the health and characteristics of living organisms, often at the genetic level.



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Biotechnology has applications in four main agricultural areas:

- 1 • Large commodity row crops, including corn, grains, soybeans, and cotton



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Biotechnology has applications in four main agricultural areas:

2 • Fruits and vegetables



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Biotechnology has applications in four main agricultural areas:

3 • Forestry



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Biotechnology has applications in four main agricultural areas:

4 • Increasingly: value-added crops



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In plant agriculture, biotechnology targets and improves, for the plant:

• Growth characteristics

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In plant agriculture, biotechnology targets and improves, for the plant:


• Growth characteristics
• Species vitality and strength

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In plant agriculture, biotechnology targets and improves, for the plant:

• Growth characteristics
• Species vitality and strength
• Resistance to diseases


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In plant agriculture, biotechnology targets and improves, for the plant:

-  *Growth characteristics*
-  *Species vitality and strength*
-  *Resistance to diseases*
-  *Resistance to external pests*


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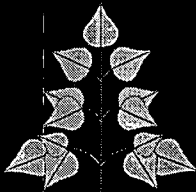
In plant agriculture, biotechnology targets and improves, for the plant:

-  *Growth characteristics*
-  *Species vitality and strength*
-  *Resistance to diseases*
-  *Resistance to external pests*
-  *Product characteristics*


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In plant agriculture, biotechnology yields gain beyond the plant itself:




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In plant agriculture, biotechnology yields gain beyond the plant itself:

- *Decreased input costs and effort*


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In plant agriculture, biotechnology yields gain beyond the plant itself:

- *Decreased input costs and effort*
- *Decreased tillage and erosion*


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In plant agriculture, biotechnology yields gain beyond the plant itself:

- *Decreased input costs and effort*
- *Decreased tillage and erosion*
- *Decreased use of herbicides*


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In plant agriculture, biotechnology yields gain beyond the plant itself:

- *Decreased input costs and effort*
- *Decreased tillage and erosion*
- *Decreased use of herbicides*
- *Decreased use of pesticides*


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In plant agriculture, biotechnology yields gain beyond the plant itself:


- *Decreased input costs and effort*
- *Decreased tillage and erosion*
- *Decreased use of herbicides*
- *Decreased use of pesticides*
- *Improved product characteristics*

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North Carolina is among the world's leading sites for development of agricultural biotechnology, for three main reasons:

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1 • *Research capabilities – particularly at North Carolina State University – are strong.*

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2 • *International corporate facilities are unparalleled, and include: Syngenta, Aventis, BASF, and Paradigm Genetics.*


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3 • *Supporting infrastructure and resources – particularly in genomics and forestry – are strong.*



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Plant biotechnology is seen increasingly and measurably in this country and beyond.



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Plant biotechnology worldwide:

1999
98.6 million acres

2000
109.2 million acres

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Plant biotechnology in the United States:

1999
71 million acres

2000
74.8 million acres



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Plant biotechnology in the United States:

The USDA estimates that one-third of the total acreage of crops planted in major US farm states is now genetically modified.

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Plant biotechnology in the United States:

Since 1987, the USDA has permitted 5,000 field trials of biotechnology plants.

Forty products have been approved and are grown and marketed.

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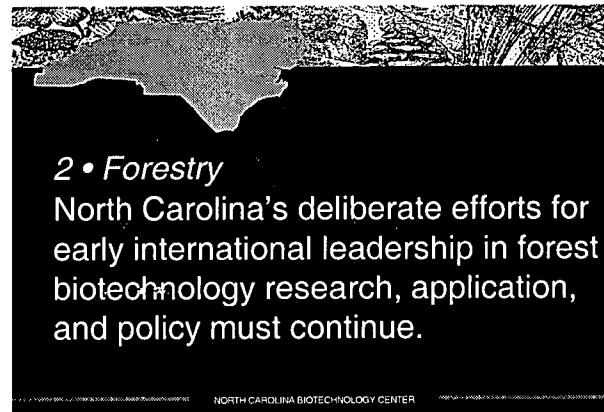
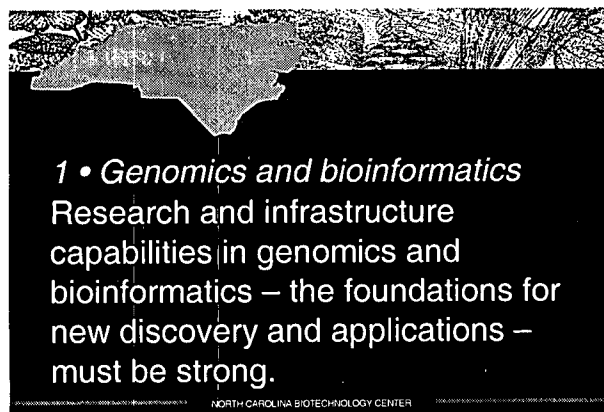
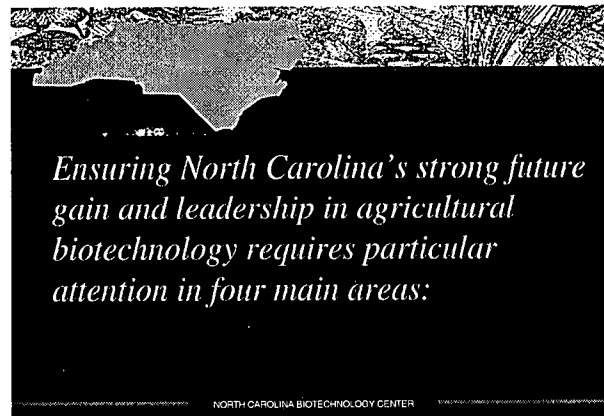
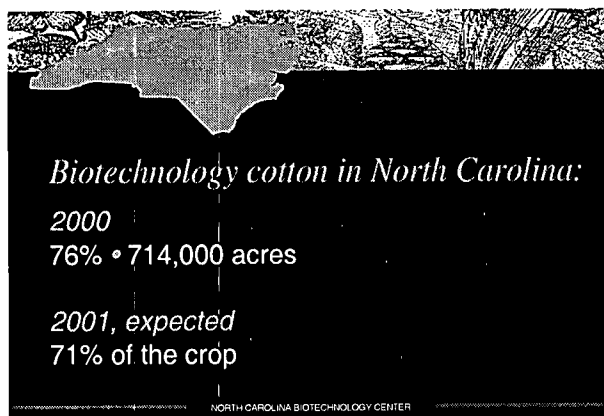
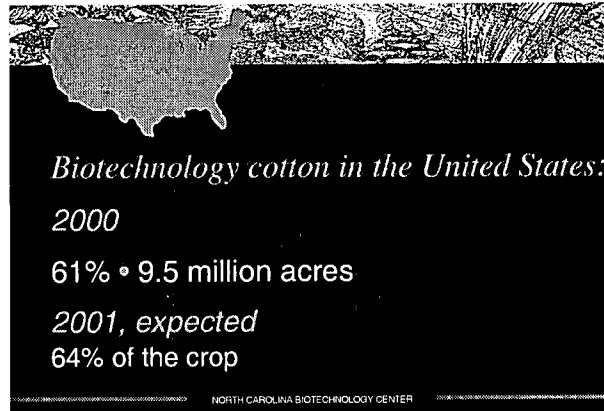
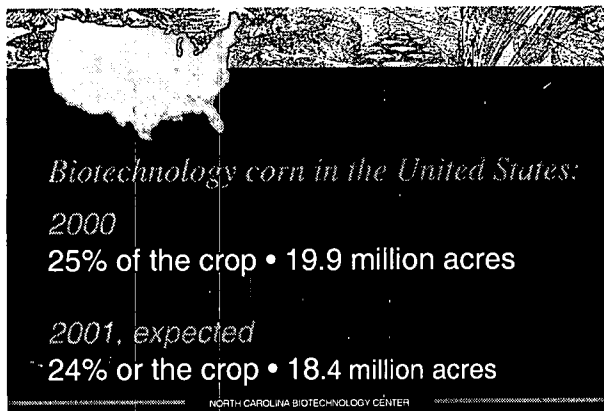


Biotechnology soybeans in the US:

2000
54% • 40.2 million acres

2001, expected
63% • 48.3 million acres

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3 • *Value-added crops*

Plants altered to produce proteins, pharmaceuticals, food additives, or other new materials must be targeted. Companies working in this area must be gained.

10/10/2009 10:10:10 AM

NORTH CAROLINA BIOTECHNOLOGY CENTER

10/10/2009 10:10:10 AM



3 • *Value-added crops*

North Carolina in fact has extraordinary opportunity for early leadership in the growth and harvesting of such crops.

10/10/2009 10:10:10 AM

NORTH CAROLINA BIOTECHNOLOGY CENTER

10/10/2009 10:10:10 AM



4 • *Very specific targeted or value-added crops*

Crops of traditional gain to this state – in particular tobacco – must be targeted for new characteristics and markets.

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AGENDA

HOUSE AGRICULTURE COMMITTEE

**June 19, 2001
1425 Legislative Building
10:00 A.M.**

OPENING REMARKS

**Representative Dewey L. Hill
Chairman**

AGENDA ITEMS

Speakers

**Dr. Charles E. Hamner
President and Chief Executive Officer**

**Mr. W. Steven Burke
Senior Vice President, Corporate Affairs & External Relations**

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ADJOURNMENT

Gennie Thurlow (Rep. Hill)

From: Gennie Thurlow (Rep. Hill)
Sent: Thursday, June 14, 2001 1:25 PM
Subject: Agriculture Committee Meeting/Sponsor

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE AND BILL SPONSOR NOTICE
2001-2002 SESSION**

You are hereby notified that the Committee on **AGRICULTURE** will meet as follows:

DAY & DATE: TUESDAY, JUNE 19, 2001
TIME: 10:00 A.M.
LOCATION: 1425 LEGISLATIVE BUILDING

The following bill will be considered (Bill # & Short Title & Bill Sponsor):

HB 984 LANDSCAPE/IRRIGATION CONTRACTORS
Sponsors: Representatives Hill and Gibson

Agriculture Committee members are invited to hear the following speakers:

Dr. Charles E. Hamner, President and Chief Executive Officer
Mr. W. Steven Burke, Senior Vice President, Corporate Affairs & External Relations
NORTH CAROLINA BIOTECHNOLOGY CENTER

Respectfully,

Representative Dewey Hill
Chair

I hereby certify this notice was filed by the committee clerk at the following offices at
1:30 p.m. on June 14, 2001.

____ Principal Clerk
____ Reading Clerk - House Chamber

Gennie Thurlow (Committee Assistant)

**MINUTES
HOUSE COMMITTEE ON AGRICULTURE**

July 3, 2001

The House Committee on Agriculture met on Tuesday, July 3, 2001, at 10:00 a.m. in Room 1425 of the Legislative Building. The following members were present: Chairman Dewey Hill; Vice Chairmen Larry Bell, Leslie Cox, W. B. Teague, Jr., Nurham Warwick; Representatives Baker, Coates, Culp, Davis, Eddins, Fox, Hilton, Kiser, Nye, Owens, Russell, Tolson, Tucker, Underhill, Warren, Weatherly, Wilson, and Yongue. The Visitor Registration Sheet is attached and made part of these minutes. (Attachment 1)

Chairman Hill presided and called the meeting to order at 10:00 a.m. and stated there was only one bill on the agenda: House Bill 984 Landscape/Irrigation Contractors.

Representative Warwick moved that House Bill 984 Proposed Committee Substitute be adopted for discussion, and the motion carried.

Representative Gibson was recognized and spoke on House Bill 984 Landscape/Irrigation Contractors Proposed Committee Substitute. Ms. Erika Churchill, committee counsel, gave the highlights of the Committee Substitute for House Bill 984. Mr. Dick Carlton, North Carolina Landscape Association, spoke on the bill and thanked the individuals who had made contributions regarding the bill. Several other visitors spoke, and there was a question and answer period.

Chairman Hill stated that Representative W. B. Teague, Jr., had an amendment (Attachment 2), and Representative Gibson explained the amendment. A discussion followed. Representative Teague moved that his amendment be given a favorable report. The motion carried, and the amendment was adopted.

Chairman Hill indicated that he had an amendment from Representative Davis (Attachment 3). Chairman Hill asked if there was further discussion. Hearing none, there was a vote. At the time of the vote, there was a division. A count of the votes showed ten members voted "yes" and five members voted "no." Chairman Hill stated that the bill is still alive. Discussion followed.

Representative Cox moved to amend House Bill 984 Proposed Committee Substitute, and he read the amendment. Representative Gibson spoke on the amendment presented by Representative Cox. A discussion followed.


Representative Warwick moved that Representative Cox's amendment be displaced until next week (July 10, 2001). A discussion followed.

Chairman Hill stated that the Agriculture Committee would meet on House Bill 984 Committee Substitute again on Tuesday, July 10, 2001. The attached amendments were adopted and carried over. (Attachments 2 and 3)

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



Representative Dewey Hill, Chairman



Gennie Thurlow, Committee Assistant

Attachments

VISITOR REGISTRATION SHEET

AGRICULTURE
Name of Committee

July 3, 2001
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

John Long	Martin Mancilla
BRUCE THOMPSON	PARKER POE ADAMS + BERNSTEIN
Arthur Monberry	NWQ Groundwater Section
David Vogel	DENR Soil + Water Conservation
Laura DeVito	DENR
Henry Jones	Attorney - Raleigh
Bill Johnson	DOT
Sam Long	TCNC
Tom Brand	NCLA + TCNC
Stephanie Mansur	NCAR

VISITOR REGISTRATION SHEET

AGRICULTURE

Name of Committee

July 3, 2001

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Tim Minto	N.C. Home Builders Assn
GARRY BRADLEY	NCSD
Steve Woodson	N.C. Farm Bureau
Erin Culbreth	LBA
Larry Benley	LBA
Willie Benney	NCDR. CS
John Cyrus	N.C. State Exchange
Charles Tomlinson	Turfgrass Council of NC
Rogers Bone	Bone & Assoc -
Gary Upchurch	NCLA
John Ross	NCLA

VISITOR REGISTRATION SHEET

Agriculture
Name of Committee

7/3/01
Date

VISITORS: PLEASE SIGN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS[illegible]



Attachment 2

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
House Bill 984

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

H984-ARF-8 [v.1]

Page 1 of 1

Date 7/3, 2001

Comm. Sub. [YES]
Amends Title [NO]
H984-CSSTx-51

Representative ~~Witt~~ Teague

- lines 19 & 20
of v. 13

- 1 moves to amend the bill on page 3, lines 17 and 18, by rewriting those lines to read:
2
3 "the General Statutes."

SIGNED Rep. Teague
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 984DATE 7/3/01

S. B. No. _____

Amendment No. _____

COMMITTEE SUBSTITUTE ✓(to be filled in by
Principal Clerk)

(Rep.)

Sen.)

Davis

line 40 of V.13

1 moves to amend the bill on page 2, line 37

2 () WHICH CHANGES THE TITLE

3 by adding after the period a new4 sentence to read:5 " Every6 Landscaper contractor and ^{every} irrigation7 Contractor shall display the license8 number issued to the contractor by9 the Board on all business cards,10 contracts and vehicles used ~~in~~ by11 the contractor in the landscape or12 irrigation contracting business."

13 _____

14 _____

15 _____

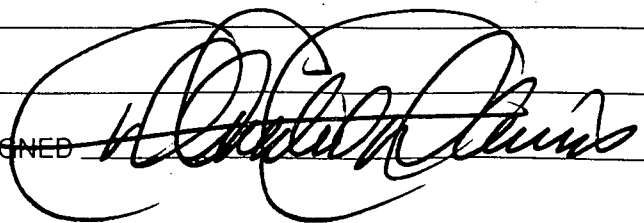
16 _____

17 _____

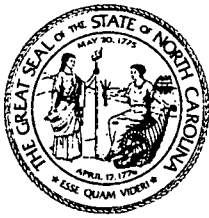
18 _____

19 _____

SIGNED



ADOPTED _____ FAILED _____ TABLED _____



HB984: Landscape/Irrigation Contractors

BILL ANALYSIS

Committee: House Agriculture Committee
Date: June 18, 2001
Version: PCS

Introduced by: Representative Hill
Summary by: Barbara Riley
Committee Counsel

SUMMARY:

House Bill 984 repeals the existing law requiring the registration of persons using the title "Landscape Contractor" and replaces it with a new program regulating the practice of landscape contracting and irrigation contracting. The new provisions establish the qualifications for licensure, examination, continuing education requirements, fees, and the disciplinary powers of the Board. House Bill 984 (SB 983) was reviewed by the Legislative Committee on New Licensing Boards and licensing of landscape/irrigation contractors was recommended.

CURRENT LAW:

Chapter 89D of the General Statutes requires persons or corporations that wish to use the title "Landscape Contractor" to register with the Landscape Contractors Registration Board. "Landscape Contractor" is defined to mean any person engaging in the installation, planting, repairing and maintenance of gardens, lawns, shrubs, vines bushes trees and other decorative vegetation including grading and preparation of plots and land for decorative treatment. It also includes those persons who construct garden pools, fountains, pavilions, conservatories, hothouses, and greenhouses incidental retaining walls, fences, walks, drainage systems and sprinkler systems. Persons desiring to register must apply to the Board and take an oral or written examination to determine the individual's qualifications. An applicant must also furnish the Board evidence of a minimum of three years experience in landscape contracting or the completion of a study or a combination of study and experience equal to three years experience under a landscape contractor.

The current Board is composed of 9 members. Two of the members are appointed by the Governor, two by the Commissioner of Agriculture, Two by the N.C. Association of Nurserymen, two by the N.C. Landscape Contractors Association, and one by the NC Chapter of the American Association of Landscape Architects. The Board has the power to deny, revoke and suspend certificates of title for false representations to obtain a certificate, for conviction of a crime involving moral turpitude, for improper, fraudulent, or dishonest dealing or violation of the rules adopted by the Board.

BILL ANALYSIS:

Section 1 of House Bill 984 repeals the existing registration requirements for landscape contractors.

Section 2 of the bill establishes the new program of licensing for landscape contractors and irrigation contractors.

Definitions

For the purpose of the licensing statutes, landscape contracting is defined as engaging in the business requiring the art, ability, knowledge, and skill to install, plant, and maintain gardens, lawns and other decorative vegetation. It also includes grading plots for decorative treatment, construction, installation or maintenance of landscape drainage systems, incidental construction of garden pools, greenhouses, fences,

or walkways, and the practice, for employment purposes, of landscape or horticulture consultation or landscape design. Irrigation contracting is defined to mean the construction, installation and maintenance of landscape irrigation systems or landscape drainage systems.

Licensing Requirements

Persons who wish to engage in the practice of landscape contracting or irrigation contracting, or to use the designation "Landscape Contractor" or "Irrigation Contractor" or advertise indicating that they are licensed, must obtain a license from the North Carolina Landscape/Irrigation Contractors Licensing Board. Licensure as a Landscape Contractor does not authorize the licensee to practice Landscape Architecture as defined in G.S. 89A-1.

To obtain a license, persons must make application to the Board demonstrating that they:

- (1) Are at least 18 years of age;
- (2) Are of good moral character;
- (3) Have at least 3 years of experience or the educational equivalent (as either a landscape contractor for the landscape contractors' license or as an irrigation contractor for the irrigation contractors' license). Two years of education is the equivalent of 1 year's experience; and
- (4) Have filed and maintain a surety bond or an irrevocable letter of credit with the Board in the amount of \$7,500. A person claiming to have been injured by an act of a licensee of the Board that violates Chapter 89D may sue to recover against the licensee and the surety.

Applicants that meet the above qualifications shall be required to pass an examination administered by the Board. The Board shall determine the scope and subject matter of the exam. The Certified Irrigation Contractor Exam and other comparable examinations shall be recognized by the Board as approved exams to become licensed as an irrigation contractor.

Licenses may be issued in the name of a corporation if one or more of the officers or full-time employees authorized to act on behalf of the corporation is licensed by the Board. The officer or employee holding the required license shall execute contracts for the corporation and shall exercise general supervision over the work performed under the contract.

Renewals/Continuing Education

Licenses must be renewed on or before December 31 of each year. Licenses not renewed shall be automatically revoked. Licenses may be renewed at anytime within a year of expiration upon the payment of the renewal fee and late fee and a finding by the Board that the licensee has not used the license in violation of the provisions of Chapter 89D and is otherwise eligible for licensure. Licensees must complete 20 hours of continuing education within a 3 year period. No more than 10 hours may be taken in any one year. Licensees who fail to complete the continuing education requirements forfeit their license and will be required to reapply and retake the exam in order to obtain a license.

Fees

The following fee schedule applies for licenses and provisional licenses:

Application fee	\$100.00
Examination fee	100.00
License renewal	100.00
Late renewal fee	50.00

License by reciprocity	250.00
Corporate license	100.00
Duplicate license	25.00

Disciplinary Action/Civil Penalties/Injunction

The Board is authorized to deny, restrict, suspend or revoke a license or refuse to issue a license if a licensee or applicant had (1) engaged in fraud/misrepresentation in obtaining a license; (2) practices or attempts to practice landscape/irrigation contracting by misrepresentation; (3) commits gross malpractice or incompetence; (4) has been convicted, or plead guilty, to a crime indicating unfitness to practice landscape/irrigation contracting or that indicates fraud or deceit; (5) is declared incompetent; (6) willfully violates the provision of Chapter 89D or the rules of the Board; (7) fraudulently uses the seal; or (8) fails to keep the required bond or letter of credit in place.

In addition to its disciplinary powers, the Board may assess a civil penalty of up to \$2,000 for each violation of Chapter 89D or the rules. The Board is to assess the gravity of the violation, the appropriateness of a civil penalty, whether the violation was willful and malicious and other mitigating or aggravating factors. The Board is also authorized to seek injunctive relief in superior court when it finds persons practicing landscape/irrigation contracting without a license.

Licensed contractors are required to notify the Board of any written complaints regarding a landscape/irrigation job filed against the contractor within 30 days of the complaint being filed.

Exemptions

The following persons are exempt from the licensure requirements of Chapter 89D:

- (1) Governmental agencies performing landscape work on public property.
- (2) Registered landscape architects.
- (3) Property owners performing landscape or irrigation work on their own property.
- (4) Persons, in the scope of employment, performing landscape or irrigation or design work on property owned or under the control of the employer.
- (5) Persons performing landscape work where the price of all contracts for labor, material, and other items for a given job site during any consecutive 12-month period is less than seven thousand five hundred dollars (\$7,500).
- (6) Persons performing irrigation work where the price of all contracts for labor, material, and other items for a given job site during any consecutive 12-month period is less than one thousand five hundred dollars (\$1,500).
- (7) Persons or business licensed as General Contractors fences, decks, arbors, driveways, walkways, or retaining walls.
- (8) Licensed plumbers performing plumbing work.
- (9) Licensed professional engineers.
- (10) Persons engaged only in the business of clearing/grading plots and areas of land.
- (11) Persons engaged only in the business of erosion control.
- (12) Persons engaged only in the business of arboriculture, including consultations on pruning and removal of trees.
- (13) Persons engaged only in the business of seed and sod installation.
- (14) Utilities contractors engaged in landscape construction for the purpose of grading and erosion control.

- (15) Any person performing irrigation work relating to agriculture or aquaculture as defined in Chapter 106 of the General Statutes.
- (16) Any person performing irrigation work related to municipal or industrial wastewater, excluding re-use water application.
- (17) Any person performing irrigation work relating to municipal stormwater.

The North Carolina Landscape/Irrigation Contractors' Licensing Board

The Board is to consist of 9 members. The Governor, Commissioner of Agriculture, President Pro Tem of the Senate and Speaker of the House are each to make one appointment. The North Carolina Chapter of the American Society of Landscape Architects, the Board of Directors of the North Carolina Association of Nurserymen, Inc. and the Carolinas Irrigation Association shall also make one appointment each. Finally, The North Carolina Landscape Association, Inc. shall make two appointments. Members shall serve three year terms and the terms are to be staggered. In addition to the powers of the Board to administer the provisions of Chapter 89D, they shall also have the authority to employ personnel and fix their compensation, to adopt and publish both a code of professional conduct and a code of minimum practice standards and to conduct administrative hearings pursuant to Article 3A of Chapter 150B of the General Statutes. The Board is entitled to the services of the Attorney General's Office or may employ its own attorneys.

Phase In of Licensure Requirements/Effective Date

The act becomes effective January 1, 2002. However, the applicability of the licensure requirements shall be phased in as follows.

- (1) Persons who are registered as landscape contractor as of December 31, 2001 shall be issued a landscape contractors license without examination if they make application and pay the fees on or before April 1, 2002. Landscape contractors registered under Chapter 89D shall not be required to renew the registration for calendar year 2002 to qualify for a license.
- (2) Persons who have obtained a Certified Irrigation Contractor certification through the Carolina Irrigation Association or who have obtained a Certified Irrigation Designer certification on the effective date of this act shall be issued an irrigation contractors license without exam if they submit an application and pay the fees on or before April 1, 2002.
- (3) At its discretion the Board may grant a landscape/irrigation license, without exam, to a registered landscape contractor or person who has obtained a Certified Landscape Irrigation Auditor certification through the Carolinas Irrigation Association and who has three years experience in irrigation contracting.
- (4) Persons who have an established place of business prior to the effective date of the act and who produce satisfactory evidence that they are engaged in the business of landscape or irrigation contracting, and who were not registered as a landscape contractor or qualified to receive an irrigation contractors license as of January 1, 2001, may apply for a provisional license on or before July 1, 2002. A provisional license shall be issued if the applicant shows that he is at least 18, of good moral character and files and maintains the required bond or letter of credit and pays the required fees. A full license may be granted only after the person meets the experience requirements and passes the examination.
- (5) Members of the Landscape Contractors Registration Board shall continue to serve until the North Carolina Landscape/Irrigation Contractors' Licensing Board is appointed. All the records, funds, and other items of the Registration Board shall transfer to the new Board.

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: House Bill 984 (First Edition)

SHORT TITLE: Landscape/Irrigation Contractors

SPONSOR(S): Representatives Hill, Gibson, and Morris

FISCAL IMPACT

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

FY 2001-02 FY 2002-03 FY 2003-04 FY 2004-05 FY 2005-06

REVENUES

Special Fund

See Assumptions and Methodology

EXPENDITURES

PRINCIPAL DEPARTMENT(S) &

PROGRAM(S) AFFECTED: NC Landscape/Irrigation Contractors' Licensing Board

EFFECTIVE DATE: This act becomes effective October 1, 2001

BILL SUMMARY: Section 1 of this legislation repeals G.S. 89D-1 through 89D-10 that outlines the authorities and responsibilities of the NC Landscape Contractors' Registration Board (hereinafter called the existing Board). Section 2 amends Chapter 89D by outlining the authorities and obligations of the NC Landscape/Irrigation Contractors' Licensing Board (hereinafter called the proposed Board). The legislation first outlines the composition of the Board and related definitions. It then goes on to outline the application and licensing procedures, exemptions, penalties, and fees imposable under the proposed Board's authority.

ASSUMPTIONS AND METHODOLOGY: Among the powers granted the NC Landscape/Irrigation Contractors' Licensing Board under this legislation is the authority to impose and collect fees. The fees authorized in the legislation are the maximum fees that the proposed Board is allowed to impose. In essence, this legislation simply extends the

authority of the existing NC Landscape Contractors' Registration Board to include irrigation contractors. Therefore, the direct fiscal impact of the legislation results from fees collected from irrigation contractor licensing. The maximum allowable fees, and estimated collections are as follows:

Type of Fee	Maximum Fee	Anticipated Number of Collections	Estimated Collections
Application Fee	\$100	250	\$25,000
Examination Fee	\$100		\$0
License Renewal	\$100	200	\$20,000
Late Renewal Fee	\$50	150	\$7,500
License by Reciprocity	\$250	150	\$37,500
Corportate License	\$250	50	\$12,500
Duplicate License	\$25	5	\$125
Total			\$102,625

The estimated increase in revenue from fees is approximately **\$102,625** annually. Estimates for the anticipated number of collections are provided by the existing NC Landscape Contractors' Registration Board. Currently, there are approximately 200-250 nationally certified irrigation contractors in the state. Certification is obtained by successfully completing the National Certified Irrigation Contractor Association Examination. Representatives from the existing Landscape Contractors' Board anticipate that the examination and certification of irrigation contractors will continue to be administered by the National Certified Irrigation Contractors' Association. Therefore, the NC Landscape Contractors' Registration Board does not anticipate that the proposed Board will collect any examination fees.

Representatives from the NC Landscape Contractors' Registration Board do not anticipate an increase in the existing fee schedule for the licensing of landscape contractors. However, the legislation does authorize the existing Board to impose fees greater than those that are currently collected. Therefore, the legislation has the potential impact of increasing revenues from currently licensed landscape contractors. The difference between current collections and the maximum estimated collections from the proposed fees results in the potential net increase in revenue. This maximum potential net increase is **\$54,720** annually. Due to the October 1, 2001 effective date, the fees from July 1, 2001 to September 30, 2001 would be

imposed using the existing fee schedule. Fees from the October 1, 2001 to June 30, 2002 would be imposed at the proposed fee schedule. Therefore, the prorated FY 2001-02 estimate for the potential increase is **\$41,040**. Current collections, and potential collections are outlined in the following chart:

Type of Fee	Curr. Max Fee	Curr. Fees	# of Curr Coll	Curr Coll	Proposed Max Fee	Max Coll from Proposed Fees
Application Fee	\$50	\$50	104	\$5,200	\$100	\$10,400
Examination Fee	\$75	\$50	100	\$5,000	\$100	\$10,000
License Renewal	\$50	\$50	720	\$36,000	\$100	\$72,000
Late Renewal Fee	\$10	\$10	210	\$2,100	\$50	\$10,500
License by Reciprocity	n/a	n/a	0	\$0	\$250	\$0
Corportate License	n/a	n/a	0	\$0	\$250	\$0
Duplicate License	\$1	\$1	5	\$5	\$25	\$125
				\$48,305		\$103,025
Net Difference					\$54,720	

TECHNICAL CONSIDERATIONS: The fees authorized in the legislation are the maximum fees that the proposed Board is allowed to impose. Revenue estimates in this fiscal note are based on these maximum fees, and reflect the maximum estimated collections.

FISCAL RESEARCH DIVISION 733-4910

PREPARED BY: Eugene Son and Richard Bostic

APPROVED BY: James D. Johnson



DATE: June 24, 2001

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

H

1

HOUSE BILL 984*

Short Title: Landscape/Irrigation Contractors.

(Public)

Sponsors: Representatives Hill, Gibson (Primary Sponsors); and Morris.

Referred to: Finance.

April 5, 2001

A BILL TO BE ENTITLED

AN ACT TO REWRITE THE LAWS REGULATING LANDSCAPE CONTRACTORS, TO INCLUDE IRRIGATION CONTRACTORS UNDER THE LAWS REGULATING LANDSCAPE CONTRACTORS, TO ALLOW THE GENERAL ASSEMBLY TO APPOINT TWO OF THE NINE MEMBERS TO THE NORTH CAROLINA LANDSCAPE/IRRIGATION CONTRACTORS' LICENSING BOARD, AND TO AUTHORIZE THE BOARD TO INCREASE FEES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 89D-1 through 89D-10 are repealed.

SECTION 2. Chapter 89D is amended by adding the following new sections to read:

"§ 89D-11. Definitions.

The following definitions apply in this Chapter:

- (1) Board. – The North Carolina Landscape/Irrigation Contractors' Licensing Board.
- (2) Irrigation contractor. – Any person who, for compensation or other consideration, constructs, installs, or maintains irrigation systems.
- (3) Irrigation construction or contracting. – The act of providing services as an irrigation contractor, as defined in this section, for compensation or other consideration.
- (4) Landscape contractor. – Any person who, for compensation or other consideration, does any of the following:
 - a. Engages in the business requiring the art, experience, ability, knowledge, science, and skill to install, plant, repair, and maintain gardens, lawns, shrubs, vines, trees, or other decorative vegetation including the grading and preparation of

plots and areas of land for decorative treatment and arrangement.

b. Practices the act of landscape or horticulture consultation or landscape design for employment purposes.

c. Constructs, installs, or maintains drainage systems.

d. Engages in the incidental construction of garden pools, fountains, pavilions, conservatories, hothouses and greenhouses, retaining walls, fences, or walks.

e. Engages in any of these acts in a manner that, under an agreed specification, an acceptable landscaping project can be executed.

(5) Landscape construction or contracting. – The act of providing services as a landscape contractor, as defined in this section, for compensation or other consideration.

(6) Person. – An individual, firm, partnership, association, corporation, or other legal entity.

"§ 89D-12. License required; use of seal; posting license.

(a) Except as otherwise provided in this Chapter, no person shall engage in the practice of landscape construction or contracting, use the designation 'landscape contractor', or advertise using any title or description that implies licensure as a landscape contractor unless the person is licensed by the Board as provided by this Chapter. All landscape construction or contracting performed by a partnership, association, corporation, firm, or other group shall be under the direct supervision of an individual licensed by the Board under this Chapter.

(b) Except as otherwise provided in this Chapter, no person shall engage in the practice of irrigation construction or contracting, use the designation 'irrigation contractor', or advertise using any title or description that implies licensure as an irrigation contractor unless the person is licensed by the Board as provided by this Chapter. All irrigation construction or contracting performed by a partnership, association, corporation, firm, or other group shall be under the direct supervision of an individual licensed by the Board under this Chapter.

(c) Upon licensure by the Board, each landscape contractor or irrigation contractor shall obtain a seal of the design authorized by the Board and bearing the name of the licensee, the number of the license, and the legend 'N.C. Licensed Landscape Contractor' or 'N.C. Licensed Irrigation Contractor'. A landscape contractor or irrigation contractor may use the seal only while the license is valid.

(d) Every landscape contractor or irrigation contractor issued a license under this Chapter shall display the license conspicuously in the contractor's place of business.

"§ 89D-13. Exemptions.

The provisions in this Chapter shall not apply to:

(1) Any federal or State agency or any political subdivision performing landscaping on public property.

(2) Any landscape architect registered under Chapter 89A of the General Statutes.

- (3) Any property owner who performs landscape construction on his or her own property.
- (4) Any landscaping work where the price of all contracts for labor, material, and other items for a given job site during any consecutive 12-month period is less than seven thousand five hundred dollars (\$7,500).
- (5) Any irrigation work where the price of all contracts for labor, material, and other items for a given job site during any consecutive 12-month period is less than three thousand five hundred dollars (\$3,500).
- (6) Installation of fences, decks, arbors, driveways, walkways, or retaining walls when performed by a person or business licensed pursuant to Article 1 of Chapter 87 of the General Statutes.
- (7) Those engaged only in the business of clearing and grading plots and areas of land.
- (8) Those engaged only in the business of erosion control.
- (9) Those engaged only in the business of arboriculture, including consultations on pruning and removal of trees.
- (10) Those engaged only in the business of seed and sod installation.
- (11) Utilities contractors engaged in landscape construction for the purpose of grading and erosion control.

"§ 89D-14. The North Carolina Landscape Contractors' Licensing Board.

(a) The North Carolina Landscape/Irrigation Contractors' Licensing Board is created. The Board shall consist of nine members who are appointed as follows:

- (1) One of the members shall be appointed by the Governor and shall be a member of the general public.
- (2) One the members shall be appointed by the Commissioner of Agriculture upon the recommendation of the Carolinas Irrigation Association.
- (3) Two of the members shall be practicing nurserymen operating a nursery certified by the North Carolina Department of Agriculture and Consumer Services Plant Pest Inspection Program upon the recommendation of the Board of Directors of the North Carolina Association of Nurserymen, Inc.
- (4) Three of the members shall be licensed landscape contractors in the business of landscape construction or contracting. One of the three members shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives and two shall be appointed by the Board of Directors of the North Carolina Landscape Association, Inc.
- (5) One of the members shall be a licensed irrigation contractor in the business of irrigation construction or contracting appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate.

(6) One of the members shall be a registered landscape architect appointed by the Board of Directors of the North Carolina Chapter of the American Society of Landscape Architects.

(b) Members of the Board shall serve three-year terms, so staggered that the terms of three members expire in one year, the terms of three members expire in the next year, and the terms of three members expire in the third year of each three-year period. No member shall serve more than two complete consecutive terms.

(c) A vacancy on the Board created by death, resignation, or otherwise shall be filled in the same manner as the original appointment, except that all unexpired terms of Board members appointed by the General Assembly shall be filled in accordance with G.S. 120-122. Appointees to fill vacancies shall serve the remainder of the unexpired term and until their successors are appointed and qualified.

(d) The Board shall elect annually a chair and other officers as it deems necessary to carry out the purposes of this Chapter and shall hold meetings at least twice a year. A majority of the Board shall constitute a quorum.

(e) Each member of the Board may receive per diem and reimbursement for travel and subsistence as set forth in G.S. 93B-5.

(f) The Board shall be entitled to the services of the Attorney General in connection with the affairs of the Board or may, in its discretion, employ an attorney to assist or represent it in the enforcement of this Chapter.

"§ 89D-15. Powers and duties.

The Board shall have the following powers and duties:

(1) To administer and enforce the provisions of this Chapter.

(2) To adopt, amend, or repeal rules to carry out the provisions of this Chapter.

(3) To examine and determine the qualifications and fitness of applicants for licensure and licensure renewal.

(4) To issue, renew, deny, restrict, suspend, or revoke licenses.

(5) To reprimand or otherwise discipline licensees under this Chapter.

(6) To receive and investigate complaints from members of the public.

(7) To conduct investigations to determine whether violations of this Chapter exist or constitute grounds for disciplinary action against licensees under this Chapter.

(8) To conduct administrative hearings in accordance with Chapter 150B of the General Statutes.

(9) To seek injunctive relief through any court of competent jurisdiction for violations of this Chapter.

(10) To collect fees required by G.S. 89D-19 and any other monies permitted by law to be paid to the Board.

(11) To require licensees to file and maintain an adequate surety bond.

(12) To establish and approve continuing education requirements for persons licensed under this Chapter.

- (13) To employ a secretary-treasurer and any other clerical personnel the Board deems necessary to carry out the provisions of this Chapter and to fix compensation for employees.
- (14) To maintain a record of all proceedings conducted by the Board and make available to licensees and other concerned parties an annual report of all Board action.
- (15) To adopt and publish a code of professional conduct for all persons licensed under this Chapter.
- (16) To adopt a seal containing the name of the Board for use on licenses and official reports issued by the Board.

"§ 89D-16. Application for license; qualifications; examination; issuance.

(a) Upon application to the Board and the payment of the required fees, an applicant may be licensed under this Chapter as a landscape contractor or an irrigation contractor if the applicant submits evidence that demonstrates his or her qualifications as prescribed in rules adopted by the Board, and meets all of the following qualifications:

- (1) Is at least 18 years of age.
- (2) Is of good moral character as determined by the Board.
- (3) Has at least three years of experience in landscape construction or contracting or the educational equivalent or three years of experience in irrigation construction or contracting or the educational equivalent. Two years of educational training in landscape construction or contracting or irrigation construction or contracting shall be the equivalent of one year of experience.
- (4) Files with the Board and maintains a corporate surety bond executed by a company authorized to do business in this State or an irrevocable letter of credit issued by an insured institution. The surety bond or the letter of credit shall be in the amount of seven thousand five hundred dollars (\$7,500). The surety bond or letter of credit shall be approved by the Board as to form and shall be conditioned upon the obligor faithfully conforming to and abiding by the provisions of this Chapter. Any person claiming to be injured by an act of a licensed landscape contractor or a licensed irrigation contractor that constitutes a violation of this Chapter may institute an action to recover against the licensee and the surety.

(b) If the application is satisfactory to the Board, the applicant shall be required to pass an examination administered by the Board. The Board shall establish the scope and subject matter of the examination, and examinations shall be held at least twice a year at a time and place to be determined by the Board. When the Board determines that an applicant has met all the qualifications for licensure and has submitted the required fee, the Board shall issue a license to the applicant.

"§ 89D-17. Reciprocity.

The Board may issue a license, without examination, to any person who is a landscape contractor or irrigation contractor licensed, certified, or registered in another

1 state or country if the requirements for licensure, certification, or registration in the
2 other state or country are substantially equivalent to the requirements for licensure in
3 this State.

4 **"§ 89D-18. License renewal and continuing education.**

5 (a) Every license issued under this Chapter shall be renewed on or before the
6 thirty-first day of December of each year. Any person who desires to continue to
7 practice shall apply for a license renewal and shall submit the required fee. Licenses that
8 are not renewed shall be automatically revoked. A license may be renewed at any time
9 within one year after its expiration, if: (i) the applicant pays the required renewal fee
10 and late renewal fee; (ii) the Board finds that the applicant has not used the license in a
11 manner inconsistent with the provisions of this Chapter or engaged in the practice of
12 landscape construction or contracting or irrigation construction or contracting after
13 notice of revocation; and (iii) the applicant is otherwise eligible for licensure under the
14 provisions of this Chapter. When necessary, the Board may require licensees to
15 demonstrate continued competence as a condition of license renewal.

16 (b) As a condition of license renewal, a licensee must meet the continuing
17 education requirements set by the Board. Each licensee shall complete 20 continuing
18 education units within a three-year period. A licensee shall not acquire more than 10 of
19 the 20 continuing education units required for license renewal in a one-year period.
20 Failure to obtain continuing education units shall result in the forfeiture of a license.
21 Upon forfeiture, a person shall be required to submit a new application and retake the
22 examination as provided in this Chapter.

23 **"§ 89D-19. Expenses and fees.**

24 (a) The Board may impose the following fees not to exceed the amounts listed
25 below:

26	(1)	<u>Application fee</u>	<u>\$100.00</u>
27	(2)	<u>Examination fee</u>	<u>100.00</u>
28	(3)	<u>License renewal</u>	<u>100.00</u>
29	(4)	<u>Late renewal fee</u>	<u>50.00</u>
30	(5)	<u>License by reciprocity</u>	<u>250.00</u>
31	(6)	<u>Corporate license</u>	<u>100.00</u>
32	(7)	<u>Duplicate license</u>	<u>25.00</u>

33 (b) When the Board uses a testing service for the preparation, administration, or
34 grading of examinations, the Board may charge the applicant the actual cost of the
35 examination services.

36 **"§ 89D-20. Disciplinary action.**

37 The Board may deny, restrict, suspend, or revoke a license or refuse to issue or
38 renew a license if a licensee or applicant:

- 39 (1) Employs the use of fraud, deceit, or misrepresentation in obtaining or
40 attempting to obtain a license or the renewal of a license.
41 (2) Practices or attempts to practice landscape construction or contracting
42 or irrigation construction or contracting by fraudulent
43 misrepresentation.

- (3) Commits an act of gross malpractice or incompetence as determined by the Board.
- (4) Has been convicted of or pled guilty or no contest to a crime that indicates that the person is unfit or incompetent to practice as a landscape contractor or irrigation contractor or that indicates that the person has deceived or defrauded the public.
- (5) Has been declared incompetent by a court of competent jurisdiction.
- (6) Has willfully violated any provision in this Chapter or any rules adopted by the Board.
- (7) Uses or attempts to use the seal in a fraudulent or unauthorized manner.
- (8) Fails to file the required surety bond or letter of credit or to keep the bond or letter of credit in force.

"§ 89D-21. Civil penalties.

(a) In addition to taking any of the actions permitted under G.S. 89D-20, the Board may assess a civil penalty not in excess of two thousand dollars (\$2,000) for each violation of any section of this Chapter or the violation of any rules adopted by the Board. All civil penalties collected by the Board shall be remitted to the school fund of the county in which the violation occurred.

(b) Before imposing and assessing a civil penalty and fixing the amount of the penalty, the Board shall, as a part of its deliberations, take into consideration the following factors:

- (1) The nature, gravity, and persistence of the particular violation.
- (2) The appropriateness of the imposition of a civil penalty when considered alone or in combination with other punishment.
- (3) Whether the violation was willful and malicious.
- (4) Any other factors that would tend to mitigate or aggravate the violations found to exist.

"§ 89D-22. Injunction to prevent violation; notification of complaints.

(a) If the Board finds that a person who does not have a license issued under this Chapter is engaging in the practice of landscape construction or contracting or irrigation construction or contracting, the Board may appear in its own name in superior court in actions for injunctive relief to prevent any person from violating the provisions of this Chapter or the rules adopted by the Board.

(b) A licensed landscape contractor or licensed irrigation contractor shall notify the Board of any complaints filed against the landscape contractor within 30 days from the date the complaint was filed by registered mail to the Board."

SECTION 3. Any person already registered as a landscape contractor on the effective date of this act shall be issued a landscape contractor's license and an irrigation contractor's license without the requirement of examination. Any person who has obtained Certified Irrigation Contractor (CIC) certifications through the Carolinas Irrigation Association shall be issued an irrigation contractor's license and a landscape contractor's license without the requirement of examination.

1 **SECTION 4.** Members serving on the North Carolina Landscape/Irrigation
2 Contractors' Licensing Board on the effective date of this act may complete the terms
3 for which they were appointed. When the term of the member appointed by the
4 Governor and whose term expires on December 1, 2002, is completed, the General
5 Assembly, upon the recommendation of the Speaker of the House of Representatives,
6 shall, pursuant to G.S. 89D-14(a)(4), as enacted in Section 2 of this act, appoint to the
7 Board one member who is a licensed landscape contractor. When the term of the
8 member appointed by the Commissioner of Agriculture and whose term expires on
9 December 1, 2002, is completed, the General Assembly, upon the recommendation of
10 the President Pro Tempore of the Senate, shall, pursuant to G.S. 89D-14(a)(5), as
11 enacted in Section 2 of this act, appoint to the Board one member who is a licensed
12 irrigation contractor. After the terms of all other Board members expire, appointments
13 shall continue to be filled in the same manner as the original appointment.

14 **SECTION 5.** This act becomes effective October 1, 2001.

LIC BILL

CALL

0984 Id=5893

H.B. _____

SESSION LAW _____

A BILL TO BE ENTITLED

AN ACT TO REWRITE THE LAWS REGULATING LANDSCAPE CONTRACTORS, TO INCLUDE IRRIGATION CONTRACTORS UNDER THE LAWS REGULATING LANDSCAPE CONTRACTORS, TO ALLOW THE GENERAL ASSEMBLY TO APPOINT TWO OF THE NINE MEMBERS TO THE NORTH CAROLINA LANDSCAPE/IRRIGATION CONTRACTORS' LICENSING BOARD, AND TO AUTHORIZE THE BOARD TO INCREASE FEES.

Introduced by Representative(s): Hill. & Gibson (Primary Sponsors)

Marrio

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APR 5 2001
AND REFERRED TO COMMITTEE
ON...Finance.....

ON MOTION OF
REP. *Culpepper*
WITHDRAWN FROM
Finance
APR 10 2001
RECOMMITTED TO
Agriculture, & for
Finance

LC BILL

CALL

0984 Id=5893

H.B. _____

SESSION LAW _____

A BILL TO BE ENTITLED

AN ACT TO REWRITE THE LAWS REGULATING LANDSCAPE CONTRACTORS, TO INCLUDE IRRIGATION CONTRACTORS UNDER THE LAWS REGULATING LANDSCAPE CONTRACTORS, TO ALLOW THE GENERAL ASSEMBLY TO APPOINT TWO OF THE NINE MEMBERS TO THE NORTH CAROLINA LANDSCAPE/IRRIGATION CONTRACTORS' LICENSING BOARD, AND TO AUTHORIZE THE BOARD TO INCREASE FEES.

Introduced by Representative(s): Hill. & Gibson (Primary Sponsors)

Marrio

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APR 5 2001
AND REFERRED TO COMMITTEE
ON... *Finance*

ON MOTION OF
REP. *Culpeper*
WITHDRAWN FROM
Finance
APR 10 2001
RECOMMITTED TO
Agriculture, & for
Finance

AGENDA

HOUSE AGRICULTURE COMMITTEE

July 3, 2001
1425 Legislative Building
10:00 A.M.

OPENING REMARKS

Representative Dewey L. Hill
Chairman

AGENDA ITEM

HB 984 LANDSCAPE/IRRIGATION CONTRACTORS
Representatives Dewey Hill and Pryor Gibson, Primary Sponsors

ADJOURNMENT

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE AND BILL SPONSOR NOTICE
2001-2002 SESSION**

You are hereby notified that the Committee on **AGRICULTURE** will meet as follows:

DAY & DATE: TUESDAY, JULY 3, 2001

TIME: 10:00 A.M.

LOCATION: 1425 LEGISLATIVE BUILDING

The following bill will be considered (Bill # & Short Title & Bill Sponsor):

HB 984 LANDSCAPE/IRRIGATION CONTRACTORS
Sponsors: Representatives Hill and Gibson

Respectfully,

Representative Dewey Hill
Chair

I hereby certify this notice was filed by the committee clerk at the following offices at
1:45 p.m. on June 28, 2001.

____Principal Clerk
____Reading Clerk - House Chamber

Gennie Thurlow (Committee Assistant)

MINUTES

HOUSE COMMITTEE ON AGRICULTURE

July 10, 2001

The House Committee on Agriculture met on Tuesday, July 10, 2001, at 10:00 a.m. in Room 1425 of the Legislative Building. The following members were present: Representative Hill, Chairman; Representatives Bell, Cox, and Warwick, Vice Chairmen; and Representatives Baker, Bonner, Coates, Culp, Davis, Eddins, Fox, Hilton, Kiser, Mitchell, Nye, Rogers, Russell, Tolson, Underhill, Warren, Wilson and Yongue. The Visitor Registration Sheet is attached and made part of these minutes. (Attachment 1)

Chairman Hill called the meeting to order and stated that House Bill 984, Landscape/Irrigation Contractors was the only agenda item.

A proposed committee substitute for House Bill 984 was offered and Representative Kiser moved for its adoption. Motion carried and the committee substitute was properly before the committee. (Attachment 2)

Representative Pryor Gibson, bill sponsor, spoke briefly on the committee substitute and asked staff to explain the differences in the committee sub before the committee at the last meeting and the committee substitute before the meeting today.

On page 2, lines 31-33, new language was added *(e) Nothing in this Chapter shall be construed to authorize a landscape contractor or irrigation contractor to practice as a well contractor certified under Article 7A of Chapter 87 of the General Statutes.* On page 3, line 40-41 added *(18) the exemption of any person performing only lawn mowing, turf edging, debris edging, or debris removal services.* On page 4, line 1-3 added *(19) the exemption of any person engaged in the business of design, installation, and maintenance of on-site wastewater disposal or reuse systems within the on-site wastewater permit specifications.*

Dick Carlton with the NC Landscape Association was recognized for comments. He told the Committee that we needed to take very small steps because this is a growing industry in our state and we are just getting started. He emphasized that 70% to 80% of the jobs are below \$7,500 and that is an appropriate limit as shown in (5) on page 3.

There was much discussion concerning specific wording in the bill and the primary purpose of the bill. Mike Currin with Greenscape, Inc addressed the primary purpose of the bill. He said the bill is needed because there are no standards of entry for this profession. Landscape work deals with the environment and setting standards for the way the work is done is very important. Customers sometimes have to pay twice

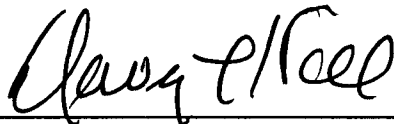
when the first job is not done properly and a second contractor has to fix what the first one did improperly.

There was much discussion about the need for this bill in the larger metropolitan areas but not in the rural areas. Rep. Gibson reminded everyone that the bill is not about contract exclusion; it is about consumer protection.

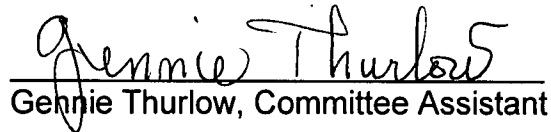
Staff explained that the two amendments adopted at the last meeting were not included in the new committee substitute because there was not a motion to roll the amendments into a committee substitute. Representative Russell moved that the amendments be engrossed into a committee substitute; motion carried.

Rep. Cox offered an amendment to change the bill on page 3, lines 12 and 13, by changing the amount from \$7,500 to \$30,000. A voice vote was taken, division was called and the count was 8 to 8. The Chair declared that motion failed for lack of a majority.

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



Representative Dewey Hill, Chairman



Gennie Thurlow, Committee Assistant

Attachments

VISITOR REGISTRATION SHEET

AGRICULTURE

Name of Committee

Date

July 16, 2001

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Jon Carr	Jordan Price
Agnes Bore	Bore Assoc.
Doug Lassiter	NC Septic Tank Assoc.
J. Bewley	LBA
David Meredith	NC State Grange
JB	NC FB
Laura Patton	ANN
Fred Altan	NC Aggregates Assn.
Lu-Ann Coe	NC Agribusiness Council, Inc
Dave Simpson	CAROLINAS Associated General Contractors
BRUCE THOMPSON	PARKER POE ADAMS & BERNSTEIN

VISITOR REGISTRATION SHEET

AGRICULTURE

Name of Committee

Jul 10, 2001
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

R. Paul Wilms	NCHBA
Erin Culbert	LBA
Charles Johnson	TCNC
Beth Ann Mumford	NCPC
Chris Porter	Bone & Assoc.
Theresa Kostzawa	Cap. Adv. Assoc.
TOM PROETT	LANARC - NCLA
GARY Upchurch	NCLA
John Long	Martin Marietta
David M. Lord	NCDA & CS
Arthur Monberry	DEMR Groundwater Section

VISITOR REGISTRATION SHEET

AGRICULTURE

Name of Committee

Date July 10, 2001

Date _____

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME _____

FIRM OR AGENCY AND ADDRESS

NICOLE PALYA

NRA
FAIRFAX, VA

Michael F. Currin

GlenScape NW Holly Springs NC 275

Tim Mister

2c Home Building Assn

Chaf Walker
Dak Carlson

Carl H. Thiele

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

H

D

HOUSE BILL 984*
PROPOSED COMMITTEE SUBSTITUTE H984-CSSTx-51 [v.13]

6/21/2001 3:37:21 PM

Short Title: Landscape/Irrigation Contractors.

(Public)

Sponsors:

Referred to:

April 5, 2001

A BILL TO BE ENTITLED

AN ACT TO REWRITE THE LAWS REGULATING LANDSCAPE CONTRACTORS, TO INCLUDE IRRIGATION CONTRACTORS UNDER THE LAWS REGULATING LANDSCAPE CONTRACTORS, AND TO AUTHORIZE THE BOARD TO INCREASE FEES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 89D-1 through 89D-10 are repealed.

SECTION 2. Chapter 89D is amended by adding the following new sections to read:

"§ 89D-11. Definitions.

The following definitions apply in this Chapter:

- (1) Board. – The North Carolina Landscape/Irrigation Contractors' Licensing Board.
- (2) Irrigation contractor. – Any person who, for compensation or other consideration does any of the following:
 - a. Constructs, installs, or maintains landscape irrigation systems.
 - b. Constructs, installs, or maintains landscape drainage systems.
- (3) Irrigation construction or contracting. – The act of providing services as an irrigation contractor, as defined in this section, for compensation or other consideration.
- (4) Landscape contractor. – Any person who, for compensation or other consideration, does any of the following:
 - a. Engages in the business requiring the art, experience, ability, knowledge, science, and skill to install, plant, repair, and maintain gardens, lawns, shrubs, vines, trees, or other decorative vegetation including the grading and preparation of plots and areas of land for decorative treatment and arrangement.

b. Practices the act of horticultural consultation or planting design for employment purposes.

c. Constructs, installs, or maintains landscape drainage systems.

d. Engages in the incidental construction of garden pools, fountains, pavilions, conservatories, hothouses and greenhouses, retaining walls, fences, or walks.

(5) Landscape construction or contracting. – The act of providing services as a landscape contractor, as defined in this section, for compensation or other consideration.

(6) Person. – An individual, firm, partnership, association, corporation, or other legal entity.

"§ 89D-12. License required; use of seal; posting license.

(a) Except as otherwise provided in this Chapter, no person shall engage in the practice of landscape construction or contracting, use the designation 'landscape contractor', or advertise using any title or description that implies licensure as a landscape contractor unless the person is licensed as a landscaped contractor as provided by this Chapter. All landscape construction or contracting performed by a partnership, association, corporation, firm, or other group shall be under the direct supervision of an individual licensed by the Board under this Chapter.

(b) Except as otherwise provided in this Chapter, no person shall engage in the practice of irrigation construction or contracting, use the designation 'irrigation contractor', or advertise using any title or description that implies licensure as an irrigation contractor unless the person is licensed as an irrigation contractor by the Board as provided by this Chapter. All irrigation construction or contracting performed by a partnership, association, corporation, firm, or other group shall be under the direct supervision of an individual licensed by the Board under this Chapter.

(c) Nothing in this Chapter shall be construed to authorize a landscape contractor to engage in the practice of landscape architecture as defined in G.S. 89A-1.

(d) Nothing in this Chapter shall be construed to authorize a landscape contractor to engage in the practice of engineering as defined in G.S. 89C-3.

(e) Nothing in this Chapter shall be construed to authorize a landscape contractor or irrigation contractor to practice as a well contractor certified under Article 7A of Chapter 87 of the General Statutes.

(f) Upon licensure by the Board, each landscape contractor or irrigation contractor shall obtain a seal of the design authorized by the Board and bearing the name of the licensee, the number of the license, and the legend 'N.C. Licensed Landscape Contractor' or 'N.C. Licensed Irrigation Contractor'. A landscape contractor or irrigation contractor may use the seal only while the license is valid.

(g) Every landscape contractor or irrigation contractor issued a license under this Chapter shall display the license conspicuously in the contractor's place of business.

"§ 89D-13. Exemptions.

The provisions in this Chapter shall not apply to:

- (1) Any federal, State, or local governmental agency performing landscape work on public property.
- (2) Any landscape architect registered under Chapter 89A of the General Statutes.
- (3) Any property owner performing landscape or irrigation work on his or her own property.
- (4) Any person, in the scope of employment, performing landscape or irrigation or design work on property owned or under the control of the employer.
- (5) Any person performing landscape work where the price of all contracts for labor, material, and other items for a given job site during any consecutive 12-month period is less than seven thousand five hundred dollars (\$7,500).
- (6) Any person performing irrigation work where the price of all contracts for labor, material, and other items for a given job site during any consecutive 12-month period is less than one thousand five hundred dollars (\$1,500).
- (7) Any person or business licensed pursuant to Article 1 of Chapter 87 of the General Statutes installing fences, decks, arbors, driveways, walkways, or retaining walls.
- (8) Any person or business licensed pursuant to Article 2 of Chapter 87 of the General Statutes performing plumbing work.
- (9) A professional engineer licensed pursuant to Chapter 89C of the General Statutes.
- (10) Those persons engaged only in the business of clearing and grading plots and areas of land.
- (11) Those person engaged only in the business of erosion control.
- (12) Those persons engaged only in the business of arboriculture, including consultations on pruning and removal of trees.
- (13) Those persons engaged only in the business of seed and sod installation.
- (14) Utilities contractors engaged in landscape construction for the purpose of grading and erosion control.
- (15) Any person performing irrigation work relating to agriculture or aquaculture as defined in Chapter 106 of the General Statutes.
- (16) Any person performing irrigation work related to municipal or industrial wastewater, excluding re-use water application.
- (17) Any person performing irrigation work relating to municipal stormwater.
- (18) Any person performing only lawn mowing, turf edging, debris blowing, or debris removal services.

- (19) Any person engaged in the business of design, installation, and maintenance of on-site wastewater disposal or reuse systems within the on-site wastewater permit specifications.

"§ 89D-14. The North Carolina Landscape Contractors' Licensing Board.

(a) The North Carolina Landscape/Irrigation Contractors' Licensing Board is created. The Board shall consist of nine members who are appointed as follows: one member by the Governor, one member by the President Pro Tempore of the Senate, one member by the Speaker of the House, one member by the Commissioner of Agriculture, one member by the North Carolina Association of Nurserymen, Inc., two members by the North Carolina Landscape Association, Inc, one member by the North Carolina Chapter of the American Society of Landscape Architects, and one member by the Irrigation Association. The members shall be appointed as follows:

- (1) The Governor shall make the following appointment:
 - a. An at-large appointee.
- (2) The President Pro Tempore of the Senate shall make the following appointment:
 - a. A licensed irrigation contractor in the business of irrigation construction or contracting, as recommended by the North Carolina Irrigation Society.
- (3) The Speaker of the House shall make the following appointment:
 - a. A licensed landscape contractor in the business of landscape construction or contracting.
- (4) The Commissioner of Agriculture shall make the following appointment:
 - a. A person recommended by the Irrigation Association.
- (5) The Board of Directors of the North Carolina Association of Nurserymen, Inc. shall make the following appointments:
 - a. A practicing nurserymen operating a nursery certified by the North Carolina Department of Agriculture and Consumer Services Plant Pest Inspection Program.
- (6) The Board of Directors of the North Carolina Landscape Association, Inc. shall make the following appointments:
 - a. A licensed landscape contractor in the business of landscape construction or contracting.
 - b. A licensed landscape contractor in the business of landscape construction or contracting.
- (7) The North Carolina Chapter of the American Society of Landscape Architects shall make the following appointment:
 - a. A registered landscape architect.
- (8) The Irrigation Association shall make the following appointment:
 - a. A licensed irrigation contractor in the business of irrigation construction or contracting.

(b) Members of the Board shall serve three-year terms, staggered so that the terms of three members expire in one year, the terms of three members expire in the next year, and the terms of three members expire in the third year of each three-year period. No member shall serve more than two complete consecutive terms.

(c) A vacancy on the Board created by death, resignation, or otherwise shall be filled in the same manner as the original appointment, except that all unexpired terms of Board members appointed by the General Assembly shall be filled in accordance with G.S. 120-122. Appointees to fill vacancies shall serve the remainder of the unexpired term and until their successors are appointed and qualified.

(d) The Board shall elect annually a chair and other officers as it deems necessary to carry out the purposes of this Chapter and shall hold meetings at least twice a year. A majority of the Board shall constitute a quorum.

(e) Each member of the Board may receive per diem and reimbursement for travel and subsistence as set forth in G.S. 93B-5.

(f) The Board shall be entitled to the services of the Attorney General in connection with the affairs of the Board or may, in its discretion, employ an attorney to assist or represent it in the enforcement of this Chapter.

"§ 89D-15. Powers and duties.

The Board shall have the following powers and duties:

- (1) To administer and enforce the provisions of this Chapter.
- (2) To adopt, amend, or repeal rules to carry out the provisions of this Chapter.
- (3) To examine and determine the qualifications and fitness of applicants for licensure and licensure renewal.
- (4) To issue, renew, deny, restrict, suspend, or revoke licenses.
- (5) To receive and investigate complaints from members of the public.
- (6) To conduct investigations to determine whether violations of this Chapter exist or constitute grounds for disciplinary action against licensees under this Chapter.
- (7) To conduct administrative hearings in accordance with Article 3A of Chapter 150B of the General Statutes.
- (8) To establish and approve continuing education requirements for persons licensed under this Chapter.
- (9) To employ a secretary-treasurer, clerical personnel, and others the Board deems necessary to carry out the provisions of this Chapter
- (10) To fix compensation for employees.
- (11) To maintain a record of all proceedings conducted by the Board and make available to licensees and other concerned parties an annual report of all Board action.
- (12) To adopt and publish a code of professional conduct for all persons licensed under this Chapter.

1 (13) To adopt and publish a code of minimum practice standards for
2 landscape and irrigation construction.

3 (14) To adopt a seal containing the name of the Board for use on licenses
4 and official reports issued by the Board.

5 **"§ 89D-16. Application for license; qualifications; examination; issuance.**

6 (a) Upon application to the Board and the payment of the required fees, an
7 applicant may sit for the examination under this Chapter as a landscape contractor or an
8 irrigation contractor if the applicant submits evidence that demonstrates his or her
9 qualifications as prescribed in rules adopted by the Board, and meets all of the
10 following qualifications:

11 (1) Is at least 18 years of age.

12 (2) Is of good moral character as determined by the Board.

13 (3) For a landscape contractor's license, has at least three years of
14 experience in landscape construction or contracting or the educational
15 equivalent. For an irrigation contractor's license, has at least three
16 years of experience in irrigation construction or contracting or the
17 educational equivalent. Two years of educational training in landscape
18 construction or contracting or irrigation construction or contracting
19 shall be the equivalent of one year of experience.

20 (4) Files with the Board and maintains a corporate surety bond executed
21 by a company authorized to do business in this State or an irrevocable
22 letter of credit issued by an insured institution. The surety bond or the
23 letter of credit shall be in the amount of seven thousand five hundred
24 dollars (\$7,500). The surety bond or letter of credit shall be approved
25 by the Board as to form and shall be conditioned upon the obligor
26 faithfully conforming to and abiding by the provisions of this Chapter.
27 Any person claiming to be injured by an act of a licensed landscape
28 contractor or a licensed irrigation contractor that constitutes a violation
29 of this Chapter may institute an action to recover against the licensee
30 and the surety.

31 (b) If the applicant meets all the qualifications in subsection (a) of this section,
32 the applicant shall be required to pass an examination administered by the Board before
33 the Board may issue the license. The Board shall establish the scope and subject matter
34 of the examination to be administered. The Board shall recognize the Certified
35 Irrigation Contractor (CIC), or any other comparable examination, as an approved
36 examination to become licensed as an irrigation contractor.

37 (c) Examinations shall be held at least twice a year at a time and place to be
38 determined by the Board.

39 (d) When the Board determines that an applicant has met all the qualifications for
40 licensure and has submitted the required fee, the Board shall issue a license to the
41 applicant.

1 (e) The Board may issue a license in the name of a corporation provided one or
2 more of the officers or full time employees that are empowered to act for the
3 corporation are licensed in accordance with the provisions of this Chapter. In addition
4 to the provisions of this Chapter, a corporation shall do all of the following when a
5 license is issued in the name of the corporation:

6 (1) The officer or full time employee licensed under this Chapter who are
7 empowered to act for the corporation shall execute contracts in the
8 name of the corporation to the extent of the license qualifications of
9 the individual.

10 (2) The officer of full time employee licensed under this Chapter shall
11 exercise general supervision over the landscape or irrigation work
12 performed under the contract.

13 (f) An individual desiring to construct, install or maintain landscape drainage
14 systems shall not be required to hold both an irrigation contractor's license and a
15 landscape contractor's license.

16 (g) Persons who had an established place of business prior to January 1, 2002,
17 and who produce satisfactory evidence that they are engaged in the landscape business
18 as defined in G.S. 89D-11 and were not registered under G.S. 89D-1 through G.S. 89D-
19 10, may apply for a landscape contractors' provisional license on or before July 1, 2002.
20 The Board shall issue a provisional license, valid up to July 1, 2004, if the applicant
21 meets the qualifications under subdivision (a)(1), (a)(2), and (a)(4) of this section and
22 pays the proper fee. Before the Board may issue a license, the applicant must pass the
23 examination under subsection (b) of this section after gaining the experience required
24 under subdivision (a)(3) of this section.

25 (h) Persons who had an established place of business prior to January 1, 2002,
26 and who produce satisfactory evidence that they are engaged in the irrigation business
27 as defined in G.S. 89D-11 and were not registered as a landscape contractor under G.S.
28 89D-1 through G.S. 89D-10 or were not qualified to receive an irrigation contractors'
29 license on January 1, 2002, may apply for an irrigation contractors' provisional license
30 on or before July 1, 2002. The Board shall issue a provisional license, valid up to July
31 1, 2004, if the applicant meets the qualifications under subdivision (a)(1), (a)(2), and
32 (a)(4) of this section and pays the proper fee. Before the Board may issue a license, the
33 applicant must pass the examination under subsection (b) of this section after gaining
34 the experience required under subdivision (a)(3) of this section.

35 **"§ 89D-17. Reciprocity.**

36 The Board may issue a license, without examination, to any person who is a
37 landscape contractor or irrigation contractor licensed, certified, or registered in another
38 state or country if the requirements for licensure, certification, or registration in the
39 other state or country are substantially equivalent to the requirements for licensure in
40 this State.

41 **"§ 89D-18. License renewal and continuing education.**

(a) Every license issued under this Chapter shall be renewed on or before the thirty-first day of December of each year. Any person who desires to continue to practice shall apply for a license renewal and shall submit the required fee. When necessary, the Board may require licensees to demonstrate continued competence as a condition of license renewal. Licenses that are not renewed shall be automatically revoked. A license may be renewed at any time within one year after its expiration, if: (i) the applicant pays the required renewal fee and late renewal fee; (ii) the Board finds that the applicant has not used the license in a manner inconsistent with the provisions of this Chapter or engaged in the practice of landscape construction or contracting or irrigation construction or contracting after notice of revocation; and (iii) the applicant is otherwise eligible for licensure under the provisions of this Chapter.

(b) As a condition of license renewal, a licensee must meet the continuing education requirements set by the Board. Failure to obtain continuing education units shall result in the forfeiture of a license.

(c) Upon forfeiture, a person shall be required to submit a new application and retake the examination as provided in this Chapter.

"§ 89D-19. Expenses and fees.

(a) For licenses and provisional licenses, the Board may impose the following fees not to exceed the amounts listed below:

(1)	Application fee	\$100.00
(2)	Examination fee	100.00
(3)	License renewal	100.00
(4)	Late renewal fee	50.00
(5)	License by reciprocity	250.00
(6)	Corporate license	100.00
(7)	Duplicate license	25.00

(b) When the Board uses a testing service for the preparation, administration, or grading of examinations, the Board may charge the applicant the actual cost of the examination services.

"§ 89D-20. Disciplinary action.

The Board may deny, restrict, suspend, or revoke a license or refuse to issue or renew a license if a licensee or applicant:

- (1) Employs the use of fraud, deceit, or misrepresentation in obtaining or attempting to obtain a license or the renewal of a license.
- (2) Practices or attempts to practice landscape construction or contracting or irrigation construction or contracting by fraudulent misrepresentation.
- (3) Commits an act of gross malpractice or incompetence as determined by the Board.
- (4) Has been convicted of or pled guilty or no contest to a crime that indicates that the person is unfit or incompetent to practice as a

landscape contractor or irrigation contractor or that indicates that the person has deceived or defrauded the public.

(5) Has been declared incompetent by a court of competent jurisdiction.

(6) Has willfully violated any provision in this Chapter or any rules adopted by the Board.

(7) Uses or attempts to use the seal in a fraudulent or unauthorized manner.

(8) Fails to keep the bond or letter of credit in force.

"§ 89D-21. Civil penalties.

(a) In addition to taking any of the actions permitted under G.S. 89D-20, the Board may assess a civil penalty not in excess of two thousand dollars (\$2,000) for each violation of any section of this Chapter or the violation of any rules adopted by the Board. All civil penalties collected by the Board shall be remitted to the school fund of the county in which the violation occurred.

(b) Before imposing and assessing a civil penalty and fixing the amount of the penalty, the Board shall, as a part of its deliberations, take into consideration the following factors:

(1) The nature, gravity, and persistence of the particular violation.

(2) The appropriateness of the imposition of a civil penalty when considered alone or in combination with other punishment.

(3) Whether the violation was willful and malicious.

(4) Any other factors that would tend to mitigate or aggravate the violations found to exist.

"§ 89D-22. Injunction to prevent violation; notification of complaints.

(a) If the Board finds that a person who does not have a license issued under this Chapter is engaging in the practice of landscape construction or contracting or irrigation construction or contracting, the Board may appear in its own name in superior court in actions for injunctive relief to prevent any person from violating the provisions of this Chapter or the rules adopted by the Board.

(b) A licensed landscape contractor or licensed irrigation contractor shall notify the Board, by registered mail, of any written complaints regarding a job related to landscape or irrigation work filed against the landscape contractor within 30 days from the date the complaint was filed."

SECTION 3. Any person already registered as a landscape contractor on December 31, 2001, shall be issued a landscape contractor's license, without the requirement of examination, upon submission of a completed application and payment of the application fee on or before April 1, 2002. Landscape contractors registered under Chapter 89D shall not be required to renew the registration for calendar year 2002 to qualify for the landscape contractor's license.

SECTION 4. Any person who has obtained a Certified Irrigation Contractor (CIC) certification through the Carolinas Irrigation Association or who has obtained a Certified Irrigation Designer (CID) on the effective date of this act shall be issued an

1 irrigation contractor's license, without the requirement of examination, upon submission
2 of a completed application and payment of the application fee on or before April 1,
3 2002.

4 **SECTION 5.** Members serving on the North Carolina Landscape
5 Contractors' Registration Board on the effective date of this act shall continue to serve
6 until the North Carolina Landscape/Irrigation Contractor's Licensing Board is
7 appointed. All records, staff, funds, and other items of the North Carolina Landscape
8 Contractors' Registration Board are transferred to and made the property of the North
9 Carolina Landscape/Irrigation Contractor's Licensing Board.

10 **SECTION 6.** At its discretion, the Board may grant, without the requirement
11 of examination, an irrigation contractor's license to a registered landscape contractor or
12 a person who has obtained a Certified Landscape Irrigation Auditor (CLIA) certification
13 through the Irrigation Association and has three years of experience in irrigation
14 contracting.

15 **SECTION 7.** This act becomes effective January 1, 2002.
16

AGENDA

HOUSE AGRICULTURE COMMITTEE

July 10, 2001
1425 Legislative Building
10:00 A.M.

OPENING REMARKS

Representative Dewey L. Hill
Chairman

AGENDA ITEM

HB 984 LANDSCAPE/IRRIGATION CONTRACTORS
Representatives Dewey Hill and Pryor Gibson, Primary Sponsors

ADJOURNMENT

Gennie Thurlow (Rep. Hill)

From: Gennie Thurlow (Rep. Hill)
Sent: Wednesday, July 04, 2001 10:17 AM
Subject: Agriculture Committee Notice 7-10-

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE AND BILL SPONSOR NOTICE
2001-2002 SESSION**

You are hereby notified that the Committee on **AGRICULTURE** will meet as follows:

DAY & DATE: TUESDAY, JULY 10, 2001
TIME: 10:00 A.M.
LOCATION: 1425 LEGISLATIVE BUILDING

The following bill will be considered (Bill # & Short Title & Bill Sponsor):

HB 984 LANDSCAPE/IRRIGATION CONTRACTORS
Sponsors: Representatives Hill and Gibson

Respectfully,

Representative Dewey Hill
Chair

I hereby certify this notice was filed by the committee clerk at the following offices at
10:30 a.m. on July 4, 2001.

____ Principal Clerk
____ Reading Clerk - House Chamber

Gennie Thurlow (Committee Assistant)

**MINUTES
HOUSE COMMITTEE ON AGRICULTURE**

July 24, 2001

The House Committee on Agriculture met on Tuesday, July 24, 2001, at 10:00 a.m. in Room 1425 of the Legislative Building. The following members were present: Chairman Dewey Hill; Vice Chairmen Larry Bell, Leslie Cox, W. B. Teague, Jr.; Representatives Bonner, Buchanan, Coates, Culp, Davis, Fox, Hilton, Kiser, Mitchell, Nye, Owens, Rogers, Russell, Tolson, Tucker, Underhill, Warren, Weatherly, and Yongue. The Visitor Registration Sheet is attached (Attachment 1) and made part of these minutes.

Chairman Hill presided and called the meeting to order at 10:00 a.m. He stated that there was only one bill on the agenda: House Bill 984 Landscape/Irrigation Contractors.

Representative Kiser moved that the Proposed Committee Substitute for House Bill 984 be adopted for discussion (Attachment 2). There was a favorable vote.

Representative Gibson was introduced. He asked Erika Churchill to explain the Proposed Committee Substitute. She stated that the version of the Proposed Committee Substitute before the committee included all the amendments that had been adopted to date. She detailed the changes.

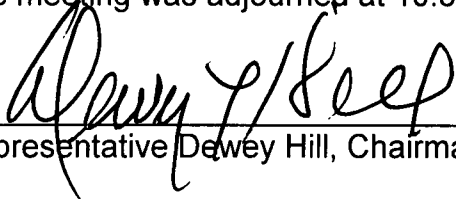
Chairman Hill asked Dick Carlton to speak on the bill. Mr. Carlton asked that the committee give the bill a favorable report.

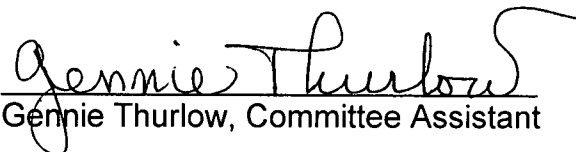
A number of the small business people spoke on the bill.

Representative Teague offered a technical amendment to the bill (Attachment 3). The amendment was adopted.

A motion was offered by Representative Culp to give the Proposed Committee Substitute a favorable report. House Bill 984 Proposed Committee Substitute was given a favorable report and re-referred to the House Finance Committee (Attachment 4).

The meeting was adjourned at 10:30 a.m.


Representative Dewey Hill, Chairman


Gennie Thurlow, Committee Assistant

Attachments

VISITOR REGISTRATION SHEET

AGRICULTURE
Name of Committee

July 24, 2001
Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME	FIRM OR AGENCY AND ADDRESS
Dick Culbert	Culbert & Abraham PLLC
Michael J. Cui	Greenscape INC
James Bewley	J Bewley and Assoc.
James R. Hodges	ARTERZA LANDSCAPE & DESIGN
Gary L. Pouch	New Garden Landscaping & Nursery
Tom Pruett	LAN Arc, Inc
David Williams	Rainy Days Irrigation Inc
Sam Lane	TEAC
NASH HARDY	HARDY LANDSCAPES INC.
MA Powell	NC State University
Erin Culbert	LEA

VISITOR REGISTRATION SHEET

AGRICULTURE

Name of Committee

July 24, 2001
Date

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME _____

FIRM OR AGENCY AND ADDRESS

Bob Spence

NC Forestry Association

PS

70

Steve Woodson

NK Fara Burgos

Theresa Kostzawa

Cap. Adv.

Charles Tomlinson

TCNC

Jon Carr

Jordan Price

Attachment 2 7/24/01
Ag. Committee

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

H

D

HOUSE BILL 984*
PROPOSED COMMITTEE SUBSTITUTE H984-CSSTx-51 [v.17]

6/21/2001 3:37:21 PM

Short Title: Landscape/Irrigation Contractors.

(Public)

Sponsors:

Referred to:

April 5, 2001

1 A BILL TO BE ENTITLED
2 AN ACT TO REWRITE THE LAWS REGULATING LANDSCAPE
3 CONTRACTORS, TO INCLUDE IRRIGATION CONTRACTORS UNDER THE
4 LAWS REGULATING LANDSCAPE CONTRACTORS, AND TO AUTHORIZE
5 THE BOARD TO INCREASE FEES.

6 The General Assembly of North Carolina enacts:

7 SECTION 1. G.S. 89D-1 through 89D-10 are repealed.

8 SECTION 2. Chapter 89D is amended by adding the following new sections
9 to read:

10 "§ 89D-11. Definitions.

11 The following definitions apply in this Chapter:

- 12 (1) Board. – The North Carolina Landscape/Irrigation Contractors'
13 Licensing Board.
- 14 (2) Irrigation contractor. – Any person who, for compensation or other
15 consideration does any of the following:
16 a. Constructs, installs, or maintains landscape irrigation systems.
17 b. Constructs, installs, or maintains landscape drainage systems.
- 18 (3) Irrigation construction or contracting. – The act of providing services
19 as an irrigation contractor, as defined in this section, for compensation
20 or other consideration.
- 21 (4) Landscape contractor. – Any person who, for compensation or other
22 consideration, does any of the following:
23 a. Engages in the business requiring the art, experience, ability,
24 knowledge, science, and skill to install, plant, repair, and
25 maintain gardens, lawns, shrubs, vines, trees, or other
26 decorative vegetation including the grading and preparation of
27 plots and areas of land for decorative treatment and
28 arrangement.

b. Practices the act of horticultural consultation or planting design for employment purposes.

c. Constructs, installs, or maintains landscape drainage systems.

d. Engages in the incidental construction of garden pools, fountains, pavilions, conservatories, hothouses and greenhouses, retaining walls, fences, or walks.

(5) Landscape construction or contracting. – The act of providing services as a landscape contractor, as defined in this section, for compensation or other consideration.

(6) Person. – An individual, firm, partnership, association, corporation, or other legal entity.

"§ 89D-12. License required; use of seal; posting license.

(a) Except as otherwise provided in this Chapter, no person shall engage in the practice of landscape construction or contracting, use the designation 'landscape contractor', or advertise using any title or description that implies licensure as a landscape contractor unless the person is licensed as a landscaped contractor as provided by this Chapter. All landscape construction or contracting performed by a partnership, association, corporation, firm, or other group shall be under the direct supervision of an individual licensed by the Board under this Chapter.

(b) Except as otherwise provided in this Chapter, no person shall engage in the practice of irrigation construction or contracting, use the designation 'irrigation contractor', or advertise using any title or description that implies licensure as an irrigation contractor unless the person is licensed as an irrigation contractor by the Board as provided by this Chapter. All irrigation construction or contracting performed by a partnership, association, corporation, firm, or other group shall be under the direct supervision of an individual licensed by the Board under this Chapter.

(c) Nothing in this Chapter shall be construed to authorize a landscape contractor to engage in the practice of landscape architecture as defined in G.S. 89A-1.

(d) Nothing in this Chapter shall be construed to authorize a landscape contractor to engage in the practice of engineering as defined in G.S. 89C-3.

(e) Nothing in this Chapter shall be construed to authorize a landscape contractor or irrigation contractor to practice as a well contractor certified under Article 7A of Chapter 87 of the General Statutes.

(f) Upon licensure by the Board, each landscape contractor or irrigation contractor shall obtain a seal of the design authorized by the Board and bearing the name of the licensee, the number of the license, and the legend 'N.C. Licensed Landscape Contractor' or 'N.C. Licensed Irrigation Contractor'. A landscape contractor or irrigation contractor may use the seal only while the license is valid.

(g) Every landscape contractor or irrigation contractor issued a license under this Chapter shall display the license conspicuously in the contractor's place of business. Every landscape contractor and every irrigation contractor shall display the license

1 number issued to the contractor by the Board on all business cards, contracts and
2 vehicles used by the contractor in the landscape or irrigation contracting business.

3 **"§ 89D-13. Exemptions.**

4 (a) The provisions in this Chapter shall not apply to:

- 5 (1) Any federal, State, or local governmental agency performing
6 landscape work on public property.
- 7 (2) Any property owner performing landscape or irrigation work on his or
8 her own property.
- 9 (3) Any person performing landscape work where the price of all contracts
10 for labor, material, and other items for a given job site during any
11 consecutive 12-month period is less than seven thousand five hundred
12 dollars (\$7,500).
- 13 (4) Any person performing irrigation work where the price of all contracts
14 for labor, material, and other items for a given job site during any
15 consecutive 12-month period is less than one thousand five hundred
16 dollars (\$1,500).
- 17 (5) Any person or business licensed pursuant to Article 1 of Chapter 87 of
18 the General Statutes.
- 19 (6) A professional engineer licensed pursuant to Chapter 89C of the
20 General Statutes.

21 (b) An individual or a business engaged in the following activities shall not be
22 required to obtain a license under this Article for performing that activity only:

- 23 (1) Clearing and grading plots and areas of land.
- 24 (2) Erosion control.
- 25 (3) Arboriculture, including consultations on pruning and removal of
26 trees.
- 27 (4) Seed and sod installation.
- 28 (5) Landscape construction engaged in by utilities contractors for the
29 purpose of grading and erosion control.
- 30 (6) Irrigation work relating to agriculture or aquaculture as defined in
31 Chapter 106 of the General Statutes.
- 32 (7) Irrigation work related to municipal or industrial wastewater,
33 excluding re-use water application.
- 34 (8) Irrigation work relating to municipal stormwater.
- 35 (9) Lawn mowing, turf edging, debris blowing, or debris removal services.
- 36 (10) Design, installation, and maintenance of on-site wastewater disposal or
37 reuse systems within the on-site wastewater permit specifications.
- 38 (11) Landscape architectural services provided by a person registered under
39 Chapter 89A of the General Statutes.
- 40 (12) Plumbing work performed by a person registered under Article 2 of
41 Chapter 87 of the General Statutes.

1 (13) Landscape or irrigation or design work performed in the scope of
2 employment on property owned or under the control of the employer.

3 **"§ 89D-14. The North Carolina Landscape Contractors' Licensing Board.**

4 (a) The North Carolina Landscape/Irrigation Contractors' Licensing Board
5 is created. The Board shall consist of nine members who are appointed as follows: one
6 member by the Governor, one member by the President Pro Tempore of the Senate, one
7 member by the Speaker of the House, one member by the Commissioner of Agriculture,
8 one member by the North Carolina Association of Nurserymen, Inc., two members by
9 the North Carolina Landscape Association, Inc, one member by the North Carolina
10 Chapter of the American Society of Landscape Architects, and one member by the
11 Irrigation Association. The members shall be appointed as follows:

12 (1) The Governor shall make the following appointment:

13 a. An at-large appointee.

14 (2) The President Pro Tempore of the Senate shall make the following
15 appointment:

16 a. A licensed irrigation contractor in the business of irrigation
17 construction or contracting, as recommended by the North Carolina
18 Irrigation Society.

19 (3) The Speaker of the House shall make the following appointment:

20 a. A licensed landscape contractor in the business of landscape
21 construction or contracting.

22 (4) The Commissioner of Agriculture shall make the following
23 appointment:

24 a. A person recommended by the Irrigation Association.

25 (5) The Board of Directors of the North Carolina Association of
26 Nurserymen, Inc. shall make the following appointments:

27 a. A practicing nurserymen operating a nursery certified by the
28 North Carolina Department of Agriculture and Consumer
29 Services Plant Pest Inspection Program.

30 (6) The Board of Directors of the North Carolina Landscape Association,
31 Inc. shall make the following appointments:

32 a. A licensed landscape contractor in the business of landscape
33 construction or contracting.

34 b. A licensed landscape contractor in the business of landscape
35 construction or contracting.

36 (7) The North Carolina Chapter of the American Society of Landscape
37 Architects shall make the following appointment:

38 a. A registered landscape architect.

39 (8) The Irrigation Association shall make the following appointment:

40 a. A licensed irrigation contractor in the business of irrigation
41 construction or contracting.

1 **(b)** Members of the Board shall serve three-year terms, staggered so that the
2 terms of three members expire in one year, the terms of three members expire in the
3 next year, and the terms of three members expire in the third year of each three-year
4 period. No member shall serve more than two complete consecutive terms.

5 **(c)** A vacancy on the Board created by death, resignation, or otherwise shall be
6 filled in the same manner as the original appointment, except that all unexpired terms of
7 Board members appointed by the General Assembly shall be filled in accordance with
8 G.S. 120-122. Appointees to fill vacancies shall serve the remainder of the unexpired
9 term and until their successors are appointed and qualified.

10 **(d)** The Board shall elect annually a chair and other officers as it deems
11 necessary to carry out the purposes of this Chapter and shall hold meetings at least twice
12 a year. A majority of the Board shall constitute a quorum.

13 **(e)** Each member of the Board may receive per diem and reimbursement for
14 travel and subsistence as set forth in G.S. 93B-5.

15 **(f)** The Board shall be entitled to the services of the Attorney General in
16 connection with the affairs of the Board or may, in its discretion, employ an attorney to
17 assist or represent it in the enforcement of this Chapter.

18 **"§ 89D-15. Powers and duties.**

19 The Board shall have the following powers and duties:

- 20 **(1)** To administer and enforce the provisions of this Chapter.
- 21 **(2)** To adopt, amend, or repeal rules to carry out the provisions of this
22 Chapter.
- 23 **(3)** To examine and determine the qualifications and fitness of applicants
24 for licensure and licensure renewal.
- 25 **(4)** To issue, renew, deny, restrict, suspend, or revoke licenses.
- 26 **(5)** To receive and investigate complaints from members of the public.
- 27 **(6)** To conduct investigations to determine whether violations of this
28 Chapter exist or constitute grounds for disciplinary action against
29 licensees under this Chapter.
- 30 **(7)** To conduct administrative hearings in accordance with Article 3A of
31 Chapter 150B of the General Statutes.
- 32 **(8)** To establish and approve continuing education requirements for
33 persons licensed under this Chapter.
- 34 **(9)** To employ a secretary-treasurer, clerical personnel, and others the
35 Board deems necessary to carry out the provisions of this Chapter
- 36 **(10)** To fix compensation for employees.
- 37 **(11)** To maintain a record of all proceedings conducted by the Board and
38 make available to licensees and other concerned parties an annual
39 report of all Board action.
- 40 **(12)** To adopt and publish a code of professional conduct for all persons
41 licensed under this Chapter.

(13) To adopt and publish a code of minimum practice standards for landscape and irrigation construction.

(14) To adopt a seal containing the name of the Board for use on licenses and official reports issued by the Board.

"§ 89D-16. Application for license; qualifications; examination; issuance.

(a) Upon application to the Board and the payment of the required fees, an applicant may sit for the examination under this Chapter as a landscape contractor or an irrigation contractor if the applicant submits evidence that demonstrates his or her qualifications as prescribed in rules adopted by the Board, and meets all of the following qualifications:

(1) Is at least 18 years of age.

(2) Is of good moral character as determined by the Board.

(3) For a landscape contractor's license, has at least three years of experience in landscape construction or contracting or the educational equivalent. For an irrigation contractor's license, has at least three years of experience in irrigation construction or contracting or the educational equivalent. Two years of educational training in landscape construction or contracting or irrigation construction or contracting shall be the equivalent of one year of experience.

(4) Files with the Board and maintains a corporate surety bond executed by a company authorized to do business in this State or an irrevocable letter of credit issued by an insured institution. The surety bond or the letter of credit shall be in the amount of seven thousand five hundred dollars (\$7,500). The surety bond or letter of credit shall be approved by the Board as to form and shall be conditioned upon the obligor faithfully conforming to and abiding by the provisions of this Chapter. Any person claiming to be injured by an act of a licensed landscape contractor or a licensed irrigation contractor that constitutes a violation of this Chapter may institute an action to recover against the licensee and the surety.

(b) If the applicant meets all the qualifications in subsection (a) of this section, the applicant shall be required to pass an examination administered by the Board before the Board may issue the license. The Board shall establish the scope and subject matter of the examination to be administered. The Board shall recognize the Certified Irrigation Contractor (CIC), or any other comparable examination, as an approved examination to become licensed as an irrigation contractor.

(c) Examinations shall be held at least twice a year at a time and place to be determined by the Board.

(d) When the Board determines that an applicant has met all the qualifications for licensure and has submitted the required fee, the Board shall issue a license to the applicant.

1 (e) The Board may issue a license in the name of a corporation provided one or
2 more of the officers or full time employees that are empowered to act for the
3 corporation are licensed in accordance with the provisions of this Chapter. In addition
4 to the provisions of this Chapter, a corporation shall do all of the following when a
5 license is issued in the name of the corporation:

6 (1) The officer or full time employee licensed under this Chapter who are
7 empowered to act for the corporation shall execute contracts in the
8 name of the corporation to the extent of the license qualifications of
9 the individual.

10 (2) The officer of full time employee licensed under this Chapter shall
11 exercise general supervision over the landscape or irrigation work
12 performed under the contract.

13 (f) An individual desiring to construct, install or maintain landscape drainage
14 systems shall not be required to hold both an irrigation contractor's license and a
15 landscape contractor's license.

16 (g) Persons who had an established place of business prior to January 1, 2002,
17 and who produce satisfactory evidence that they are engaged in the landscape business
18 as defined in G.S. 89D-11 and were not registered under G.S. 89D-1 through G.S. 89D-
19 10, may apply for a landscape contractors' provisional license on or before July 1, 2002.
20 The Board shall issue a provisional license, valid up to July 1, 2004, if the applicant
21 meets the qualifications under subdivision (a)(1), (a)(2), and (a)(4) of this section and
22 pays the proper fee. Before the Board may issue a license, the applicant must pass the
23 examination under subsection (b) of this section after gaining the experience required
24 under subdivision (a)(3) of this section.

25 (h) Persons who had an established place of business prior to January 1, 2002,
26 and who produce satisfactory evidence that they are engaged in the irrigation business
27 as defined in G.S. 89D-11 and were not registered as a landscape contractor under G.S.
28 89D-1 through G.S. 89D-10 or were not qualified to receive an irrigation contractors'
29 license on January 1, 2002, may apply for an irrigation contractors' provisional license
30 on or before July 1, 2002. The Board shall issue a provisional license, valid up to July
31 1, 2004, if the applicant meets the qualifications under subdivision (a)(1), (a)(2), and
32 (a)(4) of this section and pays the proper fee. Before the Board may issue a license, the
33 applicant must pass the examination under subsection (b) of this section after gaining
34 the experience required under subdivision (a)(3) of this section.

35 **"§ 89D-17. Reciprocity.**

36 The Board may issue a license, without examination, to any person who is a
37 landscape contractor or irrigation contractor licensed, certified, or registered in another
38 state or country if the requirements for licensure, certification, or registration in the
39 other state or country are substantially equivalent to the requirements for licensure in
40 this State.

41 **"§ 89D-18. License renewal and continuing education.**

(a) Every license issued under this Chapter shall be renewed on or before the thirty-first day of December of each year. Any person who desires to continue to practice shall apply for a license renewal and shall submit the required fee. When necessary, the Board may require licensees to demonstrate continued competence as a condition of license renewal. Licenses that are not renewed shall be automatically revoked. A license may be renewed at any time within one year after its expiration, if: (i) the applicant pays the required renewal fee and late renewal fee; (ii) the Board finds that the applicant has not used the license in a manner inconsistent with the provisions of this Chapter or engaged in the practice of landscape construction or contracting or irrigation construction or contracting after notice of revocation; and (iii) the applicant is otherwise eligible for licensure under the provisions of this Chapter.

(b) As a condition of license renewal, a licensee must meet the continuing education requirements set by the Board. Failure to obtain continuing education units shall result in the forfeiture of a license.

(c) Upon forfeiture, a person shall be required to submit a new application and retake the examination as provided in this Chapter.

"§ 89D-19. Expenses and fees.

(a) For licenses and provisional licenses, the Board may impose the following fees not to exceed the amounts listed below:

(1)	<u>Application fee</u>	<u>\$100.00</u>
(2)	<u>Examination fee</u>	<u>100.00</u>
(3)	<u>License renewal</u>	<u>100.00</u>
(4)	<u>Late renewal fee</u>	<u>50.00</u>
(5)	<u>License by reciprocity</u>	<u>250.00</u>
(6)	<u>Corporate license</u>	<u>100.00</u>
(7)	<u>Duplicate license</u>	<u>25.00</u>

(b) When the Board uses a testing service for the preparation, administration, or grading of examinations, the Board may charge the applicant the actual cost of the examination services.

"§ 89D-20. Disciplinary action.

The Board may deny, restrict, suspend, or revoke a license or refuse to issue or renew a license if a licensee or applicant:

- (1) Employs the use of fraud, deceit, or misrepresentation in obtaining or attempting to obtain a license or the renewal of a license.
- (2) Practices or attempts to practice landscape construction or contracting or irrigation construction or contracting by fraudulent misrepresentation.
- (3) Commits an act of gross malpractice or incompetence as determined by the Board.
- (4) Has been convicted of or pled guilty or no contest to a crime that indicates that the person is unfit or incompetent to practice as a

landscape contractor or irrigation contractor or that indicates that the person has deceived or defrauded the public.

(5) Has been declared incompetent by a court of competent jurisdiction.

(6) Has willfully violated any provision in this Chapter or any rules adopted by the Board.

(7) Uses or attempts to use the seal in a fraudulent or unauthorized manner.

(8) Fails to keep the bond or letter of credit in force.

"§ 89D-21. Civil penalties.

(a) In addition to taking any of the actions permitted under G.S. 89D-20, the Board may assess a civil penalty not in excess of two thousand dollars (\$2,000) for each violation of any section of this Chapter or the violation of any rules adopted by the Board. All civil penalties collected by the Board shall be remitted to the school fund of the county in which the violation occurred.

(b) Before imposing and assessing a civil penalty and fixing the amount of the penalty, the Board shall, as a part of its deliberations, take into consideration the following factors:

(1) The nature, gravity, and persistence of the particular violation.

(2) The appropriateness of the imposition of a civil penalty when considered alone or in combination with other punishment.

(3) Whether the violation was willful and malicious.

(4) Any other factors that would tend to mitigate or aggravate the violations found to exist.

"§ 89D-22. Injunction to prevent violation; notification of complaints.

(a) If the Board finds that a person who does not have a license issued under this Chapter is engaging in the practice of landscape construction or contracting or irrigation construction or contracting, the Board may appear in its own name in superior court in actions for injunctive relief to prevent any person from violating the provisions of this Chapter or the rules adopted by the Board.

(b) A licensed landscape contractor or licensed irrigation contractor shall notify the Board, by registered mail, of any written complaints regarding a job related to landscape or irrigation work filed against the landscape contractor within 30 days from the date the complaint was filed."

SECTION 3. Any person already registered as a landscape contractor on December 31, 2001, shall be issued a landscape contractor's license, without the requirement of examination, upon submission of a completed application and payment of the application fee on or before April 1, 2002. Landscape contractors registered under Chapter 89D shall not be required to renew the registration for calendar year 2002 to qualify for the landscape contractor's license.

SECTION 4. Any person who has obtained a Certified Irrigation Contractor (CIC) certification through the Carolinas Irrigation Association or who has obtained a Certified Irrigation Designer (CID) on the effective date of this act shall be issued an

1 irrigation contractor's license, without the requirement of examination, upon submission
2 of a completed application and payment of the application fee on or before April 1,
3 2002.

4 **SECTION 5.** Members serving on the North Carolina Landscape
5 Contractors' Registration Board on the effective date of this act shall continue to serve
6 until the North Carolina Landscape/Irrigation Contractor's Licensing Board is
7 appointed. All records, staff, funds, and other items of the North Carolina Landscape
8 Contractors' Registration Board are transferred to and made the property of the North
9 Carolina Landscape/Irrigation Contractor's Licensing Board.

10 **SECTION 6.** At its discretion, the Board may grant, without the requirement
11 of examination, an irrigation contractor's license to a registered landscape contractor or
12 a person who has obtained a Certified Landscape Irrigation Auditor (CLIA) certification
13 through the Irrigation Association and has three years of experience in irrigation
14 contracting.

15 **SECTION 7.** This act becomes effective January 1, 2002.
16

NORTH CAROLINA GENERAL ASSEMBLY AMENDMENT

(Please type or use ballpoint pen)

EDITION No. _____

H. B. No. 984 v. 17

DATE 7-24-01

S. B. No. 1

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

COMMITTEE SUBSTITUTE _____

Rep.) _____
) _____
Sen.) _____

1 moves to amend the bill on page 3, line 38

2 () WHICH CHANGES THE TITLE

3 by _____

4 deleting the word "registered" and
5 subst the word "licensed"; and

6 _____
7 future amends the bill on p. 3, line 40

8 _____
9 by deleting the word "registered" and
10 subst. the word "licensed"

11 _____
12 _____
13 _____
14 _____
15 _____
16 _____
17 _____
18 _____
19 _____

SIGNED W. B. Tesque Jr

ADOPTED ✓ FAILED _____ TABLED _____

**2001 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **HILL** (Chair) for the Committee on **AGRICULTURE**.

☐ Committee Substitute for
H.B. 984 A BILL TO BE ENTITLED AN ACT TO REWRITE THE LAWS REGULATING
LANDSCAPE CONTRACTORS, TO INCLUDE IRRIGATION CONTRACTORS UNDER
THE LAWS REGULATING LANDSCAPE CONTRACTORS, TO ALLOW THE
GENERAL ASSEMBLY TO APPOINT TWO OF THE NINE MEMBERS TO THE
NORTH CAROLINA LANDSCAPE/IRRIGATION CONTRACTORS' LICENSING
BOARD, AND TO AUTHORIZE THE BOARD TO INCREASE FEES.

- ☐ With a favorable report.
- ☐ With a favorable report and recommendation that the bill be re-referred to the Committee on
Appropriations ☐ Finance ☐ ☐.
- ☐ With a favorable report, as amended.
- ☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on Appropriations ☐ Finance ☐ ☐.
- ☒ With a favorable report as to committee substitute bill, which changes the title, unfavorable
as to original bill, and recommendation that the committee substitute bill be re-referred to the
Committee on FINANCE.
- ☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.
- ☐ With an unfavorable report.
- ☐ With recommendation that the House concur.
- ☐ With recommendation that the House do not concur.
- ☐ With recommendation that the House do not concur; request conferees.
- ☐ With recommendation that the House concur; committee believes bill to be material.
- ☐ With an unfavorable report, with a Minority Report attached.
- ☐ Without prejudice.
- ☐ With an indefinite postponement report.
- ☐ With an indefinite postponement report, with a Minority Report attached.
- ☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

2/15/01

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

H

D

HOUSE BILL 984*
PROPOSED COMMITTEE SUBSTITUTE H984*-PCS7268-STx-51

Short Title: Landscape/Irrigation Contractors.

(Public)

Sponsors:

Referred to:

April 5, 2001

A BILL TO BE ENTITLED
AN ACT TO REWRITE THE LAWS REGULATING LANDSCAPE
CONTRACTORS, TO INCLUDE IRRIGATION CONTRACTORS UNDER THE
LAWS REGULATING LANDSCAPE CONTRACTORS, AND TO AUTHORIZE
THE BOARD TO INCREASE FEES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 89D-1 through G.S. 89D-10 are repealed.

SECTION 2. Chapter 89D is amended by adding the following new sections
to read:

"§ 89D-11. Definitions.

The following definitions apply in this Chapter:

- (1) Board. – The North Carolina Landscape/Irrigation Contractors'
Licensing Board.
- (2) Irrigation contractor. – Any person who, for compensation or other
consideration, does any of the following:
 - a. Constructs, installs, or maintains landscape irrigation systems.
 - b. Constructs, installs, or maintains landscape drainage systems.
- (3) Irrigation construction or contracting. – The act of providing services
as an irrigation contractor, as defined in this section, for compensation
or other consideration.
- (4) Landscape contractor. – Any person who, for compensation or other
consideration, does any of the following:
 - a. Engages in the business requiring the art, experience, ability,
knowledge, science, and skill to install, plant, repair, and
maintain gardens, lawns, shrubs, vines, trees, or other
decorative vegetation including the grading and preparation of
plots and areas of land for decorative treatment and
arrangement.

- b. Practices the act of horticultural consultation or planting design for employment purposes.
- c. Constructs, installs, or maintains landscape drainage systems.
- d. Engages in the incidental construction of garden pools, fountains, pavilions, conservatories, hothouses and greenhouses, retaining walls, fences, or walks.

(5) Landscape construction or contracting. – The act of providing services as a landscape contractor, as defined in this section, for compensation or other consideration.

(6) Person. – An individual, firm, partnership, association, corporation, or other legal entity.

"§ 89D-12. License required; use of seal; posting license.

(a) Except as otherwise provided in this Chapter, no person shall engage in the practice of landscape construction or contracting, use the designation 'landscape contractor', or advertise using any title or description that implies licensure as a landscape contractor unless the person is licensed as a landscape contractor as provided by this Chapter. All landscape construction or contracting performed by a partnership, association, corporation, firm, or other group shall be under the direct supervision of an individual licensed by the Board under this Chapter.

(b) Except as otherwise provided in this Chapter, no person shall engage in the practice of irrigation construction or contracting, use the designation 'irrigation contractor', or advertise using any title or description that implies licensure as an irrigation contractor unless the person is licensed as an irrigation contractor by the Board as provided by this Chapter. All irrigation construction or contracting performed by a partnership, association, corporation, firm, or other group shall be under the direct supervision of an individual licensed by the Board under this Chapter.

(c) Nothing in this Chapter shall be construed to authorize a landscape contractor to engage in the practice of landscape architecture as defined in G.S. 89A-1.

(d) Nothing in this Chapter shall be construed to authorize a landscape contractor to engage in the practice of engineering as defined in G.S. 89C-3.

(e) Nothing in this Chapter shall be construed to authorize a landscape contractor or irrigation contractor to practice as a well contractor certified under Article 7A of Chapter 87 of the General Statutes.

(f) Upon licensure by the Board, each landscape contractor or irrigation contractor shall obtain a seal of the design authorized by the Board and bearing the name of the licensee, the number of the license, and the legend 'N.C. Licensed Landscape Contractor' or 'N.C. Licensed Irrigation Contractor'. A landscape contractor or irrigation contractor may use the seal only while the license is valid.

(g) Every landscape contractor or irrigation contractor issued a license under this Chapter shall display the license conspicuously in the contractor's place of business. Every landscape contractor and every irrigation contractor shall display the license

number issued to the contractor by the Board on all business cards, contracts, and vehicles used by the contractor in the landscape or irrigation contracting business.

"§ 89D-13. Exemptions.

(a) The provisions in this Chapter shall not apply to:

- (1) Any federal, State, or local governmental agency performing landscape work on public property.
- (2) Any property owner performing landscape or irrigation work on his or her own property.
- (3) Any person performing landscape work where the price of all contracts for labor, material, and other items for a given job site during any consecutive 12-month period is less than seven thousand five hundred dollars (\$7,500).
- (4) Any person performing irrigation work where the price of all contracts for labor, material, and other items for a given job site during any consecutive 12-month period is less than one thousand five hundred dollars (\$1,500).
- (5) Any person or business licensed pursuant to Article 1 of Chapter 87 of the General Statutes.
- (6) A professional engineer licensed pursuant to Chapter 89C of the General Statutes.

(b) An individual or a business engaged in the following activities shall not be required to obtain a license under this Article for performing that activity only:

- (1) Clearing and grading plots and areas of land.
- (2) Erosion control.
- (3) Arboriculture, including consultations on pruning and removal of trees.
- (4) Seed and sod installation.
- (5) Landscape construction engaged in by utilities contractors for the purpose of grading and erosion control.
- (6) Irrigation work relating to agriculture or aquaculture as defined in Chapter 106 of the General Statutes.
- (7) Irrigation work related to municipal or industrial wastewater, excluding reuse water application.
- (8) Irrigation work relating to municipal stormwater.
- (9) Lawn mowing, turf edging, debris blowing, or debris removal services.
- (10) Design, installation, and maintenance of on-site wastewater disposal or reuse systems within the on-site wastewater permit specifications.
- (11) Landscape architectural services provided by a person licensed under Chapter 89A of the General Statutes.
- (12) Plumbing work performed by a person licensed under Article 2 of Chapter 87 of the General Statutes.

- (13) Landscape or irrigation or design work performed in the scope of employment on property owned or under the control of the employer.

"§ 89D-14. The North Carolina Landscape Contractors' Licensing Board.

(a) The North Carolina Landscape/Irrigation Contractors' Licensing Board is created. The Board shall consist of nine members who are appointed as follows: one member by the Governor, one member by the President Pro Tempore of the Senate, one member by the Speaker of the House of Representatives, one member by the Commissioner of Agriculture, one member by the North Carolina Association of Nurserymen, Inc., two members by the North Carolina Landscape Association, Inc., one member by the North Carolina Chapter of the American Society of Landscape Architects, and one member by the Irrigation Association. The members shall be appointed as follows:

- (1) The Governor shall make the following appointment:

a. An at-large appointee.

- (2) The President Pro Tempore of the Senate shall make the following appointment:

a. A licensed irrigation contractor in the business of irrigation construction or contracting, as recommended by the North Carolina Irrigation Society.

- (3) The Speaker of the House of Representatives shall make the following appointment:

a. A licensed landscape contractor in the business of landscape construction or contracting.

- (4) The Commissioner of Agriculture shall make the following appointment:

a. A person recommended by the Irrigation Association.

- (5) The Board of Directors of the North Carolina Association of Nurserymen, Inc., shall make the following appointments:

a. A practicing nurseryman operating a nursery certified by the North Carolina Department of Agriculture and Consumer Services Plant Pest Inspection Program.

- (6) The Board of Directors of the North Carolina Landscape Association, Inc., shall make the following appointments:

a. A licensed landscape contractor in the business of landscape construction or contracting.

b. A licensed landscape contractor in the business of landscape construction or contracting.

- (7) The North Carolina Chapter of the American Society of Landscape Architects shall make the following appointment:

a. A registered landscape architect.

- (8) The Irrigation Association shall make the following appointment:

1 a. A licensed irrigation contractor in the business of irrigation
2 construction or contracting.

3 (b) Members of the Board shall serve three-year terms, staggered so that the
4 terms of three members expire in one year, the terms of three members expire in the
5 next year, and the terms of three members expire in the third year of each three-year
6 period. No member shall serve more than two complete consecutive terms.

7 (c) A vacancy on the Board created by death, resignation, or otherwise shall be
8 filled in the same manner as the original appointment, except that all unexpired terms of
9 Board members appointed by the General Assembly shall be filled in accordance with
10 G.S. 120-122. Appointees to fill vacancies shall serve the remainder of the unexpired
11 term and until their successors are appointed and qualified.

12 (d) The Board shall elect annually a chair and other officers as it deems
13 necessary to carry out the purposes of this Chapter and shall hold meetings at least twice
14 a year. A majority of the Board shall constitute a quorum.

15 (e) Each member of the Board may receive per diem and reimbursement for
16 travel and subsistence as set forth in G.S. 93B-5.

17 (f) The Board shall be entitled to the services of the Attorney General in
18 connection with the affairs of the Board or may, in its discretion, employ an attorney to
19 assist or represent it in the enforcement of this Chapter.

20 **"§ 89D-15. Powers and duties.**

21 The Board shall have the following powers and duties:

22 (1) To administer and enforce the provisions of this Chapter.

23 (2) To adopt, amend, or repeal rules to carry out the provisions of this
24 Chapter.

25 (3) To examine and determine the qualifications and fitness of applicants
26 for licensure and licensure renewal.

27 (4) To issue, renew, deny, restrict, suspend, or revoke licenses.

28 (5) To receive and investigate complaints from members of the public.

29 (6) To conduct investigations to determine whether violations of this
30 Chapter exist or constitute grounds for disciplinary action against
31 licensees under this Chapter.

32 (7) To conduct administrative hearings in accordance with Article 3A of
33 Chapter 150B of the General Statutes.

34 (8) To establish and approve continuing education requirements for
35 persons licensed under this Chapter.

36 (9) To employ a secretary-treasurer, clerical personnel, and others the
37 Board deems necessary to carry out the provisions of this Chapter.

38 (10) To fix compensation for employees.

39 (11) To maintain a record of all proceedings conducted by the Board and
40 make available to licensees and other concerned parties an annual
41 report of all Board action.

1 other state or country are substantially equivalent to the requirements for licensure in
2 this State.

3 **"§ 89D-18. License renewal and continuing education.**

4 (a) Every license issued under this Chapter shall be renewed on or before the
5 thirty-first day of December of each year. Any person who desires to continue to
6 practice shall apply for a license renewal and shall submit the required fee. When
7 necessary, the Board may require licensees to demonstrate continued competence as a
8 condition of license renewal. Licenses that are not renewed shall be automatically
9 revoked. A license may be renewed at any time within one year after its expiration, if:
10 (i) the applicant pays the required renewal fee and late renewal fee; (ii) the Board finds
11 that the applicant has not used the license in a manner inconsistent with the provisions
12 of this Chapter or engaged in the practice of landscape construction or contracting or
13 irrigation construction or contracting after notice of revocation; and (iii) the applicant is
14 otherwise eligible for licensure under the provisions of this Chapter.

15 (b) As a condition of license renewal, a licensee must meet the continuing
16 education requirements set by the Board. Failure to obtain continuing education units
17 shall result in the forfeiture of a license.

18 (c) Upon forfeiture, a person shall be required to submit a new application and
19 retake the examination as provided in this Chapter.

20 **"§ 89D-19. Expenses and fees.**

21 (a) For licenses and provisional licenses, the Board may impose the following
22 fees not to exceed the amounts listed below:

(1)	Application fee	\$100.00
(2)	Examination fee	100.00
(3)	License renewal	100.00
(4)	Late renewal fee	50.00
(5)	License by reciprocity	250.00
(6)	Corporate license	100.00
(7)	Duplicate license.....	25.00.

30 (b) When the Board uses a testing service for the preparation, administration, or
31 grading of examinations, the Board may charge the applicant the actual cost of the
32 examination services.

33 **"§ 89D-20. Disciplinary action.**

34 The Board may deny, restrict, suspend, or revoke a license or refuse to issue or
35 renew a license if a licensee or applicant:

- 36 (1) Employs the use of fraud, deceit, or misrepresentation in obtaining or
37 attempting to obtain a license or the renewal of a license.
- 38 (2) Practices or attempts to practice landscape construction or contracting
39 or irrigation construction or contracting by fraudulent
40 misrepresentation.
- 41 (3) Commits an act of gross malpractice or incompetence as determined
42 by the Board.

- (4) Has been convicted of or pled guilty or no contest to a crime that indicates that the person is unfit or incompetent to practice as a landscape contractor or irrigation contractor or that indicates that the person has deceived or defrauded the public.
- (5) Has been declared incompetent by a court of competent jurisdiction.
- (6) Has willfully violated any provision in this Chapter or any rules adopted by the Board.
- (7) Uses or attempts to use the seal in a fraudulent or unauthorized manner.
- (8) Fails to keep the bond or letter of credit in force.

"§ 89D-21. Civil penalties.

(a) In addition to taking any of the actions permitted under G.S. 89D-20, the Board may assess a civil penalty not in excess of two thousand dollars (\$2,000) for each violation of any section of this Chapter or the violation of any rules adopted by the Board. All civil penalties collected by the Board shall be remitted to the school fund of the county in which the violation occurred.

(b) Before imposing and assessing a civil penalty and fixing the amount of the penalty, the Board shall, as a part of its deliberations, take into consideration the following factors:

- (1) The nature, gravity, and persistence of the particular violation.
- (2) The appropriateness of the imposition of a civil penalty when considered alone or in combination with other punishment.
- (3) Whether the violation was willful and malicious.
- (4) Any other factors that would tend to mitigate or aggravate the violations found to exist.

"§ 89D-22. Injunction to prevent violation; notification of complaints.

(a) If the Board finds that a person who does not have a license issued under this Chapter is engaging in the practice of landscape construction or contracting or irrigation construction or contracting, the Board may appear in its own name in superior court in actions for injunctive relief to prevent any person from violating the provisions of this Chapter or the rules adopted by the Board.

(b) A licensed landscape contractor or licensed irrigation contractor shall notify the Board, by registered mail, of any written complaints regarding a job related to landscape or irrigation work filed against the landscape contractor within 30 days from the date the complaint was filed."

SECTION 3. Any person already registered as a landscape contractor on December 31, 2001, shall be issued a landscape contractor's license, without the requirement of examination, upon submission of a completed application and payment of the application fee on or before April 1, 2002. Landscape contractors registered under Chapter 89D of the General Statutes shall not be required to renew the registration for calendar year 2002 to qualify for the landscape contractor's license.

1 **SECTION 4.** Any person who has obtained a Certified Irrigation Contractor
2 (CIC) certification through the Carolinas Irrigation Association or who has obtained a
3 Certified Irrigation Designer (CID) on the effective date of this act shall be issued an
4 irrigation contractor's license, without the requirement of examination, upon submission
5 of a completed application and payment of the application fee on or before April 1,
6 2002.

7 **SECTION 5.** Members serving on the North Carolina Landscape
8 Contractors' Registration Board on the effective date of this act shall continue to serve
9 until the North Carolina Landscape/Irrigation Contractor's Licensing Board is
10 appointed. All records, staff, funds, and other items of the North Carolina Landscape
11 Contractors' Registration Board are transferred to and made the property of the North
12 Carolina Landscape/Irrigation Contractor's Licensing Board.

13 **SECTION 6.** At its discretion, the Board may grant, without the requirement
14 of examination, an irrigation contractor's license to a registered landscape contractor or
15 a person who has obtained a Certified Landscape Irrigation Auditor (CLIA) certification
16 through the Irrigation Association and has three years of experience in irrigation
17 contracting.

18 **SECTION 7.** This act becomes effective January 1, 2002.

AGENDA

HOUSE AGRICULTURE COMMITTEE

July 24, 2001
1425 Legislative Building
10:00 A.M.

OPENING REMARKS

Representative Dewey L. Hill
Chairman

AGENDA ITEM

HB 984 LANDSCAPE/IRRIGATION CONTRACTORS
Representatives Dewey Hill and Pryor Gibson, Primary Sponsors

ADJOURNMENT

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE AND BILL SPONSOR NOTICE
2001-2002 SESSION**

You are hereby notified that the Committee on **AGRICULTURE** will meet as follows:

DAY & DATE: TUESDAY, JULY 24, 2001

TIME: 10:00 A.M.

LOCATION: 1425 LEGISLATIVE BUILDING

The following bill will be considered (Bill # & Short Title & Bill Sponsor):

HB 984 LANDSCAPE/IRRIGATION CONTRACTORS
Sponsors: Representatives Hill and Gibson

Respectfully,

Representative Dewey Hill
Chair

I hereby certify this notice was filed by the committee clerk at the following offices at
12:45 p.m. on July 19, 2001.

____Principal Clerk
____Reading Clerk - House Chamber

Gennie Thurlow (Committee Assistant)

MINUTES

HOUSE COMMITTEE ON AGRICULTURE

August 20, 2002

The House Committee on Agriculture met on Tuesday, August 20, 2002, at 10:00 a.m. in Room 1425 of the Legislative Building. The following members were present: Chairman Dewey Hill; Vice Chairmen Larry Bell, Leslie Cox, W. B. Teague, Jr.; Representatives Baker, Bonner, Buchanan, Coates, Culp, Davis, Eddins, Hilton, Kiser, Mitchell, Underhill, Warren, Weatherly, and Wilson. The Visitor Registration Sheet is attached (Attachment 1) and made part of these minutes.

Chairman Hill presided and called the meeting to order at 10:05 a.m. He stated that there was only one bill on the agenda: Senate Bill 1161 Amend Use Value Statutes.

Senator Fletcher Hartsell, Jr. was recognized to speak on his bill (Attachment 2).

Several visitors spoke on the bill.

Upon motion offered by Representative Baker, the Committee on Agriculture voted to give Senate Bill 1161 a favorable report and be re-referred to the Committee on Finance.

The meeting was adjourned at 11:00 a.m.



Representative Dewey Hill, Chairman



Gennie Thurlow, Committee Assistant

Attachments

AGRICULTURE COMMITTEE

[illegible]

[illegible]

**NORTH CAROLINA HOUSE OF REPRESENTATIVES
COMMITTEE MEETING NOTICE AND BILL SPONSOR NOTICE
2001-2002 SESSION**

You are hereby notified that the Committee on **AGRICULTURE** will meet as follows:

DAY & DATE: TUESDAY, AUGUST 20, 2002

TIME: 10:00 A.M.

LOCATION: 1425 LEGISLATIVE BUILDING

The following bill will be considered (Bill # & Short Title & Bill Sponsor):

SB 1161 AMEND USE VALUE STATUTES

Sponsor: Senator Hartsell

Respectfully,

Representative Dewey Hill
Chair

I hereby certify this notice was filed by the committee assistant at the following offices at
12:00 p.m. on August 14, 2002.

___Principal Clerk
___Reading Clerk - House Chamber

Gennie Thurlow (Committee Assistant)

AGENDA

HOUSE AGRICULTURE COMMITTEE

August 20, 2002
1425 Legislative Building
10:00 A.M.

OPENING REMARKS

Representative Dewey L. Hill
Chair

AGENDA ITEM

SB 1161 AMEND USE VALUE STATUTES
Senator Fletcher L. Hartsell, Jr., Sponsor

ADJOURNMENT

VISITOR REGISTRATION SHEET

AGRICULTURE

Name of Committee

8.20.02

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Rob Dasablow	StateWatch
Bill Connolly	Boverman
JULIAN PHILPOT	NCFB
Paul Miner	NCACL
Pete Rodda	Forsyth Co Tax Assessor / Collector
John Bailey	NC DOR
DAN WHITTLE	EDF
Erica Peterson	NC Agribusiness Council
Martha Glass	NC DA'S
WALT WOOD	CTNC
GERRY COHN	American Farmland Trust

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

S

3

SENATE BILL 1161
Finance Committee Substitute Adopted 7/24/02
Third Edition Engrossed 7/29/02

Short Title: Amend Use Value Statutes.

(Public)

Sponsors:

Referred to:

June 4, 2002

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PRESENT-USE VALUE STATUTES AND TO CREATE
A PROPERTY TAX SUBCOMMITTEE OF THE REVENUE LAWS STUDY
COMMITTEE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-277.2 reads as rewritten:

"§ 105-277.2. **Agricultural, horticultural, and forestland – Definitions.**

The following definitions apply in G.S. 105-277.3 through G.S. 105-277.7:

(1) **Agricultural land.** – Land that is a part of a farm unit that is actively engaged in the commercial production or growing of crops, plants, or animals under a sound management program. Agricultural land includes woodland and wasteland that is a part of the farm unit, but the woodland and wasteland included in the unit ~~shall~~ must be appraised under the use-value schedules as woodland or wasteland. A farm unit may consist of more than one tract of agricultural land, but at least one of the tracts must meet the requirements in G.S. 105-277.3(a)(1), and each tract must be under a sound management program. If the agricultural land includes less than 20 acres of woodland, then the woodland portion is not required to be under a sound management program. Also, woodland is not required to be under a sound management program if it is determined that the highest and best use of the woodland is to diminish wind erosion of adjacent agricultural land, protect water quality of adjacent agricultural land, or serve as buffers for adjacent livestock or poultry operations.

(1a) **Business entity.** – A corporation, a general partnership, a limited partnership, or a limited liability company.

(2) **Forestland.** – Land that is a part of a forest unit that is actively engaged in the commercial growing of trees under a sound management

1 program. Forestland includes wasteland that is a part of the forest unit,
2 but the wasteland included in the unit ~~shall~~must be appraised under
3 the use-value schedules as wasteland. A forest unit may consist of
4 more than one tract of forestland, but at least one of the tracts must
5 meet the requirements in G.S. 105-277.3(a)(3), and each tract must be
6 under a sound management program.

- 7 (3) Horticultural land. – Land that is a part of a horticultural unit that is
8 actively engaged in the commercial production or growing of fruits or
9 vegetables or nursery or floral products under a sound management
10 program. Horticultural land includes woodland and wasteland that is a
11 part of the horticultural unit, but the woodland and wasteland included
12 in the unit ~~shall~~must be appraised under the use-value schedules as
13 woodland or wasteland. A horticultural unit may consist of more than
14 one tract of horticultural land, but at least one of the tracts must meet
15 the requirements in G.S. 105-277.3(a)(2), and each tract must be under
16 a sound management program. If the horticultural land includes less
17 than 20 acres of woodland, then the woodland portion is not required
18 to be under a sound management program. Also, woodland is not
19 required to be under a sound management program if it is determined
20 that the highest and best use of the woodland is to diminish wind
21 erosion of adjacent horticultural land or protect water quality of
22 adjacent horticultural land.

- 23 (4) Individually owned. – Owned by one of the following:

- 24 a. A natural person. For the purpose of this section, a natural
25 person who is an income beneficiary of a trust that owns land
26 may elect to treat the person's beneficial share of the land as
27 owned by that person. If the person's beneficial interest is not an
28 identifiable share of land but can be established as a
29 proportional interest in the trust income, the person's beneficial
30 share of land is a percentage of the land owned by the trust that
31 corresponds to the beneficiary's proportional interest in the trust
32 income. For the purpose of this section, a natural person who is
33 a member of a business entity, other than a corporation, that
34 owns land may elect to treat the person's share of the land as
35 owned by that person. The person's share is a percentage of the
36 land owned by the business entity that corresponds to the
37 person's percentage of ownership in the entity.
- 38 b. A business entity having as its principal business one of the
39 activities described in subdivisions (1), (2), and (3) and whose
40 members are all natural persons who meet one or more of the
41 following conditions:
- 42 1. The member is actively engaged in the business of the
43 entity.

- Page 3

- a. A spouse or the spouse's lineal ancestor or descendant.
- b. A lineal ancestor or a lineal descendant.
- c. A brother or sister, or the lineal descendant of a brother or sister. For the purposes of this sub-subdivision, the term brother or sister includes stepbrother or stepsister.
- d. An aunt or an uncle.
- e. A spouse of a person listed in paragraphs a. through d.

For the purpose of this subdivision, an adoptive or adopted relative is a relative and the term "spouse" includes a surviving spouse.

- (6) Sound management program. – A program of production designed to obtain the greatest net return from the land consistent with its conservation and long-term improvement.
- (7) Unit. – One or more tracts of agricultural land, horticultural land, or forestland. Multiple tracts must be under the same ownership. If the multiple tracts are located within different counties, they must be within 50 miles of a tract qualifying under G.S. 105-277.3(a) and share one of the following characteristics:
 - a. Type of classification.
 - b. Use of the same equipment or labor force."

SECTION 2. G.S. 105-277.3 reads as rewritten:

"§ 105-277.3. Agricultural, horticultural, and forestland – Classifications.

(a) Classes Defined. – The following classes of property are designated special classes of property under authority of Section 2(2) of Article V of the North Carolina Constitution and ~~shall~~ must be appraised, assessed, and taxed as provided in G.S. 105-277.2 through G.S. 105-277.7.

- (1) Agricultural land. – Individually owned agricultural land consisting of one or more tracts, one of which consists of at least 10 acres that are in actual production and that, for the three years preceding January 1 of the year for which the benefit of this section is claimed, have produced an average gross income of at least one thousand dollars (\$1,000). Gross income includes income from the sale of the agricultural products produced from the land and any payments received under a governmental soil conservation or land retirement program. Land in actual production includes land under improvements used in the commercial production or growing of crops, plants, or animals.
- (2) Horticultural land. – Individually owned horticultural land consisting of one or more tracts, one of which consists of at least five acres that are in actual production and that, for the three years preceding January 1 of the year for which the benefit of this section is claimed, have met the applicable minimum gross income requirement. Land in actual production includes land under improvements used in the commercial production or growing of fruits or vegetables or nursery or floral products. Land that has been used to produce evergreens intended for use as Christmas trees must have met the minimum gross income

requirements established by the Department of Revenue for the land. All other horticultural land must have produced an average gross income of at least one thousand dollars (\$1,000). Gross income includes income from the sale of the horticultural products produced from the land and any payments received under a governmental soil conservation or land retirement program.

(3) Forestland. – Individually owned forestland consisting of one or more tracts, one of which consists of at least 20 acres that are in actual production and are not included in a farm unit.

(b) Natural Person Ownership Requirements. – In order to come within a classification described in subsection (a) of this section, the land must, if owned by a natural person, also satisfy one of the following conditions:

(1) It is the owner's place of residence.

(2) It has been owned by the current owner or a relative of the current owner for the four years preceding January 1 of the year for which the benefit of this section is claimed.

(3) At the time of transfer to the current owner, it qualified for classification in the hands of a business entity or trust that transferred the land to the current owner who was a member of the business entity or a beneficiary of the trust, as appropriate.

(b1) Entity Ownership Requirements. – In order to come within a classification described in subsection (a) of this section, the land must, if owned by a business entity or trust, have been owned by the business entity or trust or by one or more of its members or creators, respectively, for the four years immediately preceding January 1 of the year for which the benefit of this section is claimed.

(b2) Exception to Ownership Requirements. – ~~G.S. 105-277.4(e) provides that deferred taxes are payable if land fails to meet any condition or requirement for classification. Accordingly, if land fails to meet an ownership requirement due to a change of ownership, G.S. 105-277.4(e) applies. Despite this failure and the resulting liability for taxes under G.S. 105-277.4(e), the~~ Notwithstanding the provisions of subsections (b) and (b1) of this section, land may qualify for classification in the hands of the new owner if both all of the conditions listed in this subsection are met, even if the new owner does not meet all of the ownership requirements of subsections (b) and (b1) of this section with respect to the land. If the land qualifies for classification in the hands of the new owner under the provisions of this subsection, then the deferred taxes remain a lien on the land under G.S. 105-277.4(c), the new owner becomes liable for the deferred taxes, and the deferred taxes become payable if the land fails to meet any other condition or requirement for classification.

(1) The land was appraised at its present use value or was eligible for appraisal at its present use value at the time title to the land passed to the new owner.

(2) At the time title to the land passed to the new owner, the new owner acquires the land for the purposes of and continues to use the land for

the purposes it was classified under subsection (a) of this section while under previous ownership.

(3) The new owner has timely filed an application as required by G.S. 105-277.4(a) and has certified that the new owner accepts liability for the deferred taxes and intends to continue the present use of the land.

(c) Repealed by Session Laws 1995, c. 454, s. 2.

(d) Exception for Conservation Reserve Program. – Land enrolled in the federal Conservation Reserve Program authorized by 16 U.S.C. ~~§ 1381~~ Chapter 58 is considered to be in actual production, and income derived from participation in the federal Conservation Reserve Program may be used in meeting the minimum gross income requirements of this section either separately or in combination with income from actual production. Land enrolled in the federal Conservation Reserve Program ~~shall~~ must be assessed as agricultural land if it is planted in vegetation other than trees, or as forestland if it is planted in trees.

(d1) Exception for Easements on Qualified Conservation Lands Previously Appraised at Use Value. – Property that is appraised at its present-use value under G.S. 105-277.4(b) shall continue to qualify for appraisal, assessment, and taxation as provided in G.S. 105-277.2 through G.S. 105-277.7 so long as the property is subject to an enforceable conservation easement that would qualify for the conservation tax credit provided in G.S. 105-130.34 and G.S. 105-151.12, without regard to actual production or income requirements of this section.

(e) Exception for Turkey Disease. – Agricultural land that meets all of the following conditions is considered to be in actual production and to meet the minimum gross income requirements:

(1) The land was in actual production in turkey growing within the preceding two years and qualified for present use value treatment while it was in actual production.

(2) The land was taken out of actual production in turkey growing solely for health and safety considerations due to the presence of Poultry Enteritis Mortality Syndrome among turkeys in the same county or a neighboring county.

(3) The land is otherwise eligible for present use value treatment.

(f) Sound Management Program for Agricultural Land and Horticultural Land. – If the property owner demonstrates any one of the following factors with respect to agricultural land or horticultural land, then the land is operated under a sound management program:

(1) Enrollment in and compliance with an agency-administered and approved farm management plan.

(2) Compliance with a set of best management practices.

(3) Compliance with a minimum gross income per acre test.

(4) Evidence of net income from the farm operation.

(5) Evidence that farming is the farm operator's principal source of income.

(6) Certification by a recognized agricultural or horticultural agency within the county that the land is operated under a sound management program.

Operation under a sound management program may also be demonstrated by evidence of other similar factors. As long as a farm operator meets the sound management requirements, it is irrelevant whether the property owner received income or rent from the farm operator.

(g) Sound Management Program for Forestland. – If the owner of forestland demonstrates that the forestland complies with a written sound forest management plan for the production and sale of forest products, then the forestland is operated under a sound management program."

SECTION 3. G.S. 105-277.4 reads as rewritten:

"§ 105-277.4. Agricultural, horticultural and forestland – Application; appraisal at use value; appeal; deferred taxes.

(a) Application. – Property coming within one of the classes defined in G.S. 105-277.3 ~~shall be~~ is eligible for taxation on the basis of the value of the property in its present use if a timely and proper application is filed with the assessor of the county in which the property is located. The application ~~shall~~ must clearly show that the property comes within one of the classes and ~~shall~~ must also contain any other relevant information required by the assessor to properly appraise the property at its present-use value. An initial application ~~shall~~ must be filed during the regular listing period of the year for which the benefit of this classification is first claimed, or within 30 days of the date shown on a notice of a change in valuation made pursuant to G.S. 105-286 or G.S. 105-287. A new application is not required to be submitted unless the property is transferred or becomes ineligible for use-value appraisal because of a change in use or acreage. An application required due to transfer of the land may be submitted at any time during the calendar year but must be submitted within 60 days of the date of the property's transfer.

(b) Appraisal at Present-use Value. – Upon receipt of a properly executed application, the assessor ~~shall~~ must appraise the property at its present-use value as established in the schedule prepared pursuant to G.S. 105-317. In appraising the property at its present-use value, the assessor ~~shall~~ must appraise the improvements located on qualifying land according to the schedules and standards used in appraising other similar improvements in the county. If all or any part of a qualifying tract of land is located within the limits of an incorporated city or town, or is property annexed subject to G.S. 160A-37(f1) or G.S. 160A-49(f1), the assessor ~~shall~~ must furnish a copy of the property record showing both the present-use appraisal and the valuation upon which the property would have been taxed in the absence of this classification to the collector of the city or town. ~~He shall~~ The assessor must also notify the tax collector of any changes in the appraisals or in the eligibility of the property for the benefit of this classification. Upon a request for a certification pursuant to G.S. 160A-37(f1) or G.S. 160A-49(f1), or any change in the certification, the assessor for the county where the land subject to the annexation is located ~~shall~~ must, within 30 days, determine if the

land meets the requirements of G.S. 160A-37(f1)(2) or G.S. 160A-49(f1)(2) and report the results of its findings to the city.

(b1) Appeal. – Decisions of the assessor regarding the qualification or appraisal of property under this section may be appealed to the county board of equalization and review or, if that board is not in session, to the board of county commissioners. Decisions of the county board may be appealed to the Property Tax Commission.

(c) Deferred Taxes. – Land meeting the conditions for classification under G.S. 105-277.3 ~~shall-must~~ be taxed on the basis of the value of the land for its present use. The difference between the taxes due on the present-use basis and the taxes that would have been payable in the absence of this classification, together with any interest, penalties, or costs that may accrue thereon, are a lien on the real property of the taxpayer as provided in G.S. 105-355(a). The difference in taxes ~~shall-must~~ be carried forward in the records of the taxing unit or units as deferred taxes. The taxes become due and payable when the land fails to meet any condition or requirement for classification. Failure to have an application approved is ground for disqualification. The tax for the fiscal year that opens in the calendar year in which deferred taxes become due is computed as if the land had not been classified for that year, and taxes for the preceding three fiscal years that have been deferred are immediately payable, together with interest as provided in G.S. 105-360 for unpaid taxes. Interest accrues on the deferred taxes due as if they had been payable on the dates on which they originally became due. If only a part of the qualifying tract of land fails to meet a condition or requirement for classification, ~~a determination shall be made of the assessor must~~ determine the amount of deferred taxes applicable to that part and that amount becomes payable with interest as provided above. Upon the payment of any taxes deferred in accordance with this section for the three years immediately preceding a disqualification, all liens arising under this subsection are extinguished. The deferred taxes for any given year may be paid in that year without the qualifying tract of land becoming ineligible for deferred status.

(d) Exceptions. – Notwithstanding the provisions of subsection (c) of this section, if property loses its eligibility for present use value classification solely due to one of the following reasons, no deferred taxes are due and the lien for the deferred taxes is extinguished:

- (1) There is a change in income caused by enrollment of the property in the federal conservation reserve program established under 16 U.S.C. Chapter 58.
- (2) The property is conveyed by gift to a nonprofit organization and qualifies for exclusion from the tax base pursuant to G.S. 105-275(12) or G.S. 105-275(29).
- (3) The property is conveyed by gift to the State, a political subdivision of the State, or the United States.

(e) Repealed by Session Laws 1997-270, s. 3, effective July 3, 1997."

SECTION 4. G.S. 105-277.7 reads as rewritten:

"§ 105-277.7. Use-Value Advisory Board.

1 (a) Creation and Membership. – The Use-Value Advisory Board is established
2 under the supervision of the Agricultural Extension Service of North Carolina State
3 University. The Board shall annually submit to the Department of Revenue a
4 recommended use value manual developed in accordance with the guidelines in G.S.
5 105-289(a)(5). In developing the manual, the Board may consult with federal and State
6 agencies as needed. The Board shall submit to the Department of Revenue
7 recommendations concerning requirements for horticultural land used to produce
8 evergreens intended for use as Christmas trees when requested to do so by the
9 Department.

10 The Board shall be chaired by the Director of the Agricultural Extension Service of
11 North Carolina State University shall serve as the chair of the Board. The Board and
12 shall consist of the following additional members: members, to serve ex officio:

- 13 (1) A a representative of the Department of Agriculture and Consumer
14 Services, designated by the Commissioner of Agriculture; Agriculture.
- 15 (2) A a representative of the Forest Resources Division of the Department
16 of Environment and Natural Resources, designated by the Director of
17 that Division; and a Division.
- 18 (3) A representative of the Agricultural Extension Service at North
19 Carolina Agricultural and Technical State University, designated by
20 the Director of the Extension Service.
- 21 (4) A representative of the North Carolina Farm Bureau, designated by the
22 President of the Bureau.
- 23 (5) A representative of the North Carolina Association of Assessing
24 Officers, designated by the President of the Association.
- 25 (6) The Director of the Property Tax Division of the North Carolina
26 Department of Revenue or the Director's designee.
- 27 (7) A representative of the North Carolina Association of County
28 Commissioners, designated by the President of the Association.
- 29 (8) A representative of the North Carolina Forestry Association,
30 designated by the President of the Association.

31 (b) Staff. – ~~All members shall serve ex officio.~~ The Agricultural Extension
32 Service at North Carolina State University ~~shall~~ must provide clerical assistance to the
33 Board.

34 (c) Duties. – The Board must annually submit to the Department of Revenue a
35 recommended use-value manual. In developing the manual, the Board may consult with
36 federal and State agencies as needed. The manual must contain all of the following:

- 37 (1) The estimated cash rental rates for agricultural lands and horticultural
38 lands for the various classes of soils found in the State. The rental rates
39 must recognize the productivity levels by class of soil or geographic
40 area. The rental rates must be based on the rental value of the land to
41 be used for agricultural or horticultural purposes when those uses are
42 presumed to be the highest and best use of the land. The recommended
43 rental rates may be established from individual county studies or from
44 contracts with federal or State agencies as needed.

- (2) The recommended net income ranges for forestland furnished to the Board by the Forestry Section of the North Carolina Cooperative Extension Service. These net income ranges may be based on up to six classes of land within each Major Land Resource Area designated by the United States Soil Conservation Service. In developing these ranges, the Forestry Section must consider the soil productivity and indicator tree species or stand type, the average stand establishment and annual management costs, the average rotation length and timber yield, and the average timber stumpage prices.
- (3) The capitalization rates adopted by the Board prior to February 1 for use in capitalizing incomes into values. The capitalization rate for forestland shall be nine percent (9%). The capitalization rate for agricultural land and horticultural land must be no less than six percent (6%) and no more than seven percent (7%). The incomes must be in the form of cash rents for agricultural lands and horticultural lands and net incomes for forestlands.
- (4) The value per acre adopted by the Board for the best agricultural land. The value may not exceed one thousand two hundred dollars (\$1,200).
- (5) Recommendations concerning any changes to the capitalization rate for agricultural land and horticultural land and to the maximum value per acre for the best agricultural land based on a calculation to be determined by the Board. The Board shall annually report these recommendations to the Revenue Laws Study Committee and to the President Pro Tempore of the Senate and the Speaker of the House of Representatives.
- (6) Recommendations concerning requirements for horticultural land used to produce evergreens intended for use as Christmas trees when requested to do so by the Department."

SECTION 5. G.S. 105-289(a) reads as rewritten:

"(a) ~~It shall be~~ is the duty of the Department of Revenue:

- (1) To discharge the duties prescribed by law and to enforce the provisions of this Subchapter.
- (2) To exercise general and specific supervision over the valuation and taxation of property by taxing units throughout the State.
- (3) To appraise the property of public service companies.
- (4) To keep full and accurate records of the Commission's official proceedings.
- (5) To prepare and distribute annually to each assessor ~~a the manual developed by the Use-Value Advisory Board under G.S. 105-277.7 that establishes five expected net income per acre ranges for agricultural land, horticultural land, and forestland, and establishes a method for appraising nonproductive land as a percentage of the lowest use value established for productive land. The high and low net income amount in each range may differ by no more than fifteen~~

dollars (\$15.00). The basis for establishing each range shall be soil productivity.

~~For agricultural land, the expected net income per acre ranges shall be based on the actual yields and prices of corn and soybeans over a period of at least the five previous years, and the actual fixed and variable costs, including an imputed management cost, incurred in growing corn and soybeans over the same period of time. The manual shall contain recommended adjustments to the net income per acre ranges for the growing of crops subject to acreage or poundage allotments.~~

~~Expected net income per acre ranges shall be similarly established for horticultural land and forestland, using typical horticultural or forest products in various growing regions of the State instead of corn and soybeans. the cash rental rates for agricultural lands and horticultural lands and the net income ranges for forestland.~~

(6) To establish requirements for horticultural land, used to produce evergreens intended for use as Christmas trees, in lieu of a gross income requirement until evergreens are harvested from the land, and to establish a gross income requirement for this type horticultural land, that differs from the income requirement for other horticultural land, when evergreens are harvested from the land.

(7) To conduct studies of the cash rents for agricultural lands on a county or a regional basis, such as the Major Land Resource Area map designated and developed by the U.S. Department of Agriculture. The results of the studies must be furnished to the North Carolina Use-Value Advisory Board. The studies may be conducted on any reasonable basis and timetable that will be reflective of rents and values for each local area based on the productivity of the land."

SECTION 6. G.S. 105-296(j) reads as rewritten:

"(j) The assessor ~~shall~~must annually review at least one eighth of the parcels in the county classified for taxation at present-use value to verify that these parcels qualify for the classification. By this method, the assessor shall~~must~~ review the eligibility of all parcels classified for taxation at present-use value in an eight-year period. The period of the review process is based on the average of the preceding three years' data. The assessor may request assistance from the Farm Service Agency, the Cooperative Extension Service, the Forest Resources Division of the Department of Environment and Natural Resources, or other similar organizations.

The assessor may require the owner of classified property to submit any ~~information~~ information, including sound management plans for forestland, needed by the assessor to verify that the property continues to qualify for present-use value taxation. The owner has 60 days from the date a written request for the information is made to submit the information to the assessor. If the assessor determines the owner failed to make the information requested available in the time required without good cause, the property loses its present-use value classification and the property's deferred taxes become due

1 and payable as provided in G.S. 105-277.4(c). The assessor must reinstate the property's
2 use-value classification when the owner submits the requested information unless the
3 information discloses that the property no longer qualifies for present-use value
4 classification. When a property's present-use value classification is reinstated, it is
5 reinstated retroactive to the date the classification was revoked and any deferred taxes
6 that were paid as a result of the revocation must be refunded to the property owner.

7 In determining whether property is operating under a sound management program,
8 the assessor must consider any weather conditions or other acts of nature that prevent
9 the growing or harvesting of crops or the realization of income from cattle, swine, or
10 poultry operations. The assessor must also allow the property owner to submit
11 additional information before making this determination."

12 SECTION 7. G.S. 105-299 reads as rewritten:

13 "**§ 105-299. Employment of experts.**

14 The board of county commissioners may employ appraisal firms, mapping firms or
15 other persons or firms having expertise in one or more of the duties of the assessor to
16 assist ~~him or her~~ the assessor in the performance of ~~such these~~ duties. The county may
17 also assign to county agencies, or contract with State or federal agencies, for any duties
18 involved with the approval or auditing of use-value accounts. The county may make
19 available to ~~such these~~ persons any information it has that will facilitate the
20 performance of a contract entered into pursuant to this section. Persons receiving ~~such~~
21 this information ~~shall be~~ are subject to the provisions of G.S. 105-289(e) and
22 G.S. 105-259 regarding the use and disclosure of information provided to them by the
23 county. Any person employed by an appraisal firm whose duties include the appraisal of
24 property for the county ~~shall must~~ be required to demonstrate that he or she is qualified
25 to carry out ~~such these~~ duties by achieving a passing grade on a comprehensive
26 examination in the appraisal of property administered by the Department of Revenue. In
27 the employment of ~~such these~~ firms, primary consideration ~~shall must~~ be given to the
28 firms registered with the Department of Revenue pursuant to ~~the provisions of~~
29 G.S. 105-289(i). A copy of the specifications to be submitted to potential bidders and a
30 copy of the proposed contract may be sent by the board to the Department of Revenue
31 for review before the invitation or acceptance of any bids. Contracts for the employment
32 of ~~these such~~ firms or persons ~~shall be deemed to be~~ are contracts for personal services
33 and ~~shall not be~~ not subject to the provisions of Article 8, Chapter 143, of the
34 General Statutes."

35 SECTION 8. Article 12L of Chapter 120 of the General Statutes is amended
36 by adding a new section to read:

37 "**§ 120-70.108. Property Tax Subcommittee.**

38 (a) The Revenue Laws Study Committee shall establish a Property Tax
39 Subcommittee consisting of six members. The Senate cochair of the Committee shall
40 designate three members appointed by the President Pro Tempore of the Senate to serve
41 on the Subcommittee and shall name one of those members a cochair of the
42 Subcommittee. The House cochair of the Committee shall designate three members
43 appointed by the Speaker of the House of Representatives to serve on the Subcommittee

1 and shall name one of those members a cochair of the Subcommittee. The
2 Subcommittee shall meet upon the call of the Subcommittee cochairs.

3 (b) The Property Tax Subcommittee shall study, examine, and, if necessary,
4 recommend changes to the property tax system. The Subcommittee shall include in its
5 study an examination of all classes of property, including exemptions and exclusions of
6 property from the property tax base. The Subcommittee shall also study the present-use
7 value system, including the following:

8 (1) Examine the implementation and application of the current present-use
9 value statutes.

10 (2) Evaluate other tax credits, including adjustments to and credits for ad
11 valorem taxes, to encourage agricultural, forestry, horticultural, and
12 conservation use of land.

13 (3) Evaluate the treatment of undeveloped land in ad valorem tax.

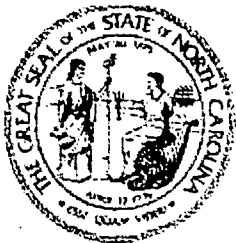
14 (4) Evaluate the possibility of amending the present-use value system and
15 developing other tax incentives to encourage conservation and
16 environmental protection of land. The study shall include the
17 feasibility of allowing lands managed for conservation and the
18 preservation of water quality, wildlife habitats, and other conservation
19 purposes to be taxed at their present-use value.

20 (5) Evaluate the possibility of adding more specific land and resource
21 management criteria to the sound management programs required for
22 all lands enrolled in the present-use value system.

23 (6) Review other issues related to the taxation of agricultural land,
24 horticultural land, and forestland, including reducing the acreage
25 requirement for land to qualify as forestland.

26 (c) The Subcommittee shall report any recommendations to the Revenue Laws
27 Study Committee."

28 **SECTION 9.** Sections 1 through 7 of this act are effective for taxes imposed
29 for taxable years beginning on or after July 1, 2003. The remainder of this act is
30 effective when it becomes law.



SENATE BILL 1161: Amend Use Value Statutes

BILL ANALYSIS

Committee: House Agriculture
Date: August 20, 2002
Version: Third Edition

Sponsor: Senator Hartsell
Analysis by: Martha Walston
Committee Counsel

SUMMARY: *Senate Bill 1161 is a recommendation of the Revenue Laws Study Committee and the result of the joint effort of representatives from the Department of Revenue, the NC Farm Bureau, the NC Association of County Commissioners, and the NC Association of Assessing Officers. The bill seeks to amend the present-use value statutes to more accurately determine the realistic present-use value of agricultural land, horticultural land, and forestland. The Bill does this by:*

- *Changing the method of determining the present use-value for agricultural land and horticultural land to one based on cash rents. The current method is based on the price and yield of corn and soybeans.*
- *Listing factors that demonstrate (1) agricultural land or horticultural land is operated under a sound management plan, and (2) forestland is operated under a sound management plan.*
- *Authorizing the Use-Value Advisory Board to set the capitalization rate within a range of 6 to 7% for agricultural land and horticultural land. Forestland remains at 9%.*
- *Adding five new members to the Use-Value Advisory Board.*
- *Making changes to the definitions that apply to the use-value statutes.*
- *Requiring a new owner to file an application within 60 days of the property's transfer and certify that the owner intends to continue the present use and accepts liability for deferred taxes on the property.*
- *Requiring the Use-Value Advisory Board to annually report to the Revenue Laws Study Committee and to the President Pro Tempore of the Senate and the Speaker of the House of Representatives on any recommended changes to (1) the capitalization rate for agricultural land and horticultural land and (2) the maximum value per acre for the best agricultural land.*
- *Allowing property to continue to be appraised at use value if the property becomes subject to an enforceable conservation easement that qualifies for the conservation tax credit under NC tax laws. This property would continue to qualify for use value even though it no longer met the actual production or income requirements of the use value statutes.*
- *Amending the statutes establishing the Revenue Laws Study Committee by adding a new section that creates a 6-member Property Tax Subcommittee. The section lists the duties of the subcommittee. These duties are similar to those given to the Property Tax Commission established last session, but with language proposed by the conservation*

proponents added. The Property Tax Commission never met and was to submit its final report of recommendations to the 2003 General Assembly.

BACKGROUND: In 1973, the General Assembly designated three classes of property as special classes of property under Article V, Sec. 2(2) of the North Carolina Constitution: agricultural land, horticultural land, and forestland. At that time, eligible property began to be appraised, assessed, and taxed at its present-use value, as opposed to its fair market value. The present-use value classification helps preserve farmland by insulating it from the rising property tax values caused by competing market pressures to develop farmland for commercial and residential purposes.

In 1985, the General Assembly enacted the current methodology for calculating present-use value. It directed the Department of Revenue to prepare and distribute annually to each tax assessor a present-use value manual to assist in appraising and assessing farmland. A four-member Use-Value Advisory Board, under the supervision of the Agricultural Extension Service of North Carolina State University, submits a recommended manual to the Department each year. The present-use value manual is advisory only, and each county remains free to develop its own present-use value schedules. Until several years ago, all counties used the manual. Today, an increasing number of counties do not use the manual because the present-use values in the manual cannot be supported by credible market evidence. For example, the values determined for agricultural land are based on yields and prices of corn and soybeans using a capitalization rate of 9%. Corn and soybeans no longer represent the typical crops grown in the State and are not the major money crops. This current method erodes the intent to foster uniformity and creates equity problems between similar types of properties.

In 1999, the Revenue Laws Study Committee recommended to change the method for determining the present-use value of agricultural land and horticultural land. The Committee based the value of such land upon its cash rents using a capitalization rate of 5%. The proposal was introduced during the 1999 session, but was not enacted.

BILL ANALYSIS: Section 1 of the bill makes the following changes to the definitions that apply in the use-value statutes¹:

- To qualify for use-value treatment the agricultural land, forestland land, and horticultural land must be actively engaged in commercial production under a sound management program. A "sound management program" is defined as "a program of production designed to obtain the greatest net return from the land consistent with its conservation and long-term improvement." **SB 1161 exempts certain agricultural land and horticultural land from a sound management program:**
 1. **If the agricultural land includes less than 20 acres of woodland, then the woodland portion is not required to be under a sound management program. Also woodland adjacent to agricultural land is not required to be under a sound management program if it is determined that the highest and best use of the woodland is to diminish wind erosion, protect water quality, or serve as buffers for the adjacent agricultural land.**

¹ The proposed changes are in bold type.

2. If the horticultural land includes less than 20 acres of woodland, then the woodland portion is not required to be under a sound management program. Also woodland adjacent to horticultural land is not required to be under a sound management program if it is determined that the highest and best use of the woodland is to diminish wind erosion of adjacent horticultural land or protect water quality of adjacent horticultural land.
- To qualify for use-value treatment, agricultural land, forestland, and horticultural land must be individually owned. The term "individually owned" means:
 1. a natural person who (a) lives on the land, (b) has owned the land in their family for at least four years, or (c) received the land when it was eligible for use-value treatment in the prior owner's hands.
 2. a business entity if farming, horticulture, or forestry is its principal business and whose members are all natural persons who are actively engaged in the business, are related to a member actually engaged in the business, or have inherited the property from one of these members.
 3. a family or charitable testamentary trust that meets certain conditions. The family trust must be created by a natural person and the beneficiaries must be the creator of the trust, the creator's relatives, or a second trust whose beneficiaries are the creator of the first trust or the creator's relatives.
 4. SB 1161 adds "tenants in common" within the term "individually-owned". Each tenant in common must either be a natural person or a business entity.
 - The current definition of "present-use value" bases the value of agricultural land, horticultural land, or forestland on its ability to produce income, using a capitalization rate of 9%. SB 1161 provides that the capitalization rate for agricultural land and horticultural land is to be determined by the Use-Value Advisory Board pursuant to statutory guidelines defining the duties of the Board. The capitalization rate for forestland will remain at 9%.
 - SB 1161 creates a definition for "unit". Current law requires agricultural land, horticultural land, and forestland to be part of a unit, but does not define the term.

Section 2 of the bill does the following:

- Under current law, the property must be the owner's residence or have been owned by the person for four years before the property can be classified in the use-value program. Prior to 2002, there was an exception to the four-year ownership requirement, if the new owner owned other property classified in the use-value program. S.L. 2001-499 removed the requirement that the new owner have other property classified in the use-value program. However, the new owner must acquire the land for the purposes of and continue to use the land for the purposes it was classified under the use-value program. Also, the new owner is liable for the deferred taxes. SB 1161 clarifies that when the land is transferred to a new owner who intends to continue its use-value purpose, the deferred taxes remain a lien on the land. SB 1161 also requires the new owner to file an application for use-value within 60 days of the date of the property's transfer and

certify that the new owner intends to continue the present use of the land and accept liability for the deferred taxes. Under current law, the deferred taxes for the preceding three years become payable whenever the property loses its eligibility for the benefit of the present-use value.

- Under current law, land enrolled in the federal Conservation Reserve Program is considered to be in actual production for use-value determination, and income derived from participation in the federal program may be used to meet the gross income requirements for use-value classification. SB 1161 corrects an incorrect cite to this federal program. (Under the federal Conservation Reserve Program, owners are paid for agreeing to refrain from farming their property in order to conserve and improve the soil and water resources of the land.)
- SB 1161 adds new language that would allow property appraised at use value to continue to qualify for use value appraisal, so long as the property is subject to an enforceable conservation easement that qualifies for the conservation tax credit under N.C. tax laws. This property would continue to qualify for use value even though it no longer met the actual production or income requirements of the use value statutes.²
- SB 1161 sets out a list of factors that the property owner may demonstrate in order to show that his or her land is operated under a sound management program. For agricultural land and horticultural land, a property owner must demonstrate only one of the listed factors or a similar factor in order to meet the sound management requirement. For forestland, the owner must demonstrate compliance with a written sound forest management plan for the production and sale of forest products.

Section 3 of the bill does the following:

- G.S. 105-277.4 sets out the requirements for a timely and proper application for present-use value classification, the duties of the assessor when appraising at present-use value, and the determination and payment of deferred taxes. An initial application for present-use value is required to be filed during the regular listing period or within 30 days of the date shown on a notice of change in valuation. A new application is required when the property is transferred or becomes ineligible because of a change in use or acreage. SB 1131 allows a taxpayer to file an application any time during the calendar year if the application is required because of a transfer of the land. However, the new application must be submitted within 60 days of the date of the property's transfer.

² G.S. 105-151.12 and 105-130.34 gives a conservation tax credit to a corporation or individual who donates interest in North Carolina property that is useful for public beach access or use, public access to public waters or trails, fish and wildlife conservation, or other similar land conservation purposes. The property must be donated to either the State, a local government, or a body that is both organized to receive and administer lands for conservation purposes and qualified to receive charitable contributions under the Code. For a corporation, the credit is taken against the income tax and is equal to 25% of the fair market value of the donated property. The credit may not exceed \$500,000, and any unused portion may be carried forward for the next succeeding five years. For an individual, the credit is taken against the income tax and is equal to 25% of the fair market value of the donated property. The credit may not exceed \$250,000, and any unused portion may be carried forward for the next succeeding five years.

- **SB 1131 clarifies that failure to have an application approved is ground for disqualification as classified property.** This means that if classified property is transferred to a new owner who intends to continue the present use of the property and the new owner does not apply for and receive approval for present-use value classification, then the new owner becomes liable for the deferred taxes.

Section 4 of the bill does the following:

- **Changes the make-up and duties of the Use-Value Advisory Board.** Under current law, the Use-Value Advisory Board is established under the supervision of the Agricultural Extension Service of NC State University. The Board annually submits a recommended manual to the Department of Revenue. The Department of Revenue annually prepares and distributes this manual to each assessor.

SB 1131 adds five new members to the current make-up of the Board:

1. The Director of the Agricultural Extension Service of NCSU, serves as chair.
2. A representative of the Department of Agriculture and Consumer Services, designated by the Commissioner of Agriculture.
3. A representative of the Forest Resources Division of DENR, designated by the Director of that Division.
4. A representative of the Agricultural Extension Service at NC Agricultural and Technical State University, designated by the Director of the Extension Service.
5. A representative of the NC Farm Bureau, designated by the President of the Bureau.
6. A representative of the NC Association of Assessing Officers, designated by the President of the Association.
7. The Director of the Property Tax Division of the NC Department of Revenue or the Director's designee.
8. A representative of the NC Association of County Commissioners, designated by the President of the Association.
9. A representative of the North Carolina Forestry Association, designated by the President of the Association.

SB 1131 makes substantive changes to the duties of the Use-Value Advisory Board. Under current law, the required contents of the manual are set out in the statutory duties of the Department of Revenue. **SB 1131 changes some of these requirements and moves them to the statute setting out the duties of the Use Value-Advisory Board.** The Board must set out the following in the manual:

- **The expected net income per acre ranges of agricultural land.** These are to be based on the estimated cash rental rates for agricultural lands for the various classes of soil in the State, instead of the actual yields and prices of corn and soybeans over a period of at least the five previous years.
- **The expected net income per acre ranges for horticultural land.** These are to be based on the estimated cash rental rates for horticultural lands for

the various classes of soil in the State, instead of typical horticultural products in various growing regions in the State.

- The rental rates for both agricultural land and horticultural land are to be used when agricultural or horticultural purposes are presumed to be the highest and best use of the land. These rates may be established from individual county studies or contracts with federal or State agencies.
- The expected net income per acre ranges for forestland. These are to be furnished by the Forestry Section of the NC Cooperative Extension Service and are to be based on six Major Land Resource Areas in the State. These areas are geographic regions designated by the US Soil Conservation Service. SB 1161 sets out in the statute a list of factors that the Forestry Section must consider when developing the income ranges. These same factors are currently listed in the Use-Value Manual.
- The capitalization rates adopted by the Board prior to February 1. The rate for forestland remains at 9%. The rate for agricultural land and horticultural land is changed from 9% to a rate of no less than 6% and no more than 7%. The rate is used to capitalize incomes into values.
- The value per acre for the best agricultural land, not to exceed \$1,200.
- Recommendation of any changes to the capitalization rate for agricultural land and horticultural land and to the maximum value per acre for the best agricultural land. These recommendations must be annually reported to the Revenue Laws Study Committee and to the President Pro Tem and Speaker.

Section 5 of the bill changes the duties of the Department of Revenue as follows:

- Moves the required contents of the Use-Value Manual from the Duties of Department of Revenue statute to the Use-Value Advisory Board statute.
- Requires the Department to conduct studies of the cash rents for agricultural lands.

Section 6 of the bill amends G.S. 105-296, which sets out the powers and duties of the assessor. This section requires the assessor to annually review one eighth of the parcels in the county classified at present-use value and authorizes the assessor to require an owner to submit information needed by the assessor to verify that the property continues to qualify. SB 1131 (1) clarifies that the assessor must annually review "at least" one eighth of the parcels, (2) authorizes the assessor to request assistance in carrying out the review, (3) clarifies that the assessor may require the owner to submit information of a sound management plan when verifying the classification of forestland, (4) clarifies that the period of the review process is based on the average of the preceding three years' data, (5) requires the assessor to consider acts of nature that may prevent the growing of crops or the realization of income when determining whether the property is operated under a sound management program, and (6) requires the assessor to allow the property owner to submit additional information before determining that the property is not operated under a sound management program.

Section 7 of the bill amends G.S. 105-299, which authorizes the board of county commissioners to employ experts. SB 1131 authorizes the county to assign to county agencies or contract with State or federal agencies, for any duties involved with the approval or auditing of use-value accounts.

Section 8 of the bill creates a six-member Property Tax Subcommittee of the Revenue Laws Committee. The Senate cochair of the Committee shall designate three members to serve on the subcommittee and the House cochair of the Committee shall designate three members. The subcommittee must report any recommendations to the Revenue Laws Committee. The duties of the subcommittee include studying the present-use value system, including the following:

1. Examine the implementation and application of the current present-use value statutes.
2. Evaluate other tax credits, including adjustments to and credits for ad valorem taxes, to encourage agricultural, forestry, horticultural, and conservation use of land.
3. Evaluate the treatment of undeveloped land in ad valorem tax.
4. Evaluate the possibility of amending the present-use value system and developing other tax incentives to encourage conservation and environmental protection of land. The study shall include the feasibility of allowing lands managed for conservation and the preservation of water quality, wildlife habitats, and other conservation purposes to be taxed at their present-use value system.
5. Review other issues related to the taxation of agricultural land, horticultural land, and forestland, including reducing the acreage requirements for land to qualify as forestland.

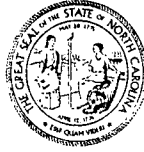
**2002 COMMITTEE REPORT
HOUSE OF REPRESENTATIVES**

The following report(s) from standing committee(s) is/are presented:

By Representative(s) **Hill** (Chair/~~Chair~~) for the Committee on **Agriculture**.

- ☒ Committee Substitute for
S.B. 1161 A BILL TO BE ENTITLED AN ACT TO AMEND THE PRESENT-USE
VALUE STATUTES AND TO CREATE A PROPERTY TAX SUBCOMMITTEE OF THE
REVENUE LAWS STUDY COMMITTEE.
- ☐ With a favorable report.
- ☒ With a favorable report and recommendation that the bill be re-referred to the Committee on
~~Appropriations~~ ☐ Finance ☒ ☐.
- ☐ With a favorable report, as amended.
- ☐ With a favorable report, as amended, and recommendation that the bill be re-referred to the
Committee on Appropriations ☐ Finance ☐ ☐.
- ☐ With a favorable report as to the committee substitute bill (#), ☐ which changes the
title, unfavorable as to (the original bill) (Committee Substitute Bill #), (and
recommendation that the committee substitute bill #) be re-referred to the Committee
on .)
- ☐ With a favorable report as to House committee substitute bill (#), ☐ which changes
the title, unfavorable as to Senate committee substitute bill.
- ☐ With an unfavorable report.
- ☐ With recommendation that the House concur.
- ☐ With recommendation that the House do not concur.
- ☐ With recommendation that the House do not concur; request conferees.
- ☐ With recommendation that the House concur; committee believes bill to be material.
- ☐ With an unfavorable report, with a Minority Report attached.
- ☐ Without prejudice.
- ☐ With an indefinite postponement report.
- ☐ With an indefinite postponement report, with a Minority Report attached.
- ☐ With recommendation that it be adopted. (HOUSE RESOLUTION ONLY)

5/13/02



North Carolina General Assembly
House of Representatives
State Legislative Building
Raleigh 27601-1096

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14TH DISTRICT

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COMMITTEES:

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FINANCE, VICE-CHAIRMAN
CONGRESSIONAL REDISTRICTING, REGIONAL CHAIR
GOVERNMENTAL OPERATIONS, ADVISORY
TRANSPORTATION
ENVIRONMENT AND NATURAL RESOURCES
LOCAL GOVERNMENT I
RULES

MEMORANDUM

DATE: September 25, 2002

FROM: Representative Dewey L. Hill, Chair
Agriculture Committee

SUBJECT: Bills Pending in the Committee on Agriculture

Pursuant to House Rule 36(a) all House bills and resolutions shall be reported from the standing committee or permanent subcommittee to which referred with such recommendations as the standing committee or permanent subcommittee may desire to make **except in the case where the principal introducer requests in writing to the Chair(s) of the standing committee or permanent subcommittee that the bill not be considered.**

MEMORANDUM

FROM: Representative Dewey L. Hill
Bill Sponsor and Chair of Agriculture Committee

SUBJECT: HB 1426 Regulate Experimental Tobacco

I request that HB 1426 not be considered by the Committee on Agriculture.

September 25, 2002
Date

Dewey Hill
Sponsor's Signature

